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Elena Ruth Sassower, Coordinator

BY HAND

December 9, 1999

Judge William A. Wetzel
Acting Justice of the Supreme Court
of the State of New York
111 Centre Street
New York, New York 10013-4310

RE: *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551)
Petitioner's Response to the Attorney General's December 6th letter and affirmation

Dear Justice Wetzel:

This letter is submitted to prevent fraud upon the Court – and through it upon the public -- by Assistant Attorney General Carolyn Cairns Olson, whose December 6th letter to the Court purports to enclose "respondent's supplemental memorandum of law, with proof of service attached" (Exhibit "A").

I received *no* such document with the copy of Ms. Olson's December 6th letter, faxed to me at 5:01 p.m. on that date. Rather, the *only* document Ms. Olson's letter enclosed was denominated "Affirmation in Further Support of Respondent's Motion to Dismiss the Verified Petition" (Exhibit "B").[1] This affirmation, Ms. Olson's own, once again demonstrates that she is incapable of any advocacy in this proceeding that is not false and deceitful and that even the pendency of my fully-documented omnibus motion, particularizing her *own* disqualifying conflict of interest as counsel herein[2] and documenting my entitlement to severest sanctions

[1] A hard copy of that affirmation was received by regular mail on December 8th, *without* any coverletter.

[2] *See* ¶¶20-23 of my July 28, 1999 affirmation in support of my omnibus motion.

against her, including disciplinary and criminal referral for her prior litigation fraud herein, is not sufficient to deter her continued litigation fraud. Consequently, this letter, in addition to exposing Ms. Olson's latest fraud upon the Court by her December 6th letter and affirmation, seeks imposition of additional sanctions against her -- and against those responsible and complicitous in her continued misconduct at the Attorney General's office and at the Commission on Judicial Conduct. As the record before the Court shows, I have given the Attorney General's office and the Commission notice of Ms. Olson's professional misconduct *at every stage of this proceeding*, most recently by notice dated October 25th, protesting her frivolous and misleading advocacy on October 1st before Justice Zweibel on the subject of my application for his recusal[3].

Ms. Olson identifies that her affirmation is submitted "in reply to petitioner's letter application for this Court's recusal" (at ¶1). She characterizes that letter application, dated December 2, 1999, as "*renew*[ing] an application before this Court" for its recusal (¶2, emphasis added). She thus appears to concede what the Court's November 22nd letter to me failed to acknowledge, *to wit*, that my November 15th letter to the Court relating to my November 5th letter to Justice Kapnick presented an application for the Court's recusal.

Presumably speaking for the Commission on Judicial Conduct, as well as the Attorney General, Ms. Olson purports "*we* know of no basis for this Court's recusal, and do not see any basis for recusal in petitioner's 12/2/99 letter or otherwise" (¶4, emphasis added). Such statement would be shocking if asserted by a private attorney. It is inexcusable when asserted by the State's highest law enforcement officer who rhetorically touts his commitment to restoring public confidence in government[4] and who is here defending the state agency whose duty is to discipline

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[3] My October 25th notice is Exhibit "I" to my November 5th letter to Justice Kapnick. The transcript of the October 1st proceeding before Justice Zweibel is Exhibit "C" to that November 5th letter.

[4] *See* my July 28, 1999 affidavit in support of my omnibus motion: "Message from Attorney General Eliot Spitzer", annexed as Exhibit "A-1" thereto; *also*, transcript of Attorney General Spitzer's public remarks before the Association of the Bar of the City of New York at an event co-sponsored by the New York Law Journal, (pp. 4-12), annexed as Exhibit "B" to Exhibit "E" thereto.

judges for failure to comply with law and ethical rules[5]. As relates to judicial disqualification, the law is Judiciary Law §14 and the ethical rules are §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct – which have the force of law in that they have been embodied by the People of this State in Article VI, Section 20 of the New York State Constitution.[6]

Except for two sentences of Ms. Olson's affirmation which distort the facts relating to my central argument of the Court's disqualification under Judiciary Law §14 for self-interest, Ms. Olson's 5-sentence presentation on the recusal issue at ¶¶3 and 4 omits ALL the facts set forth by my 12-page December 2nd letter as grounds for the Court's disqualification.

Emphasizing that Judiciary Law §14 is "the only basis for a mandatory recusal of a judge", Ms. Olson's ¶3 not only obscures that I *expressly* invoked that statute, but the basis therefore. It is *not*, as Ms. Olson pretends, because I believe that Judiciary Law §14 requires the disqualification of "any judge with a term expiring in 2001... if they are seeking reappointment or re-election" – as if these facts standing alone have some significance. *Nor* is it based on a "suspicion that Governor Pataki, who is not a party to this proceeding, is nevertheless interested enough to exert some political influence over the outcome". As the record before the Court shows, the "suspicion" -- which Ms. Olson pretends is "baseless speculation that should be rejected" -- is hard evidence that Governor Pataki, the appointing authority on whom the Court is dependent for its daily continuance on the bench by reason of the expiration of its appointive term five months ago, is implicated in the corruption which is the subject of this Article 78 proceeding[7]. That the record

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[5] *See* 22 NYCRR §7000.9 "Standards of conduct": (b) "In evaluating the conduct of judges, the commission shall be guided by: (1) the requirement that judges uphold and abide by the Constitution and laws of the United States and the State of New York; and (2) the requirement that judges abide by the Code of Judicial Conduct, the rules of the Chief Administrator and the rules of the respective Appellate Divisions governing judicial conduct.

[6] Article VI, §20 of the New York State Constitution: "judges and justices... shall also be subject to rules of conduct as may be promulgated by the chief administrator of the courts with the approval of the court of appeals."

[7] Record support for the expiration of the Court's term on June 30, 1999: Exhibit "D" to my December 2nd letter. Record support for the criminal implications of this Article 78 proceeding upon Governor Pataki: ¶¶ELEVENTH-SIXTEENTH (*See* Exhibits "A" and "B"), TWENTY-SEVENTH (*See* Exhibit "E", p. 2), THIRTIETH of the Verified Petition; and pp. 20-22 of CJA's March 26, 1999 ethics complaint, annexed as Exhibit "E" to my July 28, 1999

shows that the Governor, as a pattern and practice, subverts fixed screening procedures for his judicial appointments and reappointments[8] only further reinforces the Court's vulnerability to illegitimate pressures from the Governor.

As my December 2nd letter explicitly states (at p. 6), it is this Court's "acute dependency on the Governor for reappointment" in the context of a case that "directly implicates the Governor in criminal conduct", which gives the Court "a proscribed self-interest in this proceeding, within the meaning of Judiciary Law §14".

It seems obvious that the reason Ms. Olson does not identify the facts set forth in my December 2nd letter as to: (1) the Court's dependency on Governor Pataki for reappointment; and (2) the dire political and criminal consequences to the Governor *if* this case is decided on the facts and law, is that she would then have to deny and dispute them. This she is unable to do and does not do.

For the same reason, Ms. Olson does not identify the further fact presented by my December 2nd letter bearing on this Court's self-interest in this proceeding (at pp. 2, 7), *to wit*, beyond the general self-interest of every judge under the disciplinary jurisdiction of the Commission on Judicial Conduct that the Commission remain dysfunctional and corrupted lest it investigate judicial misconduct complaints against him and his fellow judges, this Court is a recent beneficiary of the Commission's dismissal of a facially-meritorious judicial misconduct complaint against it – a complaint based, in part, on its relationship with the Governor. That complaint, filed by Clay Tiffany, further substantiates the allegations of my Verified Petition as to the Commission's protectionism of politically-connected judges, therefore giving the Court a self-interest in not adjudicating the legitimacy of those allegations. Plainly, any adjudication of them and of the Commission's duty to investigate facially meritorious complaints would force the Court to face the prospect that a rejuvenated Commission – the goal of this proceeding – would either, *sua sponte*, investigate that improperly dismissed complaint or do so upon its resubmission.

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affidavit in support of my omnibus motion.

[8] Record support for Governor Pataki's manipulation of the judicial appointments process: pp. 15-22 of CJA's March 26, 1999 ethics complaint, annexed as Exhibit "E" to my July 28, 1999 affidavit in support of my omnibus motion.

Having obliterated the grounds for the Court's "mandatory recusal" under Judiciary Law §14, Ms. Olson's affirmation obliterates the additional grounds recited by my letter. These grounds, raising reasonable question as to this Court's impartiality – the standard for recusal under §100.3E(1) of the Chief Administrator's Rules Governing Judicial Conduct -- are:

> (1) the Court's long-standing personal and professional relationship with Governor Pataki, before he became Governor, which – quite apart from its dependency upon the Governor for reappointment -- would incline the Court to "throw" this case to protect him from the scandal and criminal consequences resulting from an adjudication based on the facts and law (at pp. 7-8);
>
> (2) the fact that the Court was *not* randomly-assigned the case, but received it upon a direction of Administrative Judge Crane for reasons unknown (at p. 10);
>
> (3) the Court's November 22nd letter, *inter alia*, claiming that no recusal application was before it; failing to, *sua sponte*, disclose facts relating to the disqualification issues presented by my November 5th letter; declining my conference request whose purpose, as outlined by my November 5th letter, was to ensure the integrity of the judicial process in this Article 78 proceeding; and failing to ascertain the intentions of the intervenors, relating either to their intervention herein or to CJA's filed criminal and disciplinary complaints seeking investigation of the Attorney General and Commission based, *inter alia*, upon their litigation fraud in this proceeding (at pp. 1-6).

Only by such wholesale obliteration is Ms. Olson able to purport not to "know" or "see any basis for recusal in petitioner's 12/2/99 letter or otherwise" (at ¶4). Since the facts set forth by my December 2nd letter cumulatively establish that this Court is perhaps the *most* disqualified of its five recused judicial predecessors, this is yet a further demonstration of Ms. Olson's fraudulent and deceitful conduct for the Attorney General on behalf of the Commission on Judicial Conduct.

Perhaps after the Court makes disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct – as expressly requested by my letter in the event that the Court does not recuse itself based on my December 2nd letter application (at pp. 1, 9-10) – Ms. Olson, the Attorney General, and the Commission will "know" and "see" the recusal issues with greater clarity.

Ms. Olson's affirmation omits any mention of this alternative relief requested by my December 2nd letter (at pp. 1, 9-10), as well as of my further express request for a 30-day extension of time within which to make a formal recusal motion (at pp. 1, 11-12). Such relief is, therefore entirely unopposed. Indeed, it must be pointed out that Ms. Olson's affirmation does not, in fact, oppose my application for the Court's recusal based on my December 2nd letter, but instead "defers to the Court the determination of whether recusal is appropriate in this case" (at ¶4).

It is without addressing the alternative relief expressly requested by my December 2nd letter – disclosure and an extension of time to make a formal recusal motion – that Ms. Olson's affirmation proceeds with its final paragraph moving to "the merits of this proceeding" (at ¶5). However, in view of Ms. Olson's failure to deny or dispute the legal authority presented by my December 2nd letter (at p. 3), showing that:

> "the judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion."[9]

or to deny or dispute the relevancy of the disclosure specified at pages 9-10 of my letter to my prospective formal recusal motion, nothing would better demonstrate this Court's disqualifying self-interest and bias than for it to refuse to make disclosure and to deny me the opportunity to interpose a formal recusal motion.

Moreover, for the Court to dismiss my Article 78 proceeding "in its entirety"[10] "for

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[9] Judicial Disqualification by Richard Flamm (Little Brown & Co., 1996), pp. 578-580, annexed as part of Exhibit "B" to my November 5th letter to Justice Kapnick.

[10] *See* p. 62 of my September 24th reply memorandum of law: "...it is long settled law that a motion to dismiss an entire complaint consisting of several causes of action is denied, if at least one of the causes of action is sufficient, *Advance Music Corp. v. American Tobacco Co.*, 296 NY 79 (NY Ct of Appeals 1946)."

all the reasons set forth in respondent's memorandum of law" – which is what Ms. Olson's ¶6 urges – would require the Court to "throw" the case by completely ignoring the record before it, thereby additionally demonstrating its disqualifying self-interest and bias. That record, containing my 99-page memorandum of law in support of my omnibus motion, establishes that Respondent's memorandum, supporting its post-default dismissal motion, is, from beginning to end, and in virtually every line, based on falsification, distortion, and concealment of the evidence-supported pleaded allegations of my Verified Petition. The record further establishes that Respondent's memorandum, presented by the Attorney General, is not properly before the Court. This, because:

(1) the Attorney General is disqualified from representing respondent by reason of his non-compliance with Executive Law §63.1 and multiple conflicts of interest;[11]

(2) Justice Lebedeff was without authority to grant a post-default extension of time to respondent after recusing herself;[12]

(3) Justice Lebedeff's aforesaid post-default extension was without adhering to the provisions of CPLR §7804(e) and the specific requirements of CPLR §3012 – which respondent had not satisfied.[13]

As highlighted by the very first page of my memorandum of law in support of my omnibus motion, these three objections to the Court's consideration of Respondent's dismissal motion are EACH threshold issues for the Court's adjudication, once it has ruled on the issue of its own disqualification.

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[11] *See* my omnibus motion: (1) my July 28, 1999 supporting affidavit, ¶¶3-103; (2) my July 28, 1999 memorandum of law, pp. 33-37; (3) my September 24, 1999 reply memorandum of law, pp. 24-35.

[12] *See* my omnibus motion: (2) my July 28, 1999 supporting affidavit, Exhibit "K", pp. 10-16 (2) my September 24, 1999 reply memorandum of law, pp. 36-37; (3) my October 1, 1999 letter to Justice Zweibel, p. 4 & fn. 4 with citation to Judicial Disqualification, *supra*, pp. 646-655.

[13] *See* my omnibus motion: (1) my July 28, 1999 supporting affidavit, ¶¶104-113; (2) my July 28, 1999 memorandum of law, pp. 96-99; (3) my September 24, 1999 reply memorandum of law, pp. 22-23, 36-43.

Lastly, it is a flagrant deceit for Ms. Olson to put before the Court the decision in *Mantell v. State Commission on Judicial Conduct* (NY Co. Index #99-108655), physically annexing a copy to her affirmation as usable authority for this Court's adjudication of my right to "judicial review" and "a writ of mandamus" on my Verified Petition[14]. Although Ms. Olson's ¶6 refers to the fact that I have "noted" the *Mantell* decision, she conspicuously omits the context in which I have done so. This context is reflected at page 3 of my December 2nd letter to the Court, wherein I describe the decision as "fraudulent" and demonstrative that this Article 78 proceeding must be referred back to Administrative Judge Crane with a recommendation for a special assignment – lest it be "thrown" by a fraudulent judicial decision, much as Mr. Mantell's Article 78 proceeding and, before it, the Article 78 proceeding *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141)

This description reiterates a more expansive discussion of the decision and the Attorney General's dishonest advocacy in Mr. Mantell's proceeding, appearing at pages 5-7 of my November 5th letter to Justice Kapnick, including the following:

> "based upon my review of the decision and the file in Mr. Mantell's Article 78 proceeding, I can affirmatively state that Mr. Mantell's case was 'thrown' by a fraudulent September 30, 1999 decision of Supreme Court Justice Edward Lehner."

Three separate exhibits annexed to my November 5th letter not only identify Justice Lehner's fraudulent decision, but seek criminal and disciplinary investigations:

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[14] Ms. Olson also claims that Mr. Mantell's petition is "similar" to mine, without identifying the precise nature of that similarity. The dissimilarities are evident upon examination of the petitions. Thus, Mr. Mantell's Amended Verified Petition involved the Commission's dismissal of his facially-meritorious September 28, 1998 judicial misconduct complaint based on a false claim that it presented "no indication of judicial misconduct upon which to based an investigation". By contrast, my Verified Petition involves the Commission's dismissal of my facially-meritorious October 6, 1998 judicial misconduct complaint for NO stated reason, as well as the Commission's refusal to acknowledge a second facially-meritorious judicial misconduct complaint, dated February 3, 1999, which, needless to say it has not dismissed. Additionally, whereas Mr. Mantell's Amended Verified Petition sought no more than judicial review of the Commission's dismissal of his judicial misconduct complaint, my Verified Petition presents a series of challenges to the constitutionality and lawfulness of the Commission's self-promulgated rules, procedures, and violative statutory interpretations and expressly requests, to the extent required by law, conversion of the Article 78 proceeding to a declaratory judgment action.

CJA's October 21st letter to the Manhattan District Attorney Robert Morgenthau (Exhibit "G", at p. 4), CJA's October 21st letter to the U.S. Attorney for the Southern District of New York (Exhibit "H", at p. 18), and CJA's October 27th letter to the New York State Ethics Commission (Exhibit "I", at p. 4). Indeed, CJA's October 27th letter (at p. 4) *expressly* put both the Attorney General and Commission on notice of their "ethical duty to take corrective steps to vacate Justice Edward Lehner's palpably fraudulent judicial decision" – a fact pointed up in a separate October 29, 1999 notice to each of them (Exhibit "C" hereto).

It is in face of my repeated assertions as to the fraudulence of Justice Lehner's decision that Ms. Olson presents it to the Court, *without* any identification of those assertions, *without* denying or disputing their accuracy, and *without* making any affirmative statement of her own as to the decision's legitimacy.

In view of Ms. Olson's shameless attempt to mislead the Court by annexing a copy of the *Mantell* decision, annexed hereto (Exhibit "D") is an analysis of Justice Lehner's decision, supported by a copy of the *Mantell* litigation papers, transmitted in an accompanying file[15].

As identified by page 6 of my November 5th letter, it was my intention to present the analysis to the Court at the requested conference

> "to support an oral application that the Court refer my Article 78 proceeding to Judge Crane with a recommendation for special assignment – lest it become the third Article 78 proceeding 'thrown' by a fraudulent judicial decision of a Supreme Court, New York County Justice, protecting the Commission."

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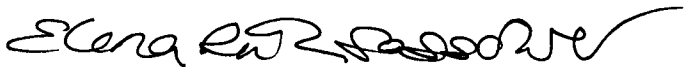
[15] As noted by my November 5th letter (pp. 6-7), substantial portions of the memorandum of law to dismiss Mr. Mantell's Article 78 proceeding were taken, *verbatim*, from Ms. Olson's memorandum of law to dismiss my Article 78 proceeding. Chief among these portions is the argument that Mr. Mantell lacked "standing" (*Cf.* pp. 13-16 of the "cross-motion" to dismiss Mr. Mantell's Amended Petition with pp. 25-29 of Ms. Olson's memorandum of law to dismiss my Verified Petition.) Justice Lehner apparently did NOT think much of that argument – since he did not rely on "standing" in his decision dismissing Mr. Mantell's proceeding. Ms. Olson, nonetheless, identifies "standing" in her last sentence of ¶6, along with "capacity to sue". These two defenses were exposed as worthless in my omnibus motion: *See* (1) my July 28, 1999 affidavit, ¶¶114-120; and Doris L. Sassower's July 28, 1999 affidavit; (2) my July 28, 1999 memorandum of law, pp. 59-61; 75-80; (3) my September 24, 1999 affidavit, ¶¶16-19 and Doris L. Sassower's September 24, 1999 affidavit; (4) my September 24, 1999 memorandum of law, pp. 46-57.

The analysis is here presented to prevent the Court from being defrauded and to reinforce my entitlement to sanctions against Ms. Olson, the Attorney General, and the Commission. However, it should ALSO be read in support of the express requests in my December 2nd letter (at p. 9) that, upon the Court's recusal, "its order of recusal refer the case back to Judge Crane for reassignment" and that "in view of the appearance and actuality of Judge Crane's *own* disqualifying bias and self-interest", a conference be scheduled "so that proper arrangements may be made to ensure that this Article78 proceeding is assigned to a fair and impartial tribunal."

Ms. Olson's affirmation, by making no reference to these further express requests, may be deemed to have no objection thereto.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Petitioner *Pro Se*

Enclosure: File of *Michael Mantell v. NYS Commission on Judicial Conduct* (NY Co. #99-108655), as inventoried on annexed page

cc: New York State Attorney General
New York State Commission on Judicial Conduct
Proposed Intervenors
U.S. Attorney for the Eastern District of New York
Administrative Judge Stephen Crane
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