

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Coordinator*

BY FAX: 212-416-8139 (6 pages)

November 21, 2002

Attorney General Eliot Spitzer  
120 Broadway  
New York, New York 10271

RE: Upholding Fundamental Ethical Standards of Professional Responsibility and Discharging your Duty as "The People's Lawyer":

- (1) Petitioner-Appellant's October 15, 2002 motion to reargue, vacate for fraud, etc. (Ct of Appeals #1212/02);
- (2) Petitioner-Appellant's October 24, 2002 motion for leave to appeal (Ct of Appeals #1213/02)

*Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York (S.Ct/NY Co. #108551/99; A.D. 1<sup>st</sup> Dept #5638/01)*

Dear Mr. Spitzer:

ONCE MORE, this is to put you on notice of your 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" to remedy the flagrant litigation misconduct of Assistant Solicitor General Carol Fischer – this time by her non-probative, knowingly false, deceitful, and frivolous November 8, 2002 "affirmation", filed with the Court of Appeals in opposition to my October 15, 2002 motion to reargue, vacate for fraud, etc. and her knowingly false, deceitful, and frivolous November 8, 2002 memorandum of law in opposition to my October 24, 2002 motion for leave to appeal.

EX "A-1"

As illustrative, Ms. Fischer's five-paragraph November 8, 2002 "affirmation" conceals and falsifies EVERY specific ground upon which my October 15, 2002 motion seeks reargument. It then refers the Court (at ¶5) to her May 28, 2002 letter responding to the Court's *sua sponte* jurisdictional inquiry on my appeal of right, as well as to her June 28, 2002 "affirmation" in opposition to my June 17, 2002 motion to strike and for sanctions, etc.

You are already aware that Ms. Fischer's May 28, 2002 letter and June 28, 2002 opposing "affirmation" are knowingly false and deceitful documents, as this was brought to your attention by my July 3, 2002 letter to you<sup>1</sup>, enclosing a copy of my June 17, 2002 notice of motion. As a result of your wilful refusal to discharge your mandatory supervisory responsibilities in response thereto and before that in response to my May 21, 2002 letter to you<sup>2</sup>, I meticulously documented, with line-by-line precision, the fraudulence of each of these documents by two reply affidavits, dated June 7, 2002 and July 13, 2002, for which I requested sanctions against you *personally*. Ms. Fischer's November 8, 2002 opposing "affirmation" does not even identify the existence of these dispositive reply affidavits – let alone deny or dispute their accuracy.

As for Ms. Fischer's barely six-page November 8, 2002 memorandum of law in opposition to my October 24, 2002 motion for leave to appeal, it conceals the existence of my fact-specific, law-supported analyses demonstrating the fraudulence of FIVE lower court decisions of which the Commission has been the beneficiary – analyses annexed as Exhibits "H", "I", "K", and "L-1" to my October 24, 2002 motion<sup>3</sup> and whose accuracy Ms. Fischer does *not* deny or

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<sup>1</sup> My July 3, 2002 letter to you is annexed as Exhibit "A-1" to my July 13, 2002 reply affidavit to Ms. Fischer's June 28, 2002 "affirmation" in opposition to my June 17, 2002 motion to strike, etc.

<sup>2</sup> My May 21, 2002 letter to you is annexed as Exhibit "A" to my June 7, 2002 reply affidavit to Ms. Fischer's May 17, 2002 memorandum of law in opposition to my May 1, 2002 disqualification/disclosure motion.

<sup>3</sup> These four annexed analyses do not include one for Justice Wetzel's decision in my lawsuit, whose most comprehensive analysis is, of course, the appellate brief I filed in the Appellate Division, First Department. As identified at page 12 of my October 24, 2001 motion for leave to appeal, the fraudulence of Justice Wetzel's dismissal of my Article 78 proceeding is exposed by my analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* and my analysis of Justice Lehner's decision in *Michael Mantell v. Commission* – since Justice Wetzel rested his dismissal exclusively on those two decisions, notwithstanding my analyses thereof were in the record before him.

dispute. Indeed, her memorandum also conceals what was *expressly* identified by my “Question Presented for Review” (at p. 3), *to wit*, that four of these five lower court decisions contravene the Court of Appeals’ OWN decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980):

“...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)...’ (emphasis added).”

Ms. Fischer’s November 8, 2002 memorandum of law *never* mentions *Nicholson* in affirmatively misrepresenting (at p. 4) that my appeal does NOT involve “a conflict with prior decisions of [the] Court” and in purporting, based on the very lower court decisions demonstrated by my motion to contravene *Nicholson*, that the Commission’s determination to investigate a complaint is “discretionary” (at pp. 3-4). Nor does her memorandum mention *Nicholson* in baldly asserting (at p. 1) that my “current attempt to seek leave on the ground of its purported ‘public importance’ is without merit”. This, notwithstanding *Nicholson* contains the Court’s unequivocal statement, quoted by my motion (at p. 22):

“There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is ‘hardly \*\*\* a higher governmental interest than a State’s interest in the quality of its judiciary’ (*Landmark Communications v. Virginia*, 425 U.S. 829, 848 [Stewart, J., concurring])”

Similarly Ms. Fischer’s memorandum does not mention *Commission v. Doe*, 61 N.Y.2d 56, 61 (1984), where, as quoted by my motion (at p. 22), the Court recognized the Commission as “the instrument through which the State seeks to insure the integrity of its judiciary”.

Because confronting pages 6-22 of my October 24, 2002 motion under the title heading “Why the Question Presented Merits Review” would have required Ms. Fischer to concede the accuracy of my analyses of the FIVE fraudulent lower court decisions of which the Commission is the beneficiary – and the controlling significance of *Nicholson* – her memorandum of law, containing scarcely more than a one-page “Argument” (at pp. 4-5), does *not* address these pages. Instead, most of her memorandum is a purported “Statement of the Case” (at pp. 2-4), which begins by identifying that “greater detail” may be

found in the Commission's brief filed in the Appellate Division, First Department, "previously submitted to the Court" (at p. 2).

This is a flagrant deceit. That March 22, 2001 brief, signed by Ms. Fischer, is, "from beginning to end, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law" of this case. You are fully aware of this because, on May 3, 2001, I hand-delivered to your office my meticulous, line-by-line, 66-page critique thereof under a coverletter to you of that date<sup>4</sup>, calling upon you to meet your "mandatory obligations, not only under New York's Disciplinary Rules of the Code of Professional Responsibility, but under Executive Law §63.1" by withdrawing that fraudulent document from the Appellate Division, First Department. Your wilful refusal to do so was recited more than a year later by my May 21, 2002 letter to you, reiterating your "mandatory supervisory responsibilities" in the wake of what was then Ms. Fischer's latest litigation misconduct: her submission of a "legally unsupported and insupportable, factually false and fraudulent" May 17, 2002 memorandum of law to the Court of Appeals in opposition to my May 1, 2002 disqualification/disclosure motion – one physically annexing a copy of her March 22, 2001 brief, to which the Court was referred.

As you know, in the year and a half since May 3, 2001, neither you, your staff, nor the Commission have denied or disputed the accuracy of my 66-page critique of Ms. Fischer's March 22, 2001 brief. This includes not denying or disputing the dispositive nature of the critique's three "highlights"<sup>5</sup>, demonstrating Ms. Fischer's brief to be fashioned on deceits from Justice Cahn's decision in *Doris L. Sassower v. Commission*, Justice Lehner's decision in *Michael Mantell v. Commission*, and the Appellate Division, First Department's "affirmance" in *Mantell*. Ms. Fischer now incorporates these and other flagrant deceits in her purported "summarized" "Statement of the Case" (at pp. 2-4) in her November 8, 2002 memorandum of law.

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<sup>4</sup> My May 3, 2001 letter to you is annexed as Exhibit "T-3" to my August 17, 2001 motion in the Appellate Division, First Department, whose second branch sought to strike Ms. Fischer's brief as a "fraud on the court", etc.

<sup>5</sup> These three dispositive "highlights", referred to repeatedly in my submissions in the Appellate Division, First Department and in my correspondence with you relative thereto, are pages 3-5, 5-11, and 40-47 of my May 3, 2001 critique of Ms. Fischer's brief.

Please be advised that UNLESS Ms. Fischer's November 8, 2002 opposing "affirmation" and November 8, 2002 memorandum of law are IMMEDIATELY withdrawn, I will have no choice but to burden the Court with reply papers. These will request that my October 15, 2002 and October 24, 2002 notices of motion for "other and further relief as may be just and proper" be deemed to seek relief comparable to that requested by my June 17, 2002 motion, *to wit*, the striking of Ms. Fischer's November 8, 2002 opposing "affirmation" and November 8, 2002 memorandum of law

"based on findings that each such document is a 'fraud on the court', violative of 22 NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), (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".

As I have expressly asserted in my extensive prior correspondence with you and reiterated in my court papers— including on these two motions<sup>6</sup> -- your duty as New 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

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<sup>6</sup> See pages 27-28 of my October 15, 2002 reargument motion; page 21 of my October 24, 2002 motion for leave to appeal.

November 21, 2002

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 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.

Yours for a quality judiciary,



ELENA RUTH SASSOWER  
Petitioner-Appellant *Pro Se*

cc: Office of the Solicitor General:  
[By Fax: 212-416-6350]  
ATT: Solicitor General Caitlin J. Halligan  
Deputy Solicitor General Michael S. Belohlavek  
Assistant Solicitor General Carol Fischer  
New York State Commission on Judicial Conduct:  
[By Fax: 212-949-8864]  
ATT: Gerald Stern, Administrator & Counsel  
Chairman Henry T. Berger & Commission members

TRANSMISSION VERIFICATION REPORT

*Attorney General  
Sitzel*

TIME : 11/21/2002 16:55

NAME : CJA

FAX : 9144284994

TEL : 9144211200

DATE, TIME	11/21 16:52
FAX NO./NAME	12124168139
DURATION	00:03:10
PAGE(S)	05
RESULT	OK
MODE	STANDARD ECM

*Solicitor General Balligan  
Deputy Solicitor General  
Belohlavek  
Asst. Solicitor General Fischer*

TIME : 11/21/2002 17:00

NAME : CJA

FAX : 9144284994

TEL : 9144211200

DATE, TIME	11/21 16:56
FAX NO./NAME	12124166350
DURATION	00:03:43
PAGE(S)	06
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*Commission*

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DATE: 11/21/02 TIME: 4:55 pm FAX #: 212-416-6350

TO: ① Solicitor General Halligan ② Deputy Solicitor General Beloravick ③ Asst Solicitor General Fischer

RE: SASSOWER v. Commission - Supervisory Oversight

FROM: ELENA RUTH SASSOWER, Coordinator

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### MESSAGE:

Enclosed is my letter of today's  
date to Attorney General Spitzer -  
to which you've indicated  
recipients

Response requested by 5 pm  
Monday, Nov 25<sup>th</sup>

CENTER for JUDICIAL ACCOUNTABILITY, INC. is a national, non-partisan, non-profit citizens' organization documenting how judges break the law and get away with it.

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DATE: 11/21/02 TIME: 5pm FAX#: 212-949-8864

TO: NYS Commission on Judicial Conduct  
ATT: Gerald Stern & Commissioners

RE: SASSOWER v. Commission

FROM: **ELENA RUTH SASSOWER, Coordinator**

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MESSAGE: \_\_\_\_\_

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to which you are indicated  
recipients

Response requested by 5pm  
Monday, Nov 20 02

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