**JUDICIAL MISCONDUCT COMPLAINT PURSUANT TO 28 U.S.C. §372(c)
AGAINST U.S. CIRCUIT JUDGE DENNIS JACOBS
AGAINST U.S. CIRCUIT JUDGE THOMAS J. MESKILL,
AND AGAINST U.S. DISTRICT JUDGE EDWARD R. KORMAN**

Filed by: **Doris L. Sassower** **Date:** **November 6, 1997**

PREFATORY NOTICE

Because of the *actual* bias and self-interest of this Circuit, as summarized herein and particularized in my incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion (at pp. 5-40), which *expressly* seeks recusal of the Circuit as a whole and transfer of the appeal, this §372(c) complaint should be transferred to another Circuit. 28 U.S.C.§372(c) does *not* preclude transfer, and recusal and transfer are always appropriate where judges are unable or unwilling to act impartially or where there is an "appearance of impropriety" -- as here[1].

Under 28 U.S.C. §1254(2), the Circuits may certify questions to the U.S. Supreme Court as to which they desire instruction. Should there be any question as to this Circuit's duty to transfer this fully-documented complaint and the federal judiciary's supervisory and ethical obligation to investigate it, it should be certified to the U.S. Supreme Court, in conjunction with my intended petition for a writ of certiorari, and sent, as well, to the Judicial Conference for an advisory opinion, *inter alia*, to its Committee on Codes of Conduct[2] and its Committee to Review Circuit Council Conduct and Disability Orders.

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[1] Chief Judge Ralph Winter is absolutely disqualified from reviewing this §372(c) complaint since the allegations herein of an appellate panel's fraudulent and retaliatory decision-making mirror those in my previously-filed §372(c) complaint against then Chief Judge Jon Newman (#96-8511) for his authorship of the fraudulent and retaliatory appellate decision in *Sassower v. Field*, 975 F.2d 75 (1992) (*See* discussion, *infra*). Judge Winter participated in the "shared enterprise of appellate decision-making", *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 831 (1985) -- having been a member of the appellate panel in *Sassower v. Field*, together with former Chief Judge Edward Lumbard.

[2] The Chairman of the Committee on Codes of Conduct of the Judicial Conference reported to the National Commission on Judicial Discipline and Removal that "[n]o Circuit Council has availed itself of advice from our Committee when responding to Section 372(c) complaints", Research Papers of the National Commission, Vol. I, p. 881, "*The Role of Judicial Ethics in the Discipline and Removal of Federal Judges*".

This is a complaint of official misconduct under 28 U.S.C. §372(c) against U.S. Circuit Judges Dennis Jacobs and Thomas J. Meskill of the Court of Appeals for the Second Circuit and U.S. District Judge Edward R. Korman of the Eastern District of New York/Second Circuit. These three judges, constituting the Second Circuit appellate panel in *Sassower v. Mangano, et al.*, #96-7805, failed to disclose facts "relevant to the question of disqualification", as set forth in the record[1], and failed to disqualify themselves for apparent bias. They then manifested their actual bias by *corruptly using their position and authority* in connection with the August 29, 1997 oral argument -- wherein Presiding Judge Jacobs cut me off, mid-sentence, during my oral recusal application -- thereafter "throwing" the appeal by a knowingly false and fraudulent not-for-publication, no-citation Summary Order, dated September 10, 1997[2], in which they failed to adjudicate their bias -- or the sole, overarching issue presented by my *uncontroverted* Appellant's Brief[3]: the bias of the district judge.

The evidentiary record before the panel established that this was no ordinary appeal. At issue was the district judge's flagrant and pervasive bias, as manifested throughout the course of the proceeding and in his appealed-from false and fraudulent decision, whose consequence was to protect influential state defendants, sued for corruption. These defendants, among them, the judges of New York's Appellate Division, Second Department, had *no* defense to the allegations of my Verified Complaint of their criminal conduct and had, therefore, embarked upon a stratagem of defense misconduct, including fraud. Yet, the district judge not only deliberately failed to adjudicate *any* of my documented and uncontroverted sanctions applications against defendants, who were represented by the State Attorney General, himself a defendant, but obliterated the very existence of my sanctions applications from his decision dismissing the case. Such dismissal was by his *sua sponte* and *without* notice conversion of defendants' dismissal motion -- the subject of one of my unadjudicated sanctions applications -- into one for summary judgment in their favor, based on *no* evidence whatever. At the same time, the district judge denied, *without* reasons, my own fully-documented and uncontroverted summary judgment application -- as to which I was entitled to relief *as a matter of law*. Because of the purposefulness of the district judge's misconduct, acting in complicity with the State Attorney General to subvert the integrity of the judicial process, my Appellant's Brief (at 76) explicitly requested disciplinary and criminal referral against them.

The evidentiary record before the panel further showed that because defendants had *no* legitimate defense to the appeal, the Attorney General's office went on to pollute the appellate process with fraud and misconduct. This was with the knowledge of the Attorney General's supervisory staff and the Attorney General himself, who simply turned their back on their ethical and professional duty to take corrective steps. For this reason, my request for disciplinary and criminal referral against the Attorney General and his co-defendants was reinforced in my Reply Brief -- and, thereafter, in a separate motion, dated April 1, 1997, which particularized the Attorney General's subversion of the case

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[1] *See* pp. 3-9 of my April 1, 1997 recusal/sanctions motion, referred to at fn. 1 of my Reply Brief.

[2] The fraudulent nature of the panel's Summary Order is highlighted by the Appendix, cross-referenced to the appellate record, which was Exhibit "N-1" to my incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion, *infra*. A copy is annexed hereto as Exhibit "A".

[3] My Appellant's Brief was uncontroverted inasmuch as defendants' Appellees' Brief did not deny *any* of the factual showing or respond to *any* of the legal argument presented therein. Indeed, it did not even refer to my Appellant's Brief! (*See* my Reply Brief, p. 2).

management phase of the appeal. My evidentiary showing as to what had taken place on appeal, like my evidentiary showing as to what had taken place in the district court, was fully-documented, uncontroverted, and incontrovertible.

This overwhelming record of judicial/attorney misconduct imposed upon the panel a transcendent ethical duty superior to, and separate from, the substantive merits of the litigation: to insure the integrity of the judicial process. This is a duty not confined to appellate judges, but is the obligation of every judge. Embodied in the Judicial Conference's Code of Judicial Conduct, Canon 3B(3) -- and articulated even more forcefully in ABA Canon 3D, entitled, "Disciplinary Responsibilities"-- a judge is expected, even required, to take "appropriate action" in the face of violations of professional codes and rules by another judge or by a lawyer. This duty is all the greater when the perverters of the judicial process are a U.S. district judge and New York's highest law enforcement officer, the State Attorney General.

These transcending appellate issues relating to the integrity of the judicial process, trashed by the district judge and New York's Attorney General, were featured in a public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", published in the August 27, 1997 New York Law Journal (Exhibit "B-1"), two days before oral argument of the appeal. Yet, the panel's response to this reminder of what the appellate record showed was its paramount ethical duty was to disregard that duty -- both at the oral argument and in its Summary Order. By that Order, the panel ignored, *without* adjudication, the record-evidence of *two* levels of defense misconduct and fraud -- as if it did not exist -- and ignored, *without* adjudication, the record evidence of the district judge's misconduct and fraud -- as if it did not exist. Instead, and without adjudicating *any* of the district judge's dispositions of the motion-submissions before him, the panel fashioned its own *sua sponte* dismissal of my Verified Complaint based on *Rooker-Feldman* and *unspecified* preclusion principles -- grounds shown by my appeal to be *inapplicable* to the Complaint's material allegations -- *all* of which the Summary Order purposefully expurgated[4]. Such expurgation replicated the fraud perpetrated by defendants in their dismissal motion and, thereafter, by the district judge in his decision -- a fraud whose significance had been highlighted over and again in my Brief, Reply and April 1, 1997 motion.

The panel's willful perversion of the appellate process and disregard of its ethical duties -- in the face of the appalling record before it -- lends support to the view that the district judge's brazenness in perverting the judicial process and disregarding his ethical duties was due to his knowledge that the Circuit would let him "get away with it" because he was advancing Circuit objectives[5]. These objectives were: (1) to protect influential state defendants -- including high-ranking state judges -- with whom this Circuit's judges, presumably, have personal and professional relationships; (2) to retaliate

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[4] Some of those material allegations appeared in the August 27, 1997 ad, which described defendant Second Department's politically-motivated, retaliatory, due process-less suspension of my law license, its subversion of the Article 78 remedy by its refusal to recuse itself, and its blocking of appellate review by the New York Court of Appeals through fraud. As the ad reflects, these allegations were featured in a prior ad, "*Where Do You Go When Judges Break the Law?*", published on the Op-Ed page of the October 26, 1994 New York Times (Exhibit "B-2") and thereafter in the November 1, 1994 New York Law Journal. That earlier ad was part of the record before the panel when it decided the appeal [R-606].

[5] The panel may well have feared that if it referred the district judge for disciplinary and criminal investigation, he would have implicated the Circuit in his misconduct.

against me because of my familial relationship to George Sassower, a long-standing judicial whistle-blower, who has brought numerous lawsuits and misconduct complaints against this Circuit's judges, alleging that they author dishonest decisions, which falsify facts and disregard controlling law, so as to cover-up state court corruption in which the Attorney General is an active and complicitous participant; and (3) to retaliate against me for my own whistleblowing advocacy, including against this Circuit by my testimony before the National Commission on Judicial Discipline and Removal (7/14/93), the Long Range Planning Committee of the Judicial Conference (12/9/94), and the Circuit's own Task Force on Gender, Racial, and Ethnic Fairness in the Courts (11/28/95) (Br. 3, R-890], exposing the Circuit's prior retaliation against me based solely on my familial relationship to Mr. Sassower.

This prior judicial retaliation was the Circuit's false and fraudulent decision in *Sassower v. Field*, 975 F.2d 75 (1992), upholding, by its own *sua sponte* invocation of the district judge's inherent power, a completely arbitrary, *without*-a-hearing, $100,000 sanctions award against me and my daughter in favor of fully-insured private defendants for whom it was a windfall double-recovery, where the record was devoid of *any* factual or legal basis on which to found a sanctions award against us. Indeed, the decision, authored by Judge Jon Newman, *never* once cited the record or identified *any* of our appellate arguments -- among them, the flagrant bias of the district judge -- each dispositive of our right to reversal, including a new trial based on our fully-documented and uncontroverted Rule 60(b)(3) motion. It also included the Southern District's unlawful suspension of my federal law license[6], *without* a hearing, in violation of my constitutional rights and Rule 4 [R-502-3, R-558-572, R-904-7], which I had *expressly* invoked because the Second Department had suspended my state law license *without* notice of charges, *without* reasons, *without* findings, *without* a hearing -- either before or after -- and *without* any right of appellate review -- in retaliation for my whistle-blowing against state judicial corruption and the manipulation of state judicial selection by the major political parties. Thus, this Circuit had already demonstrated its own retaliatory interest in depriving me of my financial assets, my good-name, and my license to practice law -- *all* of which were at issue in the case and on the appeal herein.

If decided by a fair and impartial tribunal -- which the panel did *not* purport itself or the district court to be -- this case would have necessarily resulted in immediate restoration of my law license, a multi-million dollar award of compensatory and punitive damages from the state defendants -- with disciplinary and criminal referral against them for their official misconduct -- and a declaration of the unconstitutionality of New York's attorney disciplinary law. Many days of front-page headlines would have ensued, particularly in the wake of defendants' criminal prosecution and removal from office. This would have catapulted me and my judicial whistle-blowing activities into the media spotlight and brought examination of my charges against the federal judiciary. Investigation, prosecution, and removal of the federal judges involved in the Circuit's *readily-verifiable* prior retaliation against me would have followed -- lending credibility to and investigation of Mr. Sassower's allegations of this Circuit's protectionism of state court judges and of the Attorney General, sued for corruption. Two members of the panel were involved in that protectionism: Circuit Judge Thomas Meskill -- whose cover-up of state judicial corruption by a dishonest decision had been the subject of Mr. Sassower's first §372(c) misconduct complaint -- as well as District Judge Edward Korman, who had dismissed two of

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[6] As set forth at pp. 4-5 of my prior §372(c) complaint against then Chief Judge Newman for his authorship of the fraudulent, retaliatory decision in *Sassower v. Field*, I have reason to believe he was involved behind-the scenes in the Southern District's suspension of my federal law license. That complaint is Exhibit "C" to my incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion.

Mr. Sassower's state court corruption cases[7]. For this reason, it was a matter of obvious self-interest[8] for the panel to "throw" the appeal -- which could only be done if it willfully disregarded its statutory and ethical duty to disqualify itself for bias under 28 U.S.C. §455, Canons 3C(1) and D of the Code of Conduct for U.S. Judges, and Canon 3E and F of the ABA Code of Judicial Conduct.

Incorporated herein by reference is the appellate record in *Sassower v. Mangano, et al.*, #96-7805 -- from which the panel's misconduct is *readily verifiable*. It includes my fact-specific, fully-documented 43-page affidavit in support of my October 10, 1997 motion for the panel's recusal for bias and for vacatur of its Summary Order for fraud. Annexed thereto as Exhibit "K" is the transcript of the August 29, 1997 oral argument, comprehensively analyzed by my affidavit (at pp. 15-32), which also analyzed (at pp. 32-37) the Summary Order and annexed a 13-page Appendix (Exhibit "N-1") (Exhibit "A" hereto) establishing -- line-by-line -- with meticulous cross-referencing to the record -- that the Order is a knowing deceit and fraud. Notwithstanding such document-supported analysis and the fact that the motion was completely unopposed by defendants, the panel disposed of it by a one-word October 22, 1997 Order, "DENIED". The panel, thereby, demonstrated that it could not articulate *any* factual or legal basis for its denial, because there is none[9]. As such, the October 22, 1997 Order is not a "good faith" adjudication and constitutes further misconduct by the panel.

Where, as at bar, a recusal application is "not frivolous or fanciful, but substantial and formidable"[10], it is misconduct for judges to deny it *without any reasons or findings as to its sufficiency*. It is certainly misconduct *per se* for judges not to confront bias issues squarely before them for adjudication -- as they were before the panel on this appeal. The very purpose of §455(a) -- codifying the Canons -- was "to promote public confidence in the integrity of the judicial process", *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1987), citing both Senate and House reports. Indeed, a judge's obligations thereunder are self-executing and do not even require the filing of an affidavit. Nor do they require a showing of actual bias -- as here present -- but only the "appearance" of impropriety. *Aetna v. Lavoie*, *infra*. *See*, also, "*Statutory Disqualification of Federal Judges*", David C. Hjelmfelt, Kansas Law Review, Vol. 30, pp. 255-263 (1982); Judicial Disqualification, Richard E. Flamm, Little Brown & Co., 1996, pp. 739-761.

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[7] Mr. Sassower's first §372(c) complaint against, *inter alia*, Judge Meskill, as well as the Circuit's affirmances of Mr. Sassower's appeals from two cases in which Judge Korman was the district judge, are annexed as Exhibits "G" and "I-1" and "I-2", respectively, to my incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion.

[8] "...an interest is sufficiently 'direct' if the outcome of the challenged proceeding substantially advances the judge's opportunity to attain some desired goal even if that goal is not actually obtained in that proceeding." *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1985) citing *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), *Gibson v. Berryhill*, 411 U.S. 564 (1973), and *In re Murchison*, 349 U.S. 133 (1955).

[9] Nor was there any factual or legal basis for the one-word denial of my April 1, 1997 recusal/sanctions motion by a three-judge panel consisting of Judge Amalya Kearse, as Presiding Judge, and Judges Guido Calabresi and Louis Oberdorfer.

[10] *Cf. Berger v. United States*, 41 S.Ct. 230, 233 (1921), where the issue -- which the Circuit Court certified to the Supreme Court -- was the sufficiency of an affidavit for recusal made under the predecessor statute to the present 28 U.S.C. §144.

My October 10, 1997 recusal/vacatur for fraud motion should be the starting point for evaluating the panel's failure to perform its duty to have recused itself for both apparent and actual bias and its willful and continuing fraud. Incorporated in that motion (at p. 2) is my Petition for Rehearing with Suggestion for Rehearing *In Banc* -- which the panel did *not* deny when it denied the motion. I do not know whether the panel has since denied the Petition because, following the October 28, 1997 filing of my §372(c) complaint against the district judge (#97-8535), the case management office abruptly ceased providing me with information as to its status, as it had prior thereto. My October 10, 1997 recusal/vacatur for fraud motion also incorporated (at p. 2) that §372(c) complaint and, as such, it is incorporated herein.

This complaint is properly cognizable under the §372(c) statute for all the reasons set forth in my incorporated-by-reference §372(c) complaint against the district judge -- which should be deemed a "companion" complaint. It is not "merits-related", because no "good-faith" adjudications are here involved, but a deliberate misuse of judicial power by a biased Circuit panel -- which knowingly failed to adjudicate the threshold bias issues because it was intent on advancing ulterior and illicit purposes. The panel's demonstrably fraudulent September 10, 1997 Summary Order -- be it to cover up state judicial corruption, to retaliate against a judicial whistle-blower, or to forestall exposure of corruption in the Circuit -- subverts the "effective and expeditious administration of the business of the courts". Its one-word October 22, 1997 Order only reinforces the impeachable nature of its conduct. This is properly the subject of disciplinary review, irrespective of whether appellate or judicial remedies exist. Moreover, under 28 U.S.C. §372(c), even "merits-related" complaints are reviewable, since the statute affords discretion *not* to dismiss such complaints.

By my October 10, 1997 recusal/vacatur for fraud motion and by my Petition for Rehearing with Suggestion for Rehearing *In Banc*, I have already availed myself of the available judicial remedies. It remains to be seen what the Circuit's response will be to my Petition for Rehearing -- which incorporates (at p. 15) the recusal/vacatur for fraud motion, this §372(c) complaint, and my companion §372(c) complaint against the district judge. Other than that, there is no appellate review as of right -- the only review being discretionary review by the U.S. Supreme Court -- which is a statistical impossibility -- a fact highlighted in my Brief (at 73-74) in the context of my *Rooker-Feldman* arguments, which the Summary Order did not address.

Should this fully-documented misconduct complaint nonetheless be dismissed as "merits-related", it should be by a fact-specific, responsive, non-conclusory order addressed to the complaint's particulars, as recited in my companion complaint against the district judge. Both complaints are well suited to standing as interpretive precedent and any dismissal should provide definition of the "merits-related" category in the specific context of complaints alleging bad-faith, biased conduct that is egregious, and illuminate its relationship to "normal adjudicative procedures", i.e., judicial and appellate remedies[11]. Should it be maintained that the sole avenue for review of deliberate, on-the-bench misconduct by Circuit judges is in the U.S. Supreme Court -- and if not there, nowhere -- then the dismissal order should state as much so that the Supreme Court can more fully appreciate -- and make appropriate provision for -- its transcendant appellate and supervisory obligation -- without which there is no disciplinary review by the Circuit.

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[11] *See* "*Without Merit: The Empty Promise of Judicial Discipline*", E. R. Sassower, The Long Term View, Vol. 1, No. 4, pp. 90-97 (1997) (Exhibit "C"). *See also*, "*Self-Regulation of Judicial Misconduct Could Be Mis-Regulation*", Anthony D'Amato, Michigan Law Review Vol. 89:609-623 (1990).