

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ELENA RUTH SASSOWER, Coordinator of :  
The Center For Judicial Accountability, :  
Inc., Acting Pro Bono Publico, :  
Petitioner, :

AFFIRMATION IN  
FURTHER SUPPORT OF  
RESPONDENT'S  
MOTION TO  
DISMISS THE  
VERIFIED PETITION

-against- :

Index No.: 99-108551

COMMISSION ON JUDICIAL CONDUCT :  
OF THE STATE OF NEW YORK, :  
Respondent. :

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CAROLYN CAIRNS OLSON, an attorney admitted to practice  
in the courts of the State of New York, under penalty of perjury,  
affirms as follows:

1. I am an Assistant Attorney General in the office of  
ELIOT SPITZER, Attorney General of the State of New York,  
attorney for respondent, Commission on Judicial Conduct of the  
State of New York (the "Commission"). I make this affirmation in  
reply to petitioner's letter application for this Court's recusal  
and in further support of the Commission's motion to dismiss this  
Article 78 proceeding pursuant to CPLR 7804(f) and 3211(a)(3),  
(5), (2) and (7).

2. Petitioner has made a recusal application before

several of the seven judges who have been assigned to this action. All have been granted. By letter dated December 2, 1999 ("Pet. 12/2/99 letter"), she now renews an application before this Court.

3. Judiciary Law § 14 sets forth the only basis for a mandatory recusal of a judge. Petitioner's belief that any judge with a term expiring in 2001 should recuse him or herself if they are seeking reappointment or re-election (see Pet. 12/2/99 letter at 4) is simply not one of those grounds. Additionally, as we argued before Justice Zweibel on October 8, 1999 (see petitioner's letter to Justice Kapnick dated November 5, 1999, Exhibit C), petitioner's suspicion that Governor Pataki, who is not a party to this proceeding, is nevertheless interested enough to exert some political influence over the outcome, is baseless speculation that should be rejected.

4. Absent a legal disqualification of a judge under Judiciary Law § 14, a trial judge is the sole arbiter of whether recusal is appropriate in a given case. People v. Moreno, 70 N.Y.2d 403, 405 (1987). While we know of no basis for this Court's recusal, and do not see any basis for recusal in petitioner's 12/2/99 letter or otherwise, respondent respectfully defers to the Court the determination of whether recusal is

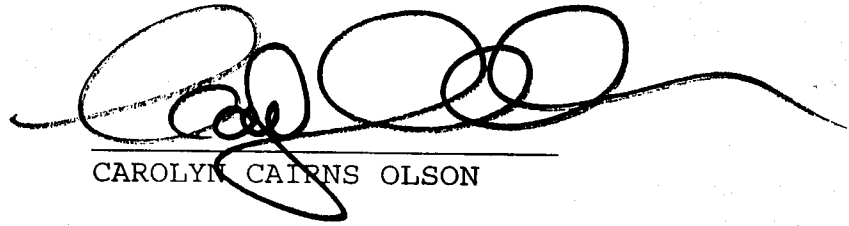
appropriate in this case.

5. Finally, petitioner's 12/2/99 letter offers no further argument on the merits of this proceeding. It is respectfully submitted that, for all the reasons set forth in respondent's memorandum of law, the petitioner should be dismissed in its entirety. Indeed, as petitioner has noted, on September 30, 1999, in Mantell v. State Commission on Judicial Conduct, N.Y. Co. Index No. 108655/99, the Supreme Court, New York County (Lehner, J.) dismissed a similar petition seeking to overturn the Commission's determination that it would not investigate an attorney's complaint against a Criminal Court judge. See Exhibit A annexed hereto. There, the Court agreed that petitioner's claim concerning the Commission's failure to formally investigate a complaint against a judge and to dismiss the complaint without investigation are "not appropriately subject to judicial review." Mantell at 4, 7. Likewise, here, assuming, arguendo, that petitioner has the capacity to sue or standing to bring this proceeding, the Commission's decision to dismiss petitioner's complaints without investigation "is not vulnerable to a writ of mandamus." Mantell, at 7.

WHEREFORE, for all of the foregoing reasons, and for the reasons set forth in all of the papers and pleadings

previously submitted by and on behalf of the Commission,  
petitioner's motion for disqualification of the Attorney General  
and for sanctions should be denied and the verified petition  
should be dismissed in its entirety.

Dated: New York, New York  
December 6, 1999



CAROLYN CAIRNS OLSON