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,

NOTICE OF MOTION TO STRIKE, FOR COSTS, SANCTIONS, DISCIPLINARY & CRIMINAL REFERRALS, DISQUALIFICATION OF ATTORNEY GENERAL, etc.

-against-

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

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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PLEASE TAKE NOTICE that upon the annexed affidavit of Petitioner-Appellant, ELENA RUTH SASSOWER, sworn to June 17, 2002, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, ELENA RUTH SASSOWER will move this Court at 20 Eagle Street, Albany, New York 12207-1095 on Monday, July 1, 2002 at 10:00 a.m. or as soon thereafter as Respondent-Respondent, New York State Commission on Judicial Conduct, and its counsel, the New York State Attorney General, can be heard for an order:

1. Striking the Attorney General's May 17, 2002 memorandum of law in opposition to Petitioner-Appellant's disqualification/disclosure motion, as likewise his May 28, 2002 letter responding to the Court's *sua sponte* jurisdictional inquiry, based on findings that each such document is a "fraud on the court", violative of 22

NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), (5); and §1200.33(a)(5), with a further finding that the Attorney General and Commission are "guilty" of "deceit or collusion... with intent to deceive the court or any party" under Judiciary Law §487, and, based thereon, for an order: (a) imposing maximum monetary sanctions and costs on the Attorney General's office and Commission, pursuant to 22 NYCRR §130-1.1, including against Attorney General Eliot Spitzer, *personally*; (b) referring Attorney General Spitzer and the Commission for disciplinary and criminal investigation and prosecution, along with culpable staff members, consistent with this Court's mandatory "Disciplinary Responsibilities" under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, for, *inter alia*, filing of false instruments, obstruction of the administration of justice, and official misconduct; and (c) disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules;

2. Granting such other and further relief as may be just and proper, including referral of the record herein to the New York State Institute on Professionalism in the Law for study and recommendations for reform.

Dated: June 17, 2002
White Plains, New York

Yours, etc.

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

TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271
(212) 416-8020

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
Respondent-Respondent
801 Second Avenue
New York, New York 10017
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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,

AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE, FOR COSTS, SANCTIONS, DISCIPLINARY & CRIMINAL REFERRALS, DISQUALIFICATION OF ATTORNEY GENERAL, etc.

-against-

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

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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

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

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings heretofore had herein.

2. This affidavit is in support of the relief requested by my accompanying notice of motion. Like my pending May 1, 2002 motion for the disqualification of this Court's judges and for disclosure, this motion is threshold, as its purpose is to safeguard the integrity of the proceedings on this appeal. It is also independent of my entitlement to the Court's disqualification/disclosure and to an appeal of right because no tribunal – and certainly not our state's highest -- can permit fraud and

deceit in advocacy before it. This is all the more so when the fraud and deceit are practiced by our state's highest legal officer, the State Attorney General, whose transcendent duty to the People of this State, like that of this Court, is to uphold "the administration of justice".

3. This Court itself recognized in *Matter of Rowe*, 80 N.Y.2d 336, 340 (1992)[1]:

> "the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct...Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in it warrants disciplinary action (*see Matter of Holtzman*, 78 NY2d 184, 191, *cert denied*, __ US __, 112 S Ct 648; *Matter of Nixon*, 53 AD2d 178, 181-182; *cf., Matter of Mitchell*, 40 NY2d 153, 156)".

4. Such responsibility is reflected by the mandatory nature of §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, entitled, "Disciplinary Responsibilities", whose subsection (2), directly applicable to this motion, states:

> "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."

5. Just as my May 1, 2002 motion requires the Court to grapple with the same statutory and rule provisions for judicial disqualification and disclosure as

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[1] Such decision was five weeks before *Wieder v. Skala*, 80 N.Y.2d 628, 636 (1992), discussed at ¶47 of my May 1, 2002 disqualification/disclosure motion. *See*, also, fn. 5 of my February 20, 2002 motion to the Appellate Division, First Department for leave to appeal.

are the substantive content of the appeal[2], this motion requires the Court to grapple with the same statutory and rule provisions for attorney conduct and with Executive Law §63.1 as are the appeal's substantive content[3]. It also requires the Court to grapple with a judge's disciplinary responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, likewise the substantive content of the appeal.

6. Here, too, this Court must teach by its own example[4]. Otherwise, the judicial process will continue to be polluted with fraud, misrepresentation, and concealment, *obscuring the material facts of the most straightforward cases and the operative law relative thereto.*

7. On May 1, 2002, "Law Day", Attorney General Eliot Spitzer addressed this Court and an assembled audience of which I was a member. Taking as his theme "*The Crisis of Accountability*"[5], Mr. Spitzer spoke eloquently about the fact that "we" have imposed upon "our society's leading institutions" the requirement that they pursue their objectives "within certain boundaries, delineated by

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[2] *See* my May 1, 2002 disqualification/disclosure motion, ¶¶5-7.

[3] These issues of transcending "public importance" are particularized by my February 20, 2002 motion for leave to appeal, ¶¶11-13, 15(b), 16-17.

[4] I again call the Court's attention to the superlative, must-read article cited at fn. 4 of my May 1, 2002 disqualification/disclosure motion: "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, 22 Santa Clara Law Review, 95-116 (1982).

[5] A copy of Mr. Spitzer's "Law Day" address, obtained from his website [*www.oag.state.ny.us/*], is annexed as Exhibit "D-2" to my June 7, 2002 reply affidavit on the disqualification/disclosure motion, *infra.*

carefully articulated standards of conduct, disclosure and moral responsibility" -- "even when they conflict with pure self-interest" (at p. 1). According to Mr. Spitzer, this has been eroded by the failure of self-policing and other oversight, born of a lowering of expectations, misplaced trust, and "an ever increasing opaqueness in the operation of these institutions" (at p. 2). Pointing to "the law and our legal institutions" as the solution, Mr. Spitzer stated:

> "Society's defense against misplaced trust must be found in a system of law...If our legal system operates as it should, we will uncover the abuses of trust...we will bring them to the public's attention, and we will demand the implementation of systemic changes to ensure that the dereliction of duty does not reoccur.
>
> In this way, our legal system can serve as a bridge over the chasm of distrust separating the public from these institutions.
>
> The faith that was once reserved for these institutions and their policies of self-policing will be restored by a renewed reliance on our legal system and its insistence on accountability.
>
> For this to work, the law must demand – and these institutions must accept – that standards of behavior that were being ignored must now be strictly followed. The rigorous enforcement of existing laws and codes of conduct will ensure that these institutions are accountable to the broad public they are meant to serve, and not their own narrow institutional interests." (at pp. 4-7).

8. Consistent with Mr. Spitzer's "Law Day" address, this motion is to ensure that "our legal system operates as it should" and that Mr. Spitzer, who has been unlawfully defending the Commission on Judicial Conduct in violation of Executive Law §63.1 and conflict of interest rules, is finally brought to account, together with his culpable staff and the Commission, for wilful and deliberate

violations of fundamental "standards of behavior" and "existing laws and codes of conduct".

9. Already before this Court are my June 7, 2002 reply affidavit to the Attorney General's May 17, 2002 opposing memorandum of law on my disqualification/disclosure motion and my June 7, 2002 reply affidavit to the Attorney General's May 28, 2002 letter responding to the Court's *sua sponte* jurisdictional inquiry. These two affidavits provide virtual line-by-line Critiques, particularizing that the Attorney General's May 17, 2002 opposing memorandum and May 28, 2002 letter, each signed by Assistant Solicitor General Carol Fischer, are "*from beginning to end*, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law". In sum, both are demonstrated "frauds on the court", triggering this Court's disciplinary responsibilities under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct and related obligations under DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, "Disclosure of Information to Authorities", *Wieder v. Skala*, 80 N.Y.2d 628, 636 (1992).

10. In the interest of judicial economy, I incorporate these two June 7, 2002 affidavits by reference. This includes the referred-to and annexed correspondence[6], establishing that Ms. Fischer's violative submissions to this

[6] Exhibits "A" – "F" to my June 7, 2002 reply affidavit on the disqualification/disclosure motion.

Court -- within weeks of Mr. Spitzer's "*Crisis of Accountability*" speech – were with the knowledge and consent of Mr. Spitzer, as likewise of her intermediate superiors, Deputy Solicitor General Michael Belohlavek and Solicitor General Caitlin Halligan, and culpable members and staff of the Commission, all of whom failed and refused to take corrective steps in face of explicit notice, by letter dated May 21, 2002[7], that I would otherwise have no choice but to burden the Court with this motion.

11. Mr. Spitzer, his staff, and the Commission are long familiar with the "existing laws and codes of conduct" for ensuring their accountability invoked by this motion, as they were invoked by my prior motions for similar relief against them for comparably violative conduct. Chief among these, my July 28, 1999 omnibus motion in Supreme Court/New York County – denied by Justice Wetzel's January 31, 2000 appealed-from decision, *without* reasons and *without* findings – and my August 17, 2001 motion in the Appellate Division, First Department – denied by the appellate panel's appealed-from December 18, 2001 decision, *without* reasons, *without* findings, and by falsifying the relief sought. The July 28, 1999 omnibus motion presented line-by-line proof of the fraudulence of Mr. Spitzer's *most important* Supreme Court submission: his May 24, 1999

[7] This letter is Exhibit "A" to my June 7, 2002 reply affidavit on the disqualification/disclosure motion.

motion to dismiss my verified petition[8]. My August 17, 2001 motion did the same with regard to Mr. Spitzer's *most important* Appellate Division submission: his March 22, 2001 Respondent's Brief[9]. Each motion *also* annexed my voluminous correspondence with Mr. Spitzer, his subordinate supervisory staff, and the Commission, establishing their knowledge of, and consent to, these and other fraudulent court submissions by their refusal to take corrective steps, upon notice of their obligation to do so[10].

12. The dispositive nature of my July 28, 1999 and August 17, 2001 motions is highlighted by my Jurisdictional Statement (p. 2, fn. 2; pp. 6, 9, 12) and key documents referred to therein[11]. In the interest of judicial economy, I

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[8] This line-by-line proof is presented by my 99-page July 28, 1999 memorandum of law.

[9] *See* my 66-page May 3, 2001 Critique of this Respondent's Brief, annexed as Exhibit "U" to my August 17, 2001 motion.

[10] Between my July 28, 1999 and August 17, 2001 motions is my September 21, 2000 motion in the appeal of *Mantell v. Commission* – summarized at ¶¶49-67 of my August 17, 2001 motion. The express purpose of that motion, which the *Mantell* appellate panel denied, *without* reasons and *without* findings, was "to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner, Michael Mantell", by the Attorney General's fraudulent appellate brief. By reason thereof, the motion specified as "other and further relief": disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1, striking the fraudulent appellate brief, imposing costs and financial sanctions upon the Attorney General and Commission, pursuant to 22 NYCRR §130-1.1, and directing them both for disciplinary and criminal investigation and prosecution.

By letter to Mr. Spitzer, dated September 27, 2000, I gave him notice of his Law Department's misconduct in the *Mantell* appeal. That letter is Exhibit "G-1" to my May 1, 2001 disqualification/disclosure motion – as I gave a copy, *in hand*, to Chief Judge Kaye (*see* fn. 53 of my May 1, 2001 disqualification/disclosure motion).

[11] *See* my 19-page analysis of the Appellate Division's December 18, 2001 decision (at pp. 8-11), annexed as Exhibit "B-1" to my January 17, 2002 reargument motion; my January 17, 2002 reargument motion (at pp. 6-16); and my February 20, 2002 motion for leave to appeal (at pp. 6, 10).

incorporate these two motions by reference, each essential to the Court's adjudication of *this* motion. Indeed, the Court will necessarily be required to adjudicate, *with findings*, the second branch of my August 17, 2001 motion to have Ms. Fischer's respondent's brief stricken as "a fraud on the court"[12], precisely because her May 17, 2002 opposing memorandum PHYSICALLY encloses[13] that very respondent's brief for the express purpose of providing the Court with "a more complete statement of the facts of this proceeding" (Exhibit "A"). Likewise, the Court will necessarily be required to adjudicate, *with findings*, the first branch of my July 28, 1999 omnibus motion to "disqualify the Attorney General from representing [the Commission] for non-compliance with Executive Law §63.1 and for multiple conflicts of interest" [A-195], as ALL the facts therein particularized underlay the identical relief herein sought.

13. To avoid needless duplication, I request that the discussion in my July 28, 1999 and August 17, 2001 motions as to "existing law and codes of conduct" for assuring accountability be deemed my memorandum of law before this Court on that subject. Specifically, I refer the Court to my discussion of "Applicable Ethical and Legal Provisions", appearing at pages 5-12 of my July 28, 1999

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[12] ¶¶88-92 of my August 17, 2001 moving affidavit pertain to this second branch.

[13] Although Ms. Fischer's May 17, 2002 memorandum of law (at p. 2) refers to her respondent's brief as "attached", her May 17, 2002 transmittal letter to the Court states that it is "enclosed" (Exhibit "A"). I received neither an "attached" or "enclosed" copy.

memorandum of law on my omnibus motion[14], as well as pertinent pages from the TWO Critiques supporting my August 17, 2001 motion: pages 2-3 of my May 3, 2001 Critique and pages 3-5 of my September 17, 2001 Critique[15]. For the Court's convenience, copies are annexed hereto as Exhibits "B", "C-1" and "C-2".

14. As the record of these two prior motions reflects[16], the Attorney General did not deny or dispute the plain meaning of NYCRR §§1200 *et seq.*, codifying New York's Disciplinary Rules of the Code of Professional Responsibility, Judiciary Law §487 entitled "Misconduct by Attorneys", Penal Law §210.10 pertaining to perjury, Penal Law §105.05(1) relevant to accomplices to perjury, Penal Law §195 entitled "Official Misconduct", and 22 NYCRR §130-1.1 pertaining to imposition of costs and sanctions for "frivolous" conduct – or their applicability to Mr. Spitzer *personally*, to members of his staff, and to culpable members and staff of the Commission. Rather, he denied and disputed the sufficiency of my factual showing of entitlement to the application of these

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[14] A copy of these same pages of "Applicable Ethical and Legal Provisions" was annexed as Exhibit "AA" to my September 21, 2000 motion in the *Mantell* appeal. (*see* fn. 10, *supra*).

[15] These two Critiques are, respectively, Exhibit "U" to my August 17, 2001 motion and Exhibit "AA" to my October 15, 2001 reply affidavit in further support of the motion.

[16] The Attorney General's opposition to my July 28, 1999 omnibus motion was by an August 13, 1999 memorandum of law (signed by Assistant Attorney General Carolyn Cairns Olson) – to which I responded by a September 24, 1999 reply memorandum of law and reply affidavit. My subsequent correspondence with the court further supplemented and reinforced my entitlement to the relief sought on my omnibus motion [A-217, 222-223].

The Attorney General's opposition to my August 17, 2001 motion was by an August 30, 2001 opposing "affirmation" and memorandum of law (signed by Assistant Solicitor General Carol Fischer) – to which I responded by an October 15, 2001 reply affidavit.

clear rule and statutory provisions – a further deceit resoundingly exposed by my reply papers on both motions, presenting line-by-line analyses in substantiation[17].

15. Nor did the Attorney General challenge the plain meaning of Executive Law §63.1 -- the *sole* statutory authority on which the Attorney General's representation of the Commission is predicated. As identified at page 35 of my July 28, 1999 memorandum of law,

> "nothing in Executive Law §63.1, by itself, automatically entitles [the Commission] to the Attorney General's representation or confers upon the Attorney General authorization to defend [the] proceeding. Rather, a determination must be made as to 'the interests of the state'".

16. As chronicled by my July 28, 1999 omnibus motion[18] – and true today, nearly three years later -- the Attorney General has *never* come forward with even a claim that his representation of the Commission in this lawsuit is in "the interests of the state", let alone that it has been so-determined by individuals untainted by his self-interest – or that of his staff. Nor has he ever denied or disputed my argument that there is NO state interest served by fraud and that the fraudulent defense tactics he has employed on behalf of the Commission, documented by my

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[17] As to my July 28, 1999 omnibus motion: *see* my 66-page September 24, 1999 reply memorandum of law; As to my August 17, 2001 motion: *see* my 58-page September 17, 2001 Critique, annexed as Exhibit "AA" to my October 15, 2001 reply affidavit.

[18] *See*, my July 28, 1999 moving affidavit, ¶¶5-6, 54-103; my July 28, 1999 memorandum of law, pp. 33-36; the Attorney's General's August 13, 1999 opposing/reply memorandum of law, pp. 2-4; and my September 24, 1999 reply memorandum of law, pp. 24-29.

motions, establish the absence of *any* legitimate defense in which the state would have an "interest".

17. Mr. Spitzer's acquiescence in fraudulent submissions *to this Court* – the subject of this motion -- as likewise his acquiescence in the fraudulent submissions in Supreme Court and the Appellate Division – the subject of my incorporated July 28, 1999 and August 17, 2001 motions -- is *inexplicable* except as an expression of his profound self-interest and that of his upper echelon senior staff in thwarting this meritorious lawsuit by corrupting the judicial process. The particulars of this multiple self-interest, arising, *inter alia*, from the three cases featured in CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" [A-55-56] – which intersect in this lawsuit – and from the evidentiary proof of the corruption of "merit selection" relating to Judge Rosenblatt's 1998 elevation to this Court, which I personally presented to Mr. Spitzer for investigation under a January 27, 1999 letter[19], following publication of my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" [A-101], identifying that I would be turning to Mr. Spitzer for such purpose, was particularized at ¶¶10-53 of my 55-page moving affidavit in support of my July 28, 1999 omnibus motion. Substantiating these paragraphs were four free-standing file folders of documentary proof [A-346-349].

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[19] My January 27, 1999 letter to Ms. Spitzer is Exhibit "D" to my July 28, 1999 omnibus motion.

18. Mr. Spitzer's response to ¶¶10-53 of my July 28, 1999 omnibus motion was an August 13, 1999 opposing memorandum of law, reducing these 43 paragraphs to <u>two sentences</u> from which "*all* material facts [were] purposefully excised"[20]. No affidavit was submitted by Mr. Spitzer nor any member of his staff as to the multiple conflicts of interest detailed at ¶¶10-53[21]. Nor was an affidavit submitted by the Commission's Chairman, Henry T. Berger, as to his relationship with Mr. Spitzer, including the conflict identified at ¶51 pertaining to his role as an Election Law lawyer in securing the razor-margin that won Mr. Spitzer's 1998 race for Attorney General. Pages 29-35 of my September 24, 1999 reply memorandum of law particularized that such non-probative, knowingly false and deceitful opposition was insufficient, *as a matter of law*, to my demonstration of entitlement to the Attorney General's disqualification for interest.

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[20] This quote appears in my September 24, 1999 reply memorandum of law (at p. 30).

[21] This non-probative, knowingly false and deceitful opposition was interposed the week following my August 6, 1999 letter to Mr. Spitzer's counsel, David Nocenti, enclosing a duplicate copy of my July 28, 1999 omnibus motion for Mr. Spitzer's personal review, as well for filing as a complaint with his "Employee Conduct Committee". Mr. Nocenti's response, by letter dated September 1, 1999, was "we have determined that it would not be advisable for this office to undertake a separate internal review of your allegations" – which he based on the fact that the allegations of the motion were pending in Supreme Court, were related to allegations I had filed with the New York State Ethics Commission, and were against Mr. Spitzer "who is head of this agency". This exchange of letters is annexed to my September 24, 1999 reply affidavit as Exhibits "A" and "E".

Justice Wetzel's subsequent failure to make *any* findings as to my July 28, 1999 omnibus motion was with full knowledge both of Mr. Nocenti's position, as well as the fact that the Ethics Commission, of which Mr. Rifkin was the former Executive Director, was neither acknowledging nor determining the ethics complaints I had filed with it. (*See* my September 24, 1999 reply affidavit, ¶¶7-12; my September 24, 1999 reply memorandum of law, pp. 10-12; A-223-225).

19. The myriad of uncontested fact-specific, document-supported allegations of multiple conflicts of interest appearing at ¶¶10-53 of my July 28, 1999 motion are the "starting point" for assessing, *on this motion*, the same conflicts of interest. These have remained the underlying cause and motivating factor in the Attorney General's unrestrained litigation misconduct at *every* level of this important public case – from the Supreme Court, to the Appellate Division, and now to this Court.

20. If, *on this motion*, Mr. Spitzer, his culpable staff, and the Commission do NOT come forward with affidavits responsive to their unaddressed conflicts of interest particularized at ¶¶10-53 of my July 28, 1999 omnibus motion, as well as with previously-requested documentation establishing the Commission's entitlement to the Attorney General's representation, the Court must, *as a matter of law*, grant disqualification based thereon. This is apart from granting disqualification based on my line-by-line showing of Ms. Fischer's fraud and deceit by her May 17, 2002 opposing memorandum of law and May 28, 2002 letter, as to which Mr. Spitzer, his supervisory staff, and the Commission, with ample manpower, legal resources, and expertise between them, must respond, with commensurate line-by-line precision. Included thereby would be a refutation of

the accuracy of my analyses of the FIVE fraudulent judicial decisions of which the Commission has been the beneficiary[22].

21. Any affidavit interposed by Mr. Spitzer on the conflict of interest issue must identify whether and in what respects, based on his review of the three cases featured in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" [A-55-56], he disagrees with the ad's recitation as to the fraudulent defense tactics of his predecessor Attorneys General, rewarded by fraudulent judicial decisions, and must account for his inaction in taking appropriate steps to vindicate the "rule of law" in those cases. Likewise, he must account for his inaction in undertaking an investigation of the corruption of the "merit selection" process, based on the materials I provided him. This includes the *facially-meritorious* October 6, 1998 judicial misconduct complaint against Judge Rosenblatt – the subject of this lawsuit -- AND the *facially-meritorious* predecessor September 19, 1994, October 26, 1994, December 5, 1994 judicial misconduct complaints against him. Mr. Spitzer's affidavit must also identify who reviewed *my* repeatedly-asserted right to the Attorney General's representation in upholding the public interest advanced by my verified petition. And it must identify the names of <u>all</u> attorneys in

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[22] These are: (1) my 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54]; (2) my 13-page analysis of Justice Lehner's decision in *Michael Mantell v. Commission* [A-321-334] – both of which establish the fraudulence of the grounds upon which Justice Wetzel dismissed my Article 78 proceeding; (3) my 1-page analysis of the appellate decision in *Mantell v. Commission* (annexed as Exhibit "R" to my August 17, 2001 motion); and (4) my 19-page analysis of the December 18, 2001 appellate "affirmance" of Justice Wetzel's decision (annexed as Exhibit "B-1" to my January 17, 2002 reargument motion).

supervisory positions upon whom Mr. Spitzer relied in ignoring, throughout more than three years, my repeated notices to him as to his Law Department's litigation misconduct in defending against my lawsuit and against the simultaneous lawsuit in *Michael Mantell v. Commission*, and the fraudulent judicial decisions in both cases. This would include information as to the involvement of Mr. Spitzer's so-called "public integrity unit", whose existence he publicly announced on January 27, 1999.

22. As the record reflects, Mr. Spitzer has maintained "opaqueness in the operation" of his office not only as to these questions, but, more generally, as to:

> "the Attorney General's procedures for ensuring the workproduct of assistant attorneys general assigned to defense of Article 78 proceedings and, in particular, those against the New York State Commission on Judicial Conduct"

and "as to procedures for ensuring the integrity of appellate submissions and supervisory oversight"[23]. These, too, must be answered.

23. As this motion also seeks to impose *personal* liability on the Commission and its culpable staff, the record shows my repeatedly-expressed position, reflected by my Jurisdictional Statement (at pp. 3-4), that

> "...there is no reason why a fully-informed, knowledgeable client like the Commission – all but two of whose members are lawyers and which is staffed with lawyers – should not be held to have supervisory responsibilities over its demonstrably

[23] *See* ¶8 of my October 15, 2001 reply affidavit in further support of my August 17, 2001 motion.

> misbehaving attorney. Certainly, 22 NYCRR §1200.3(a)(1), proscribing a lawyer or law firm from 'circumvent[ing] a disciplinary rule through the actions of another', would make the fully-informed lawyer members and staff of the Commission liable for ALL the Commission's violative conduct in this proceeding – including the wilful refusal of Deputy Solicitor General Belohlavek, [former] Solicitor General Bansal[24], and Attorney General Spitzer to discharge their mandatory supervisory responsibilities under 22 NYCRR §1200.5."

24. The Commission has never denied its liability for the Attorney General's violative conduct on its behalf. Yet, "opaqueness" has cloaked the nature and extent of the Commission's role. Thus, Gerald Stern, the Commission's Administrator and Counsel, has refused to even confirm that my correspondence for the Commissioners and the duplicate court submissions I transmitted to the Commission office pertaining to the Attorney General's misconduct and the Commission's obligation to assume its own defense were timely distributed to them[25]. An affidavit is required from Mr. Stern and the Commissioners on the subject, together with confirmation of the fact that the Commission made no claim that it "requires the services of attorney or counsel", pursuant to Executive Law §63.1. As I have pointed out in my repeated letters

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[24] There has been no response to my reasonable questions as to whether the sudden departure of former Solicitor General Preeta Bansal was related to my August 17, 2001 motion, seeking sanctions against her *personally* and "specifically, to any disagreement between her and Attorney General Spitzer as to the appropriate response thereto". *See* ¶18 of my October 15, 2001 reply affidavit in further support of my August 17, 2001 motion.

[25] *See* ¶30 of my October 15, 2001 reply affidavit in further support of my August 17, 2001 motion.

requesting that the Commission undertake its own representation in the appellate phase of this litigation,

> "all but two of its 11 commissioners are lawyers and it has ample lawyers on staff. Moreover, it is the Commission – not the Attorney General's office – which has the expertise to address the issues herein presented, involving judicial disqualification and judicial misconduct, which are uniquely within the Commission's purview."[26]

25. Finally, it is obvious from Chief Judge Kaye's March 3, 1999 Administrative Order, embodying the resolution of the Administrative Board of the Courts establishing the New York State Judicial Institute on Professionalism in the Law (Exhibit "D"), that the profound issues presented by this motion, must be directed to that taxpayer-supported Institute for study and recommendations for reform. "Professionalism", no less than "the Law", cease to exist when, as here, our state's highest legal officer, aided and abetted by the state agency charged with enforcing judicial standards, obliterates clear and unequivocal statutory and rule provisions for ensuring professionalism and accountability and is rewarded by self-interested lower courts, flouting fundamental rules of judicial disqualification and disclosure.

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[26] *See, inter alia*, my January 10, 2001 letter to Attorney General Spitzer (at p. 3) – annexed as Exhibit "T-1" to my August 17, 2001 motion; my January 17, 2002 letter to Attorney General Spitzer (at p. 3) – annexed as Exhibit "B-1" to my February 20, 2002 reply affidavit on my

WHEREFORE, pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, this Court must vindicate the integrity of the proceedings before it and safeguard fundamental standards of professionalism and accountability by granting the full relief requested by my accompanying notice of motion.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
17th day of June 2002

Notary Public

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

reargument motion. *Also*, my May 8, 2002 letter to the Commission (at p. 1) – annexed as Exhibit "E" to my June 7, 2002 reply argument on disqualification/disclosure motion.

TABLE OF EXHIBITS