COURT OF APPEALS
STATE OF NEW YORK

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

Petitioner-Appellant,

**REPLY AFFIDAVIT**
**to "Affirmation" in**
**Opposition to**
**REARGUMENT MOTION**

-against-

Motion #1212/02

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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

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

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings heretofore had in this important public interest lawsuit against the New York State Commission on Judicial Conduct [hereinafter "the Commission"].

2. Pursuant to §500.11(c) of this Court's rules and its referred-to §500.12, this is to request permission to file this affidavit in reply to the non-probative and knowingly false, deceitful, and frivolous five-paragraph November 8, 2002 "affirmation" of Assistant Solicitor General Carol Fischer in opposition to my

October 15, 2002 reargument motion, which does NOT deny or dispute ANY of the facts and law presented by my 36-page motion.

3. This affidavit is also submitted in support of a request that my October 15, 2002 notice of motion for "Such other and further relief as may be just and proper" be deemed to include the striking of Ms. Fischer's November 8, 2002 opposing "affirmation", based on a finding that it is a "fraud on the court", violative of 22 NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), 1200.3(a)(5); and 1200.33(a)(5), with a further finding that the Attorney General and Commission are "guilty" of "deceit or collusion...with intent to deceive the court or any party" under Judiciary Law §487, and, based thereon, for an order:

(a) imposing maximum monetary sanctions and costs on the Attorney General's office and Commission, pursuant to 22 NYCRR §130-1.1, including against Attorney General Eliot Spitzer, *personally*;

(b) referring Attorney General Spitzer and the Commission for disciplinary and criminal investigation and prosecution, along with culpable staff members, consistent with this Court's mandatory "Disciplinary Responsibilities" under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, for, *inter alia*, filing of false instruments, obstruction of the administration of justice, and official misconduct; and

(c) disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

4. The Attorney General and Commission have been on notice that my reply herein would request this specific relief. By fax to Attorney General Spitzer,

dated November 21, 2002 (Exhibit "A-1"), I notified him that unless he discharged his

> "mandatory supervisory responsibilities under the clear and unambiguous provisions of 22 NYCRR §§1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility], as well as under NYCRR §130-1.1, to take 'reasonable remedial action'",

by withdrawing Ms. Fischer's November 8, 2002 "affirmation", I would have "no choice but to burden the Court with reply papers", expressly requesting the aforesaid relief (Exhibit "A-1", p. 5).

5. My November 21, 2002 fax to Mr. Spitzer further stated:

> "As I have expressly asserted in my extensive prior correspondence with you and reiterated in my court papers – including [my October 15, 2002 reargument motion and my October 24, 2002 motion for leave to appeal][fn. 6] -- your duty as York's highest law enforcement officer and 'The People's Lawyer' is to come forward with a statement, *under penalties of perjury*, as to the state of the record herein, including as to my analyses of the FIVE fraudulent lower court decisions of which the Commission has been the beneficiary. I, therefore, expressly call upon you to provide such sworn statement to the Court for its consideration on my important October 15, 2002 and October 24, 2002 motions in which the public's rights and welfare are so directly at stake. This is consistent with – indeed compelled by -- Executive Law §63.1.
>
> As in the past, I also call upon your client, the state agency charged with enforcing judicial standards of

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fn. 6 "*See* pages 27-28 of my October 15, 2002 reargument motion; page 21 of my October 24, 2002 motion for leave to appeal."

> conduct, to come forward with its own statement, *under penalties of perjury*, as to the state of the record herein, including as to my analyses of the FIVE fraudulent lower court decisions.
>
> Statements by you and the Commission are all the more essential as Ms. Fischer has tellingly avoided making *any* statement, even unsworn, as to the accuracy of such analyses – whose very existence she does not *even* mention.
>
> Please inform me of your intentions no later than 5:00 p.m., Monday, November 25, 2002, so that I may know how to proceed." (Exhibit "A-1", pp. 5-6, emphases in the original).

6. Faxed copies were sent to the indicated recipients: Solicitor General Caitlin Halligan and Deputy Solicitor General Michael Belohlavek, each Ms. Fischer's direct superiors, as well as Ms. Fischer herself and the Commission.

7. On November 25, 2002, I received a fax from Ms. Fischer, purporting that her "supervisors ha[d] asked [her] to respond on their behalf" (Exhibit "B"). *Without* denying or disputing the accuracy of my fax's summary of illustrative respects in which her November 8, 2002 "affirmation" is knowingly false, deceitful, and frivolous (Exhibit "A-1", p. 2), Ms. Fischer stated that the Attorney General's office did "not intend to withdraw" it.

8. She then asserted, *without* the slightest reason or legal authority[1]:

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[1] The only legal authority cited in Ms. Fischer's November 25, 2002 fax is MISCITED, *to wit*, §§510.12(b) and 510.14 of the Court's rules for the proposition that "reply papers are not permitted unless their submission is authorized, in writing, by the Clerk of the Court". Such rules, which pertain to capital cases, are inapplicable to this civil case.

Ms. Fischer's knowledge of my familiarity with the correct rules may be seen from the record herein where I have already twice requested the Court's permission to submit reply papers

> "neither the Attorney General of the State of New York nor the Commission will submit to the Court of Appeals any 'statement, under penalties of perjury, as to the state of the record herein."

9. Such assertion is indefensible – and all the more so as it emanates from the office of New York's highest legal officer in a matter directly impacting upon the public's rights and welfare. It cannot be tolerated by *any* court engaged in a "search for truth" -- which is what the judicial process is supposed to be about.

10. My submissions to this Court, under penalties of perjury, have ALL emphasized that my rights and those of the public arise from the record herein, whose particulars I have painstakingly detailed. This includes my reargument motion – as to which, *as a matter of law*, NO OPPOSITION could properly have been submitted on the Commission's behalf, without a statement, under oath, rebutting the record-particulars to which I had sworn.

11. As hereinafter demonstrated, had the Attorney General and Commission provided this Court with a sworn statement as to the "state of the record", it would have exposed the fraudulence of Ms. Fischer's instant "affirmation", as likewise of every one of her prior "affirmations" and submissions herein. Indeed, it would have exposed that the Attorney General has been unlawfully representing the Commission throughout the more than 3-1/2 years of

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to her fraudulent opposition to my motions – each time invoking this Court's §500.11(c) and its referred-to §500.12. *See* ¶2 of my June 7, 2002 affidavit in reply to Ms. Fischer's May 17, 2002 memorandum of law opposing my May 1, 2002 disqualification/disclosure motion; and (2) ¶2 of my July 13, 2002 affidavit in reply to Ms. Fischer's June 28, 2002 affidavit opposing my June 17, 2002 affidavit to strike, etc.

this litigation, wilfully refusing to confront the pivotal record-based facts and law pertinent thereto essential to determining the "interests of the state", pursuant to Executive Law §63.1. As highlighted by ¶61 of my reargument motion, and equally true now,

> "the Attorney General has never claimed that his representation of the Commission [is] in 'the interests of the state', as required by the plain language of Executive Law §63.1 and ha[s] never denied or disputed that 'there is NO state interest served by fraud and that [his] fraudulent defense tactics...establish[] the absence of *any* legitimate defense in which the state would have an 'interest'.'" (emphases in the original).

12. For the convenience of the Court, a Table of Contents follows:

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* * *

**Ms. Fischer's "Affirmation" Continues the Identical Pattern of Her Prior Litigation Misconduct before this Court and the Appellate Division**

13. Ms. Fischer's November 8, 2002 opposing "affirmation" NOW marks the FOURTH TIME BEFORE THIS COURT that she has wilfully violated fundamental litigation standards. The three previous occasions are meticulously documented by the record on my June 17, 2002 motion, whose denial by the Court, *without reasons and without findings*, is encompassed by my reargument motion. These three previous occasions are:

(a) Ms. Fischer's May 17, 2002 memorandum of law in opposition to my May 1, 2002 disqualification/disclosure motion – exposed as knowingly false, deceitful, and frivolous by my 31-page critique thereof[2], *whose accuracy was and is undenied and undisputed*;

(b) Ms. Fischer's May 28, 2002 letter responding to the Court's *sua sponte* inquiry on my May 1, 2002 notice of appeal and jurisdictional statement – exposed as knowingly false, deceitful, and frivolous by my 19-page affidavit-critique thereof[3], *whose accuracy was and is undenied and undisputed*;

(c) Ms. Fischer's June 28, 2002 opposing "affirmation" to my June 17, 2002 motion – exposed as knowingly false, deceitful, and frivolous by my 18-page July 13, 2002 reply affidavit, *whose accuracy was and is undenied and undisputed.*

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[2] Annexed as Exhibit "C" to my June 7, 2002 reply affidavit to Ms. Fischer's May 17, 2002 opposing memorandum of law.

[3] This is my June 7, 2002 affidavit in response to the Court's *sua sponte* jurisdictional inquiry.

14. The consequence of the Court's denial, *without reasons and findings*, of such fully-documented June 17, 2002 motion is that Ms. Fischer has been emboldened to oppose this reargument motion, as likewise my pending October 24, 2002 motion for leave to appeal, with the same kind of fraudulent litigation tactics as typified her prior three submissions to this Court. Similarly emboldened have been Ms. Fischer's superiors at the Attorney General's office and the Commission, who have ratified, if not directed, her misconduct.

15. The deficiencies *as to form* which render Ms. Fischer's November 8, 2002 "affirmation" NON-PROBATIVE – and which carry over into substance -- are the same deficiencies as in her June 28, 2002 "affirmation" opposing my June 17, 2002 motion. In fact, they are the same deficiencies which my July 13, 2002 reply affidavit detailed as having characterized the three "affirmations" Ms. Fischer previously submitted to the Appellate Division, First Department, *to wit*, (a) her August 31, 2001 "affirmation" in opposition to my August 17, 2001 motion, whose second branch sought to strike her March 22, 2001 respondent's brief as a "fraud on the court", and other sanctions relief comparable to that herein requested; (b) her February 7, 2002 "affirmation" in opposition to my motion to reargue the Appellate Division's December 18, 2001 decision/order; and (c) her February 27, 2002 "affirmation" in opposition to my motion for leave to appeal the Appellate Division's December 18, 2001 decision/order to this Court.

16. For the convenience of the Court, annexed hereto as Exhibit "C" are pages 4-8 of my July 13, 2002 reply affidavit – from which may be seen that Ms. Fischer's November 8, 2002 "affirmation" is now the FIFTH TIME in this litigation that she has wilfully disregarded the most basic standards for the making of affirmations, with the knowledge and approval of her superiors at the Attorney General's office and at the Commission.

17. Once again, and because her misconduct was tolerated by the Appellate Division, First Department and, thereafter, by this Court, Ms. Fischer violates the express requirement of CPLR §2106 that affirmations be "affirmed...to be true under the penalties of perjury". This, by omitting the operative phrase "to be true" from her "affirmation", reflective of her knowledge that it is NOT true. Such omission is in face of the black-letter legal authority I brought to Ms. Fischer's attention on each of the FOUR previous occasions I sought sanctions against her for her knowingly false and deceitful "affirmations", *to wit*,

> "... 'An affidavit must state the truth, and those who make affidavits are held to a strict accountability for the truth and accuracy of their contents', Corpus Juris Secundum, Vol. 2A §47 (1972 ed., p. 487). 'False swearing in either an affidavit or CPLR 2106 affirmation constitutes perjury under Chapter 210 of the Penal Law', Siegel, New York Practice, §205 (1999 ed., p. 325)."

18. For the FIFTH TIME, too, Ms. Fischer's "affirmation" also fails to identify (at ¶1) her testimonial knowledge different from any other Assistant Solicitor General – failing even to identify that it is she who has handled this

appeal before the Court, as likewise before the Appellate Division, and that she is the signator on the three submissions challenged by my June 17, 2002 motion – encompassed by this reargument motion. Again, this is in face of the legal authority presented by my prior sanctions motions:

> "It has too long been the rule to need the citation to authority, that such averments in an affidavit have not [sic] probative force. The court has a right to know whether the affiant had any reason to believe that which he alleges in his affidavit.' *Fox v. Peabody*, 97 App. Div. 500, 501 (1904).

*Pachucki v. Walters*, 56 A.D.2d 677, 391 N.Y.S.2d 917, 919 (3rd Dept. 1977); *Soybel v. Gruber*, 132 Misc. 2d 343, 346 (NY. Co. 1986), citing *Koump v. Smith*, 25 N.Y.2d 287, for the proposition, "An affirmation by an attorney without personal knowledge of the facts is without probative value and must be disregarded."

19. Here, too, as in her prior "affirmations", Ms. Fischer has substituted (at ¶1) the usual phraseology of being "fully familiar with all the facts, papers, and proceedings heretofore had" with the assertion that she is "fully familiar with the matters set forth in this Affirmation" – which "matters" she then materially misrepresents in her very sentence about being "fully familiar" by purporting that the Court "denied" my May 1, 2002 "motion to disqualify the entire court from hearing [my] appeal" (at ¶1) – a deceit she thereafter continues to exploit.

20. Indeed, just as ALL Ms. Fischer's prior submissions to this Court and the Appellate Division have been based on the most flagrant misrepresentation of the record, so, here, Ms. Fischer's November 8, 2002 "affirmation".

21. Thus, her ¶2 proclaims that my motion is "not only without merit but a waste of judicial resources" because I have allegedly done "little more than repeat the same *unsupported* accusations of fraud and corruption [I have] made in all of [my] prior filings" (emphasis added). The most cursory examination of my reargument motion and "prior filings" suffices to expose Ms. Fischer's pretense that they are "unsupported" – each and every one being fact-specific, record-referenced, and substantiated by legal authority as to the fraud and corruption established by the record.

22. Tellingly, Ms. Fischer fails to identify even one of my supposedly "unsupported accusations of fraud and corruption", either in her ¶2 or in the balance of her "affirmation". Indeed, her ¶¶3 and 4 falsify the nature of my "accusations of fraud and corruption" committed by the Court in connection with my May 1, 2002 disqualification/disclosure motion to conceal what those "accusations" actually are and the proof I presented in substantiation.

23. As hereinafter detailed, although the five paragraphs of Ms. Fischer's opposing "affirmation" are based on material falsehood, distortion, and omission, they do NOT deny or dispute ANY of the facts and law presented by my reargument motion to support my entitlement to the requested relief.

**Ms. Fischer Does NOT Deny or Dispute ANY of the Facts and Law Presented by ¶¶18-33 of my Reargument Motion Pertaining to the Court's Fraudulent Dismissals of my May 1, 2002 Disqualification Motion**

24. Ms. Fischer's ¶3 begins by asserting that my reargument motion has "devoted many pages to challenging the denial of [my] motion to disqualify Chief Judge Kaye and Judges Rosenblatt, Smith, Graffeo, Ciparick and Levine". This is utterly untrue. I have NOT challenged the Court's DENIAL of the disqualification motion since the motion was NOT DENIED. This is as clear as clear can be from ¶4 of my moving affidavit and my fact-specific, record-referenced, and law-supported paragraphs (¶¶18-33) under the subheadings:

> "The Court's Fraudulent Dismissal of my Disqualification Motion against Chief Judge Kaye and Judges Smith, Levine, Ciparick and Graffeo" (emphasis added)
>
> "The Court's Fraudulent Dismissal of my Disqualification Motion against Judge Rosenblatt" (emphasis added).

These make plain that I am challenging the Court's DISMISSAL of my disqualification motion as to Chief Judge Kaye, Smith, Graffeo, Ciparick, and Levine based on its fraudulent pretense that "the Court has no authority to entertain the motion made on nonstatutory grounds", as well as its DISMISSAL of the disqualification motion as to Judge Rosenblatt based on its fraudulent pretense that same is "academic".

25. It is to justify the Court's non-existent denial of my disqualification motion that Ms. Fischer's ¶3 purports that my motion did not establish judicial disqualification for interest under Judiciary Law §14. As Ms. Fischer is presumed to know, the sufficiency of my motion is IRRELEVANT where, as here, the Court did NOT deny it. For that reason, ¶¶18-30 of my reargument motion are NOT predicated on the sufficiency of my motion's showing, but on the fact that the motion was made on "statutory grounds" – requiring the Court to have granted or denied it in the same fact-specific, reasoned manner as it adjudicated the statutorily-based disqualification motion in *New York State Association of Criminal Defense Lawyers, et al. v. Kaye, et al.*, 95 N.Y.2d 556 (2000), which it denied. Tellingly, much as Ms. Fischer refuses to acknowledge the DISMISSAL of my disqualification motion, so she also refuses to acknowledge that the motion was made on "statutory grounds" – referring, instead, to my "claim that [my] motion was based upon Judiciary Law §14" (¶3), as if there might be some question on the subject.

26. Obviously, if the Court believed, as Ms. Fischer pretends (¶3), that I had "no basis to seek relief under [Judiciary Law §14]", its September 12, 2002 decision on Mo. No. 581 WOULD HAVE DENIED my disqualification motion. This it did NOT do – and the only explanation is that the Court knew that a reasoned decision would have required it to grant the motion as sufficient in establishing statutory disqualification for interest.

27. As for Ms. Fischer's attempt to impugn the motion's sufficiency by grossly falsifying its substance, *to wit*,

> "petitioner never demonstrated that any of the court's members (with the arguable exception of Judge Rosenblatt, the subject of one of the complaints giving rise to this proceeding) had anything remotely resembling a present, non-speculative interest in the outcome of this case. See Judiciary Law 14. To the contrary, petitioner sought disqualification because of her wholly unsupported and fantastical conviction that if she prevailed in her appeal, various judges of the Court would face disciplinary and criminal liability based on their actions in other cases. (See Affidavit of Elena Ruth Sassower in Support of Disqualification, sworn to May 1, 2002)",

this replicates her similar falsifications in her May 17, 2002 memorandum of law in opposition to my May 1, 2002 disqualification/disclosure motion. Such predecessor falsifications were exposed, with line-by-line precision, by pages 24-31 of my 31-page critique thereof[4]. This includes not only her pretense that my fact-specific, document-supported disqualification motion is "wholly unsupported", but her transmogrification of its explicit, all-encompassing ground for disqualifying six of the Court's judges for interest, *to wit*,

> "*their participation in the events giving rise to this lawsuit or in the systemic governmental corruption it exposes – as to which they bear disciplinary and criminal liability.*" (¶10 of my disqualification motion; ¶20 of my reargument motion; emphasis in the original).

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[4] Exhibit "C" to my June 7, 2002 reply affidavit to Ms. Fischer's opposing memorandum of law on my disqualification/disclosure motion.

which ¶3 of Ms. Fischer's November 8, 2002 opposing "affirmation" transmogrifies for the same reason as her May 17, 2002 memorandum of law had, to materially conceal:

> "the connection between the disciplinary and criminal liability of the various judges and 'the events giving rise to this lawsuit or...the systemic governmental corruption it exposes.'" (critique, p. 26, emphasis added).

28. Finally, as to Ms. Fischer's ¶3 assertion that my "contention that none of Judge Rosenblatt's colleagues could impartially evaluate [my] appeal" is "based solely on [my] own unfounded speculation" – citing ¶32 of my reargument motion – Ms. Fischer conceals the proposition for which ¶32 and its adjacent paragraphs were presented by my reargument motion, namely, that the Court's dismissal of my disqualification motion as to Judge Rosenblatt was "NOT 'academic'" (reagument motion, ¶31).

29. Since Ms. Fischer concedes (¶3) Judge Rosenblatt's "arguable" disqualification for interest, the Court's adjudication of the nature and extent of this statutory disqualification is plainly relevant and material to

> "whether ANY of Judge Rosenblatt's six Court of Appeals colleagues could impartially evaluate, or be perceived as able to impartially evaluate, the instant appeal." (reagument motion, ¶32, emphasis in the original).

30. Ms. Fischer does NOT deny or dispute that proposition – or, for that matter, ANY of the propositions particularized by ¶¶18-33 of my reargument

motion as to the fraudulence of the Court's dismissing my disqualification motion for having been "made on nonstatutory grounds" and for being "academic".

**Ms. Fischer Does NOT Deny or Dispute ANY of the Facts and Law Presented at ¶¶34-47 of my Reargument Motion Pertaining to the Court's Fraudulent Denials of my "Application for Recusal" by Six of the Court's Judges – Without Reasons and Without Requested Disclosure**

31. Ms. Fischer's ¶4 pertaining to "recusal" falsifies and perverts what the Court's September 12, 2002 decision on Mo. No. 581 did. The Court did NOT, after "den[ying]" my disqualification motion, "treat[]" it as "one for recusal" to be "referred to the Judges for individual consideration and determination by each Judge". Rather, as plain from the September 12, 2002 decision and detailed by ¶¶34-41 of my reargument motion, the Court falsely made it appear that I had made some separate recusal application and that it was referring this separate application to the individual judges for consideration and determination by each judge. As to this procedure, nothing could be further from the truth than Ms. Fischer's pretense that my ¶41 "appears to concede that this procedure was supported by the Court's own caselaw". To the contrary, my ¶41 states that:

> "what the Court did in *Association of Criminal Defense Lawyers v. Kaye* underscores WHAT IT SHOULD HAVE DONE IN MY CASE, as likewise in Mr. Schulz'. RATHER THAN dismissing each supposedly non-statutorily-based motion, with a pretense that there was some separate recusal 'application' that it was referring, THE COURT SHOULD HAVE stated that it was 'properly treat[ing] each motion as one for 'recusal' and referring it to the

> individual judges." (underlining in the original, capitalization added for emphasis).

32. It is only by turning my words around to say the OPPOSITE of what they do that Ms. Fischer is able to purport that my claims that the decision is "fraudulent therefore makes no sense" – for which she cites my ¶¶34-47. Examination of these paragraphs, all under my subheading,

> "The Fraudulent Denials of my 'Application for Recusal' by Six of the Court's Judges -- Without Reasons and Without Requested Disclosure",

shows that they make such perfect sense that Ms. Fischer has been unable to deny or dispute their fact-specific, law-supported allegations in ANY respect.

**Ms. Fischer does NOT Deny or Dispute ANY of the Facts and Law Presented by ¶¶48-65 of my Reargument Motion Pertaining to the Court's Fraudulent Dismissal of my Appeal of Right and Fraudulent Denial of my June 17, 2002 Sanctions/Disqualification Motion**

33. Ms. Fischer's final ¶5 pertains to the Court's dismissal of my May 1, 2002 notice of appeal and denial of my June 17, 2002 motion, designated Mo. No. 719. As to these, she asserts that the "sole support" I have provided for reargument are "citations to, and lengthy quotations from, [my] own prior submissions", as to which she purports

> "Respondent replied to these arguments and charges in its earlier filings, and therefore respectfully refers the Court to its May 28, 2002 letter to the Court, submitted in response to the Court's sua sponte inquiry into its jurisdiction over petitioner's appeal, and the Affirmation of Carol Fischer, dated June 28, 2002, in

Opposition to Petitioner's Motion To Strike and For Sanctions, Etc." (emphasis added).

34. Tellingly, Ms. Fischer does NOT identify a single one of my "arguments" and "charges"; does NOT identify which of my "own prior submissions" my reargument motion cites to and quotes from for these unidentified "arguments" and "charges"; and, in contrast to her ¶¶3-4 which furnished paragraph citations to my reargument motion, gives NO paragraph citations to facilitate verification of her claim that her May 28, 2002 letter to the Court and June 28, 2002 "affirmation" have "replied" to my unidentified "arguments" and "charges". This is not surprising as her ¶5 is a wholesale deceit.

35. The fraudulence of Ms. Fischer's May 28, 2002 letter and June 28, 2002 "affirmation", to which she refers the Court, has been resoundingly exposed, with line-by-line precision, by my June 7, 2002 affidavit in response to the Court's *sua sponte* jurisdictional inquiry and by my July 13, 2002 reply affidavit on my June 17, 2002 motion. Ms. Fischer conceals the existence of these two affidavits, the accuracy of which she did NOT previously deny or dispute and whose accuracy, even NOW, she does NOT deny or dispute -- in ANY respect.

36. Moreover, examination of Ms. Fischer's May 28, 2002 letter shows, contrary to her ¶5, that it does NOT reply to the "arguments" and "charges" particularized by ¶¶48-56 of my reargument motion under the heading

> "The Court's Wilful Refusal to Build Interpretive Caselaw Governing Appeals of Right on the Due Process Ground Enunciated by *Valz v. Sheephead Bay* by its Fraudulent Dismissal of my Notice of Appeal".

Nor could her May 28, 2002 letter do so. Indeed, the foremost "arguments" and "charges" in my ¶¶48-56 are taken from my June 7, 2002 affidavit in response to the Court's *sua sponte* inquiry, where they were presented for the first time. These include the Court's failure to build precedential caselaw interpreting *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), and its failure to enunciate the basis upon which it took jurisdiction over the appeal of right in *General Motors v. Rosa*, 82 N.Y.2d 183, 189 (1993), as to which I asserted a right of appeal that was "analogous...if not *a fortiori*". Plainly, too, Ms. Fischer's May 28, 2002 letter could not reply to my June 7, 2002 reply affidavit's assessment of her letter, quoted at pages 27-28 of my reargument motion, *to wit*, that it

> "does NOT, in any respect, deny or dispute the accuracy of my Jurisdictional Statement's recitation of the proceedings in the Appellate Division and my declaration that the Appellate Division decision is ''totally devoid' of evidentiary and legal support''. Even as to her penultimate paragraph, identifying that my appeal rests on "[my] alleged deprivation of [my] right to a 'fair tribunal' at the hands of a 'biased' First Department", [Ms. Fischer] makes NO affirmative claim that the Appellate Division was a 'fair tribunal' and that my due process rights were respected. Neither does she deny or dispute that such issue is, as I have contended, 'threshold and decisive'." (emphases in the original).

37. Obviously, too, Ms. Fischer's May 28, 2002 letter could not reply to my assertion that the Court's September 12, 2002 dismissal of my notice of appeal "upon the ground that no substantial constitutional question is directly involved" is its "meaningless boilerplate" (¶53), whose fraud is:

> "evident from its failure to even identify that my notice of appeal was specifically predicated on the Court's decision in *Valz*... -- let alone to deny or dispute that *Valz* entitles me to an appeal of right. Likewise, by its failure to deny or dispute that the Court's taking jurisdiction over the appeal in *General Motors v. Rosa* and its subsequent decision therein are corroborative of my right." (¶54).

38. Similarly, examination of Ms. Fischer's June 28, 2002 "affirmation" shows, contrary to her ¶5, that it does NOT reply to ANY of the "arguments" and "charges" particularized by ¶¶57-65 of my reargument motion under the heading,

> "The Court's Wilful Violation of its Mandatory Disciplinary Responsibilities Under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct by its Fraudulent Denial of my June 17, 2002 Sanctions/Disqualification Motion, Without Reasons"

## CONCLUSION

The foregoing demonstrates that Ms. Fischer's flimsy five-paragraph opposing "affirmation" is fashioned on knowing falsification, deceit, and concealment, *without* denying or disputing ANY of the facts and law upon which my reargument motion rests. As such, I am entitled to the sanctions relief requested at ¶3 herein, in addition to the granting of the motion, so that fundamental standards of professional responsibility and the rule of law may be vindicated on this transcendingly important appeal.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
3rd day of December 2002

Notary Public

## TABLE OF EXHIBITS