

assertion that the Attorney General had a duty to take supervisory steps so as to avoid my having to burden to the Court with such motion and was perfectly contented by the possibility that, as in the three litigations detailed in "*Restraining 'Liars'*", the Court might cover-up the Attorney General's misconduct by ignoring it -- a possibility I raised with him. He rejected the notion that the Attorney General, as this State's chief law enforcement officer, has any duty to ensure the integrity of the judicial process.

\* 102. On Monday, July 26, 1999 (9:30 a.m.), I learned from David Nocenti, counsel to Mr. Spitzer, that conflict-of-interest issues involving employees of the Attorney General's office can be directed to a four-person "Employee Conduct Committee" -- one of whose members is Mr. Rifkin. I also learned from him that the Attorney General has not actually set up the "public integrity unit" in any formal way and that Mr. Pope is one of several Assistant Attorneys General to whom public integrity matters are directed.

I reported to Mr. Nocenti the salient facts pertaining to the Attorney General's conflict of interest and litigation misconduct in this proceeding -- and the refusal of those in supervisory positions to effect supervision. I named for him the Assistants Attorneys General handling the case, as well as all the supervisory personnel to whom I turned. Requesting that our phone conversation together be deemed notice to Mr. Spitzer (from whom he stated he was "two doors" away) that I was going to be seeking sanctions against him, personally, I noted that New York's Disciplinary Rules of the Code of Professional Responsibility had reinforced the supervisory duties of law firms<sup>22</sup>. I complained that the consequence of Mr. Spitzer's failure to

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<sup>22</sup> See my accompanying Memorandum of Law, p. 7.

take corrective action in the three cases featured in "*Restraining 'Liars'*", was the continued *modus operandi* of litigation misconduct by the Attorney General's office. I stated that I would send him a copy of this sanctions motion and asked that he obtain from Mr. Palozzola, in the interim, my document-supported correspondence with Mr. Spitzer and, in particular, my March 26, 1999 ethics complaint.

103. Thereafter (11:00 a.m.), I telephoned Mr. Palozzola and requested that he provide my aforesaid correspondence to Mr. Nocenti. I told him that my sanctions motion was nearly complete, that it contained a recitation of my communications with the Attorney General's office, and asked him to confirm for me his statement that Mr. Pope had told him that he was "comfortable" with Litigation's handling of the case. He confirmed that this was what Mr. Pope had told him.

**D. THE ATTORNEY GENERAL DID NOT -- AND COULD NOT -- MEET THE STANDARD FOR A POST-DEFAULT CPLR §3012(d) APPLICATION EXTENDING HIS TIME TO RESPOND TO THE VERIFIED PETITION**

104. As hereinabove detailed, when the Attorney General sought an extension of time in which to oppose the Verified Petition, Respondent was already in default. I pointed this out to the Attorney General in my May 12th letter (Exhibit "I", pp. 1, 4) -- and, on May 14th, the return date of the Verified Petition, opposed Ms. Olson's attempt to obtain an extension from the Senior Court Attorney by citing CPLR §7804(c), requiring Respondent's answer to be served "at least five days before" the return date and CPLR §7804(f), requiring any objection in point of law that Respondent desired to raise by motion be "within the time allowed for answer". Ms.