October 24, 2002
Motion for Leave to Appeal
Elena Ruth Sassower
v.
Commission on Judicial Conduct

22 NYCRR §500.11(d)(1)(ii)
Question Presented for Review

Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it[1] establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions[2] without which it would not have survived three separate legal challenges -- with four of these decisions, two of them appellate, contravening this Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit*:

> "...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)..." (emphasis added).

22 NYCRR §500.11(d)(1)(iii)
Procedural History

Timeliness Chain

On January 18, 2002, Petitioner-Appellant was served, by mail, with the Appellate Division, First Department's December 18, 2001 decision/order (Exhibit "A-1").

On February 20, 2002, Petitioner-Appellant served and filed her motion to the Appellate Division, First Department for leave to appeal to the Court of Appeals.

---

[1] The record, in full, was filed with the Court on May 1, 2002 "Law Day", in conjunction with Petitioner-Appellant's May 1, 2002 jurisdictional statement in support of her appeal of right and her May 1, 2002 motion for disqualification of the Court's judges and for disclosure.

[2] Excluded from these five decisions are the Court's two September 12, 2002 decision/orders (Exhibits "B-1", "B-2"), the subject of Petitioner-Appellant's separate reargument motion to vacate for fraud and lack of jurisdiction, etc.

22 NYCRR §500.11(d)(v)
Why the Question Presented Merits Review

This appeal presents the Court with five judicial decisions arising from three separate Article 78 proceedings against the Commission, all involving its mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* judicial misconduct complaints[3]. No provision is more important to a complainant of judicial misconduct than Judiciary Law §44.1.

The direct subject of the appeal is the Appellate Division, First Department's December 18, 2001 decision (Exhibit "A-1"). That decision "affirmed" the January 31, 2000 decision of Acting Supreme Court Justice William Wetzel (Exhibit "C"), whose dismissal of Petitioner-Appellant's verified petition (at pp. 4-5) was exclusively based on the July 13, 1995 decision of Supreme Court Justice Herman Cahn in *Doris L. Sassower v. Commission* (NY Co. #95-109141) (Exhibit "D") and the September 30, 1999 decision of Supreme Court Justice Edward Lehner in *Michael Mantell v. Commission* (NY Co. #99-108655) (Exhibit "E"). In "affirming", the Appellate Division *directly* cited only a single decision: its own November 16, 2000 decision in *Mantell v. Commission* (Exhibit "F"), "affirming" Justice Lehner's decision.

That these five decisions are judicial frauds[4], falsifying both the material facts AND applicable law in each proceeding so as to "protect" a corrupted Commission, is

---

[3] Judiciary Law §44.1 is NOT the only issue presented by this Article 78 proceeding, whose verified petition contains six claims for relief addressed to a variety of statutory and rule provisions [A-37-45].

[4] Two of these five decisions are unpublished: Justice Wetzel's January 31, 2000 decision and Justice Cahn's July 13, 1995 decision.

Petitioner-Appellant's analyses of the decisions of Justices Cahn and Lehner (Exhibits "H", "I") – the same two analyses as she provided to Chief Judge Kaye in March 2000 (Exhibit "G", fn. 8) – suffice to expose the fraud of all five decisions, *readily*. The Court must not countenance opposition from the Attorney General and Commission unless they confront these two dispositive analyses. Indeed, the record shows that throughout the 3-1/2 years of this litigation, including during its foray into the *Mantell* appeal, the Attorney General, acting for the Commission, not only completely REFUSED to address these analyses, but has never even mentioned the word "analysis", either singular or plural. Peruse his papers and it is as if such pivotal documents do not exist.

Chief Judge Kaye's public position, expressed in "*I rise in defense of state's courts*" (Daily News, 1/17/02) (Exhibit "M-1"), and reflected in "*State judicial system is accountable to the public*" (Albany Times Union, 2/10/02) (Exhibit "M-2"), is that "as a public institution the courts must recognize their accountability to the public – and we do." This appeal represents a decisive moment for this Court – and a powerful opportunity to demonstrate that judges don't just cover-up for judges, but are capable of holding their judicial brethren accountable for their fraudulent decisions, which have here destroyed the public's right to be safeguarded against judicial misconduct by a properly-functioning Commission.

Finally, as to the related transcending issues encompassed by this appeal – all of which can only enhance public trust and confidence in the judiciary and in the judicial process— Petitioner-Appellant refers the Court to her February 20, 2002 affidavit in support of her motion in the Appellate Division for leave to appeal. Suffice to repeat this Court's words quoted therein, first from *Nicholson* (at 607):

> "There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly *** a higher governmental interest than a State's interest in the quality of its judiciary' (*Landmark Communications v. Virginia*, 425 US 829, 848 [Stewart, J., concurring]",

and then from *Commission v. Doe* (at 61), where the Court recognized the Commission as

"the instrument through which the State seeks to insure the integrity of its judiciary".