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BY FAX AND EXPRESS MAIL

September 23, 1998

Justices of the United States Supreme Court
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Invocation of Judicial Disqualification and Disclosure under 28 U.S.C. §455
Sassower v. Mangano, et al., #98-106; Conference Calendar: 9/28/98

Honorable Justices:

The above-captioned case is about the lower federal courts' wilful disregard and perversion of congressional statutes designed to safeguard the integrity of judicial proceedings, 28 U.S.C. §455 among them[1]. 28 U.S.C. §455 is also applicable to this Court's Justices so that they, too, are bound by the appearance and actuality of impartial, detached decision-making -- the *sine qua non* without which justice can neither be done nor appear to be done.

This letter[2] outlines facts which, I respectfully submit, meet the standard for judicial disqualification under §455(a) [A-3] in that they raise reasonable question as to the Justices' impartiality . Although individual Justices may wish to recuse themselves in light thereof, §455(e) allows a party to waive disqualification following "full disclosure on the record"[3] [A-3].

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[1] The pertinent text of 28 U.S.C.§455, as well as of §§144 and 372(c), is included in the appendix to my petition for a writ of certiorari at A-2-5.

[2] Chief Deputy Clerk Francis Lorson has advised that letters for the Justices are to be sent directly to them at the Court, in separate envelopes, and not to the Clerk's office. He has also advised that the procedure for reminding the Justices of their obligations under 28 U.S.C. §455 and the ethical codes, in light of the specific circumstances of this case, would be by letter, filed with the Clerk's office, but that copies might also be sent to the Justices, individually. Consistent with Mr. Lorson's instructions, this letter is also being filed with the Clerk.

[3] *See*, also, Canons 3C(1) and D of the Code of Conduct for U.S. Judges [A-17-18] and Canons 3E and F of the ABA Model Code of Judicial Conduct [A-19-20].

Exhibit E-2

As set forth in my cert petition (at 27),

> "In *Liljiberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1987), the Court more than once stated: 'The very purpose of §455 is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. See S. Rep. No. 93-419, at 5; H.R. Rep. No. 93-1453, at 5.' (at 865). Plainly, as to a motion made under §455(a), where a judge's impartiality might 'reasonably be questioned', the very word 'reasonable' contains within it the word 'reason'. Once a reasoned basis is given for a judge's recusal -- one persuasive to the 'objective observer' -- the judge must provide reasons that would counter those proffered for 'reasonably' questioning his impartiality. Doing otherwise makes a travesty of the statute designed to foster public confidence in the judiciary."

28 U.S.C. §455 contains no procedural requirements. Like the ethical codes, it is self-executing. The facts herein summarized are intended to assist the Justices in *sua sponte* meeting their duty thereunder. Such is consistent with the view in Chief Justice Rehnquist's dissenting opinion in *Liljiberg* -- in which Justices Scalia and White joined and with which Justice O'Connor separately agreed -- that "a judge considering whether or not to recuse himself is necessarily limited to those facts bearing on the question of which he has knowledge" (at 872). I respectfully submit that the particulars are best known to the Justices, who, additionally, may be aware of further facts, not here presented, but warranting recusal or on-the record disclosure.

As highlighted in my supplemental brief (at p. 3), this Court is a role model, sensitizing the lower courts and legal community to their ethical obligations. The threshold obligations that must here be confronted are those relating to the appearance and actuality of each Justice's fairness and impartiality -- much as these must be the threshold obligations of every judge in performance of official duties.

The facts as to which the impartiality of the Court's Justices "might reasonably be questioned" [A-3] include the following: Firstly, the Justices have long-standing personal and professional relationships with many of the Second Circuit federal judges, whose official misconduct is the subject of the *unopposed* cert petition. Such official misconduct in covering up, by fraudulent decisions, New York state judicial corruption and collusion by the State Attorney General, is both indictable and impeachable -- and would result in indictment and impeachment of the subject federal judges were the Court to meet its supervisory duty under Rule 10[.1](a) to grant the writ or its ethical duty to make criminal and disciplinary referrals of the subject judges. [*See* cert petition, at 23-26].

Understandably, the Justices may be loathe to visit such damning fate upon their judicial colleagues and close personal friends[4]. The Justices may, likewise, have personal and professional relationships with members of the New York state judiciary, implicated or complicitous in the state judicial corruption which is the gravamen of this civil rights action under 42 U.S.C. §1983. This would include, in particular, judges of the New York Court of Appeals.

Secondly, my ex-husband, George Sassower, has a sharply adversarial relationship with this Court, based on claims that the Court has, in fact, protected its brethren in the lower federal judiciary and on the New York state level by denying his petitions for extraordinary writs and for certiorari. Upon information and belief, the serious allegations in Mr. Sassower's petitions -- as to which the Court has denied review -- are not dissimilar from the allegations in my instant petition, to wit, that the lower federal judiciary has authored factually-false, fabricated, and fraudulent decisions to cover-up New York state judicial corruption in which the State Attorney General is actively complicitous and that he was unconstitutionally denied due process and wrongfully stripped of his law license. Indeed, the Court's response to Mr. Sassower's *in forma pauperis* petitions has been not only to deny them, but ultimately to issue, without any prior warning or notice, a *per curiam* order, *prospectively* banning him from seeking *in forma pauperis* status for his petitions in non-criminal matters, *In Re Sassower*, 510 U.S. 4 (1993) (Exhibit "A"). To justify such draconian procedure, the Court's order cites *In re McDonald*, 489 U.S. 180 (1989) and *In re Sindram*, 498 U.S. 177 (1991). In both those cases, where the petitioners were prospectively barred from *in forma pauperis* petitions seeking extraordinary writs, the dissenting justices commented on the unprecedented nature of the Court's action, with the four-judge dissent in *McDonald* opening with the words: "In the first such act in its almost 200-year history, the Court today bars its door to a litigant prospectively."

Comparing *McDonald* and *Sindram* to *In Re Sassower* only accentuates that the Court's "impartiality might reasonably be questioned". Whereas the *per curiam* orders in both *McDonald* and *Sindram* recite the gravamen of the petitioners' contentions therein, there is no recitation of Mr. Sassower's contentions in the *per curiam* order against him, which does no more than note that his 11 prior petitions over the preceding three years "all were denied

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[4] Likewise, the Justices have long-standing personal and professional relationships with persons, in government and out, whose complicity in the misconduct of the subject federal judges is chronicled by the cert petition and supplemental brief. Most particularly, this includes the Assistant General Counsel in the Administrative Office of the United States Courts, to whom the substantiating record was long ago transmitted for presentment to the Judicial Conference [A-308-310; SA-79-89].

without recorded dissent" and to characterize his 10 pending petitions as "all of them patently frivolous" (Exhibit "A"). Moreover, in *McDonald*, the four dissenting Justices, Justices Brennan, Marshall, Blackmun, and Stevens, and, in *Sindham*, the three justices, Justices Marshall, Blackmun, and Stevens -- Justice Brennan being no longer on the bench -- joined in dissent based on general principle. Yet, in *In Re Sassower*, there is no principled dissent by Justices Blackmun and Stevens, the two formerly dissenting Justices still on the bench. By contrast, each of these two Justices dissented, in principle, in the only other case cited as precedent in *In Re Sassower -- Martin v. District of Columbia Court of Appeals*, 506 U.S. 1 (1992) -- wherein the Court prospectively barred Mr. Martin from *in forma pauperis* status for non-criminal petitions. However, from the order it appears that prior thereto, the Court had five times before denied Mr. Martin's *in forma pauperis* requests, the first of which was by *per curiam* order, *Zatko v. California*, 502 U.S. 16 (1991), wherein Justices Blackmun and Stevens, likewise, gave principled dissent.

I have sought to ascertain from the Clerk's office the number of litigants restricted prospectively from *in forma pauperis* status for petitions in non-criminal matters, in addition to Mr. Martin and Mr. Sassower, who appear to have been the first two in the annals of the Court. I was told that the "ballpark" number is about 16 or 17. My requests for their names for purposes of accessing their orders and comparing them to *In Re Sassower* (Exhibit "A") was denied, with the statement that my daughter, who made the inquiry, should do her own research. However, I am personally aware of one such litigant, "Glendora", restricted by the Court from prospective *in forma pauperis* filings in non-criminal matters. The Court's March 9, 1998 order in *Glendora v. John Porzio, et al.* (#97-7300) recited the allegations of her filings and referred to its prior denial of her request for *in forma pauperis* status in *Glendora v. DiPaola*, 522 U.S. ____ (1997). Justice Stevens, the only member of the original *McDonald* dissent on the bench, gave principled dissent based on *McDonald*.

On information and belief, Justices Thomas and Ginsberg absented themselves from *In Re Sassower* (Exhibit "A") because they recognized the appearance or actuality of their bias against Mr. Sassower based on his public advocacy against their Senate confirmation to the Court. Such opposition derived from his contention that, as judges of the D.C. Circuit, they wrongfully participated in protecting the state and federal defendants he sued in connection with his state judicial corruption claims.

Although I am unaware of the nature and extent of Mr. Sassower's advocacy against members of this Court and have seen *In Re Sassower* for the first time only this past week, I have just learned that Mr. Sassower has sued Chief Justice Rehnquist and has publicly made known what he views as the Chief Justice's role in the federal judicial cover-up that his litigations chronicle. The Chief Justice's failure and refusal, as head of the Judicial

Conference of the United States, to ensure appropriate action on a May 29, 1998 letter[5] about the Judicial Conference's fraudulent claims to the House Judiciary Committee as to the efficacy of 28 U.S.C. §§144, 455, and 372(c), hand-delivered for him to the Court's Clerk, William Suter -- as recounted in the Center for Judicial Accountability's written statement to the House Judiciary Committee for inclusion in the record of its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17-28, *See* SA-21, SA-25-27] -- must be seen in that context.

While I am reluctant to outrightly state that the Court would transfer hostile feelings toward Mr. Sassower onto me, it has already been my unfortunate experience to have been retaliated against by federal judges, angry at Mr. Sassower's activities and ready to hurt him by harming his innocent family. That is precisely what happened in *Sassower v. Field*, which came before this Court more than five years ago (#92-1405), in which my daughter and I were co-plaintiffs. In that civil rights action involving housing discrimination, the Second Circuit Court of Appeals -- without identifying a single argument raised on the appeal, including the bias of the district judge, whose decision was shown to be factually unsupported and legally insupportable -- *sua sponte* and without notice invoked the district judge's "inherent power" to uphold a completely arbitrary and uncorrelated $100,000 sanction against us, without a hearing, in favor of fully-insured defendants, for whom it was a windfall double-recovery, and whose litigation fraud and other misconduct was documented by our *uncontroverted* Rule 60(b)(3) fraud motion, which was part of the appeal.[6]

This Court not only denied the *Sassower v. Field* cert petition, without reasons or dissent, but, thereafter, my petition for rehearing and supplemental petition for rehearing, which identified the Second Circuit's retaliatory *animus* against Mr. Sassower as the only explicable basis for its lawless and factually false and dishonest decision. That this Court could close its eyes to such profoundly serious charge -- substantiated by a Circuit decision,

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[5] The letter is at R-61-65 of the evidentiary compendium, supporting CJA's written statement to the House Judiciary Committee, *infra*, lodged with the Clerk's office [*See* Exhibit "B-1"].

[6] The Second Circuit's vicious judicial retaliation against me in *Sassower v. Field* is part of the instant case -- having been grounds upon which I moved for the Second Circuit's recusal from the appeal in *Sassower v. Mangano, et al.* and from its adjudication of my §372(c) judicial misconduct complaints against the district judge and circuit panel. *See Sassower v. Mangano* cert petition, pp. 13, 19, and appendix documents, A-187-191; A-243, fn.3; A-251, fn. 1; A-256, A-273-280, A-314-16. *See*, also SA-39-41; SA-55-56.

on its face violative of this Court's black-letter law[7] -- suggests either that the Court approved of the Second Circuit's retaliatory use of its judicial power, perhaps because it was already familiar with Mr. Sassower's whistleblowing litigation by reason of his 11 petitions it had previously denied (*see* fn in *In Re Sassower*, Exhibit "A"), or that it was unwilling to expose the official misconduct of its Second Circuit friends. Certainly, had the Court taken remedial steps, consistent with its "power of supervision", which I expressly invoked in the *Sassower v. Field* case, it would have opened the Second Circuit up to scrutiny as to whether its fraudulent and retaliatory decision in *Sassower v. Field* was part of a pervasive pattern of misconduct, such as Mr. Sassower alleged[8].

Likewise raising reasonable question as to this Court's impartiality was its similar denial, without dissent or reasons, of my cert petition in the state Article 78 proceeding, *Sassower v. Mangano, et al.* (#94-1546). The constitutional abominations therein particularized -- and now part of the instant petition -- included the spectacle of the Appellate Division, Second Department's adjudicating the Article 78 proceeding, to which it was a party in interest, by granting the fraudulent and perjurious dismissal motion of its own attorney, the New York State Attorney General, and a flagrantly unconstitutional attorney disciplinary law, being used to retaliate against a judicial whistle-blowing attorney, suspended thereunder, without written charges, hearing, findings, reasons, or right of appeal, and thereafter denied any post-suspension hearing, leave to appeal, or any independent review by the common law writs, codified as Article 78[9]. 28 U.S.C. §2106 expressly empowers the Court to take action as "may be just under the circumstances". As highlighted by my petitioner's reply memorandum (at 8), "summary reversal and immediate vacatur" of the Appellate Division,

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[7] These multitudinous violations of this Court's decisional law, evident from *the face* of the Second Circuit's decision in *Sassower v. Field*, were succinctly itemized at pp. 4-6 of my supplemental petition for rehearing therein. Such supplemental petition was precipitated by the Court's granting of cert to *Liteky v. U.S.*, 510 U.S. 540 (1994), to interpret 28 U.S.C. §455(a).

[8] It may be noted that *In Re Sassower* was issued four months after the Court denied the rehearing petitions in *Sassower v. Field*. Upon information and belief, some of the 10 certiorari petitions as to which that Court's order denied Mr. Sassower's *in forma pauperis* status referred to and/or related to events in the *Sassower v. Field* case, as to which the district judge, after denying him the right of intervention, authored decisions defaming him.

[9] The "Questions Presented" by that cert petition as to the unconstitutionality of New York's attorney disciplinary law, as written and as applied, are incorporated by reference in the "Questions Presented" in my instant petition and reprinted at A-117 . Likewise reprinted are the "Reasons for Granting the Writ" and four-point legal argument addressed to those questions [A-118-131].

Second Department's June 14, 1991 order suspending my state law license were "constitutionally mandated".

There seems to me one further fact raising reasonable question as to the Court's impartiality: namely, my membership at the Supreme Court bar. Deputy Clerk Francis Lorson has advised that my request for issuance of a Rule 8 show cause order is now pending before the Justices. As set forth in my September 2, 1998 letter to him (Exhibit "B-1"), notwithstanding the explanation from the Clerk's office that the reason the Court did not previously issue such order was because it was not notified by the Appellate Division, Second Department of its June 14, 1991 order [A-97], the Appellate Division's Clerk has asserted that the Court was so-notified[10]. While superficially the Court's failure to adhere to its Rule 8 by suspending my bar membership and issuing a show cause order could be favorably interpreted, the Court has thereby deprived me of vindication by its reinstatement of my Supreme Court membership and its express refusal to respect the suspensions of my state and federal law licenses -- which would be the inevitable result were it to afford me the opportunity presented by a show cause order. My response would demonstrate the complete denial of my constitutional and due process rights in both state and federal tribunals. Pursuant to Rule 8.2, I would be entitled to "a hearing if material facts are in dispute". Such hearing as to the facts pertaining to these two fraudulent and retaliatory suspension orders would be the FIRST I have ever had before any tribunal in all these many years.

Finally, as to other matters related to the pending cert petition, annexed hereto is a copy of a September 4, 1998 letter to which the Justices are indicated recipients (Exhibit "C"). Said letter transmitted copies of my supplemental brief to the non-parties identified by my September 2, 1998 certificate of service -- all of whom possess copies of the *Sassower v. Mangano* case file, with the exception of the U.S. Solicitor General, who presumably has access to the copy possessed by the Justice Department's Public Integrity Section. These non-parties are: (1) the U.S. Solicitor General; (2) the Chief of the Public Integrity Section of the Justice Department's Criminal Division; (3) the Administrative Office of the U.S. Courts; (4) the House Judiciary Committee; (5) the Commission on Structural Alternatives for the Federal Courts of Appeals; and (6) the American Bar Association. The letter also identified a further non-party possessing a copy of the *Sassower v. Mangano* case file --the Association of the Bar of the City of New York -- whose President was also an indicated

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[10] As indicated by my September 2, 1998 letter (Exhibit "B-1", p. 2), the Southern District of New York has not disclosed whether -- as its procedures require -- it had notified the Court of its February 27, 1992 order suspending my federal license in the Southern District [A-134].

recipient of the letter[11].

I respectfully submit that since these governmental and bar association recipients of that September 4, 1998 letter have not come forth with any response thereto, their silence must be deemed a concession as to the breakdown of all checks on federal judicial misconduct by the three governmental Branches and the organized bar, as particularized in my supplemental brief.

Lastly, it has come to my attention that in November 1998 Justice Kennedy will be speaking at the "Judicial Independence and Accountability Symposium" at the University of Southern California (Exhibit "E-1"). Presumably, there will be future occasions when other Justices will also be addressing this critical topic. Based on Justice Kennedy's sanguine remarks at a 1996 conference on "Judicial Ethics and the Rule of Law" (reprinted in 40 St. Louis L.J. 1067: Exhibit "E-2"), I would be remiss if I did not point out that the fully-documented case of *Sassower v. Mangano, et al.*, #98-106, will transform the customary dialogue on judicial independence and accountability and serve as the benchmark of the Court's true commitment to these fundamental constitutional principles.

Most respectfully,

DORIS L. SASSOWER
Petitioner *Pro Se*

cc: New York State Attorney General,
Respondent and Counsel to Co-Respondents

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[11] The receipts, verifying mailing on September 5, 1998 to all the interested" non-parties and confirmation of delivery, are also enclosed (Exhibit "D"). Hand-delivery to the President of the Association of the Bar of the City of New York was made on September 8th *via* the Association's General Counsel, who promised to transmit same to the President, with whom my daughter personally spoke about such matter on September 9th.