

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

CERTIFIED/RRR: 7000-1670-0007-9431-9912

September 21, 2001

New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

ATT: Gerald Stern, Administrator and Counsel

RE: Appellant's August 17, 2001 Motion: 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; Appellate Division, First Dept.: November 2001 Term)

Dear Mr. Stern:

Today's front-page notice in The New York Law Journal that "The Office of New York State Attorney General Eliot Spitzer at 120 Broadway remains closed until further notice..." – may be a response to my yesterday's telephone call to the Law Journal (212-779-9200), advising that that was what the Attorney General's Albany office had just told me when I had telephoned it (518-474-7330).

My phone call to the Attorney General's Albany office was at the suggestion of Ron Uzenski, the Appellate Division's Motion Clerk, who I had phoned (212-340-0423), expressing concern that not only were the phone and fax lines at the Attorney General's 120 Broadway office still non-operational but that the express mail package I had sent to Deputy Solicitor General Belohlavek on Monday, September 17th, for next day delivery, had still not been delivered (ET495066399US). That package contains my Critique of Ms. Fischer's opposition to my August 17th motion.

According to the Attorney General's Albany office, which I have phoned again today, Deputy Solicitor General Belohlavek is not reachable through any other

ERH

office and mail for him should continue to be sent to 120 Broadway.

As Mr. Belohlavek has yet to receive and review the Critique that I express mailed for him last Monday, I am superseding it with a version containing substantive changes, in addition to typographical corrections. Among these substantive changes are those reflected at pages 11-12 and 54-55, which reprint – and rightfully emphasize – Ms. Fischer’s failure to respond to the three “highlights” from my May 3rd Critique of her Respondent’s Brief – “highlights” identified by my August 17th motion (at ¶¶89, 92) and by my Reply Brief (at p. 5), *to wit*,

- (a) Point I of the Critique (at pp. 3-5) showing that Respondent’s Brief conceals that Justice Wetzel’s dismissal of my Verified Petition is based exclusively on decisions whose fraudulence was evidentially established by the record before him: my *uncontroverted* 3-page analysis Justice Cahn’s decision [A-52-54] and my *uncontroverted* 13-page analysis of Justice Lehner’s decision [A-321-334] -- the accuracy of which *uncontroverted* analyses Respondent’s Brief does not deny or dispute;
- (b) Point II of the Critique (at pp. 5-11) showing that Respondent’s Brief is fashioned on knowingly false propositions about the Commission, derived from the decisions of Justices Cahn and Lehner, without identifying these decisions as its source – and that the propositions are rebutted by my *uncontroverted* analyses of these decisions and the *uncontroverted* evidence in the record of my proceeding;
- (c) Point III(D)(1) of the Critique (at pp. 40-47) showing that Respondent’s Brief relies on this Court’s appellate decision in *Mantell* to support inflated claims that I lack “standing” to sue the Commission – concealing not only the different facts of my case, making the *Mantell* appellate decision inapplicable, but the fraudulence of the *Mantell* appellate decision, as highlighted by my *uncontroverted* 1-page analysis – the accuracy of which Respondent’s Brief does not deny or dispute.

As my revised Critique makes explicit (at p. 11), these “highlights”, resting on my *uncontroverted* three analyses: of Justice Cahn’s decision in *Doris L. Sassower v. Commission*, of Justice Lehner’s decision in *Mantell v. Commission*, and of the Appellate Division’s appellate decision in *Mantell v. Commission*, establish my entitlement to the granting of BOTH the first and second branches of my August 17th motion.

I specifically call upon you and the Commission's members to respond to these three "highlights" from my May 3rd Critique of Ms. Fischer's Respondent's Brief.

Such response is particularly appropriate as the second branch of my August 17th motion not only seeks sanctions against, and disciplinary and criminal referral of, culpable members of the Attorney General's office based on Ms. Fischer's Respondent's Brief, but culpable members and staff of the Commission.

As you know, I have consistently provided the Commission with duplicate copies of my litigation papers and relevant correspondence with the Attorney General. This, so that the Commission would not be able to plead "ignorance" of the Attorney General's misconduct, committed on its behalf¹. Indeed, 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 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, Solicitor General Bansal, and Attorney General Spitzer to discharge their mandatory supervisory responsibilities under 22 NYCRR §1200.5.

So that the record before the Court on this motion, as likewise on this appeal, is complete as to the Commission's knowledge and complicity in the Attorney General's misconduct, please confirm that you have furnished the Commission members with the copies of the litigation papers and correspondence that I have been hand-delivering and mailing to the Commission's office since the inception of my Article 78 proceeding, including my motion papers in the *Mantell* appeal. In particular, please confirm that upon your receipt of copies of the following specific documents – each hand-delivered to the Commission's office -- you timely provided them to the Commission members:

¹ Such duplicates were also provided so that the Commission would not be able to "distance itself" from the Attorney General's misconduct in my proceeding. As reflected by your May 8, 1996 letter to me – Exhibit "G" to my Verified Petition (at "Ex. "D-14" thereto) – you used the excuse that "The Commission was represented by the Attorney General's office" to counter my protest that the Commission had "defended itself" by litigation misconduct in *Doris L. Sassower v. Commission*.

- (1) my January 10, 2001 letter to Attorney General Spitzer² expressly requesting (at p. 3) that the Commission “undertake its own defense, as it is well capable of doing. There has been no claim that the Commission ‘requires the services of attorney or counsel’, pursuant to Executive Law §63.1.”³
- (2) my May 3, 2001 Critique of Respondent’s Brief⁴, transmitted to the Commission with copies of my May 3rd letters to Attorney General Spitzer and Deputy Solicitor General Belohlavek⁵;
- (3) my August 17, 2001 motion with exhibits

Please also confirm that this letter and my enclosed revised September 17th Critique will be promptly furnished to the members of the Commission.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Enclosures: (1) NYLJ item; (2) revised September 17th Critique
cc: See next page

² Exhibit “T-1” to my August 17, 2001 motion.

³ On March 20, 2001, at the Association of the Bar of the City of New York, Commission Chairman Henry Berger specifically declined to accept from me a copy of the January 10, 2001 letter, which I offered him after he refused to accept from me a copy of my December 22, 2000 Appellant’s Brief. In response to my question as to whether he had previously seen my Appellant’s Brief, he told me that he had been given it, but had chosen NOT to read it. This, because, as far as he was concerned, he had “a very good lawyer”. I asked him whether, in face of the continuing notice I had given the Commission of the Attorney General’s fraudulent defense misconduct, he felt that this was a proper discharge of his professional and ethical duty, but Chairman Berger would not respond.

⁴ Exhibit “U” to my August 17th motion.

⁵ Exhibits “T-3” and “T-4” to my August 17th motion.

cc: New York State Attorney General Eliot Spitzer
 ATT: Deputy Solicitor General Michael S. Belohlavek
 By Priority Mail/Certified/RRR: 7000-1670-0007-0498-0591
 Appellate Division, First Department
 ATT: Ron Uzenski, Motion Clerk

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VOLUME 226—NO. 58

NEW YORK, FRIDAY, SEPTEMBER 21,

TODAY'S NEWS

Update

The Manhattan District Attorney's Office continues to be without telephone service because of the disruption caused by the attack on the World Trade Center, its spokeswoman Barbara Thompson said yesterday. Until regular service is restored, lawyers can contact the office at two numbers: (212) 343-7220 or (212) 864-7884. Outside of normal business hours, the office can be reached at (646) 210-2500.

The Office of New York State Attorney General Eliot Spitzer at 120 Broadway remains closed until further notice. The Attorney General can be served at his Harlem office, located at 163 West 125th Street, 13th floor. Regular mail should be sent to 120 Broadway, where it will be redirected to Albany, and all phone inquiries should also go to the Albany office at (518) 474-7330.

Unless parties are contacted by the court, there will be no jury trials at the U.S. District Court for the Southern District of Manhattan during the week of Sept. 24, officials said yesterday. Jurors with new summonses for Sept. 19, 20 and 24 should still report to the jury assembly room. All mediations scheduled for the week of Sept. 17 will be rescheduled. Naturalization proceedings scheduled for Sept. 14 have been rescheduled for Oct. 19. Naturalization proceedings scheduled for today have been rescheduled for Oct. 26. Petitioners for naturalization will also be notified of the changes. Officials urge attorneys to call (914) 390-4220 for recorded updates on the court's status. The court's Web site is also updated daily at 2 p.m. The site is www.nysd.uscourts.gov. A list

budget powers have agreed to extend until Oct. 4 the time for filing reply briefs. The case, *Pataki v. McCall*, was scheduled for a conference tomorrow before Albany Supreme Court Justice Bernard J. Malone Jr. However, in light of the World Trade Center attack, attorneys agreed to an unspecified delay, and the judge concurred.

The Court of Appeals yesterday agreed to review a decision that the Public Employment Relations Board enjoys exclusive jurisdiction over the scope of collective bargaining disputes between the police union and the City. In *PBA v. City*, the Appellate Division, Third Department, ruled that a state panel, not a City panel, should take charge of all dispute resolution procedures.

A request by voters and City Council candidates to delay Tuesday's primary elections because of continued disruption from recent terrorist attacks was denied late yesterday afternoon by Eastern District Senior Judge I. Leo Glasser. The judge rejected the arguments of attorney Paul Wooten, who said that the new primary date, set when New York was thrown into chaos on Sept. 11, still did not give election officials and voters enough time to prepare for voting. Mr. Wooten had asked to extend the Sept. 25 primary four weeks, and delay November's general election by three to four weeks.

A group of 45 Corporation Counsel attorneys working on the administration of the election in New York City will move into Chadbourne &

Court Defers to EPA No Jurisdiction Seen to Review

BY JOHN CAHER

ALBANY — Giving wide deference to the Environmental Protection Agency, a Northern District federal judge — with more than a hint of personal displeasure — has held that the court lacks jurisdiction to review a highly contentious administrative determination that could force General Electric Co. to dredge part of the Hudson River.

Judge Lawrence E. Kahn said that while the U.S. Court of Appeals for the Second Circuit has never directly addressed whether a temporary determination by the EPA can be challenged, eight other circuits have all generally concluded that the environmental agency's initial determinations on toxic waste disposal are virtually immune from legal action.

Judge Kahn acknowledged the "seemingly harsh result" of finding that a group of farmers are for now barred from the courthouse, and observed in a footnote that he is "sympathetic" to the valid concern that his finding here may well render the claim moot. But, he said, the law is clear.

Farmers Against Irresponsible Remediation (FAIR) v. United States Environmental Protection Agency, 01-CV-1183, stems from the contamination of the Hudson River by General Electric, and an ongoing debate over what, if anything, to do about it.

Judge Kahn said he will have jurisdiction after the EPA's action is undertaken, he acknowledged. He will render moot the claim raised by the farmers.

Microsoft and Government

BY JONATHAN GRONER
American Lawyer Media

IF ANYONE thought that the contentious Microsoft antitrust case was ready to gradually wind down in a rush of good feeling, the filing of yesterday's "Joint Status Report" in the case will put an end to such hopes.

The report, which was ordered last month by U.S. District Judge Colleen Kollar-Kotelly but postponed six days in the aftermath of last week's

judge. But the report, which the parties' lawyers, is completely of opposing issues, coupled with the chief issue Microsoft's insistence that the government seek remedies — essentially, the company stop engaging in anti-competitive business practices — at