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Elena Ruth Sassower, Coordinator

BY EXPRESS MAIL

December 2, 1999

Judge William A. Wetzel
Acting Justice of the Supreme Court
of the State of New York
111 Centre Street
New York, New York 10013-4310

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)*

- (1) Application for the Court's Recusal; and, if that is denied, for Disclosure and for an Extension of Time to Make a Formal Recusal Motion (pp. 5-12);
- (2) Referral of this Article 78 Proceeding Back to Administrative Judge Crane for a Conference and Assignment of a Specially-Designated Judge (pp. 9-10)

Dear Justice Wetzel:

This letter responds to the Court's November 22nd letter (Exhibit "A") in which the Court, having reviewed my November 5th letter to Justice Barbara Kapnick, declined my request for a conference, stating:

"the issue before Justice Kapnick was your application that she recuse herself. No such application is pending before me."

This is not correct. In support of my conference request, my November 15th letter to the Court (Exhibit "B") directed the Court's attention "specifically, to pages 4-9" of that November 5th letter. These were described as "no less relevant now than they were prior to Justice Kapnick's recusal." (emphasis added).

The very first sentences on page 4 of my November 5th letter identified that:

“a conference would afford the Court the opportunity to confront the threshold disqualification issue, as is its duty under §100.3E of the Chief Administrator’s Rules Governing Judicial Conduct (“Disqualification”).”

The remaining sentences of that page were even more specific:

“The Court will be able to question me as to the systemic governmental corruption which this case exposes, its CRIMINAL ramifications on New York’s highest echelons of political power, and the public perception that this Court will be subjected to enormous political pressures and enticements as a result. Certainly, the conference would be a convenient forum for the Court to make disclosure, pursuant to Section 100.3F of the Chief Administrator’s Rules Governing Judicial Conduct (“Remittal of disqualification”), as to facts bearing upon its impartiality... [A] conference will have the beneficial result of speedily clarifying relationships or other interests requiring the Court’s recusal. These interests include those created by judicial misconduct complaints against the Court filed with the Commission – as to which the Court may have knowledge -- or its knowledge of judicial misconduct complaints against judicial colleagues with whom the Court has friendships or is dependent professionally.

Pages 5-6 continued in the same vein and proposed that this case be specially assigned “to a retired or retiring judge, willing to disavow an intention of judicial and/or political appointment”:

...there is reasonable question whether *any* judge under the disciplinary jurisdiction of the Commission can be fair and impartial in a case such as this. No judge can be expected to want to revitalize a corrupted Commission when the consequence will be to increase the likelihood that legitimate complaints against him and his fellow judges will be the subject of investigation, rather than – as they presently are – dumped *without* investigation.

Consequently, it is my view that arrangements must be made for this case to be assigned to a retired or retiring judge, willing to disavow

an intention of judicial and/or political appointment. According to Chief Clerk Frank Pollina, with whom I spoke on November 4th, proper procedure would be for an application to be made to Administrative Judge Crane.

...
At the conference, I intend... to support an oral application that the Court refer my Article 78 proceeding to Judge Crane with a recommendation for special assignment..."

Thus, my November 5th letter presented the Court with a recusal application, an application for disclosure, and, additionally, an express request that this proceeding be referred back to Administrative Judge Crane with a recommendation for special assignment. This, because of judicial self-interest in covering up for a corrupted Commission on Judicial Conduct, already manifested by fraudulent judicial decisions "throwing" two separate Article 78 proceedings against the Commission, each brought in Supreme Court, New York County: *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655).

Apart from my November 5th letter, the Court is presumed to know that it has an independent duty to recuse itself and make disclosure when facts exist giving rise to a reasonable question as to its ability to be fair and impartial. Indeed, my November 5th letter attached pages from a treatise on judicial disqualification showing that it is the Court's burden to disclose grounds of potential disqualification:

"... the judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion."¹

The Court even had the examples of THREE other justices in this proceeding who, without any application pending before them, *sua sponte*, recognized their duty to recuse themselves and/or make requisite disclosure. Thus, Justice Diane Lebedeff *sua sponte* made disclosure and then recused herself based thereon. Justice Walter

¹ See pp. 578-580 of Judicial Disqualification by Richard Flamm (Little Brown & Co., 1996) annexed as part of Exhibit "B" to my November 5th letter to Justice Kapnick.

Tolub *sua sponte* recused himself and then disclosed the basis in his recusal order (Exhibit "C").² And Justice Franklin Weissberg *sua sponte* recused himself.³

Certainly, the fact that FIVE judges already recused themselves from this politically-explosive case, wherein the Governor and a long list of other powerful officials and critical government agencies are directly implicated in systemic governmental corruption, should have prompted the Court to examine whether it shares with those judges any of the grounds upon which they had recused themselves or could be presumed to have recused themselves. The judges immediately preceding this Court on the case, Justice Ronald Zweibel, Justice Franklin Weissberg, and Justice Barbara Kapnick, each with terms of office expiring in 2001, recused themselves in face of a record showing my contention that any judge nearing the expiration of his term and seeking to be reappointed or re-elected to the bench is disqualified by reason of his dependency on political interests controlling the judicial selection process which a successful outcome of this case jeopardizes. This is highlighted at pages 2-3 of my November 5th letter, at the very outset of the section entitled "Recusal and Special Assignment", whose continuation on pages 4-6 is hereinabove quoted.

It must be noted that the reason pages 2-3 from my November 5th letter were not cited by my November 15th letter to the Court as being "no less relevant now than they were prior to Justice Kapnick's recusal" (Exhibit "B") is because I erroneously believed the Court had many years to its term, making substantial portions of those pages irrelevant to the Court's consideration. This belief stemmed from my November 15th phone conversation with your law secretary, Vicky Vossen, referred to in my letter of that date (Exhibit "B"). In that conversation -- my one and only phone conversation with her -- I expressly asked Ms. Vossen when the Court's term would be expiring.⁴ She laughed, asking me whether I thought the case would last

² Justice Tolub's May 20th order was never mailed to me and I was unaware of it until I reviewed the County Clerk's file on November 9th, when I made a copy (Exhibit "C"). Such order confirmed my surmise, at footnote 6 of my November 5th letter, that Justice Tolub's knowledge of my father's judicial misconduct complaint against him may have played a role in his recusing himself.

³ I have received no order relating to Justice Weissberg's recusal, and none was in the County Clerk's file when I reviewed it on November 9th.

⁴ Immediately prior thereto, I had called the Court at the number listed in the 1999 New York Lawyers Diary and Manual (212-374-8007), which number was its Chambers, and spoke

that long. I told her that that was not my concern, but rather that if the Court was dependent on the Governor for upcoming reappointment to the Court of Claims, this would impact on his impartial handling of this case in which the facts and law would require it to implicate the Governor in criminal conduct. From her reassuring response, I was misled into believing that the Court's term had many years to run.⁵

In fact, as I discovered on Monday, November 29th from the State Senate Judiciary Committee,⁶ this Court's term does not have many years remaining. Nor is its term nearing expiration. Rather, the Court is a "hold over", with its term having expired *five months ago*. This may be seen from the Governor's certificate of nomination, dated June 12, 1995, addressed to the Senate, whose single sentence reads: "I

to the Court's secretary, Lillian, to whom I also inquired as to when the Court's term would be expiring. Lillian stated that she did not know that information and suggested that I call the Court's Part Clerk, whose number she gave me (212-374-3031). Thereupon I called the Part Clerk, Al Daniels, who, as I recall, did not know that information and asked me if I'd like to speak with the Court's law secretary. He then transferred my call to Ms. Vossen.

⁵ The New York State Directory (1999-2000 ed.) identifies that "Court of Claims judges are appointed by the Governor for nine-year terms" and lists this Court's term as expiring in 1999. This was greatly confusing to me since I knew that the Court was appointed by the Governor in 1995 – which would have meant that a nine-year term ends in 2004. Eventually, I obtained somewhat tentative information on November 26th from Ed Borelli of the Education and Training Office of the OCA (212-428-2523), then confirmed on November 29th by Susan Zimmer, clerk of the Senate Judiciary Committee (518-455-2071), but not fully clarified until yesterday. The nine-year term for a Court of Claims judge is only if he has been appointed to a vacant position. If he has been appointed to an unexpired term, he serves only for the balance of the nine years that remain. [Article I, Section 1, subsection 4 of the Court of Claims Act]. This Court was appointed to an unexpired term, ending in 1999. With so little of 1999 remaining, I mistakenly assumed that the Governor had already re-appointed the Court to a second – and now full – term.

⁶ On that same date, prior to my success in obtaining information from the Senate Judiciary Committee, which was not until the afternoon, I telephoned the Court's Part Clerk, again inquiring about the Court's term. The Clerk suggested that I speak to Ms. Vossen and routed the call so that I could speak to her. Unbeknownst to me, the routing was to Chambers. My call was answered by the Court's secretary, who after taking my name, reminded me that the Court's November 22nd letter (Exhibit "A") had instructed that parties are not permitted to call Chambers. I told her that I had not called, but rather that the Part Clerk had routed the call upon advising me that I should speak with Ms. Vossen and recited my confusion as to the Court's term, Ms. Vossen's ambiguous reassurance, and my inability to obtain definitive information of the Court's actual status. After putting me "on hold", I was told that I had to put my request in writing.

hereby nominate as a Judge of the Court of Claims WILLIAM A. WETZEL of Briarcliff Manor, for a term *expiring on June 30, 1999*. (Exhibit "D", italics added). It seems obvious that such a state of affairs, where this Court can be replaced any day by the Governor's nomination of another to fill its seat, renders it far more vulnerable to political pressure from the Governor than Justices Zweibel and Weissberg, both Court of Claims judges with two years remaining to their terms – each of whom, nonetheless, felt it appropriate to recuse themselves.

In view of the obvious merit to my argument that judges with expiring terms seeking reappointment or re-election are disqualified and the fact that THREE judges with expiring terms recused themselves in face of such argument, it is disingenuous in the extreme for the Court not to have disclosed in its November 22nd letter (Exhibit "A") that for the past five months it has occupied an expired seat – and particularly where, through Ms. Vossen, as well as its secretary Lillian (*see* fn. 4, *supra*), it is presumed to know that I had inquired on November 15th about the expiration of its term.

I submit that the Court's failure to disclose such plainly pertinent information reflects its guilty knowledge that by virtue of its acute dependency on the Governor for reappointment, its disqualification is legally and ethically mandated. Indeed, the record of my argument before Justice Zweibel shows my contention that because this case directly implicates the Governor in criminal conduct, judges dependent on the Governor for reappointment have a proscribed self-interest in this proceeding, within the meaning of Judiciary Law §14.⁷

I further submit that there are at least two other highly germane facts which, based upon pages 4-6 of my November 5th letter, the Court was ethically obliged to disclose – either one of which also required the Court to recuse itself. I was completely unaware of either until November 24th when, following receipt of this Court's November 22nd letter, I took initial investigatory steps to clarify the specific grounds for a recusal application relevant to this Court.

⁷ See pp. 8, 9-11 of the transcript of the June 14th conference before Justice Zweibel, annexed as Exhibit "O" to my July 28th affidavit in support of my omnibus motion.

Firstly, it appears that the Court has a long-standing personal and professional relationship with Governor Pataki going back many years. This Court and the Governor were in the same politically-connected Westchester law firm, Plunkett & Jaffe. Additionally, in 1994, the Court held a fundraiser at its home for then gubernatorial candidate Pataki. A picture of candidate Pataki and the Court, believed to be taken at that fundraiser, is annexed (Exhibit "E"). It is my belief that this relationship forms the basis for the Governor's nomination of the Court to the Court of Claims – as part of the Governor's very first round of judicial appointments. This relationship would plainly motivate the Court to "throw" this case to protect its friend, the Governor, who had been a friend to the Court by the initial appointment.

Secondly, the Court has been the subject of at least one facially meritorious judicial misconduct complaint filed with the Commission, of which I am aware. The complaint, dated May 21, 1999, was based, *inter alia*, on the impropriety of its holding the 1994 fundraiser for the Governor, while serving as a village justice, as well as a contention that the Governor's appointment of the Court to the Court of Claims was "a quintessential quid pro quo", rewarding a friend and political supporter (Exhibit "F"). The Commission September 14, 1999 dismissal of that complaint, without investigation, based on a supposed "insufficient indication of judicial misconduct to warrant investigation"⁸ (Exhibit "G") is particularly relevant to this case, which seeks to establish that the Commission has a pattern and practice of protecting politically-connected judges, who are the subject of judicial misconduct complaints. The Court's relationship with the Governor, identified in the judicial misconduct complaint, is surely a powerful political connection. It is not unlikely that the Court has knowledge of the complaint, filed by Clay Tiffany, since the November 4, 1999 issue of Martinelli Publications' Home News & Times ran Mr. Tiffany's "Guest Editorial" about it (Exhibit "H") and, as reflected therein, Mr. Tiffany has publicly discussed the complaint on his cable television show, "Dirge for the Charlatans".

⁸ Cf., §100.5(A) of the Chief Administrator's Rules Governing Judicial Conduct, Incumbent judges and others running for public election to judicial office: "Prohibited political activity shall include: ... (d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization; (e) publicly endorsing... another candidate for public office; (f) making speeches on behalf of... another candidate; (g) attending political gatherings; (h) soliciting funds for... or making a contribution to a... candidate."

I submit that the foregoing facts suffice to raise reasonable question as to whether this Court can be fair and impartial in this proceeding in which the Court's long-time friend and now patron, Governor Pataki, on whom it is presently dependent for reappointment, is implicated in criminal conduct and the Commission, being sued for protectionism, recently dismissed a facially-meritorious complaint against the Court involving its relationship with Mr. Pataki, both as candidate and Governor.

Moreover, *any* fair and impartial judge examining my conference request would have recognized that the three bases for the conference delineated in my letter: (1) "Recusal and Special Assignment" (pp. 2-6); (2) "Supplementing the Omnibus Motion" (pp. 6-7); and (3) "Ascertaining the Intentions of the Proposed Intervenors" (pp. 7-9) had *a common purpose: to ensure the integrity of the judicial process in this Article 78 proceeding.* The imperative to do so was evident from the most cursory examination of the Court's file of the case, establishing: (1) that the Commission on Judicial Conduct has NO legitimate defense to the allegations of its corruption in the Verified Petition; (2) that the State Attorney General has defended it in violation of Executive Law §63.1 and conflict of interest rules with litigation fraud; and (3) that the proposed intervenors -- public officials and agencies whose duty it is to protect the public -- suffer multiple conflicts of interest⁹ and, as a result, have not only been sitting on the sidelines of this litigation, but have been ignoring CJA's fact-specific, fully-documented ethics and criminal complaints against a range of public officers and agencies involved in the systemic governmental corruption presented by this case. This has included complaints against the Attorney General and Commission based on their fraudulent defense tactics in this proceeding, as well as in the two other Article 78 proceedings against the Commission.¹⁰

⁹ Record references for these conflicts of interests appear at fn. 10 of my November 5th letter to Justice Kapnick.

¹⁰ These are: (1) CJA's September 15, 1999 complaint to the NYS Ethics Commission (pp. 1-3), annexed as Exhibit "G" to my September 24th reply affidavit in support of my omnibus motion, and CJA's October 27, 1999 complaint to the NYS Ethics Commission (pp. 3-4), annexed as Exhibit "J" to my November 5th letter to Justice Kapnick; (2) CJA's October 21, 1999 complaint to the Manhattan District Attorney (pp. 1-5), annexed as Exhibit "F" to my November 5th letter to Justice Kapnick, and correspondence thereon, annexed as Exhibit "K-1 - K-3" to my November 5th letter to Justice Kapnick; (3) CJA's October 21, 1999 complaint to the U.S. Attorney for the Southern District of New York (pp. 4-9, 14-18), annexed as Exhibit "H" to my November 5th letter to Justice Kapnick; (4) CJA's complaints and correspondence to Attorney

Under such circumstances, my request at pages 7-9 of my November 5th letter that the Court discharge its "Disciplinary responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct by inviting the proposed intervenors to the conference and ascertaining from them their intentions as regards to both intervention and investigation of the ethics and criminal complaints was clearly warranted.

The Court's failure to even request that the proposed intervenors furnish a sworn statement of their intentions prior to imposing its arbitrary December 6th deadline "after which time the matter will be considered fully submitted" (emphasis in the original) – let alone to apprise them of the December 6th deadline so that they might be guided accordingly – supports a view that the Court, intent on "throwing" the case to advance its own self-interest and that of the Governor, does not want to facilitate their intervention, which would prevent that from happening. Nor does it want to foster investigation of CJA's ethics and criminal complaints, since this would expose the fraudulent defense tactics which the Court must cover-up if this case is to be "thrown".

In the event of the Court's recusal, I request that its order of recusal refer the case back to Judge Crane for reassignment. In view of the appearance and actuality of Judge Crane's *own* disqualifying bias and self-interest, I hereby request that Judge Crane – to whom a copy of this letter is being sent -- schedule a conference so that proper arrangements may be made to ensure that this Article 78 proceeding is assigned to a fair and impartial tribunal.

If, notwithstanding the foregoing, the Court does not recuse itself, I request that it belatedly meet its duty to disclose the relevant specifics, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct: whether and when it applied to be reappointed, its personal and professional relationship with Mr. Pataki before he became Governor, including information concerning its 1994 fundraiser for him, its relationship since, if any, and its knowledge of Mr. Tiffany's judicial misconduct complaint, as well as of any other

General Eliot Spitzer's counsel, David Nocenti, and Peter Pope and William Casey, Chief and Chief Investigator of the Attorney General's "Public Integrity Unit", dated August 6, 1999 and August 16, 1999, annexed as Exhibit "A" and "B", respectively to my September 24th reply affidavit in support of my omnibus motion, and CJA's letter dated October 25, 1999, annexed as Exhibit "I" to my November 5th letter to Justice Kapnick.

judicial complaints against it that may have been filed with the Commission.

I also request that the Court disclose its relationships with other politically-connected persons having an interest in the outcome of this proceeding. Since the Court is from Westchester County, this would include its relationship with past and present leaders of the Westchester Republican County Committee involved in the 1989 cross-endorsement judge-trading deal and illegally-conducted judicial nominating conventions, which were the subject of several of the eight judicial misconduct complaints from the prior Article 78 proceeding,¹¹ sought to be reviewed in this proceeding,¹² as well as its relationship with Court of Appeals Judge Albert Rosenblatt, formerly a prominent Republican from Dutchess County.

Further, since there is also reasonable question as to the basis upon which the Court was hand-picked for this case by Administrative Judge Crane, I request information as to the Court's knowledge of the basis and whether the Court apprised the Administrative Judge of any of the aforesaid facts bearing upon the appearance and actuality of its disqualification for bias and self-interest.

Simultaneously, I ask Administrative Judge Crane to disclose: the basis upon which he directed the case to the Court, following Justice Kapnick's recusal, and whether he knew of its aforesaid disqualifications. Additionally, I request that he disclose the basis for his previous direction in this case: taking it away from Justice Carol Huff, to whom it had been *randomly* assigned following Justice Tolub's disqualification, and directing it to Justice Zweibel¹³. This includes the legal authority for such actions.

¹¹ See Verified Petition in *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141): Exhibits "C", "D", "E", and "G"

¹² See my Notice of Petition, p. 3; Verified Petition, ¶¶ FIFTY-SECOND – FIFTY-FOURTH.

¹³ I was completely unaware of Judge Crane's earlier involvement in this case until November 4th. It was then, in preparing the procedural history of the four prior judicial recusals appearing at page 1 of my November 5th letter to Justice Kapnick, that I first learned that Justice Zweibel had *not* been randomly assigned upon Justice Tolub's recusal, as I had believed until then. Rather, for reasons unknown, Judge Crane selected him, taking the case from Justice Huff, the randomly-assigned judge.

In the event the Court does not recuse itself based on this letter-application, it is my intention to make a formal recusal motion. For such purpose, I request 30 days from this Court's arbitrarily-imposed December 6th deadline. This would afford me time to evaluate and incorporate the information herein requested as part of the Court's disclosure obligations pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, which disclosure I trust will be readily forthcoming.

It will also give me time to gather additional information relevant to such recusal motion. This includes obtaining information from Steve Dunleavy, whose highly-critical comments about the Court, which he described as a "political hack", appeared in his November 26th column in the New York Post (Exhibit "I"). It also includes obtaining from the Governor the 1995 written report of Justice Wetzel's qualifications, which would have been prepared by his "temporary" judicial screening committee and which, pursuant to Executive Order #11, ¶2(c), is supposed to be "available for public inspection".

As reflected by CJA's ethics complaints against the Governor, filed with the New York State Ethics Commission¹⁴ and CJA's criminal complaint against the Governor, filed with the U.S. Attorney for the Eastern District of New York¹⁵ – which are part of the record before the Court, the Governor has consistently withheld the reports of his judicial screening committees. Indeed, as far back as June 2, 1997, CJA requested the reports for ALL the Governor's judicial nominees. Not a single one was supplied, despite repeated subsequent requests.

By copy of this letter to the Governor, transmitted under a coverletter to him (Exhibit "J"), CJA again reiterates the public's rights under Executive Orders #11, ¶2(c) and #10, ¶2(d) and under F.O.I.L. to the reports of his judicial screening committees of the qualifications of ALL his judicial appointees, as well as other information substantiating the legitimacy of his purported judicial screening process. This includes first and foremost, the report of the Court's qualifications

¹⁴ See pp. 1-2; 14-22 of CJA's March 26, 1999 ethics complaint, annexed as Exhibit "E" to my July 28th affidavit in support of my omnibus motion, and p. 3 of CJA's September 15, 1999 ethics complaint, annexed as Exhibit "G" to my September 24th reply affidavit in support of my omnibus motion.

¹⁵ See pp. 1-2 of CJA's September 7, 1999 criminal complaint, annexed as Exhibit "H" to my September 24th reply affidavit in support of my omnibus motion.

and the procedures used by the "temporary" judicial screening committee when, assumedly, it screened the Court in 1995. I request that the Governor provide these without delay – along with an explanation as to why this Court has been maintained as a "hold over" these past five months.

Needless to say, a month's extension for my recusal motion is further appropriate since, as a non-lawyer, the burden of drafting a formal motion, with supporting memorandum of law, is all the more difficult and time-consuming. In any event, there is no prejudice to justice – the supposed end-point of this Article 78 proceeding -- by the granting of such extension request, which, additionally will afford me time to also enjoy the holiday season.

Yours for a quality judiciary,



ELENA RUTH SASSOWER

Petitioner *Pro Se*

cc: New York State Attorney General
New York State Commission on Judicial Conduct
Proposed Intervenors
Administrative Judge Stephen Crane
[by certified mail/rrr: Z-294-568-945]
Governor George Pataki
[by certified mail/rrr: Z-294-568-946]
Clay Tiffany, cable T.V. host, "Dirge for the Charlatans"
Steve Dunleavy, columnist, New York Post



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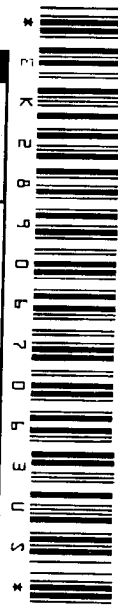
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