

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY HAND

August 6, 1999

Attorney General Eliot Spitzer
25th Floor
120 Broadway
New York, New York 10271

RECEIVED BY: J. Wigley for DAVID NOCENTI
08/06/99 TIME: 2:00 p.m.

ATT: David Nocenti, Counsel to Attorney General Spitzer

RE: Petitioner's July 28, 1999 Motion for Omnibus Relief
Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, v. Commission on Judicial Conduct of the State of New York, #99-108551

Dear Mr. Nocenti:

Following up our telephone conversation on Monday, July 26th, transmitted herewith is a duplicate copy of my Affidavit and Memorandum of Law in the above-entitled Article 78 proceeding¹. These documents should be immediately inspected, not only by yourself, but by Attorney General Spitzer, *personally*, since my Notice of Motion seeks sanctions against Mr. Spitzer, *personally*, as well as disciplinary and criminal referral of him [at paragraphs (5) and (6)], based on the litigation fraud and misconduct particularized by my Affidavit and Memorandum.

Such litigation fraud and misconduct continues the identical *modus operandi* of Mr. Spitzer's predecessors, both Republican and Democratic, as recounted in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (*New York Law Journal*, 8/27/97, pp. 3-4), CJA's \$3,000 public interest ad with which you stated you were unfamiliar². Mr. Spitzer, however, is *fully familiar* with that ad and was so on January 27th at the City Bar, when I publicly questioned him as to what he was going to do in face of its allegations that "the Attorney General's office uses fraud to defend state judges and

¹ Our conversation together is recounted at ¶102 of my Affidavit.

² The ad is Exhibit "B" to the Verified Petition in my Article 78 proceeding and is, additionally, included among the following exhibits to my Affidavit herein: Exhibit "B", "Exhibit "D", Exhibit "F". Yet a further copy is annexed to this letter, for your convenience.

Ex. N

the Commission on Judicial Conduct sued in litigation". Mr. Spitzer's public promise was that "anything that is submitted to us, we will take a look at"³.

The voluminous substantiating materials I provided Mr. Spitzer *before* January 27th, *on* January 27th, and *after* January 27th have been sitting, collecting dust, in the office of Joe Palozzola, Assistant to Mr. Spitzer's Chief of Staff. As detailed by my Affidavit (¶¶40-53), Mr. Spitzer has not followed through on his public promise to me because he is compromised by personal and professional relationships with those involved in his predecessors' corrupt litigation practices or benefitting from those practices. Meanwhile, Mr. Spitzer has yet to make good on yet another public promise he made on January 27th -- establishing a "public integrity unit".

The reason Mr. Spitzer has failed to set up such a unit, despite his public promise on January 27th that it was then being established, is identified in CJA's March 26th ethics complaint against Mr. Spitzer, *personally*, filed with the New York State Ethics Commission. As set forth in that complaint (at p. 6)⁴, Mr. Spitzer's "public integrity unit" "could not credibly 'clean up' corruption elsewhere in state government, without first 'cleaning up' the corruption in the Attorney General's office" that has already been the subject of two prior ethics complaints against it, filed with the State Ethics Commission: CJA's September 14, 1995 and December 16, 1997 ethics complaints. Like the March 26th ethics complaint, those two prior ethics complaints are among the volume of materials sitting in Mr. Palozzola's office. Mr. Spitzer has had those two complaints since December 24, 1998, when they were hand-delivered to his law office to support CJA's request, *inter alia*, that he rescind his appointment of Richard Rifkin as Deputy Attorney General for State Counsel, based on Mr. Rifkin's official misconduct in connection with those complaints as Executive Director of the Ethics Commission.

You stated to me that Mr. Rifkin is among the four members of the Attorney General's "Employee Conduct Committee", which deals with conflict of interest issues at the Attorney General's office and entertains complaints from the general public. Please consider the enclosed Affidavit and Memorandum of Law, detailing Mr. Spitzer's conflict of interest in this Article 78 proceeding and seeking his disqualification based thereon, to be an ethics complaint against him. Please also consider them as an ethics complaint against Mr. Rifkin, as well as against litigation staff and supervisory personnel in the Attorney General's office, who, beholden to Mr. Spitzer and Mr. Rifkin for their positions, have engaged in, or countenanced, the litigation fraud and misconduct in this Article 78 proceeding, with knowledge that Mr. Spitzer and Mr. Rifkin are self-interested in these proceedings.

³ See January 27th transcript (pp. 13-14), annexed as part of Exhibit "E" to my Affidavit [Exhibit "B" thereto].

⁴ As reflected in footnote 4 on that page, Mr. Spitzer has a professional/personal relationship with Respondent's Chairman, Henry T. Berger, who helped establish his narrow election victory.

August 6, 1999

Please note that my omnibus motion is returnable on Tuesday, August 17th -- on which date the Court will hear argument on the motion. In view of its seriousness, Mr. Spitzer should plan to *personally* attend and account for his misconduct -- and that of his staff -- in this proceeding. I invite him to do so. In the event Mr. Spitzer is unable to appear, he should furnish the Court with a sworn statement, to be presented by yourself, as his counsel.

Yours for a quality judiciary,



ELENA RUTH SASSOWER

Petitioner *Pro Se*

Enclosures

cc: Justice Ronald Zweibel

Joe Palozzola, Assistant to Attorney General Spitzer's Chief of Staff

NY SUPREME COURT
RECEIVED

AUG 6 1999

I.A.S. MOTION
SUPPORT OFFICE

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

-----x
ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.
-----x

Index # 99-108551

NOTICE OF MOTION
FOR OMNIBUS RELIEF

Joseph Wigley
FOR DAVID NOCENTI
08/06/99 2:00 p.m.

MANAGING ATTYS. OFC.
RECEIVED
99 AUG -6 PM 1:47

SUBMIT

PLEASE TAKE NOTICE that, upon the annexed Affidavit of Petitioner *Pro Se*

ELENA RUTH SASSOWER, sworn to on July 28, 1999, the exhibits annexed thereto, her supporting Memorandum of Law, dated July 28, 1999, the Affidavit of Doris L. Sassower, sworn to on July 28, 1999, the Notice of Petition and Verified Petition, sworn to on April 22, 1999, and upon

all the papers and proceedings heretofore had, Petitioner will move this Court at ~~Part 68, Room 1023, 141 Centre Street~~, New York, New York on August 17, 1999 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, for an order:

The Submitting Part
Room 130
60 Centre Street
(es)

(1) disqualifying the Attorney General from representing Respondent for non-compliance with Executive Law §63.1 and for multiple conflicts of interest;

(2) declaring a nullity and vacating the post-default extension of time granted by Justice Diane Lebedeff on Respondent's application pursuant to CPLR §3012(d), after she had recused herself and without adhering to the provisions of CPLR §7804(e) or the specific requirements of CPLR §3012(d), which Respondent did not satisfy;

6-6 1999

Documents received in D.A.S. Office by Jankis D. on 8/6/99
For Tom Worman

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

NYS SUPREME COURT
RECEIVED

AUG 6 1999

I.A.S. MOTION
SUPPORT OFFICE

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ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner,

Index # 99-108551

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.
-----x

MANAGING ATTORNEY'S OFFICE
RECEIVED
99 AUG -6 PM 1:47

**PETITIONER'S MEMORANDUM OF LAW
IN OPPOSITION TO RESPONDENT'S DISMISSAL MOTION
& IN SUPPORT OF PETITIONER'S MOTION
FOR DISQUALIFICATION OF THE ATTORNEY GENERAL,
SANCTIONS, A DEFAULT JUDGMENT, AND OTHER RELIEF**

Joseph Wigley FOR DAVID NOCENTI
08/06/99 2:00 p.m.

RECEIVED
10-6-99
State

ELENA RUTH SASSOWER
Petitioner *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

Documents received in D.A.S. office - by Jackie D. on 8/6/99