

CENTER for JUDICIAL ACCOUNTABILITY, INC.

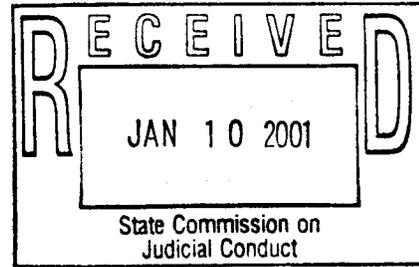
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Elena Ruth Sassower, Coordinator

NY-JAG
DANurse
2-10-01



BY HAND

January 10, 2001

New York State Attorney General Eliot Spitzer
120 Broadway
New York, New York 10271-0332

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ATTY'S OFC.
RECEIVED

RE: Your duty under Executive Law §63.1 in the appeal of *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; Appellate Division, First Dept.: Cal. #2000-5434)

Dear Mr. Spitzer:

Pursuant to Executive Law §63.1, this is to request that you “protect the interest of the state” in the now perfected appeal of my above-entitled public interest Article 78 proceeding against the New York State Commission on Judicial Conduct by: (1) disavowing your representation of the Commission; (2) joining in support of the appeal; and (3) joining in support of a motion to ensure that the appeal is heard by a fair and impartial appellate tribunal.

Your Law Department has a copy of my Appellant’s Brief and Appendix, filed on December 22, 2000 in the Appellate Division, First Department. From these, you can readily confirm what you already know from CJA’s past voluminous correspondence with you¹: that the Article 78 proceeding was “steered” to Acting Supreme Court Justice Wetzel, who then manifested his disqualifying self-interest and bias by rendering a fraudulent decision which falsified and fabricated the

¹ See, *inter alia*, CJA’s February 7, 2000 memorandum and, thereafter, CJA’s February 25, 2000 memorandum transmitting a copy of CJA’s February 23, 2000 letter to Governor Pataki.

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factual record in EVERY material respect. This, in order to protect your client, the Commission, which would not otherwise have survived my Article 78 challenge to its corrupt and unlawful conduct

Long ago², I brought to your attention that Executive Law §63.1 requires that the Attorney General's participation in litigation be guided by "the interest of the state" and that the New York Court of Appeals has recognized that ensuring judicial integrity and impartiality is a preeminent state interest:

"There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly * * * a higher governmental interest than a State's interest in the quality of its judiciary'". *Nicholson v. Commission on Judicial Conduct*, 50 NY2d 597, 607 (1980), quoting from the concurring opinion of U.S. Supreme Court Justice Potter Stewart in *Landmark Communications v. Virginia*, 435 U.S. 829, 848 (1977).

The most cursory examination of the "Questions Presented" and "Introduction" of my Appellant's Brief reveals that the Article 78 appeal seeks to uphold the transcendent state interest of judicial integrity and impartiality, destroyed by Justice Wetzel's fraudulent and self-interested decision, covering up the corruption of the sole state agency responsible for enforcing judicial integrity and impartiality. As such, your duty, pursuant to Executive Law §63.1, is to join in the appeal.

In any event, because there is NO legitimate defense to the appeal, you cannot, consistent with Executive Law §63.1, continue to represent the Commission. Doing so would require you to engage in fraudulent litigation tactics on its behalf, such as you employed in representing the Commission in the Supreme Court. Here, as there, no state interest is served by fraud.

Please be advised that should you not disavow your representation of the Commission and oppose my appeal, I will make a motion to disqualify you based on your violation of Executive Law §63.1 and multiple conflicts of interest, as well as for sanctions and disciplinary and criminal referral of you *personally*. As it is, my appeal already demonstrates my entitlement to your disqualification and to

² See, *inter alia*, pp. 33-36 of my memorandum of law in support of my July 28, 1999 omnibus motion and ¶7 of my supporting affidavit.

sanctions and disciplinary and criminal referral of you³. Such fact plainly gives you a profound self-interest in the outcome of the appeal, severely compromising your ability to chart a course consistent with "the interest of the state". However, your ethical duty at this stage is not to thwart the efficacy of the appellate process by further litigation misconduct, but, rather, to mitigate what you have done by taking forceful corrective steps. This would include appointing independent counsel to review the Brief, Appendix, and underlying case file and, based thereon, to advise you as to what Executive Law §63.1 requires. Such step would also serve to diminish your ultimate liability.

By copy of this letter to the Commission, I request that it undertake its own defense, as it is well capable of doing. There has been no claim that the Commission "requires the services of attorney or counsel", pursuant to Executive Law §63.1. That it does not is obvious from the fact that all but two of its 11 commissioners are lawyers and it has ample lawyers on staff. Moreover, it is the Commission – not the Attorney General's office – which has the expertise to address the issues presented by the appeal. These issues involve judicial disqualification and judicial misconduct, which are uniquely within the Commission's purview.

Finally, on the subject of judicial disqualification, the Appellate Division, First Department's fraudulent five-sentence decision in *Michael Mantell v. New York State Commission on Judicial Conduct* (S.Ct/NY Co. 108655/99, App. Div. 2000-3833) – including its denial, *without reasons*, of my fully-documented motion to intervene and for other relief -- establishes that it is not a fair and impartial tribunal. Such decision manifests its disqualifying interest and bias in maintaining the Commission as a corrupt façade⁴. As such, an appropriate motion must be made to ensure that my appeal is heard by a fair and impartial tribunal. I request your assistance in formulating such motion to safeguard the integrity of the appellate process.

³ See my July 28, 1999 omnibus motion, September 24, 1999 reply papers, and my December 9, and 17, 1999 letters to Justice Wetzel, particularizing your disqualification and litigation misconduct.

⁴ You and the Commission were given notice of the Appellate Division, First Department's fraudulent decision in *Mantell v. Commission* by CJA's December 1, 2000 memorandum, calling upon you to move to vacate it for fraud.

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Please advise as to your intentions by Wednesday, January 17, 2001 so that I may be guided accordingly.

Yours for a quality judiciary,



ELENA RUTH SASSOWER

Petitioner-Appellant *Pro Se*

cc: Assistant Attorneys General Carolyn Cairns Olson and Michael Kennedy
New York State Commission on Judicial Conduct

ATT: Chairman Eugene W. Salisbury and Commissioners
Gerald Stern, Administrator & Counsel

Michael Mantell, Esq.