TABLE OF EXHIBITS

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

(212) 416-8014

CAITLIN J. HALLIGAN
Solicitor General

May 17, 2002

By Overnight Delivery

Office of the Clerk of the Court
Court of Appeals
of the State of New York
Court of Appeals Hall
Albany, New York 12207-1095

Re: Sassower v. Comm'n on Judicial Conduct, App. Div. No. 5638/01

To the Clerk of the Court:

We are counsel to the respondent New York State Commission on Judicial Conduct in the above action. Please accept for filing one original and nine copies of the Memorandum of Law of Respondent the New York State Commission on Judicial Conduct in Opposition to Petitioner's Motion for Disqualification. Also enclosed is a copy of the Brief for Respondent, filed in the Appellate Division, First Department, to which the Court is referred for a more complete statement of the facts of this proceeding.

Sincerely yours,

CAROL FISCHER
Assistant Solicitor General

cc: Ms. Elena Ruth Sassower
Petitioner-Appellant pro se
P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

(via overnight delivery)

Ex "A"

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

----------x

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

Petitioner,

Index # 99-108551

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

----------x

**PETITIONER'S MEMORANDUM OF LAW
IN OPPOSITION TO RESPONDENT'S DISMISSAL MOTION
& IN SUPPORT OF PETITIONER'S MOTION
FOR DISQUALIFICATION OF THE ATTORNEY GENERAL,
SANCTIONS, A DEFAULT JUDGMENT, AND OTHER RELIEF**

ELENA RUTH SASSOWER
Petitioner *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

Ex "B"

APPLICABLE ETHICAL AND LEGAL PROVISIONS

The New York State Attorney General is the state's highest law enforcement officer. The issue, highlighted by Petitioner at the June 14th court conference (at p. 7, lns. 15-19) and presented by this Memorandum, is whether the Attorney General will be held to fundamental ethical and professional standards, applicable to every other attorney in this state, or whether, in defending the state agency charged with enforcing judicial standards, he and it will be permitted to obliterate basic litigation standards and obstruct justice by fraudulent and deceitful advocacy. In fact, the Attorney General, as a government lawyer, is bound by a higher standard:

> "A government lawyer who has discretionary power relative to litigation should refrain from...continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to the lawyer should so advise his or her superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and develop a full and fair record, and should not use his or her position or the economic power of the government to harass parties or to bring about unjust settlement or results..." EC 7-14 of the New York State Bar Association's Code of Professional Responsibility

This Court's duty to ensure the integrity of the judicial process is set forth in Part 100 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct, as well as in the Code of Judicial Conduct, adopted by the New York State Bar Association -- a primary source of judicial ethics that Respondent is supposed to enforce[10]. Part 100.3(C) relates to a

---

[10] *See* 22 NCYRR §7000.9 "Standards of Conduct",

(b) "In evaluating the conduct of judges, the commission shall be guided by :... (2) the requirement that judges abide by the Code of Judicial Conduct, the rules of the Chief

judge's "Disciplinary Responsibilities". In mandatory language it states:

> "(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility *shall* take appropriate action."[11] (emphasis added).

The Disciplinary Rules of the Code of Professional Responsibility, promulgated as joint rules of the Appellate Divisions of the Supreme Court, are Part 1200 of Title 22 of New York Codes, Rules and Regulations. Particularly relevant is the Code's definitions section, which specifies "fraud" as involving:

> "scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another"(§1200.1(I)).

Under §1200.3 [DR- 1-102], "Misconduct", a lawyer or law firm is prohibited from, *inter alia*, "Violat[ing] a disciplinary rule", §1200.3(a)(1); "Circumvent[ing] a disciplinary rule through actions of another", §1200.3(a)(2); "Engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation", §1200.3(a)(4); and "Engag[ing] in conduct that is prejudicial

---

Administrator, and the rules of the respective Appellate Divisions governing judicial conduct."

See also, 1999 Annual Report of the Commission on Judicial Conduct (p. 1), reprinting the Chief Administrator's Rules at pp. 61-76. *See also*, Transcript of the 9/22/87 Hearing of the NYS Assembly Judiciary Committee on the Commission on Judicial Conduct, Testimony of Gerald Stern, p. 15.

[11] This reporting duty has been reiterated by the Advisory Committee on Judicial Ethics, *See, inter alia*, Op. 89-54, 89-74, 89-75; 91-114. Its importance is further underscored in the ABA/BNA Lawyers' Manual on Professional Conduct: "It cannot be emphasized strongly enough that lawyers and judges must report unethical conduct to the appropriate disciplinary agency. Failure to render such reports is a disservice to the public and the legal profession. Judges in particular should be reminded of their obligation to report unethical conduct to the disciplinary agencies." (*See*, "Standards for Imposing Lawyer Discipline, Preface, 01-802) *See also, People v. Gelbman*, 568 N.Y.S.2d 867, 868 (Just. Ct. 1991) "A Court cannot countenance actions, on the part of an attorney, which are unethical and in violation of the attorney's Canon on Ethics... . ... A Court cannot stand idly by and allow a violation of law or ethics to take place before it.".

to the administration of justice", §12003(a)(5).

Under §1200.4 [DR-1-103], "Disclosure of Information to Authorities", lawyers possessing knowledge of a violation of §1200.3:

> "that raises a substantial question as to another lawyer's honesty, trustworthiness, or fitness in other respects as a lawyer *shall* report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation." (emphasis added)

These provisions are adapted from the American Bar Association's Model Rules of Professional Conduct. However, of the 50 states and the District of Columbia, New York alone has extended the Model Rules to law firms, *"New Rule Authorizes Discipline of Firms"*, New York Law Journal, 6/4/96, p.1, top, cols. 5-6; *"Taking a Firm Hand in Discipline"*, ABA Journal, Vol. 84, 9/98. Under §1200.5 [DR 1-104], "Responsibilities of a Partner or Supervisory Lawyer", a law firm is required to "make reasonable efforts to ensure that all lawyers in the firm conform to the disciplinary rules" and to "adequately supervise", §1200.5(c). Additionally, "a lawyer with management responsibility...or direct supervisory authority" is required to make "reasonable efforts" to ensure adherence to the disciplinary rules, §1200.5(b), and is responsible for the violations of another lawyer if "the lawyer orders, or directs the specific conduct, or, with knowledge of the specific conduct, ratifies it"; or

> "knows of such conduct, or in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could be or could have been taken at a time when its consequences could be or could have been avoided or mitigated", §1200.5(d).

Under §1200.33 [DR 7-102], "Representing a Client Within the Bounds of Law",

a lawyer cannot, *inter alia*, "...assert a position, conduct a defense...or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another", §1200.33(a)(1); "knowingly make a false statement of law or fact", §1200.33(a)(5); or "counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent, §1200.33(a)(7). Moreover, a lawyer who receives "information clearly establishing" that a fraud has been perpetrated upon the tribunal, is required to take corrective steps. If the fraud has been perpetrated by his client, the lawyer "shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal...", §1200.33(b)(1).

§1200.20, [DR 5-101], "Refusing Employment When the Interests of the Lawyer May Impair Independent Professional Judgment", requires that "neither a lawyer nor the lawyer's firm shall accept employment" in litigation "if the lawyer knows or it is obvious" that he or another lawyer in the firm may be called as a witness other than on behalf of the client, and it is apparent that the testimony would or might be prejudicial to the client", with §1200.21 [DR 5-102], "Withdrawal as Counsel When the Lawyer Becomes a Witness", requiring his withdrawal under such circumstances, where he has already undertaken the employment.

While the Disciplinary Rules of the Code of Professional Responsibility are the basis for imposition of discipline on lawyers in this State, criminal prosecution is also available. Among the relevant provisions: Judiciary Law §487, "Misconduct by attorneys", which makes it a misdemeanor for an attorney to be guilty of "any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party" -- with punishment in accordance with

the penal law[12]. Also, Penal Law §210.10 pertaining to perjury, which makes it a felony for a person to swear falsely when his false statement is:

> "(a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved."

Accomplices to perjury can be criminally prosecuted as conspirators. Under §105.05(1), "Conspiracy in the Fifth Degree",

> "A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:
>
> 1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct."

Additionally, since the Attorney General and Respondent's Commissioners and staff are public servants, whose duty it is to uphold the law and safeguard the integrity of the judiciary, the paramount "interest of the state"[13], Penal Law §195, "Official Misconduct", is available. Under §195:

> "A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:
>
> 1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or
>
> 2. He knowingly refrains from performing a duty which

---

12 Judiciary Law §487 also makes the guilty attorney liable for treble damages, recoverable in a civil action.

13 "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*, 435 US 829, 848 [Stewart, J., concurring]..." *Nicholson v. Commission on Judicial Conduct*, 50 NY2d 597, 607 (1980).

is imposed upon him by law or is clearly inherent in the nature of his office."

Official misconduct is a misdemeanor.

The Chief Administrator of the Courts has also promulgated rules, Part 130-1.1, empowering the Court to award costs and sanctions for "frivolous" conduct. Pursuant to 130-1.1(c), conduct is "frivolous" if:

> "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false."

The subject dismissal motion meets the test for frivolousness on all three counts.

Under 130-1.1, costs and sanctions may be imposed on the party, the attorney, or both -- and may be against the attorney who personally appeared, or against the government agency with which the attorney is associated and has appeared as attorney of record. Rule 130-1.1 specifically identifies two factors to be considered in determining whether conduct is frivolous and whether costs and sanctions should be imposed:

> "(1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct;
>
> (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party."

These factors also aggravate or mitigate attorney disciplinary sanctions, as they do

the imposition of criminal penalties.

Attorney General Spitzer has "over 500 lawyers and over 1,800 employees, including ...legal assistants,...investigators, and support staff"[14] -- and promotes the "credentials, integrity, and commitment to public service" of his "staff of legal professionals"[15]. As particularized in Petitioner's accompanying Affidavit (¶¶54-63), the Attorney General's office had over two and a half months *before* this Article 78 proceeding was commenced in which to verify if there was ANY legal or factual basis for the conduct that gave rise to it -- and repeated offers from Petitioner to assist it in evaluating the underlying documentation, which she had transmitted, including the file of the prior Article 78 proceeding against Respondent[16]. These offers continued after the instant Article 78 proceeding was commenced and, thereafter were combined with Petitioner's repeated notification to appropriate supervisory personnel of the litigation misconduct by the Assistant Attorneys General assigned to the case. All such supervisory personnel uniformly ignored and rebuffed Petitioner's offers and notifications (¶¶64-103).

Likewise, Respondent failed to take any corrective steps upon written notice (¶96), prior to the filing of the dismissal motion and immediately thereafter, of the Attorney General's sanctionable conduct on its behalf.

---

[14] *See* Exhibit "A-3" (at p. 1) to Petitioner's accompanying Affidavit.

[15] *See* Exhibit "A-2" (at p. 1) to Petitioner's accompanying Affidavit.

[16] The "prior Article 78 proceeding against Respondent" refers to the proceeding entitled, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (N.Y. Co. #95-109141), identified in ¶EIGHTH of the Verified Petition. A copy of the file therein, as transmitted to Mr. Spitzer on December 24, 1998, is part of File Folder I.

Under 130-1.1-a(a) every "paper, served on another party or filed or submitted to the court" is required to be signed. This constitutes certification that

> (b) By signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1."

The Attorney General's dismissal motion consists of a Notice of Motion, signed by Assistant Attorney General Kennedy, in which Respondent moves to dismiss pursuant to CPLR §§7804(f) and 3211(a)(3), (5), and (7). To this is attached a 4-1/4 page Affirmation from Mr. Kennedy, dated May 24, 1999, and a 3/4 page-Affidavit of Respondent's Clerk, Albert B. Lawrence, sworn to on May 17, 1999. A 41-page "Memorandum in Support of a Motion to Dismiss", dated May 24, 1999, is signed by Assistant Attorney General Olson, appearing "of counsel" with Mr. Kennedy, and consists of four parts, a "Preliminary Statement" (pp. 1-4), a "Statement of the Case" (pp. 4-11), a four-Point argument (pp. 11-40), and a "Conclusion" (p. 41).

New York County Clerk's Index No.108551/99
Appellate Division, September 2001 Term

NEW YORK SUPREME COURT
Appellate Division -- First Department

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.

PETITIONER-APPELLANT'S CRITIQUE OF THE RESPONDENT'S BRIEF

PRESENTED TO THOSE CHARGED WITH SUPERVISORY RESPONSIBLITIES IN THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

TO ASSIST THEM IN MEETING THEIR PROFESSIONAL AND ETHICAL OBLIGATIONS, inter alia, BY WITHDRAWING THE RESPONDENT'S BRIEF

BY: Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

Dated: May 3, 2001

Ex "C-1"

Ms. Fischer's Respondent's Brief – because it is otherwise impossible to conceive how utterly deceptive a document it is. Such critique demonstrates that Ms. Fischer's Respondent's Brief can properly be defined as "fraudulent" and as a "fraud upon the court" designed to mislead it as to the material facts and law governing this important public interest case.

So that there is no mistake as to the meaning of "fraud", it is defined by Black's Law Dictionary (7th ed., 1999) as:

> "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (especially when the conduct is willful) it may be a crime."

"Fraud on the court" is defined as:

> "A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding."

New York's Disciplinary Rules of the Code of Professional Responsibility also define fraud [22 NYCRR §1200.1(i)]. It is conduct containing:

> "an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another."

New York's Disciplinary Rules expressly proscribe "conduct involving dishonesty, fraud, deceit or misrepresentation" and "conduct that is prejudicial to the administration of justice" [DR 1-102(a)(4)(5); 22 NYCRR §1200.3(a)(4)(5)]. Judiciary §487 makes it a misdemeanor for any attorney to be guilty of "any deceit or collusion, or consents to any

---

subdivision 2 of section 90 of the Judiciary Law".

deceit or collusion, with intent to deceive the court or any party". This is over and beyond 22 NYCRR §130-1.1, defining "frivolous" conduct to include "assert[ing] factual statements that are false."

As herein demonstrated, the factual statements in Ms. Fischer's Respondent's Brief are not just false and misleading, they are knowingly and deliberately so. They are, by definition, fraudulent.

I. MS. FISCHER WILFULLY OBLITERATES FROM HER RESPONDENT'S BRIEF ANY MENTION OF PETITIONER'S ANALYSES OF THE DECISIONS OF JUSTICES CAHN AND LEHNER, THE ACCURACY OF WHICH SHE DOES NOT DENY OR DISPUTE

Ms. Fischer did not have to do more than read Justice Wetzel's decision [A-12-13] to see that his dismissal of Petitioner's Article 78 proceeding against the Commission relied, *exclusively*, on Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-189-194] and Justice Lehner's decision in *Michael Mantell v. Commission* [A-299-307][2].

Nor did she have to do more than read the Petitioner's Brief to know that the record before Justice Wetzel contained more than what his decision describes as Petitioner's "contention" that these decisions were "corrupt" and that each case was "thrown" [A-13]. From the Brief (at pp. 12-13, 24-25, 33, 35, 58-60), Ms. Fischer was fully aware that Petitioner had challenged these decisions with written analyses [A-52-54; A-321-334], substantiated by copies of the files of those cases [A-346; A-350], and that the Attorney

[2] Nevertheless, Ms. Fischer's "Statement of the Case" (at p. 13) falsely makes it appear that Justice Wetzel relied SOLEY on *Mantell v. Commission* in dismissing Petitioner's case. *See* discussion at p. 37 *infra*.

New York County Clerk's Index No. 108551/99
Appellate Division, November 2001 Term

NEW YORK SUPREME COURT
Appellate Division -- First Department

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.

PETITIONER-APPELLANT'S CRITIQUE OF RESPONDENT'S OPPOSITION TO HER AUGUST 17, 2001 MOTION

PRESENTED TO THOSE CHARGED WITH SUPERVISORY RESPONSIBLITIES IN THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

TO ASSIST THEM IN MEETING THEIR PROFESSIONAL AND ETHICAL OBLIGATIONS -- BEGINNING WITH WITHDRAWING RESPONDENT'S OPPOSITION

BY: Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

Dated: September 17, 2001

Ex 'C-2'

> of her Respondent's Brief in ANY respect – a fact Ms. Fischer's August 30th Memorandum of Law (at pp. 9-12) shamelessly tries to justify by a spurious legal argument that the Attorney General's Office can engage in whatever misrepresentation of documents and decisions it wishes, but that this is not 'fraud on the court' because these documents and decisions are 'clearly before the Court in their complete form in Petitioner-Appellant's Appendix' (at p. 11) and because I have been able to challenge the Attorney General's misrepresentations by my advocacy (at p. 12)." (emphases in the original).

As hereinabove stated, Ms. Fischer's opposition to Appellant's August 17, 2001 motion violates ALL the rule and statutory provisions cited in the Notice of Motion as warranting sanctions and other relief, including disciplinary and criminal referral against culpable parties at the Attorney General's office and at the Commission.

The language of these rule and statutory provisions is unambiguous. 22 NYCRR §130-1.1 proscribes "frivolous conduct", which it expressly defines to include conduct which "asserts material factual statements that are false" or "is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law", or "is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another". Such provision provides for costs and sanctions.

22 NYCRR §§1200.3(a)(4) and (5) proscribe "conduct involving dishonesty, fraud, deceit, or misrepresentation" and "conduct that is prejudicial to the administration of justice". 22 NYCRR §1200.33(a)(5) proscribes a

lawyer, "in the representation of a client", from "[k]nowingly mak[ing] a false statement of law or fact"[1]. These three provisions are part of New York's Disciplinary Rules of the Code of Professional Responsibility [DR 1-102(a)(4) and (5); DR 7-102(a)(5)]. Consequently, pursuant to §603.2 of the Appellate Division, First Department's rules, violations are "professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law".

Judiciary Law §487, titled "Misconduct by attorneys", makes it a misdemeanor punishable under the penal law for an attorney to be "guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party".

As hereinafter demonstrated, Ms. Fischer's opposing Memorandum of Law conceals the language of ALL these rule and statutory provisions, whose "meaning and purpose" she pretends (at p. 10) Appellant "misunderstands"; conceals (at p. 10) that Appellant has invoked 22 NYCRR §130-1.1 on her motion; and, further conceals (at p. 10) the definition of "fraud on the court", as defined by Black's Law Dictionary (7th ed. 1999), set forth (at p. 2) in

---

[1] Other provisions of §1200.33(a) are also germane -- such as the proscriptions under (a)(1) "...assert[ing] a position, conduct[ing] a defense...or tak[ing] other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another; (a)(2) "Knowingly advanc[ing] a claim or defense that is unwarranted under existing law; except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law"; (a)(3) "Conceal[ing] or knowingly fail[ing] to disclose that which the lawyer is required by law to reveal; (a)(7) "[c]ounsel[ing] or assist[ing] the client in conduct that the lawyer knows to be illegal or fraudulent; (a)(8) [k]nowingly engag[ing] in other illegal conduct or conduct contrary to a disciplinary rule."

Appellant's Critique of Respondent's Brief. That definition, equally applicable to Ms. Fischer's opposition to Appellant's motion, both her "Affirmation" and her Memorandum of Law, is:

> "a lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding."

* * *

MS. FISCHER'S OPPOSING "AFFIRMATION" IS NON-PROBATIVE, LEGALLY-INSUFFICIENT, AND FILLED WITH SANCTIONABLE DECEIT

Ms. Fischer, a seasoned litigator, may be presumed to be familiar with the basic requirement for affirmations set forth in CPLR §2106 – quite apart from the fact that it is set forth by Appellant in the record of this proceeding[2]:

> "The statement of an attorney... when subscribed and affirmed by him to be true under the penalties of perjury, may be served or filed in the action in lieu of and with the same force and effect as an affidavit."[3]

Conspicuously, Ms. Fischer does NOT affirm that her self-styled "Affirmation" is "true under the penalties of perjury". Rather, she only "states as follows under penalty of perjury". Thus omitted is the operative phrase "affirmed... to

---

[2] *See* Appellant's July 28, 1999 Memorandum of Law in support of her omnibus motion (at p. 13).

[3] "'While attorneys always have a professional duty to state the truth in papers, the affirmation under this rule gives attorneys adequate warning of prosecution for perjury for a false statement.' McKinney's Consolidated Laws of New York Annotated, 7B, p. 817 (1997), Commentary by Vincent C. Alexander."

ADMINISTRATIVE ORDER OF THE
CHIEF JUDGE OF THE STATE OF NEW YORK

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby adopt the following resolution relating to the creation of a Judicial Institute on Professionalism in the Law, to read as follows:

WHEREAS the legal profession in New York State enjoys the privilege of self-regulation; and

WHEREAS, the responsible exercise of that privilege requires continuous attention to the condition of the professionalism of lawyers practicing in New York and to the needs of the clients whom they serve and the public at large; and

WHEREAS, in order to examine these matters, the Chief Judge in 1993 established the Committee on the Profession and the Courts and charged it with the responsibility of recommending measures to address the contemporary public dissatisfaction with the legal profession; and

WHEREAS, the Committee reported that in fact the level of professionalism among lawyers practicing in New York State was high, and recommended measures to support and reinforce that professionalism and to improve public confidence therein; and

WHEREAS, among such measures was the creation of an institute to give continuous attention to matters affecting the professionalism of lawyers in New York and the public's confidence therein; and

WHEREAS, in response to this recommendation the Administrative Board of the Courts formed the Task Force on Attorney Professionalism and Conduct to, among other things, examine further the desirability of establishing such an institute and to suggest the form such an institute might take; and

WHEREAS, a Subcommittee of the Task Force has submitted its "Final Report to the Administrative Board of the Courts" which unanimously recommends that such an institute be

Ex "D"

established having the powers, duties and structure set out herein; and

WHEREAS, the Administrative Board has accepted and adopted that report,

IT IS HEREBY RESOLVED:

1. There is established in the Office of Court Administration the Institute on Professionalism in the Law ("Institute").

2. It shall be the purpose of the Institute to:

   A. Promote the awareness of and adherence to professi values and ethical behavior by lawyers in the State of New York;

   B. Encourage and support the organized bar, law schools, and other institutions of the legal prof sion in efforts to undertake effective programs, individually and in concert, for the promotion of such awareness;

   C. Promote scholarship regarding, and practical attention to, emerging issues in the practice of law that may present issues of professionalism or legal ethics;

   D. Promote public understanding of matters relating to the role of law, and to professionalism, ethics and discipline in the legal profession,

   E. Facilitate cooperation among practitioners, bar associations, law schools, courts, civic and lay organizations and others in addressing matters of professionalism, ethics and public understanding of the legal profession.

3. The Institute shall consist of a Chair and 18 members, each of whom shall be appointed by the Chief Judge in consultation with the Administrative Board of the Courts and serve at the pleasure of the Chief Judge. To the extent feasible, the membership of the Institute shall at all times include attorneys who live or practice in each of the departments of the Appellate

Division and persons who are not members of either the bar or the judiciary.

4. In order to carry out its purposes, the Institute shall:

A. Collect information relevant to matters within its jurisdiction;

B. Study issues within its jurisdiction, including in cooperation with other entities when appropriate;

C. Take steps to encourage dialogue within the profession and between the profession and lay persons concerning the matters within its jurisdiction;

D. Take steps to promote public education concerning the role of law and lawyers and public understanding of professionalism and ethics in the law;

E. Maintain relationships with bar associations, law schools, courts and other entities within and outside the State of New York to promote the purposes of the Institute;

F. Monitor and, when in its judgment appropriate, comment on the conduct of continuing legal education programs in the state insofar as they affect the professionalism and ethical behavior of lawyers in the state;

G. Monitor and comment on the methods for enforcing standards of professional conduct for lawyers in the state including, without limitation, the procedures for imposing discipline or sanctions for misconduct and for compensating clients victimized by the misbehavior of lawyers within the state:

H. Monitor and, when in its judgment appropriate, comment on the implementation and effectiveness of measures adopted by court officials for the advancement of professionalism and ethics in the practice of law in the state;

I. Hold public hearings and convene forums, seminars or other meetings in order to carry out its purposes;

J. From time to time recommend measures, including, without limitation, proposed legislation, rules of practice, and modifications of the Code of Professional Responsibility, that in its judgment would improve the professionalism and ethical behavior of lawyers within the state;

K. Publish reports and report to the Chief Judge and Administrative Board of the Courts from time to time as it deems appropriate or as the Chief Judge requests, but in any event biennially; and

L. Conduct such other programs, activities, studies or functions as, in its judgment, may be necessary or proper to the carrying out of its purposes, provided however, that the Institute shall not:

(I) issue opinions on ethical matters in response to inquiries in particular cases;

(ii) initiate disciplinary complaints against individual attorneys or otherwise participate in disciplinary proceedings or litigation concerning individual attorneys; or

(iii) undertake (except in concert with law schools or bar associations) to provide directly, whether for consideration or not, courses or materials for continuing legal education programs.

5. The Institute shall meet at least twice a year and at other times at the call of the Chair. A majority of its members shall constitute a quorum for any action. Meetings may be held at any place within the state and may also be held by means of telecommunication that permits reasonably accurate and contemporaneous participation by the members attending by such means. The Chair may appoint committees of members and assign to them such

responsibilities, consistent with the purposes, powers and duties of the Institute, as the Chair may deem appropriate. The Institute shall have the power, within the limits of its funding, to engage staff and to assign the duties of such staff.

6. The Institute shall be funded by monies made available from the appropriation for the Office of Court Administration.

CHIEF JUDGE OF THE STATE OF NEW YORK

Dated: March 3, 1999

AO/147/99