

PART 50Q

MAY 28 1999

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY HAND

May 28, 1999

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Judge Ronald A. Zweibel
Acting Justice, Supreme Court
of the State of New York
100 Centre Street, Room 1731
New York, New York 10013

RE: *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. #99-108551)*

Dear Justice Zweibel:

I am the petitioner *pro se* in the above-entitled action. This letter responds to the hand-delivered letter of Assistant Attorney General Carolyn Cairns Olson, dated May 25, 1999, on behalf of Respondent, the Commission on Judicial Conduct of the State of New York.

Although I have no objection to Ms. Olson's proposal of a conference -- which is what she requests in her first paragraph -- I do strenuously object to Ms. Olson's "sleight of hand" in her last paragraph where she suggests that the Court might dispense with her conference request entirely and simply "issue a scheduling order for the briefing and submission of this proceeding." Indeed, it appears that the purpose of the three intermediate paragraphs of Ms. Olson's letter is to lull the Court into believing that this expedient would be appropriate. Nothing could be further from the truth -- as would have been obvious had Ms. Olson not omitted from her self-serving recitation the serious and substantial threshold issues in the record, which, as a matter of proper procedure, must be addressed BEFORE the Court can "reaffirm the extension for the Commission's opposition papers", the goal behind Ms. Olson's "sleight of hand".

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EX "N"

Firstly, as to the paragraph that Ms. Olson purports to be "Background", Ms. Olson conspicuously fails to identify that pursuant to CPLR §7804(c), requiring opposing papers to be served "at least five days before" the return date of the Article 78 petition, Respondent was already in default "on or about May 11th" when "someone" from the Attorney General's office contacted me to request a two-week extension of the May 14th return date. Nor does Ms. Olson identify that the "someone" from the Attorney General's office was an Assistant Attorney General, William Toran, whose deceitful attempt to take advantage of me as an unrepresented litigant, as well as the Commission's default, were discussed in a letter I faxed to him on May 12th -- the original and four copies of which I gave her in hand at the Attorney General's office at 11:53 a.m. Friday, May 14th, after the day's events in court -- and which she file stamped at that time (Exhibit "A").

As to the adjournment of the return date of the Article 78 petition, which Ms. Olson was able to obtain earlier that day, in Room 130, over my "objection", Ms. Olson does not identify the basis for my "objection" -- or that there was more than one -- namely; (1) that Respondent was in default; (2) that the Senior Court Attorney, who Ms. Olson erroneously refers to as a "Referee", was without jurisdiction to grant any such adjournment, pursuant to CPLR §7804(e); and (3) that the Attorney General's appearance, on Respondent's behalf, was unlawful and tainted by conflict of interest. These objections, forming the basis for my "application" at the calendar call, are not "on the record" because the Senior Court Attorney, David Sheehan, refused my *explicit* request for a court reporter. Mr. Sheehan also *explicitly* refused to query Ms. Olson as to the circumstances necessitating her extension application -- including whether the Attorney General had attempted to obtain from me a stipulated adjournment¹ -- and to impose upon her any terms and conditions, such as requiring that opposing papers be served upon me in advance of the new May 28th return date.

It was while I was still protesting with Mr. Sheehan his refusal to require any advance service upon me, that Ms. Olson literally fled with her ill-gotten victory. Had she not done so, she could have accompanied me to the Chief Clerk, Frank Pollina, who -- after hearing me recount the violation of my rights in this Article 78 proceeding -- added the case to the Monday, May 17th calendar of Justice Lebedeff, the assigned judge.

¹ That Ms. Olson reasonably anticipated that she might be required to provide such information in order to obtain an adjournment, may be seen from the fact that Mr. Toran accompanied her before Mr. Sheehan on May 14th -- and then, again, on May 17th before Justice Lebedeff. Only on May 17th did I learn from Ms. Olson his identity -- since on May 14th he had refused to answer my question as to his identity, other than that he was from the Attorney General's office and a "spectator".

The May 17th proceeding before Justice Lebedeff is on the record because Justice Lebedeff had a court reporter called, following my request upon approaching the bench with Ms. Olson. A copy of the \$80 transcript, which I ordered immediately following the proceeding, is annexed (Exhibit "B"). It shows that after Justice Lebedeff "indicated" she would recuse herself, Ms. Olson went ahead and obtained from the recused Justice an adjournment (Exhibit "B", p. 10, ln. 19 - p. 11, ln. 8). Indeed, it shows that Ms. Olson then misled Justice Lebedeff into believing that May 24th was the date she was requesting for serving me with opposing papers -- [Tr. 14, ln. 16-18] rather than the true date, Friday, May 21st, which she had indicated to the Court [Tr. 11, ln. 2] and which was printed in the first paragraph of her "Affirmation in Support of Respondent's Application Pursuant to CPLR 3012(d)".

As to Ms. Olson's second intermediate paragraph entitled "The Extension To Answer is Proper and Should Be Affirmed", she identifies only a single basis for my protest of Justice Lebedeff's authority, namely, that she "did not have the authority to grant the extension after she recused herself." However, I vigorously asserted a second ground, both before Justice Lebedeff -- as well as in my phone conversation with Ms. Olson on May 20th: that under CPLR §7804 Justice Lebedeff had no jurisdiction to have granted the extension. This is clearly reflected by the transcript of the proceedings before Justice Lebedeff, where I quoted CPLR §7804(e) *verbatim* (Exhibit "B", p. 14, ln. 19-22; p. 15, ln. 1-16; p.16, ln. 12-13).

Having obliterated this all-important ground of objection from her second intermediate paragraph -- which would otherwise have exposed the critical default issue -- Ms. Olson then asserts in her third intermediate paragraph, also under the heading "The Extension to Answer is Proper and Should Be Affirmed", that:

"Justice Lebedeff had the authority to grant [the] Commission's request for an extension in the same proceeding in which she determined to recuse herself."

For this bold claim, Ms. Olson offers not the slightest legal or ethical authority. This, notwithstanding her client, the Commission on Judicial Conduct, is charged with upholding standards of judicial ethics and, presumably, could have readily provided it to her -- were such authority to actually exist.

By copy of this letter to the Commission, demand is hereby made that it "back up" its counsel's aforesaid claim -- which I believe to be as much of a deceit on the Court as Ms. Olson's attempt, in her next sentence, to mislead the Court into believing that by a simple expedient of "reaffirm[ing] the extension", it can "avoid further litigation on this issue" -- when she has conspicuously not disclosed the "issue" of the Court's lack of jurisdiction for such

extension under CPLR §7804(e).

The Commission is already on notice of the Attorney General's misconduct in this litigation -- and my challenge to its right to be represented -- at taxpayers' expense -- by the Attorney General. Indeed, immediately following the May 17th proceeding before Justice Lebedeff, I went to its principal office at 801 Second Avenue and submitted a hand-written notification on these subjects -- a copy of which is annexed, together with the typed copy I then faxed to it later that day (Exhibit "C"). Consequently, Ms. Olson's May 25th letter may be deemed as being with the knowledge and consent of the Commission -- its intended beneficiary.

It deserves note that immediately upon Ms. Olson's first appearance in this Article 78 proceeding -- on Friday, May 14th -- I identified to her that she was disqualified by reason of her past participation in another litigation², encompassed by this Article 78 proceeding, and that she is a potential witness. This she wilfully ignored -- as, likewise, her superiors at the Attorney General's office have wilfully ignored ALL my verbal communications to them of her litigation misconduct and that of her predecessors, including Assistant Attorney General Toran,

² Ms. Olson's prior litigation misconduct also included her utter disrespect for fundamental rules of judicial disqualification. In that case, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, an Article 78 proceeding in which the Appellate Division, Second Department was sued, Ms. Olson argued, *without* legal authority, against the petitioner's request for recusal and transfer, suggesting that even the Second Department's presiding justice, whose name appeared in the case caption and who had participated in the orders being challenged, was not disqualified. Her misconduct therein -- facilitating the judicial misconduct of the Appellate Division, Second Department panel, including Justice Albert Rosenblatt, which "threw" the case -- resulted in the Attorney General being named, along with the Appellate Division Second Department justices, as defendants a §1983 federal action, sued for corruption and civil rights violations. This federal action, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, is an integral part of my October 6, 1998 judicial misconduct complaint, filed with the Commission -- the subject of this Article proceeding -- and is referred to at paragraphs TWENTY-SECOND, TWENTY-THIRD, of THIRTY-THIRD of the verified petition. Additionally, referred to in the verified petition (at paragraphs SEVENTEENTH, TWENTY-EIGHTH, FORTY-SECOND, FORTY-THIRD, FORTY-FOURTH, FIFTY-SECOND, EIGHTIETH) is the September 19, 1994 judicial misconduct complaint, which CJA filed with the Commission -- based on the judicial misconduct of the Appellate Division, Second Department panel in the *Sassower v. Mangano* Article 78 proceeding, for which Ms. Olson was responsible. [Each of these two cases is described in CJA's public interest ad, "*Restraining Liars in the Courtroom' and on the Public Payroll*", *infra*.]

involved in the foiled stipulation attempt³. The most recent such communication was on May 26th (at 12:10 p.m.), when I telephoned James Henly, who heads the Litigation Bureau -- and whose name appears on the letterhead of Ms. Olson's letter. My phone message for Mr. Henly was left with Tanzi Gonzales and emphasized the urgency of immediate supervision over the Assistant Attorneys General involved in this case. It was occasioned not only by my receipt of Ms. Olson's letter, but of the dismissal motion bearing the names of Assistant Attorney General Olson and Assistant Attorney General Michael Kennedy -- a motion which I stated to Ms. Gonzales had to be withdrawn because it is "deceitful, false and frivolous".

According to Ms. Olson's letter, a "courtesy copy" of the Attorney General's dismissal motion was enclosed therewith. Such motion is not merely sanctionable, but provides further graphic evidence -- beyond the massive evidence to be presented at a conference -- that this Court must, as a threshold matter, disqualify the Attorney General for bias and conflict of interest -- and issue an order requiring him to obtain outside counsel to evaluate the public's rights, and my rights, to his intervention herein.

Finally, I would note that Ms. Olson's letter fails to state that after Justice Lebedeff recused herself, this Article 78 proceeding was assigned to Justice Walter Tolub, who also recused himself. I learned of this recusal on Friday, May 21st, when I called Justice Tolub's chambers. Whereas the personal and professional relationship motivating Justice Lebedeff's recusal is "on the record" (Exhibit "B", p. 5, ln. 15-20), I was not told the reason for Justice Tolub's recusal, upon being informed thereof by his secretary, Sandy.

As reflected by my statements before Justice Lebedeff on May 17th (Exhibit "B", p. 11, ln. 12 - p. 13, ln. 2), I believe that innumerable justices in this court are disqualified for actual and apparent bias. This is an explosive case -- with repercussions reaching beyond the corruption

³ My protests as to Ms. Olson's misconduct and the need for supervision have included: (1) my May 14th voice mail message (212-416-8594) to Assistant Attorney General Charles Sanders, head of Section "D" (at about 12:00 p.m.); (2) my May 14th in-person conversation with June Duffy, Deputy Bureau Chief of Litigation (at about 12:10 p.m.); (3) my May 17th voice mail message (212-416-8618) for Ms. Duffy (at 2:35 p.m.); (4) my May 18th voice mail message for Mr. Sanders (at 9:45 a.m.). NONE OF THESE PHONE MESSAGES HAVE BEEN RETURNED. Likewise, none of my phone messages relating to the misconduct of Assistant Attorney General Toran and the Attorney General's office have been returned: (1) my two May 11th voice mail messages for Mr. Sanders (at 10:30 a.m. and 5:00 p.m.); (2) my two May 13th voice mail message for Mr. Sanders (at 10:35 a.m. and 5:45 p.m.); (3) my May 13th voice mail message (212-416-8523) for James Henly, Assistant Attorney General in Charge of the Litigation Bureau (at 11:15 a.m.).

May 28, 1999

of the State Commission on Judicial Conduct to systemic governmental corruption involving the newest member of this State's highest Court, former Appellate Division, Second Department Justice Rosenblatt, and embracing the State Commission on Judicial Nomination, the Governor, the Chairman of the State Senate Judiciary Committee -- and, in the private sector, leaders of the organized bar. Any judge handling this Article 78 proceeding can be expected to be subjected to enormous political pressures -- and incentives -- to "throw" it -- much as Justice Herman Cahn "threw" the prior Article 78 proceeding against Respondent, jettisoning ALL threshold issues, rules of law and evidence. Concisely summarizing the judicial misconduct in that prior Article 78 proceeding -- as well as the Attorney General's misconduct therein -- is CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4), which I paid for, personally. A copy is annexed as Exhibit "B" to my verified petition -- and also annexed hereto as part of Exhibit "A".

I trust, and specifically request, that consistent with its ethical responsibilities, the Court will make requisite disclosure as to facts bearing upon its ability to be fair and impartial in this transcendingly important public interest case at the outset of the anticipated Court conference -- which law secretary Lisa Rubin told me is the Court's customary practice to hold upon assignment of a case.

Thank you.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Petitioner, *Pro Se*

Attachments: Exhibit "A"- "D"

cc: Attorney General Eliot Spitzer [By Hand]

ATT: James B. Henly, Bureau Chief

Assistant Attorney General Carolyn Cairns Olson

Commission on Judicial Conduct of the State of New York [By Hand]

ATT: Henry T. Berger, Chairman

Gerald Stern, Administrator