

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,

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE
STATE OF NEW YORK,

Respondent-Respondent.
-----x

App. Div. No. 5638

AFFIRMATION IN
OPPOSITION TO
MOTION FOR
LEAVE TO APPEAL

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
Attorney General Eliot Spitzer, counsel for the respondent-
respondent Commission on Judicial Conduct of the State of New
York ("respondent" or "Commission"). I submit this affirmation
in opposition to petitioner-appellant Elena Ruth Sassower's
("petitioner") motion for leave to appeal to the Court of Appeals
this Court's December 18, 2001 decision and order, Sassower v.
Comm'n on Judicial Conduct of New York, ___ A.D.2d ___, 734
N.Y.S.2d 68 (1st Dep't 2001).

2. Petitioner's arguments in support of her present motion
substantially duplicate those she advanced in support of her
January 17, 2002 motion for re-argument, also pending before
Court. As in her previous motion, petitioner's motion for leave

is premised on her unsubstantiated belief that this Court's decision was the product of "systemic judicial and governmental corruption, facilitated by the nonfeasance and misfeasance of leaders of the legal profession, in and out of government." (Affidavit of Elena Ruth Sassower, sworn to February 20, 2002 ("Sassower Aff.") ¶18).

The Underlying Action

3. The background of this case is discussed in detail in Respondent's Brief, pp. 3-20, and will not be repeated here. The gravamen of petitioner's article 78 proceeding was that the Commission, which oversees judicial conduct, was required by Judiciary Law §44.1 to conduct a comprehensive investigation of every "facially-meritorious" complaint of judicial misconduct, and therefore was without the discretion to dismiss complaints filed by petitioner on behalf of her organization, the Center for Judicial Accountability, Inc. ("CJA"), after the Commission concluded that the complaints did not warrant a full-scale investigation. As petitioner asserted that the Commission's duty to investigate is mandatory, she sought an order of mandamus directing the Commission to vacate its dismissal of the complaint petitioner had filed regarding then-Appellate Division Justice Albert Rosenblatt, and to "receive" and "determine" the petitioner's complaint concerning Appellate Division, Second Department Justice Daniel W. Joy. Petitioner also asked that 22

NYCRR §7000.3 and 22 NYCRR §7000.11 (part of the Commission's procedural rules concerning the investigation of complaints) be declared unconstitutional, both on their face and "as applied" by the Commission, and that Judiciary Law §45 be declared unconstitutional, either as applied by the Commission or on its face.

4. In a Decision, Order and Judgment dated January 31, 2000 (Petitioner-Appellant's Appendix ("A.") 9-14), Acting Supreme Court Justice Wetzel dismissed the petition (and denied petitioner's motion for recusal and for sanctions against the Attorney General and the Commission due to their alleged "litigation misconduct"). In doing so, the court followed the July 13, 1995 Decision, Order and Judgment of Supreme Court, New York Co. (Cahn, J.) in D. Sassower v. Commission, N.Y. Co. Clerk's No. 109141/95 (A. 174-188). Justice Cahn's decision dismissed a nearly identical proceeding that petitioner's mother, Doris L. Sassower, had brought against the Commission, on the ground that, under its governing legislation, the Commission had the power to make discretionary preliminary determinations as to whether it wished to undertake more comprehensive investigations, and therefore could not be compelled to undertake a comprehensive investigation (A. 192). Judge Wetzel also relied upon Mantell v. New York State Comm'n on Judicial Conduct, 181 Misc. 2d 1027 (Sup. Ct. N.Y. Co. 1999) (then on appeal to this Court, which

affirmed, Mantell v. New York State Comm'n on Judicial Conduct, 715 N.Y.S.2d 316 (1st Dep't 2000), app. den., 96 N.Y.2d 706 (2001)), holding that plaintiff had no standing to seek an order compelling the Commission to investigate a particular complaint, as such an investigation was a discretionary, rather than an administrative act (A. 12-13).

Proceedings On Appeal

5. On August 17, 2001, petitioner sought to disqualify this Court from hearing her appeal, due to its alleged self-interest, and to strike Respondent's Brief as a purported "fraud on the court." She also sought to impose sanctions on the Commission and its counsel, and to refer 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.

6. This Court's December 18, 2001 decision affirmed Justice Wetzel's decision in Sassower v. Comm'n on Judicial Conduct of New York and denied petitioner's motion for recusal, disqualification and sanctions. This Court held that the "petition to compel respondent's investigation of a complaint was properly dismissed since respondent's determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to amenable to mandamus." Sassower,

supra, 734 N.Y.S.2d at 69. The Court also held that "inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct, she lacks standing to sue the Commission." Id.

7. With respect to the imposition of the filing injunction against both petitioner and CJA, the Court held it was "justified given petitioner's vitriolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions." Id.

**Petitioner Has Not Demonstrated
Either "Public Importance" Or Conflict With
Prior Court of Appeals Case Law**

8. Petitioner's motion for leave to appeal to the Court of Appeals does not raise any issue that is "novel, or of public importance, or [which] involve[s] a conflict with prior decisions of this Court, or [as to which] there is a conflict among the Appellate Divisions." 22 NYCRR § 500.11(d)(1)(v). Petitioner's belief that her case is of "public importance" rests solely on her erroneous belief that "[t]he decisions of Justice Wetzel and this Court, when compared to the record, establish, prima facie, judicial corruption . . ." (Sassower Aff. ¶16).

9. Of course, far from demonstrating "judicial corruption," the Court's decision in Sassower represented the straight-forward application of well-established law. As a

matter of law, petitioner had no standing to seek an order compelling the Commission to exercise its discretion by "accepting" and "investigating" a previously-dismissed judicial misconduct complaint. See Respondent's Brief, pp. 3-5, 14-15.

10. Further, this Court's decision in Sassower did not, in any sense, conflict with the Court of Appeals' decision in Nicholson v. State Comm'n on Judicial Conduct, 50 N.Y.2d 597 (1980). Nicholson, 50 N.Y.2d at 611, citing Judiciary Law §44.1, stated that the Commission's mandate is to "investigate" complaints of judicial misconduct. Nicholson, however, did not mandate the manner in which the Commission was to conduct its investigation - specifically, it did not, as petitioner seems to imagine (Sassower Aff., Proposed Question (e), p. 14), hold that the Commission was required to undertake a comprehensive investigation of every complaint filed with it. Neither did Nicholson hold that a person who had filed a complaint with the Commission had standing to seek an order compelling the Commission to investigate his or any other complaint, since such an investigation was a discretionary, rather than an administrative, act.

11. This Court's decisions in both Sassower and Mantell are, therefore, entirely consistent with Nicholson: they uphold the Commission's discretionary power to review a complaint and determine whether a full-fledged investigation is warranted,

AFFIDAVIT OF SERVICE

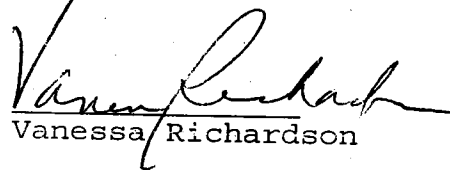
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

VANESSA RICHARDSON, being duly sworn, deposes and says:
I am over eighteen years of age and an employee in the office of
Eliot Spitzer, Attorney General of the State of New York.

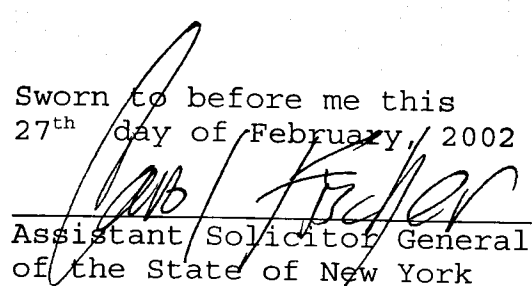
On the 27th day of February 2002 I served one copy of the
annexed Affirmation In Opposition To Motion For Leave To Appeal
upon the following named person:

Elena Ruth Sassower
P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

in the within proceeding, by depositing one true and correct copy
thereof, properly enclosed in a post-paid wrapper, in a post-office
box regularly maintained by the Government of the United States at
120 Broadway, New York, New York 10271, directed to said person at
the address within the state designated by her for that purpose.


Vanessa Richardson

Sworn to before me this
27th day of February, 2002


Assistant Solicitor General
of the State of New York

-Sir:
Please take notice that the within is a true
copy of
duly filed and entered in the office of the Clerk
of
the
day of
Country, on
Yours, etc.,
ELIOT SPITZER
Attorney General,

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

To:
Attorney for
Sir:
Esq.

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
day of
2002, at M.

Dated, N.Y.,
Yours, etc.,
ELIOT SPITZER
Attorney General,

Attorney For
Office and Post Office Address
120 Broad way, New York, N.Y. 10271
To:
Attorney for
Esq.

Index No. 5638

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Personal Service of a Copy of within

..... day of
is admitted this..... 2002