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Elena Ruth Sassower, Coordinator

BY HAND

November 30, 2001

Kris Fischer, Editor-in-Chief
New York Law Journal
345 Park Avenue South
New York, New York 10010

RE: Doing a "*Behind the News*" investigative story about the New York State Commission on Judicial Conduct, based on the record in *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. 108551/99) – and about Attorney General Spitzer's official misconduct, as documented therein

Dear Ms. Fischer:

Thank you for meeting with me and other members of the Center for Judicial Accountability, Inc. (CJA) on November 21st, when we dropped by, following oral argument at the Appellate Division, First Department of the appeal of my above-entitled public interest lawsuit against the New York State Commission on Judicial Conduct.

As the Commission is the SOLE state agency charged with the duty of investigating complaints against New York State judges, there can be no question but that the legal community and general public are profoundly affected when – as chronicled by the Six Claims for Relief in my Verified Petition [A-37-45] – the Commission jettisons that duty, imposed by Judiciary Law §44.1, and disregards the letter and spirit of a panoply of other statutory and constitutional requirements. They are even more affected when – as the record of my lawsuit shows – the Commission subverts the judicial process through litigation misconduct of its attorney, the State Attorney General.

Nor can there be any question as to the timeliness of the New York Law Journal exploring such a story, based on the record of my lawsuit. Indeed, on Monday, November 26th, the Daily News ran the first of what it has announced as a series of editorials on the subject of "*Disorder in the Courts: Judging the Judges*", sharply criticizing New York's system for disciplining

incompetent and unethical judges – and promising to “explore the judiciary in detail” – including “its lack of accountability” (Exhibit “A”).

Enclosed, *as you requested*, are copies of the appellate briefs in my lawsuit against the Commission: (1) my Appellant’s Brief and Appendix; (2) the Attorney General’s Respondent’s Brief; and (3) my Reply Brief.

As you know from the copy of my written oral argument that I provided you¹, I have a pending *unadjudicated* August 17th motion to strike the Attorney General’s Respondent’s Brief as a “fraud on the court” and to disqualify the Attorney General from representing the Commission. That motion also seeks to disqualify the Appellate Division, First Department. As it is an integral part of the appeal, indeed, *expressly* incorporated by my Reply Brief (at p. 5), a full copy of the papers on the motion is enclosed – as, likewise, my two Interim Relief Applications, referred to in my oral argument.

As the August 17th motion is voluminous, I would just point out that Exhibit “U” to my moving affidavit² is my *uncontroverted* 66-page May 3rd Critique of the Respondent’s Brief. The Attorney General’s response to that dispositive May 3rd Critique is highlighted by pages 13, 49-55 of my *uncontroverted* 58-page September 17th Critique of the Attorney General’s opposition to my motion – annexed to my October 15th reply affidavit as Exhibit “AA”. These two Critiques evidentially prove the wholly fraudulent nature of the Attorney General’s appellate advocacy – and will enable you to glean the magnitude of the Attorney General’s similarly fraudulent advocacy in the lower court – as summarized by my Appellant’s Brief (at pp. 19-21, 30-34, 56, 60).

I would further point out that the exhibits to my August 17th motion, beginning with Exhibit “T”, establish Attorney General Spitzer’s *personal* knowledge of the appellate misconduct committed in his name – and his wilful refusal to discharge his mandatory supervisory responsibilities under DR 1-104 of New York’s Disciplinary Rules of the Code of Professional Responsibility [22 NYCRR §1200.5]³. In similar fashion, the lower court record establishes Attorney General

¹ A superseding copy of my oral argument – annotated to reflect the appellate panel’s questions to me and my responses – is transmitted herewith. It is Exhibit “A” to my enclosed letter of today’s date to the appellate panel.

² My moving affidavit discusses my entitlement to relief against the Attorney General for his fraudulent appellate tactics at ¶¶88-92.

³ Exhibit “T-3”, my May 3rd letter to Attorney General Spitzer, is a MUST-READ. Not only does it transmit to him a copy of my 66-page May 3rd Critique of his Respondent’s Brief, but it reflects that on April 18, 2001, I had a public exchange and private conversation with Attorney General Spitzer, protesting his

Spitzer's *personal* knowledge of his office's misconduct throughout the litigation in the lower court and, likewise, his wilful refusal to discharge his mandatory supervisory responsibilities under DR 1-104 [22 NYCRR §1200.5].

As we move into 2002, with Attorney General Spitzer presumably running for re-election, the Law Journal has an important service to render to the legal community and general public in exploring his *on-the-job* performance. I do not believe I exaggerate by saying that if the media does its job, my public interest lawsuit against the Commission will be THE decisive issue in that race – not only ending Attorney General Spitzer's re-election prospects and political career, but his legal career as well. As set forth in my November 21st oral argument before the Appellate Division, First Department, his defense misconduct in the case would be grounds for disbarment, if committed by a private attorney. Indeed, from the appellate papers before you can *readily-verify* Attorney General Spitzer's refusal to adhere to the most fundamental ethical standards of New York's Code of Professional Responsibility. This quite apart from his complete disregard for the "interests of the state" which Executive Law §63.1 explicitly sets as the standard for determining whether he defends or prosecutes a litigation.

The Law Journal already has a unique connection to the issue of Attorney General Spitzer's defense of the Commission against my lawsuit. On January 27, 1999 – at the outset of Attorney General Spitzer's administration, the Law Journal co-sponsored with the Association of the Bar of the City of New York a breakfast forum –at which I was the first audience speaker to ask Attorney General Spitzer a question. My question concerned the *modus operandi* of fraudulent defense tactics used by his predecessor Attorneys General, summarized in CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", appearing in the August 27, 1997 Law Journal [A-55-56] – the same ad as I gave you in-hand during our brief meeting last week. As memorialized by the Law Journal transcript (Exhibit "B, pp. 13-14")⁴, my exchange with Attorney General Spitzer on January 27, 1999 included the following:

fraudulent defense tactics in my lawsuit – and providing him, *in hand*, a copy of my Appellant's Brief, Appendix, and his Respondent's Brief. The letter expressly requests that all these materials be deemed "further support of my public statement to [him] on January 27, 1999", my question to him – and his response thereto. See discussion, *infra*.

⁴ The full transcript, annexed hereto for your convenience as Exhibit "B", is ALSO part of the lower court record in my lawsuit against the Commission, where it is annexed as part of Exhibit "E" to my July 28, 1999 omnibus motion to disqualify the Attorney General from representing the Commission, to sanction him and the Commission, and to refer them for disciplinary and criminal investigation.

Sassower: "What steps are you going to take in view of those allegations [of the ad] that the Attorney General's office uses fraud to defend state judges and the State Commission on Judicial Conduct sued in litigation?"

Spitzer: "Anything that is submitted to us we will look at it."

Sassower: "I have it. I have it right here."

Spitzer: "Okay. Why did I suspect that? Thank you."

The materials that Attorney General Spitzer was thanking me for included the key documents that underlie this lawsuit, among them, my *facially-meritorious* October 6, 1998 judicial misconduct complaint [A-57-83] and the Commission's December 23, 1998 letter dismissing the complaint, *without* reasons or investigation [A-93]. The record of my lawsuit in the lower court details the story thereafter: Attorney General Spitzer refused to respond to these materials in any way, ignoring my repeated entreaties to investigate the Commission's unlawful dismissal of the October 6, 1998 *facially-meritorious* complaint – and the related evidence of the corruption of the "merit selection" process to the Court of Appeals, reflected, *inter alia*, by my November 18, 1998 letter to the City Bar [A-86-90] and my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (*New York Post*, 12/28/98) [A-101] – copies of which I also gave him *in-hand* on January 27, 1999. Indeed, Attorney General Spitzer's ONLY response was to unleash the same fraudulent defense tactics chronicled in "*Restraining Liars*" as having been committed by predecessor Attorneys General – when, as a result of his inaction and with a lapsing statute of limitations, I had no other means to vindicate the public's rights than to sue the Commission for unlawfully dismissing the *facially-meritorious* October 6, 1998 judicial misconduct complaint.

The lower court record establishes that notwithstanding Attorney General Spitzer's high-sounding claims on January 27, 1999 about making his office "the finest public interest law firm in the nation" (Exhibit "B", at p. 11), with "public integrity" being the "operating principle that drives our agenda" (Exhibit "B", at p. 10), and "a team of lawyers that stands for excellence", this was disingenuous rhetoric and pretense. Likewise his announced creation of a Public Integrity Unit "that will investigate and root out corruption throughout the state" (Exhibit "B", p. 7). Indeed, it was months before Attorney General Spitzer even staffed his Public Integrity Unit, which then blithely ignored ALL my innumerable phone messages and written requests that it investigate the fraudulent litigation conduct of the Attorney General's office in my lawsuit – as likewise in the three prior cases featured in "*Restraining Liars*" and, the subsequent case of *Michael Mantell v. Commission*.

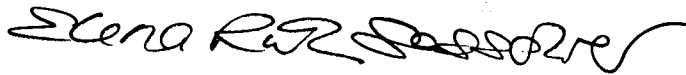
The foregoing only grazes the surface of two of the many transcendingly important and electorally-significant stories encompassed by my public interest lawsuit against the Commission

– stories which the tens of thousands of rank-and-file lawyers that comprise the legal community have a right to expect will be explored by the Law Journal. The breadth and depth of these many stories will be obvious to you upon cursory review of the appellate papers. Needless to say, I would be pleased to assist you with a personal presentation.

At your request, I will promptly provide you with the lower court record – much as, long, long ago, I provided it to the City Bar. Presumably, it is with the City Bar that the Law Journal will be co-sponsoring programs on the 2002 race for Attorney General.

Thank you.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures: As indicated