

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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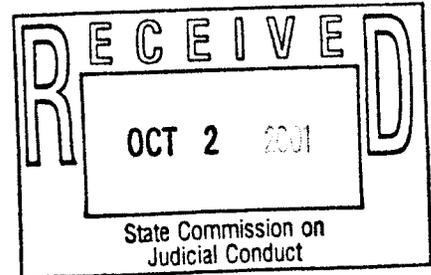
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Elena Ruth Sassower, Coordinator

BY HAND

October 2, 2001

Solicitor General Caitlin J. Halligan
Office of New York State Attorney General Eliot Spitzer
120 Broadway
New York, New York 10271



RE: Your Duty to Comply with Fundamental Rules of Supervisory and Professional Responsibility 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 Department, November 2001 Term)

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NYSJAC - RECEIVED

Dear Ms. Halligan:

According to the September 25th New York Law Journal (Exhibit "A-1"), Attorney General Spitzer has appointed you to "immediately succeed" Solicitor General Preeti D. Bansal, who has resigned -- purportedly "to pursue other opportunities".

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While doubtless "other opportunities" are available to Ms. Bansal, whose prodigious talents were highlighted two years ago in a September 1, 1999 New York Times profile (Exhibit "A-2"), it is surprising that any professional heading an office of "about 100 attorneys and support personnel" would depart so suddenly -- and do so at a time of unprecedented havoc and backlog resulting from the nearly two-week closure of the 120 Broadway office after the World Trade Towers attack.

Inasmuch as I have an August 17th motion pending in the above-entitled appeal, *inter alia*, to impose sanctions and costs upon Attorney General Spitzer and Solicitor General Bansal, *personally*, and to refer each of them for disciplinary and criminal prosecution based on their knowledge of, and complicity in, the fraudulent Respondent's Brief of Assistant Solicitor General Carol Fischer -- and their wilful refusal to discharge their mandatory supervisory responsibilities under 22 NYCRR

§1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility] (Exhibit "B")¹ by withdrawing it--- I believe I am entitled to know whether Ms. Bansal's abrupt departure was related to my motion and, specifically, to any disagreement between her and Attorney General Spitzer as to the appropriate response thereto.

By a September 4th fax (Exhibit "C"), I alerted Attorney General Spitzer and Solicitor General Bansal that I had just received their opposition to my motion -- an August 30th Affirmation and Memorandum of Law signed by Ms. Fischer -- and that it, like Ms. Fischer's Respondent's Brief, was "*from beginning to end, [] based on knowing and deliberate falsification, distortion, and concealment of the material facts and law*". I stated that just as I had previously provided them with a 66-page Critique demonstrating the fraudulence of Ms. Fischer's Respondent's Brief -- Exhibit "U" to my August 17th motion -- so I was willing to provide them with a critique of Ms. Fischer's Affirmation and Memorandum of Law. This, to assist them in meeting their clear and unambiguous supervisory responsibilities under 22 NYCRR §1200.5 and 22 NYCRR §130-1.1 to withdraw Ms. Fischer's opposition. I advised that, absent withdrawal of Ms. Fischer's opposition, I would have "no choice but to burden the Court with otherwise unnecessary reply papers, including an application for further relief against [them], *personally*, for failure to discharge [their] mandatory supervisory responsibilities."

On September 6th, I received a fax from Deputy Solicitor General Michael Belohlavek (Exhibit "D") stating,

"With regard to your offer to provide a critique of Ms. Fischer's opposition to your motion, we would be happy to review such a critique in considering your request that Ms. Fischer's opposition to the motion be withdrawn."

My response to Mr. Belohlavek, by fax dated September 7th (Exhibit "E"), was that I would furnish such critique and that if he were "sincere":

¹ A copy of 22 NYCRR §1200.5 [DR 1-104], "*Responsibilities of a Partner or Supervisory Lawyer*", was annexed as Exhibit "A-1" to my June 7th letter to Solicitor General Bansal, *infra*. In view of its seminal importance, a further copy is annexed hereto (Exhibit "B"), along with 22 NYCRR §1200.4 [DR 1-103] "*Disclosure of Information to Authorities*"; 22 NYCRR §1200.33 [DR 7-102], "*Representing a Client Within the Bounds of the Law*"; and 22 NYCRR §130-1.1, "*Awards of Costs and Imposition of Financial Sanctions for Frivolous Conduct in Civil Litigation*"; *infra*.

“the Attorney General’s Office should be preparing to withdraw Ms. Fischer’s Respondent’s Brief. This, because Ms. Fischer’s Affirmation and Memorandum of Law do NOT deny or dispute the accuracy of my 66-page Critique of her Respondent’s Brief in ANY respect – a fact Ms. Fischer’s August 30th Memorandum of Law (at pp. 9-12) shamelessly tries to justify by a spurious legal argument that the Attorney General’s Office can engage in whatever misrepresentation of documents and decisions it wishes, but that this is not ‘fraud on the court’ because these documents and decisions are ‘clearly before the Court in their complete form in Petitioner-Appellant’s Appendix’ (at p. 11) and because I have been able to challenge the Attorney General’s misrepresentations by my advocacy (at p. 12).” (emphases in the original)

On September 17th, I express mailed a Critique of Ms. Fischer’s opposition to my motion under a coverletter to Deputy Solicitor General Belohlavek (Exhibit “F-1”), reinforcing not only his own “supervisory responsibilities”, but those of Attorney General Spitzer and Solicitor General Bansal. According to the express mail receipt, delivery was made on Friday, September 21st (Exhibit “F-2”). According to a September 25th e-mail from Ms. Fischer, Mr. Belohlavek received the Critique on Monday, September 24th (Exhibit “G”-1) -- the day on which, according to the Law Journal (Exhibit “A-1”), you were appointed to “immediately succeed” Solicitor General Bansal.

I trust Ms. Bansal would concede that she did *not* require this further Critique to know that there was NO legitimate defense to that branch of my August 17th motion as sought sanctions and other relief against her and Attorney General Spitzer for refusing to withdraw Ms. Fischer’s fraudulent Respondent’s Brief. Her prior review of my 66-page May 3rd Critique of Ms. Fischer’s Respondent’s Brief – whose accuracy neither she, the Attorney General, nor anyone else had denied or disputed in the 3-1/2 months before I made my August 17th motion -- was more than dispositive on that subject. However, I believe I am entitled to know whether, prior to resigning, Ms. Bansal reviewed my September 17th Critique of Ms. Fischer’s opposition to my motion and, additionally, whether she made any comments or recommendations with respect thereto.

As Ms. Bansal’s resignation does not relieve her of liability for Ms. Fischer’s flagrant and twice-committed “fraud on the court” under her “watch” as Solicitor General, I request that if Ms. Bansal did not review my September 17th Critique and coverletter to Mr. Belohlavek (Exhibit “F-1”) *prior* to resigning, she be immediately

provided with copies², along with a copy of this letter and my September 21st letter to Respondent, the New York State Commission on Judicial Conduct (Exhibit "H").

Although Ms. Bansal's resignation relieves her of supervisory responsibilities under 22 NYCRR §1200.5 [DR 1-104] and 22 NYCRR §130-1.1, she is not thereby relieved of her professional responsibilities under 22 NYCRR §1200.4(a) [DR 1-103(A)], "*Disclosure of Information to Authorities*". Such provision has been described by our state's highest Court as a "core Disciplinary Rule", "critical to the unique function of self-regulation belonging to the legal professional":

"... the Legislature has delegated the responsibility for maintaining the standards of ethics and competence to the Departments of the Appellate Division (*see* Judiciary Law §90[2]; and *see e.g.*, Rules of App Div, 1st Dept [22 NYCRR §603.2). To assure that the legal profession fulfills its responsibility of self-regulation, DR 1-103(A) places upon each lawyer and Judge the duty to report to the Disciplinary Committee of the Appellate Division any potential violations of the Disciplinary Rules that raise a 'substantial question as to another lawyer's honesty, trustworthiness or fitness in other respects'. Indeed one commentator has noted that, '[t]he reporting requirement is nothing less than essential to the survival of the profession' (Gentile, *Professional Responsibility – Reporting Misconduct by Other Lawyers*, NYLJ, Oct. 23, 1984, at 1, col 1; at 2, col 2; *see also*, Olsson, *Reporting Peer Misconduct: Lip Service to Ethical Standards is Not Enough*, 31 Ariz L Rev 657, 658-659)^{Fn 2}." *Wieder v. Skala*, 80 NY2d 628, 636 (1992).

² A revision of that Critique was transmitted to Mr. Belohlavek under my September 21st coverletter to him (Exhibit "I") – and I request that such 58-page revised version be provided to Ms. Bansal if she did not see it. For your convenience, a corrected copy is herein enclosed.

^{Fn 2} "See also, *Matter of Rowe* (80 NY2d 336, 340) ['The Code of Professional Responsibility... counsels that... (l)awyers play a critical role in sustaining the rule of law and... the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct... Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in (the Bar) warrants disciplinary action']."

Nor does Ms. Bansal's resignation relieve her of her professional obligations under 22 NYCRR §1200.33(b) [DR 7-102(B)], "*Representing a Client Within the Bounds of Law*", to reveal to the Court Ms. Fischer's fraud on it, both by her opposition to my August 17th motion and by her Respondent's Brief. Certainly, only by coming forward can Ms. Bansal now mitigate, albeit belatedly, the inescapable monetary, disciplinary, and criminal liability she bears for Ms. Fischer's misconduct, established by my two Critiques.

As for yourself, you have now acquired the mandatory supervisory responsibilities under 22 NYCRR §§1200.5 and 130-1.1 that Ms. Bansal has relinquished with her office – perhaps because she could not accept Attorney General Spitzer's self-interested resistance to what the record herein resoundingly shows is his duty to do: withdrawing Ms. Fischer's opposition to my motion; withdrawing Ms. Fischer's Respondent's Brief, withdrawing his representation of the Commission, and joining with me to support this fully-meritorious appeal before a fair and impartial tribunal.

As highlighted by my June 7th letter to Ms. Bansal (at pp. 5-6) – annexed as Exhibit "W" to my August 17th motion – Attorney General Spitzer is severely compromised by multiple conflicts of interest. These

“are particularized in the lower court record, most dramatically by my July 28, 1999 omnibus motion for Mr. Spitzer's disqualification and for sanctions against him, *personally* [A-195-197]³ – a copy of which was provided to his counsel, David Nocenti, under an August 6, 1999 coverletter⁴. Among these disqualifying conflicts is that presented by Mr. Spitzer's relationship with Respondent's Chairman, Henry T. Berger, ‘a prominent Election Law lawyer who helped establish [Mr. Spitzer's] narrow election victory – so close that it could not be determined without an unprecedented post-election ballot counting’⁵ (emphasis in the original).

³ As to Ms. Spitzer's own conflicts of interest, *see, inter alia*, ¶¶8, 40-53 of my affidavit in support of my July 28, 1999 omnibus motion.

⁴ My August 6, 1999 coverletter is Exhibit "A" to my September 24, 1999 reply affidavit in support of my omnibus motion. Discussion of the letter and Mr. Spitzer's duty with respect thereto under applicable codes of professional responsibility appears at pages 3-11 of my September 24, 1999 reply memorandum of law.

⁵ *See* ¶51 of my affidavit in support of my July 28, 1999 omnibus motion, with its record reference.

These multiple conflicts of interest led to the Attorney General's unlawfully defending the Commission in the lower court – unlawfully because the Commission has publicly-funded counsel and the Attorney General had NO legitimate defense to the allegations in my Verified Petition of the Commission's corruption and, therefore, had to resort to litigation misconduct rising to a level of fraud. This created further self-interest on the appellate level, where, in order to conceal his litigation misconduct before the lower court – as highlighted by my Appellant's Brief -- the Attorney General had to subvert the appellate process by further litigation misconduct. This he did *via* Assistant Solicitor General Fischer's two appellate submissions, each permeated with knowing and material falsifications, distortions, and omissions in virtually each and every line. Such misconduct, on appeal, as before the lower court, is wholly violative of Executive Law §63.1, which predicates the Attorney General's advocacy on the "interest(s) of the state". As asserted in my January 10th letter to Attorney General Spitzer – annexed as Exhibit "T-1" to my August 17th motion – "no state interest is served by fraud".

My January 10th letter predicted the consequences to this appeal of Attorney General Spitzer's conflicts of interest. It urged him to appoint "independent counsel to review the Brief, Appendix, and underlying case file and, based thereon, to advise [him] as to what Executive Law §63.1 requires." It is the Attorney General's wilful failure and refusal to make such salutary appointment -- and his apparent stranglehold over the Solicitor General's office, such that it is incapable of adhering to even fundamental litigation standards – that has resulted in my August 17th motion against him and Solicitor General Bansal.

According to the September 25th Law Journal (Exhibit "A-1"), Attorney General Spitzer announced your appointment as Solicitor General by praising you for "understand[ing] the tough judgment calls that have to be made by the State both in [its] defensive litigation and [its] affirmative litigation." "The role of the [Solicitor General's] office is complex in ways that are often not appreciated... Caitlin understands the competing values and the needs to rationalize these values."

My pending August 17th motion, like the underlying appeal, will be a touchstone of your ability to make "tough judgment calls" -- when "tough" means no more than upholding such basic litigation requirements as honesty. For sure, there are NO "competing values" – and NOTHING that needs to be "rationalize[d]" – in the UNAMBIGUOUS proscriptions against falsehood and deceit in New York's

Disciplinary Rules of Professional Responsibility and in 22 NYCRR §130-1.1 (Exhibit "B"). As I have repeatedly pointed out, including in the Conclusions to each of my two Critiques, the defense fraud employed by the Attorney General throughout this litigation underscores that he is on the wrong side – and that, pursuant to Executive Law §63.1, he should be undertaking "affirmative litigation" on behalf of the public interest in this important case in which the welfare of the public and its right to a lawfully-functioning Commission on Judicial Conduct are so profoundly at stake

As noted by my September 26th e-mail to Ms. Fischer (Exhibit "G-2"), the return date for my motion is now Monday, October 15th. In the event you will not be withdrawing Ms. Fischer's opposition, I request that you so advise me no later than Tuesday, October 9th so that I will have adequate time to prepare my reply papers. Inasmuch as I want these reply papers to accurately reflect the basis upon which you are burdening the Court with the necessity of adjudicating my entitlement to a further application for sanctions, costs, and disciplinary and criminal referral – this time, against you, *personally*, in addition to Attorney General Spitzer -- I request that you provide a written statement, signed by both yourself and Attorney General Spitzer, setting forth the respects in which you dispute that my 58-page September 17th Critique is sufficient to trigger your mandatory supervisory responsibilities to withdraw Ms. Fischer's August 30th Affirmation and Memorandum of Law. As part thereof, be sure to address the three "highlights" identified by my September 17th Critique (at p. 11) as dispositive of my entitlement to the granting of BOTH the first and second branches of my August 17th motion⁶: *to wit*, pages 3-11 and 40-47 of my May 3rd Critique of Ms. Fischer's Respondent's Brief.

As always, I remain hopeful that the profoundly serious issues herein presented may be resolved without having to burden the Court. To that end, I am ready to meet with you and Attorney General Spitzer to constructively devise ways in which we can work together to vindicate the public's rights in the rule of law and in a lawfully functioning Commission and judicial process. I am also willing to stipulate to putting the appeal over to the December Term – if doing so will enhance your ability to discharge your mandatory supervisory responsibilities under 22 NYCRR §§1200.5 and 130-1.1. Such stipulation would have to be submitted to the Court by Thursday, October 4th.

⁶ My September 21st letter to the Commission (Exhibit "H") similarly requests its response to these three "highlights".

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower", with a long, sweeping horizontal line extending to the right.

ELENA RUTH SASSOWER

Petitioner-Appellant *Pro Se*

Enclosures

cc: New York State Attorney General Eliot Spitzer
Commission on Judicial Conduct of the State of New York
ATT: Chairman Henry T. Berger & Commissioners
Gerald Stern, Administrator & Counsel

**ELENA SASSOWER'S OCTOBER 2, 2001 LETTER
TO SOLICITOR GENERAL CAITLIN J. HALLIGAN**

TABLE OF EXHIBITS

- Exhibit "A-1": "*Spitzer Names Halligan Solicitor General*", NYLJ, 9/25/01
- "A-2": "*Poised and Playful in the Legal Fast Lane*", NYT, 9/1/99
- Exhibit "B": 22 NYCRR §1200.4 [DR 1-103]: "*Disclosure of Information to Authorities*";
 22 NYCRR §1200.5 [DR 1-104]: "*Responsibilities of a Partner or Supervisory Lawyer*";
 22 NYCRR §1200.33 [DR 7-102]: "*Representing a Client Within the Bounds of the Law*";
 22 NYCRR §130-1.1: "*Awards of Costs and Imposition of Financial Sanctions for Frivolous Conduct in Civil Litigation*"
- Exhibit "C": Elena Sassower's September 4, 2001 memo to Attorney General Eliot Spitzer and Solicitor General Preeta D. Bansal
- Exhibit "D": Deputy Solicitor General Michael Belohlavek's September 6, 2001 letter to Elena Sassower
- Exhibit "E": Elena Sassower's September 7, 2001 letter to Deputy Solicitor General Belohlavek
- Exhibit "F-1": Elena Sassower's September 17, 2001 letter to Deputy Solicitor General Belohlavek, sent by express mail
- "F-2": Express mail postal receipt

- Exhibit “G-1”:** Assistant Solicitor General Carol Fischer’s September 25, 2001 e-mail to Elena Sassower
- “G-2”:** Elena Sassower’s September 26, 2001 e-mail to Assistant Solicitor General Fischer
- “G-3”:** Elena Sassower’s September 26, 2001 e-mail to Solicitor General Fischer
- Exhibit “H”:** Elena Sassower’s September 21, 2001 letter to NYS Commission on Judicial Conduct
- Exhibit “I”:** Elena Sassower’s September 21, 2001 letter to Deputy Solicitor General Belohlavek