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,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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JURISDICTIONAL STATEMENT
PURSUANT TO 22 NYCRR §500.2

AD 1st Dept. #5638/01
S.Ct/NY Co. #108551/99

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22 NYCRR §500.2(a)

1. The title of this case is as set forth above.

2. The court from which this appeal is taken is the Appellate Division, First Department.

3. Petitioner-Appellant's Notice of Appeal was served and filed by mail on May 1, 2002, "Law Day". Also on "Law Day", this Jurisdictional Statement has been served by mail and filed with this Court[1].

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[1] Simultaneously, Petitioner-Appellant has served and filed a motion to disqualify this Court's judges for interest and bias, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, and for disclosure, pursuant to §100.3F of the Chief Administrator's Rules.

The Court's determination of such disqualification/disclosure motion is threshold to its determination of Petitioner-Appellant's entitlement to this appeal of right. *See* Appellant's Appendix: A-339: "So long as the affidavit [to disqualify] is on file, and the issue of disqualification remains undecided, the judge is without authority to determine the cause or hear any matter affecting substantive rights of the parties", 48A Corpus Juris Secundum, §145; *See*

4. Timeliness Chain: On January 18, 2002, Petitioner-Appellant was served, by mail, with the Appellate Division, First Department's *per curiam* seven-sentence decision & order, entered on December 18, 2001 (Appeal No. 5638). On February 20, 2002, Petitioner-Appellant served and filed her motion to the Appellate Division, First Department for leave to appeal to the Court of Appeals. On April 24, 2002, Petitioner-Appellant was served, by mail, with the Appellate Division, First Department's order, entered March 26, 2002, denying, *without* reasons, her February 20, 2002 motion for leave to appeal (M-938), as well as her separate January 17, 2002 motion for reargument (M-323).

5. Respondent-Respondent's attorney is the New York State Attorney General, 120 Broadway, New York, New York 10271. However, the record reflects that because of the violative and unlawful nature of such representation[2], Petitioner-Appellant has consistently served Respondent-Respondent, the New York State Commission on Judicial Conduct, with a duplicate set of the litigation papers so that its attorney members and staff could meet their obligations under New York's Disciplinary Rules of the Code of Professional Responsibility, 22 NYCRR §1200.3(a)(1), proscribing the "circumvent[ing] of a disciplinary rule through the

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also Appellant's Appendix: A-232-233, Judicial Disqualification: Recusal and Disqualification of Judges by Richard E. Flamm.

[2] This has been the subject of two fact-specific, law-supported motions by Petitioner-Appellant to disqualify the Attorney General and for sanctions – Petitioner-Appellant's July 28, 1999 omnibus motion in Supreme Court/New York County and her August 17, 2001 motion in the Appellate Division, First Department. These motions, dispositive of Petitioner-Appellant's rights, were each denied, *without* reasons and *without* findings by the decisions which are the subject of the appeals.

actions of another" and 22 NYCRR §1200.5 pertaining to supervisory responsibilities[3].

22 NYCRR §500.2(b)

1. Petitioner-Appellant's May 1, 2002 Notice of Appeal is Exhibit "A".

2. The Appellate Division, First Department's *per curiam* seven-sentence December 18, 2001 decision & order -- the subject of this appeal -- is Exhibit "B".

3. Other orders of the Appellate Division, First Department brought up for review:

(a) March 26, 2002 order of the Appellate Division, First Department, denying, *without* reasons, Petitioner-Appellant's January 17, 2002 motion for reargument (M-323) and her February 20, 2002 motion for leave to appeal (M-938) is Exhibit "C";

(b) November 19, 2001 order of Appellate Division, First Department Justice Eugene Nardelli, Presiding Justice of the panel assigned to the appeal, denying, *without* reasons, Petitioner-Appellant's November 16, 2001 interim relief application to adjourn oral argument of the appeal pending adjudication of her threshold August 17, 2001 disqualification/sanctions motion, is Exhibit "D-1";

(c) November 20, 2001 order of then Appellate Division, First Department Presiding Justice Joseph Sullivan, denying, *without* reasons, that portion of Petitioner-

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[3] *See, inter alia*, Petitioner-Appellant's October 15, 2001 reply affidavit in further support of her August 17, 2001 motion (at ¶12).

Appellant's November 19, 2001 interim relief application as sought an audio/video/stenographic record of the oral argument is Exhibit "D-2".

4. The January 31, 2000 decision, order & judgment of Acting Supreme Court Justice William Wetzel -- "affirmed" by the Appellate Division, First Department's December 18, 2001 decision & order -- is Exhibit "E".

22 NYCRR §500.2(c)

This Court's jurisdiction to entertain the appeal, pursuant to Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), rests on the Court's *own* decision in *Valz v. Sheepshead Bay*, 249 NY 122, 131-2 (1928), cert den. 278 U.S. 647, holding:

> "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right"[4].

In *Holt v. Virginia*, 381 U.S. 131, 136 (1965), the U.S. Supreme Court held:

> "... since 'A fair trial in a fair tribunal is a basic requirement of due process,' *In re Murchison*, 349 U.S. 133, 136, it necessarily follows that motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential...".

The threshold and decisive issue on this appeal is the Appellate Division, First Department's wilful violation of Petitioner-Appellant's right to a fair tribunal and the

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[4] *See* 11 Carmody-Wait 2d, §71:37, p. 62 (1996); 4 NY Jur. 2d §76, p. 134 (1997), each citing *Valz v. Sheepshead Bay* for the identical proposition, "...where the decisive question is whether a judgment is the result of due process, an appeal lies to the Court of Appeals as a matter of right even though in determining that question the court must give consideration to the proper construction and effect of a statute." *Also*, annotations in McKinney's Consolidated Laws of New York Annotated to §5601, p. 455 (1995).

manifestation of its disqualifying interest and bias by its obliteration of all adjudicative standards.

Exemplifying this is its one-sentence denial, *without* reasons, *without* findings, and *without* legal authority, of Petitioner-Appellant's fact-specific, document-supported August 17, 2001 motion, whose first branch of relief sought its disqualification for interest and bias, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, and for pertinent disclosure pursuant to §100.3F of the Chief Administrator's Rules. Such relief is concealed by the falsified description of the motion in the last sentence of the Appellate Division, First Department's decision & order (Exhibit "B"). Likewise concealed is the August 17, 2001 motion's second branch of relief: to strike the Attorney General's Respondent's Brief as a "fraud on the court"; to sanction him and the Commission pursuant to §130-1.1 of the Chief Administrator's Rules; to refer them for disciplinary and criminal prosecution pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct; and to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules.

As for the six preceding sentences of the decision & order, "affirming" Justice Wetzel's appealed-from decision, such "affirmance" -- like Justice Wetzel's decision (Exhibit "E") -- is "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause" of the United States Constitution: *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of*

Louisville, 362 U.S. 199 (1960)[5]. This is evident from the most cursory comparison with the record herein. A full copy of that record is transmitted as part of this submission to substantiate the Court's jurisdiction of this appeal of right on due process grounds[6].

The Appellate Division, First Department's "affirmance" is additionally devoid of legal support. Its *only* direct legal citation is to the Appellate Division, First Department's own appellate decision in *Michael Mantell v. Commission*, 227 AD2d 96 (2000), whose fraudulence was demonstrated by Petitioner-Appellant's August 17, 2001 motion[7], including as to the very proposition for which it is cited, *to wit*, that the Commission has discretion "whether to investigate a complaint" of judicial misconduct. As shown, this Court long ago interpreted that the Commission has NO

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[5] The precise quotation, "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause", in the context of Justice Wetzel's decision, appears in Petitioner-Appellant's Brief (p. 52) under the heading, "Justice Wetzel's Decision is *Prima Facie* Proof of his Disqualifying Actual Bias and is Unconstitutional for that Reason, as well as its Lack of any Factual or Legal Support". It corresponds to the third of the four "Questions Presented" by the Brief (at p. 1):

> "Is Justice Wetzel's Decision so unfounded, factually and legally, as to manifest: (a) the actuality of his disqualifying bias, thereby establishing his denial of Petitioner's recusal application as an abuse of discretion; and (b) a violation of Petitioner's due process rights under the United States Constitution?"

[6] The copy of the record herein transmitted is contained in two cartons. The first contains the record of the proceedings in Supreme Court/New York County. The second contains the record of the proceedings in the Appellate Division, First Department. An inventory of the contents of these two cartons is enclosed.

[7] *See* Petitioner-Appellant's August 17, 2001 motion, ¶¶49-67 under the heading "The Court's Appellate Decision in *Mantell* Manifests this Court's Disqualifying Self-Interest and Actual Bias".

discretion but to investigate *facially-meritorious* complaints pursuant to Judiciary Law §44.1:

> "...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law 44, subd 1), *Matter of Nicholson*, 50 NY2d 597 (1980), at 610-611 (emphasis added).

This is the very issue presented by the first two of Petitioner-Appellant's Six Claims for Relief [A-37-40].

The factually and legally unsupported and insupportable seven-sentence decision & order, manifesting the appellate panel's self-interest and actual bias, was the subject of a 19-page analysis by Petitioner-Appellant, annexed as Exhibit "B-1" to her January 17, 2002 reargument motion [hereinafter "reargument analysis"]. Such reargument analysis identified and demonstrated the reasons why the appellate panel made *no* findings as to Petitioner-Appellant's August 17, 2001 motion. It could not do so without exposing

(1) its legal disqualification for interest;

(2) the *a fortiori* legal disqualification for interest of Justice Wetzel, whose wrongful denial, *without* findings, of Petitioner-Appellant's fact-specific, document-supported December 2, 1999 letter-application for his disqualification and for disclosure [A-250-290] was the threshold and decisive issue presented by her Appellant's Brief (at p. 1);

(3) the three fraudulent lower court decisions of which the Commission had been the knowing beneficiary – Justice Herman Cahn's decision in *Doris L. Sassower v. Commission* [A-189-194], Justice Edward Lehner's decision in *Mantell v. Commission* [A-299-307], and Justice Wetzel's decision in Petitioner-Appellant's lawsuit [A-9-14][8] – and the resulting

[8] Establishing the fraudulence of Justice Cahn's decision is Petitioner-Appellant's 3-page analysis thereof [A-52-54] – whose accuracy is *undisputed*. Establishing the fraudulence of Justice Lehner's decision is Petitioner-Appellant's 13-page analysis thereof [A-321-334] -- whose

disqualification for interest of appellate panel members dependent on Governor Pataki and Chief Judge Kaye, whose official misconduct in covering up these fraudulent decisions the lawsuit exposes[9];

(4) the fraudulence of the *Mantell* appellate decision – and the resulting disqualification for interest of appellate panel members whose official misconduct therein would be exposed by this appeal;

(5) the Attorney General's litigation misconduct on the appeal, *inter alia*, by urging the appellate panel to rely on the fraudulent decisions of Justices Cahn, Lehner, Wetzel, and the *Mantell* appellate panel;

(6) the Attorney General's litigation misconduct in Supreme Court/New York County, *inter alia*, by urging dismissal of Petitioner-Appellant's Verified Petition based on the fraudulent decisions of Justices Cahn and Lehner – as to which Justice Wetzel made *no* findings in denying Petitioner-Appellant's July 28, 1999 omnibus motion for sanctions against the Attorney General and the Commission, to direct them for disciplinary and criminal prosecution, and to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest;

(7) Petitioner-Appellant's entitlement to ALL the relief requested by her Verified Petition -- for which her July 28, 1999 omnibus motion sought summary judgment, denied by Justice Wetzel, *without reasons or findings*.

The record shows that notwithstanding the Attorney General's "non-probative and knowingly false, deceitful, and frivolous" opposition to Petitioner-Appellant's January 17, 2002 reargument motion and to her February 20, 2002 motion for leave to

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accuracy is also *undisputed*. Inasmuch as Justice Wetzel's dismissal of Petitioner-Appellant's lawsuit rests exclusively on these two decisions, these *undisputed* analyses, each in the record before him suffice to establish the fraudulence of his decision, quite apart from the *undisputed* recitation in Petitioner-Appellant's Brief (*see* discussion at pp. 42-68).

[9] *See* Petitioner-Appellant's August 17, 2001 motion, ¶¶15-31 under the heading "This Court's Justices Have a Self-Interest in the Appeal to the Extent they are Dependent on Governor Pataki for Reappointment to this Court and for Elevation to the New York Court of Appeals" and ¶¶32-48 under the heading "This Court's Justices Have a Self-Interest in this Appeal to the Extent they are Dependent on Other Public Officers, such as Chief Judge Kaye, Implicated in the Systemic Corruption Exposed by this Appeal."

appeal – for which Petitioner-Appellant demonstrated her entitlement to sanctions[10] -- the Attorney General did NOT deny or dispute the accuracy of her 19-page reargument analysis in *any* respect. NOR did the Attorney General deny or dispute the significance of her presentation of facts, undisclosed by the appellate panel[11], showing the *immediate* dependencies of three of its five members on Governor Pataki for redesignation to the Appellate Division, First Department and/or elevation to be its Presiding Justice and the participation of a fourth panel member in the fraudulent *Mantell* appellate decision. Likewise, the Attorney General did NOT deny or dispute the aptness of her citation of Appellate Division, First Department caselaw, as well as caselaw of this Court, *Oakley v. Aspinwall*, 3 N.Y. 547 (1850) and *Wilcox v. Royal Arcanum*, 210 N.Y. 370, 377 (1914), showing that the appellate panel's statutory disqualification for interest under Judiciary Law §14 deprived it of jurisdiction to render the December 18, 2001 decision & order[12].

Nevertheless, the appellate panel denied, *without* reasons, Petitioner-Appellant's motions for reargument and leave to appeal (Exhibit "C").

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[10] *See* Petitioner-Appellant's February 20, 2002 reply affidavit in further support of her reargument motion AND Petitioner-Appellant's March 6, 2002 reply affidavit in further support of her motion for leave to appeal.

[11] These undisclosed facts are particularized and documented by Petitioner-Appellant's January 17, 2002 reargument motion (at ¶¶18-19) and Petitioner-Appellant's February 20, 2002 reply affidavit in support of her reargument motion (at ¶¶36-37).

[12] *See* Petitioner-Appellant's February 20, 2002 reply affidavit in support of her reargument motion (at ¶¶3, 24, 29-30) and Petitioner-Appellant's March 7, 2002 affidavit in support of her motion for leave to appeal (at ¶9).

Pursuant to §600.14(b) of the Appellate Division, First Department's rules, Petitioner-Appellant's February 20, 2002 motion for leave to appeal sets forth (at pp. 12-15) "questions of law to be reviewed by the Court of Appeals". Of the seven proposed questions, the first four related to Petitioner-Appellant's August 17, 2001 motion and were under the heading "As to Judicial Disqualification & Disclosure". These four questions were annotated by three footnotes reflecting "broader legal principles" as to which the record shows the appellate panel "is in dire need of guidance". Petitioner-Appellant will raise these same four questions and the "broader legal principles" on her appeal to this Court, directly and necessarily involving her due process rights, as guaranteed by Article I, §6 of the New York State Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States. They are:

I. Adjudicative Standards Pertaining to Judicial Disqualification and Disclosure: Judiciary Law §14 and §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct[13]:

> 1. "*As a matter of law*, was Petitioner-Appellant's August 17, 2001 motion sufficient to require [the appellate panel's] 'legal disqualification' for interest pursuant to Judiciary Law §14 and to require disclosure of facts pertinent to the grounds for its disqualification therein set forth, including as to its bias, both actual and apparent?[14]"

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[13] The Chief Administrator's Rules Governing Judicial Conduct, promulgated pursuant to Article VI, §§20(b)(4) and 28(c) of the New York State Constitution, have the force of the Constitution behind them. *Cf. Morgenthau v. Cooke*, 56 N.Y.2d 24 (1982).

[14] "This question would allow the Court of Appeals to also articulate whether, as set forth in Judicial Disqualification: Recusal and Disqualification of Judges by Richard E. Flamm [A-237], a judge is required to disclose facts that would be relevant to the parties and their counsel in considering whether to move for recusal. *Also*, Ethics Opinion #548 (1983) of the Committee on Professional Discipline of the New York State Bar Association."

2. "*As a matter of law*, is [the appellate panel's] decision so unfounded, factually and legally, as to manifest (i) the actuality of the [appellate panel's] disqualifying bias, thereby establishing its denial of Petitioner-Appellant's August 17, 2001 for its recusal an abuse of discretion; and (ii) a violation of Petitioner's due process rights under the New York and United States Constitutions?"

3. "*As a matter of law*, was [the appellate panel] required to adjudicate Petitioner-Appellant's August 17, 2001 motion, fully-submitted five weeks before oral argument of the appeal, *in advance of oral argument*?[15]"

4. "*As a matter of law*, could [the appellate panel] properly deny, *without* reasons or findings, Petitioner-Appellant's August 17, 2001 motion and do so in a manner concealing that the motion sought (i) [the appellate panel's] disqualification and disclosure[16]; and (ii) sanctions, including disciplinary and criminal referral, against the Attorney General and Commission for litigation misconduct and the Attorney General's disqualification?"

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Petitioner-Appellant's three additional questions focused on three further respects in which the appellate panel's decision & order is factually-false and legally unsupported and insupportable. Two of these questions were supplemented by "broader legal principles" underscoring the larger constitutional issues directly and

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[15] "This question would allow the Court of Appeals to establish whether, as enunciated in 48A Corpus Juris Secundum §145 [A-339] and Judicial Disqualification: Recusal and Disqualification of Judges by Richard E. Flamm [A-232-233], a motion for judicial disqualification is threshold and a court is without authority/jurisdiction to 'determine the cause or hear any matter affecting substantive rights' until such motion is adjudicated."

[16] "This question would allow the Court of Appeals to articulate whether, as propounded in [] Petitioner-Appellant's Brief (pp. 38-39), adjudication of motions and applications for judicial disqualification are to be guided by the same legal and evidentiary standards as govern adjudication of other motions -- such that a judge's failure to respond to a fact specified as warranting recusal may be deemed to admit it and falsehood and evasion in responding to a fact is considered evidence in substantiation thereof."

necessarily involved. These will also be raised by Petitioner-Appellant on her appeal to this Court:

II **Adjudicative Standards Governing an Appellate Division's Invocation of Lack of "Standing" to Sustain Dismissal of a Lawsuit, Not Dismissed on that Ground by the Court Below:**

> 5. "*As a matter of law*, could [the appellate panel] properly assert that Petitioner-Appellant 'lacks standing to sue the Commission' – a ground for dismissal NOT relied on by the lower court – (i) *without* specifying the facts supporting its conclusion that Petitioner-Appellant 'failed to demonstrate that she suffered some actual or threatened injury as a result of the putatively illegal conduct'; (ii) *without* discussing substantiating legal authority or even directly citing such authority; and (iii) *without* addressing, or even identifying, ANY of Petitioner-Appellant's appellate arguments in support of her 'standing to sue'"[17].

As noted in Petitioner-Appellant's motion for leave to appeal (p. 14, fn. 14)[18], the fact that lack of "standing" was NOT part of Justice Wetzel's decision

> "raises due process issues as 'the linchpin of our constitutional and statutory design [is] intended to afford each litigant at least one appellate review of the facts (Cohen and Karger, Powers of the New York Court of Appeals §109, at 465 [rev ed])', *People v. Bleakley*, 69 N.Y.2d 490, 494 (1987)."

The appellate panel wholly conceals that its "affirmance" of Justice Wetzel's decision is NOT an "affirmance" of any determination by Justice Wetzel that Petitioner-Appellant lacked "standing" (Exhibit "E"). As pointed out by Petitioner-Appellant's

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[17] "These appellate arguments appear in the third 'highlight' of Petitioner-Appellant's Critique of Respondent's Brief (pp. 40-47) – annexed as Exhibit 'U' to [her] August 17, 2001 motion. The dispositive nature of this third 'highlight' was repeatedly identified by Petitioner-Appellant in the record before [the appellate panel], including at the oral argument of the appeal [*See* [Petitioner-Appellant's] January 17, 2002 reargument motion, Exhibit "C", p. 6 thereto]."

reargument analysis (pp. 15-16), Justice Wetzel had rejected dismissal for lack of "standing", although urged upon him by the Attorney General. In so doing, the appellate panel followed the same pattern as the *Mantell* appellate panel, whose "affirmance" purporting that Mr. Mantell lacked "standing", made in one ambiguous sentence, unsupported by facts or law, similarly concealed that no such determination had been made by Justice Lehner, who had rejected dismissal on that ground, although urged upon him by the Attorney General. Likewise, the *Mantell* appellate panel had devoted only a single sentence to Mr. Mantell's supposed lack of standing.

The "constitutional and statutory design" of affording "each litigant at least one appellate review of the facts" is reflected in CPLR §5712, prescribing the content of orders determining appeals. Subsection (b), pertaining to orders of "affirmance", explicitly provides:

> "whenever the appellate division, although affirming a final or interlocutory judgment or order, reverses or modifies any findings of fact, or makes new findings of fact, its order shall comply with the requirements of subdivision (c)"

Subdivision (c) pertains to "reversal or modification" and requires that the appellate order state "whether its determination is upon the law, or upon the facts, or upon the law and the facts". Subdivisions (1) and (2) then require further specific information as to the "facts – be they affirmed, modified, reversed, or newly-found.

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[18] *See also* Petitioner-Appellant's February 20, 2002 reply affidavit in support of her reargument motion (at fn. 7)

The commentary by Professor David Siegel in McKinney's Consolidated Laws of New York Annotated illuminates the importance of such statutory provision for purposes of this Court's jurisdiction:

> "One of the rare instances in which the Court of Appeals can review issues of fact is where the appellate division has expressly or impliedly found new facts and has, based on those new findings, made a final disposition of the case. Subdivision (b) and (c) of CPLR 5712 are both designed to require the appellate division to reveal what new findings they have made, if any, to enable the Court of Appeals to determine, among other things, whether the Court of Appeals can now review the facts. Typically, it will be subdivision (c) that's relevant, because ordinarily a finding of new facts by the appellate division will result in its reversing or modifying the lower court determination. But sometimes the appellate division, although modifying a fact finding or finding a new fact, will merely affirm the determination as so modified. The latter is the situation covered by subdivision (b). Both (b) and (c) would appear to have reference to the review-of-facts powers contained in CPLR 5501(b). The latter refers to a case in which the appellate division has reversed or modified the lower court disposition, which would appear to lend relevancy only to subdivision (c) of CPLR 5712. But what CPLR 5501(b) sees as 'modifying' the judgment might be what the appellate division sees as an order 'affirming' the judgment as modified, within the intendment of CPLR 5712(b). It may be only a nice case of semantics, but factual activity by the appellate division can be important for the Court of Appeals to know about regardless of the label the appellate division has given to its disposition.
>
> Hence, whether there is an affirmance, a reversal, or a modification, underlying findings in respect of the facts, and especially any alterations made by the appellate division in the facts as found at the trial level, should be revealed by the appellate division order." McKinney's, 7B, pp. 583-4 (1995).

On its face, the appellate panel's decision & order (Exhibit "B") is violative of CPLR §5712. *At minimum*, CPLR §5712 required identification of whether the "affirmance" was "upon the law, or upon the facts, or upon the law and the facts" –

which the appellate panel does not state. Moreover, based on the decision & order's claim that Petitioner-Appellant "failed to demonstrate that she personally suffered some actual or threatened injury" – a claim *not* made by Justice Wetzel (Exhibit "E") – the appellate panel was required, pursuant to CPLR §5712(c)(2), to set forth its supporting "findings of fact". This, unless the appellate panel was conceding that Justice Wetzel had substituted conclusory assertions for factual findings – entitling Petitioner-Appellant to reversal of his appealed-from decision on due process grounds. As Petitioner-Appellant's uncontroverted Brief demonstrated, there is NO factual support in the record for the conclusory assertions and defamatory characterizations in Justice Wetzel's appealed-from decision.

Insofar as CPLR §5712(c)(2) uses the "particularity" of findings made by "the court of original instance" as the guide for "new findings of fact made by the appellate division", it gives license to the Appellate Division to repeat due process violations by such earlier tribunal in failing to make requisite factual findings. It seems obvious, however, that an Appellate Division making a first-time adjudication as to a litigant's supposed lack of "standing" must be guided by the rudimentary standards that, as a matter of due process, are supposed to guide first-time adjudications: factual finding, discussion of legal authority, and examination of countervailing contentions of the litigants pertaining thereto. That the appellate panel, in addition to concealing its first-time adjudication of Petitioner-Appellant's supposed lack of "standing", jettisoned these salutary standards is because, as the record shows, there are NO facts or law to support its false claim – much as there were NO facts and

law to support the claim by the *Mantell* appellate panel as to his supposed lack of "standing".

Upon information and belief, over the 27 years of the Commission's existence, during which time it has been sued approximately two dozen times by complainants for wrongful dismissals of judicial misconduct complaints, courts never held -- until the *Mantell* appellate decision and the appellate panel's decision herein -- that complainants lack "standing" to sue the Commission. That two Appellate Division, First Department panels have now done so in such a procedurally deficient fashion manifests the true import of their appellate decisions: to eliminate the rights of aggrieved members of the public to sue the Commission under any circumstances. Otherwise, their unprecedented decisions would have articulated the prerequisites for "standing" to sue the Commission, including for declaratory relief as to the constitutionality of contradictory rule and statutory provisions under which the Commission operates, such as sought by Petitioner-Appellant's Verified Petition [A-18-20]. The decision & order thus additionally violates the right to petition the government for redress of grievances, as guaranteed by Article I, §9 of the New York State Constitution and the First Amendment to the New York State Constitution.

III Adjudicative Standards for Affirming a Lower Court's Exercise of "Inherent Power", Not Identified as Such, to Impose a Filing Injunction on a Party and *Non-Party*:

Profound due process violations are also the subject of Petitioner-Appellant's further proposed question from her leave to appeal motion:

> 6. "*As a matter of law*, was [the appellate panel] required to vacate the lower court's imposition of a filing injunction against Petitioner-Appellant and the *non-party* Center for Judicial Accountability, Inc. where the record establishes, *prima facie*, (i) that such *sua sponte* imposition by the lower court was *without* notice, *without* opportunity to be heard, and *without* findings; and (ii) NO facts to support imposition of such filing injunction?"

As highlighted by Petitioner-Appellant's reargument analysis (pp. 17-19), the appellate panel's decision & order conceals "EVERY due process violation" in the record pertaining to Justice Wetzel's filing injunction. Such *sua sponte*, ***without***-notice-and-opportunity-to-be-heard filing injunction, imposed *without* findings, not only violates due process and equal protection guarantees, hereinabove cited, but Article I, §5 of the New York State Constitution and the Eighth Amendment to the United States Constitution, barring "cruel and unusual punishment". Surely, it is "cruel and unusual punishment" when, as the record proves, *non-existent* litigation misconduct by Petitioner-Appellant has been fabricated by Justice Wetzel, reiterated by the appellate panel, and made the basis for draconian penalty against her and the *non-party* Center for Judicial Accountability, Inc.

There is *no* statutory or constitutional warrant for the draconian penalty of a filing injunction – which is an exercise of "inherent power" though not identified as such either by Justice Wetzel or the appellate panel. Petitioner-Appellant raised the

issue of constitutionality of such "inherent power" exercise in her Brief (pp. 67-68) – with her proposed question in her motion for leave to appeal further identifying the "broader legal principle" of constitutionality involved:

> "whether, and under what circumstances, a filing injunction is constitutional – and whether [the Court of Appeals'] decision in *AG Ship Maintenance v. Lezak*, 69 NY2d 1 (1986), and the subsequent promulgation of 22 NYCRR §130-1.1 preempts or forecloses such 'inherent power' remedy (*Cf.* [] Appellant's Brief, pp. 67-68)."

It would appear that this Court has never addressed the constitutionality of filing injunctions and the due process requisites that must accompany them – as decisions by the lower state courts do not reflect guidance from this Court on the subject.

IV Mandatory Adjudicative & Disciplinary Responsibilities Pursuant to §§100.3B & D of the Chief Administrator's Rules Governing Judicial Conduct:

The remaining question proposed by Petitioner-Appellant's motion for leave to appeal (at p. 14) – which she will raise before this Court – concerns the appellate panel's violation of her due process and equal protection rights by its wilful refusal to discharge its mandatory adjudicative and disciplinary responsibilities, pursuant to §§100.3B and D of the Chief Administrator's Rules Governing Judicial Conduct. Reflecting this is the appellate panel's refusal to address the *undisputed* documentary proof as to the fraudulence of the *Mantell* appellate decision, which Petitioner-Appellant presented. This includes the decision's perversion of the plain language of

Judiciary Law §44.1, already interpreted by this Court – and embodied by Petitioner-Appellant's proposed question:

> "*As a matter of law* could [the appellate panel properly] rely on its own appellate decision in *Mantell v. Commission*, 227 A.D.2d 96 (2000), for the proposition that the Commission has 'discretion' 'whether to investigate a complaint', when the record before it showed, *inter alia*, that such decision conflicts with the Court of Appeals' decision in *Matter of Nicholson*, 50 N.Y.2d 597 (1980), as to the Commission's mandatory investigative duty under Judiciary Law §44.1?"

The unfounded interpretation of the *Mantell* appellate decision, adopted by the appellate panel herein, raises constitutional issues since, as the record shows[19], Article VI, §22 of the New York State Constitution must be interpreted from the pertinent language of Judiciary Law §44.1 as to the Commission's mandatory investigative duty. This, because such statutory language PRECEDED the constitutional creation of the Commission and was retained despite extensive statutory revisions following each of the two constitutional amendments pertaining to the Commission – the second being the current Article VI, §22.

22 NYCRR §500.2(d)

Petitioner-Appellant's Notice of Verified Petition [A-18-21] challenges the constitutionality of various statutory provisions pertaining to the Commission and

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[19] *See* Point II of Doris L. Sassower's June 8, 1995 Memorandum of Law in *Doris L. Sassower v. Commission*, referred to at the outset of Petitioner-Appellant's 3-page analysis of Justice Cahn's fraudulent decision [A-52-54], setting forth legislative history of Judiciary Law §44.1. A copy of this Memorandum of Law is part of the record herein, having been supplied by Petitioner-Appellant in support of her July 28, 1999 omnibus motion in Supreme Court/New York County [A-346]. As a convenience to the appellate panel, a copy was also annexed as Exhibit "B" to Petitioner-Appellant's February 20, 2002 motion for leave to appeal to this Court [*see* fn. 9 thereto].

seeks conversion of this proceeding to a declaratory judgment action to the extent required by law. These statutory provisions are Judiciary Law §45, challenged by Petitioner-Appellant's Third Claim for Relief [A-40-42], and Judiciary Law §§41.6 and 43.1, challenged by her Fourth Claim for Relief [A-42-44].

The New York State Attorney General was given notice of this Article 78 proceeding from its inception on April 22, 1999 and was served with Notice of Right to Seek Intervention [A-16-17], to which he never responded. On the appellate level, the New York State Solicitor General has been handling the appeal since shortly after Petitioner-Appellant served and filed her Brief on December 22, 2000. Such Brief demonstrated that Petitioner-Appellant was entitled to the granting of her Verified Petition, including *all* six of her Claims for Relief. Nonetheless, pursuant to 22 NYCRR §500.2(d), notification of Petitioner-Appellant's constitutional challenges to Judiciary Law §§45, 41.6, and 43.1 and a copy of this Jurisdictional Statement has been served upon the Solicitor General, Department of Law, The Capitol, Albany, New York 12224. A copy of this notification is annexed hereto as Exhibit "F".

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Dated: May 1, 2002, "Law Day"
White Plains, New York

TABLE OF EXHIBITS