

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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

Petitioner-Appellant,

- against -

**PRE-ARGUMENT  
STATEMENT**

NY Co. # 99-108551

COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF NEW YORK,

Respondent-Respondent.  
-----X

1. CASE TITLE:

As set forth above.

2. FULL NAMES OF ORIGINAL PARTIES:

As set forth above.

3. NAME, ADDRESS, & TELEPHONE NUMBER OF PETITIONER:

Elena Ruth Sassower, Petitioner-Appellant *Pro Se*  
Box 69, Gedney Station  
White Plains, New York 10605-0069  
(914) 421-1200

4. NAME, ADDRESS, & TELEPHONE NUMBER OF COUNSEL FOR RESPONDENT:

NYS Attorney General Eliot Spitzer, Counsel for Respondent-Respondent  
120 Broadway  
New York, New York 10271  
(212) 416-8611

5. COURT AND COUNTY FROM WHICH APPEAL IS TAKEN:

Supreme Court of the State of New York, County of New York.

6. DECISION, ORDER, & JUDGMENT APPEALED FROM:

This is an appeal from a Decision, Order, & Judgment, dated January 31, 2000, by Acting Supreme Court Justice William A. Wetzel. The Decision, Order, & Judgment was entered on February 18, 2000 and served by mail with Notice of Entry on February 22, 2000.

7. NATURE AND OBJECT OF THE CASE:

This is an Article 78 proceeding, whose Verified Petition contains six separate Claims for Relief:

- (1) declaring 22 NYCRR §7000.3, *as written*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1;
- (2) declaring 22 NYCRR §7000.3 *as applied*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1;
- (3) declaring Judiciary Law §45, *as applied* by Respondent, unconstitutional, and, in the event such relief is denied, that Judiciary Law §45, *as written*, is unconstitutional;
- (4) declaring 22 NYCRR §7000.11 unconstitutional, *as written and as applied*, and, in the event such relief is denied, that Judiciary Law §§41.6 and 43.1 are unconstitutional, *as written and as applied*;
- (5) declaring Respondent in violation of Judiciary Law §41.2 by the continued long-time chairmanship of Henry T. Berger and mandating his removal;
- (6) commanding Respondent to formally "receive" and "determine" Petitioner's February 3, 1999 judicial misconduct complaint against Appellate Division, Second Department Justice Daniel W. Joy in conformity with Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

**The Verified Petition also seeks other relief against Respondent:**

- (7) a court request to the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges through, *inter alia*, its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons;**
- (8) a court referral of Respondent for appropriate criminal and disciplinary investigation by the New York State Attorney General, the United States Attorney, the Manhattan District Attorney, and the New York State Ethics Commission – all proposed intervenors in the proceeding; and**
- (9) imposition of the statutory fine of \$250, payable to the State Treasurer, pursuant to Public Officers Law §79.**

As part of its "other and further relief", the Notice of Petition specifies that as to those branches of relief seeking a declaration of the unconstitutionality of statutory provisions, the proceeding be converted to a declaratory judgment action to the extent required by law.

Following service of the Verified Petition, the nature and object of the case shifted as petitioner endeavored to ensure the integrity of the judicial process:

By omnibus motion, petitioner sought, *inter alia*: (1) to disqualify the Attorney General from representing Respondent for violation of Executive Law §63.1 and multiple conflicts of interest; and (2) to sanction the Attorney General and Respondent for their litigation misconduct, including their fraudulent dismissal motion, and to have them each referred for criminal and disciplinary action, *inter alia*, for the crimes of "perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct" in connection with the litigation.

In view of the self-interest of every state judge under Respondent's disciplinary jurisdiction in the outcome of the proceeding and the fact that the proceeding criminally implicates Governor Pataki in Respondent's corruption, petitioner requested that the proceeding be specially assigned to a retired or retiring judge, willing to disavow future political and/or judicial appointment. In support, petitioner identified that the two most recent other Article 78 proceedings against Respondent, both in Supreme Court/New York County, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co.

#99-108655) had each been “thrown” by fraudulent judicial decisions – for which she provided written analyses of the decisions, substantiated by copies of the record of those two Article 78 proceedings, which she physically incorporated in the record of her Article 78 proceeding.

Thereafter, upon Justice Wetzel’s assignment to the case, petitioner made a written application for his recusal, based on the appearance and actuality of his self-interest and bias. This was not only because Justice Wetzel, an Acting Supreme Court Justice, was a Court of Claims “hold-over”, sitting at the pleasure of the Governor, who had appointed him in 1995 and with whom he had had a professional and personal relationship, but because Justice Wetzel had recently been the beneficiary of Respondent’s dismissal, without investigation, of a facially-meritorious judicial misconduct complaint against him – a complaint based, in part, on a 1994 fundraiser that then village town justice Wetzel had held at his home for then gubernatorial candidate Pataki. Petitioner’s recusal application included an alternative request that in the event Justice Wetzel did not recuse himself, he disclose the facts as to the grounds for his disqualification specified in the application and that he afford petitioner time to incorporate such disclosure in a formal recusal motion.

Simultaneously, petitioner made a written request to Administrative Judge Stephen G. Crane for the legal authority for his interference with “random selection” in “directing” the case to Justice Wetzel, the basis for his having done so, and whether, before making such “direction”, he was aware of the facts pertaining to Justice Wetzel’s disqualification, as identified in the recusal application.

8. RESULT BELOW:

Administrative Judge Crane did not respond to petitioner’s written request for information pertaining to his interference with “random selection” and his “direction” of the case to Justice Wetzel.

Thereafter, in a single Decision, Order, & Judgment, Justice Wetzel:

- (1) denied petitioner’s written recusal application, without identifying any of the grounds it had set forth as warranting his recusal and without making any factual findings with respect thereto;
- (2) ignored, without mention, Petitioner’s alternative request for disclosure and time to make a formal recusal motion, thereby implicitly denying it;

- (3) denied petitioner's omnibus motion, without reasons or factual findings;
- (4) dismissed the Verified Petition, based on the decisions in *Doris L. Sassower v. Commission* and in *Michael Mantell v. Commission* – without identifying the existence of petitioner's record-supported written analyses of those decisions, without making any factual findings with respect thereto, and without examining whether those decisions were germane to the Verified Petition's six separate Claims for Relief;
- (5) enjoined petitioner and the *non-party* Center for Judicial Accountability, Inc. from instituting "related" actions or proceedings, of whose "relatedness" Justice Wetzel designated himself the judge – without any factual findings to support the injunction nor legal authority for appointing himself arbiter of the "relatedness" of any future actions or proceedings.

9. GROUNDS FOR SEEKING REVERSAL:

The Decision, Order, & Judgment violates the most *fundamental* standards of adjudication and due process. It substitutes unwarranted aspersions and characterizations for factual findings and, in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding. This, to wholly subvert the judicial process and deprive petitioner of the relief to which she is entitled by her Verified Petition, omnibus motion, and recusal application. As such, it is more than *prima facie* proof of Justice Wetzel's disqualifying actual bias and self-interest, it is a criminal act by him, in which Administrative Judge Crane is complicitous.

10. RELATED PROCEEDINGS:

A Notice of Appeal to the Appellate Division, First Department has been filed in *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655) by the petitioner therein, dated November 5, 1999. Such Article 78 proceeding against the same Respondent is "related", *inter alia*, because notwithstanding petitioner's uncontroverted record-supported analysis showing that the decision therein was a legally insupportable and contrived cover-up, Justice Wetzel's Decision, Order, & Judgment refers to the decision as "a carefully reasoned and sound analysis of the very issue raised in the within petition" and specifically adopts its "finding" that "mandamus is unavailable to require the respondent to investigate a particular complaint."

Dated: White Plains, New York  
March 23, 2000



ELENA RUTH SASSOWER  
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