

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

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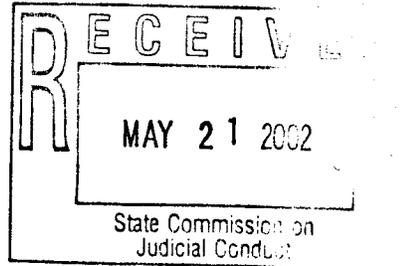
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*Elena Ruth Sassower, Coordinator*

BY FAX: 212-416-8139 (4 pages)  
BY HAND

May 21, 2002

Attorney General Eliot Spitzer  
120 Broadway  
New York, New York 10271



RE: Upholding Fundamental Ethical Standards of Professional Responsibility and Discharging your Duty as "The People's Lawyer" in the public interest lawsuit *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York (S.Ct/NY Co. #108551/99; A.D. 1<sup>st</sup> Dept #5638/01; Ct of Appeals: Motion # 581/02)*

Dear Mr. Spitzer:

YET AGAIN, this is to put you on notice of your mandatory supervisory responsibilities under the clear and unambiguous provisions of 22 NYCRR §§1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility], as well as under NYCRR §130-1.1, to take "reasonable remedial action" to remedy the flagrant litigation misconduct of Assistant Solicitor General Carol Fischer – this time, by her legally unsupported and insupportable, factually false and fraudulent May 17, 2002 "Memorandum of Law of Respondent New York State Commission on Judicial Conduct in Opposition to Petitioner's Motion for Disqualification" [hereinafter "Opposing Memorandum"].

As with Ms. Fischer's March 22, 2001 Respondent's Brief in the Appellate Division, First Department – a copy of which her Opposing Memorandum PHYSICALLY attaches for the Court of Appeals – Ms. Fischer's May 17, 2002 Opposing Memorandum is, *from beginning to end*, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law.

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As to Ms. Fischer's March 22, 2001 Respondent's Brief, I provided you with a fact-specific, fully-documented 66-page Critique under a May 3, 2001 coverletter to assist you in meeting your mandatory supervisory responsibilities. Notwithstanding you did *not* deny or dispute the accuracy of that Critique – as likewise neither your Solicitor General's office nor the Commission to whom I also provided the Critique denied or disputed its accuracy -- you refused to withdraw the Respondent's Brief. This necessitated the second branch of my August 17, 2001 motion to strike that Brief as a "fraud on the court", for sanctions against you and culpable members of your staff and the Commission, *personally*, including disciplinary and criminal referral pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, and for your disqualification from representing the Commission by reason of your violation of Executive Law §63.1 and multiple conflicts of interest<sup>1</sup>.

As you know, the Appellate Division, First Department's December 18, 2001 decision & order falsified the relief sought by my August 17, 2001 motion, whose first branch was for its disqualification and for disclosure, and denied the motion, *without reasons or findings*<sup>2</sup>. My entitlement to both branches of the motion is the threshold and decisive issue on my appeal of right to the Court of Appeals.

Please be advised that UNLESS you *immediately* withdraw Ms. Fischer's frivolous, false, and fraudulent May 17, 2002 Opposing Memorandum – as is your mandatory duty under ethical rules of professional responsibility -- I will have no choice but to burden the Court of Appeals with a motion for relief comparable to that in the second branch of my August 17, 2001 motion, *to wit*, to strike the May 17, 2002 Opposing Memorandum as a "fraud on the court", for sanctions against you and culpable members of your staff and the Commission *personally*, including disciplinary and criminal referral, and for your disqualification from representing the Commission by reason of your violation of Executive Law §63.1 and multiple conflicts of interest.

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<sup>1</sup> My 66-page Critique is Exhibit "U" to my August 17, 2001 motion, with my May 3, 2001 letter to you annexed as Exhibit "T-3" thereto.

<sup>2</sup> The record before the Appellate Division, First Department showed that not only was my August 17, 2001 motion *uncontroverted* – but that I was entitled to additional severest sanctions against you and the culpable members of your staff and of the Commission based on your wilful failure to withdraw Ms. Fischer's August 30, 2001 opposition to the motion. This opposition was also *from beginning to end*, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law – and was exposed as such by my 58-page September 17, 2001 Critique thereof. This 58-page Critique, whose accuracy was completely *undenied and undisputed* by your Law Department and the Commission, is Exhibit "AA" to my October 15, 2001 reply affidavit in further support of my August 17, 2001 motion.

I believe it is in the interest of all concerned that, without delay, we sit down to a meeting to discuss the horrifying record of this lawsuit. As you know, my May 3, 2002 letter to you -- the original of which I delivered to your office on that date, with a copy then handed to you at the Independence Party Convention on Saturday, May 18th (albeit seized by your security man who stood beside you) -- called upon you (at p. 2) to provide the Court of Appeals with "your own statement, *under penalties of perjury*, as to the state of the record". It also called upon you (at p. 3) to provide "*your own sworn statement*" as to the accuracy of the description of the Law Department's fraudulent defense tactics in the three cases described in CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4), an integral part of my disqualification/disclosure motion. I, thereafter, twice approached you at the Independence Party Convention and asked you about a meeting. The first time was when you were sitting beside the table filled with water pitchers, within eyeshot of the two cartons I had brought containing a complete copy of the record of the lawsuit in Supreme Court/New York County and in the Appellate Division, First Department. You smirked at the suggestion. The second time was immediately following the Independence Party's acclamation vote, putting you on its ballot as its candidate for Attorney General. Perhaps because of the presence of other people around you, or because the speakers who had nominated you had extolled your commitment to professionalism, government integrity, and accountability, you stated that I should "call [your] office". My response was that I would do so Monday morning.

True to my word, on Monday morning -- yesterday -- I called your office (10:30 a.m. 212-416-8050). This was before I received Ms. Fischer's Opposing Memorandum -- which contains NO statement as to the state of the record. Your Administrative Assistant, Maribel Torres, told me you were in, but on the phone. Although I left with her a message that I was calling to set up a meeting about the Commission case, as you had invited me to do, I have received no return call.

I know you are busy with your 2002 re-election campaign -- and that the Democratic Convention starts tomorrow. However, as the incumbent Attorney General, you are running on your "record". That "record" includes my public interest lawsuit against the Commission on Judicial Conduct, spanning your tenure in office. Indeed, the lawsuit was generated by your wilful nonfeasance in connection with CJA's January 27, 1999 letter to you, which I publicly presented to you at the Association of the Bar of the City of New York on that date, upon your public invitation to me. This was following your announcement of the establishment of your "Public Integrity Unit" and powerful description of your "ultimate goal" to make "the New York

May 21, 2002

State Department of Law... the finest public interest law firm in the nation" (at pp. 8-11)<sup>3</sup>.

This is yet further reason why scheduling a meeting to discuss the lawsuit, as likewise withdrawing your Opposing Memorandum, deserve priority attention.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc. (CJA)

cc: **Office of the Solicitor General: [By Fax and By Hand: 212-416-6350]**  
ATT: Solicitor General Caitlin J. Halligan  
Deputy Solicitor General Michael S. Belohlavek  
Assistant Solicitor General Carol Fischer  
**New York State Commission on Judicial Conduct [By Fax: 212-949-8864]**  
ATT: Gerald Stern, Administrator & Counsel  
Chairman Henry T. Berger & Commission members

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<sup>3</sup> CJA's January 27, 1999 letter is Exhibit "D" to my July 28, 1999 omnibus motion in Supreme Court/New York County, *inter alia*, to disqualify you from representing the Commission for violation of Executive Law §63.1 and multiple conflicts of interest and to sanction you and culpable members of your staff and the Commission *personally*, including by disciplinary and criminal referral. The Law Journal transcript of our January 27, 1999 public exchange (at pp. 13-14), including the whole of your public remarks about your "Public Integrity Unit" and its mission to "insure the integrity of our public institutions", "to investigate and root out corruption throughout the state", and "to shine light into the dark corners of the state and makes sure that those who thrive on secrecy and obfuscation no longer do so" (at pp. 7-8) is appended to my March 26, 1999 complaint against you and other public officers, filed with the New York State Ethics Commission, annexed as Exhibit "E" to my July 28, 1999 omnibus motion.