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BY EXPRESS MAIL
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October 14, 1998

William K. Suter, Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: *Sassower v. Mangano, et al.*, S.Ct. #98-106
(1) Procedures for Recusal Applications;
(2) Procedures for Judicial Misconduct Complaints;
(3) Recall/Vacatur of the October 5, 1998 Order;
(4) Rule 44 Extension Request for Filing of Petition for Rehearing;
(5) Use of "good standing" status as a member of the Supreme Court bar on letterheads, professional cards, etc.

Dear Mr. Suter:

The purpose of this letter is five-fold. Firstly, I request clarification of Supreme Court procedures pertaining to applications for the Justices' recusal. According to Chief Deputy Clerk Francis Lorson[1], the general policy of the Clerk's office is *not* to docket recusal applications unless the Justices act upon them. Mr. Lorson gave this as the *sole* reason why my September 23, 1998 letter-application for the Justices' disqualification and disclosure, pursuant to 28 U.S.C. §455, had not been docketed -- notwithstanding he confirmed that it had been distributed to each of the Justices in connection with their consideration of my then pending petition for a writ of certiorari in the above-entitled matter. On October 5, 1998, the Court entered an order denying the cert petition, with no mention of my September 23, 1998

[1] Mr. Lorson's representations, as set forth herein, were made in the course of two telephone conversations with my paralegal assistant/daughter, on October 5th and October 8th. Her verification thereof appears at the end of this letter.

Exhibit E-3

application or disposition thereon[2].

Please confirm that the general policy of the Clerk's office is, in fact, to docket *only* recusal applications which are acted on by the Justices -- and provide legal authority therefor. It seems obvious that such policy, if it exists, creates a "false record", wherein the Clerk's office not only conceals the existence of filed recusal applications, but the misconduct of the Justices, whose denial of cert petitions is tainted by their failure to adjudicate those threshold applications. I am unaware of legal authority that would permit any judge -- let alone Justices of our Supreme Court -- to fail to act upon a recusal application. I respectfully submit that a recusal application must either be denied, granted, or otherwise addressed.

Please also advise why, notwithstanding my September 23, 1998 recusal letter-application was, according to Mr. Lorson, distributed to the Justices and, though not docketed, part of a permanent correspondence file of the case, the Clerk's office has now returned it under a completely incomprehensible coverletter, dated October 6, 1998, signed by Denise McNerney, an Administrative Assistant (Exhibit "A")[3]. Ms. McNerney purports to be responding to my "letter addressed to the Supreme Court of the United States"-- the date of which she does not identify. However, her responses do not reflect ANY inquiry I made in ANY of my letters: not in my September 23, 1998 letter-application, addressed to the

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[2] Likewise, the Court's October 5, 1998 order neither mentioned nor adjudicated my written requests for issuance of a Rule 8 show cause order relative to my membership in "good standing" at the Supreme Court bar. Mr. Lorson similarly stated that such requests were "before the Court" in conjunction with its consideration of my cert petition. These written requests are annexed as Exhibits "B-1" and "B-2" to my unadjudicated September 23, 1998 recusal application.

[3] On October 9th, following receipt of Ms. McNerney's letter, my daughter telephoned Ms. McNerney about it. Ms. McNerney stated she did not recall who had forwarded to her the letter to which she purported to respond and put my daughter "on hold"for the next five minutes. As a result, my daughter hung up and telephoned Mr. Lorson, leaving a message on his voice mail, requesting that he or Ms. McNerney call back to discuss the letter. My daughter also called back Ms. McNerney, but her phone was answered by "Amy". "Amy" refused to give her last name, refused to identify whether she was a co-worker or superior to Ms. McNerney, and, hung up on my daughter after she objected to "Amy's" misinformation as to the time for filing a petition for rehearing. As of today, neither I nor my daughter have received any return call from Ms. McNerney or Mr. Lorson about the October 6th letter. Indeed, my daughter tells me that notwithstanding Mr. Lorson's voice mail states that he will return phone calls, he has, since early August, consistently not returned any of her phone calls, thereby necessitating further calls -- also unreturned. It is my daughter's recollection that Mr. Lorson only once returned a phone call -- and that either in late July or early August.

Justices, which she returned[4], nor in my September 29, 1998 letter, addressed to Mr. Lorson, formally requesting docketing of my September 23, 1998 recusal letter. According to Mr. Lorson, that September 29th letter was also distributed to the Justices, who were indicated recipients thereof[5].

Secondly, please advise as to the procedures for filing judicial misconduct complaints against the Justices. Mr. Lorson stated he was unaware of any procedures, that he was unaware of any response from the Court to the recommendation in the National Commission's 1993 Report on the subject, and that he does not know who at the Court would be able to provide information as to the Court's actions, if any, with respect to the National Commission's aforesaid recommendation.

Pages 121-123 of the National Commission's Report pertaining to the Supreme Court are enclosed for your convenience (Exhibit "B"). These identify the Court's "current practice" of referring a judicial misconduct complaint against a Justice "to the Justice to whom it relates". Not included is how the complained-about Justice then addresses the misconduct complaint, if at all[6]. The National Commission's recommendation, included in those pages, is:

> "...that the Supreme Court may wish to consider the adoption of policies and procedures for the filing and disposition of complaints alleging misconduct against Justices of the Supreme Court." (at 123).

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[4] Such returned document is herewith enclosed.

[5] The concluding paragraph to that letter was as follows:

> "...the Justices cannot properly decide the *Sassower v. Mangano* cert petition (and supplemental brief) without their first addressing the threshold issue of judicial disqualification/disclosure, presented by petitioner's September 23rd letter, as well as the related issue of the Rule 8 show cause order, which is part thereof".

[6] *Cf.*, the National Commission's discussion and recommendations relative to §372(c) judicial misconduct complaints involving the lower federal judiciary, where the Circuit Chief Judges who receive such complaints are not supposed to dismiss them except by non-conclusory orders addressed to the particulars of the complaint, which orders are to be publicly accessible and statistically reported to the Administrative Office of the U.S. Courts. Such recommendations were endorsed by the Judicial Conference in its March 15, 1994 report of its proceedings.

It was this recommendation to which the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders referred when it stated in its March 1994 report to the Chief Justice and the Judicial Conference that:

> "One recommendation [of the National Commission] is directed to the Supreme Court of the United States and is therefore not within the purview of the Judicial Conference." (at 11)

Please advise as to the Court's response to this single recommendation relative to judicial misconduct complaints against its Justices, directed to it and within its purview.

Thirdly, so as not to delay the filing of a judicial misconduct complaint against the Justices, based on their wilful failure to adjudicate my application for disqualification and disclosure, pursuant to 28 U.S.C. §455, while proceeding to summarily deny my cert petition, I respectfully request that this letter be deemed a judicial misconduct against all of them, individually and collectively. For that reason, I am enclosing nine originals of this letter-complaint for distribution to the Justices -- each with my original signature beneath the verification.

Individually and collectively, the Justices' purposeful failure to adjudicate my recusal application cannot be viewed as anything but a subversion of 28 U.S.C. §455 -- replicating the identical subversion of that essential statute by Second Circuit judges for which my cert petition sought review. Indeed, the second "Question Presented" by my cert petition -- affirmatively answered in Point II therein -- was:

> "Is it misconduct *per se* for federal judges to fail to adjudicate or to deny, without reasons, fact-specific, fully-documented recusal motions?".

In support of this judicial misconduct complaint against the Justices, I rest on the pertinent legal argument in Point II of my *unopposed* cert petition (at 26-30), including the statement that "the reasonable inference drawn from a court's failure to rule on such due process-determining motion is that it cannot meet the constitutional issues presented as to its bias." (at 26-27). Additionally, I rely on this Court's decisional law, which, over and again, has recognized that justice, as well as public confidence in the judicial system, require both the actuality and appearance of a fair and impartial tribunal. There can be neither justice nor public confidence, where a fact-specific recusal application is, as here, purposefully unadjudicated.

Absent legal authority or argument showing that the Justices were not obligated to adjudicate my fact-specific September 23, 1998 application, pursuant to 28 U.S.C. 455, notwithstanding such statute applies to them[7], I respectfully request they promptly recall/vacate their October 5, 1998 order denying the cert petition and adjudicate that threshold application with its incorporated, likewise unadjudicated, Rule 8 show cause request (at p. 7). These corrective steps would obviate my being burdened with filing a formal petition for rehearing. It is anticipated that the rehearing petition will be addressed to the Court's subversion of the §455 statute, as well as its actualized bias and official misconduct, manifested by its summary denial of cert, with no disciplinary and criminal referral of the subject federal judges[8]. That this official misconduct rises to a level justifying the Justices' impeachment -- based on my *unopposed* cert petition and supplemental brief detailing judicial corruption in the Second Circuit, unrestrained by any checks -- may be seen from the current all-consuming public discussion as to grounds for impeachment and the necessity of upholding the rule of law and integrity of the judicial process.

Fourthly, inasmuch as my petition for rehearing is presently due on October 30, 1998, I request that, pursuant to Rule 44, my time for such filing be extended by the Court or a Justice pending the Justices' determination of this judicial misconduct complaint against them and incorporated-request for recall/vacatur of the October 5, 1998 order.

Finally, out of respect for the Court, I believe it appropriate to give notice of my intention to include my "good standing" status as a member of the Supreme Court bar on my letterhead, professional cards, etc. I trust the Court will have no objection since, as summarized in my unadjudicated recusal application (at p. 7), it has not removed me from membership in the Supreme Court bar or issued a show cause order, pursuant to Rule 8.

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[7] *See, inter alia*, the Court's November 1, 1993 press release "Statement of Recusal Policy", relative to its obligations under 28 U.S.C. §455 where their spouses, children or other relatives are involved as practicing attorneys in cases before the Court. Printed at pp. 1068-1070 of Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company, 1996.

[8] The Court's duty under ethical codes to make criminal and disciplinary referrals was detailed at Point IB of my *unopposed* cert petition (25-26) and in my supplemental brief (2-3, 10).

I await your prompt response with respect to all of the foregoing.

Very truly yours,

DORIS L. SASSOWER, Petitioner *Pro Se*
Member in good standing, U.S. Supreme Court bar

I affirm under penalties of perjury that the factual statements made in the foregoing letter-complaint are true and correct to the best of my knowledge, as hereinabove stated.

DORIS L. SASSOWER

I affirm under penalties that the factual recitations in the foregoing letter-complaint as to telephone conversations with Francis Lorson, Denise McNerney, and "Amy" of the Clerk's office are true and correct to the best of my knowledge.

ELENA RUTH SASSOWER
Paralegal Assistant

cc: New York State Attorney General,
Counsel to Respondents and Himself a Respondent
Justices of the United States Supreme Court