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BY HAND

March 4, 2003

New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

ATT: Gerald Stern, Administrator and Counsel

RE: Judicial Misconduct Complaints against Supreme Court Justice John R. LaCava and Administrative Judge Francis A. Nicolai

Dear Mr. Stern:

This is a formal judicial misconduct complaint against Supreme Court Justice John R. LaCava arising from his wilful disregard of clear and controlling rules of judicial disqualification/disclosure and his flagrant misuse of his judicial office for politically-motivated and self-interested retaliatory purposes in *Beverly Girardi v. Doris L. Sassower and Doris L. Sassower, P.C.* (Westchester Co. #6303/00).

Under recognized legal authority, such serious on-the-bench misconduct mandates removal, *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940):

> "'*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal....*'" italicized by the Appellate Division, First Department, quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909);

Matter of Bolte, 97 A.D. 551, 90 N.Y.S.499 (1st Dept. 1904)[1]:

> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another, and to the destruction of his usefulness as a magistrate through the loss of public confidence in his fairness and integrity" (at 568, emphasis in the original)...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574)[2].

At issue, however, is not simply one "decision or judicial action", but a long, continuing pattern of wilfully biased, sadistic, and lawless behavior, encompassing fraud and collusion with plaintiff's counsel, George Mayer, Esq., with whom Judge LaCava may have a personal relationship arising from their common assistant district attorney backgrounds. As such fraud and collusion have enabled Mr. Mayer to both procure and preserve a factually and legally baseless order for a potential default judgment of up to $1,500,000 against defendants on a complaint demonstrated to be not only frivolous, but fraudulent, it is possible that a portion of these monies has been earmarked, if not for Judge LaCava himself, than for his political patrons and judicial superior, Administrative Judge Francis A. Nicolai, who are plainly influencing this case – and with whom Judge LaCava and his Law Secretary have reason to curry favor[3].

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[1] Citation to *Bolt* appeared in your Perspective Column, "*Judicial Independence is Alive and Well*", New York Law Journal, August 20, 1998, p. 2.

[2] *See* also the 1973 Report of the Temporary Commission on the New York State System, And Justice For All, which led to the Commission's creation, and which listed the two most serious types of on-the-bench misconduct as: "allowing personal considerations to influence judicial decisions – such as, favoring friends or making decisions which would indirectly favor self or friends" and "corruption in office – such as, agreeing to decide a case to favor a party in exchange for money" (Part II, p. 60).

[3] As reflected by the record herein, Judge LaCava refused to respond to defendants' request for a copy of his "biographic background", as well as that of his Law Secretary, Alfred Farella, and denied, without reasons, their request for disclosure made by formal motion. *See* pp.

As against Administrative Judge Francis A. Nicolai, this formal judicial misconduct complaint also arises from politically-motivated and self-interested misuse of judicial power, also in *Girardi v. Sassower*. In retaliation against Ms. Sassower for the politically-explosive 1990 Election Law case *Castracan v. Colavita, et al.*, which she brought as *pro bono* counsel against Republican and Democratic party leaders in the Ninth Judicial District and their cross-endorsed judicial nominees, Judge Nicolai among them[4], Administrative Judge Nicolai failed to recuse himself from matters involving her and to transfer this case, into which he had inserted himself, to another judicial department. This, in face of Ms. Sassower's written request that he do so, based, *inter alia*, on his having been sued in *Castracan* as a party respondent and the further fact that eight of the Court's 12 judges available for civil trials had already recused themselves from matters involving her. Administrative Judge Nicolai ignored such written request, without response – yet, a year later, with this case assigned to Judge LaCava[5], recused himself *sua sponte* from a related *Girardi* matter involving Ms. Sassower based on "prior lawsuits and dealings" with her. This, however, did not prevent him, a year after that, from setting this case down for an inquest on defendants' alleged "default" – and then ignoring the written objection of Ms. Sassower's counsel, as well as notice of Judge LaCava's misconduct in connection therewith.[6]

15-16, *infra*. Upon information and belief, Mr. Farella aspires to judicial office, for which he requires the support of political leaders and other operatives whose criminal machinations have been exposed by Doris Sassower's whistle-blowing advocacy.

[4] Judge Nicolai owes his Supreme Court judgeship to the 1989 three-year, judge-trading Deal, implemented at illegally-conducted judicial nominating conventions, challenged in *Castracan*. Pursuant to the 1990 phase of the Deal, Judge Nicolai, then a Westchester County judge, was nominated to the Supreme Court vacancy created by Albert Emanuelli's contracted-for resignation to become Westchester County Surrogate. Copies of the Deal and the three affidavits/affirmations of eye-witnesses to the 1990 judicial nominating convention affidavits, have been in the Commission's possession for more than a decade, having been transmitted, *inter alia*, with Ms. Sassower's October 24, 1991 and January 2, 1992 judicial misconduct complaints.

[5] This case had previously been before Judge Scarpino, before whom Ms. Sassower made a November 1, 2000 motion for recusal and change of venue, which he denied, noting as well that the case would be reassigned in light of his election as Westchester County Surrogate. It is unknown how Judge LaCava was selected for such reassigned case.

[6] In its July 14, 1995 decision censuring part-time town court justice Alana J. Lindell-Cloud for not disqualifying herself and using "her power as a judge to satisfy a personal

As recognized by the Court of Appeals in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), Judiciary Law §44.1 imposes upon the Commission a mandatory investigative duty, absent a determination that a judicial misconduct complaint "on its face lacks merit". This judicial misconduct complaint is not just *facially-meritorious*, but substantiated by the record. A copy of a pertinent portion is herein transmitted.

The most important part of the record pertains to defendants' September 5, 2002 Order to Show Cause. Its first branch of relief was for Judge LaCava's disqualification for bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, transfer of this case to another judicial department; and, if denied, for disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct. The second branch was for vacatur of Judge LaCava's fraudulent May 2, 2002 Decision/Order granting Mr. Mayer's factually and legally baseless March 5, 2002 default motion, along with vacatur of Judge LaCava's egregious prior Decision/Orders, most particularly, his unfounded July 27, 2001 Decision/Order denying defendants' March 30, 2001 dismissal/summary judgment motion. Included in the subsequent branches: summary judgment for defendants under CPLR §3211(c) and relief against Mr. Mayer under 22 NYCRR §130-1.1 for frivolous conduct, under Judiciary Law §487(1) for "collusion and deceit", as well as his referral for disciplinary and criminal investigation and prosecution based on his "perjury, deceit, fraud, collusion, filing of false instruments, interference with the administration of justice, and other unethical conduct."

The issue of Judge LaCava's disqualifying bias and self-interest, emerging from his undisclosed political, professional, and personal relationships with, and dependency on, *inter alia*, Administrative Judge Nicolai, was the organizing

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vendetta", the Commission held, "Even creating the appearance of using judicial office for retaliation is serious misconduct. (*Matter of Schiff v. State Commission on Judicial Conduct*, 83 NY2d 689, 693-94)." As to the actuality of such misconduct, the assertions of Commission counsel in memoranda are particularly germane: "...there is no more egregious misconduct by a judge than using the judicial office to harm a party, especially with the intention of gaining personal retribution." (December 22, 1994 Post-Hearing Memorandum, p. 8; February 15, 1995 Memorandum in Support of a Motion to Confirm the Referee's Findings of Fact and Conclusions of Law and to Render Determination, p. 8).

principle around which Ms. Sassower's September 5, 2002 moving Affidavit in support of defendants' Order to Show Cause was structured. By a fact-specific 84-page presentation, substantiated by record references and annexed documentary PROOF, Ms. Sassower's moving Affidavit not only summarized the appearance of Judge LaCava's bias and self-interest arising from such relationships and dependencies (¶¶1-5), but demonstrated his actualized bias and self-interest, culminating in its "most virulent manifestation", *to wit*, his May 2, 2002 Decision[7], shown to be, "in every material respect, factually false and misleading and violative of the most basic black-letter law" (¶¶6-179).

Among the PROOF presented was that Judge LaCava had procured the May 2, 2002 Decision by such threshold frauds as his pretense that he was granting Mr. Mayer's default motion upon "unopposed...papers" – when Ms. Sassower had opposed it -- and his pretense that Ms. Sassower had *not* submitted "medical proof" to support her second request to adjourn the motion – when she had (¶¶84-98). By these threshold frauds, Judge LaCava was able to avoid the dispositive due process and jurisdictional objections Ms. Sassower had raised. Among these, that there could be NO DEFAULT, *as a matter of law*, because of the controlling significance of CPLR §321 and because her submitted "medical proof" not only mandated Judge LaCava's granting of her requested second adjournment, but reinforced the unconscionability and deceit of Mr. Mayer's default motion.

Mr. Mayer's October 2, 2002 "Affirmation in Answer" and accompanying Memorandum of Law did NOT deny or dispute that Judge LaCava had committed such threshold frauds or their significance. NOR did his aforesaid Affirmation and Memo deny or dispute Ms. Sassower's further showing (¶¶105-139) that his default motion was, *on its face*, so deficient that, even *unopposed*, NO fair and impartial tribunal could grant it. Indeed, with but two minor exceptions, Mr. Mayer did NOT deny or dispute ANY of the specific allegations in Ms. Sassower's moving Affidavit – albeit he sought to conceal his lack of legitimate opposition by a camouflage of perjury and bald deceit. This was meticulously PROVEN by the 56-page November 15, 2002 Reply Affirmation of defense counsel, Thomas Hartnett, Esq., establishing the precise state of the factual record on defendants' Order to Show Cause and, with it, their entitlement to an additional award of §130-1.1 sanctions and maximum

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[7] The May 2, 2002 Decision/Order is annexed as Exhibit "I-9" to Ms. Sassower's moving

attorney fee costs against Mr. Mayer. Such entitlement was reinforced by defendants' November 12, 2002 Notice of Cross-Motion for this relief.

The legal principles applicable to this factual record were presented by defendants' November 15, 2002 Consolidated Memorandum of Law. Point I (pp. 2-3) was captioned:

> "Mr. Mayer's Opposing Affirmation Presents No Opposition to the Evidentiary Facts Particularized by Ms. Sassower's Affidavit in Support of the Order to Show Cause, Thereby Conceding Them, *as a Matter of Law*".

Point II (pp. 3-45) was captioned:

> "Defendants are Entitled to the First Branch of Relief [of their Order to Show Cause]: Disqualification, Change of Venue, & Disclosure".

This Point II spanned 42 pages of the 100-page Consolidated Memorandum and joined an extensive prefatory presentation as to the standards for adjudication of disqualification/recusal, change of venue, and disclosure (pp. 3-11) with two key sections, entitled:

> "A. The Threshold Egregious Errors [Frauds] Committed by the Court in Rendering the May 2, 2002 Default Decision/Order are Dispositive of Defendants' Entitlement to Vacatur Thereof and to the Court's Disqualification" (at pp. 11-20)
>
> B. No Fair and Impartial Tribunal Would Have Granted the Default Motion as it was so Grossly Insufficient that, Even Unopposed, the Motion had to be Denied, *as a matter of law*" (at pp. 20-45).

These two sections paralleled the uncontested factual presentation at ¶¶84-139 of Ms. Sassower's moving Affidavit. As to the first of these sections, pertaining to the threshold frauds Judge LaCava had committed in rendering the May 2, 2002 Decision, defendants' Point II (at p. 12) asserted:

Affidavit.

> "On this motion to vacate the May 2, 2002 default decision/order, the substantive issues hereinafter discussed [pertaining to the second through eighth branches of defendants' Order to Show Cause] are not even reached until there is an adjudication as to the propriety of the Court's having proceeded to decide Mr. Mayer's March 5, 2002 default motion without having made the requisite preliminary rulings on Ms. Sassower's entitlement to the granting of her second adjournment request and upon the validity of the jurisdictional and due process objections she had raised." (emphasis added).

Defendants' Point II was ENTIRELY undenied and undisputed by Mr. Mayer, whose only response was his November 26, 2002 Reply Affirmation. Such also did NOT deny or dispute the accuracy of ANY of the other Points of defendants' Consolidated Memorandum[8] – all establishing that Judge LaCava's May 2, 2002 Decision, itself devoid of discussion of legal standards or decisional authority, to be legally insupportable and baseless.

The factual and legal record on defendants' September 5, 2002 Order to Show Cause did not stop there, however. The record also contained Ms. Sassower's November 15, 2002 Reply Affidavit, particularizing, and providing documentary proof of, the fraudulence of the underlying *Girardi v. Sassower* Complaint[9] over and beyond what was demonstrated by defendants' Consolidated Memorandum (pp. 35-45, 66-86, 90-91). Additionally, the record contained defendants' November 12, 2002 Notice of Demand for Documents pursuant to CPLR §2214(c), specifying documents in Mrs. Girardi's possession whose production by her would further decisively prove the fraudulence of her Complaint, drafted by Mr. Mayer.

The allegations of Ms. Sassower's November 15, 2002 Reply Affidavit, specifying the fraudulence of the *Girardi* Complaint, were ALL undenied and undisputed by Mr. Mayer's November 26, 2002 Reply Affirmation, with one minor exception, wholly devoid of probative value. This, as likewise Mr.

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[8] So-noted by ¶11 of Mr. Hartnett's December 26, 2002 Reply Affirmation.

[9] The Complaint in *Girardi v. Sassower* is annexed as Exhibit "A" to defendants' March 30, 2001 dismissal/summary judgment motion. It is also annexed as Exhibit "A" to Mr. Mayer's March 5, 2002 default motion. Copies of these two motions are transmitted herewith.

Mayer's concealment of the very existence of defendants' Notice of Demand for Documents, as well as of their Notice of Cross-Motion for sanctions were detailed by Mr. Hartnett's December 26, 2002 Reply Affirmation (¶¶24-28, 2-3). Such December 26, 2002 Reply Affirmation was expressly submitted "in exercise of defendants' right of reply to prevent fraud on the Court" (¶1) and requested additional sanctions and attorney fee costs under 22 NYCRR §130-1.2 for the multitudinous perjuries and deceits it demonstrated as to Mr. Mayer's November 26, 2002 Reply Affidavit.

This then was the record before Judge LaCava when, by a January 13, 2003 Decision & Order, he: (1) denied, *essentially without reasons and without findings*, defendants' September 5, 2002 Order to Show Cause; (2) denied, *without findings*, defendants' November 12, 2002 Cross-Motion for sanctions and attorney fee costs; (3) rejected as "untimely" Mr. Hartnett's December 26, 2002 Reply Affirmation, with no further comment; and (4) did not adjudicate defendants' entitlement to plaintiff's compliance with their November 12, 2002 Notice of Demand for Documents, whose very existence he concealed. That Judge LaCava's January 13, 2003 Decision is -- like his May 2, 2002 Decision – a fraud and a further flagrant manifestation of his virulent disqualifying bias and self-interest -- is evident from his knowing and deliberate failure to even identify, let alone confront, ANY of the specific facts and legal authority presented by defendants in support of their Order to Show Cause.

As to the overarching first branch of defendants' September 5, 2002 Order to Show Cause for disqualification/recusal, transfer, and disclosure – the subject of Point II of their Consolidated Memorandum of Law -- Judge LaCava's January 13, 2003 Decision denied transfer and disclosure, *without reasons and without findings*, after disposing of disqualification/recusal by the bald single-sentence declaration:

> "Defendants have failed to advance a mandatory statutory or administrative basis for disqualification (see Judiciary Law 14; 22 NYCRR 100.3[E]) and I do not find, as a matter of personal conscious (sic) (see, People v. Smith, 63 N.Y.2d 41, 68, cert. denied 469 U.S. 1227), that recusal is warranted." (at p. 2)

Such single sentence wilfully conceals EVERY fact "advance[d]" by defendants, both as to the appearance of Judge LaCava's interest and bias, and its actuality, including as to his threshold frauds in rendering the May 2, 2002

Decision. It also misrepresents the applicable standard for recusal, set forth in defendants' Point II. Recusal is NOT "a matter of personal conscience" where "the alleged 'bias or prejudice or unworthy motive' is 'shown to affect the result". As demonstrated by defendants' motion, "the result" of Judge LaCava's interest and bias was his wholly fraudulent May 2, 2002 Decision, culminating a pattern of biased and abusive conduct by him that included *ex parte* communications and collusion with Mr. Mayer. Indeed, Point II had asserted, based on the reasoning of *Capshaw*, *Droege*, and *Bolte*:

> "A judge who fails to disqualify himself upon a showing that his 'unworthy motive' has 'affect[ed] the result' and, based thereon, does not vacate such 'result' is subject not only to reversal on appeal, but to removal proceedings." (at p. 8).

Judge LaCava's citation to *People v. Smith*, 63 NY2d 41, is itself revealing. There was no reason for him to have reached back to such 1984 Court of Appeals decision over the 1987 Court of Appeals decision in *People v. Moreno*, 70 NY2d 403, cited in Point II (at p. 7), or, for that matter, over his own 1998 decision in *People v. Tiffany*, 672 NYS2d 973, except that *Moreno* and his own *Tiffany* decision identify that where "bias, or prejudice or unworthy motive" are shown to "affect the result", a denial of disqualification will be reversed on appeal and, further that "it may be the better practice in some situations for a court to disqualify itself in a special effort to maintain the appearance of impartiality" – circumstances here directly applicable[10].

Tellingly, Judge LaCava's January 13, 2003 Decision makes NO statement, let alone ANY finding: (1) that he has no personal or pecuniary interest affected

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[10] In *Tiffany*, Judge LaCava's denial of a change of venue motion from the village court included an extended discussion of both statutory disqualification and "discretionary" recusal. As part thereof, and unlike his January 13, 2003 Decision at bar, he specified that disqualification for interest had "not been established because "there is no showing that the subject judge stands to 'profit or gain by any decision in this case". He also did not merely cite *Smith*, as at bar, but quoted from it, "[T]he decision on a recusal motion is generally a matter of personal conscience" -- thereby revealing the qualifying word "generally". Additionally, he quoted from *Moreno* as to "the better practice...to maintain the appearance of impartiality", thereby giving clear indication of the pertinent factor for consideration by the village town justice, who – according to the headnote – was "the only judge who has yet to recuse himself". At bar, and as highlighted by defendants' motion, 10 of the 12 available justices of the civil part, including Administrative Judge Nicolai, had recused themselves. [*See* Ms. Sassower's moving Affidavit, ¶¶1-5; Mr. Hartnett's Reply Affirmation, ¶¶31-34; defendants' Consolidated Memorandum, pp. 9-10.]

by the outcome of this action; (2) that his May 2, 2002 Decision, as likewise his prior Decisions on which it rests, are not the result of bias and interest, being factually and legally sound; and (3) that his conduct has been consistent with "the appearance of impartiality".

With the record before Judge LaCava on defendants' motion presenting undisputed and indisputable evidentiary proof and controlling legal authority that his May 2, 2002 Decision is

> "in every material respect, factually false and misleading, and violative of the most basic black-letter law",

his responsibility was to confront defendants' factual and legal showing, and, absent that, to vacate such Decision and recuse himself. He could not – *without engaging in serious judicial misconduct, not to mention further fraud* – simply ignore the unassailed and evidentiarily-established facts and controlling law, as if they did not exist. Yet, this is exactly what his January 13, 2003 Decision does – and does to such an extent as to commit an even more outrageous fraud. Indeed, because his January 13, 2003 Decision wholly conceals that defendants' motion even impugned the May 2, 2002 Decision, let alone impugned it as fraudulent, Judge LaCava is able to rely on the May 2, 2002 Decision to deny its vacatur pursuant to §5015(a)(1). Thus, he purports that the May 2, 2002 Decision supports his "finding that defendants have failed to advance a reasonable excuse for the default" – a "finding" he makes *without* identifying ANY of the facts and law defendants had presented as constituting their "reasonable excuse". Tellingly, such facts and law are the same as expose the "virulent bias" manifested by his fraudulent May 2, 2002 Decision.

It is this conclusory, NON-"finding" that becomes Judge LaCava's pretext for making NO FINDING at all as to whether defendants satisfied the second prong for vacatur pursuant to CPLR §5015(a)(1), a "meritorious defense". Yet from the record before him, most particularly, Ms. Sassower's November 15, 2002 Reply Affidavit and pages 31-45, 65-74 of defendants' Consolidated Memorandum[11], Judge LaCava knew that defendants had established not only a "meritorious defense", but that the *Girardi* Complaint, drafted by Mr. Mayer, was a fraud. Plainly, such record-compelled finding would have made obvious Judge LaCava's criminality and collusion in his maintaining a potential

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[11] These are Point II, Section B(4) and Point VI, Section A of defendants' Consolidated Memorandum.

$1,500,000 liability against defendants based on such fraudulent Complaint.

An extensive analysis of Judge LaCava's fraudulent January 13, 2002 Decision is annexed hereto as Exhibit "A" and incorporated herein by reference. Suffice to say, Judge LaCava's denial of the first branch of defendants' September 5, 2002 Order to Show Cause for disqualification/recusal, *without* reasons, *without* findings, and *without* discussion of applicable legal standards is all the more egregious as such formal motion was insisted on by him before he would rule on disqualification/recusal issues. As detailed by Ms. Sassower's moving Affidavit (¶¶22-27, 99-104), Judge LaCava REFUSED to rule on her informal request for his *sua sponte* disqualification, taking the position that she had to proceed by formal motion. This, in face of his having been advised by Ms. Sassower that she was ill and that her then counsel in the action, Frank Cattarrasa, Esq., was refusing to make such motion. For Judge LaCava to have thus burdened Ms. Sassower and created the rift between her and Mr. Cattarrasa that would ultimately require her to discharge Mr. Cattarrasa for cause – when he also knew that, *irrespective of the presented facts and applicable law*, he was going to deny a formal disqualification/recusal motion by fiat, as he has here done[12], can only be seen as harassing and sadistic in the extreme.

This harassing, sadistic conduct by Judge LaCava, compelling a formal motion for matters which were his duty to swiftly and independently confront, also underlies his threshold fraud in rendering the May 2, 2002 Decision, purportedly upon "unopposed papers", with no mention, let alone disposition, of the due process and jurisdictional objections Ms. Sassower had presented by

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[12] Judge LaCava's denial, by fiat, could not be further from the standard proposed by defendants' Point II:

> "Adjudication of a recusal motion must be guided by the same legal and evidentiary standards as govern adjudication of other motions. When, as here, the recusal motion details specific supporting facts from which bias and interest are inferable, if not demonstrated, the Court, as the real party in interest, has a legal and ethical duty to respond to those facts, as likewise to the law presented in support thereof. To fail to do so subverts the motion's very purpose of resolving the "reasonable questions" as to the Court's impartiality, requiring disqualification, as contemplated under §100.3E of the Chief Administrator's Rules Governing Judicial Conduct. This is all the more so at bar, where Mr. Mayer has been wholly unable to defend the Court against such evidentiary facts by his opposing affirmation."

her March 20, 2002 fax to him[13]. This includes as to the controlling significance of CPLR §321. As detailed by defendants' motion[14], Judge LaCava's response to these due process and jurisdictional objections was to require Ms. Sassower to proceed by formal motion, notwithstanding his knowledge that she was ill and without replacement counsel for her *defacto* discharged, but still extant, attorney of record – a fact concealed by his May 2, 2002 Decision. Thereafter, Judge LaCava told Mr. Hartnett to proceed by formal motion when, based on the dispositive significance of CPLR §321, Mr. Hartnett sent him a June 28, 2002 letter, requesting, "in the interest of judicial economy and to allow this matter to proceed on the merits without more motion practice and potential appeals", that he *sua sponte* vacate his May 2, 2002 Decision and recuse himself[15]. Administrative Judge Nicolai "stood idly by" (*See* Mr. Hartnett's supporting affirmation to September 5, 2002 Order to Show Cause and exhibits thereto).

Having thus compelled defendants to raise their decisive CPLR §321 objections by their September 5, 2002 Order to Show Cause[16], Judge LaCava does not deny or dispute that they are dispositive. Instead, his January 13, 2003 Decision simply conceals that CPLR §321 exists and that objection based thereon was ever raised by defendants. The wilfulness of this is evident from the two-page section titled "Miscellaneous", the largest section of the decision's eight and a half pages. This "Miscellaneous" section (pp. 5-7), whose argument appears tangentially related to the threshold fraud issues highlighted by defendants' motion[17], without identifying this, goes on at length as to why Judge LaCava "rejects defendants' position that Mr. Cattarras should have been treated as the attorney of record until the appearance of current counsel..." (p. 6). Apart from

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[13] Ms. Sassower's March 20, 2002 fax to Judge LaCava is annexed as Exhibit "I-1" to her moving Affidavit.

[14] *See* Ms. Sassower's moving Affidavit, ¶¶67-74, 97-98; defendants' Consolidated Memorandum, pp. 17-18.

[15] Mr. Hartnett's June 28, 2002 letter is annexed as Exhibit "A-1" to his September 5, 2002 supporting Affirmation. *See* also ¶5 of that Affirmation; Ms. Sassower's moving Affidavit, ¶¶187-190.

[16] Defendants' November 15, 2002 Consolidated Memorandum, pp. 17-20, 30.

[17] *See* ¶¶84-98 of Ms.Sassower's moving Affidavit and pages 11-20 of defendants' Consolidated Memorandum (Point II, Section A).

the material factual falsehoods and omissions of such recitation, particularized at pages 11-13 of the accompanying analysis, Judge LaCava altogether conceals that "defendants' position" has a LEGAL BASIS, namely, CPLR §321. Even in referring to Ms. Sassower's March 20, 2002 fax, and quoting its characterization of Mr. Mayer's default motion as "'legally and factually baseless'" (p. 7), Judge LaCava suppresses ALL particulars from the March 20, 2002 fax supporting that characterization, such as CPLR §321.

Actually, Judge LaCava's reference to Ms. Sassower's March 20, 2002 fax, as likewise to his own April 11, 2002 faxed letter -- which is not until the final paragraph of his "Miscellaneous" section (p. 7) -- appears to be for the separate proposition with which the section concludes, namely, "Ms. Sassower was aware of the nature and content of the default motion and of its final return date" (p. 7). In other words, Judge LaCava wants to make it seem, *but without saying so*, that the May 2, 2002 Decision satisfied due process.

Yet, defendants' motion NEVER contended that Ms. Sassower was not "aware of the nature and content of the default motion" and, as to the "final return date" of Mr. Mayer's motion, the issue was NOT Judge LaCava's April 11th letter, but Ms. Sassower's responding April 11th and April 12th faxes, each submitting "medical proof" in substantiation of her second adjournment request[18]. As particularized by Ms. Sassower's moving Affidavit (¶¶80, 87-91), Judge LaCava NEVER notified her of any inadequacy of such submitted "medical proof", and, by his May 2, 2002 Decision, falsely made it appear, that following his April 11th letter, she had submitted "no medical proof".

That Judge LaCava should continue to conceal this submitted "medical proof" and defendants' clear entitlement to adjournment of Mr. Mayer's default motion based thereon, and likewise continue to conceal defendants' CPLR §321 objections, quite apart from otherwise misrepresenting and suppressing the counsel issue, underscores that he has NO explanation in mitigation of the threshold frauds without which his May 2, 2002 Decision could not have held defendants liable, by default, for a potential $1,500,000 judgement against them.

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[18] Judge LaCava's April 11, 2002 letter and Ms. Sassower's responding April 11th and April 12th faxes are annexed as Exhibits "I-4", "I-5", and "I-6", respectively, to Ms. Sassower's moving Affidavit.

A judge who receives such serious and substantial "medical proof" as Ms. Sassower transmitted by her April 11th and 12th faxes and then not only commits the vicious threshold frauds of the May 2, 2002 Decision, but, upon being confronted with same by formal motion, dissembles and maintains such financially-destroying Decision, without confronting, or even identifying the pivotally-presented "medical proof" and defendants' fundamental rights arising therefrom, is a sociopathic menace and must be removed from the bench forthwith.

That Judge LaCava rendered his fraudulent January 13, 2003 Decision with knowledge that defendants' motion had been, or was going to be, filed with the Commission as a judicial misconduct complaint against him and against Administrative Judge Nicolai[19], only further underscores that there are NO mitigating factors in connection therewith and that the fraudulent May 2, 2002 Decision to which he adhered is no inadvertent anomaly.

None of the specific facts particularized by defendants' motion as to *ex parte* communications and collusion between Judge LaCava and Mr. Mayer are denied by Judge LaCava's January 13, 2003 Decision. The collusion between them is powerfully evidenced by the Decision's cover-up of Mr. Mayer's perjurious and deceitful opposition to defendants' motion, including defendants' entitlement to requested §130-1.1 sanctions and attorney fee costs, as well as his cover-up of the fraudulent *Girardi* complaint, further exposed by Mr. Mayer's non-compliance with defendants' Notice of Demand for Documents.

Judge LaCava is presumed to know that the record on defendants' September 5, 2002 Order to Show Cause will require that his January 13, 2003 Decision be reversed on appeal by any impartial appellate court. His Decision then serves no purpose but to oppress Ms. Sassower with a costly and time-consuming appeal, as well as with proceedings upon the directed inquest. Such must be considered a significant aggravating factor in warranting Judge LaCava's removal from the bench. Indeed, the record herein will be used to support CJA's advocacy of legislative reform so that judges are made to *personally* bear the heavy financial costs to litigants and the taxpaying public of their deliberate appeal-generating judicial misconduct.

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[19] *See* ¶¶12-13 of Mr. Hartnett's September 5, 2002 supporting Affirmation; ¶194 of Ms. Sassower's September 5, 2002 moving Affidavit.

Appellate remedies do not preclude – or substitute for --disciplinary review, as you yourself recognized in your law review article, "*Is Judicial Discipline in New York State a Threat to Judicial Independence*" (Pace Law Review, Vol. 7, No. 2 (Winter 1987), pp. 291-388, at pp. 303-305:

> "...legal error and judicial misconduct are not mutually exclusive; a judge is not immune from being disciplined merely because the judge's conduct also constitutes legal error. From earliest times it has been recognized that 'errors' are subject to discipline when the conduct reflects bias, malice or an intentional disregard of the law. These standards have been refined in recent years to remove from office or otherwise discipline judges who abuse their power and disregard fundamental rights. Clearly, no sound argument can be made that a judge should be immune from discipline for conduct demonstrating lack of fitness solely because the conduct also happens to constitute legal error.
>
> ...
>
> Over the past few years, a major contribution by the Commission on Judicial Conduct and the Court of Appeals has been the development of a body of case law condemning tyrannical conduct by judges. Providing the right to appellate review for egregious violations of rights was simply an inadequate deterrent. Moreover, the right to appeal does not address the possible misconduct of the trial court and does not grant the appellate court the power to discipline the judge. Judicial 'independence' encompasses making mistakes and committing 'error', but was not intended to afford protection to judges who ignore the law or otherwise pose a threat to the administration of justice."

Such recognized and well-articulated principle will be tested by the crucible of these judicial misconduct complaints against Judge LaCava and Administrative Judge Nicolai. As hereinabove shown, these complaints are not about "errors of law" or "wrong" decisions. Rather, they are about biased and self-interested judges who have disregarded fundamental rules of judicial disqualification/recusal/disclosure in furtherance of a vindictive retaliatory agenda. Before such judges, there has been no "administration of justice", but only the exercise of raw power, in defiance of incontrovertible documentary facts and controlling black-letter law.

The record on defendants' September 5, 2002 Order to Show Cause is so meticulous and decisive in documentarily establishing the malicious frauds Judge LaCava perpetrated by his May 2, 2002 Decision and then reinforced by his January 13, 2003 Decision that the only investigation required by the Commission on these judicial misconduct complaints, beyond review of the transmitted documentation, is as to the source of the bias and interest motivating this brazenly-manifested misconduct. As detailed by Ms. Sassower's moving Affidavit (¶¶38-41), Judge LaCava failed to make requested disclosure in the course of this litigation concerning himself and his Law Secretary. As reflected by his January 13, 2003 Decision (at p. 2), he has further, *without reasons and without legal authority*, denied the disclosure sought by the defendants' motion pertaining to his relationships with Administrative Judge Nicolai, among others -- entitlement to which was highlighted by Point II of their Consolidated Memorandum (pp. 6-7), citing the Commission as authority:

> "'It is cause for discipline for a judge to fail to disclose on the record or offer to disqualify under circumstances where his impartiality might reasonable (sic) be questioned'[fn.6]. Since 1998, the Commission's Annual Reports have highlighted:
>
> > 'All judges are required by the Rules [Governing Judicial Conduct] to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned.'"

Finally, pursuant to Judiciary Law §44.10, those portions of these documented judicial misconduct complaints as establish Mr. Mayer's perjury and fraud and his collusion with Judge LaCava must be referred to the Grievance Committee. Request is made for such relief, as likewise, for referrals to the District Attorney's office for criminal prosecution of the conspirators in the frauds here perpetrated.

[fn.6] "Commission's 7/10/89 Brief in the Court of Appeals in *Matter of Edward J. Kiley*, at p. 20."

Doris Sassower is available to answer your questions, supply additional corroborating documents, and give testimony under oath.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures (see attached inventory)

Read, approved, and sworn to by:

DORIS L. SASSOWER, Director
Center for Judicial Accountability, Inc.

Sworn to before me
this 4th day of March, 2003

NOTARY PUBLIC

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 3/11/06

INVENTORY OF TRANSMITTAL
TO CJA's MARCH 4, 2003 JUDICIAL MISCONDUCT COMPLAINT AGAINST SUPREME COURT JUSTICE JOHN R. LaCAVA AND ADMINISTRATIVE JUDGE FRANCIS A. NICOLAI

DEFENDANTS' SEPTEMBER 5, 2002 ORDER TO SHOW CAUSE IN *GIRARDI v. SASSOWER* (Westchester Co. #6303/00)

1. Defendants' September 5, 2002 Order to Show Cause, Thomas Hartnett's supporting Affirmation and Doris Sassower's moving Affidavit

2. George Mayer's October 2, 2002 "Affirmation in Answer to Defendants Order to Show Cause and Cross Motion"

3. George Mayer's October 2, 2002 Memorandum of Law

4. Defendants' November 12, 2002 Notice of Cross-Motion for Sanctions and Attorney Fee Costs Pursuant to 22 NYCRR §130-1.1 & Other Relief

5. Defendants' November 12, 2002 Notice of Demand for Documents pursuant to CPLR §2214(c)

6. Thomas Hartnett's November 15, 2002 Affirmation in Reply, in Opposition to Plaintiff's Cross-Motion, and in Support of Defendants' Cross-Motion

7. Doris Sassower's November 15, 2002 Affidavit in Reply, in Opposition to Plaintiff's Cross-Motion, and in Support of Defendants' Cross-Motion

8. Defendants' November 15, 2002 Consolidated Memorandum of Law

9. Thomas Hartnett's December 26, 2002 Reply Affirmation in Further Support of Defendants' Cross-Motion for Sanctions & Attorney Fee Costs Pursuant to 22 NYCRR §130-1.1 *et seq.*

10. Judge John LaCava's January 13, 2003 Decision & Order

INVENTORY OF TRANSMITTAL

BACKGROUND DOCUMENTS FROM THE RECORD
***GIRARDI v. SASSOWER* (Westchester Co. #6303/00)**

1. Defendants' March 30, 2001 dismissal/summary judgment motion, with Doris L. Sassower's moving Affidavit

2. George Mayer's May 9, 2001 Affirmation

3. Beverly Girardi's May 30, 2001 Affidavit

* * *

4. George Mayer's March 5, 2002 default motion, with Mr. Mayer's moving Affidavit

5. *NOTE: Doris Sassower's correspondence with Judge LaCava is annexed as Exhibits* "I-1" to "I-8" to her moving Affidavit in support of Defendants' September 5, 2002 Order to Show Cause

6. George Mayer's April 12, 2002 Affirmation