

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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ELENA RUTH SASSOWER, Coordinator of  
of the Center for Judicial  
Accountability, Inc., acting pro bono  
publico,

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE  
STATE OF NEW YORK,

Respondent-Respondent.  
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App. Div. No. 5638

**AFFIRMATION IN  
OPPOSITION TO  
MOTION FOR  
REARGUMENT**

CAROL FISCHER, an attorney duly admitted to practice law  
before the Courts of the State of New York, states as follows  
under penalty of perjury:

1. I am an Assistant Solicitor General in the Office of  
Attorney General Eliot Spitzer, counsel for the respondent-  
respondent Commission on Judicial Conduct of the State of New  
York ("respondent" or "Commission"). I submit this affirmation  
in opposition to petitioner-appellant Elena Ruth Sassower's  
("petitioner") motion for reargument. She seeks an order  
vacating of this Court's December 18, 2001 decision and order,  
Sassower v. Comm'n on Judicial Conduct of New York, \_\_\_ A.D.2d  
\_\_\_, 734 N.Y.S.2d 68 (1<sup>st</sup> Dep't 2001), and reassigning this  
appeal to the Appellate Division, Fourth Department, due to this  
Court's alleged conflicts of interest.

2. Throughout this case, petitioner has argued that the  
Governor of the State of New York, the Commission, the Attorney

General of the State of New York, and virtually the entire New York judiciary system are involved in a vast conspiracy of "systemic judicial and governmental corruption." See petitioner's January 17, 2002 Affidavit ("Sassower Aff.") ¶16. The strength of her convictions are such that she has labeled every filing by the Attorney General, and every adverse decision, a "fraud." See petitioner's January 7, 2002 letter to New York State Attorney General Spitzer and the Commission (Sassower Aff., Ex. B-1, pp. 11-14). Her current motion papers are largely an excuse for a repetition of her shrill rhetoric; nothing in them demonstrates that the Court "overlooked or misapprehended" any legal or factual aspect of this case, or that reargument would be warranted for any other reason. The Commission's response to each of petitioner's already-rejected arguments follows below

**The Denial Of The Request For An Order of Mandamus**

3. Pursuant to 22 NYCRR §7000.1 and 22 NYCRR §7000.3, the Commission has established a two-part system for handling judicial misconduct complaints: it first conducts an initial "review and inquiry" regarding the complaint, then determines whether a full-fledged investigation is warranted. Judiciary Law §44.1 and Nicholson v. State Comm'n on Judicial Conduct, 50 N.Y.2d 597 (1980), cited by petitioner (Sassower Aff. ¶¶7-8), confirm that the Commission's mandate is to "investigate" complaints -- but neither suggests, as petitioner implies, that

the Commission does not have the power to make discretionary preliminary determinations as to which complaints merit comprehensive investigations and which do not.

4. This case, therefore, was controlled by Mantell v. New York State Comm'n on Judicial Conduct, 277 A.D.2d 96 (1<sup>st</sup> Dep't 2000), app. den., 96 N.Y.2d 706 (2001), holding that a person who have filed a complaint with the Commission had no standing to seek an order compelling the Commission to investigate his or any other particular complaint, since such an investigation was a discretionary, rather than an administrative, act. Because any investigation, preliminary or comprehensive, inherently involves many independent discretionary decisions (such as which lines of inquiry are to be pursued and whether legal action might be taken), the result could hardly be otherwise. See, for example, Klostermann v. Cuomo, 61 N.Y.2d 525, 540 (1984), which explains that while an officer may be directed by mandamus to perform a duty that involves the exercise of discretion, the court may not specify how, in fact, he is to exercise that discretion. The relevant statutes and regulations, and the Commission's arguments concerning these issues, are discussed in full in its Respondent's Brief, pp. 3-5, 14-15.

#### Petitioner's Lack of Standing

5. In addition to holding that petitioner had no right to mandamus, the Court also held that she lacked standing to sue the

Commission because she could not demonstrate that she had suffered an actual or threatened injury (a point also addressed in Respondent's Brief, pp. 14-15). In criticizing this aspect of the Court's decision, petitioner, notably, does not try to demonstrate that she could, in fact, prove that she has standing. (See, e.g., *Sassower Aff.*, Ex. B-1, pp. 15-16). Even her claim that Supreme Court did not base its decision on lack of standing is irrelevant, for, as she admits, the Commission did assert from the outset before the trial court that she lacked standing (*Id.*) Accordingly, the Commission never waived its standing claim, and was free to raise it again on appeal.

**Justice Wetzel's Refusal To Recuse Himself**

6. Petitioner does not offer any new material concerning the Court's affirmation of Justice Wetzel's decision not to recuse himself; she simply refers to her original appellate brief. (*Sassower Aff.*, Ex. B-1, pp. 16-17). In it, she speculated that Justice Wetzel, being dependent on Governor Pataki for reappointment, would therefore try to protect the Governor by thwarting her lawsuit, which was otherwise destined to prove that the Governor was involved in the Commission's fraudulent conduct. Petitioner also believed that Justice Wetzel would seek to protect the Commission in order to prevent it from investigating any previously-dismissed complaints made against him. See Petitioner Brief, pp. 47-49. The Commission's

response, set forth in Respondent's Brief, pp. 17-19, was that petitioner's unsupported speculation as to possible future events did not represent a genuine, present interest in the lawsuit, and therefore could hardly require recusal -- a point petitioner has never addressed, and does not address in her current motion.

**The Injunction Against Further Filings**

7. Petitioner's effective identity with the Center for Judicial Accountability, Inc. has already been addressed at Respondent's Brief, pp. 20-21 . Petitioner's actions during this appeal, coupled with Supreme Court findings below, amply demonstrate why petitioner is the rare litigant against whom a court could justifiably enter a sua sponte injunction to prevent from further filings without permission.

8. At the trial court level, petitioner demanded the recusal of every judge to whom the case was assigned, and submitted copious motion papers and letters full of repetitive, bitter attacks concerning the Governor, various members of the judiciary and court personnel, the Attorney General and members of the Attorney General's staff. Petitioner repeated her obstructive and time-consuming tactics at the appellate level. In addition to submitting lengthy briefs and correspondence, petitioner has now filed two motions seeking the recusal of the entire Appellate Division, First Department. The first, filed on August 15, 2001, was not only over five hundred pages, but it

flung accusations of criminal misconduct at virtually everyone connected with the New York State judicial system. At no point has petitioner's vindictive behavior changed: she currently asks for the criminal prosecution of the panel which decided this appeal, "as well as disciplinary proceedings to effect their removal from the bench." (Sassower Aff. ¶6).

**New Disqualification Charges Concerning the Panel**

9. Petitioner's last charge, that four of the December 18, 2001 panel members ought to have recused themselves, three "by reason of their dependencies on the governor for re-appointment and elevation," and one, "by reason of her participation on the Mantell appellate panel" (Sassower Aff. ¶18), requires little comment. All of petitioner's recusal motions are based on an imagined conspiracy involving the Governor, and the presumed wish possessed by judges to protect the supposed conspiracy from exposure. Petitioner does not specifically explain why participation in the Mantell decision would require recusal, but presumably she believes that a Mantell panel judge would either want to conceal the alleged "fraudulent" nature of the decision, or be biased against her due to the Mantell court's refusal to allow her to intervene in that case.

10. Petitioner's ultimate conclusion, that the purported errors committed in deciding her appeal are the product of bias and criminal misconduct (Sassower Aff. ¶¶20-25), fails in light