

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY HAND

January 27, 1999

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

RE: Your mandatory professional and ethical obligations

Dear Attorney General Spitzer:

This letter is to put you on notice of your mandatory obligations under professional and ethical rules<sup>1</sup>, to take corrective steps to vacate the fraudulent judicial decisions in the three litigations detailed in the Center for Judicial Accountability's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", NYLJ, 8/27/97 (Exhibit "A") -- litigations in which the Attorney General's office itself corrupted the judicial process by defense strategies based on fraud and other misconduct.

Such notice was previously given to Mr. Vacco, in conjunction with two ethics complaints against the Attorney General's office, including against Mr. Vacco, personally (Exhibits "B-1" and "B-2"), which the Center for Judicial Accountability, Inc. (CJA) filed with the New York State Ethics Commission. The first complaint, dated September 14, 1995, was based on the Attorney General's litigation misconduct and fraud in the Article 78 proceeding *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York*, (N.Y. Co. #95-109141) and, prior thereto, in the Article 78 proceeding *Doris L. Sassower v. Hon. Guy Mangano, et al.* (AD 2nd Dept. #93-02925; NY Ct. of Appeals; Mo. No. 529, SSD 41; 933; US Sup Ct. #94-1546). The second complaint, dated December 16, 1997 -- a supplement to our first -- was based on the Attorney General's litigation misconduct and fraud in the §1983 federal action *Doris L. Sassower v. Hon. Guy Mangano, et al.* (#94 Civ. 4514 (JES);

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<sup>1</sup> See, *inter alia*, New York State Bar Association's Code of Professional Responsibility: DR-1-102 "Misconduct" [22 NYCRR 1200.3]; DR-103 "Disclosure of Information to Authorities" [22 NYCRR 1200.4]; DR-104 "Responsibilities of a Supervisory Lawyer" [22 NYCRR 1200.5]; DR 7-102 "Representing a Client Within the Bounds of the Law" [22 NYCRR 1200.33]; EC 7-14 "A government lawyer in a civil action...has the responsibility to seek justice and to 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 settlements or results"; See also, ABA Model Rules of Professional Conduct, Rule 3.1 "Meritorious Claims and Contentions"; Rule 3.3 "Candor Toward the Tribunal"; Rule 5.1 "Responsibilities of a Partner or Supervisory Lawyer"; Rule 8.3 "Reporting Professional Misconduct"; Rule 8.4 "Misconduct".

EX "D"

2nd Cir. #96-7805).

You should already be fully familiar with our September 14, 1995 and December 16, 1997 ethics complaints -- since we provided copies on December 24, 1998 to your former law partner, Lloyd Constantine, in his capacity as chairman of your transition team (Exhibit "C-1"). This, to enable you to determine the unfitness of the Ethics Commission's Executive Director, Richard Rifkin, who you had just appointed to head the very unit in the Attorney General's office which was the subject of these two complaints: the unit that defends the state and its agencies against lawsuits.

As demonstrated by our voluminous correspondence about our September 14, 1995 complaint, supplied to Mr. Constantine, Mr. Rifkin protected the Attorney General's office by corrupting the Ethics Commission. Mr. Rifkin purported to dismiss that fully-documented complaint, without presentment to the Ethics Commissioners, in a letter which misrepresented the complaint's allegations. In so doing, Mr. Rifkin failed to disclose his disqualifying relationship with the Attorney General's office, as a top aide to Attorney General Robert Abrams during the critical period of the *Sassower v. Mangano* Article 78 proceeding, encompassed by the complaint. CJA made this and other official misconduct by Mr. Rifkin the subject of repeated written protest to the Ethics Commissioners. This culminated in CJA's express request to the Commissioners -- in our December 16, 1997 ethics complaint -- that they remove Mr. Rifkin from his position as Executive Director

"by reason of his official misconduct and ... [that they] initiate a complaint against him, pursuant to Executive Law §94.12(a) for his gross and wilful violations of Public Officers Law §74(2) and §74.3, in particular §74.3(d), while in office." (CJA's December 16, 1997 ethics complaint, at p. 3)

Under Mr. Rifkin's corrupt stewardship, the Ethics Commission did not respond to that complaint, constituting a supplement to our September 14, 1995 complaint against the Attorney General. As of this date, the December 16, 1997 complaint remains open and pending before the Ethics Commission.

As successor to Mr. Vacco -- over whom the Ethics Commission no longer has direct jurisdiction<sup>2</sup> -- you inherit Mr. Vacco's ethical and professional obligations, as well as criminal liabilities under Penal law §195 relating to official misconduct.

You have long had knowledge of the three cases featured in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "A"). This may be seen from CJA's letters, dated August 8, 1994, September 7, 1998, and September 8, 1998 (Exhibits "D-1", "D-2", and "D-3"). Such letters reflect that we transmitted to you copies of relevant papers from the *Sassower v. Mangano* Article 78 proceeding and *Sassower v. Mangano* federal action. As to *Sassower v. Commission on Judicial*

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<sup>2</sup> However, the Ethics Commission is authorized to make referrals to other agencies which would have jurisdiction over Mr. Vacco, personally, such as the Grievance Committee, the District Attorney's office, etc.

*Conduct*, we hand-delivered a copy of the litigation file with our December 24, 1998 letter (Exhibit "C-1").

The August 8, 1994, September 7, 1998 and September 8, 1998 letters (Exhibits "D-1", "D-2" and "D-3") establish your wilful choice, as contender to be the democratic candidate for Attorney General, not to expose the corruption in the Attorney General's office -- presumably because exposing it would have compromised your democratic political base, involved in the fraud and misconduct of the Attorney General's office under democrats Robert Abrams and G. Oliver Koppell. Indeed, your rhetoric before and after becoming Attorney General has been to proclaim the quality of the Attorney General's office prior to Republican Dennis Vacco -- and particularly, under Mr. Abrams.

Now that you are Attorney General, you no longer have the option of continuing to ignore CJA's document-supported presentations about the Attorney General's office under all three of your predecessors -- without engaging in official misconduct. This, apparently, did not "sink in" when you were Attorney General-Elect. In the unlikely event that you are unaware of Mr. Constantine's wholly unprofessional behavior as chairman of your transition team, be advised that he failed to respond to our December 24th letter, our follow-up December 28, 1998 letter (Exhibit "C-2"), or to any of our repeated telephone messages<sup>3</sup> alerting you to the fact that your appointment of Mr. Rifkin was akin to "the fox guarding the henhouse", as likewise your appointment of Michelle Hirshman as your First Deputy Attorney General.

Mr. Constantine's wilful disregard of our letters and phone calls about the unfitness of Mr. Rifkin and Ms. Hirshman makes plain that notwithstanding your "hype" about freeing the Attorney General's office from the political hiring you descried in Mr. Vacco and your claim that "the first step in restoring the integrity of the office is appointing a staff based exclusively on merit"<sup>4</sup>, he is perfectly willing to install as your closest aides persons who have been complicitous in systemic judicial corruption in which the Attorney General is an active participant.

With such persons in the upper echelons of the Attorney General's office, there is no possibility for creating in the Attorney General's office "the greatest public interest law firm the state has ever seen" -- which is what you pledged to do. Indeed, your failure to carry through with your pre-election proposal to set up a public integrity unit to monitor state government shows that your administration will not champion the public interest -- which, first and foremost, would require you to root out the corruption which infests our state government at all levels.

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<sup>3</sup> Aside from our phone messages for Mr. Constantine (left with Gladys and Mr. Estes) on December 23, 1998 -- the very day the newspapers reported your appointment of Mr. Rifkin and Ms. Hirshman, we left phone messages for Mr. Constantine on December 29th (with Gladys), on December 31st (with Mr. Estes and Gladys), on January 6th (with Angie), and January 8th (with Gladys).

<sup>4</sup> "Spitzer Plans Job Protection for Gay Aides", The New York Times, 1/5/99, B5

As highlighted by CJA's December 28th letter (Exhibit "C-2"), the need for such a public integrity unit is "exponentially greater because of individuals like Ms. Hirshman and Mr. Rifkin who betrayed and corrupted the essential monitoring agencies and offices they have headed." This metastesied corruption has come to include the Commission on Judicial Nomination, as detailed in CJA's November 18, 1998 letter to the Association of the Bar of the City of New York -- to which you were an indicated recipient (Exhibit "E"). A further copy of that letter was annexed to our December 24, 1998 letter to Mr. Constantine (Exhibit C-1").

Enclosed herewith is a copy of the documentation substantiating our November 18, 1998 letter<sup>5</sup> (Exhibit "E") -- which our December 28, 1998 letter to Mr. Constantine promised was being readied for transmittal (Exhibit "C-2"). This documentation will enable you to verify for yourself the fraud perpetrated by the Commission on Judicial Nomination by its recommendation of Albert Rosenblatt as a "well qualified" candidate for the Court of Appeals, and, thereafter, by Governor Pataki by his nomination of Justice Rosenblatt in the face of notice to him of that fraud, including by our November 18, 1998 letter (Exhibit "E"). Indeed, such documentation will enable you to verify precisely what our Letter to the Editor in the December 28, 1998 New York Post asserted, to wit, that Justice Rosenblatt's confirmation would not have survived public presentation of our documented opposition -- and, for this reason, was rammed through in a no-notice, by invitation only confirmation hearing. That published Letter, "*An Appeal to Fairness: Revisit the Court of Appeals*", annexed to our December 28, 1998 letter to Mr. Constantine (Exhibit "C-2") concluded by stating that we would be "calling upon our new state attorney general as the 'People's lawyer,' to launch an official investigation."

For such purpose, documents further substantiating the fraud committed by the Senate Judiciary Committee Chairman are enclosed. These include the transcript of the December 17, 1998 Senate proceeding, wherein Chairman Lack made the following pivotal misrepresentation to the Senators about the nominee:

"I'll just simply say that, in the days since he has been nominated by the Governor, the only -- the only comments my office has received embedding (sp) this candidate for the Court of Appeals has been one in which the word 'E' --- 'exemplary', 'excellent' and the word 'F' for 'fantastic' candidate..." (transcript, at 6595-6)

Such statement should be compared with CJA's December 16, 1998 letter to David Gruenberg, senior counsel to Chairman Lack and the Judiciary Committee, reflecting CJA's repeated communicated opposition to Justice Rosenblatt's nomination and explicit request that Chairman Lack and the Committee members be apprised of CJA's request to testify in opposition at the confirmation

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<sup>5</sup> Not transmitted are the materials already in your possession: the cert petition and supplemental brief in the *Sassower v. Mangano* federal action -- transmitted to you on September 8, 1998 (Exhibit "D-3") -- and the July 27, 1998 letter to the U.S. Justice Department's Public Integrity Section, Criminal Division -- transmitted to you on December 24, 1998 (Exhibit "C-1").

January 27, 1999

"hearing"<sup>6</sup>.

Since you do not have a public integrity unit, please advise as to what unit within the Attorney General's office is equipped to investigate this matter -- and whether you will be making a referral to the Ethics Commission, which has jurisdiction over both the Commission on Judicial Nomination and the Governor. Perhaps ethics complaints bearing your signature would be properly addressed by the Ethics Commission.

Please also advise as to what corrective steps you intend to take in the three cases, which form the basis of CJA's September 14, 1995 and December 16, 1997 ethics complaints against you, pending before the Ethics Commission.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, COORDINATOR  
Center for Judicial Accountability, Inc. (CJA)

P.S. Your client, the State Commission on Judicial Conduct, has summarily dismissed our *facially-meritorious* October 6, 1998 judicial misconduct complaint against Justice Rosenblatt and his Appellate Division, Second Department brethren. Its December 23, 1998 dismissal letter -- and our December 29, 1998 informational request, to which you are an indicated recipient -- are enclosed in the folder containing our October 6, 1998 judicial misconduct complaint.

cc: New York State Ethics Commission  
Lloyd Constantine, Esq.  
New York Law Journal  
The New York Times

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<sup>6</sup> The Judiciary Committee has not yet responded to our January 13, 1999 letter requesting the transcript of its confirmation "hearing", a copy of which is enclosed.