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Elena Ruth Sassower, Coordinator

BY FAX: 212-416-8139 (3 pages)
11:25 a.m.

July 12, 2002

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

RE: Discharging Your Mandatory Supervisory Responsibilities Pursuant to 22 NYCRR §130-1.1 and 22 NYCRR §§1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility]
June 17, 2002 motion in the Court of Appeals (#719/02) in the public interest lawsuit *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (S.Ct/NY Co. #108551/99; A.D. 1st Dept #5638/01)

Dear Mr. Spitzer:

It is now more than 25 hours since I faxed my yesterday's letter. Having received NO response whatever from you -- nor from any of the other indicated recipients thereof -- I will, as indicated, be filing my reply affidavit in further support of my June 17, 2002 motion for additional maximum monetary costs and sanctions against you *personally*, as likewise against them, pursuant to 22 NYCRR §130-1.1.

As you are presumed to know, the 1998 amendment to 22 NYCRR §130-1.2 removed the prior $10,000 limit "in any action or proceeding" so as to allow imposition of such amount for "any single occurrence of frivolous conduct". The record of my proceeding establishes THREE occurrences of "frivolous" conduct by Assistant Solicitor General Carol Fischer before the Court of Appeals. The first two resulted in my June 17, 2002 motion: Ms. Fischer's May 17, 2002 memorandum of law in opposition to my May 1, 2002 motion to disqualify the Court's judges and for disclosure and her May 28, 2002 letter in response to the Court's *sua sponte* jurisdictional inquiry. The third is Ms. Fischer's June 28, 2002 "affirmation" in opposition to my June 17, 2002 motion.

Ex. C-1

It would appear that the Court of Appeals has not addressed 22 NYCRR 130-1.1 since its 1990 decision in *Matter of Minister, Elders and Deacons of the Reformed Protestant Church of the City of New York v. 198 Broadway, Inc.*, 76 N.Y.2d 411.

In that decision, the Court stated it was "proceed[ing] cautiously" as the case marked "the first time that sanctions have been imposed by our court". The Court, therefore, "selected an amount within the lower range of permissible sanctions" – $2,500, imposed on respondent, which it described as "a sophisticated corporate entity", "represented throughout the litigation by experienced counsel".

The Court further stated:

> "While an additional sanction on the attorneys in this case is authorized by the rules", we elect not to impose one, in the absence of a specific request for such relief...Because of these circumstances, we leave for another day the questions of when, and in what situations, the parties' attorneys should be penalized for 'frivolous conduct'." (at 415).

My June 17, 2002 motion, with its intended reply, each expressly requesting maximum sanctions and costs against the Commission's attorney, presents the "day" for the Court to finally address what its decision in *Matter of Minister, Elders and Deacons* deferred exactly twelve years ago this past Wednesday – and do so in the most dramatic context imaginable: that of New York's highest legal officer, whose experienced legal staff numbers more than 500 attorneys[1], here representing "a sophisticated [governmental] entity", itself an institutional litigant, regularly appearing before the Court as the state agency charged with safeguarding judicial standards of conduct.

Please be further advised that the Court's footnote in *Matter of Minister, Elders and Deacons* that the "express request" by the petitioner therein for sanctions pursuant to §130-1.1 had "furnished respondent with adequate notice that such relief would be considered and rendered a formal hearing unnecessary" (at 413) has led New York Appellate Practice §5.11[3][2] (at p. 50) to quote Professor David Siegel as

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[1] *See* my June 17, 2002 motion, Exhibit "B", p. 11.

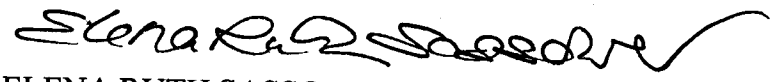
[2] The "Background" discussion to §130-1.1 in New York Practice (at pp. 46-48) pertaining to whether a court has "the inherent power to impose sanctions" for abusive and frivolous litigation and the Court's decision in *A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1 (1986), reinforces the argument in my Brief to the Appellate Division, First Department relating

saying:

> "[the] obvious advice to a party against whom a sanctions request is made is to consider coming forward quickly with any available evidence in exoneration or explanation. Don't automatically assume there'll be time to do that at some kind of testimonial hearing."

That Ms. Fischer's June 28, 2002 "affirmation" in opposition to my motion furnishes NO "evidence in exoneration or explanation" and is non-probative and knowingly false, deceitful, and frivolous will be the content of my reply.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Enclosures

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

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to my right to vacatur of Justice Wetzel's due process-less imposition of an inherent power filing injunction against me and the non-party Center for Judicial Accountability, Inc. (CJA) [*See* Brief, pp. 67-68]. The Appellate Division's affirmance of such injunction is among the far-reaching constitutional due process issues presented by my May 1, 2002 Jurisdictional Statement (pp. 18-19), in support of my appeal of right, concealed by Ms. Fischer's May 28, 2002 letter in response to the Court's *sua sponte* jurisdictional inquiry [*See* my June 7, 2002 responding affidavit, ¶¶10, 12, 21].

Attorney General Bolger

TRANSMISSION VERIFICATION REPORT

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