

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

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

Petitioner,

Index # 99-108551

-against-

REPLY AFFIDAVIT

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.
-----X

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

1. I am the Petitioner in the above-entitled proceeding and fully familiar with all the papers and proceeding heretofore had herein.

2. This Reply Affidavit is submitted, without prejudice to the threshold issue of my oral recusal request, to attest to the truth of evidentiary facts appearing in my accompanying Reply Memorandum of Law and incorporated herein by reference. Insofar as the facts in my "Prefatory Statement" (at pp. 1-12) relate to Attorney General Spitzer's knowledge of my omnibus motion, his toleration of his Law Department's continued litigation misconduct, and his refusal to take ethically-mandated corrective steps, as likewise Respondent's knowledge and complicity therein, these facts further support those branches of my omnibus motion seeking the Attorney General's disqualification and sanctions against Mr. Spitzer personally, Respondent, and

their complicitous staff. This includes especially those branches seeking disciplinary and criminal referrals based on that misconduct.

3. Such facts, as well as the additional facts herein set forth as to the inaction and complicity of the New York State Ethics Commission, which has disciplinary jurisdiction over both the Attorney General and Respondent, reinforce this Court's mandatory duty, pursuant to Part 100.3(D)(2), to take "appropriate action" against a lawyer committing "a substantial violation of the Code of Professional Responsibility" – even more compelling when that lawyer is a public officer.

4. This Affidavit is also submitted to present facts bearing upon the Court's mandatory duties, pursuant to Part 100.3(E)(1), to disqualify itself from a proceeding in which its impartiality "might be reasonably questioned", including where it has an "interest that could be substantially affected by the proceeding" (subdivision c), and to disclose facts relative thereto. Insofar as those disqualification/disclosure duties relate to the Court's dependence upon Governor Pataki for reappointment to the bench at the expiration of its term in two years, such facts show notice to the Governor of this proceeding in which he is implicated in serious official misconduct by his complicity in Respondent's corruption, long known to him, as well as by his criminal fraud in connection with the nomination and confirmation of Justice Albert Rosenblatt to the Court of Appeals. This official misconduct is reflected by the Verified Petition and particularized in CJA's March 26, 1999 ethics complaint (at pp. 20-22), filed with the New York State Ethics Commission, annexed as Exhibit "E" to my Affidavit in support of my omnibus motion.

5. Finally, this Affidavit attests to the truth of facts, set forth at pages 47-55 of my accompanying Reply Memorandum of Law, showing the Attorney General's bad faith in connection with his technical objection as to my capacity to sue herein. Specifically, Ms. Olson's deliberate failure to make any inquiry of me in response to my direct statements to her that I was not suing Respondent "on behalf of CJA" or "as its Coordinator", notwithstanding my complete willingness to discuss with her and other lawyers at the Attorney General's office all aspects of the case.

**Petitioner's Factual Assertions in the "Prefatory Statement"
of Her Reply Memorandum of Law**

6. In the interest of judicial economy, I will not repeat the factual recitation appearing in the "Prefatory Statement" of my Reply Memorandum of Law (at pp. 1-12), whose accuracy may be seen from the unchallenged "paper trail" of correspondence referred to therein. That correspondence is already in the Court's possession, with the exception of three letters hereinbelow itemized as Exhibits "E", "G", and "H". Nonetheless, for the Court's convenience, all the correspondence is annexed hereto. As to the content of my signed letters, I attest to them as true and correct:

- (A) My August 6, 1999 letter to David Nocenti, counsel to Mr. Spitzer (Exhibit "A" herein), transmitting a copy of my July 28th omnibus motion and requesting the Attorney General to take corrective steps to address its documented showing of his conflicts of interest and litigation misconduct.
- (B) My August 16, 1999 letter to Mr. Nocenti and Assistant Attorneys General Olson and Kennedy (Exhibit "B" herein), requesting consent, *inter alia*, to an extension of time to September 10th to respond to the Attorney General's August 13th Reply-Opposition Memorandum, which I identified as "continu[ing] unabated the Attorney General's fraudulent and deceitful

advocacy". The letter also invited the Attorney General and Respondent to each respond to my June 14th oral application for the Court's recusal "based upon the appearance and actuality of the Court's self-interest in this proceeding".

- (C) Ms. Olson's August 16, 1999 letter to the Court (Exhibit "C" herein), opposing my extension request, *inter alia*, by misrepresenting it as a "sur-reply" and requesting, in the event the Court granted me "leave" to file a written recusal motion or treated my August 16th letter as a written motion, "time to serve and file a reply thereto".
- (D) My August 17, 1999 letter to the Court (Exhibit "D" herein), seeking clarification as to whether it would require my oral recusal application in writing, and requesting an extension of time to September 10th to respond to the Attorney General's Reply-Opposition Memorandum¹.
- (E) Mr. Nocenti's September 1, 1999 letter to me (Exhibit "E" herein), advising that the Attorney General's office was declining to undertake "a separate internal review" of my document-supported allegations of its conflict of interest and litigation misconduct herein and proffering, as an excuse, that "the allegations" are pending before this Court on my motion, with "related allegations" submitted to the New York State Ethics Commission².
- (F) My September 10, 1999 letter to Ms. Olson and Mr. Kennedy (Exhibit "F" herein), confirming the Court's extension of my time to reply to September 24th.
- (G) CJA's September 15, 1999 letter to the New York State Ethics Commissioners (Exhibit "G" herein), notifying them of the Attorney General's September 1st letter and supplementing CJA's as yet unresponded-to March 26th ethics complaint to include the Attorney

¹ The Court did not respond to this letter and, following the Labor Day holiday, I telephoned, requesting the maximum time the Court would allow beyond the initially-requested September 10th date, in view of the enormity of the response required and my other commitments relating to the Jewish holidays and teaching responsibilities.

² The "related allegations" to which Mr. Nocenti referred are those contained in CJA's March 26th ethics complaint against Mr. Spitzer and Respondent, based on events giving rise to this proceeding. That ethics complaint is Exhibit "E" to my Affidavit in support of my omnibus motion.

General's conflicts of interest and litigation misconduct in this proceeding and Respondent's complicity therein. In connection therewith, I stated (at p. 11) that it "would be appropriate" for the Commissioners to apprise the Court of their intentions since the supplement against the Attorney General and Respondent "involv[es] the *very* issues as are before the Court on my motion.

- (H) CJA's September 7, 1999 letter to Andrew Weissmann, Deputy Chief of the Criminal Division, U.S. Attorney, Eastern District of New York (Exhibit "H" herein), transmitting evidentiary materials to support its corruption investigation of Governor Pataki, including a full copy of CJA's unresponded-to March 26th ethics complaint. This, because the March 26th ethics complaint is against the Governor and details his subversion of the Ethics Commission, including by his appointment of Paul Shechtman as its Chairman.

**Facts Subsequent to those Recited in Petitioner's "Prefatory Statement"
Relating to the New York State Ethics Commission Reinforce this
Court's Mandatory Disciplinary Duty**

7. CJA's September 15th letter to the Ethics Commissioners (Exhibit "G") constitutes a supplement to its March 26th ethics complaint -- not only against the Attorney General and Respondent -- but also against the Ethics Commissioners, all of whom are appointed by the Governor. Their gross dereliction of their official duties is chronicled in the March 26th ethics complaint and updated by the September 15th letter.

8. It is because of the Ethics Commissioners' track record of misfeasance and nonfeasance that I requested them to notify the Court of their intentions relative to Mr. Nocenti's September 1st letter -- lest they simply ignore the September 15th supplement against the Attorney General and the Governor, much as they have ignored the March 26th ethics complaint.

9. According to Walter Ayres, the Ethics Commission's Public Information Officer, CJA's September 15th letter, which I faxed to the Commission on that date, was

distributed to the Commissioners at their September 15th meeting. Mr. Ayres further advised me that, pursuant to my request, he specifically referred the Commissioners to my request therein that they notify the Court of their intentions with respect to the supplement so that the Court would know

“... whether the transcending issue of the corruption of the judicial process by our state’s highest law enforcement officer and the state agency designed to enforce judicial standards rests with it alone.” (at p. 11)

10. As discussed with Mr. Ayres and reflected by the letter (at p. 11), it was my desire to incorporate the Ethics Commissioners’ intentions in this Reply, which I identified to them as due on Friday, September 24th.

11. Although I arranged with Mr. Ayres that I would call him on Wednesday, September 23rd to ascertain the Commissioners’ response, he stated he was unable to inform me of any response when I spoke with him yesterday, September 24th. Indeed, he stated that he could not advise me whether, and if, a response would be forthcoming.

12. The strong possibility that the Ethics Commission will refuse to discharge its duty in connection with my supplemental complaint of the Attorney General’s defense fraud and misconduct in this proceeding and of Respondent’s complicitous collusion therein reinforces the compelling need for the Court’s performance of its mandatory disciplinary duties.

Facts Relating to Notice to the Governor of this Proceeding

13. This Court’s willingness to meet its disciplinary duties, when doing so requires it to confront the subversion of the judicial process by the State’s highest law enforcement officer and the state agency charged with enforcing judicial standards in a

politically-explosive case whose ramifications reach the Governor, requires it to be free from self-interest and extraneous political pressures.

14. This Court is particularly vulnerable to extraneous political pressures as it nears the end of its appointed term and requires the support of the political powers which control judicial appointments. The Governor is the ultimate judge-maker when it comes to this state's judicial appointments. As chronicled in CJA's March 26th ethics complaint, he freely uses that power to confer initial judgeships, reappointments, and higher judgeships to favored, but not necessarily fit candidates. In this, he is aided and abetted by Paul Shechtman, who is not only the Ethics Commission's chairman, but also chairman of the Governor's state judicial screening committee. This too is detailed in the March 26th ethics complaint (at pp. 14-20). Consequently, if this Court desires reappointment to the Court of Claims, it is Mr. Shechtman's committee which will purport to do the screening for the Governor.

15. By virtue of CJA's September 7th letter to the U.S. Attorney of the Eastern District of New York and September 15th letter to the Ethics Commissioners – both reciting particulars of this proceeding – and each sent to the Governor, certified mail/rrr, this case is no secret to him, just as it is no secret to his politically-connected, self-serving friends at the Ethics Commission and Attorney General's office, who have long been covering up for the Governor and for each other. All would be immolated and exposed as corrupt accomplices in the political upheaval following any adjudication of this case based on fundamental legal and ethical principles. Their subtle and not-so-subtle pressures on the Court can be expected to be considerable, as likewise, the clear self-interest of the Court, if, as it has stated, it is not intending

to retire and move down to Florida, but, rather, is seeking reappointment or higher judicial appointment.

**Facts Pertaining to the Attorney General's Bad Faith Technical Objection
as to Petitioner's Capacity to Sue**

16. As set forth in my accompanying Reply Memorandum of Law (at pp. 47-55), the Reply-Opposition falsely attempts to portray my assertion that I am not suing Respondent "on behalf of" CJA or "as" its Coordinator as newly-advanced – rebutted by ¶¶85 and 115 of my moving Affidavit – and to conceal the numerous opportunities I offered the Attorney General to clarify and verify the facts relating to any aspect of this proceeding.

17. At no time did Ms. Olson, to whom I gave express, face-to-face notice of my individual status on May 17th -- a full week before she signed the May 24th Memorandum supporting the Attorney General's dismissal motion – ever make the slightest inquiry of me on the subject, although I would have readily provided her with all the information about which she is now complaining in the Reply-Opposition she is learning only "now". Nor did she make any inquiry of me following my second notice to her – at the June 14th court conference. Likewise, no one at the Attorney General's office to whom I sought assistance because of Ms. Olson's advantage-taking and defense fraud ever make any inquiry on that subject.


18. Finally, this is to reiterate what I believed to be clear from my moving papers: although CJA did not authorize me to bring a proceeding on its behalf, it had no objection to my bringing this suit individually, which, upon reviewing my Verified Petition, CJA's Director and another attorney CJA Board member were satisfied I was doing (¶117 of my moving

Affidavit; ¶5 of Doris Sassower's Affidavit).

19. As recited in my Reply Memorandum of Law (at pp. 53-55), the experience of the prior Article 78 proceeding, brought individually by my mother, the Petitioner therein, as well as my experience with Respondent's Clerk, Albert Lawrence, regarding Respondent's policy for handling complaints, convinced me – as well as CJA – that I would face no bar in bringing an individually-commenced proceeding, based upon judicial misconduct complaints that I both signed and wrote.


ELENA RUTH SASSOWER
Petitioner, *Pro Se*

Sworn to before me this
24th day of September 1999


Notary Public

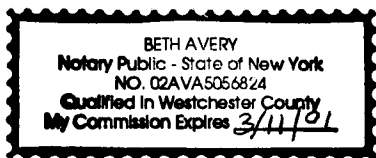


TABLE OF EXHIBITS TO PETITIONER'S REPLY AFFIDAVIT

- Exhibit "A" Petitioner's August 6, 1999 letter to David Nocenti,
Counsel to Attorney General Spitzer
- Exhibit "B": Petitioner's August 16, 1999 letter to Mr. Nocenti and
Assistant Attorneys General Olson and Kennedy
- Exhibit "C": Ms. Olson's August 16, 1999 letter to the Court
- Exhibit "D": Petitioner's August 17, 1999 letter to the Court
(w/o exhibits)
- Exhibit "E": Mr. Nocenti's September 1, 1999 letter to Petitioner
- Exhibit "F": Petitioner's September 10, 1999 letter to Ms. Olson and
Mr. Kennedy
- Exhibit "G": Petitioner's September 15, 1999 letter to the New York
State Ethics Commissioners
- Exhibit "H": Petitioner's September 7, 1999 letter to Andrew
Weissmann, Deputy Chief of the Criminal Division, U.S.
Attorney, Eastern District of New York