

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

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

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MAR 06 2002

Petitioner-Appellant,

APPELLATE DIVISION SUPREME
COURT, FIRST DEPARTMENT

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.
----- x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. This affidavit replies to the non-probative and knowingly false, deceitful, and frivolous February 27, 2002 opposing "affirmation" of Assistant Solicitor General Carol Fischer, on behalf of Respondent New York State Commission on Judicial Conduct ["Commission"].

2. It is also submitted in support of a request, herein made (*see also* "WHEREFORE" clause, p. 14, *infra*), for maximum costs and monetary sanctions, pursuant to 22 NYCRR §130-1.1, against Ms. Fischer and those complicitous in her misconduct, specifically, Attorney General Eliot Spitzer and Solicitor General Caitlin Halligan *personally*, and the complicitous members and staff of the Commission

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MAR 6 2002

REPLY AFFIDAVIT ^{Miss. In} IN
FURTHER SUPPORT OF
LEAVE TO APPEAL TO
THE COURT OF APPEALS

App. Div. 1st Dept. #5638
S.Ct/NY Co. #108551/99

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personally, as well as disciplinary and criminal referral of them, pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. This, based on their "substantial violations of the Code of Professional Responsibility", including DR 1-102(a)(2), (4), (5) [22 NYCRR §§1200.3(a)(2), (4),(5)], pertaining to "Misconduct"; DR 7-102(a)(1), (2), (5), (7), (8) [22 NYCRR §1200.33(a)(1), (2), (5), (7), (8)]; DR 1-104 [22 NYCRR §1200.5], pertaining to "Representing a Client within the Bounds of the Law"; and DR 1-103(a) [22 NYCRR §1200.4(a)], pertaining to "Responsibilities of a Partner or Supervisory Lawyer"; and their deceitful and collusive conduct, proscribed by Judiciary Law §487. Such litigation misconduct further reinforces my entitlement to the Attorney General's disqualification from representing the Commission for violation of Executive Law §63.1 and conflict of interest – relief sought by the second branch of my August 17th motion.

3. On February 20, 2002, *simultaneous* with my serving Ms. Fischer with my February 20th motion for leave to appeal to the Court of Appeals, I served her with my February 20th reply affidavit to my January 17, 2002 reargument motion. The first page of this February 20th reply affidavit objected to her opposing "affirmation" therein as legally deficient:

"Ms. Fischer's 'affirmation' is non-conforming with the requirement of CPLR §2106 that affirmations be 'affirmed... to be true under the penalties of perjury'. Ms. Fischer does NOT affirm her self-styled 'affirmation' to be 'true under the penalties of perjury'. Rather, she "states as follows under penalty of perjury". Thus omitted is the operative phrase 'affirmed... to be true'. Without this, Ms. Fischer's 'affirmation' is non-probative and meaningless since all she is stating 'under

penalty of perjury' is the content of her statement – not the truth thereof.

This omission is not inadvertent. As hereinafter shown, to the extent Ms. Fischer's 'affirmation' says anything material, it is, when compared to the record, NOT true – and, by reason thereof, is known by Ms. Fischer to not be true.

Additionally, Ms. Fischer's 'affirmation' fails to set forth the basis upon which it is made: whether on personal knowledge or upon information and belief, and if the latter, the source of the information and belief.

These two deficiencies repeat the identical deficiencies which I previously objected-to in connection with Ms. Fischer's 'affirmation' in opposition to my August 17, 2001 motion. [See my October 15, 2001 reply affidavit: Exhibit 'AA', pp. 5-7].”

4. It is in face of such clear and unequivocal notice as to proper procedure that Ms. Fischer's opposing “affirmation” herein repeats the already-twice objected-to violations as to form. Likewise, as to substance, Ms. Fischer's opposing “affirmation” is UNTRUE as to its material claims and known by Ms. Fischer to be untrue by reason of the lower court record with which she is expected to be fully familiar and the appellate record with which she has personal knowledge.

5. The deceit pervading the ENTIRETY of Ms. Fischer's opposing “affirmation” – like the deceit pervading ALL Ms. Fischer's prior advocacy before this Court – flows from her refusal to address, or even to acknowledge the existence of, the very documents that over and again I have emphasized as dispositive of my entitlement to ALL the relief requested by my Appellant's Brief and ALL the relief requested by my threshold August 17th motion. These documents are: (1) my *undisputed* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v.*

Commission [A-52-54]; (2) my *undisputed* 13-page analysis of Justice Lehner's decision in *Michael Mantell v. Commission* [A-321-334]; and (3) my *undisputed* 1-page analysis of the *Mantell* appellate decision [Exhibit "R" to my August 17th motion], and the three "highlights" of my *undisputed* 66-page Critique of Ms. Fischer's Respondent's Brief based on those three analyses¹.

6. Instead, Ms. Fischer blithely regurgitates the claims of her Respondent's Brief, whose falsity was exposed, *line-by-line*, by my *undisputed* 66-page Critique, annexed as Exhibit "U" to my August 17th motion to strike her Respondent's Brief as a "fraud on the court" -- a motion this Court's December 18, 2001 decision purports to deny, *without reasons and without findings*.

7. From this *undisputed* 66-page Critique and my *undisputed* 58-page *line-by-line* Critique of Ms. Fischer's fraudulent opposition to the August 17th motion, annexed as Exhibit "AA" to my October 15th reply affidavit thereto [hereinafter "Second Critique"], as well as from my *sub judice* 22-page February 20th reply affidavit, responding, *line-by-line*, to Ms. Fischer's fraudulent February 7th opposing "affirmation" on my reargument motion, this Court can readily recognize, *on its own*, the fraudulence of Ms. Fischer's opposing "affirmation" herein, without further assistance from me.

8. However, as a convenience to the tribunal which will ultimately respect its mandatory disciplinary responsibilities and exact just penalty for each and every lie Ms. Fischer has put forward to sabotage justice, I will summarize the deceit in her

¹ The three "highlights" of my Critique are pages 3-5; 5-11; 40-47 thereof.

12-paragraph opposing “affirmation”. This will also underscore that Ms. Fischer has NOT denied or disputed my factual or legal showing in my moving affidavit.

9. As for Ms. Fischer’s ¶2, purporting that my motion for leave, like my reargument motion, are

“premised on [my] *unsubstantiated belief* that this Court’s decision [is] 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..., ¶18)” (emphasis added),

examination of these motions shows they are *fully substantiated* as to the lawless and corrupt nature of this Court’s decision, covering up a record of utter lawlessness and corruption. Indeed, the *line-by-line* precision of my February 20th reply affidavit to my reargument motion is to prove that Ms. Fischer does NOT deny or dispute ANY aspect of my 19-page analysis of this Court’s decision (Exhibit “B-1” to my reargument motion) – nor ANY aspect of the recitation in my 26-paragraph moving affidavit therein, drawn from that 19-page analysis. This includes NOT denying or disputing my showing as to the dispositive significance of my three *undisputed* analyses and three *undisputed* Critique “highlights”.

As asserted at ¶6 of my February 20th reply affidavit – and as Ms. Fischer does NOT deny or dispute -- these three *undisputed* analyses and “highlights” PROVE, without more, the fraudulence of FIVE judicial decisions of which the Commission has been the beneficiary, including Justice Wetzel’s appealed-from decision and this Court’s affirmance, together with the Attorney General’s litigation

fraud in connection therewith. Moreover, as I have furnished these analyses and “highlights” to this State’s highest public officers and others – all of whom have failed to take any corrective steps – the criminal and ethical ramifications of these analyses and “highlights” reach them – a fact also undenied and undisputed by Ms. Fischer.

As for Ms. Fischer’s ¶¶3-7, under the section headings “*The Underlying Action*” and “*Proceedings on Appeal*”, these paragraphs are “filler” to conceal the paucity of her actual opposition. The fact that three weeks earlier, Ms. Fischer’s February 7th opposing “affirmation” to my reargument motion provided NO parallel paragraphs with such background underscores how superfluous her ¶¶3-7 are in her February 27th opposing “affirmation”. All they do is regurgitate claims I have repeatedly demonstrated as materially false and misleading – without addressing the particularized showing in my moving affidavit of my entitlement to the granting of leave to appeal to the Court of Appeals.

10. Ms. Fischer’s ¶¶3-4, under the heading “*The Underlying Action*”, replicate, essentially *verbatim*, the two paragraphs under the identical heading at pages 2-4 of her August 30, 2001 Memorandum of Law in opposition to my August 17th motion. The false and misleading nature of each sentence of these two paragraphs was detailed, with *line-by-line* precision, at pages 20-26 of my Second Critique. As a convenience, Ms. Fischer’s original pages and my rebuttal thereto are annexed hereto as Exhibits “A-1” and “A-2”.

In rough summary, the falsity of Ms. Fischer's ¶3, which invites the Court to rely on pages 3-20 of her Respondent's Brief and pretends that the supposed "gravamen" of my Article 78 proceeding involves whether the Commission can be compelled to conduct "comprehensive" and "full-scale" investigation of judicial misconduct complaints, is detailed by my *undisputed* 66-page Critique of Ms. Fischer's Respondent's Brief and, in particular, the Critique's dispositive second "highlight" (at pp. 5-11), showing, contrary to Ms. Fischer's pretense in this and subsequent paragraphs, that the Commission does *not* have different levels of investigation² and, further, that my *facially-meritorious* judicial misconduct complaint against Justice Rosenblatt was dismissed, without ANY investigation (See Exhibit "A-2", pp. 20-23).

In rough summary, the falsity of Ms. Fischer's ¶4, summarizing Justice Wetzel's decision as resting on Justice Cahn's decision in the supposedly "nearly identical proceeding" of *Doris L. Sassower v. Commission*³ relative to supposed "more comprehensive" and "comprehensive" investigations, and on Justice Lehner's decision in *Mantell v. Commission* as to the supposed discretionary nature of the Commission's investigation of complaints, which decision Ms. Fischer makes appear

² See also Exhibit "A-2", pp. 20-21; pp. 34-35 of my Second Critique (Exhibit "AA" to my October 15th reply affidavit); my February 20th reply affidavit: ¶12.

³ Ms. Fischer conceals that Justice Wetzel's appealed-from decision [A-9-14] falsely purports that I am the petitioner in the 1995 proceeding decided by Justice Cahn. (Exhibit "A-2", pp. 24-25) and, likewise, that my lawsuit is NOT "a nearly identical proceeding" to the 1995 proceeding (see also pp. 56-57 of my Appellant's Brief).

to include a complainant's supposed lack of standing, is exposed by my *undisputed* three analyses and Critique "highlights". (See also Exhibit "A-2", pp. 23-26).

11. Ms. Fischer's ¶5, purporting to summarize the relief sought by my August 17th motion, materially deletes its requests for disclosure and to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules. This replicates Ms. Fischer's identical deletions in her August 30th opposition to that motion – identified at pp. 19-20, 29-30, 46 of my Second Critique.⁴

12. Ms. Fischer's ¶¶6-7, purporting to summarize this Court's decision as affirming Justice Wetzel's decision, conceals that my supposed "lack of standing to sue the Commission" was NOT part of Justice Wetzel's decision – a fact pointed out at ¶15(d) of my moving affidavit, with its due process significance reflected at fn. 14, citing Cohen and Karger, Powers of the Court of Appeals §109, at 465 [rev d], *People v. Bleakley*, 69 NY2d 490, 494 (1987) as part of my Proposed Question (f). As for this Court's supposed denial of my "motion for recusal, disqualification and sanctions", ¶¶15(a) and (b) of my moving affidavit point out that the Court's denial falsified the relief sought on the motion – which fact is the basis for Proposed Question (d).

13. Ms. Fischer's ¶¶8-12, under her heading "*Petitioner Has Not Demonstrated Either 'Public Importance' Or Conflict With Prior Court of Appeals Case Law*", are the only paragraphs of her opposing "affirmation", other than her ¶2,

⁴ For Ms. Fischer's most recent omission of my disclosure requests, see ¶24 of my February 20th reply affidavit on my reargument motion.

to actually purport to address my motion for leave. Like her ¶2, however, these additional paragraphs consist of bald claims, whose falsity is resoundingly proven by the record on this motion, including my incorporated reargument motion.

14. As to “public importance”, Ms. Fischer’s ¶8 pretends that my claims as to “public importance”

“rests solely on [my] 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)”.

Aside from the fact that ¶¶9-18 of my moving affidavit set forth additional issues of “public importance” – whose significance Ms. Fischer does not deny or dispute – my *uncontroverted* Appellant’s Brief⁵ and my *undisputed* 19-page analysis of this Court’s decision (reargument motion: Exhibit “B-1”) expose Ms. Fischer’s utterly deceitful claim as to my supposed “erroneous belief”. Indeed, if Ms. Fischer actually believed that the decisions of Justice Wetzel and this Court were legitimate, it was for her to at least confront the summarized recitation at ¶¶14-15 of my moving affidavit. She does not even try.

15. As to Ms. Fischer’s ¶9, baldly claiming that the Court’s decision “represented the straight-forward application of well-established law” and that “[a]s a matter of law, [I] had no standing to seek an order compelling the Commission to exercise its discretion by ‘accepting’ and ‘investigating’ a previously-dismissed

⁵ In fact, my Appellant’s Brief is also undenied and undisputed. Aside from my demonstrated entitlement to have Ms. Fischer’s Respondent’s Brief stricken as a “fraud on the court”, her Respondent’s Brief does not deny or dispute the accuracy of any aspect of the factual recitation in my Appellant’s Brief and does not confront my legal arguments.

judicial misconduct complaint”, this flagrant deceit is immediately obvious from her record citation to pages 3-5 and 14-15 of her Respondent’s Brief – the very pages encompassed by my Critique’s *undisputed* second and third “highlights” (pp. 5-11; 40-47). Likewise, it is obvious from my *undisputed* 19-page reargument analysis (reargument motion: Exhibit “B-1”), particularizing how all seven sentence of this Court’s decision – *not just the two sentences to which Ms. Fischer refers* -- “pervert[] the most basic adjudicative standards and obliterate[] anything resembling the rule of law.” (reargument motion, at ¶5)

16. As to decisional conflict, Ms. Fischer’s ¶¶10-11 pretends that the Court’s decision “[does] not, in any sense, conflict” with *Matter of Nicholson*, 50 NY 2d 597 (1980), by implying that, unlike *Nicholson*, it is not about the Commission’s “mandate...to ‘investigate’ complaints of judicial misconduct”, but about “the manner” of its investigation, by which Ms. Fischer means “whether a full-fledged investigation is warranted”. That this is altogether untrue may be seen from the Court’s decision, which has *nothing* to do with the “manner” of investigation – just as the *Mantell* appellate decision has *nothing* to do with the “manner” of investigation. Rather, the Court’s decision, resting on the *Mantell* appellate decision, declaratively states “whether to investigate a complaint involves an exercise of discretion”. As detailed at ¶¶19-21 of my moving affidavit, this is diametrically opposite to *Nicholson*. Further, as hereinabove noted (¶10) and repeatedly in my prior submissions, the Commission has but a single level of investigation.

17. As to Ms. Fischer's ¶10, pretending that my Proposed Question (e) "imagine(s)" that *Nicholson* requires the Commission to conduct a "comprehensive investigation" of each complaint filed with it, this is nowhere reflected by that Question and is rebutted by the record, showing, over and again, my strong objection to Ms. Fischer's repeated pretense about levels of investigation, which do *not* exist. (See also ¶¶10, 16 *supra*).

18. The deceit of Ms. Fischer's ¶12, purporting that my other Proposed Questions are "also without merit", is immediately evident from her failure to discuss, or even identify, *any* of these Proposed Questions and her pretense that various pages of her Respondent's Brief "address[]" the issues they raise. Firstly, her Respondent's Brief, including the pages of legal argument to which she cites, is altogether fraudulent – established as such by my *undisputed* 66-page Critique of her Respondent's Brief. Secondly, her Respondent's Brief pertains to what took place in Supreme Court and Justice Wetzel's decision, NOT what took place on appeal and this Court's decision to which my Proposed Questions are addressed. Thirdly, her Respondent's Brief does not address the "broader legal principles" raised by my Appellant's Brief and relevant to my Proposed Questions – such as those identified at footnotes 13 and 16 to my moving affidavit – or other broader principles, identified at footnotes 11, 12, and 14.

* * *

19. In support of my request herein for sanctions, including disciplinary and criminal referral against Ms. Fischer's superiors at the Attorney General's office, who, upon notice of her litigation misconduct rising to a level of "fraud on the court", have continued to violate their duty to take discernible supervisory steps, annexed hereto as Exhibit "B" is my February 20th letter to Attorney General Spitzer. Such letter notified Mr. Spitzer that my February 20th reply affidavit on my reargument motion sought sanctions against him *personally* for his complicity in Ms. Fischer's misconduct, transmitting to him a copy of that reply affidavit, along with a copy of my February 20th motion for leave to appeal.

20. As in the past, I have also served copies of all papers on these motions upon the Commission directly. This, in keeping with my position, previously asserted, that:

"...there is no reason why a fully-informed, knowledgeable client like the Commission – all but two of whose members are lawyers and which is staffed with lawyers – should not be held to have supervisory responsibilities over its demonstrably misbehaving attorney. Certainly, 22 NYCRR §1200.3(a)(1), proscribing a lawyer or law firm from 'circumvent[ing] a disciplinary rule through the actions of another', would make the fully-informed lawyer members and staff of the Commission liable for ALL the Commission's violative conduct in this proceeding – including the wilful refusal of Deputy Solicitor General Belohlavek, Solicitor General [Halligan], and Attorney General Spitzer to discharge their mandatory supervisory responsibilities under 22 NYCRR §1200.5." [¶12 of my October 15th reply affidavit to my August 17th motion]

* * *

21. Finally, as this, most probably, is my last submission to this Court (halleluyah!), a bit of housekeeping is in order.

Annexed hereto as Exhibit "C" is the only part of my *still undecided*⁶ November 30, 2001 letter-application pursuant to §600.11(f)(4) of this Court's Rules⁷ not annexed to my reargument motion, *to wit*, the petition signatures I proffered to the Court during the November 21, 2001 oral argument in further support of my application for permission for a stenographic/audio/video record.⁸

Annexed hereto as Exhibit "D" is the memorial dedication to my December 22, 2000 Appellant's Brief, which was its last page. The Clerk's Office would not allow me to file my Brief unless I removed it. This memorial dedication was included in the two copies of the Brief I served on the Attorney General and is included in every other copy of the Brief.

⁶ See fn. 4 to my reargument analysis (reargument motion: Exhibit "B-1")

⁷ My November 30th letter-application to the Court is Exhibit "D" to my reargument motion.

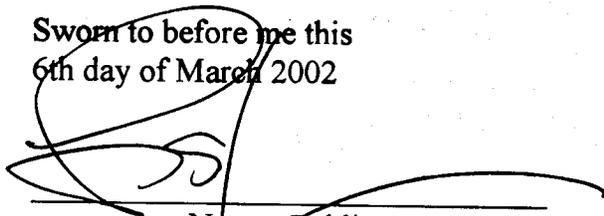
⁸ See my November 30th letter-application (at p. 5) and my improvised record (at p. 3), annexed as Exhibit "C" to my reargument motion.

WHEREFORE, leave to appeal to the Court of Appeals must be granted, with referral to that Court of my entitlement to sanctions and other relief against Assistant Solicitor General Fischer and her culpable superiors at the Attorney General's office and the Commission, based on her fraudulent opposition to this motion. This, by reason of this Court's disqualification for interest pursuant to Judiciary Law §14, depriving it of jurisdiction to adjudicate such sanctions and further relief.



ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
6th day of March 2002



Notary Public

Lawrence H. Mandelker

Notary Public, Westchester County

No 02MA4941452

Commission Expires August 15, 2002

TABLE OF EXHIBITS

Exhibit "A-1": Pages 2-4 of Assistant Solicitor General Carol Fischer's August 30, 2001 Memorandum of Law in opposition to Petitioner-Appellant's August 17, 2001 motion

"A-2": Pages 20-26 of Petitioner-Appellant's September 17, 2001 Critique of Ms. Fischer's opposition to her August 17th motion [Annexed as Exhibit "AA" to Petitioner-Appellant's October 15, 2001 reply affidavit in further support of the motion]

Exhibit "B": Petitioner-Appellant's January 20, 2002 letter to Attorney General Eliot Spitzer

Exhibit "C": Petition signatures proffered by Petitioner-Appellant at the November 21, 2001 oral argument in support of her application for permission for a stenographic/audio/video record

Exhibit "D": Petitioner-Appellant's memorial dedication of her December 22, 2000 Appellant's Brief to Judy Abrams, Esq.