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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**AFFIDAVIT IN RESPONSE TO *SUA SPONTE* JURISDICTONAL INQUIRY**

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

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 heretofor had herein.

2. This affidavit responds to the May 17, 2002 letter of this Court's Clerk, Stuart M. Cohen, advising of the Court's *sua sponte* inquiry into its subject matter jurisdiction "with respect to whether a substantial constitutional question is directly involved to support the appeal taken as of right (CPLR 5601[b])". Specifically, it replies to the May 28, 2002 response to that letter of Assistant

Solicitor General Carol Fischer, on behalf of Respondent-Respondent, New York State Commission on Judicial Conduct.

3. This submission is timely, pursuant to permission from this Court's Assistant Deputy Clerk Laurene Tacy, with whom I spoke by phone on May 28, 2002, following that day's receipt of Ms. Fischer's May 28, 2002 letter (by fax) and of Mr. Cohen's May 17, 2002 letter (by mail)[1].

4. Ms. Fischer's May 28, 2002 letter echos, albeit with some significant modifications, her May 17, 2002 memorandum of law in opposition to my May 1, 2002 motion for disqualification of, and disclosure by, this Court's judges [Motion No. 02/581]. Such opposing memorandum, "*from beginning to end*, [is] based on knowing and deliberate falsification, distortion, and concealment of the material facts and law" – and I so notified Ms. Fischer's ultimate superior at the Attorney General's office, Attorney General Eliot Spitzer, by a May 21, 2002 letter[2] – with separate copies for Solicitor General Caitlin Halligan, Deputy Solicitor General Michael Belohlavek, the Commission, as well as for Ms. Fischer herself.

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[1] Ms. Tacy stated I could have ten days from that date in which to respond.

[2] Annexed as Exhibit "A" to my June 7, 2002 affidavit in reply to Ms. Fischer's opposing memorandum.

5. Mr. Belohlavek responded by letter dated May 23, 2002[3] that Ms. Fischer's May 17, 2002 opposing memorandum was "an appropriate response" and "we have no obligation to, or intention of, withdrawing that memorandum."

6. Five days later, I received Ms. Fischer's May 28, 2002 letter, responding to the Court's *sua sponte* jurisdictional inquiry. In so doing, it replicated, even more aggressively, the deceit of her May 17, 2002 opposing memorandum.

7. The repetition of Ms. Fischer's May 17, 2002 opposing memorandum in her May 28, 2002 letter – and its material modifications – are clear from comparing her opposing memorandum's "Statement of the Case" (at pp. 2-5) with her letter's third paragraph (at pp. 1-2) relating to the allegations and relief sought by my verified petition, her fourth paragraph (at p. 2) relating to Justice Wetzel's January 31, 2000 decision, and her fifth paragraph (at p. 2) relating to the Appellate Division's December 18, 2001 decision. Additionally, from comparing her letter's penultimate paragraph (at p. 3) -- the only paragraph citing my Jurisdictional Statement and *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1928) -- with the virtually identical paragraph on page 7 of her memorandum.

8. In the interest of judicial economy, I incorporate by reference my June 7, 2002 affidavit replying to Ms. Fischer's May 17, 2002 opposing memorandum.

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[3] Annexed as Exhibit "B" to my June 7, 2002 affidavit in reply to Ms. Fischer's opposing memorandum.

Annexed thereto as Exhibit "C" is my 31-page Critique of Ms. Fischer's opposing memorandum. Pages 5-16 of the Critique demonstrate the knowingly false and deceitful nature of Ms. Fischer's aforesaid "Statement of the Case" -- applicable to the third, fourth, and fifth paragraphs of her May 28, 2002 letter. This includes Ms. Fischer's deceitful references to "comprehensive investigation" and "full-scale investigation" in her letter's third paragraph, in face of her knowledge that the uncontroverted record shows such investigations do NOT exist, were *never* alleged by my verified petition, and that the Commission's dismissal of my *facially-meritorious* October 6, 1998 judicial misconduct complaint was without *any* investigation[4].

9. As to Ms. Fischer's material modifications to the text *transposed* from her May 17, 2002 opposing memorandum, these are for purposes of advancing her knowingly false arguments.

10. Thus, to foster the materially false claim in her letter's second paragraph (at p. 1):

> "Neither the December 18, 2001 Decision & Order of the Appellate Division, First Department that petitioner seeks to appeal, nor the Supreme Court decision it affirmed, ever reached an issue of state or federal constitutional construction. Instead, both courts held that petitioner had no right to seek a writ of mandamus",

[4] *See, inter alia*, my second "highlight" to my May 3, 2001 Critique (pp. 5-8), annexed as Exhibit "U" to my August 17, 2001 motion.

her fourth and fifth paragraphs relating to these two decisions excise the following from her "Statement of the Case":

> (a) the identification (at p. 3) that Justice Wetzel's decision denied my "motion for [his] recusal and for sanctions against the Attorney General and the Commission due to their alleged 'litigation misconduct'";
>
> (b) the identification (at p. 3) that Justice Wetzel's decision imposed a filing injunction against me and the Center for Judicial Accountability, Inc. (CJA);
>
> (c) the two-fold identification (at p. 4) that I had made a motion to disqualify the Appellate Division, to sanction the Attorney General and Commission and direct them for disciplinary and criminal investigation and that the Appellate Division's decision had denied it; and
>
> (d) the identification (at p. 5) that the Appellate Division's decision affirmed Justice Wetzel's filing injunction against me and CJA.

11. Moreover, like her "Statement of the Case" (at p. 3), Ms. Fischer's fourth paragraph knowingly falsifies the "further" ground upon which Justice Wetzel dismissed my verified petition, *to wit*, my supposed lack of standing – ***when it was not*** -- thereby concealing in her fifth paragraph that that the Appellate Division's decision relating to standing was NOT an "affirmance" of such prior determination by Justice Wetzel[5].

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[5] Ms. Fischer's fourth paragraph materially alters this "further" ground from the way it appears in her "Statement of the Case" (at p. 3) by inserting the word "comprehensive" so that her letter's pertinent text reads, "because the decision to undertake a comprehensive investigation was a discretionary, rather than an administrative act". This, despite the fact that Justice Lehner's decision in *Mantell v. Commission* [A-299-307] – on which Justice Wetzel relied for this "further" ground [A-12-13] -- did NOT say anything about "comprehensive" investigations. This notion of "comprehensive" investigation is exported by Ms. Fischer from Justice Cahn's decision

12. The significance of these material excisions and falsifications to the issues of constitutional construction embodied by the Appellate Division's decision is evident from my Jurisdictional Statement (pp. 5-20). Detailed in six of seven "Questions Presented" are the constitutional ramifications of the decision's

(a) denial, *without* reasons, *without* findings, *without* legal authority, and by falsifying the relief sought, of my August 17, 2001 motion, whose first branch was for its disqualification for interest and bias and for disclosure, and whose second branch sought to strike the Attorney General's Respondent's Brief as a "fraud on the court", for sanctions, including disciplinary and criminal referral, and to disqualify the Attorney General for violation of Executive Law §63.1 and conflicts of interest [Jurisdictional Statement, at pp. 6, 8-10, 11-12];

(b) affirmance of a *statutorily-unauthorized* filing injunction against me and the NON-party CJA – imposed by Justice Wetzel, *sua sponte*, *without* notice or opportunity to be heard, *without* findings, and without factual basis – constituting an exercise of inherent power, *not* identified as such [Jurisdictional Statement, at pp. 18-19].

(c) first-time invocation of my supposed lack of standing in order to sustain Justice Wetzel's dismissal of my lawsuit, *not* dismissed by him on that ground -- as to which the Appellate Division made *no* factual findings, discussed *no* substantiating legal authority nor directly cited any, and did *not* identify, let alone address, *any* of my legal arguments as to standing [Jurisdictional Statement, at pp. 13-17].

13. Also untrue is the claim with which Ms. Fischer begins her sixth paragraph (at p 2):

> "Thus, the decision petitioner wishes to challenge did not reach any issue of statutory construction. Instead, petitioner's case was resolved by the application of a basic principle of administrative law,

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in *Doris L. Sassower v. Commission* [A-189-194] – a decision which attempted to reconcile the Commission's mandatory investigative duty under Judiciary Law §44.1 by a *sua sponte* pretense that "initial review and inquiry" constituted "investigation".

that mandamus will not lie to compel performance of a discretionary act."

As set forth in my Jurisdictional Statement (at pp. 7-8, 19-20), including by the seventh of my "Question's Presented", the Appellate Division decision, relying on its own appellate decision in *Mantell v. Commission*, interpreted Judiciary Law §44.1 contrary to the *non*-discretionary interpretation of, *inter alia*, this Court's decision in *Matter of Nicholson*, 50 N.Y.2d 597 (1980) – *to wit*, "...the Commission MUST investigate following receipt of a complaint, unless the complaint is determined to be facially inadequate" -- as to which mandamus would lie to compel performance.

14. As to Ms. Fischer's continuation of this sixth paragraph of her letter, mechanically quoting from *Board of Education of the Monroe-Woodbury School District v. Weider*, 72 N.Y.2d 174, 182 (1988) and her seventh paragraph, mechanically quoting from *Westchester-Rockland County Newspapers, Inc. v. Leggett, Inc.*, 48 N.Y.2d 430, 437 fn. 2 (1979), these cases have NO RELEVANCE to this Court's jurisdiction over my appeal of right[6], which, as Ms.

[6] The only relevance *Board of Education v. Weider* does have is to my request in my May 1, 2002 motion (fn. 2) – unopposed by Ms. Fischer -- that, in the interest of judicial economy and justice, the Court *sua sponte* grant leave to appeal for all the reasons set forth in my February 20, 2002 motion to the Appellate Division, First Department for leave to appeal – if it dismisses my appeal of right. In *Board of Education v. Wieder*, as likewise in *In re Shannon B*, 70 N.Y.2d 458, 462 (1987) – two cases cited in New York Appellate Practice, §11.02[3], pp. 20, 23 (2001) -- the Court granted motions for leave to appeal made at oral argument, presumably because it would otherwise have dismissed the appeal of right. According to Ms. Tacy's computerized records, the application for leave to appeal in *Board of Education v. Wieder* was orally made at oral argument. This suggests a flexibility and informality that would make a *sua sponte* grant of leave to appeal appropriate to the undisputed and indisputable record-documented facts detailed by my February 20, 2002 motion.

Fischer concedes in her following penultimate paragraph, is based on "the sole case" of *Valz v. Sheepshead Bay*.

15. As hereinabove noted, Ms. Fischer's penultimate paragraph (at p. 3) replicates a virtually identical paragraph at page 7 of her May 17, 2002 opposing memorandum. Only here does she acknowledge that my appeal of right is predicated on my contention that:

> "the 'threshold and decisive' issue on appeal is [my] alleged deprivation of [my] right to a 'fair tribunal' at the hands of a 'biased' First Department (Petitioner's Jurisdictional Statement, pp. 5-6)."

16. Ms. Fischer does *not* deny or dispute that I have been deprived of my right to a fair tribunal – or that this is the "threshold and decisive" issue. Rather, she claims in the one sentence not in her parallel paragraph from her May 17, 2002 opposing memorandum (at p. 7) that *Valz* "does not support [my] argument that any petitioner asserting a nebulous 'due process' claim may appeal of right to this Court."

17. I have made *no* such argument. The argument in my Jurisdictional Statement relates only to *my* right as petitioner, as to which there is *nothing* the least bit "nebulous" about the deprivations of due process, summarized therein, including by my "Questions Presented", and further particularized in my referred-to 19-page analysis of the Appellate Division decision[7]. Indeed, Ms. Fischer has not identified anything "nebulous" about either document.

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[7] My 19-page analysis is Exhibit "B-1" to my January 17, 2002 reargument motion.

18. Insofar as Ms. Fischer's practical concern that if

> "[my] contention were correct, every litigant claiming to have been deprived of a fair hearing and adequate review would be entitled to an appeal to this Court as of right",

Article VI, §2(b) of the New York State Constitution provides a means by which this Court's adjudicative capacity may be increased by more than 57%. By certification to the Governor of the need for assistance in hearing and disposing of cases, the Governor is empowered to designate up to four Supreme Court justices to serve as associate judges of the Court.

19. Moreover, such treatise authority as New York Appellate Practice, Thomas R. Newman (2001), is most reassuring as to the Court's ability to protect itself against unworthy appeals:

> "The Court of Appeals has been vigilant against counsels' efforts to invoke its mandatory civil jurisdiction by casting procedural error as a due process violation...." (§11.02[3], p. 25).

20. As illustrative, New York Appellate Practice goes on to quote from *Fryberger v. N.W. Harris Co.*, 273 N.Y. 115 (1937), wherein the Court dismissed an appeal of right alleging due process violation because the appellant

> "'had had his day in court; had had a trial lasting about nine days; and all issues which the court decided relevant under the applicable rules of law had been decided by the court in *a decision which contained over a hundred findings of fact.*'" (§11.02[3], p. 26, emphasis added).

Thus, the Court rejected, on the merits, the appellant's claimed due process violation – leaving undisturbed his contention that the violation of due process would entitle him to an appeal of right, as to which, in support, he had cited *Valz*.

21. By contrast to *Fryberger*, the record here shows that the dismissal of my verified petition, *without* a trial, AND the *sua sponte* imposition of an inherent power filing injunction against me and the *non*-party CJA were accomplished by Justice Wetzel's jettisoning of ALL "applicable rules of law", "affirmed" by the Appellate Division decision. The decisions of both tribunals are devoid of requisite factual findings – beginning with findings as to their disqualification for interest under Judiciary Law §14.

22. Conspicuously, in proclaiming that CPLR §5601 "does not authorize" my appeal of right on due process grounds and "has never been [so] interpreted by this Court"– omitting, as throughout her letter, that I have also invoked the comparable provision of the New York State Constitution, *to wit*, Article VI, §3(b)(1)[8] – Ms. Fischer does not address *any* of the treatises relevant to CPLR §5601 and Article VI, §3(b)(1), whether those cited at page 5 of my Jursidictional Statement relating to *Valz*[9] or others. Thus, New York Appellate Practice, though not referencing *Valz*, offers encouraging advise as to appeals of right on

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[8] "The civil subject matter jurisdiction of the New York Court of Appeals is established not by the CPLR, but by Article 6, §3 of the state Constitution, the 'Judiciary Article.'", ¶5601.01 New York Civil Practice, Weinstein, Korn, & Miller, p. 7 (2001).

constitutional questions of due process, for instance quoting from this Court's decision in *Sharrock v. Dell Buick-Cadillac, Inc.*, 45 N.Y.2d 152, 159-60 (1978):

> "'On innumerable occasions, this court has given our State Constitution an independent construction, affording the rights and liberties of the citizens of this State even more protection than may be secured under the United States Constitution (citations omitted). This independent construction finds its genesis specifically in the unique language of the due process clause of the New York Constitution as well as the long history of due process protections afforded the citizens of this State...'" (§11.02[3], p. 27).

23. As to Ms. Fischer's final assertion in her penultimate paragraph that *Valz*

> "falls squarely within the terms of CPLR 5601(b)(1), since in order to resolve the dispositive 'due process' issue in that case the Court needed to assess the constitutionality of the New York statute providing for service by publication",

this is not only seemingly at odds with what she has said two sentences earlier, but it is misleading as to *Valz*. In actuality, the Court in *Valz* did not assess the constitutionality of the statute providing for service by publication – taking it as a given. Instead, it grappled with whether the statute's interpretation by the lower courts was consistent with due process.

24. Cohen & Karger's Powers of the New York Court of Appeals has an extensive discussion of *Valz* – one referred to in Article 56 of Weinstein, Korn &

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[9] 11 Carmody-Wait 2d, §71:37, p. 62 (1996) and 4 NY Jurisprudence 2d §76, p. 134 (1997). *Also*, annotations to §5601 in McKinney's Consolidated Laws of New York Annotated, p. 455 (1995)

Miller's New York Civil Practice[10] (to which Judge Smith has been a "Practice Comment Author" and "Revision Author").

25. As set forth in Cohen & Karger's 1952 edition – and repeated 40 years later in the 1992 edition (pp. 271-274):

> "The precise scope of the doctrine of the *Valz* case is difficult of appraisal, and the case is not readily reconcilable with other decisions of the Court. The basis of the *Valz* ruling was that the decisive question was whether the judgment under attack was the result of due process, and that the issue of statutory construction was subsidiary to, and not independent of the constitutional issue, since the effect of an erroneous construction would itself be a denial of a constitutional right. In that view the constitutional question and the issue of construction would be inextricably interrelated, so that decision of the issue of construction would also resolve the constitutional question." (at p. 273).

26. Cohen & Karger conclude that *Valz* is "an exceptional ruling", but one that "apparently still has vitality in entirely analogous situations" (at p. 274).

27. Only this Court knows the "entirely analogous situations" to which it has been recognizing its jurisdiction over appeals of right based on *Valz*, as it has failed to build precedential caselaw on the subject. As a general rule, the Court does not specify the successful arguments or precedential authority on which it accepts review – which are not set forth in the decisions ultimately rendered on the merits. Thus, in *Matter of General Motors Corporation v. Rosa*, 82 N.Y.2d 183, 188 (1993) (Exhibit "A-1"), Chief Judge Kaye's decision identifies "The appeal is

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[10] *See* fn. 137 thereto, annotating text reading "Particularly troublesome are cases in which the Appellate Division rested the decision on a non-constitutional ground but the appellant claims

before this Court as a matter of right on constitutional grounds (*see*, CPLR 5601[b][1])", but not the constitutional grounds on which the appeal was recognized or precedential authorities therefor.

28. Plainly, the papers filed in support of the Notice of Appeal in *Matter of General Motors* would illuminate those grounds and cited precedents. However, the Court has destroyed these original papers, pursuant to the records destruction policy identified at ¶56 of my May 1, 2002 disqualification/disclosure motion.

29. In view of treatise citation to *Valz* for the proposition that "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", the appellant in *Matter of General Motors* – which was General Motors --could rightfully have invoked *Valz*. In any event, the Court's jurisdiction over my appeal of right is analogous to *Matter of General Motors*, if not *a fortiori*.

30. Notwithstanding the Court's document destruction policy, I obtained from counsel for *General Motors* his notice of appeal and Jurisdictional Statement, as likewise his simultaneous motion for leave to appeal. Copies are annexed so that the Court can undertake its own comparison (Exhibits "B-1", "B-2" and "C").

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that the panel's reliance on the ground was erroneous." ¶5601.01 New York Civil Practice, p. 49 (2001).

31. Even without benefit of General Motors' further papers in response to the Court's *sua sponte* inquiry[11] – which may or may not have cited *Valz* -- these documents give ample indication that the Court's recognition of the appeal of right therein by its summary order, 599 N.Y.S.2d 800 (1993) (Exhibit "A-2"), "Motion for leave to appeal denied upon the ground that an appeal lies as of right", rested on General Motors' contentions that it had been denied "a fair and impartial hearing" by the administrative law judge, who assumed an advocacy role, and, additionally, that it had been denied "due process of law" because the Commissioner of the New York State Division of Human Rights, who had been the Division's General Counsel when the case was first prosecuted, thereafter decided it, and, further, that the record was "devoid" of critical evidence. This is reinforced by examination of the appellant's Brief, which I also obtained.

32. Insofar as General Motors' Jurisdictional Statement asserted:

> "The Court of Appeals has jurisdiction of this Motion (sic), pursuant to CPLR 5601(b)(1), because the Order and Memorandum of the Appellate Division, Fourth Department, construe and apply the provisions of Article I, Section 6 of the New York State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution" (Exhibit "B-2", p. 3),

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[11] According to Ms. Tacy, the Court's computerized records reflect that General Motors responded to the Court's *sua sponte* jurisdictional inquiry with two letters. No response was received from respondents. Respondents did, however, oppose General Motor's motion for leave to appeal, to which the Court accepted General Motors' reply. As yet, I have been unable to obtain these additional documents.

the Appellate Division, Fourth Department's appealed-from decision, 187 A.D.2d 960 (1992) (Exhibit "A-3") both as to the Administrative Law Judge's fairness and impartiality, and the applicability of the "rule of necessity" to the Commissioner, does not more directly construe and apply Article I, Section 6 of the New York State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution than the Appellate Division, First Department's appealed-from decision in my case, both as to Justice Wetzel's fairness and impartiality and its own fairness and impartiality.

33. Judge Kaye's decision in *Matter of General Motors* (Exhibit "A-1") reinforces the transcending constitutional issue upon which my appeal of right is premised:

> "The participation of an independent, unbiased adjudicator in the resolution of disputes, is an essential element of due process of law, guaranteed by the Federal and State Constitutions (*see*, US Const, 14th Amend, §1; NY Const, art I, §6; *see also, Matter of 1616 Second Ave. Rest. v. New York State Liq. Auth.*, 75 NY2d 158, 161; Redish and Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 Yale LJ 455, 475-505 [1986])...." (at p. 188).

34. Indeed, the cited pages from "*Adjudicatory Independence and the Values of Procedural Due Process*" stress that "None of the core values of due process...can be fulfilled without the participation of an independent adjudicator." (at p. 476); it is "a *sine qua non* of procedural due process" (at p. 477), "there can never be due process without a sufficiently independent adjudicator" (at p. 479), and, further,

> "Review of historical evidence demonstrates that the right to an independent adjudicator was considered a crucial element of procedural justice by the common law, by those that established the law of the colonies, and, perhaps most important, by the Framers of the United States Constitution. This historically fundamental role adds significant weight to the conclusion that the right to an independent adjudicator constitutes the floor of due process." (at p. 479).

35. Such authoritative assessment underscores the deceit of the final paragraph of Ms. Fischer's May 28, 2002 letter, proclaiming,

> "Neither the facts of this case nor the decision appealed from raise any issue concerning the constitution of the State of New York or of the United States." (at p. 3),

when the predecessor paragraphs of her May 28, 2002 letter ignore all the particularized "facts of this case", presented by my Jurisdictional Statement, as, likewise, cited legal authority on the constitutional issues, including U.S. Supreme Court caselaw.

36. As my Jurisdictional Statement reflects (at p. 7), I have transmitted to the Court a full copy of the substantiating record. The Court can thereby confirm for itself the truth and accuracy of everything my Jurisdictional Statement describes as to the Appellate Division's annihilation of due process and that the threshold issue, dispositive of all others, is the legal sufficiency of my August 17, 2001 motion for its disqualification and for disclosure – denied by the appellate panel, *without* findings, *without* reasons, *without* legal authority and by falsifying the motion's relief in its December 18, 2001 decision -- which it had *no* jurisdiction to render by virtue of its disqualification for interest under Judiciary

Law §14, *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), *Wilcox v. Royal Arcanum*, 210 N.Y. 370, 377 (1914).

37. Before the Court is put to the burden of examining the record, however, I believe it appropriate to attest, under oath, to the truth and accuracy of the recitation in my Jurisdictional Statement. Likewise, so there is no question but that my 19-page analysis of the Appellate Division decision is a sworn document[12], I hereby especially attest to the truth and accuracy of that analysis. Further, I attest to the truth and accuracy of every document bearing my signature, which is part of the record herein. It is for this reason that I have made this submission by affidavit, not by letter.

38. Because the record herein documentarily establishes that the Commission, aided and abetted by the Attorney General, has been the beneficiary of FIVE fraudulent judicial decisions without which it would NOT have survived, it has been my view that the duty of Attorney General Spitzer and the Commission was to present the Court with sworn statements, particularly as to the truth and accuracy of my 19-page analysis. This is reflected by my May 3, 2002 letter to Mr. Spitzer and my May 8, 2002 letter to the Commission – Exhibits "D-1" and "E" to my accompanying June 7, 2002 reply affidavit. Their answer to these two

[12] It is incorporated by reference in my January 17, 2002 affidavit in support of my reargument motion, to which it is annexed as Exhibit "B-1".

letters, as to my further May 8, 2002 letter to Ms. Fischer[13] -- has been Ms. Fischer's knowingly false and deceitful May 17, 2002 opposing memorandum and May 28, 2002 letter.

39. Although Ms. Fischer exclusively handled the appeal in the Appellate Division and has direct, first-hand knowledge as a result, her unsworn letter 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", she 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". Similarly, her May 17, 2002 opposing memorandum.

[13] Exhibit "F" to my June 7, 2002 affidavit in reply to Ms. Fischer's opposing memorandum

40. My upcoming motion for sanctions and other relief will request that both Ms. Fischer's May 28, 2002 letter and May 17, 2002 opposing memorandum be adjudicated for what they are, "frauds on the court", and stricken by reason thereof.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
7th day of June 2002

Beth Avery

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 3/11/06

## TABLE OF EXHIBITS