

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-344-3318 (3 pages)

August 9, 2001

New York Civil Liberties Union
Arthur Eisenberg, Legal Director
125 Broad Street, 17th Floor
New York, New York 10004

RE: On the Issue of Standing -- *Amicus* and other assistance in the appeal of the public interest Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York (NY Co. #108551/99; Appellate Division; September 2001 Term)*

Dear Mr. Eisenberg:

For your convenience, enclosed is the Appellate Division, First Department's summary affirmance in *Mantell* – with its one-sentence add-on, unsupported by any law, as to “standing”.

Also enclosed is CJA's December 1, 2000 memo to the Attorney General and the Commission, putting them on notice of their duty to vacate the *Mantell* appellate decision for fraud – and providing a thumb-nail analysis of the decision.

That the Attorney General and Commission – without denying or disputing the accuracy of that analysis – or even acknowledging its existence -- nonetheless are urging dismissal of my appeal based on the *Mantell* appellate decision – indeed, are even expanding it to stand for the broader proposition that not only do I lack standing as to *my* judicial misconduct complaints, but to sue the Commission *altogether* is detailed at pages 40-47 of my Critique to the Respondent's Brief.

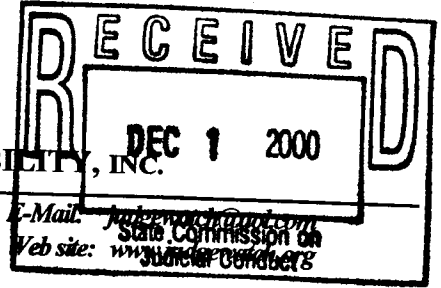
IF YOU DO NOTHING ELSE (except also reading pp. 1-11 of the Critique)– PLEASE, PLEASE, PLEASE, give me the benefit of your evaluative comment on those 7 pages. Unless this pretense of “lack of standing” is knocked out now, citizens with legitimate complaints will have no rights to challenge the Commission's wrongful conduct. The time for the Civil Liberties to do something is NOW – AND THIS IS THE CASE IN WHICH TO DO IT.

*Elena Ruth
Sassower*

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BY HAND

TO: NEW YORK STATE ATTORNEY GENERAL ELIOT SPITZER

ATT: David Nocenti, Counsel
Peter Pope, Chief, "Public Integrity Unit"
William Casey, Chief Investigator,
"Public Integrity Unit"

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

ATT: Commissioners
Gerald Stern, Administrator & Counsel

FROM: ELENA RUTH SASSOWER, COORDINATOR

RE: *Michael Mantell v. New York State Commission on Judicial Conduct*
(NY Co. #99-108655)

DATE: December 1, 2000

*Received for
the Atty Gen
12/1/00
Gary Smedley*

This is to put you on notice of your on-going duty -- of which, by now, you should no longer need to be reminded -- to move to vacate for fraud the fraudulent judicial decisions of which you are the beneficiary. The latest of these fraudulent decisions is the Appellate Division, First Department's unsigned 5-sentence decision in *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655): (1) affirming Justice Lehner's September 30, 1999 decision; (2) further holding that "Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct"; and (3) denying my motion to intervene and for other relief.

Significantly, the Appellate Division gives no reasons for denying my motion. As you know, my motion exposes (at Exhibit "E") that Justice Lehner's decision is legally insupportable and further exposes (at pages 9-10, fn. 9; Exhibit "Z-3") the frivolousness of any objection based on lack of standing.

Tellingly, the Appellate Division not only provides NO law for its holding on lack of standing, but distorts the factual record to obscure that Mr. Mantell is seeking investigation of HIS facially-meritorious complaint pursuant to Judiciary Law §44.1.

Elena Ruth Sassower



New York Law Journal[®]

Official Publication for the First and Second Judicial Departments

Established in 1888

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VOLUME 224—NO. 97

NEW YORK, MONDAY, NOVEMBER 20, 2000

TODAY'S NEWS

Update

The Appellate Division, First Department, has upheld a ruling that the State Commission on Judicial Conduct has the discretion to refuse to investigate charges brought to it by an attorney against a judge. In a two-paragraph unsigned opinion, a five-justice panel affirmed a September 1999 decision by Manhattan Supreme Court Justice Edward Lehner not to require the commission to investigate allegations that a Manhattan Criminal Court Judge changed a ruling based on personal animus against the complaining lawyer. The appeals court last week said that the lawyer who brought the charges lacks standing to assert that the commission is required to investigate all meritorious complaints of judicial misconduct. The case is *Mantell v. New York State Commission on Judicial Conduct*, 2291.

2291. **MICHAEL MANTELL, pet-ap, v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, res-res QDS:12118527** — Judgment, Supreme Court, New York County (Edward Lehner, J.), entered on or about September 30, 1999, which, in a proceeding pursuant to CPLR article 78 to compel respondent Commission to investigate petitioner attorney's complaint of judicial misconduct, granted respondent's motion to dismiss the petition, unanimously affirmed, without costs.

Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus (*cf., Matter of Dyno v. Rose*, 260 AD2d 694, 698, *appeal dismissed* 93 NY2d 998, *lv denied* 94 NY2d 753).

M-5760. **MANTELL v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT**—Motion seeking leave to intervene and for other related relief denied.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

By Williams, J.P.; Mazzairelli, Lerner, Buckley and Friedman, JJ.