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P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judicial@judicial.com
Web site: www.judicial.com

BY HAND

TO: NEW YORK STATE ATTORNEY GENERAL ELIOT SPITZER

ATT: David Nocenti, Counsel
Peter Pope, Chief, "Public Integrity Unit"
William Casey, Chief Investigator,
"Public Integrity Unit"

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

ATT: Commissioners
Gerald Stern, Administrator & Counsel

FROM: ELENA RUTH SASSOWER, COORDINATOR

RE: *Michael Mantell v. New York State Commission on Judicial Conduct*
(NY Co. #99-108655)

DATE: December 1, 2000

Received for
the Att'y Gen
12/1/00
Gary Smith

This is to put you on notice of your on-going duty -- of which, by now, you should no longer need to be reminded -- to move to vacate for fraud the fraudulent judicial decisions of which you are the beneficiary. The latest of these fraudulent decisions is the Appellate Division, First Department's unsigned 5-sentence decision in *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655): (1) affirming Justice Lehner's September 30, 1999 decision; (2) further holding that "Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct"; and (3) denying my motion to intervene and for other relief.

Significantly, the Appellate Division gives no reasons for denying my motion. As you know, my motion exposes (at Exhibit "E") that Justice Lehner's decision is legally insupportable and further exposes (at pages 9-10, fn. 9; Exhibit "Z-3") the frivolousness of any objection based on lack of standing.

Tellingly, the Appellate Division not only provides NO law for its holding on lack of standing, but distorts the factual record to obscure that Mr. Mantell is seeking investigation of HIS facially-meritorious complaint pursuant to Judiciary Law §44.1.

Elena Ruth
Sassower



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TODAY'S NEWS

Update

The Appellate Division, First Department, has upheld a ruling that the State Commission on Judicial Conduct has the discretion to refuse to investigate charges brought to it by an attorney against a judge. In a two-paragraph unsigned opinion, a five-justice panel affirmed a September 1999 decision by Manhattan Supreme Court Justice Edward Lehner not to require the commission to investigate allegations that a Manhattan Criminal Court Judge changed a ruling based on personal animus against the complaining lawyer. The appeals court last week said that the lawyer who brought the charges lacks standing to assert that the commission is required to investigate all meritorious complaints of judicial misconduct. The case is *Mantell v. New York State Commission on Judicial Conduct*, 2291.

2291. MICHAEL MANTELL, pet-ap, v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, res-res QDS:12118527 — Judgment, Supreme Court, New York County (Edward Lehner, J.), entered on or about September 30, 1999, which, in a proceeding pursuant to CPLR article 78 to compel respondent Commission to investigate petitioner attorney's complaint of judicial misconduct, granted respondent's motion to dismiss the petition, unanimously affirmed, without costs.

Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus (*cf.*, *Matter of Dyno v. Rose*, 260 AD2d 694, 698, appeal dismissed 93 NY2d 998, lv denied 94 NY2d 753).

M-5760. MANTELL v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT—Motion seeking leave to intervene and for other related relief denied.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

By Williams, J.P.; Mazzarelli, Lerner, Buckley and Friedman, JJ.