

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

New York County
Clerk's No.
108551/99

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE
STATE OF NEW YORK,

**AFFIRMATION OF
CAROL FISCHER
IN OPPOSITION
TO PETITIONER'S
MOTION**

Respondent-Respondent.
-----X

CAROL FISCHER, an attorney duly admitted to practice
law before the Courts of the State of New York, states as follows
under penalty of perjury:

1. I am an Assistant Solicitor General in the Office
of the Attorney General of the State of New York, counsel for the
respondent-respondent Commission on Judicial Conduct of the State
of New York ("respondent" or "Commission"). As such, I am fully
familiar with the matters set forth in this Affirmation, which is
submitted in opposition to the August 17, 2001 motion of
petitioner-appellant Elena Ruth Sassower ("petitioner"). In her
motion, petitioner seeks an order (a) disqualifying this Court
from hearing her appeal, due to its alleged self-interest, and
assigning her appeal either to a panel of retired or soon-to-be
retired judges, or to the Appellate Division, Fourth Department;
and (b) striking the Commission's appellate brief as a claimed
"fraud on the court," imposing sanctions on the Commission and

its counsel, and referring the Commission, the Office of the Attorney General of the State of New York, the Attorney General, the Solicitor General, and other members of the Attorney General's Office for disciplinary and criminal investigation and prosecution.

2. This article 78 proceeding was commenced by service of a Notice of Petition and Verified Petition on or about April 22, 1999. In her Petition (reproduced at pp. 22-46 of Petitioner-Appellant's Appendix ("A.")), petitioner sought an order of mandamus directing the Commission to vacate its dismissal of the complaint petitioner had filed regarding Judge Albert Rosenblatt (then an Appellate Division Justice), to remove Henry T. Berger as its chairman, and to "receive" and "determine" the petitioner's complaint concerning Appellate Division, Second Department Justice Daniel W. Joy (A. 23-24). In conjunction with the order of mandamus, petitioner also asked that 22 NYCRR §7000.3 and 22 NYCRR §7000.11 (which govern the manner in which the Commission investigates complaints) each be declared unconstitutional, both on their face and "as applied" by the Commission, and that Judiciary Law §45 be declared unconstitutional as well, either as applied by the Commission or on its face (Id.).

3. On the Commission's motion, the Petition was dismissed in a Decision, Order and Judgment of Supreme Court, New York Co.

(Wetzel, Acting Supreme Court Justice) dated January 31, 2000 (A. 9-15). The court also denied petitioner's cross-motion for its recusal, and for the imposition of sanctions on the Commission's counsel, the Attorney General of the State of New York.

4. Petitioner's present motion may be viewed as the product of what appears to be her pattern of turning every lawsuit into a prolonged litigation characterized by relentless personal and professional attacks on either or both her adversaries and the presiding court once they disagree with her legally and factually unsupported claims. For example, in Sassower v. Field, 138 F.R.D. 369 (S.D.N.Y. 1991), District Court Judge Gerhard L. Goettel awarded fees and sanctions against petitioner and her mother following an adverse jury verdict in their Fair Housing Act suit. Judge Goettel explained in detail how the Sassowers had unnecessarily prolonged the action "vexatiously, wantonly and for oppressive reasons:"

The Sassowers pursued this litigation as if it was a holy war and not a court proceeding. . . . They made several unsupported bias recusal motions based upon the court's unwilling involvement in some of the earlier proceedings initiated by George Sassower [petitioner's father]. There were continual personal attacks on the opposing parties and counsel. In virtually every instance where a court ruling was not satisfactory to them, plaintiffs routinely made a motion to reargue. . . .

Sassower v. Field, 138 F.R.D. at 376 (citations and parenthetical comments omitted). Judge Goettel specifically noted how the

Sassowers had, without factual support, accused opposing counsel of "fraud, perjury and chicanery:" "[the Sassowers'] view of any factual disputes has been, all along, that their claims are to be acknowledged without dispute and contrary evidence of the defendants is to be rejected as fraud and perjury." Sassower v. Field, 138 F.R.D. at 383. The Second Circuit affirmed Judge Goettel's decision, Sassower v. Field, 973 F.2d 75 (2d Cir. 1992), vacating the amount assessed against petitioner personally and remanding for reconsideration in light of her claim to be indigent.

5. Before the trial court in this proceeding, petitioner repeated most of the tactics employed in Sassower v. Field. She made numerous recusal motions (A. 10). She submitted voluminous papers "replete with accusations against virtually the entire judiciary, the Attorney General, the Governor and the respondent" (A. 11). In response to the Commission's motion to dismiss, she moved for the disqualification and sanctioning of the Attorney General, asserting that the Commission's motion was "a flagrant deceit," (A. 216) and "litigation misconduct reaching a level of criminality" (A. 223). In denying her motion for his recusal, Justice Wetzel predicted that he would "undoubtedly join the long list of officials and judges who are the objects of petitioner's relentless vilification" (A. 12). Not surprisingly, his prediction has has been fulfilled. See, e.g., paragraph 29 of

Petitioner's Affidavit in Support of her Motion, in which she asks that the Court refer Justice Wetzel to "disciplinary and law enforcement agencies" as the result of his "fraudulent" decision.

6. Petitioner's current motion, filled with unsupported accusations of corruption and criminality on the part of virtually any judge or attorney who has crossed petitioner's path, is no different in character from her earlier submissions. It is patently frivolous in its entirety, and should be denied.

7. The accompanying Memorandum of Law submitted in opposition to petitioner's motion provides a detailed refutation, pp. 5-9, of petitioner's claim that this Court must disqualify or recuse itself from hearing her appeal due to its "actual bias" and "self-interest." Petitioner's belief that the Court is fatally trapped in a web of corruption involving the Governor, the Commission, the Chief Judge, and numerous other court officers is solely the product of her own imaginings; nothing in the factual record supports it.

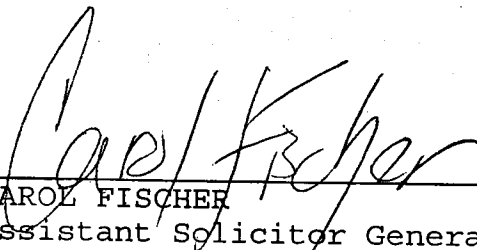
8. The second portion of her motion, which asks that the Commission's brief be stricken, and that sanctions be imposed on the Commission and its counsel, is founded on the manifestly absurd argument that the Commission's brief is a "fraud on the court," and must therefore be withdrawn by the Commission and its counsel. We address this claim in the accompanying Memorandum of Law, pp. 9-12. However, petitioner's own sixty-six page

"Critique of Respondent's Brief," Exhibit U in her moving papers, speaks for itself, and is perhaps the best refutation of her claim that the Commission's brief is a "fraud on the court."

9. For all of petitioner's insistence that she seeks to protect and improve the legal system, her own motion, comprised of at least five hundred pages and replete with unsupported accusations of criminal wrongdoing, is itself the prototypical example of the kind of abusive litigation conduct that typically merits some form of judicial sanction, such as, e.g., the imposition of costs.

10. The Commission respectfully requests this Court to deny petitioner's motion in its entirety.

Dated: New York, New York
August 30, 2001



CAROL FISCHER
Assistant Solicitor General

-Sir:

Please take notice that the within is a true

copy of
duly filed and entered int he office of the Clerk
of
the day of
County, on
, 2001.

Yours, etc.,
ELIOT SPITZER
Attorney General,

Attorney For

Office and Post Office Address
120 Broad way, New York, N.Y. 10271

To:

, Esq.

Attorney for

Please take notice that the within

Sir:

will be presented for settlement and signature herein
to the Hon.
one of the judges of the within named Court, at

in the Borough of
City of New York, on the
2001, at M. day of

Dated, N.Y.,

, 2001

Yours, etc.,
ELIOT SPITZER
Attorney General,

Attorney For

Office and Post Office Address
120 Broad way, New York, N.Y. 10271

To:

, Esq.

Attorney for

Docket No. 108551/99

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ELIOT SPITZER
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Attorney for Respondent
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120 Broadway, New York, N.Y. 10271
(212) 416-8014
Personal Service of a Copy of within

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is admitted this.....
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day of
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