New York County Clerk's Index No.108551/99
Appellate Division, November 2001 Term

NEW YORK SUPREME COURT
Appellate Division -- First Department

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

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

PETITIONER-APPELLANT'S CRITIQUE OF RESPONDENT'S OPPOSITION TO HER AUGUST 17, 2001 MOTION

PRESENTED TO THOSE CHARGED WITH SUPERVISORY RESPONSIBLITIES IN THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

TO ASSIST THEM IN MEETING THEIR PROFESSIONAL AND ETHICAL OBLIGATIONS -- BEGINNING WITH WITHDRAWING RESPONDENT'S OPPOSITION

BY: Elena Ruth Sassower

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

Dated: September 17, 2001

TABLE OF CONTENTS

INTRODUCTION

On September 4, 2001 – the first business day following Appellant's receipt of Respondent's opposition to her August 17, 2001 motion -- Appellant faxed a memorandum to Attorney General Eliot Spitzer and Solicitor General Preeta D. Bansal, stating,

> "ONCE AGAIN, this is to put you on notice of your mandatory supervisory responsibilities under the clear and unambiguous provisions of 22 NYCRR §§1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility], as well as under NYCRR §130-1.1, to investigate and take 'reasonable remedial action' to remedy the flagrant litigation misconduct committed by Assistant Solicitor General Carol Fischer – this time, by her legally insufficient and factually false and fraudulent August 30, 2001 Affirmation and so-called Memorandum of Law in opposition to my August 17, 2001 motion ...
>
> In the *unlikely* event you are unfamiliar with my August 17, 2001 motion, whose second branch of relief is addressed to Ms. Fischer's prior litigation misconduct in my appeal by her fraudulent Respondent's Brief – and your failure to discharge your mandatory supervisory duty in connection therewith, as to which I expressly seek sanctions and costs against you, *personally*, as well as disciplinary and criminal referral – faxed herewith is the Notice of Motion. I hereby request that you immediately obtain the full motion from Ms. Fischer. This will enable you to verify for yourselves – as is your duty upon notice – that just as Ms. Fischer's Respondent's Brief was, '*from beginning to end*, [] based on knowing and deliberate falsification, distortion, and concealment of the material facts and law' so, likewise, her August 30, 2001 Affirmation and Memorandum of Law opposing my motion. Now – as then – your duty is to take corrective steps by withdrawing her violative court submission."

Appellant further stated,

> "Much as I previously provided you with a fact-specific, fully-documented 66-page Critique of Ms. Fischer's Brief to assist you in discharging your supervisory responsibilities over Ms. Fischer, so I am prepared to provide you with a similarly meticulous critique of Ms. Fischer's Affirmation and Memorandum of Law, *should that be necessary*. Therefore, please advise whether you would like such additional critique, setting forth the specific respects in which Ms. Fischer's Affirmation and Memorandum of Law are violative of NYCRR §130-1.1, 22 NYCRR §§1200.3(a)(4), (5), 1200.33(a), and Judiciary Law §487 – the same provisions relied on in my August 17, 2001 Notice of Motion – or whether you are ready to withdraw these facially-repugnant documents without so burdening me.
>
> **Should** you not withdraw Ms. Fischer's opposition to my motion – which I hereby expressly call upon you to do – I will have no choice but to burden the Court with otherwise unnecessary reply papers, including an application for further relief against you, *personally*, for failure to discharge your mandatory supervisory responsibilities." (emphases in the original).

Two days later, Deputy Solicitor General Michael S. Belohlavek, Ms. Fischer's immediate superior, to whom Appellant had also sent a copy of her September 4, 2001 memorandum, advised by fax:

> "With regard to your offer to provide a critique of Ms. Fischer's opposition to your motion, we would be happy to review such a critique in considering your request that Ms. Fischer's opposition to the motion be withdrawn."

Appellant's responding September 7, 2001 fax to Mr. Belohlavek stated that she would provide such critique and that if he were "sincere":

> "<u>the Attorney General's Office should be preparing to withdraw Ms. Fischer's Respondent's Brief.</u> This, because Ms. Fischer's Affirmation and Memorandum of Law do NOT deny or dispute the accuracy of my 66-page Critique

> of her Respondent's Brief in ANY respect – a fact Ms. Fischer's August 30th Memorandum of Law (at pp. 9-12) shamelessly tries to justify by a spurious legal argument that the Attorney General's Office can engage in whatever misrepresentation of documents and decisions it wishes, but that this is not 'fraud on the court' because these documents and decisions are 'clearly before the Court in their complete form in Petitioner-Appellant's Appendix' (at p. 11) and because I have been able to challenge the Attorney General's misrepresentations by my advocacy (at p. 12)." (emphases in the original).

As hereinabove stated, Ms. Fischer's opposition to Appellant's August 17, 2001 motion violates ALL the rule and statutory provisions cited in the Notice of Motion as warranting sanctions and other relief, including disciplinary and criminal referral against culpable parties at the Attorney General's office and at the Commission.

The language of these rule and statutory provisions is unambiguous. 22 NYCRR §130-1.1 proscribes "frivolous conduct", which it expressly defines to include conduct which "asserts material factual statements that are false" or "is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law", or "is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another". Such provision provides for costs and sanctions.

22 NYCRR §§1200.3(a)(4) and (5) proscribe "conduct involving dishonesty, fraud, deceit, or misrepresentation" and "conduct that is prejudicial to the administration of justice". 22 NYCRR §1200.33(a)(5) proscribes a

lawyer, "in the representation of a client", from "[k]nowingly mak[ing] a false statement of law or fact"[1]. These three provisions are part of New York's Disciplinary Rules of the Code of Professional Responsibility [DR 1-102(a)(4) and (5); DR 7-102(a)(5)]. Consequently, pursuant to §603.2 of the Appellate Division, First Department's rules, violations are "professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law".

Judiciary Law §487, titled "Misconduct by attorneys", makes it a misdemeanor punishable under the penal law for an attorney to be "guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party".

As hereinafter demonstrated, Ms. Fischer's opposing Memorandum of Law conceals the language of ALL these rule and statutory provisions, whose "meaning and purpose" she pretends (at p. 10) Appellant "misunderstands"; conceals (at p. 10) that Appellant has invoked 22 NYCRR §130-1.1 on her motion; and, further conceals (at p. 10) the definition of "fraud on the court", as defined by Black's Law Dictionary (7th ed. 1999), set forth (at p. 2) in

---

[1] Other provisions of §1200.33(a) are also germane -- such as the proscriptions under (a)(1) "...assert[ing] a position, conduct[ing] a defense...or tak[ing] other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another; (a)(2) "Knowingly advanc[ing] a claim or defense that is unwarranted under existing law; except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law"; (a)(3) "Conceal[ing] or knowingly fail[ing] to disclose that which the lawyer is required by law to reveal; (a)(7) "[c]ounsel[ing] or assist[ing] the client in conduct that the lawyer knows to be illegal or fraudulent; (a)(8) [k]nowingly engag[ing] in other illegal conduct or conduct contrary to a disciplinary rule."

Appellant's Critique of Respondent's Brief. That definition, equally applicable to Ms. Fischer's opposition to Appellant's motion, both her "Affirmation" and her Memorandum of Law, is:

> "a lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding."

* * *

MS. FISCHER'S OPPOSING "AFFIRMATION" IS NON-PROBATIVE, LEGALLY-INSUFFICIENT, AND FILLED WITH SANCTIONABLE DECEIT

Ms. Fischer, a seasoned litigator, may be presumed to be familiar with the basic requirement for affirmations set forth in CPLR §2106 – quite apart from the fact that it is set forth by Appellant in the record of this proceeding[2]:

> "The statement of an attorney... when subscribed and affirmed by him to be true under the penalties of perjury, may be served or filed in the action in lieu of and with the same force and effect as an affidavit."[3]

Conspicuously, Ms. Fischer does NOT affirm that her self-styled "Affirmation" is "true under the penalties of perjury". Rather, she only "states as follows under penalty of perjury". Thus omitted is the operative phrase "affirmed... to

---

[2] *See* Appellant's July 28, 1999 Memorandum of Law in support of her omnibus motion (at p. 13).

[3] "'While attorneys always have a professional duty to state the truth in papers, the affirmation under this rule gives attorneys adequate warning of prosecution for perjury for a false statement.' McKinney's Consolidated Laws of New York Annotated, 7B, p. 817 (1997), Commentary by Vincent C. Alexander."

be true". Without this, Ms. Fischer's "Affirmation" is meaningless since all she is stating "under penalty of perjury" is the content of her statement – *not the truth thereof.*

This omission is not inadvertent. As hereinafter shown, to the extent Ms. Fischer's "Affirmation" says anything material, it is, when compared to the record, NOT true – and, by reason thereof, known by Ms. Fischer to not be true.

As further set forth by Appellant in the record of this proceeding[4]:

> "... 'An affidavit must state the truth, and those who make affidavits are held to a strict accountability for the truth and accuracy of their contents', Corpus Juris Secundum, Vol. 2A, § 47 (1972 ed., p. 487). 'False swearing in either an affidavit or CPLR 2106 affirmation constitutes perjury under Chapter 210 of the Penal Law', Siegel, New York Practice, §205 (1999 ed., p. 325)."

Ms. Fischer violates a further fundamental requirement in failing to set forth the basis upon which her "Affirmation" is made – whether on personal knowledge or upon information and belief, and if the latter, the source of the information and belief. This requirement is also set forth by Appellant in the record of this proceeding[5]:

> "'It has too long been the rule to need the citation to authority, that such averments in an affidavit have not [sic] probative force. The court has a right to know

---

[4] *See* Appellant's September 24, 1999 Reply Memorandum of Law in further support of her omnibus motion (at p. 14).

[5] *See* Appellant's July 28, 1999 Memorandum of Law in support of her omnibus motion (at p. 13).

> whether the affiant had any reason to believe that which he alleges in this affidavit.' *Fox v. Peabody*, 97 App. Div. 500, 501 (1904).
> *Pachucki v. Walters*, 56 A.D.2d677, 391 N.Y.S.2d 917, 919 (3rd Dept. 1977); *Soybel v. Gruber*, 132 Misc. 2d 343, 346 (NY. Co. 1986), citing *Koump v. Smith*, 25 N.Y.2d 287, for the proposition, 'An affirmation by an attorney without personal knowledge of the facts is without probative value and must be disregarded.'"

Instead, all Ms. Fischer says (at ¶1) as to the basis upon which she makes her "Affirmation" is that she is "an Assistant Solicitor General in the Office of the Attorney General of the State of New York, counsel for the respondent-respondent Commission on Judicial Conduct of the State of New York" and "AS SUCH" (emphasis added) "fully familiar with the matters set forth in [her] Affirmation". By that standard, Ms. Fischer is *not* attesting to knowledge superior to other Assistant Solicitors General in the Attorney General's office having *no* prior contact with this proceeding.

Although Ms. Fischer is the signator of Respondent's Brief, whose false and fraudulent content is the subject of the second branch of Appellant's motion, her "Affirmation" does not even acknowledge that she has signed it. Nor does she provide any particulars relevant to the motion's second branch, such as (1) whether her signature connotes her authorship of Respondent's Brief; (2) her familiarity with the lower court record, including consultations with the Assistant Attorneys General who handled the proceeding in the lower court and with the Commission; and (3) her review of Appellant's 66-page

Critique of her Respondent's Brief, as well as her consultations pertaining thereto with others at the Attorney General's office and at the Commission.

Nor, in connection with the first branch of Appellant's motion relating to the Court's disqualification, does Ms. Fischer attest to familiarity with relevant papers and proceedings, including: (1) George Sassower's *facially-meritorious* judicial misconduct complaints and lawsuits against the Court's justices, based, *inter alia*, on their complicity in the Attorney General's misconduct arising from the involuntary dissolution of Puccini Clothes, Inc.; and (2) the appellate record in *Mantell v. Commission* containing Appellant's motion based on the fraud perpetrated by the Attorney General's Respondent's Brief therein.

Having failed to attest to the truthfulness of her "Affirmation" and to the basis for her factual statements – each eliminating the probative value of her "Affirmation" – Ms. Fischer then vitiates the very purpose of her "Affirmation" as opposition to Appellant's motion.

The purpose of an affirmation – like an affidavit – is also set forth by Appellant in the record of this proceeding[6]:

> "The affidavit is 'the foremost source of proof on motions', Siegel, New York Practice, 205 (1999 ed., p. 324)..."

---

[6] *See* Appellant's September 24, 1999 Reply Memorandum of Law in further support of her omnibus motion, at pp. 14, 16-18; *Also*, Appellant's October 5, 2000 Reply Memorandum of Law in support of her September 21, 2000 motion in the appeal of *Mantell v. Commission*, at pp. 1-2, noting that the legal authority cited in the lengthy second section, although relating to summary judgment motions is applicable, albeit less rigorously, to all motions.

"... 'A party opposing a motion... cannot rely on mere denials, either general or specific... it is not enough for the opponent to deny the movant's presentation. He must state his version and he must do so in evidentiary form.' [Vol 6B Carmody-Wait 2d] §39:56 (pp. 163-4).... '[M]ere general allegations will not suffice', Vol. 6B Carmody-Wait 2d §39:52 (1996 ed., p. 157)...

'Failing to respond to a fact attested in the moving papers... will be deemed to admit it', Siegel, New York Practice, §281 (1999 ed., p. 442) -- citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing *Laye v. Shepard*, 265 N.Y.S.2d 142 (1965), aff'd 267 N.Y.S.2d 477 (1st Dept. 1966) and Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. 'If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it' *id.* (1992 ed., p. 324). '[I]f answering affidavits are not produced, the facts alleged in the movant's affidavits will usually be taken as true', 2 Carmody-Wait §8:52 (1994 ed., p. 353). Where answering affidavits are produced, they 'should meet traversable allegations' of the moving affidavit. 'Undenied allegations will be deemed to be admitted', *id*, citing *Whitmore v. J. Jungman, Inc.*, 129 NYS 776, 777 (S.Ct., NY Co. 1911).

Moreover, 'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.'" Corpus Juris Secundum Vol. 31A, 166 (1996 ed., p. 339)[7].

Ms. Fischer does NOT deny or dispute *any* of the specific and documented facts sworn to by Appellant's moving Affidavit. Instead, she "resorts to falsehood [and] other fraud" by pretending that Appellant's motion is "patently frivolous

[7] *Cf. People v. Conroy*, 97 NY 62, 80 (1884): "The resort to falsehood and evasion by one accused of a crime affords of itself a presumption of evil intentions, and has always been considered proper evidence to present to a jury upon the question of the guilt or innocence of the person accused." citing cases.

in its entirety" (at ¶6); "solely the product of her own imaginings; nothing in the factual record supports it" (at ¶7); "manifestly absurd" (at ¶8); and "replete with unsupported accusations of criminal wrongdoing" (at ¶9).

The unabashed falsity of these characterizations – as likewise of Ms. Fischer's portrayals (¶¶6, 7) of Appellant's motion as an indiscriminate and irresponsible presentation of corruption and criminality by judges, lawyers, and public officers -- is established by the most cursory examination of Appellant's motion, whose 50-page moving Affidavit is fact-specific, substantive, and documentarily substantiated by 68 discrete exhibits -- Appellant's 66-page Critique of Respondent's Brief, among them. However, for Ms. Fischer to acknowledge the existence of Appellant's specific, documented, and sworn-to factual allegations would require her to give specific denials, under penalty of perjury, which she cannot do.

Among the most significant of Appellant's sworn allegations are those relating to her *uncontroverted* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54] and her *uncontroverted* 13-page analysis of Justice Lehner's decision in *Michael Mantell v. Commission* [A-321-334], showing these decisions [A-189-194; A-299-307] to be fraudulent. Ms. Fischer's failure to deny or dispute the accuracy of these two *uncontroverted* analyses, as likewise of Appellant's *uncontroverted* 1-page analysis of the Court's fraudulent appellate decision in *Mantell* (Exhibit "R"), establish "in one

fell swoop", Appellant's entitlement to the granting of BOTH the first and second branches of her motion. [*See, inter alia*, pp. 37-39, 54-55 *infra*].

Epitomizing Ms. Fischer's refusal to provide a sworn refutation of *any* of Appellant's specific sworn allegations is the ***single sentence*** of her "Affirmation" in which she asserts that Appellant's 66-page Critique "speaks for itself". This, in face of Appellant's moving Affidavit expressly identifying (at ¶92), as the Attorney General's burden on this motion, to "com[e] forth with specific and substantiated denials to the Critique – "first and foremost" of pages 3-11 and 40-47 of the Critique resting on Appellant's *uncontroverted* analyses of the decisions of Justices Cahn and Lehner and of the Court's appellate decision in *Mantell*. These pages similarly establish Appellant's entitlement to the granting of BOTH the first and second branches of her motion.

Appellant's Reply Brief terms pages 3-11 and 40-47 of the Critique as its "dispositive highlights". These "highlights" are summarized in both the Reply Brief (at p. 5) and Appellant's moving Affidavit (at ¶89) as follows:

(1) Point I of the Critique (at pp. 3-5) showing that Respondent's Brief conceals that Justice Wetzel's dismissal of Appellant's Verified Petition is based exclusively on decisions whose fraudulence was evidentiarily established by the record before him: Appellant's *uncontroverted* 3-page analysis Justice Cahn's decision [A-52-54] and her *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;

(2) 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 Appellant's *uncontroverted* analyses of these decisions and the *uncontroverted* evidence in the record of her proceeding;

(3) 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 Appellant lacks "standing" to sue the Commission – concealing not only the different facts of Appellant's case, making the *Mantell* appellate decision inapplicable, but the fraudulence of the *Mantell* appellate decision, as highlighted by Appellant's *uncontroverted* 1-page analysis – the accuracy of which Respondent's Brief does not deny or dispute.

The Court's case of *Schindler v. Issler & Schrage, P.C.*, 262 A.D.2d 226 (1st Dept. 1999) – to which Ms. Fischer refers in her Memorandum of Law (at p. 10) -- reflects that her bad-faith attempt to avoid confronting the fact-specific, documents presentation in Appellant's Critique is itself a violation:

> "It is well settled that when there is a duty to speak, silence may very well constitute fraudulent concealment (*see, Donovan v. Aeolian Co.*, 270 NY 267, 271), which is itself the equivalent of affirmative misrepresentations of fact (*Nasaba Corp. v. Harfred Realty Corp.*, 287 NY 290, 295). This is especially true where an officer of the court owes such an obligation to the tribunal (Code of Professional Responsibility DR 7-102[A][3] [22 NYCRR 1200.33(a)(3)])' (*Guardian Life Ins. Co. v. Handel*, 190 AD2ed 57, 61)."

The "obligation to the tribunal" which "an officer of the court" owes under DR 7-102[A][3] – 22 NYCRR §1200.33(a)(3) -- is *not* to "[c]onceal or knowingly fail to disclose that which the lawyer is required by law to reveal". DR 7-DR 102[B](1) and (2) -- 22 NYCRR §§1200.33(b)(1) and (2) – are explicit as to that obligation: ***when fraud has been perpetrated upon a tribunal, a lawyer is obligated to "reveal the fraud to the tribunal".***

Ms. Fischer's knowledge of this may be seen from her pretense –in the same *single sentence* as purports that the Critique "speaks for itself" (at ¶8) -- that the Critique "is perhaps the best refutation of [Appellant's] claim that the Commission's brief is a 'fraud on the court'". That this is untrue – and that Ms. Fischer knows it to be untrue – is evident from the definition of "fraud on the court" from Black's Law Dictionary (7th ed. 1999), set forth in the Critique's "Introduction" (at p. 2) -- which definition Ms. Fischer's "Affirmation", like her Memorandum of Law, simply ignores because it perfectly describes her Respondent's Brief.

It is in the complete absence of *any* factual refutation to *any* of the allegations of Appellant's moving Affidavit – including the factual showing in Appellant's Critique of the "fraud on the court" perpetrated by Ms. Fischer's Respondent's Brief -- that Ms. Fischer purports (at ¶¶7, 8) that she has a legal defense to the motion's first and second branches, set forth at pages 5-9 and 9-12 of her Memorandum of Law. These pages, representing Ms. Fischer's Point I and Point II "Argument", are legally-unsupported and fashioned on factual deceits – as herein demonstrated at pages 28-48 and 49-55.

It is to conceal the factual and legal baselessness, indeed, fraudulence, of her opposition – and to give an aura of substance to her false pretense that Appellant's motion is unsupported and harassing that -- Ms. Fischer, even before purporting to address the motion, claims (at ¶4) that it:

> "may be viewed as the product of what appears to be her pattern of turning every lawsuit into a prolonged litigation characterized by relentless personal and professional attacks on either or both her adversaries and the presiding court once they disagree with her legally and factually unsupported claims."

Ms. Fischer cites the decision of Judge Gerard Goettel in *Sassower v. Field*, 138 F.R.D. 369 (SDNY 1991), affirmed by the Second Circuit, 973 F2d 75 (2d Cir. 1992), as illustrating this supposed "pattern" of unsupported and harassing advocacy. She quotes and paraphrases Judge Goettel's decision that Appellant made "several *unsupported* bias recusal motions...based upon...George Sassower"; that Appellant "*without* factual support, accused opposing counsel of 'fraud, perjury and chicanery'"; and that Appellant's "view of any factual disputes has been, all along, that [her] claims are to be acknowledged without dispute and *contrary evidence* of the defendants is to be rejected as fraud and perjury" (emphases added).

Ms. Fischer does not purport to have any personal knowledge of Judge Goettel's decision – or the record underlying it – *and she has none*. However, as signator of Respondent's Brief and the sole affirmant in opposition to Appellant's motion, she is presumed to be familiar with the record of this proceeding. From this she knows that Judge Goettel's decision, *even if true*, has NO application to this proceeding because Appellant's advocacy herein, at every juncture, has met the highest evidentiary and professional standards.

Moreover, from the record herein, Ms. Fischer has had notice that Judge Goettel's decision and the Second Circuit affirmance are *not true* and are "fraudulent and retaliatory". Reflecting this notice is Appellant's March 26, 1999 ethics complaint against Governor Pataki[8], referred to at footnote 18 of Appellant's Brief and at footnote 9 of Appellant's moving Affidavit in substantiation of her assertions that the Governor is criminally implicated by this proceeding. The March 26, 1999 ethics complaint against the Governor identifies (at fn. 2) Appellant's July 27, 1998 criminal complaint to the U.S. Justice Department's Public Integrity Section of its Criminal Division and the cert petition in the §1983 federal action *Doris L. Sassower v. Mangano, et. al.* These two documents, both in the record of this proceeding [A-347, A-348], each particularize the fraudulent and retaliatory nature of the *Sassower v. Field* decisions[9].

It is thus a knowingly falsehood for Ms. Fischer to assert, as she does in ¶5, that "Before the trial court in this proceeding, petitioner repeated most of the tactics employed in Sassower v. Field" – inferring thereby that Appellant's advocacy herein in the lower court was unsupported and harassing. She provides *no* substantiating record references – other than the falsehoods and defamations of Justice Wetzel's appealed-from decision, already exposed as

---

[8] *See* Exhibit "E" to Petitioner's July 28, 1999 omnibus motion, at footnote 2.

[9] *See* July 27, 1998 criminal complaint to the Justice Department's Public Integrity Section, pp. 6-8 and Exhibit "J" thereto; *Sassower v. Mangano* cert petition: A-243, fn. 3; A-251, fn. 1; A-256; A-274-5; A-278-280.

such by the record references in Appellant's *uncontroverted* Brief and reiterated by Appellant's *uncontroverted* Critique.

Finally, as to Ms. Fischer's ¶1, which purports to summarize the relief sought by Appellant's instant motion, her ¶2, which purports to summarize the relief sought by the Verified Petition, and her ¶3, which purports to summarize the disposition in Justice Wetzel's appealed-from decision, these repeat, even *verbatim*, the recitals contained at the outset of her Memorandum of Law – including the material omissions and distortions in those recitals, designed to mislead the Court. They are detailed hereinafter. (*See* footnotes 10, 18, 19 *infra*).

MS. FISCHER'S MEMORANDUM OF LAW

MS. FISCHER'S "PRELIMINARY STATEMENT" (at pp. 1-2) IS MATERIALLY FALSE AND MISLEADING

Each of the two sentences of Ms. Fischer's first paragraph (at p. 1) is materially false and misleading[10].

Ms. Fischer's first sentence of her first paragraph (at p. 1) misleadingly asserts that Appellant's motion to disqualify the Court is "due to its alleged self-interest" – *as if that is the entire ground.* However, the motion also seeks the Court's disqualification for "actual and apparent bias" – a fact clearly stated in the Notice of Motion (¶1). Yet nowhere in Ms. Fischer's

---

[10] ¶1 of Ms. Fischer's "Affirmation", reciting the relief sought by the instant motion, is embodied in her Memorandum's "Preliminary Statement" – both the first and second paragraphs.

Memorandum of Law – as, likewise nowhere in her "Affirmation"[11] – is the "apparent bias" ground for disqualification ever acknowledged.

This material omission enables Ms. Fischer to purport – as the title of Point I of her "Argument" section (at p. 5) -- that "Petitioner has Established No Basis for the Disqualification or Recusal of this Court" – when, in fact, Appellant's showing of entitlement to the Court's disqualification for "apparent bias", as set forth at ¶¶68-74 of her moving Affidavit, is wholly undenied and undisputed.

Ms. Fischer's second sentence of her first paragraph (at p. 1) transmogrifies Appellant's proceeding as one "seeking mandamus" against the Commission. This is *not* an accurate depiction of what Appellant's Verified Petition seeks – as examination of its Six Claims for Relief plainly shows [A-37-45] as, likewise, of the 10 items listed in the Notice of Verified Petition [A-18-20].

Such gross simplification of Appellant's proceeding as "mandamus" is to falsely make it appear that the Court's appellate decision in *Mantell v. Commission* that "Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus"[12] has some application to Appellant's proceeding, with its far more

---

[11] *See* ¶¶1 and 7 of Ms. Fischer's "Affirmation".

[12] Exhibit "B-1" to Appellant's August 17, 2001 motion.

complex issues and different facts. That it does not is detailed at pages 40-47 of Appellant's Critique of Respondent's Brief – pages whose significance were highlighted both by Petitioner's moving Affidavit (¶¶89, 92) and her Reply Brief (at p. 5).

Each of the two sentences of Ms. Fischer's second paragraph (at pp. 1-2) is materially false and misleading.

Ms. Fischer's first sentence of her second paragraph (at pp. 1-2) identifies that Appellant's motion sought special assignment of the appeal to "a panel of retired or soon-to-be-retiring judges" – but omits the qualification that such judges be "'willing to disavow future political and/or judicial appointment'" (Notice of Motion, ¶1). This qualification is, likewise, omitted from the balance of Ms. Fischer's Memorandum – and from her "Affirmation"[13].

Such material omission – combined with Ms. Fischer's concealment of the specific allegations in Appellant's moving Affidavit (¶¶15-48) pertaining to the dependence of this Court's justices on the Governor and others for appointments – further enables Ms. Fischer to falsely pretend in her Point I that "Petitioner has Established No Basis for the Disqualification or Recusal of this Court".

Ms. Fischer's second sentence of her second paragraph (p. 2), which rushes to describe the second branch of Appellant's motion, as being "in

[13] *See* ¶¶1 and 7 of Ms. Fischer's "Affirmation".

tandem" with Appellant's request for the disqualification of the Court's justices, materially omits the further relief sought in the motion's first branch:

> "disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of the facts pertaining to their personal and professional relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby" (Notice of Motion, ¶1).

This relief is also omitted from the balance of Ms. Fischer's Memorandum – and from her "Affirmation"[14]. Ms. Fischer thereby conceals that Appellant's entitlement to disclosure, like her entitlement to the Court's disqualification for "apparent bias", is undenied and undisputed.

Ms. Fischer also materially omits the further relief sought by the motion's first branch for:

> "permission for a record to be made of the oral argument of this appeal, either by a court stenographer, and/or by audio or video recording" (Notice of Motion, ¶1),

Such relief, altogether omitted from Ms. Fischer's "Affirmation"[15], only appears in her Memorandum at the end of her Point I (at pp. 8-9), wherein she conceals that she offers no opposition to Appellant's request based on the public's right to a record, as particularized by ¶¶83-87 of Appellant's moving Affidavit.

As to the second branch of Appellant's motion, which Ms. Fischer purports to summarize, materially omitted is its requested relief for the Attorney

---

[14] *See* ¶¶1and 7 of Ms. Fischer's "Affirmation".

[15] *See* ¶¶1 and 7 of Ms. Fischer's "Affirmation".

General's disqualification for violation of Executive Law §63.1 and conflict of interest rules. Ms. Fischer wholly conceals this requested relief from both her Memorandum and "Affirmation"[16].

Lastly, Ms. Fischer materially omits that Appellant's motion had a third branch, for "such other and further relief as may be just and proper." Likewise, no mention of this third branch appears in the balance of Ms. Fischer's Memorandum – or in her "Affirmation".

MS. FISCHER'S "STATEMENT OF BACKGROUND FACTS" (at pp. 2-5) IS MATERIALLY FALSE AND MISLEADING

A. "The Underlying Action" (at pp. 2-4):

Each of the sentences in the two paragraphs of Ms. Fischer's statement of "The Underlying Action" is materially false and misleading.

Ms. Fischer's first sentence of her first paragraph (at p. 2) is a shameless deceit in referencing pages 3-20 of her Respondent's Brief for "[t]he origins of this case" -- *as if the Court could and should rely on the presentation therein* – when Appellant's *uncontroverted* Critique (pp. 3-61) already exposed these pages as wilfully falsifying, distorting, and concealing the statutory and rule provisions pertaining to the Commission and the record of the proceeding.

Ms. Fischer's second sentence of her first paragraph (at p. 2) is false and misleading in several material respects. First, it is materially misleading to portray, as "the gravamen" of Appellant's Article 78 proceeding, that "the Commission... is required by Judiciary Law §44.1 to conduct a *comprehensive*

[16] *See* ¶¶1 and 8 of Ms. Fischer's "Affirmation".

investigation of every 'facially-meritorious' judicial misconduct complaint" (emphasis added). As highlighted by Appellant's Critique (at p. 7),

> "uncontroverted evidence in the record, consisting of information provided by the Commission's Administrator, is that there is:
>
> > 'only one class of investigation... once the Commission authorizes an investigation, there is a full formal investigation. There are no gradations, such as initial inquiry or preliminary investigation.'"

Ms. Fisher's use of phrases like "*comprehensive* investigation" and then "*full-scale* investigation", also in this second sentence (at pp. 2-3, emphases added), is a deliberate deceit, playing off the central hoax perpetrated by Justice Cahn's decision in *Doris L. Sassower v. Commission* – a hoax exposed by Appellant's Critique (at pp. 6-8).

Second, the Commission did not conclude that Appellant's "complaints did not warrant full-scale investigation." Only one of Appellant's complaints was dismissed – and this, Appellant's October 6, 1998 judicial misconduct complaint [A-57-83]. As highlighted by Appellant's *uncontroverted* Critique (at pp. 12-13, 46-47), her February 3, 1999 judicial misconduct complaint [A-97-101] was not dismissed [A-36-7].

Third, Ms. Fischer conceals the specific reason Appellant's Verified Petition contended that, pursuant to Judiciary Law §44.1, the Commission was "without the discretion to dismiss" -- as it did -- her October 6, 1998 complaint [A-57-83] *to wit*, that such complaint – as likewise Appellant's February 3, 1999 complaint [A-97-101] -- is *facially-meritorious*.

Fourth, insofar as Ms. Fischer states that Appellant's complaints were "on behalf of her organization, the Center for Judicial Accountability, Inc. ('CJA')", Ms. Fischer conceals that the Commission's policy, reflected by the record[17], is to recognize the complaint as belonging to its signator – here, Appellant. This, too, is reflected by Appellant's *uncontroverted* Critique (at p. 26).

Ms. Fischer's third sentence of her first paragraph (at p. 3)[18] materially fails to identify that then-Appellate Division Justice Albert Rosenblatt was an Appellate Division, Second Department justice and that Appellant's October 6, 1998 complaint was not only against him, but against his fellow Appellate Division, Second Department justices. This is significant as these specific facts bear directly on Appellant's entitlement to the Court's disqualification for "apparent bias", particularized at ¶72, based on the especially close personal and professional relationships presumed to exist between its justices and those of the geographically proximate Appellate Division, Second Department, from which it is separated by less than ten miles.

Further, Ms. Fischer confusingly makes it appear that the basis for Appellant seeking "an order of mandamus" to remove Henry T. Berger as the

---

[17] *See* Appellant's September 24, 1999 Reply Memorandum of Law in further support of her July 28, 1999 omnibus motion, pp. 53-56 and A-210, A-212.

[18] ¶2 of Ms. Fischer's "Affirmation", pertaining to the relief sought by the Verified Petition, roughly corresponds with her Memorandum's third and fourth sentences of the first paragraph under the heading "Underlying Action" (at p. 3).

Commission's Chairman relates to the Commission's mandatory investigative duty. This is not so. Judiciary Law §44.1, pertaining to that investigative duty, has nothing to do with removing Mr. Berger from a chairmanship he had then held for nine years. Rather, as reflected by the Verified Petition [A-19, A-44], the pertinent statute is Judiciary Law §41.2, expressly limiting the chairmanship to a member's "term in office or for a period of two years, whichever is shorter" [A-44]. As to the Commission's duty to "receive" and determine" Appellant's judicial misconduct complaint against Appellate Division, Second Department Justice Daniel Joy – as to which mandamus lies – the pertinent authority is, as the Verified Petition relating to Appellant's February 3, 1999 complaint reflects, both Article VI, §22a and Judiciary Law §44.1 [A-45].

Ms. Fischer's fourth sentence of her first paragraph (at p. 3), pertaining to Appellant's (separate) requests that 22 NYCRR §§7000.3 and 7000.11 be declared unconstitutional, *as written and applied*, conceals that the Verified Petition [A-19, A-42] specified that in the event 22 NYCRR §7000.11 were to be upheld, Judiciary Law §§41.5 and 43.1 were to be challenged as unconstitutional, *as written and applied.*

Ms. Fischer's first sentence of her second paragraph (at p. 3)[19] is materially misleading in concealing that Justice Wetzel's appealed-from

[19] ¶3 of Ms. Fischer's "Affirmation", pertaining to Justice Wetzel's appealed-from decision, roughly corresponds to her Memorandum's first sentence of the second paragraph under the heading "the Underlying Action" (at p. 3). Both recitations are incorrect in identifying the form of Appellant's application for Justice Wetzel's recusal. It was NOT, as Ms. Fischer's ¶3 of her "Affirmation" purports, a "cross-motion" . Nor was it a "motion"

January 31, 2000 decision ALSO enjoins Appellant and the non-party CJA from instituting any "related" actions or proceedings, of whose "relatedness" Justice Wetzel has designated himself the judge [A-13-4].

As pointed out by Appellant's *uncontroverted* Critique (at pp. 11-12, 65-66), Ms. Fischer's concealment of the injunction in her Respondent's Brief:

> "serves no purpose but to mislead the Appellate Division into believing that it can wholly dispose of the appeal by embracing her claim (at p. 14) that Petitioner's purported lack of standing 'disposes of all relief she sought in the proceeding'."

Tellingly, when Ms. Fischer refers, in her first sentence of her "Statement of Background Facts", *supra*, to pages 3-20 of her Respondent's Brief as "discuss[ing] in detail" the "origins of this case", she omits pages 21-23 of her Respondent's Brief pertaining to Justice Wetzel's "Sua Sponte Enjoining Petitioner and CJA from Filing Further Lawsuits" – the spuriousness of which is exposed by pages 62-66 of Appellant's *uncontroverted* Critique.

Ms. Fischer's second and third sentences of her second paragraph (at pp. 3-4), which acknowledge that Justice Wetzel "followed the July 13, 1995 Decision, Order & Judgement of Supreme Court, New York Co. (Cahn, J.) in D. Sassower v. Commission, N.Y. Co. Clerk's No. 109141/95 (A. 174-188)", represent a critical turn-about from her Respondent's Brief (at p. 13) since, as highlighted by Appellant's *uncontroverted* Critique (at p. 37), Respondent's

---

as her Memorandum of Law purports (at p. 2). Rather, it was a letter -- Appellant's December 2, 1999 letter [A-250-290] – which even Justice Wetzel's decision acknowledges as such [A-10-11].

Brief had falsely made it appear that Justice Lehner's decision in *Mantell v. Commission* was the SOLE basis upon which Justice Wetzel dismissed Appellant's proceeding. However, her second sentence (p. 3) is deceptive – and even more her third sentence (pp. 3-4) -- because Justice Wetzel's decision did NOT identify "D. Sassower v. Commission" as such [A-12]. Justice Wetzel identified it as "Sassower v. Commission" and pretended that Appellant herein was "the same petitioner" in that case [A-12]. This material falsehood in Justice Wetzel's decision is concealed by Ms. Fischer's second sentence and, even more so by her third sentence which identifies the petitioner in the prior case as "petitioner's mother, Doris L. Sassower", without acknowledging that this is NOT what Justice Wetzel's decision purports as to who the petitioner was.

Ms. Fischer's third sentence also materially misrepresents -- much as Justice Wetzel did in his decision – that the proceeding Justice Cahn dismissed was "a nearly identical proceeding" to Appellant's. This untruth is highlighted by Appellant's Brief (at pp. 55-58) in the context of rebutting Justice Wetzel's dismissal of Appellant's Verified Petition on grounds of *res judicata*/collateral estoppel. Further, Ms. Fischer repeats the pretense, derived from Justice Cahn's decision, that:

> "the Commission had the power to make discretionary preliminary determinations as to whether it wished to undertake more *comprehensive* investigations, and therefore could not be compelled to undertake a *comprehensive* investigation (A. 192)" (emphases added).

Such pretense, the central hoax of Justice Cahn's decision, is rebutted at pages 6-8 of Appellant's *uncontroverted* Critique under the heading "The Insidious Influence of Justice Cahn's Decision". Ms. Fischer wholly avoids addressing these pages – although her obligation to do so is highlighted by Appellant's moving Affidavit (at ¶¶89, 92) and her Reply Brief (at p. 5).

Ms. Fischer's fourth sentence of her second paragraph (at p. 4), referring to Justice Wetzel's further reliance on the lower court decision in *Mantell v. Commission* to dismiss Appellant's Verified Petition, is false and misleading in two material respects. First, even while conceding that Justice Lehner's decision in *Mantell*, "181 Misc. 2d 1027 (Sup. Ct. N.Y. Co. 1999" was "then on appeal to this Court, which affirmed, Mantell v. New York State Comm'n on Judicial Conduct, 715 N.Y.S.2d 316 (1st Dep't 2000), app. den., 96 N.Y.2d 706 (2001)", Ms. Fischer uses the Court's add-on about "standing" from its affirmance – which was NOT part of Justice Lehner's decision – as if it were part of the original decision. Second, the Court did NOT even say that Mr. Mantell "had no standing to seek an order compelling the Commission to investigate a particular complaint" – but, rather, that he had no standing as to "ALL facially-meritorious complaints of judicial conduct" (emphasis added). This fact was highlighted in Appellant's *uncontroverted* Critique (at pp. 41-42) – which Ms. Fischer fails to address, notwithstanding her obligation to do so was underscored in Appellant's moving Affidavit (at ¶¶66, 89, 92) and Reply Brief (at p. 5).

Ms. Fischer's fifth sentence in her second paragraph (at p. 4) about Appellant's attempt "to intervene" in the *Mantell* appeal is materially misleading. Appellant's moving Affidavit highlights (at ¶¶50-51, 59) that what she sought in the *Mantell* appeal was to have her September 21, 2001 Affidavit, setting forth facts pertaining to the fraud being perpetrated on the Court and on Mr. Mantell by the Attorney General's Respondent's Brief therein, considered by the Court on Mr. Mantell's appeal. It did not matter whether consideration of that Affidavit was upon her being granted intervention, *amicus curiae* status, or through the Court's inherent power.

B. <u>"Proceedings on Appeal" (at pp. 4-5):</u>

Ms. Fisher's four sentences in the single paragraph under this heading conceal that Deputy Solicitor General Belohlavek responded to Appellant's complaints about Ms. Fischer's Respondent's Brief by asking for "something in writing" and that Appellant complied by providing a 66-page Critique to support her request that Respondent's Brief be withdrawn as a "fraud on the court". Ms. Fischer also conceals that the Attorney General's office then refused to withdraw her Respondent's Brief, notwithstanding it did *not* deny or dispute the accuracy of Appellant's Critique *in any respect*. Instead, Ms. Fischer refers to the "written correspondence... attached to petitioner's motion in Exhibits T through Z" – not even identifying that Appellant's *uncontroverted* Critique is among this correspondence. Nor does Ms. Fischer anywhere acknowledge that she has altogether ignored the Critique's

uncontroverted factual and legal presentation in opposing this motion – including pages 3-11 and 40-57 of the Critique specifically identified by Appellant's moving Affidavit as "highlights" (¶¶89, 92) requiring response "first and foremost".

MS. FISCHER'S "ARGUMENT" (at pp. 5-12) IS MATERIALLY FALSE AND MISLEADING

MS. FISCHER'S POINT I OPPOSITION TO THE FIRST BRANCH OF APPELLANT'S MOTION IS BASED ON KNOWING AND DELIBERATE FALSIFICATION AND CONCEALMENT

Ms. Fischer's entire Point I (at pp. 5-9), beginning with its title, "Petitioner has Established No Basis for Disqualification or Recusal of this Court", rests on knowing and deliberate falsification and concealment.

A. Ms. Fischer Conceals the Statutory and Rule Provisions under which Appellant has Moved for the Court's Disqualification and Disclosure

Ms. Fischer's Point I materially conceals the statutory and rule authority invoked by the first branch of Appellant's motion for the Court's disqualification. This is:

> "Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, for self-interest and bias." (Notice of Motion, ¶1)

Nowhere in her Point I does Ms. Fischer cite §100.3E and her single citation to Judiciary §14 (at p. 5) is for the general proposition that it contains "[t]he only grounds for the mandatory disqualification of a court"[20].

Ms. Fischer also materially conceals that Appellant's first branch of her motion also seeks disclosure by "the justices assigned to this appeal" – and this pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

As to the scope and application of Judiciary Law §14 and §§100.3E and 100.3F of the Chief Administrator's Rules Governing Judicial Conduct, Ms. Fischer provides *no* discussion and *no* caselaw. This, notwithstanding her client, the Commission, is vested with responsibility for disciplinary enforcement of these provisions[21] and has unparalleled expertise as to the standards for judicial disqualification and disclosure, with myriad of caselaw examples at its disposal, including its own caselaw.

Thus may be seen that Ms. Fischer has presented NO legal basis for opposing Appellant's request, pursuant to Judiciary Law §14 and §100.3E of the

---

[20] Ms. Fischer almost makes it appear that Appellant has NOT moved for disqualification under Judiciary Law §14 because her sentence

> "Accordingly, that branch of petitioner's motion which seeks the disqualification or recusal of the entire Appellate Division, First Department, involves matters that can only be addressed by individual members of the Court itself" (at pp. 5-6)

immediately follows the sentence that disqualification, when not based on Judiciary Law §14, is "a matter of the court's conscience", citing *People v. Moreno*, 70 NY2d, 403, 405 (1987).

Chief Administrator's Rules Governing Judicial Conduct, for the Court's disqualification and that Appellant's request, pursuant to §100.3F, for disclosure, is entirely unopposed.

B. By Concealing that Appellant Seeks the Court's Disqualification for "Apparent Bias", Ms. Fischer Concedes Appellant's Entitlement Thereto

In addition to concealing Appellant's request for disclosure by the justices assigned to this appeal, Ms. Fischer's Point I (at pp. 5-9) also conceals that "apparent bias" is a specific ground upon which Appellant has moved to disqualify the Court. Indeed, the words "apparent bias" nowhere appear in Ms. Fischer's Point I -- nor anywhere else in her Memorandum of Law or in her "Affirmation".

Disqualification for "apparent bias" is governed by §100.E – whose unequivocal preface is:

> "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...".

The importance of avoiding even the "appearance of impartiality" is evident from caselaw, including the Court's own, such as cited at the outset of the "Preliminary Statement" of Appellant's Brief (at p. 36). It is also evident from *People v. Moreno* – one of the few cases Ms. Fisher's Point I cites – and the only case her Point I cites twice (at pp. 5, 8). In *People v. Moreno*, the New

---

[21] 22 NYCRR §7000.9, "Standards of Conduct".

York Court of Appeals stated that even where there is no mandatory disqualification under Judiciary Law §14:

> "it may be the better practice in some situations for a court to disqualify itself in a special effort to maintain the appearance of impartiality (*Corradino v. Corradino*, 48 NY2d 894, 895[]."

Appellant's motion identifies grounds deemed particularly relevant "in assessing whether, 'for appearance sake', it might not be more appropriate to transfer this appeal to [the Appellate Division, Fourth] Department" (¶68). These grounds – any one of which would be sufficient to disqualify the Court for "apparent bias" – are:

(1) the publicly-adversarial relationship between Appellant's father, George Sassower, and the Court – giving an appearance that it would be biased against Appellant (¶71);

(2) the geographic proximity and resulting close personal and professional relationships between the Court and the Appellate Division, Second Department -- giving an appearance that the Court would be biased in an appeal whose proper adjudication would adversely impact on the past and present justices of the Appellate Division, Second Department (¶72);

(3) the close personal and professional relationships presumed to exist between the Court's justices and now Appellate Division, Second Department Justice Stephen G. Crane — giving an appearance that the Court would be biased in properly adjudicating an appeal involving his administrative misconduct as Administrative Judge of the Civil Branch of the Manhattan Supreme Court (¶73);

(4) the appearance that the Court could not be fair and impartial in light of the involvement of its Presiding Justice in the December 29, 2000 redesignation of Justice Crane as Administrative Judge (Exhibit "Q-2")– possibly with knowledge of Appellant's April

18, 2000 letter to Chief Judge Kaye (Exhibit "L-2", pp. 5-7) (¶73);

(5) The appearance that the Attorney General believes the Court is not a fair and impartial tribunal and that it will let him "get away with anything" -- the dispositive proof of which is his submission of Ms. Fischer's fraudulent Respondent's Brief and refusal to withdraw same in face of Appellant's *uncontroverted* 66-page Critique, demonstrating its fraudulence (¶74).

None of these are denied or disputed by Ms. Fischer in any way – just as she does not deny or dispute the additional grounds, based on "interest" and "actual bias", identified by Appellant's motion (¶69) as also constituting "apparent bias" grounds for disqualification. These further grounds are:

(1) the self-interest of the Court's justices by reason of the Commission's disciplinary jurisdiction over them (¶¶8-14);

(2) the self-interest of the Court's justices to the extent they are dependent on Governor Pataki for reappointment to that Court or for elevation to the New York Court of Appeals (¶¶15-31);

(3) the self-interest of the Court's justices to the extent they are dependent on other public officers, such as Chief Judge Kaye, implicated in the systemic corruption exposed by this appeal (¶¶32-48);

(4) the self-interest and actual bias of the Court as manifested by its appellate decision in *Michael Mantell v. Commission* (¶¶49-66).

As Appellant's factual showing of her entitlement to the Court's disqualification for "apparent bias" is wholly undenied and undisputed by Ms. Fischer[22], it is, as a matter of law, deemed conceded.

---

[22] This, moreover, would have had to have been by affidavit/affirmation in order to have evidentiary value.

Consequently, Ms. Fischer's Point I title, "Petitioner has Established No Basis for the Disqualification or Recusal of this Court", is a patent untruth.

C. As Ms. Fischer Does Not Deny that the Commission's Disciplinary Jurisdiction over the Court's Justices Gives Them an Interest in the Proceeding, Appellant is Entitled to their Disqualification on that Ground

Further undenied and undisputed by Ms. Fischer is that the Court's justices are all under the Commission's disciplinary jurisdiction – with a consequent self-interest in whether Judiciary Law §44.1 imposes upon the Commission a mandatory duty to investigate *facially-meritorious* judicial misconduct complaints and in whether a complainant has standing to seek judicial review of the Commission's dismissal, without investigation, of his OWN *facially-meritorious* judicial misconduct complaint (¶¶8-9). As this – not the *facially-meritorious* complaints against the Court's justices filed by George Sassower and dismissed by the Commission, *without* investigation – is the essence of Appellant's argument under the title heading, "This Court's Justices have a Self-Interest in the Appeal by Reason of the Commission's Disciplinary Jurisdiction Over Them" – Appellant's assertion of the Court's self-interest under that heading is unopposed.

Further, as to Mr. Sassower's *facially-meritorious* judicial misconduct complaints, Ms. Fischer's rejection of their significance is by a single deceitful sentence (at p. 6) claiming that Appellant's two supposed

"underlying assumptions" have *no* "basis in the factual record". The two "underlying assumptions" that Appellant is purported to have made are:

> "that past complaints against members of the Court were rejected without any inquiry, and that the members of the Court believe that complaints against them would be substantiated if investigated."

Appellant made neither of these "underlying assumptions".

As to the first, Appellant never used the phrase "without any inquiry". Nor would she. The issue in this proceeding is "investigation" and, as Appellant's *uncontroverted* Critique highlights (pp. 6-7), 22 NYCRR §§7000.1(i) and (j) *expressly* distinguish between "initial review and inquiry" and "investigation".

Ms. Fischer's substitution of the word "inquiry" is purposeful. She intends for it to be confused with "investigation". This is plain from the first sentence of her Memorandum's "Statement of Background Facts" (at p. 2), which incorporates the recitation at pages 3-20 of her Respondent's Brief. Presented therein (at pp. 4-5) is Ms. Fischer's false claim that there is a "two-part procedure for investigating a complaint" with the first part being "initial review and inquiry". This false claim permeates Ms. Fischer's Memorandum, with its repetition of phrases like "comprehensive investigation" (at pp. 2, 4), "full-scale investigation" (at p. 3), and "full investigation" (at p. 6) – the implication being that this is the second part. There are no gradations of investigation – which is separate and distinct from "inquiry" -- as Ms. Fischer

knows from Appellant's *uncontroverted* Critique (at pp. 6-8) identifying that fact.

Thus, shearing away Ms. Fischer's deceitful use of the term "inquiry", Appellant's assertions (¶12) that her annexed sample of her father's judicial misconduct complaints against the Court's past and present members are *facially-meritorious*, and that they were dismissed, *without* investigation in violation of Judiciary Law §44.1, is undenied and undisputed by Ms. Fischer. Likewise, undenied and undisputed by her is that the Court's adjudication of Appellant's right, pursuant to Judiciary Law §44.1, to the Commission's investigation of her *facially-meritorious* October 6, 1998 and February 3, 1999 judicial misconduct complaints, which underlie this proceeding,

> "would, in essence, be an adjudication of [her] father's right to investigation of his *facially-meritorious* complaints against [the Court's] justices pursuant to Judiciary Law §44.1" (Appellant's Affidavit, ¶12).

As to the second of Appellant's supposed "assumptions", Appellant never assumed anything about the justices' belief as to whether, upon investigation, "the complaints against them would be substantiated". At issue in this proceeding is NOT the ultimate substantiation of judicial misconduct complaints upon investigation, but the Commission's failure to undertake investigation in the first instance of *facially-meritorious* complaints, as required by Judiciary Law §44.1. However, based on the sampling of Mr. Sassower's *facially-meritorious* judicial misconduct complaints annexed to Appellant's

motion (Exhibits "E-1" – "E-6"), "members of the Court" could believe that the complaints would be evidentiarily substantiated upon investigation. This, because the complaints are sufficiently particularized, including as to evidence "in the form of filed judicial papers" (Exhibit "E-1a", at p. 4). Indeed, from The Village Voice article, "*To the Gulag: Courthouse Leper George Sassower Takes on Every Judge in Town*", annexed to Appellant's motion as Exhibit "E-7", it appears that the reporter substantiated the key fact underlying Mr. Sassower's complaints pertaining to the court-approved larceny of the judicial trust assets of Puccini Clothes, "the Judicial Fortune Cookie":

> "In early 1982, Puccini's assets of roughly half a million dollars were brought together in a single bank certificate of deposit while a new receiver, Lee Feltman, tried to sort out the mess. But by October 26, 1988, after the CD account had blossomed (with interest) to $756,155, not one penny of the money had been paid to any of the three surviving partners.
>
> Instead, Feltman's firm, Feltman Karesh Major & Farbman billed and collected $687,080 in fees, *although no court record exists approving distribution of the fees of the law firm until September 1988 – at which point the Puccini account was empty.*" (emphasis added).

D. Ms. Fischer's Opposition to the Court's Disqualification based on the Dependencies of its Justices on the Governor, Chief Judge, and Others is Founded on Wilful Misrepresentation of the Proof in the Record

As to Appellant's entitlement to the Court's disqualification for interest because its justices

> "depend on Governor Pataki, on Chief Judge Kaye, and 'a host of public officers and agencies whose misfeasance criminally implicates them in the

> Commission's corruption and the subversion of the judicial process in the three Article 78 proceedings 'thrown' by Justices Cahn, Lehner, and Wetzel' (Pet. Aff. ¶32)". (Fischer Memo of Law, pp. 6-7),

Ms. Fischer's opposition is predicated on her deceit that Appellant's motion for the Court's disqualification on such ground rests on "rank speculation which has no record support" (at p. 7). Similarly, she states:

> "on its face petitioner's motion is based on *unsupported, unproven* allegations of widespread judicial wrongdoing, and raises nothing that warrants the drastic relief she seeks." (at p. 6, emphasis added)

If Ms. Fischer actually believed that Appellant's "allegations of widespread judicial wrongdoing" were "unproven" and "unsupported" – all she had to do was deny and dispute the accuracy of Appellant's 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54] and of Appellant's 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321-334]. In "one fell swoop", these two analyses not only expose the fraud of Justice Cahn's decision [A-189-194] and of Justice Lehner's decision [A-299-307], but of Justice Wetzel's appealed-from decision [A-9-14] and of the Court's appellate decision in *Mantell* (Exhibit "B-1" to the motion).

As detailed by Appellant's moving Affidavit (¶22-23), these two *uncontroverted* analyses, substantiated by copies of the record in *Doris L. Sassower v. Commission* and in *Mantell v. Commission*, were *physically* part of the record before Justice Wetzel (¶¶23, 24; A-346; A-350) – thereby exposing the fraudulence of his decision dismissing Appellant's proceeding, based,

exclusively, on Justices Cahn's and Lehner's decisions [A-12-13]. Likewise detailed by Appellant's moving Affidavit (¶¶52-54, 66) is that her *uncontroverted* analysis of Justice Lehner's decision [A-321-334] was before the Court on the *Mantell* appeal when, nonetheless, it affirmed Justice Lehner's decision.

Because Ms. Fischer knows that these two fact-specific, law-supported analyses [A-52-52; A-321-334] are irrefutable, she wholly conceals that they even exist. She thereby replicates on this motion the same concealment of the analyses as she had in her Respondent's Brief -- resoundingly exposed by Appellant's *uncontroverted* Critique thereof (at pp. 3-11).

Moreover, as Governor Pataki and Chief Judge Kaye were each provided with copies of Appellant's analyses of the decisions of Justices Cahn and Lehner – and of the record from *Doris L. Sassower v. Commission* and *Mantell v. Commission* that supported them – their "misfeasance and criminal complicity" is exposed by verification of these analyses. Appellant's moving Affidavit details her voluminous correspondence with the Governor and Chief Judge (¶¶24-31; ¶¶35-48) and annexes substantiating copies (Exhibits "F"-"Q"). This is not "rank speculation" devoid of "record support", but, once again, record proof so irrefutable that Ms. Fischer does not even mention it.

Just as Ms. Fischer's Point I wholly conceals the existence of Appellant's analyses of Justices Cahn's and Lehner's decisions [A-52-54; A-

321-334] – because doing otherwise would force her to address them -- so it wholly conceals the existence of Appellant's correspondence [Exhibits "F" and "Q" to the motion]. Indeed, it is by such concealment that Ms. Fischer is able to engage in the deceit that "petitioner's conviction that the Governor and the Chief Judge have engaged in criminal activity is *based wholly on accusations she cannot support*" (at p. 7, emphasis added).

Ms. Fischer provides two examples of Appellant's allegations where she contends there is "*no evidence in the record*" (at p. 8, emphasis added). The first (at p. 7) is that

> "the Governor 'rewarded' then-Administrative Judge Crane and Justice Wetzel with favorable appointments as a 'pay-back' for 'their demonstrably corrupt and criminal conduct in obliterating [Appellant's] Article 78 proceeding – the subject of this appeal' (Pet. Aff. ¶28)."

Yet the record, highlighted by Appellant's moving Affidavit (at ¶¶24-31), contains ample evidence – none of which Ms. Fischer addresses, let alone even identifies:

(1) Appellant's February 23, 2000 letter to the Governor, providing a particularized recitation of the judicial misconduct committed by Administrative Judge Crane and Justice Wetzel, "*readily-verifiable* as a wilful and deliberate subversion of the judicial process, constituting a criminal act."[23] (Exhibit "F to Appellant's motion, p. 32, emphasis in the original);

---

[23] This particularized recitation is essentially repeated, albeit with less specificity as to Administrative Judge Crane, in Appellant's Brief – the accuracy of which recitation is NOT denied or disputed by Ms. Fischer's Respondent's Brief -- just as Ms. Fischer's Point I does not deny or dispute the accuracy of the original recitation in the February 23, 2000 letter. Appellant's February 23, 2000 letter is referred to at fn. 1 of Appellant's Brief (at p. 3).

(2) the Governor's wilful failure to respond to Appellant's repeated written letters for information about the procedures and processes pertaining to his elevation of Administrative Judge Crane and his reappointment of Justice Wetzel; (Exhibits "I", "J");

(3) Appellant's filed ethics and criminal complaints against the Governor, detailing and transmitting substantiating proof to the New York State Ethics Commission and U.S. Attorney for the Eastern District of New York of his past manipulation of judicial selection to the lower state judiciary by rigging the ratings of his judicial screening committees (*see* fn. 9 to Appellant's motion (at p. 12).

Such record evidence gives ample reason for viewing the Governor's designation of Administrative Judge Crane to the Appellate Division, Second Department and his reappointment of Justice Wetzel to the Court of Claims as "rewards" and "pay-offs" for judicial misconduct which "protected" the Governor from the criminal implications of this proceeding.

As for Ms. Fischer's second example that:

> "Chief Judge Kaye is alleged to have engaged [in] a pattern of favoritism and protectionism due to her apparent refusal to accept as true petitioner's claims concerning Administrative Judge Crane (Pet. Aff. ¶¶34, 40-48)" (at pp. 7-8),

this description is a knowing distortion of the record. As demonstrated by ¶¶35-39 of Appellant's moving Affidavit – paragraphs omitted from Ms. Fischer's above citation -- Appellant's March 3, 2000 letter to the Chief Judge (Exhibit "K", pp. 1, 5) did not expect that the Chief Judge "accept as true [her] claims concerning Administrative Judge Crane". Rather, the March 3, 2000 letter transmitted to the Chief Judge a copy of the "three-in one record" of the Article

78 proceeding, by which she could independently verify Administrative Judge Crane's misconduct and, based thereon, demote him from his administrative position and take steps so that he and Justice Wetzel were removed from the bench and criminally prosecuted. It was Chief Judge Kaye's wilful failure and refusal to respond to Appellant's subsequent April 18, 2000 and June 30, 2000 letters to her (Exhibits "L-2" and "M") that made manifest her blatant "favoritism and protectionism", including as to Administrative Judge Crane. This "favoritism and protectionism" is the only explanation for her deliberate failure to provide Appellant with the basic information requested by her April 18, 2000 letter – highlighted at ¶39 of Appellant's moving Affidavit --including as to: (1) "the applicable procedure for securing Justice Crane's demotion as Administrative Judge"; (2) the yearly designation procedures for administrative judges such as Administrative Judge Crane; and (3) legal authority to justify Administrative Judge Crane's complained-of administrative misconduct, including by his interference with "random selection" rules, without affording Appellant notice or opportunity to be heard.

As detailed by ¶¶42-48 of Appellant's moving Affidavt, the Chief Judge's official misconduct in connection with Appellant's April 18, 2000 and June 30, 2000 letters and her possible affirmative representations as to Administrative Judge Crane's fitness, thereafter, enabled him to be nominated for the Court of Appeals by the New York State Commission on Judicial Nomination and redesignated as Administrative Judge by Chief Administrative

Judge Jonathan Lippman, with her approval and "in consultation with the Presiding Judge of the Appellate Division, First Department".

E. Ms. Fischer's Opposition to the Court's Disqualification based on its Interest and Actual Bias by its *Mantell* Decision is Founded on Wilful Misrepresentation and Concealment

Ms. Fischer's four-sentence opposition (at p. 8) to the Court's disqualification for interest and actual bias by its appellate decision in *Mantell* is based on knowing misrepresentation and concealment of the material facts and law.

Firstly, Ms. Fischer conceals the basis upon which Appellant alleged the Court to be disqualification for interest. Appellant's moving Affidavit particularized it at ¶8 under the title heading, "This Court's Justices have a Self-Interest in the Appeal by Reason of the Commission's Disciplinary Jurisdiction Over them". As stated at ¶8, the sole issue presented by the Verified Petition in *Mantell* was the Commission's mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* complaints. Therefore, for the Court

> "to [have] acknowledge[d] the plain language of Judiciary Law §44.1 and to [have] acknowledge[d] a complainant's standing to seek judicial review of the Commission's dismissal, *without* investigation, of his OWN *facially-meritorious* complaint – which [the] Court's *Mantell* decision, *without* legal authority, deceptively infers does not exist...-- would [have] reinforce[d] the Commission's duty to investigate *facially-meritorious* complaints, including against [its] justices" (Appellant's Affidavit ¶8, emphases in the original).

Ms. Fischer does not deny the existence of this interest by the Court's justices. However, she deceitfully makes it appear that the Court's appellate decision in *Mantell*, wherein it purported that Judiciary Law §44.1 did not impose a mandatory duty on the Commission and barred judicial review based on standing, is not part of Appellant's argument for disqualification based on *Mantell*. Thus she states,

> "Petitioner's reliance on this Court's refusal to allow her *to intervene* in the Mantell appeal..." (at p. 8, emphasis added)

and further,

> "...nothing in petitioner's extended account of the adverse reception of *her motion to intervene* in the Mantell appeal (Pet. Aff., ¶¶49-67)..." (at p. 8, emphasis added)

Indeed, Ms. Fischer's Point I makes no reference to the *Mantell* appellate decision – notwithstanding Appellant's title heading, "This Court's Appellate Decision in *Mantell* Manifests this Court's Disqualifying Self-Interest and Actual Bias" (at p. 29) – and ¶¶66-67 of Appellant's moving Affidavit relating thereto.

In addition to concealing the factual basis for Appellant's objection based on interest, Ms. Fischer provides no legal authority refuting disqualification on that ground. Rather, her citation to *People v. Moreno*, 70 NY2d at 407, is expressly for the proposition that "bias or prejudice which can

be urged against a judge must be based upon something other than rulings in the case, citing *Berger v. United States*, 255 U.S. 22, 31 (1921)."

The fact that the Court's justices are under the disciplinary jurisdiction of the Commission is plainly "something other than rulings". However, Ms. Fischer does not address this "something".

As to Ms. Fischer's seemingly unequivocal statement that "adverse rulings are not themselves evidence of bias, and cannot support a claim for disqualification or recusal", this is belied by the Court's decision in *Solow v. Wellner*, 157 AD2d 459 (1st Dept. 1990) – a case cited by Ms. Fischer herself (at p. 9). *Solow* makes plain that "an actual ruling which demonstrates bias" can furnish a basis for recusal, citing *Katz v. Denzer*, 70 AD2d 548 (1st 1979).[24] Further, *Moreno* approvingly cites *Johnson v. Hornblass*, 93 AD2d 732, 733 (1st 1983) – also the Court's case -- that

> "'[i]n the absence of a violation of express statutory provisions, bias or prejudice or unworthy motive on the part of a Judge, unconnected with an interest in the controversy, will not be a cause of disqualification, *unless shown to affect the result.*'" (emphasis added)

Obviously, where decisions and rulings have *no* basis in fact or law – such as the Court's appellate decision in *Mantell* and its denial of Appellant's motion

---

[24] *See also Liteky v. U.S.*, 114 S.Ct. 1147 (1994), and *United States v. Wolfson*, 558 F.2d 59, 63 (2nd Cir. 1977), "We do not read the authorities as holding that a judge's conduct of proceedings before him can never form a basis for finding bias", quoted in *United States v. Coven*, 662 F.2d 162, 168 (2d Cir. 1981).

therein -- it may be presumed that "bias or prejudice or unworthy motive" affected "the result".

As to Appellant's bias objection based on *Mantell*, Ms. Fischer conspicuously fails to identify the nature of the "bias" at issue. This, notwithstanding it is clearly set forth as "actual bias" in Appellant's moving Affidavit, both at ¶49 and in the bold-faced title heading that precedes it.

Factually, Ms. Fischer addresses the "bias" issue with the bald, generalized claim that

> "nothing in petitioner's extended account of the adverse reception of her motion to intervene in the Mantell appeal (Pet. Aff. ¶¶49-67) substantiates her claim that it was the product of bias, as opposed to the Court's unwillingness to hear argument from a nonparty." (at p. 8).

This is belied by the very paragraphs she cites. Indeed, the "extended account" in ¶¶50-67 of Appellant's moving Affidavit fully substantiates the assertion in ¶50 that:

> "No fair and impartial tribunal could deny – as [the Appellate Division, First Department] did – the relief sought by [Appellant's] September 21, 2000 motion in the *Mantell* appeal."

That relief was not "intervention", as Ms. Fischer simplistically makes it appear, with no specificity. The relief Appellant sought was to put before the Court, for consideration on Mr. Mantell's appeal, her September 21, 2000 moving Affidavit

> "setting forth essential facts, based on direct, personal knowledge, in order to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner, Michael Mantell, by the Attorney General... representing Respondent... Commission"[25].

Ms. Fischer does not deny that Appellant's September 21, 2000 Affidavit established that the Attorney General's Respondent's Brief in *Mantell* was perpetrating a fraud, *inter alia*, by arguing for affirmance of Justice Lehner's decision without disclosing the existence of Appellant's uncontroverted 13-page analysis [A-321-334] establishing the decision to be a fraud.

Obviously, when a court wilfully aligns itself with fraud, producing a decision whose fraudulence is established by the motion of the "nonparty" before it – a "nonparty" who, moreover, met legal standards for intervention -- actual bias is resoundingly substantiated.

F. Ms. Fischer's Opposition to Appellant's Request, *on Her Own Behalf*, for a Record of the Oral Argument of the Appeal is Based on Wilful Misrepresentation and Concealment

Ms. Fischer opposes (at p. 9) Appellant's request, *on her own behalf*, for a record of oral argument (¶¶75-82), by asserting:

> "petitioner's submissions to this Court and to the Commission's counsel have been so consistently bitter, and so replete with personal attacks, that it is highly unlikely that allowing oral argument to be played out before a camera, or even a stenographer, would lead to anything other than disruption." (at p. 9)

---

[25] To that end, and as highlighted by Appellant's instant motion (at ¶59), Appellant did not care in what fashion the Court received her supporting affidavit, whether by granting her intervention, *amicus curiae* status – or simply *via* the Court's inherent power to protect itself from fraud.

This is a deceit. There is *no* evidence in the record to support any disparagement of Appellant's litigation conduct. As highlighted by Appellant's Brief (at pp. 65-66) – and unchallenged by any record proof cited by Ms. Fischer's Respondent's Brief –

> "Any fair and impartial tribunal examining the voluminous exhibits and materials substantiating Petitioner's written presentations, as likewise the written presentations themselves, could not but be impressed by the very highest of evidentiary standards to which Petitioner adhered in documenting the issues pertinent to this lawsuit: (1) Respondent's corruption – the gravamen of the proceeding; (2) Petitioner's entitlement to the Attorney General's disqualification from representing Respondent by reason of his violation of Executive Law §63.1 and multiple conflicts of interest; (3) the Attorney General's litigation misconduct, entitling Petitioner to sanctions against him and Respondent, as well as disciplinary and criminal referral; and (4) the need to ensure the impartiality and independence of the tribunal hearing the proceeding so that it would not be "thrown" by a fraudulent judicial decision, as happened in *Doris L. Sassower v. Commission* and *Mantell v. Commission.* This is not "relentless vilification" of a "long list of public officials and judges" by Petitioner, as the Decision falsely pretends, once again with no specificity [A-12]."

Further belying Ms. Fischer's claim (at p. 9) that allowing a record would lead to "disruption" are the stenographic transcripts of the three court appearances in Supreme Court/New York County – highlighted at ¶81 of Appellant's Affidavit as included in Appellant's Appendix [A-128-143; A-144-171; A-240-243]. Tellingly, Ms. Fischer does not cite those transcripts to substantiate her claim of what would transpire if a stenographer was permitted to record the oral argument – just as she does not otherwise cite the evidentiary

record to support her completely unjustified disparagement of Appellant's conduct.

Moreover, Ms. Fischer does not deny or dispute Appellant's assertion (at ¶80) that an audio/video/or stenographic record of oral argument would have superior evidentiary value of any contemporaneous affidavit Appellant might furnish the Court of Appeals to substantiate her contention of the Court's "actual bias". She simply disputes that there is anything about the justices' conduct at the oral argument that would substantiate an "actual bias" claim. Obviously, if there is nothing, there is no harm in a record establishing that fact. Such record could then be used by Respondent to oppose Appellant's appeal, based on the Court's bias claims.

G. Ms. Fischer's Conceals that She has No Opposition to Appellant's Request, *on the Public's Behalf*, for a Record of the Oral Argument of the Appeal

Although Ms. Fischer (at p. 8) alludes to "what [Appellant] regards as the intense public interest in the case" – specifically referencing ¶¶83-87 of Appellant's moving Affidavit -- she does not deny or dispute any of the allegations of those paragraphs, which, moreover, should be in affidavit/affirmation form to have evidentiary value. These are, therefore, deemed conceded

MS. FISCHER'S POINT II OPPOSITION TO THE SECOND BRANCH OF APPELLANT'S MOTION IS BASED ON KNOWING AND DELIBERATE MISREPRESENTATION AND CONCEALMENT

Ms. Fischer's entire Point II (at pp. 9-12), beginning with its title, "Petitioner has Failed to Demonstrate any Factual or Legal Basis for Sanctioning the Commission or its Counsel", is founded on knowing and deliberate falsification and concealment.

In purporting that the various relief sought in Appellant's second branch

> "rest[s] on her claim that the Commission's brief is 'a fraud on the court,' and thus violates 22 NYCRR §§1200.3(a)(4), 1200.3(a)(5), 1200.33(a)(5) and Judiciary Law §487", (Memorandum of Law, at p. 10)

Ms. Fischer materially omits 22 NYCRR §130-1.1. That this omission is wilful may be seen from the fact that §130-1.1 is the *first rule* identified by the second branch of Appellant's Notice of Motion – and the only rule to be *twice cited*, the second time as legal authority for imposition of monetary sanctions and costs. The reason for this wilful omission is evident. §130-1.1 provides the clearest sanctioning basis. As highlighted by the "Introduction" to Appellant's Critique (at p. 3): §130-1.1 does not require "fraud", but rests on "frivolous conduct", such as "assert[ing] factual statements that are false" [§130-1.1(c)(3)].

Having confined herself to "22 NYCRR §§1200.3(a)(4), 1200.3(a)(5), 1200.33(a)(5) and Judiciary Law §487", Ms. Fischer purports (at

p. 10) "petitioner... misunderstands the meaning and purpose of these rules." Ms. Fischer then recites, as if Appellant does not know:

> "Judiciary Law §487 and the cited regulations are intended to prohibit misrepresentations which are both intentionally made and which 'can be reasonably expected to induce detrimental reliance by another.' 22 NYCRR §1200.1(i) (defining 'fraud' as used in the Disciplinary Rules)".

That Appellant is fully knowledgeable of "the meaning and purpose" of these provisions – and that Ms. Fischer is foisting a deceit by implying otherwise -- is obvious from the "Introduction" to Appellant's Critique (pp. 1-3). This "Introduction" sets forth the *same* definition of "fraud" from 22 NYCRR §1200.1(i) that Ms. Fischer recites (at p. 10), as well as the definition of "fraud on the court", taken from Black's Law Dictionary (7th ed. 1999), which, conspicuously, Ms. Fischer does not recite.

Additionally, the "Introduction" (at pp. 2-3) sets forth the language of Judiciary Law §487 that makes it a misdemeanor for any attorney to be guilty of

> "any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party".

Ms. Fischer does not cite – let alone confront -- the clear and unequivocal language of Judiciary Law §487. This, notwithstanding the TOTALITY of Mr. Fischer's legal argument rests on the single case of *Lazich v. Vittoria & Parker*, 189 AD2d 753 (2d Dept), app. dismissed without op., 81 NY2d 1006 (1993) – which she deceptively identifies as involving "violati[ion]

of"] Judiciary Law §487 – and whose reasoning she purports to be "dispositive here" (at pp. 11-12).

Lazrich was an independent "action to recover damages", *not, as this, a motion for sanctions in the very proceeding in which the deceitful and collusive misconduct has occurred.* Ms. Fischer's specious legal argument (at p. 12), based on *Lazrich*, is that an attorney's knowingly false and deceitful statements in a litigation do not constitute violations of Judiciary Law §487 and, implicitly, 22 NYCRR §§1200.3(a)(4), 1200.3(a)(5), 1200.33(a)(5) – and the concealed 22 NYCRR §130-1.1 -- so long as the adverse party is able to controvert the statements by a record before the court. Such offensive argument is belied by the *express* language of Judiciary Law §487 and the language of the rule provisions on which Appellant's second branch of her motion rests – none of which language is cited or discussed in *Lazrich* – just as they are not cited or discussed in Ms. Fischer's Point II.

Further evidencing Ms. Fischer's frivolous, bad-faith opposition to the second branch of Appellant's motion is her extraordinary assertion (at pp. 10-11):

> "...petitioner's 'Critique of Respondent's Brief,' (Pet. Aff., Ex. U) shows that petitioner believes the Commission and its counsel to have committed 'deceit' and 'misconduct' not through any actual or threatened deception but rather through the manner in which they discuss decisions and documents which are clearly before the Court in their complete form in Petitioner-Appellant's Appendix."

To the extent Ms. Fisher infers that Appellant's Critique does not demonstrate "actual... deception" committed by "the Commission and its counsel" in advocacy before the Court, examination of the Critique shows this to be an unmitigated lie. To the extent that Ms. Fischer purports that "the manner in which decisions and documents are "discuss[ed]" by "the Commission and its counsel" in advocacy before the Court cannot constitute "actual deception", Ms. Fisher provides not the slightest legal authority – and NONE exists. Plainly, the essence of appellate advocacy is a presentation of "decisions and documents" – and to suggest that "officers of the court" and their clients can knowingly misrepresent these "decisions and documents", is more than "frivolous", pursuant to 22 NYCRR §130-1.1(c)(1):

> "... it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law."

Finally, to conceal the dispositive showing in Appellant's *uncontroverted* Critique, Ms. Fischer selects (at p. 11) five examples from its 66 pages – *none* of which she describes with specificity but, rather, with characterizations that are either distorted or inferentially disparaging. The first two:

> "Petitioner finds 'fraud', for example, in the fact that the Commission's brief does not quote, in their entirety, the clauses in her petition describing the relief she seeks (Pet. Aff. Ex. U, pp. 13, 31-33), [and] that it fails to acknowledge the 'fact' that the Mantell case had been 'thrown' (supra, p. 37)...".

This is untrue. As exposed by the very references to the Critique that Ms. Fischer cites, her Respondent's Brief: (1) made "material omissions" in listing the relief of the Verified Petition's six distinct Claims for Relief -- omissions which, as the Critique demonstrated, contributed to other materially false and misleading claims; and (2) "materially omitted" from its description of Appellant's request in the lower court for the case to be specially assigned her contention, in support therefor,

> "that *Mantell v. Commission* had been 'thrown' by a fraudulent judicial decision – or that she had provided an analysis [A-321-334] and a copy of the case file in substantiation [A-350]"

-- an omission which, as the Critique demonstrated, contributed to a materially false and misleading inference.

As to Ms. Fischer's two further examples from the Critique as to her Respondent's Brief's "*purportedly* 'deceitful' claims about Mantell's holding (supra, p. 41)" [emphasis added] and about its "'*attempts*' to 'conceal' Petitioner's claim for relief under Judiciary Law §44.1 (supra, p. 45)" [emphasis added], examination of the very pages of the Critique cited by Ms. Fischer shows Appellant's fact-specific demonstration of the actual deceit in Respondent's Brief regarding the *Mantell* appellate decision and its actual concealment of Judiciary Law §44.1. This, in addition to the materiality of this misconduct to the foremost issues on the appeal.

Finally, notwithstanding Ms. Fischer's pretense (at p. 11) as to "arguments that draw [Appellant's] particular displeasure" – she cites only a single argument, "the claim that petitioner, D. Sassower and CJA are functionally identical". Examination of Appellant's Critique (at p. 63) reveals no "particular displeasure" – but, rather, rebuttal of that deceitful claim with the same dispassionate precision as every other "argument" and factual deceit in Ms. Fischer's Respondent's Brief. Further, contrary to Ms. Fischer's inference, the Critique also exposes the deceit in the various underlying assertions that Ms. Fischer resurrects from her Respondent's Brief[26] (at pp. 20-21), as if they had never been rebutted.

Tellingly, in selecting her five non-examples from Appellant's Critique, Ms. Fischer has, without explanation, chosen not to address Appellant's own three examples of the fraudulence of Respondent's Brief, highlighted by her moving Affidavit (¶¶89, 92) as warranting response "first and foremost":

(1) Point I of the Critique (at pp. 3-5) showing that Respondent's Brief conceals that Justice Wetzel's dismissal of Appellant's Verified Petition is based exclusively on decisions whose fraudulence was evidentiarily established by the record before him: Appellant's *uncontroverted* 3-page analysis Justice Cahn's decision [A-52-54] and her *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;

---

[26] In stating, "petitioner corresponds in CJA's name with public officials concerning this litigation" (at p. 11), Ms. Fischer purposefully obscures the distinction which even her Respondent's Brief (at pp. 21-22) had recognized– a distinction the Critique highlighted: "Petitioner's correspondence with the court, as opposed to her 'correspondence with the Commission, and with every other New York State office' has NOT been 'in the name of CJA' (at p. 22)." [Critique, p. 63, emphasis added].

(2) 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 Appellant's *uncontroverted* analyses of these decisions and the *uncontroverted* evidence in the record of her proceeding;

(3) 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 Appellant lacks "standing" to sue the Commission – concealing not only the different facts of Appellant's case, making the *Mantell* appellate decision inapplicable, but the fraudulence of the *Mantell* appellate decision, as highlighted by Appellant's *uncontroverted* 1-page analysis – the accuracy of which Respondent's Brief does not deny or dispute.

The first two of these three examples are *entirely* ignored by Ms. Fischer. As to the third, superficially encompassed by Ms. Fischer's two bad-faith examples from the Critique relating to her Respondent's Brief's "purportedly 'deceitful' claims about Mantell's holding (supra, p. 41)" and about its "'attempts' to 'conceal' Petitioner's claim for relief under Judiciary Law §44.1 (supra, p. 45)", Ms. Fischer does not deny or dispute the accuracy of pages 41 and 45 -- nor the accuracy of the contextual pages 40-47 within which they are presented by Appellant's Critique.

As hereinabove detailed, notwithstanding Ms. Fischer does not deny or dispute the accuracy of pages 3-11 and 40-47 of Appellant's Critique, her opposition to the instant motion rests on unabashedly replicating most of the material misrepresentations and concealment detailed therein.

MS. FISCHER'S "CONCLUSION" (at p. 13) IS KNOWINGLY FALSE AND MISLEADING

As a seasoned lawyer, Ms. Fischer knows, from the record before her, that her one-sentence conclusion:

> "For all the reasons stated above, petitioner's motion should be denied in all respects."

is knowingly false and misleading because her "reasons stated above" are false, misleading, and insufficient as a matter of law. Moreover, she knows that key relief sought by the motion is wholly unopposed and, by reason thereof, should be granted.

As to the first branch of Appellant's motion, this relief is for: (1) the Court's disqualification based on "apparent bias", pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct; (2) disclosure by the justices assigned to this appeal, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of the facts pertaining to their personal and professional relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby; and (3) the public's right to a record of the oral argument of the appeal, either by a court stenographer and/or by audio or video recording.

As to the second and third branches of Appellant's motion, this relief is for all the relief sought by the second branch, pursuant to 22 NYCRR §130-1.1.

CONCLUSION

Based on the foregoing fact-specific, law-supported demonstration, there can be no question but that Assistant Solicitor General Carol Fischer's August 30, 2001 opposing "Affirmation" and Memorandum of Law are, from beginning to end, and in virtually every line, permeated with falsification, misrepresentation, and omission of material fact and law – and that such misconduct by her is knowing and deliberate. Those charged with supervisory responsibilities at the Office of the New York State Attorney General – such as Deputy Solicitor General Michael S. Belohlavek – and, beyond him, Solicitor General Preeta D. Bansal and, ultimately, Attorney General Eliot Spitzer -- must, pursuant to the mandatory provisions of 22 NYCRR §1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility] and 22 NYCRR §130-1.1, take "reasonable remedial action". Withdrawing Ms. Fischer's opposing "Affirmation" and Memorandum of Law as violative of 22 NYCRR §§130.1-1, 1200.3(a)(4), 1200.3(a)(5), 1200.33(a)(5), and Judiciary Law §487 – and to prevent fraud on the court -- is the most minimal of that action.

Manifest from the violative and fraudulent nature of Ms. Fischer's opposing "Affirmation" and Memorandum of Law is that there is NO legitimate defense to Appellant's August 17, 2001 motion. Consequently, more significant action is required of the Attorney General – beginning with withdrawal of Ms. Fischer's similarly violative and fraudulent Respondent's Brief, exposed as such

by Appellant's *uncontroverted* 66-page Critique – Exhibit "U" to the motion. As set forth at ¶89 of Appellant's moving Affidavit, such Critique is "the dispositive document establishing, *prima facie*, [Appellant's] entitlement to ALL [the relief]" requested in the motion's second branch.

Beyond that, it is the Attorney General's duty, pursuant to Executive Law §63.1 which requires that his litigation advocacy be predicated on "the interest of the state", to disavow representation of the Commission and join in support of the appeal. This includes supporting the first branch of Appellant's motion for: (1) special assignment of this appeal "to a panel of 'retired or retiring judge[s], willing to disavow future political and/or judicial appointment'"; (2) disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, by the judges assigned to this appeal; and (3) permission for a record to be made of oral argument of the appeal, either by a court stenographer, and/or by audio or video recording.