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

----------x

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

Petitioner,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

----------x

Index # 99-108551

NOTICE OF MOTION FOR OMNIBUS RELIEF

PLEASE TAKE NOTICE that, upon the annexed Affidavit of Petitioner *Pro Se* ELENA RUTH SASSOWER, sworn to on July 28, 1999, the exhibits annexed thereto, her supporting Memorandum of Law, dated July 28, 1999, the Affidavit of Doris L. Sassower, sworn to on July 28, 1999, the Notice of Petition and Verified Petition, sworn to on April 22, 1999, and upon all the papers and proceedings heretofor had, Petitioner will move this Court at Part 68, Room 1023, 111 Centre Street, New York, New York on August 17, 1999 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, for an order:

(1) disqualifying the Attorney General from representing Respondent for non-compliance with Executive Law §63.1 and for multiple conflicts of interest;

(2) declaring a nullity and vacating the post-default extension of time granted by Justice Diane Lebedeff on Respondent's application pursuant to CPLR §3012(d), after she had recused herself and without adhering to the provisions of CPLR §7804(e) or the specific requirements of CPLR §3012(d), which Respondent did not satisfy;

(3) granting a default judgment against Respondent in favor of Petitioner by reason of its failure to file its answer or dismissal motion in accordance with the mandatory time requirements of CPLR §7804(c)(e), if such is denied, directing that an answer be filed, together with a certified transcript of the record of the proceedings before Respondent, both as specified by CPLR §7804(e);

(4) converting Respondent's dismissal motion under CPLR §3211(a) to a motion for summary judgment in favor of Petitioner pursuant to CPLR §3211(c), and, if deemed appropriate by the Court, immediate trial of the issues raised on the motion, particularly with regard to the sanctionable misconduct of Respondent and the Attorney General;

(5) imposing sanctions and awarding costs, pursuant to Part 130-1.1 of the Chief Administrator's Rules, against Respondent, its members and culpable staff, and against Attorney General Spitzer personally and his culpable Assistant Attorneys General for their litigation misconduct;

(6) referring Respondent's members and culpable staff and Attorney General Spitzer personally and his culpable Assistant Attorneys General for disciplinary and criminal action based on their litigation misconduct, including fraud and deceit upon the Court and Petitioner, as well as the crimes of, *inter alia*, perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct;

(7) granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, are to be served on or before August 13, 1999, pursuant to the direction of the Court.

Dated: White Plains, New York
July 28, 1999

Yours, etc.,

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

TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Respondent
120 Broadway
New York, New York 10271

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

----------x

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

Petitioner,

-against-

Index # 99-108551

Affidavit in Support of Disqualification of the Attorney General, Sanctions, a Default Judgment, and Other Relief

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

----------x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

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

1. I am the Petitioner *pro se* in the above-entitled matter and personally familiar with all the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is submitted in support of the affirmative relief requested in my accompanying Notice of Motion, as well as in opposition to Respondent's dismissal motion, in the event the Court rules that the dismissal motion is properly before it.

3. It was not my intention to appear *pro se* in this important public interest case, in which I am acting *pro bono publico*. My reasonable expectation was that the taxpayer-supported Attorney General, as "the People's Lawyer"[1], would intervene on the People's behalf

[1] *See* Exhibits "A-1" and "A-2" herein.

and, thereby, provide me with the benefit of his advice and counsel in vindicating the public's rights. Indeed, I believed that the Attorney General was duty-bound to intervene because Respondent had NO legitimate defense to the allegations of the Verified Petition and, therefore, could not be represented by the Attorney General consistent with "the interests of the state" -- the *only* legal basis for the Attorney General's participation in such legal actions and proceedings, pursuant to Executive Law §63.1.

4. The Attorney General's Motion to Dismiss, dated May 24, 1999, confirms that Respondent has NO legitimate defense -- and the unlawfulness of his representation of Respondent. The knowingly false, fraudulent, and frivolous nature of that motion, particularized in my accompanying Memorandum of Law, as well as of his May 17, 1999 "Application Pursuant to CPLR 3012(d)", particularized at ¶¶104-113 herein, further supports my entitlement to all the relief requested in my instant Notice of Motion.

5. As hereinafter detailed, the Attorney General's office has wilfully failed and refused to respond: (a) to my reasonable inquiries as to who, *if anyone*, has evaluated the public's right to its advocacy against Respondent in this proceeding: (2) to my reasonable inquiries as to the outcome of such evaluation, *if any*; (3) to my reasonable requests for documentation establishing Respondent's entitlement to its defense herein, and; (4) to my reasonable requests for the legal authority by which it was purporting to defend Respondent, including confirmation that such authority is Executive Law §63.1.

6. Only in its dismissal motion has the Attorney General's office belatedly confirmed that Executive Law §63.1 is its sole legal authority for its defense of Respondent --

confirmation which it relegates to the first footnote of its Memorandum, without *any* statement that its defense of Respondent is in the "interests of the state" and had been so-determined.

7. The Attorney General's legally and ethically violative conduct herein is in the context of a Verified Petition alleging, and by appended proof documenting, the corruption of Respondent, an essential state agency, whose function it is to protect the public from unfit state judges and judicial candidates. Adding to this, the Verified Petition also exposes the corruption of the "merit selection" process for the New York Court of Appeals by another essential state agency, the State Commission on Judicial Nomination, as well as by the Governor and the State Senate. The State's transcending interest in such a case -- on the merits -- may be seen from the Court of Appeals' decision in *Nicholson v. Commission on Judicial Conduct*, 50 NY2d 597 (1980):

> "There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly *** a higher governmental interest than a State's interest in the quality of its judiciary' (*Landmark Communications v. Virginia*, 435 US 829, 848 [Stewart, J., concurring]..." at p. 607

It is also in the context of Attorney General Spitzer's rhetoric about his commitment to "ensuring the integrity of public institutions" -- a goal toward which he purports to have organized the Attorney General's office so that it will become "the finest public interest law organization in the nation", with the Attorney General "rightfully...known as '*the People's Lawyer.*" (Exhibit "A-2")

8. As hereinafter particularized, the wilful and deliberate, not to mention hypocritical, misconduct of the Attorney General's office is motivated by Mr. Spitzer's self-

interested desire to protect himself -- and those with whom he has personal and professional relationships -- from the consequences of their official misconduct by their complicity in Respondent's corruption -- the immediate subject of this proceeding -- and in the corruption of the Attorney General's office, inextricably intertwined therein. This self-interest includes the actual involvement of high-level staff members of the Attorney General's office, whose misfeasance and nonfeasance caused and/or facilitated the events giving rise to this Article 78 proceeding. The testimony of such individuals, including Attorney General Spitzer himself and his immediate predecessor, Dennis Vacco, as well as of lower level staff, would be vital, at very least on "the immediate trial of the issues raised" on this motion, requested in my Notice of Motion (¶4). My accompanying Memorandum of Law (at p. 8) cites the pertinent provisions of the Code of Professional Responsibility, making mandatory the disqualification of a lawyer-witness in circumstances such as at bar.

9. For the Court's convenience, a Table of Contents to this Affidavit follows:

TABLE OF CONTENTS

A. THE ATTORNEY GENERAL'S CUSTOMARY PRACTICE, VIOLATIVE OF EXECUTIVE LAW §63.1, IS TO PROVIDE KNEE-JERK DEFENSE OF STATE AGENCIES *WITHOUT* THE REQUISITE EVALUATION OF "THE INTERESTS OF THE STATE"

10. Upon information and belief, the Attorney General's office routinely violates Executive Law §63.1 by *automatically* defending state agencies sued in litigation -- without any evaluation of "the interests of the state". To that end, even if liability is clear and it has NO legitimate defense to evidence-supported allegations of governmental corruption, it will still defend state agencies, engaging in litigation fraud and other misconduct in order to defeat the claim. This is particularly so where it can count on the court's complicity because the subject of litigation involves state judicial corruption or Respondent's cover-up thereof.

11. CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) -- a copy of which is annexed as Exhibit "B" to the Verified Petition -- details the Attorney General's *modus operandi*, where it has no legitimate defense, but defends anyway:

> "It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without *any* probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a 'green light.'" (emphasis in the original)

12. As reflected in the Verified Petition's only footnote (at p. 6), I personally paid the $3,077.22 cost of that ad. I also wrote the ad, which is based on my direct, first-hand

experience with the Attorney General's office in the three litigations the ad describes. The recitation therein set forth is true and correct of my personal knowledge, and is, additionally, based on the files of the three litigations, in my possession. In order of presentation in the ad, they are:

(a) the prior Article 78 proceeding against Respondent, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York*; N.Y. Co. #95-109141;

(b) the Article 78 proceeding against the Appellate Division, Second Department, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, A.D. 2nd Dept. #93-02925; N.Y. Ct. of Appeals: Mo. No. 529, SSD 41; 933; U.S. Ct. #94-1546; and

(c) the §1983 federal action against the Appellate Division, Second Department, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, S.D.N.Y. 94 Civ. 4514 (JES); 2nd Cir. 96-7805; U.S. S.Ct. 98-106, in which the Attorney General was also sued as a co-defendant, based on his litigation misconduct in the *Sassower v. Mangano* Article 78 proceeding.

13. As to each of these cases, in which, as the files show, the Attorney General's office demonstrably corrupted the judicial process and countenanced its corruption by state or federal judges, it has its own original litigation files. The Attorney General's office has never denied or disputed the fact-specific allegations in the ad, copies of which it has repeatedly received from me as part of CJA's voluminous correspondence. This correspondence has not only been with staff, but with Attorney General Spitzer himself and prior thereto with Attorney General Vacco, notifying them of their ethical duty to take corrective steps to vacate the decisions therein for fraud. The Attorney General's consistent response to the ad -- likewise manifested

in this proceeding -- is complete non-response. Thus, although pursuant to CPLR §3014, the text of the ad is part of the pleading, his dismissal motion makes no reference to it whatever nor to any of the particulars set forth therein.

B. THE ATTORNEY GENERAL'S SELF-INTEREST IN NOT EVALUATING THE PUBLIC INTEREST IN THIS CASE

14. Adding to the Attorney General's usual and customary practice of violating his duty under Executive Law §63.1 by NOT evaluating "the interests of the state" in suits brought against state agencies, especially where judicial corruption is involved, is the Attorney General's self-interest in thwarting such evaluation IN THIS CASE. This, because this Article 78 proceeding presents the confluence of the three litigations which "*Restraining 'Liars'*" describes and necessarily exposes the official misconduct of Attorney General Spitzer's predecessors in those litigations and subsequent thereto in wilfully failing and refusing to take corrective steps upon notice, as well as his own official misconduct in failing to take corrective steps when notified of his mandatory ethical and professional duty to do so.

15. The importance of the prior Article 78 proceeding against Respondent may be seen from Point II of the Attorney General's Memorandum in support of his dismissal motion, where he invokes a *res judicata*/collateral estoppel defense based thereon. In so doing, he refers to (at p. 13), but does not address, ¶¶NINTH through FOURTEENTH of the Verified Petition, pertaining to Justice Cahn's fraudulent judicial decision dismissing the prior Article 78 proceeding against Respondent and CJA's exhaustive efforts to obtain corrective action from

those in leadership, including the Attorney General[2]. Those paragraphs not only vitiate the *res judicata*/collateral estoppel defense, but expose the Attorney General's fraud in the prior Article 78 proceeding and misfeasance and nonfeasance thereafter, leading to this proceeding.

16. As alleged at ¶FIFTEENTH, Respondent has continued to disregard its mandatory duty under Judiciary Law §44.1 to investigate facially meritorious judicial misconduct complaints, particularly where the complaints are against high-ranking, politically-connected judges. Evidencing this is Respondent's purported dismissal of my October 6, 1998 judicial misconduct complaint and its refusal to receive and determine my February 3, 1999 judicial misconduct complaint. Both of these facially-meritorious complaints are sought to be reviewed herein -- and involve the fraudulent conduct of Appellate Division, Second Department justices in the *Sassower v. Mangano* federal action -- an action which resulted from the fraudulent conduct of an Appellate Division, Second Department panel in the *Sassower v. Mangano* Article 78 proceeding, aided and abetted by their counsel therein, the Attorney General.

17. ¶¶SEVENTEENTH, TWENTY-SECOND, TWENTY-THIRD pertain to my facially-meritorious October 6, 1998 complaint, annexed to the Verified Petition as Exhibit "C-1". Such complaint, in its caption, expressly identifies that it is directed "against Appellate Division, Second Department Justice Albert M. Rosenblatt and against his co-defendant

---

[2] His pretense for not addressing these paragraphs is that my assertion that the decision is a "false" and "fraudulent" is "a conclusory claim". As particularized in my accompanying Memorandum of Law (at pp. 62-67), this is a bald-faced deceit upon the Court, *inter alia*, because those paragraphs incorporate CJA's three-page fact-specific analysis of the decision [at ¶¶TWELFTH, THIRTEENTH, and FOURTEENTH], which is annexed to the Verified Petition as part of Exhibit "A". That analysis, which is from CJA's December 15, 1995 letter to the Assembly Judiciary Committee, to which the Attorney General was an indicated recipient, was sent to the Attorney General AT THAT TIME. He also received that analysis on subsequent occasions, as well, including when he received CJA's May 5, 1997 memorandum, which is the whole of Exhibit "A".

Appellate Division, Second Department justices in the *Sassower v. Mangano* federal civil rights action". The complaint alleges that these justices acted collusively in the litigation fraud of the Attorney General, their co-defendant counsel therein -- litigation fraud it identifies as particularized in the *unopposed* cert petition and supplemental brief in the case (S. Ct. #98-106), a copy of which it further identifies as being transmitted to Respondent. Additionally, the complaint proffered to Respondent "a copy of the record of the district court and Second Circuit proceedings (S.D.N.Y. 94 Civ. 4514; 2nd Circ. #96-7805)" therein to substantiate the uncontroverted, particularized recitation.

18. ¶¶THIRTY-THIRD and THIRTY-SIXTH pertain to my facially-meritorious February 3, 1999 complaint against Respondent's highest-ranking judicial member, Daniel Joy, who, as an Appellate Division, Second Department Justice, was one of the co-defendants in the *Sassower v. Mangano* federal action against whom the October 6, 1998 complaint is directed, but, nonetheless, may have participated in Respondent's determination thereof[3].

19. Also sought to be reviewed in this proceeding as demonstrative of Respondent's pattern and practice of dismissing facially-meritorious complaints, without investigation, particularly against high-ranking state judges, are the eight facially-meritorious

---

[3] As stated in footnote 1 to my December 29, 1998 letter (Exhibit "F-4" to the Verified Petition), referred to at ¶THIRTY-THIRD, the Appellate Division, Second Department, by its Clerk, acknowledged service of the summons and verified complaint in the federal action upon the justices, whose names, including Justice Joy, appeared on an appended list. Such acknowledgment was identified as having been appended as Exhibit "3" to CJA's December 5, 1994 judicial misconduct complaint -- a copy of which was given, in hand, to Mr. Spitzer personally, *infra*, ¶48, together with a January 27, 1999 coverletter (Exhibit "D"). The Clerk's acknowledgment and list, additionally, appear in the Record on Appeal in the federal action at R-600-601.

complaints against high-ranking politically-connected judges, annexed to the Verified Petition in the prior Article 78 proceeding. As alleged at ¶¶NINTH and FIFTY-THIRD of my Verified Petition, my challenge to Respondent's summary dismissal of these complaints was not adjudicated by Justice Cahn's fraudulent decision. This includes the three prior judicial misconduct complaints against Justice Rosenblatt, dated September 19, 1994, October 26, 1994, and December 5, 1994, alleged at ¶¶SEVENTEENTH, TWENTY-EIGHTH, FORTY-SECOND, FORTY-THIRD, FORTY-FOURTH, FIFTY-SECOND, and SEVENTY-NINTH. The September 19, 1994 complaint was based on the judicial misconduct that occurred in the course of the *Sassower v. Mangano* Article 78 proceeding[4] -- and was filed with Respondent with a full copy of the record of therein to support its allegations that the Appellate Division, Second Department panel, on which Justice Rosenblatt sat, violated ethical rules of judicial disqualification and Judiciary Law §14 by refusing to recuse itself, notwithstanding its justices were parties-defendant to the proceeding, and then granted the legally insufficient, factually-perjurious dismissal motion of its own attorney, the Attorney General.

20. The Attorney General's self-interest in concealing his defense misconduct in these integrally-connected three litigations exists on many levels. On its lowest level is the self-interest of the litigation staff, including those who have been with the Attorney General's office for years and have either participated in that defense misconduct -- or have personal friendships with those who have. Exemplifying this is Assistant Attorney General Carolyn Olson.

---

[4] This is reflected by my October 5, 1998 letter to the Commission on Judicial Nomination (Exhibit "C-2" to the Verified Petition, pp. 2-3), which is part of my October 6, 1998 judicial misconduct complaint (Exhibit "C-1" to the Verified Petition).

According to her May 17, 1999 "Affirmation in Support of Respondent's Application Pursuant to CPLR 3012(d)", Ms. Olson was assigned this case together with Assistant Attorney General Michael Kennedy "for litigation purposes" while the Attorney General's office was allegedly reviewing my request for it "to 'intervene' and prosecute this Article 78 proceeding against the Commission"(at ¶3).

21. Ms. Olson was the Assistant Attorney General involved in the defense misconduct in the *Sassower v. Mangano* Article 78 proceeding. Indeed, it was she who opposed the motion to transfer the proceeding to another judicial department by arguing, without legal authority, that even the Appellate Division, Second Department's own Presiding Justice, Justice Guy Mangano, was not disqualified[5]. The two-fold consequence of her litigation misconduct in the *Sassower v. Mangano* Article 78 proceeding -- facilitating the judicial misconduct of her Appellate Division, Second Department clients -- was (1) the *Sassower v. Mangano* §1983 federal action, based on the *Sassower v. Mangano* Article 78 proceeding, thereafter giving rise to the subject October 6, 1998 and February 3, 1999 judicial misconduct complaints; and (2) the subject September 19, 1994 judicial misconduct complaint, directly arising from the *Sassower v. Mangano* Article 78 proceeding.

---

[5] These legally-unsupported claims by Ms. Olson's were set forth in her "Memorandum in Opposition to Petitioner's Cross-Motion in this CPLR Article 78 Proceeding", dated July 12, 1993, which was replete with false statements of fact, as to which she had no personal knowledge, nor claimed any, and which presented legal authority that was either irrelevant or misrepresented by her. This was particularized in two documents: (1) Doris Sassower's "Affidavit in Further Opposition to Respondent's Dismissal Motion and in Further Support of her Omnibus Cross-Motion for a Stay and Other Relief", sworn to on July 19, 1993, and (2) Doris Sassower's "Memorandum of Law in Opposition to Respondents' Dismissal Motion and in Support of Petitioner's Cross-Motion", dated July 19, 1993. As herein shown, this unethical style of lawyering is replicated by Ms. Olson in the case at bar.

22. In addition to Ms. Olson's direct participation in the triggering events here at issue, she has personal and professional relationships with other litigation staff, present and past, who, likewise, are involved in these events. Among them is Jay Weinstein, Esq. As Assistant Attorney General, he engaged in the defense misconduct in the *Sassower v. Mangano* §1983 federal action, highlighted by "*Restraining 'Liars'*" and particularized by the cert petition and supplemental brief, supporting my subject October 6, 1998 judicial misconduct complaint. Ms. Olson's chummy relationship with him was evident as they sat together in Room 130 on the May 14, 1999 return date of the subject Verified Petition.

23. By reason of Ms. Olson's involvement in the chain of Attorney General litigation misconduct that has generated the instant Article 78 proceeding against Respondent -- and her friendships and personal and professional relationships with other litigation staff involved therein -- she has a direct, personal interest in ensuring that there be no independent review of the public's rights herein.

24. On a much higher level -- indeed, at the uppermost echelons of the Attorney General's office -- are Michelle Hirshman, First Deputy Attorney General, and Richard Rifkin, Deputy Attorney General for State Counsel, whose name appears on the letterhead of the Law Department[6] which defends the state, its agencies and officials, from "thousands of suits each year" brought against them[7]. They also have direct, personal interests in ensuring that there be no independent review of the public's rights in this case -- because it would expose their own

---

[6] *See, inter alia*, letterhead of Ms. Olson's May 25, 1999 letter to the Court (Exhibit "M" herein).

[7] *See* Exhibit "A-3" herein (at p. 2).

official misconduct in the important positions they held prior to their appointments by Attorney General Spitzer.

25. Before being appointed[8], each occupied high government positions, critical to safeguarding governmental integrity. Ms. Hirchman was the Chief of the Public Corruption Unit of the U.S. Attorney for the Southern District of New York. Mr. Rifkin was Executive Director of the New York State Ethics Commission. In those capacities, I turned to each of them, as CJA's coordinator. In fact, they are among the persons referred to at ¶¶ELEVENTH through FIFTEENTH of the Verified Petition and whose wilful inaction resulted in the on-going judicial corruption and cover-up by Respondent, leading to this proceeding.

26. CJA's correspondence with Mr. Rifkin is especially voluminous. Most relevant is the correspondence beginning when CJA filed a March 22, 1995 ethics complaint[9] with the Ethics Commission against Respondent for its protectionism of high-ranking politically connected judges, as manifested by its summary dismissals, without investigation of the same eight facially-meritorious judicial misconduct complaints that would, shortly thereafter, be challenged in the prior Article 78 proceeding against Respondent. Substantiating CJA's March 22, 1995 ethics complaint were full copies of what were then CJA's four most recently filed judicial misconduct complaints -- including the three involving Justice Rosenblatt, identified at ¶¶SEVENTEENTH, TWENTY-EIGHTH, FORTY-THIRD of the Verified Petition herein. As

---

[8] *See* Exhibits "A-4", "A-5", "A-6" herein.

[9] The March 22, 1995 ethics complaint is Exhibit "A" to my September 14, 1995 letter to Mr. Rifkin, *infra*. [File Folder I: Rifkin Doc. #1]

to the first of these three, the September 19, 1994 judicial misconduct complaint, a full copy of the substantiating record of the *Sassower v. Mangano* Article 78 proceeding was transmitted to the Ethics Commission, much as a full copy had been previously transmitted to Respondent.

27. Because Mr. Rifkin, prior to becoming the Ethics Commission's Executive Director, had held a high-ranking position in the Attorney General's office during the critical period of the *Sassower v. Mangano* Article 78 proceeding, he had a self-interest in the disposition of the March 22, 1995 ethics complaint, since it involved the September 19, 1994 judicial misconduct complaint based on that proceeding.

28. That same September 19, 1994 judicial misconduct complaint gave him a self-interest in the prior Article 78 proceeding against Respondent when the Ethics Commission was served with Notice of Right to Seek Intervention therein. Mr. Rifkin failed to disclose such self-interest -- or to disqualify himself -- when he sent CJA a May 2, 1995 letter which, without identifying the status of the intervention request, advised that the March 22, 1995 ethics complaint would be held in abeyance during the pendency of the Article 78 proceeding[10].

29. Following the conclusion of that proceeding, I sent Mr. Rifkin a September 14, 1995 letter, advising that the Ethics Commission was now free to proceed with CJA's March 22, 1995 ethics complaint by reason of Justice Cahn's decision that Respondent's dismissal of the eight facially-meritorious complaints, annexed to the Verified Petition, was "not before the court" [File Folder I: Rifkin Doc #1, at p. 4]. Moreover, noting (at pp. 5-6) that the Ethics

---

[10] Mr. Rifkin's May 2, 1995 letter is annexed as Exhibit "E" to my September 14, 1995 letter to him and discussed therein at p. 5 [File Folder I: Rifkin Doc. #1].

Commission had never responded to the Notice of Right to Seek Intervention therein, I requested the Ethics Commission's intervention at that juncture in the wake of Justice Cahn's fraudulent decision -- intervention all the more compelled by the failure of Respondent and the Attorney General to take steps to vacate the decision for fraud.

30. My letter (at p. 1) also expanded the March 22, 1995 ethics complaint against Respondent to include the litigation misconduct perpetrated on its behalf by the Attorney General in the Article 78 proceeding and, based thereon, initiated an ethics complaint against the Attorney General. Expressly included was the Attorney General's violation of elementary conflict of interest rules by the failure of his office to independently evaluate the public interest and to intervene, on the public's behalf, as requested by the same Notice of Right to Seek Intervention as had been given to the Ethics Commission. I pointed out that the Attorney General's litigation misconduct reflected

> "his conscious knowledge that all the facts and the law were in the People's favor -- and that they, rather than the Commission, were entitled to the Attorney General's representation." (at p. 2)

Substantiating the September 14, 1995 ethics complaint and the intervention request was a full copy of the file of the Article 78 proceeding against Respondent, from which the Ethics Commission could readily verify the Attorney General's litigation misconduct therein, conflict of interest, and the fraudulent nature of Justice Cahn's dismissal decision.

31. By reason of Mr. Rifkin's prior high-level position at the Attorney General's office -- including during the critical period when it had engaged in the litigation misconduct in the *Sassower v. Mangano* Article 78 proceeding, encompassed by the ethics

complaints -- my September 14, 1995 letter asserted (at p. 6) that there was an "appearance of impropriety" in Mr. Rifkin's participation in review of the ethic complaints.

32. By letter dated October 3, 1995, Mr. Rifkin refused to recuse himself, making no reference to the fact, identified by my September 14, 1995 letter, that he had worked at the Attorney General's office during the critical period of the *Sassower v. Mangano* Article 78 proceeding [File Folder I: Rifkin Doc. #2]. He then dismissed the March 22, 1995 and September 14, 1995 complaints against both Respondent and the Attorney General. Entirely unaddressed was the issue of the Ethics Commission's intervention.

33. Upon information and belief, Mr. Rifkin's dismissal of those ethics complaints against Respondent and against the Attorney General was without requesting a response from them and without presenting the complaints to the Ethics Commissioners. Upon information and belief, Mr. Rifkin also never presented the intervention issue to the Ethics Commissioners.

34. By letter to Mr. Rifkin, dated January 24, 1996, I demonstrated that his October 3, 1995 dismissal letter was an insupportable cover-up of fully-documented ethics complaints against Respondent and the Attorney General [File Folder I: Rifkin Doc. #3]. As part thereof, I incorporated by reference (at p. 5) the three-page analysis of Justice Cahn's decision dismissing the Article 78 proceeding -- the same as is annexed to the Verified Petition as part of Exhibit "A"[11]. I also annexed a copy of the Verified Complaint in the then-pending *Sassower v.*

---

[11] Mr. Rifkin received that three-page analysis on subsequent occasions as well, including with CJA's May 5, 1997 memorandum -- the whole of which is Exhibit "A" to the Verified Petition.

Mangano federal action and highlighted (at p. 6) that Mr. Rifkin's self-interest in preventing examination of the Attorney General's litigation misconduct in the *Sassower v. Mangano* Article 78 proceeding was all the greater because it would expose the Attorney General's liability in the consequent federal action, in which he was a co-defendant.

35. Mr. Rifkin's response, by letter dated February 29, 1996, was to claim that "no new substantive issues" had been raised [File Folder I: Rifkin Doc. #4] -- a claim whose falsity I exposed in an April 24, 1996 letter [File Folder I: Rifkin Doc. #5], particularizing this further example of Mr. Rifkin's dishonesty. Thereafter, I wrote letters directly to the Ethics Commissioners, dated April 11, 1997, June 9, 1997, and December 16, 1997 [File Folder I: Rifkin Docs. #7, #8, #9]. Each complained of Mr. Rifkin's misconduct in subverting the Ethics Commission, *inter alia*, by his dismissal of the March 22, 1995 and September 14, 1995 ethics complaints. The Ethics Commissioners never responded. Nor did they ever acknowledge, let alone dispose of, my supplemental ethics complaint against the Attorney General, based on his subsequent litigation misconduct in the *Sassower v. Mangano* federal action -- a supplement expressly identified in the caption of my December 17, 1997 letter [File Folder I: Rifkin Doc. #9]. As to the particulars of the Attorney General's litigation misconduct in the *Sassower v. Mangano* federal action, the December 16, 1997 letter (at p. 3) proffered the substantiating case file and appended a copy of CJA's ad, "*Restraining 'Liars'*", summarizing its highlights.

36. As to Michelle Hirshman, now Mr. Spitzer's "second-in-command", CJA's correspondence commenced with an August 1, 1995 letter, addressed to the Deputy Chief of the Criminal Division of the U.S. Attorney's Office, Southern District for transmittal to Ms.

Hirshman, then head of the Public Corruption Unit [File Folder I: Hirshman Doc. #1, Exhibit "A"]. Said letter transmitted the full file of the prior Article 78 proceeding against Respondent, as well as the U.S. Supreme Court papers in the *Sassower v. Mangano* Article 78 proceeding, to demonstrate:

> "the utter perversion of the Article 78 remedy by the New York Attorney General's office and the New York State courts when what is being challenged are politically-powerful judges and the system that protects them." (at p. 1)

This, so that the U.S. Attorney's office could take action to protect the public. Thereafter, with the New York Law Journal's publication of my Letter to the Editor, "*Commission Abandons Investigative Mandate*" (8/14/95) -- referred to at ¶TWELFTH of the Verified Petition -- I hand-delivered a copy, which I annotated with the following urgent request[12],

> "We need intervention by the U.S. Attorney's office. As the papers in your possession reflect -- the state judicial process has been subverted in order to cover-up and protect judicial corruption in this state. All standards of adjudication have been abandoned."

37 Nearly two years later, with no response from Ms. Hirshman, I sent her a May 6, 1997 letter, remarking on that fact and enclosing a copy of CJA's May 5, 1997 memorandum, with its three-page analysis of Justice Cahn's fraudulent judicial decision -- the same as is now Exhibit "A" to the Verified Petition. Ms. Hirshman's response, by letter dated May 19, 1997, advised, without elaboration, that "there did not appear to be a basis to initiate a federal criminal investigation"[File Folder I: Hirshman Doc. #2]. Ms. Hirshman purported that

---

[12] My annotated Letter to the Editor is annexed as Exhibit "G-3" to my July 27, 1998 letter to Lee Radek, Chief of the U.S. Justice Department's Public Integrity Section's Criminal Division [File Folder I: Hirshman Doc. #4].

such assessment was based "on review of the documents" I had provided. Six weeks later, by letter dated June 27, 1997, Ms. Hirshman returned the documents -- in uncreased, apparently unread condition [File Folder I: Hirshman Doc. #3].

38. Thereafter, by letter to Lee Radek, Chief of the U.S. Justice Department's Public Integrity Section of its Criminal Division, dated July 27, 1998, I particularized Ms. Hirshman's cover-up [File Folder I: Hirshman Doc. #4] -- with a copy of the documents she returned enclosed for Mr. Radek's inspection.

39. By reason of their prior misfeasance and nonfeasance described herein, Mr. Rifkin, who oversees the Attorney General's defense of state agencies and officials, including in THIS case, and Ms. Hirshman, as Mr. Spitzer's "second-in-command", are each self-interested in ensuring that there be no independent evaluation of the public's rights to the Attorney General's intervention in this Article 78 proceeding -- since this would expose their prior official misconduct in covering up documentary proof of the Attorney General's *modus operandi* of litigation misconduct -- a cover-up which enabled Respondent's continued corruption, precipitating this lawsuit.

40. The self-interest of the Attorney General's office reaches higher still -- to the Attorney General himself. Mr. Spitzer has a direct, self-interest in ensuring there be no independent review of the public's rights in this Article 78 proceeding. This would expose his own official misconduct in retaining in his administration the unworthy and culpable Mr. Rifkin and Ms. Hirshman and in failing to take corrective steps in the three litigations featured in "*Restraining 'Liars'*", where his ethical and professional duty to take corrective steps was

brought directly to his personal attention by me.

41 Immediately upon announcement of Mr. Spitzer's appointment of Mr. Rifkin and Ms. Hirshman, I contacted Mr. Spitzer's transition team, thereafter delivering, by-hand, a December 24, 1998 letter (Exhibit "B"), requesting that their appointments be rescinded based on:

> "their dishonesty and betrayal of the public trust when presented with FULLY-DOCUMENTED, READILY-VERIFIABLE PROOF -- in the form of case file evidence -- of the State Attorney General's corruption of the Article 78 remedy in two politically-sensitive Article 78 proceedings..." (at p. 1, emphasis in the original).

42. In support of such request, I simultaneously transmitted copies of my extensive correspondence with and about both Mr. Rifkin and Ms. Hirshman, in their respective capacities as Executive Director of the Ethics Commission and Chief of the Public Integrity Unit, including a copy of the file of the prior Article 78 proceeding against Respondent, identical to the one transmitted to each of them[13]. My December 24, 1997 letter (Exhibit "B", at p. 2) asserted that "that case alone -- being the focus of CJA's correspondence with Ms. Hirshman and Mr. Rifkin -- should suffice to establish, DISPOSITIVELY, that Mr. Spitzer must rescind their appointments". As to Mr. Rifkin, my letter stated:

> "nothing could be more obscenely incongruous and dangerous to the People of this State than for Mr. Rifkin to be given the responsibility 'to defend the state and its agencies against lawsuits' when, as Executive Director of the Ethics Commission, he has

---

[13] Such documentation, already in the Attorney General's possession, is being transmitted to the Court in File Folders designated "I", subdivided "prior Article 78 proceeding against Respondent"; " Rifkin Documents"; "Hirshman Documents". These are incorporated herein by reference.

> demonstrably protected and covered up for the Attorney General's fraudulent defense to our lawsuits against the State Commission on Judicial Conduct and Appellate Division, Second Department justices -- the subject of filed ethics complaints." (Exhibit "B", at p. 2)

43. My letter identified (at p. 2) that Justice Rosenblatt's elevation to the State Court of Appeals was the most recent consequence to the People of this State of Ms. Hirshman's and Mr. Rifkin's "flagrant official misconduct" -- and underscored the necessity that Mr. Spitzer make good on his pre-election proposal to set up "an office of public integrity" -- with "investigation of the State Commission on Judicial Conduct and State Commission on Judicial Nomination among its top assignments."

44. Four days later, with publication by the New York Post of my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*", as to the fraudulent manner in which the State Senate had confirmed Justice Rosenblatt to the Court of Appeals[14], I faxed a copy to Mr. Spitzer under a December 28, 1998 letter (Exhibit "C"). The letter stated (at p. 1) that the need for "an office of public integrity" was "exponentially greater because of individuals such as Ms. Hirshman and Mr. Rifkin who betrayed and corrupted the essential monitoring agencies and offices they headed".

45. Mr. Spitzer did not respond to these fact-specific, document-supported letters. Nor did his transition staff return my repeated telephone calls. This is particularized in my January 27, 1999 letter to Mr. Spitzer (Exhibit "D"), which I presented him, in hand, on that date. The letter (at p. 1) put him on notice of "mandatory obligations under professional and

---

[14] My published Letter to the Editor is annexed to Exhibit "F-6" to the Verified Petition.

ethical rules to take corrective steps to vacate the fraudulent judicial decisions detailed in "*Restraining 'Liars'*"-- a copy of which it annexed as Exhibit "A". It also formally requested (at pp. 4-5) investigation of Justice Rosenblatt's fraudulent nomination and confirmation, pursuant to the public notice in "*An Appeal to Fairness: Revisit the Court of Appeals*".

46. My January 27th letter recited the fact that Mr. Spitzer had long had knowledge of the three cases featured in "*Restraining 'Liars'*", but that, as a candidate for Attorney General, he had wilfully chosen not to expose the Attorney General's fraudulent defense tactics. I concluded (at p. 3) that this was because doing otherwise "would have compromised [his] democratic political base, involved in the fraud and misconduct of the Attorney General's office under democrats Robert Abrams and G. Oliver Koppell" and undercut his rhetorical claim about "the quality of the Attorney General's office prior to Republican Dennis Vacco -- and particularly, under Mr. Abrams" (Exhibit "D", pp. 2-3)

47. My January 27th letter also pointed out that although Mr. Spitzer had continued this cover-up as Attorney General-Elect by failing to rescind the appointments of Mr. Rifkin and Ms. Hirshman as his closest aides, he "no longer ha[d] the option of continuing to ignore CJA's document-supported presentations about the Attorney General's office under all three of his predecessors -- without engaging in official misconduct" under §195 of the Penal Law (Exhibit "D", p. 3).

48. Mr. Spitzer received my January 27th letter, in hand, before an assembled audience at the Association of the Bar of the City of New York, which, with the New York Law Journal, was co-sponsoring a breakfast for him. This receipt was in the context of the public

exchange between us in a question-answer segment, following Mr. Spitzer's public announcement that he was creating a "public integrity unit"[15]. In that exchange, I publicly expressed the need for his newly-announced "public integrity unit" to "examine the practices of the Attorney General's office in defending state judges and state agencies sued in litigation". Then, referring to the ad "*Restraining 'Liars'*", I confronted him with the direct question:

> "What steps are you going to take in view of those allegations that the Attorney General's office uses fraud to defend state judges and the Commission on Judicial Conduct sued in litigation?" (Exhibit "E": transcript annexed as Ex. "B" thereto, p. 13)

It was upon Mr. Spitzer's response that "anything that it submitted to us, we will take a look at" (*id*, at p. 14), that I publicly went up to him and, in front of the assembled audience, handed him the January 27th letter (Exhibit "D") -- and with it substantiating materials[16]. Among these materials were free-standing copies of the September 19, 1994, October 26, 1994, and December 5, 1994 facially-meritorious judicial misconduct complaints against Justice Rosenblatt, whose summary dismissal by Respondent, without investigation and without findings, had been challenged in the prior Article 78 proceeding, but not adjudicated by Justice Cahn's decision.

49. I received no response from Mr. Spitzer to my January 27th letter (Exhibit "D"), as, likewise, I had received no response from him to my prior letters (Exhibits "B" and

---

[15] Mr. Spitzer's public announcement of his "public integrity unit" -- and my exchange with him, thereafter, are memorialized by the New York Law Journal's transcript. A copy is annexed as Exhibit "B" to Exhibit "E" herein: my March 26, 1999 ethics complaint against Mr. Spitzer, *infra*, ¶¶49-52.

[16] These documentary materials, already in the Attorney General's possession, are being transmitted to the Court as "File Folder II", together with the cert petition and supplemental brief in the *Sassower v. Mangano* federal action, which were part thereof -- although provided to Mr. Spitzer on September 8, 1998. Such materials are incorporated herein by reference.

"C"). Consequently, by letter dated March 26, 1999, I filed with the State Ethics Commission an ethics complaint against Mr. Spitzer, *personally*, sending him a copy, certified mail/return receipt (Exhibit "E"), together with more than eleven pounds of supporting documentation[17].

50. This ethics complaint was based on Mr. Spitzer's wilful and deliberate failure to review the three cases featured by "*Restraining 'Liars'*" and to review the evidentiary proof of Justice Rosenblatt's fraudulent nomination and confirmation to the Court of Appeals and to commence an investigation thereon. The ethics complaint alleged (at pp. 27-29) that this non-feasance -- along with his failure to staff his "public integrity unit" (at pp. 5-7) -- was reflective of Mr. Spitzer's deliberate protectionism of "the powerful political interests and individuals implicated in...systemic corruption". That corruption was detailed in the several ethics complaints against various public officials and agencies, with which the ethics complaint against Mr. Spitzer was co-joined. These additional ethics complaints were, *inter alia*, against Respondent (at pp. 25-27), the Commission on Judicial Nomination (at pp. 22-24), and the Governor (at pp. 20-22), based on the facts giving rise to this Article 78 proceeding and involving Justice Rosenblatt's fraudulent elevation to the Court of Appeals. One of the ethics complaints was against Mr. Rifkin, based on his official misconduct as Executive Director of the Ethics Commission to cover-up the misconduct of the Attorney General and Respondent, among others (at pp. 12-14).

51. Among the powerful, political individuals who the March 26, 1999 ethics

---

[17] A relevant portion of that documentary material, already in the Attorney General's possession, is being transmitted to the Court, in File Folder III. Such documents are incorporated herein by reference.

complaint identified Mr. Spitzer as having a self-interest in protecting was Respondent's Chairman, Henry T. Berger, a prominent Election Law lawyer who helped establish his narrow election victory – so close that it could not be determined without an unprecedented post-election ballot-counting (Exhibit "E", at p. 6, fn. 4).

52. The March 26th ethics complaint against Mr. Spitzer -- pending before the Ethics Commission -- is yet a further reason why Mr. Spitzer cannot permit his office to undertake an independent evaluation of the public's rights in this proceeding, since it would confirm his official misconduct in failing and refusing to take the corrective steps, mandated by the record in the three litigations detailed in "*Restraining 'Liars'*" -- including removal of Mr. Rifkin and Ms. Hirshman -- and in failing and refusing to open an investigation into Justice Rosenblatt's fraudulent nomination and confirmation, as is his duty as the State's highest law enforcement officer[18].

53. The Attorney General's litigation staff is fully aware of Mr. Spitzer's self-interest in avoiding independent review of the public's rights in this proceeding -- as well as of the self-interest of Mr. Rifkin and Ms. Hirshman. As hereinafter detailed, I discussed such self-interest with them, requesting that they obtain the substantiating March 26th ethics complaint and prior correspondence with Mr. Spitzer.

---

[18] The remedy of *quo warranto* is available to the Attorney General for such purpose.

C. PETITIONER'S LONG-STANDING AND REPEATED REQUESTS FOR THE ATTORNEY GENERAL'S INTERVENTION ON BEHALF OF THE PUBLIC AND HIS CONCOMITANT NONFEASANCE AND LITIGATION MISCONDUCT

1. Introduction:

54. Pursuant to Executive Law §63.1, the Attorney General's duty is to examine "the interest of the state" in any proceeding involving the state, its agencies, or officials. That duty is even more compelled where, as here, a petitioner suing a state agency makes specific and repeated request for the Attorney General's intervention on the public's behalf.

55. On April 22, 1999, the Attorney General was served with my Notice of Right to Seek Intervention, simultaneous with service upon him of my Notice of Petition and Verified Petition. Such Notice of Right to Seek Intervention was both preceded and followed by my repeated vigorous requests for the Attorney General's intervention on the public's behalf.

56. The Attorney General's response to those requests, as hereinafter detailed, demonstrates his wilful failure and refusal to perform his lawful duty to evaluate "the interests of the state" -- and his repetition of the same *modus operandi* of litigation misconduct chronicled in "*Restraining 'Liars'*". Such violative conduct makes manifest the actuality, and not just the appearance, of his self-interest in this proceeding, for which he must be disqualified, as a matter of law from representing Respondent, the beneficiary of the Attorney General's on-going corruption of our judicial process.

B. Procedural History of Petitioner's Efforts to Secure the Attorney General's Intervention and Involvement *Prior* to Commencement of the Instant Article 78 Proceeding:

57. As early as January 28, 1999, I notified the Attorney General's office that an Article 78 proceeding would have to be commenced against Respondent, based on its purported dismissal, without investigation, of my facially-meritorious October 6, 1998 judicial misconduct complaint against Albert Rosenblatt and his co-defendant Appellate Division, Second Department justices in the *Sassower v. Mangano* federal action. In that context, I requested that the Attorney General not only intervene on behalf of the public, but that he himself commence the proceeding.

58. My January 28th notification was in a half-hour telephone conversation with Bill Estes (212-416-8080), formerly counsel to Mr. Spitzer's transition team. It was the day after I handed Mr. Spitzer my January 27, 1999 letter. The documents transmitted with that letter included ALL my correspondence to date with Respondent concerning the October 6, 1998 judicial misconduct complaint -- the same as are now Exhibits "C", "D", "E", "F-1"-"F-3". I asked Mr. Estes to ensure that my documented-supported January 27th letter be directed to Mr. Spitzer's publicly-announced "public integrity unit" -- along with the documents supporting my December 24, 1998 letter, including, in particular, the file of the prior Article 78 proceeding against Respondent.

59. On Thursday, February 4th, I telephoned Mr. Estes, who advised me that the "public integrity unit" had not yet been appointed and that all my correspondence and supporting documents were with Joe Palozzola, Assistant to Mr. Spitzer's Chief of Staff. I

requested Mr. Estes to relay to Mr. Palozzola my request for the Attorney General's advocacy in an Article 78 proceeding against Respondent and that, in the event Mr. Palozzola wished me to provide him with an overview of the transmitted materials -- or had any questions -- he should call me.

60. Six weeks later, with no word from the Attorney General's office, I telephoned Mr. Palozzola (212-416-6051). I left voice mail messages for him on both March 18th and 19th, neither of which were returned. On Tuesday, March 23rd, I again telephoned Mr. Palozzola, speaking to him for the first time. Mr. Palozzola stated that the "public integrity unit" had still not been appointed. I told Mr. Palozzola that the impending deadline for bringing an Article 78 proceeding against Respondent required expeditious review by the Attorney General's office and that, based on the Attorney General's dilatory behavior, I was preparing an ethics complaint against Mr. Spitzer, personally. We agreed that we would speak further within the next two weeks.

61. On Friday, April 2nd, I faxed a letter to Mr. Palozzola, identifying, with an inventory, the documents to be reviewed "in anticipation of our phone conversation on Tuesday, April 6th, about the Attorney General's role in an Article 78 proceeding against the Commission on Judicial Conduct..." (Exhibit "F", at p. 2). In my letter, I also offered to come down to the Attorney General's New York office to assist the Attorney General in assessing his role on the public's behalf, with:

> "a personal presentation about the documentary-proven corruption of the Commission on Judicial Conduct and its dire consequences, individually and collectively, to the People of the state" (at p. 2).

62. On Tuesday, April 6th, I telephoned Mr. Palozzola, who stated that he still did not know who would be reviewing the materials. He suggested that I call him on Monday, April 12th, if I didn't hear from him before then. Again, I emphasized the rapidly-approaching deadline for commencing the Article 78 proceeding against Respondent.

63. I received no call back from Mr. Palozzola or anyone on his behalf. Consequently, on Monday, April 12th, Tuesday, April 13th, and Wednesday, April 14th, I left three telephone messages on Mr. Palozzola's voice mail proposing a meeting on April 15th at the Attorney General's New York office to discuss the dramatic posture of the case and the profound public interest issues presented by the Article 78 petition -- which I stated I was then drafting. Not one of these three consecutive voice mail messages was returned.

3. Procedural History of Petitioner's Efforts to Secure the Attorney General's Intervention *Following* Commencement of the Instant Article 78 Proceeding:

64. On Friday, April 23rd, I left a further voice mail message for Mr. Palozzola -- this one informing him that the Article 78 proceeding against Respondent had been commenced the previous day and that the Attorney General had been served with Notice of Right to Seek Intervention. I asked that he get back to me as to who would be evaluating the Attorney General's role in the newly-commenced proceeding. Again, I received no return call from Mr. Palozzola or anyone else at the Attorney General's office.

65. A week later, on Friday, April 30th, I telephoned Mr. Palozzola once more -- speaking with him for the first time since our April 6th conversation. In response to my

questions, Mr. Palozzola informed me that the Attorney General had still not appointed anyone to head his "public integrity unit" and that the Article 78 proceeding was being handled by James Henly, Chief of the Litigation Bureau, whose telephone number he gave me (212-416-8523).

66. Mr. Henly, who I telephoned later that day, knew nothing about the case and was unable to answer my question as to who would be evaluating the public's right to the Attorney General's intervention -- entitlement to which I summarized for him. Such summary included a brief description as to what had transpired in the prior Article 78 proceeding and the fact that in that proceeding the Attorney General's office had failed to undertake any independent evaluation of the public's right to the Attorney General's intervention.

67. Shortly, thereafter Mr. Henly's office informed me that the case had been assigned to Charles Sanders, head of Section "D" of the Attorney General's Litigation Bureau. It was then approximately 4:30 p.m. on Friday, April 30th and I immediately contacted Mr. Sanders by leaving a voice mail message for him, inquiring as to who would be evaluating the public's right to the Attorney General's intervention.

68. At about 3:30 p.m. on Monday, May 3rd -- about an hour and a half after I left a second telephone message for Mr. Sanders -- I received a phone call from Assistant Attorney General Michael Kennedy. He stated that Mr. Sanders had assigned the case to him, but that he had not yet reviewed the papers. I told Mr. Kennedy that upon his examination of the papers, he would readily see that not only did Respondent have NO legitimate defense, but that the systemic corruption they documented required referral to the Attorney General's "public integrity unit" -- as to which I informed him that Mr. Palozzola had extensive correspondence

from me, including an ethics complaint against Mr. Spitzer personally regarding his failure to staff such unit. I requested that Mr. Kennedy obtain that correspondence from Mr. Palozzola and, particularly, the copy of the file of the prior Article 78 proceeding, which I told him substantiated the first two exhibits to the Verified Petition: the three-page analysis of Justice Cahn's fraudulent decision and the ad, "*Restraining 'Liars'*". We agreed to speak together again on Thursday afternoon, May 6th, after Mr. Kennedy had reviewed the papers and had ascertained who would be evaluating the public's right to the Attorney General's intervention. I never heard from Mr. Kennedy again.

69. On Thursday, May 6th, I left two voice mail messages for Mr. Kennedy that, rather than speaking by phone, I hoped we could speak in person, since I was going to be filing with the Court the proofs of service for the Article 78 papers and would stop by the Attorney General's office after that. By 4:00 p.m., I was at the 24th floor lobby outside the Litigation Bureau and, over the next hour, left several voice mail messages for him, as well as for Mr. Sanders. Eventually, I was told by one of the office secretaries with whom I spoke that both Mr. Kennedy and Mr. Sanders were at a meeting, but that I could wait. At 5:30 p.m., Mr. Sanders came out to see me.

70. In this first conversation with Mr. Sanders, I reiterated the contents of my May 3rd conversation with Mr. Kennedy. Mr. Sanders also did not know who would be evaluating the public's rights to the Attorney General's advocacy. I explained to him the importance of independent evaluation, focusing on the conflict of interest of both Mr. Rifkin and Mr. Spitzer. Mr. Sanders assured me that he would let me know who would be conducting that

independent evaluation. To expedite his follow-up -- and to enable him to personally see for himself that Respondent had NO legitimate defense to the allegations of the Verified Petition -- I gave him, in hand, a duplicate copy of the Notice of Right to Seek Intervention, the Notice of Petition, and the Verified Petition with a full set of exhibits. I told him that the Attorney General's intervention was essential to ensure the integrity of the judicial process and prevent the case from being "thrown" by a fraudulent judicial decision, as had happened in the prior Article 78 proceeding against Respondent and in the two other cases detailed in "*Restraining 'Liars'*" -- a copy of which I showed him. I also told Mr. Sanders that IF Respondent had a legitimate defense, all he had to do was call me up and I would withdraw the proceeding. I never heard from Mr. Sanders again.

71. The following day, Friday, May 7th, I telephoned Mr. Palozzola and asked him to forward to Mr. Sanders and Mr. Kennedy all my document-supported correspondence in his possession -- which he agreed to do. At approximately 3:30 p.m. on Monday, May 10th, I faxed him a letter memorializing my request and his agreement thereto, thereafter faxing a copy to Mr. Sanders and Mr. Kennedy, who were indicated recipients thereof (Exhibit "G").

72. Sometime after faxing my May 10th letter -- and possibly after 5:00 p.m. -- I received a voice mail message from Assistant Attorney General William Toran, who identified only that I should call him at my earliest convenience "with regard to the case we have pending on Friday". Immediately upon receipt of Mr. Toran's message at about 6:50 p.m., I returned the call (212-416-6092), leaving a message on his voice mail.

73. Mr. Toran telephoned me the next day, Tuesday, May 11th, at

approximately 9:45 a.m. Stating that he had been assigned the case late the day before, he asked me to agree to a two-week adjournment. However, he was not at all sure he would be handling the case and, indeed, the more I told him about it, including my offer to withdraw the proceeding IF the Attorney General had a legitimate defense, the less certain he was that he would be handling it. I advised him that I was still waiting for Mr. Kennedy and Mr Sanders to get back to me as to who was evaluating the public's rights to the Attorney General's intervention -- a question to which he had no answer. He himself recognized that outside counsel might be required to evaluate the People's rights, in view of the Attorney General's conflict of interest, which we discussed. Mr. Toran resisted my request that any stipulation extending Respondent's time include a signature line for the Attorney General as "the People's lawyer", reflecting his "advice and consent". And he specifically asked me not to telephone Mr. Sanders when I stated my desire to call him about this request and about my other questions concerning Mr. Toran's involvement in the case.

74. I telephoned Mr. Sanders shortly after concluding my conversation with Mr. Toran. It was then 10:30 a.m. and I left a voice mail message that I was still waiting for him to get back to me as to who was reviewing the public's rights to the Attorney General's intervention and expressing puzzlement over Mr. Toran's involvement.

75. Four hours later, at approximately 2:42 p.m., Mr. Toran faxed me his proposed stipulation, whose only signature line was for the Attorney General as "Attorney for Respondent" (Exhibit "H-1"). On the heading of his coverletter, above Mr. Henly's name, was imprinted the name Richard Rifkin, Deputy Attorney General State Counsel Division. Two hours

later, I telephoned Mr. Toran, and told him that seeing Mr. Rifkin's name on the Attorney General's letterhead reinforced my belief that I could not, in good conscience, sign the proposed stipulation -- absent the "advice and consent" of the Attorney General, as the People's lawyer. Ten minutes later, I left a voice mail message to the same effect for Mr. Sanders. Approximately half an hour later, Mr. Toran faxed me a second letter, also imprinted with Mr. Rifkin's name, in which he reiterated that the Attorney General was representing Respondent and that "if [I] wish to stipulate with someone else who is going to appear in this action...[I should] prepare a separate stipulation for that person.", but that "meanwhile" I should sign the stipulation he had faxed (Exhibit "H-2").

76. The following day, Wednesday, May 12th, I heard nothing further from Mr. Toran. Nor did Mr. Sanders return either of my two voice messages for him. Consequently, at approximately 3:30 p.m., I faxed a letter to Mr. Toran -- with copies for Mr. Henly, Mr. Sanders, Mr. Kennedy, and Mr. Palozzola -- protesting the Attorney General's "demonstrably bad-faith and frivolous conduct", including his attempt "to take advantage of an unrepresented litigant" by a stipulation of adjournment, when Respondent was already in default (Exhibit "I"). My May 12th letter summarized the Attorney General's persistent disregard for my reasonable request to know who was evaluating the public's rights and made two further information requests: (1) for the legal basis for the Attorney General's representation of Respondent; and (2) for other information and documentation substantiating Respondent's entitlement to the Attorney General's representation, pursuant to Public Officers Law §72. I asserted that Respondent did not have an automatic right to such representation under Executive Law §63.1, which requires

that the Attorney General's involvement be guided by "the interests of the state" (at p. 3). I also pointed out that the Attorney General could not properly be representing Respondent without having first ascertained whether it had a legitimate defense to the proceeding and that, in view of my offer to withdraw the proceeding IF Respondent had a legitimate defense, the Attorney General should be seeking from me a stipulation of discontinuance, not a stipulation of adjournment (at p. 4). Again I emphasized -- as I had in my prior conversations -- that Respondent had "NO LEGITIMATE defense", that the only way Respondent could survive this Article 78 proceeding was if it was "thrown" by a fraudulent judicial decision -- and that only the Attorney General's intervention, on the public's behalf, could ensure the integrity of the judicial process in this vital public interest case (at p. 4).

77. Notwithstanding my May 12th letter concluded by requesting that someone contact me "ASAP...so that, if possible, we can obviate the need for a court appearance on May 14th" (Exhibit "I", at p. 5), no one ever did. On Thursday, May 13th, I left a voice mail message for Mr. Sanders at 10:35 a.m. to confirm his receipt of my faxed May 12th letter and to request that he advise me as to the Attorney General's intentions with respect to the next day's court appearance. At 11:15 a.m., I left a similar message for Mr. Henly with Tanzi Gonzales. Six hours later (at 5:45 p.m.), with no return call from either Mr. Sanders or Mr. Henly, I left a further voice mail message for Mr. Sanders that he should be sure that any Assistant Attorney General appearing in court the next day be "knowledgeable" about the case and be able to provide legal authority and documentation showing Respondent's right to defense by the Attorney General.

78. Appearing at the next day's calendar call was Assistant Attorney General

Carolyn Cairns Olson, whose potential participation herein had never been mentioned by Mr. Kennedy, Mr. Sanders, or Mr. Toran in my above-described conversations with them about the case. Ms. Olson answered the calendar call, as did I, by seeking an "application". We then went before David Sheehan, an Associate Court Attorney, who denied my request for a stenographer so that the proceeding could be "on the record".

79. Ms. Olson made no objection to Mr. Sheehan's disregard of my rights, as he granted her application for a two-week adjournment, *explicitly* denying my request that he query her as to the circumstances necessitating her extension application, and *explicitly* refusing my request that he impose upon her any terms and conditions, such as requiring that opposing papers be served upon me in advance of the new return date. Such adjournment was over my strenuous objection to Mr. Sheehan that, pursuant to CPLR §7804, Respondent was in default and he was without jurisdiction to grant the extension. It was also in the face of Ms. Olson's refusal to respond to my question as to the legal authority for the Attorney General's representation of Respondent and my assertion that the Attorney General was disqualified from representing Respondent, based on conflict of interest. Ms. Olson then fled while I was yet before Mr. Sheehan, protesting his conduct in a case about which he had made no inquiry and about which he claimed to know nothing.

80. Thereafter, Chief Clerk Frank Pollina, to whom I turned with a description of what had taken place, *sua sponte*, put the case on the Monday, May 17th calendar of Judge Lebedeff, the assigned judge, and took from me Mr. Sander's telephone number to apprise him of the new calendaring.

81. I thereupon went to the Attorney General's office to deliver "hard copies" of my May 12th letter, which, although faxed, had not been mailed. In so doing, I encountered Ms. Olson and advised her of the new calendaring. Ms. Olson took from me the original May 12th letter for Mr. Toran, as well as the three additional copies for Mr. Sanders, Mr. Kennedy, and Mr. Palozzola and time-stamped my own copy (Exhibit "I", p. 1)[19]. In response to my inquiry, she stated that both she and Mr. Kennedy would be handling the case. She ignored my immediate statement to her that she was disqualified by reason of her litigation involvement in the *Sassower v. Mangano* Article 78 proceeding, as she would be a witness. As before, she also ignored my inquiries as to the legal authority for the Attorney General's representation of Respondent and who was evaluating the public's right to his intervention. Indeed, her only response to my latter question was to repeat that the Attorney General was representing Respondent.

82. I then sought to alert Ms. Olson's superiors of her misconduct in trampling on my rights -- and allowing the Senior Court Attorney to trample on my rights. From the lobby of the Attorney General's litigation office, I telephoned Mr. Sanders, leaving a message on his voice mail. Again, I reiterated my prior queries as to the Attorney General's legal authority for his representation of Respondent, for substantiation of Respondent's entitlement, and for the name of the person(s) evaluating the public's rights to the Attorney General's advocacy. I specifically requested such information by the end of the day.

---

[19] At the same time, Ms. Olson receipt-stamped the letter's two enclosures: my April 2, 1999 letter (Exhibit "F") and my May 10, 1999 letter (Exhibit "G").

83. Immediately after I left my voice mail message for Mr. Sanders, I telephoned Mr. Henley's office to report on the morning's events. I was advised that someone would come out to the lobby to speak with me. That person was June Duffy, the Deputy Bureau Chief for the Litigation Bureau, who was accompanied by a man she introduced as being with "the police". To both of them, I recounted the morning's events, as well as the background and course of the litigation to that point. This included the Attorney General's refusal to identify who was evaluating the public's rights to his advocacy in the case and to provide the legal authority for the Attorney General's representation of Respondent -- information Ms. Duffy herself *refused* to provide. This refusal is reflected by the fax I sent to Ms. Duffy four hours later (Exhibit "J"), in which I requested such information:

> "by the end of the day today so that my recitation to the Court on Monday can be fully informed as to the relevant facts and circumstances surrounding the Attorney General's handling of this profoundly significant -- and politically explosive -- public interest case."

I received no response from Ms. Duffy -- nor from Mr. Sanders, to whom I also sent the fax.

84. Likewise, on Monday, May 17th, Ms. Olson would not respond to my requests for the legal authority for the Attorney General's representation of Respondent, nor identify who was evaluating the public's rights. These requests I made to her both before and after our appearance before Justice Lebedeff. Ms. Olson's "Affirmation in Support of Respondent's Application Pursuant to CPLR 3012(d)", which she handed me in the courtroom just prior to our appearance before Justice Lebedeff, conspicuously avoided identifying who was evaluating my request that the Attorney General "'intervene' and prosecute this Article 78

proceeding", while stating that the Attorney General's office had been "reviewing this request" when the case was assigned to her and Mr. Kennedy "for litigation purposes" (at ¶3).

85. Immediately upon reading the Affirmation, while waiting for the case to be called, I told Ms. Olson it was sanctionable, crossing the courtroom to speak to her for such purpose. I specifically challenged as patently false her Affirmation's claim that I was suing "on behalf of CJA" and "on behalf of a corporation", as to which she was contending I lacked capacity to sue, and her reliance on Justice Cahn's fraudulent decision in the prior Article 78 proceeding for a *res judicata*/collateral estoppel defense.

86. Ms. Olson's misconduct continued before Justice Lebedeff as she improperly procured an adjournment to May 24th[20] to file opposing papers *after* Justice Lebedeff had already recused herself, and in face of my vigorous objections based thereon and on CPLR §7804(e), which limits the Court to granting a default or directing an answer to the pleading. As reflected by the transcript, Ms. Olson did not address either objection (Exhibit "K", pp. 12-16)

87. At 2:30 p.m. that day, I left a voice mail message for Ms. Duffy (212-416-8618), advising her of Ms. Olson's continued litigation misconduct, including her ongoing refusal to identify the legal authority for the Attorney General's representation of Respondent and the identity of who in the Attorney General's office was evaluating the public's rights. I specifically noted ¶3 of Ms. Olson's Affirmation and asked Ms. Duffy to identify who had been "reviewing"

---

[20] Ms. Olson misled Justice Lebedeff into believing that Monday, May 24th was the date she was requesting for serving me with opposing papers (Exhibit "K", p. 14, ln. 16-18), rather than the true date, Friday, May 21st, which she had indicated to the Court (Exhibit "K", p. 11, ln. 2) and which was printed in the first paragraph of her Affirmation.

my request for the Attorney General to "'intervene' and prosecute" the proceeding so that I could speak to such person. I received no return call from Ms. Duffy, then or thereafter.

88. At 9:40 a.m. the following day, May 18th, I telephoned Ms. Olson (212-416-8595) and requested that she specify who was being referred to in her Affirmation as having "review[ed]" my intervention/prosecution request. Ms. Olson responded by stating that:

> "you have been speaking to everyone at the Attorney General's office and should get the answer from them. I receive my directions from Mr. Sanders".

She then hung up the phone, telling me "the conversation is over -- goodbye."

89. I immediately telephoned Mr. Sanders, leaving a lengthy message on his voice mail recounting my phone conversation with Ms. Olson and reiterating my request for legal authority for the Attorney General's representation of Respondent and substantiating proof of its entitlement. I received no return call from him.

90. On Thursday, May 20th, I telephoned Ms. Olson to clarify that the date which Justice Zweibel had given her for filing Respondent's opposing papers was May 24th -- and not the May 21st date her Affirmation had requested. During the course of that conversation, I again asked Ms. Olson to identify who was reviewing the case for the People. Ms. Olson's response was that it would be in the dismissal motion, which she would be express mailing to me.

91. I received the dismissal motion on Wednesday, May 26th, bearing her name and Mr. Kennedy's name as "of counsel". It contained no reference to the identity of who at the Attorney General's office had reviewed the case to determine the public's rights to the Attorney General's advocacy; no statement that his representation of Respondent was in "the interests of

the state", and no reference to the conflict of interest issue. The only reference to my challenge to the Attorney General's authority to represent Respondent herein was in footnote 1 of their Memorandum in support of dismissal (at p. 1), which claimed that "any" challenge would be "frivolous". The only statutory authority cited for the Attorney General's representation was Executive Law §63.1 -- which was referenced without any discussion or analysis. This was followed by a bald citation to a single case, *Sassower v. Signorelli*, 99 A.D. 2d 358 (2d Dept. 1984) -- a case whose one sentence discussion of Executive §63.1 misrepresents the clear language of that statute.

92. At 12:05 p.m., three hours after my receipt of the dismissal motion, I left a voice message for Mr. Kennedy (212-416-8625), protesting its fraudulent and deceitful nature and requesting that he pass such message on to Ms. Olson. I further requested that he provide me with the names of those in supervisory positions who approved the motion and the identity of the person(s) who had reviewed the case to determine the public's rights to the Attorney General's advocacy. I received no return call.

93. Immediately thereafter, I telephoned Mr. Henly, leaving a message with Tanzi Gonzales as to the need for supervision over the Assistant Attorneys General in this case. I specifically referred to the dismissal motion of Ms. Olson and Mr. Kennedy, requesting that it be withdrawn because it was "deceitful, false and frivolous". I, likewise, noted as sanctionable Ms. Olson's May 25th letter to the Court.

94. Ms. Olson's May 25th letter (Exhibit "M"), which I had received by fax, purported to request that the Court schedule a conference, but actually argued for an alternative

request that the Court issue "a scheduling order for the briefing and submission of the proceeding" (at p. 2). This alternative request, which Ms. Olson placed in the last paragraph of her letter, was preceded by a skewed recitation which entirely omitted the threshold issues that had to be addressed before any scheduling order could properly issue: (1) the Attorney General's duty to evaluate "the interests of the state", pursuant to Executive Law §63.1; (2) the Attorney General's disqualifying conflict of interest; (3) Respondent's default pursuant to CPLR §7804 -- and the fact that the Court was without jurisdiction to do other than issue a default judgment or to direct it to answer.

95. On Friday, May 28th, I hand-delivered a letter to the Court, particularizing the respects in which Ms. Olson's letter was false and misleading -- and a continuation of the pattern of the Attorney General's misconduct that had characterized his defense of Respondent over the preceding weeks (Exhibit "N").

96. My letter stated (at p. 4) that this pattern of litigation misconduct was with Respondent's knowledge and consent, having received notice from me on May 17th (Exhibit "L"), immediately following that day's proceeding before Justice Lebedeff. In connection therewith, I highlighted that Ms. Olson was attempting to further deceive this Court by purporting that:

> "Justice Lebedeff had the authority to grant [the] Commission's request for an extension in the same proceeding in which she determined to recuse herself." (Exhibit "M", p. 2)

I pointed out that Ms. Olson provided no legal or ethical authority for such bald claim -- notwithstanding Respondent, as an agency charged with upholding standards of judicial ethics

could, presumably, have provided it to her -- were it to actually exist. My letter, therefor, specifically challenged Respondent to "back up" its counsel's claim, stating that a copy would be served upon it for such purpose (Exhibit "N", p. 3). Indeed, my hand-delivered May 28th letter to the Court bore receipt stamps from the offices of the Attorney General, as well as Respondent, reflecting that copies had already been delivered to them (Exhibit "N", p. 1).

97. Neither Respondent nor the Attorney General came forward with any legal authority. Nor did they otherwise respond to my fact-specific, document-supported May 28th letter, reciting the defense misconduct and pointing out Ms. Olson's disqualification as a potential witness herein (Exhibit "N", p. 4).

98. On Friday June 11th, (1:10 p.m.), I telephoned Mr. Palozzola and apprised him of the on-going litigation misconduct of the Attorney General's office. I again sought to ascertain the status of the "public integrity section". Mr. Palozzola informed me that Peter Pope had just been appointed to head the unit, but was unable to specify the date of the appointment or provide me with a press release on it[21]. Mr. Palozzola further stated that he believed that Mr. Pope was aware of the instant Article 78 proceeding against Respondent and is "comfortable" with how it was being handled by the Litigation Bureau. I thereupon telephoned Mr. Pope (212-416-6051) (1:17 p.m.), leaving a message for him with his secretary, Holly, who was not sure whether Mr. Pope was heading the "public integrity unit". At 4:20 p.m. I left a second message with Holly, requesting that Mr. Pope return the call before the end of the day, as the case, whose

---

[21] Mr. Pope's position, as it appears on press releases posted on the Attorney General's website is "Special Counsel to the Attorney General" (Exhibits "A-4" and "A-5").

index number I provided, was on for a conference before the Court on Monday, June 14th. I advised her that it was my intention to seek sanctions against the Attorney General's office for its litigation misconduct herein.

99. At the June 14th court conference, at which Ms. Olson again appeared on Respondent's behalf, I identified that:

> "An issue in this litigation, threshold issue, is the integrity of the judicial process and whether the Attorney General, our highest legal officer, is going to be held to fundamental, rudimentary ethical standards of conduct." (Exhibit "O", p. 7, lns. 15-19)

This followed my summary of the false and misleading nature of Ms. Olson's May 25th letter, which I described as "an illustrative example of [the] bald-faced deceit on this Court that the Attorney General is ready to perpetrate." (Exhibit "O", p. 7, lns. 21-23) As for the dismissal motion, I stated that it confirmed my contention that Respondent had "no legitimate defense" (p. 22, lns. 10-11) and that "It is, from beginning to end, filled with falsification, concealment, omission, misrepresentation, distortion" (p. 22, lns. 13-15). I alerted the Court to the fact I already had "over 40 pages addressed to their factual falsifications in their dismissal motion" and that "their four points [of law] are entirely predicated on their falsification of the pleading, entirely" (p. 26, lns. 16-20) -- concluding by stating that it was my intention not only to oppose the motion, but to seek "sanctions, severe sanctions, criminal sanctions" (p. 28, ln. 7).

100. The following day, Tuesday, June 15th (11:15 a.m.), I telephoned Mr. Pope for the third time, once again leaving a message with his secretary Holly, requesting a return call and specifying that he should obtain from Mr. Palozzola my voluminous correspondence with

the Attorney General on the subject of systemic governmental corruption. On Monday, June 21st (2:15 p.m.), I telephoned Mr. Pope a fourth time, leaving a message with Sasha. I also called him, a fifth time, on Wednesday, July 7th (10:03 a.m.), leaving a message with Holly that I was working on a motion to impose severe sanctions on the Attorney General, including criminal penalties, and that if Mr. Pope was too busy to return my call, that he designate someone to do so.

101. Immediately thereafter, I telephoned Mr. Palozzola, advising him that I had just left a fifth telephone message for Mr. Pope, who had returned none of my previous calls. In response to my query as to whether he had transmitted my correspondence to Mr. Pope -- as I had requested him to do in our June 11th conversation -- Mr. Palozzola told me that he had not, but that his office was only two doors down from Mr. Pope's office and that Mr. Pope was aware of it, as likewise the Litigation Bureau. Mr. Palozzola again repeated that Mr. Pope was "comfortable" with Litigation's handling of the case. I told him that Mr. Pope could not possibly be "comfortable" with it -- since the Litigation Bureau was replicating the same fraudulent defense strategy, particularized in "*Restraining 'Liars'*". Indeed, I stated that I had already drafted a 70-page memorandum in support of a sanctions motion, detailing that virtually every line of the Attorney General's dismissal motion falsified, distorted, and omitted the material allegations of the Verified Petition and that it was my intention to seek sanctions, including disciplinary and criminal referral, against Mr. Spitzer, personally.

Mr. Palozzola's only response to my plea for the Attorney General's oversight -- the purpose of my call to him -- was that I should make my sanctions motion. He scoffed at my

assertion that the Attorney General had a duty to take supervisory steps so as to avoid my having to burden to the Court with such motion and was perfectly contented by the possibility that, as in the three litigations detailed in "*Restraining 'Liars'*", the Court might cover-up the Attorney General's misconduct by ignoring it -- a possibility I raised with him. He rejected the notion that the Attorney General, as this State's chief law enforcement officer, has any duty to ensure the integrity of the judicial process.

102. On Monday, July 26, 1999 (9:30 a.m.), I learned from David Nocenti, counsel to Mr. Spitzer, that conflict-of-interest issues involving employees of the Attorney General's office can be directed to a four-person "Employee Conduct Committee" -- one of whose members is Mr. Rifkin. I also learned from him that the Attorney General has not actually set up the "public integrity unit" in any formal way and that Mr. Pope is one of several Assistant Attorneys General to whom public integrity matters are directed.

I reported to Mr. Nocenti the salient facts pertaining to the Attorney General's conflict of interest and litigation misconduct in this proceeding -- and the refusal of those in supervisory positions to effect supervision. I named for him the Assistants Attorneys General handling the case, as well as all the supervisory personnel to whom I turned. Requesting that our phone conversation together be deemed notice to Mr. Spitzer (from whom he stated he was "two doors" away) that I was going to be seeking sanctions against him, personally, I noted that New York's Disciplinary Rules of the Code of Professional Responsibility had reinforced the supervisory duties of law firms[22]. I complained that the consequence of Mr. Spitzer's failure to

---

[22] *See* my accompanying Memorandum of Law, p. 7.

take corrective action in the three cases featured in "*Restraining 'Liars'*", was the continued *modus operandi* of litigation misconduct by the Attorney General's office. I stated that I would send him a copy of this sanctions motion and asked that he obtain from Mr. Palozzola, in the interim, my document-supported correspondence with Mr. Spitzer and, in particular, my March 26, 1999 ethics complaint.

103. Thereafter (11:00 a.m.), I telephoned Mr. Palozzola and requested that he provide my aforesaid correspondence to Mr. Nocenti. I told him that my sanctions motion was nearly complete, that it contained a recitation of my communications with the Attorney General's office, and asked him to confirm for me his statement that Mr. Pope had told him that he was "comfortable" with Litigation's handling of the case. He confirmed that this was what Mr. Pope had told him.

D. THE ATTORNEY GENERAL DID NOT -- AND COULD NOT -- MEET THE STANDARD FOR A POST-DEFAULT CPLR §3012(d) APPLICATION EXTENDING HIS TIME TO RESPOND TO THE VERIFIED PETITION

104. As hereinabove detailed, when the Attorney General sought an extension of time in which to oppose the Verified Petition, Respondent was already in default. I pointed this out to the Attorney General in my May 12th letter (Exhibit "I", pp. 1, 4) -- and, on May 14th, the return date of the Verified Petition, opposed Ms. Olson's attempt to obtain an extension from the Senior Court Attorney by citing CPLR §7804(c), requiring Respondent's answer to be served "at least five days before" the return date and CPLR §7804(f), requiring any objection in point of law that Respondent desired to raise by motion be "within the time allowed for answer". Ms.

Olson did not respond to such legal authority, a copy of which I presented for the inspection of the Senior Court Attorney, as well as of Ms. Olson, who was standing alongside him.

105. Even on May 17th, Ms. Olson did not confront the jurisdictional requirements of CPLR §7804(e) when she sought an extension from Justice Lebedeff. Indeed, her failure to do so is reflected not only by the transcript of the proceeding on that date (Exhibit "K", pp. 10-16), but by the "Affirmation in Support of Respondent's Application" that she handed to the Justice. Such "Application" was not made pursuant to any section of CPLR §7804, but explicitly "Pursuant to CPLR 3012(d)".

106. The inapplicability of CPLR §3012(d) to an Article 78 proceeding is discussed at pp. 96-99 of my accompanying Memorandum. However, CPLR §3012(d) itself requires that the Court's granting of an application to "extend the time to appear or plead" be "*upon such terms as may be just* and *upon a showing of reasonable excuse for delay or default.*" (emphases added)

107. No "showing of reasonable excuse was made", not on May 14th, before the Senior Court Attorney, nor on May 17th, before Justice Lebedeff:

A. On May 14th, the Senior Court Attorney not only granted Ms. Olson an extension without making any inquiry as to any "reasonable excuse" for Respondent's default, but, refused my specific request that he query Ms. Olson into the circumstances of her application. This is recited in my uncontroverted May 28th letter to the Court (Exhibit "N", p. 2).

B. On May 17th, Justice Lebedeff granted Ms. Olson's extension request, also

without inquiring as to any "reasonable excuse" for Respondent's default. This is reflected by the transcript of the proceeding on that date (Exhibit "K", pp. 10-16).

108. To the extent that Justice Lebedeff may have relied on Ms. Olson's Affirmation -- which Ms. Olson handed up to her when we approached the bench[23] -- she was misled by its deceptive claim that the requested adjournment was "not unreasonable, given the volume of petitioner's moving papers and the numerous issues involved" (at p. 4). This deception would have been readily apparent to Justice Lebedeff had she afforded me the opportunity to respond to the Affirmation, which she did not do. It, likewise, would have been apparent had Ms. Olson not removed from her Affirmation's Exhibit "3" the two attachments to my May 12th letter (Exhibit "I"), *to wit*, my April 2nd and May 10th letters to Mr. Palozzola (Exhibits "F" and "G")[24].

109. My April 2nd letter and its annexed inventory (Exhibit "F") made evident that the Attorney General had long had in his possession not only the bulk of the "volume of moving papers", but ***all*** exhibits to the Verified Petition, except Exhibit "H". Exhibits "A", "B", and "E" had been transmitted to the Attorney General under my December 24, 1998 coverletter (Exhibit "B"), together with the file of the prior Article 78 proceeding against Respondent. Exhibits "C", "D", and "F-1"-"F-4" had been transmitted to him under my January 27, 1999

---

[23] I received no advance notice of the Attorney General's §3012(d) application, which consists of Ms. Olson's May 17th Affirmation, bearing no notice.

[24] Exhibit "2" to Ms. Olson's Affirmation is also incomplete -- containing Mr. Toran's first May 11th fax to me, with his proposed stipulation (Exhibit "H-1"), but not his second fax of the same date (Exhibit "H-2").

coverletter (Exhibit "D"), and Exhibits "F-5"-"F-7" and "G" had been transmitted to him with the copy of CJA's March 26, 1999 ethics complaint (Exhibit "E"). Moreover, as to the "numerous issues involved"[25], the April 2nd letter showed that I had offered to provide the Attorney General's office with a personal presentation (Exhibit "F", p. 2).

110. I would have stated this to Justice Lebedeff, had she made any inquiry on the subject of the Attorney General's extension request. As the foregoing recitation makes plain, the Attorney General had more than adequate time and sufficient staff involvement with which to review the evidence substantiating the Verified Petition, as well as repeated offers from me to assist him on the "issues" -- all of which he spurned.

111. Ms. Olson's Affirmation also sought to buttress her extension request by claiming that Respondent had "good and absolute defenses to each of the causes of action" (¶6) -- and wished to include all of them in its opposition papers, "rather than a piecemeal approach" (¶5). This claim of "good and absolute defenses to each of the causes of action" was a further flagrant deceit upon the Court. As demonstrated in my accompanying Memorandum, each of those defenses is spurious, resting on the Attorney General's wilful falsification, distortion and concealment of the material allegations of the Verified Petition. Indeed, had Justice Lebedeff at all examined the two defenses for which Ms. Olson's Affirmation provided specificity: her *res*

---

[25] It must be noted that while, for purposes of obtaining an extension, Ms. Olson's Affirmation refers to "numerous issues", her tune changed a week later in the dismissal motion, where, for purposes of setting up a *res judicata* /collateral estoppel defense, she asserts that the Petition herein is "practically identical and, in fact, repeats many of the claims raised in the petition" in the prior Article 78 proceeding (Memorandum pp. 6-7). Obviously, if the Verified Petition was "practically identical" then no great expenditure of time was needed for response.

judicata/collateral estoppel defense based on Justice Cahn's dismissal of the prior Article 78 proceeding (at ¶3) and her defense that I lacked capacity to sue "on behalf of CJA" and "on behalf of a corporation" (at ¶¶4, 6) -- or given me the opportunity to be heard with respect thereto -- she would have easily seen the fraud being perpetrated upon her by Ms. Olson.

112. In granting Ms. Olson's requested extension, Justice Lebedeff did not impose upon the Attorney General any "terms" that would be "just", such as requiring her to file an answer or to disclose the legal authority for the Attorney General's representation of Respondent or the identity of who had undertaken -- or was undertaking -- to evaluate my rights. Instead, as reflected by the transcript (Exhibit "K"), she cut me off, mid-sentence, as I attempted to present these objections and, without making any inquiry of Ms. Olson, solicitously offered her own *sua sponte* justification for the Attorney General's appearance before her on Respondent's behalf:

> "Ma'am, let me tell you it's very common for the attorney general to represent people and agencies even though they have their own counsel and maybe they are still sorting that out." (Exhibit "K", p. 14)

113. Justice Lebedeff identified no legal authority for the proposition that while "still sorting...out" the "state interest", the Attorney General could affirmatively defend Respondent. Nor did Ms. Olson provide such authority during the proceeding before Justice Lebedeff. Nor did she do so in her "Affirmation in Support of Respondent's Application Pursuant to CPLR 3012(d)", which, as hereinabove noted, did not disclose the outcome of my request for the Attorney General to intervene and prosecute the proceeding, which it ambiguously

purported either had been or was then being reviewed (at ¶3).

E. THE ATTORNEY GENERAL'S SANCTIONABLE MISCONDUCT IN CONNECTION WITH HIS POINT I DEFENSE THAT PETITIONER LACKS "CAPACITY TO SUE ON BEHALF OF THE CENTER FOR JUDICIAL ACCOUNTABILITY"

114. At the June 14th court conference, Ms. Olson responded to the prospect of my filing a motion for the Attorney General's disqualification by requesting that it be "heard together with Point I" of the Attorney General's dismissal motion, "on the question of [my] capacity to sue *on behalf of* the Center for Judicial Accountability" (Exhibit "O", p. 21, lns. 22-24, emphasis added).

115. The transcript reflects that I immediately protested this further deceit by Ms. Olson as to the capacity in which I was bringing this proceeding and attempted to show the Court, by reference to the caption and paragraphs of the Verified Petition, that "this case..is being brought by me in an individual capacity. I am not suing *as* coordinator". (Exhibit "O", p. 21, ln. 25 - p.22, ln. 5, emphasis in the oral original)[26].

116. My rebuttal to Ms. Olson's Point I is set forth in my accompanying Memorandum (at pp. 59-61). It shows that Point I rests on "material misrepresentation" of the Verified Petition -- for which the Attorney General provides no record support, either to its caption or to its allegations.

117. Suffice to say that the reason the Verified Petition's caption and allegations

---

[26] It was Ms. Olson's attempt to mislead the Court as to the legitimacy of the Attorney General's Point I defense that sparked my recitation that his dismissal motion is "from beginning to end, filled with falsification, concealment, omission, misrepresentation, distortion" (Exhibit "O", p. 22, lns. 13-15).

nowhere state that I am suing "on behalf of CJA" or "as" its Coordinator is because I am bringing this suit individually. This, because CJA did not authorize this proceeding, which, if brought by it or for it by a non-lawyer, would, as I was well aware, have required appearance by counsel. This is reflected from the fax I received from CJA's Director, Doris L. Sassower, at 8:30 a.m. on April 6th:

> "The Center is a corporation and must appear by counsel. I do not authorize this lawsuit -- it is doomed to defeat. Take a cruise instead with the money it is going to cost you. I will not be involved in it." (Exhibit "P", emphasis in the original)

118. Consequently, the caption herein contains only my descriptive title, "Coordinator of the Center for Judicial Accountability, Inc.", and NOT the words "on behalf of" or "as". Consequently, too, I have paid the various disbursements and other expenses from my own pocket. These include the $170 for the Index Number, the $75 for the RJI, the $80 cost for the transcript of the May 17th proceeding before Justice Lebedeff (Exhibit "K"), the $77 cost of the transcript of the June 14th court conference (Exhibit "O"), and travel expenses.

119. It must be noted that even where -- as in the prior Article 78 proceeding -- the caption on the Verified Petition contains NO descriptive title and only the name of the individual Petitioner, Doris L. Sassower -- the Attorney General is so unabashed in his deceit as to claim herein for purposes of his spurious *res judicata*/collateral estoppel defense, that "Doris Sassower sued as the 'Director' of the CJA". (Attorney General's Memorandum, at p. 16). That proceeding was brought by the Petitioner therein in her individual capacity and, likewise, I have brought this proceeding in an individual capacity.

120. It is bad faith in the extreme for the Attorney General to raise any Point I objection based on my lack of capacity to sue. Plainly, had he respected his duty to himself bring this proceeding -- or to intervene and prosecute this already commenced proceeding -- as I repeatedly requested of him, based on the transcending "state interest" I am single-handedly championing, at great effort and expense to myself, this non-issue would not even exist as a pretense.

WHEREFORE, it is respectfully prayed that the relief sought in my Notice of Motion be granted in all respects.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petititoner, *Pro Se*

Sworn to before me this
28th day of July 1999

Notary Public

NOTARY PUBLIC

ANTHONY DELLA VECCHIA
Notary Public, State of New York
No. 01DE5035676
Certificate Filed in Westchester County
Commission Expires 11/21-2000

INVENTORY OF EXHIBITS TO PETITIONER'S JULY 28, 1999 AFFIDAVIT

Exhibit "A-1":	Attorney General Spitzer's Homepage (on June 10, 1999)
"A-2":	Message from Attorney General Spitzer (on April 6, 1999)
"A-3":	Tour the Attorney General's Office (on June 10, 1999)
"A-4":	Press Release: December 22, 1998: "New Attorney General Announces Senior Staff Appointments"
"A-5":	Press Release: Executive Legal Staff (on June 10, 1999)
"A-6":	Press Release: April 12, 1999 "Spitzer Marks First 100 Days in Office: A.G. Lauded for Quality of Hires, Early Activism"
Exhbiit "B":	Petitioner's December 24, 1998 letter to Attorney General-Elect Spitzer, with attached exhibits [*See*, also, File Folder I]
Exhibit "C":	Petitioner's December 28, 1998 letter to Attorney General-Elect Spitzer, with attached Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*"
Exhibit "D":	Petitioner's January 27, 1999 letter to Attorney General Spitzer, with attached exhibits [*See*, also, File Folder II]
Exhibit "E":	Petitioner's March 26, 1999 letter/complaint to NYS Ethics Commission, with attached exhibits (copy sent to Spitzer, certified mail/rrr) [*See*, also, File Folder III]
Exhibit "F":	Petitioner's April 2, 1999 letter to Joe Palozzola, Assistant to Attorney General Spitzer's Chief of Staff, with attachments
Exhibit "G":	Petitioner's May 10, 1999 letter to Joe Palozzola -- copies to Assistants Attorneys General Kennedy, Sanders
Exhibit: "H-1":	Assistant Attorney General Wiliam Toran's May 11, 1999 faxed letter to Petitioner, enclosing stipulation
"H-2"	Assistant Attorney General Toran's second May 11, 1999 faxed letter to Petitioner
Exhibit "I":	Petitioner's May 12, 1999 letter to Assistant Attorney General Toran -- copies to Litigation Chief Assistant Attorney General James Henly and Assistant Attorneys General Charles Sanders, William Kennedy, and Joe Palozzola
Exhibit "J":	Petitioner's May 14, 1999 fax to Deputy Litigation Chief June Duffy -- copy to Assistant Attorney General Sanders

Exhibit "K": Transcript of May 17, 1999 proceedings before Justice Diane Lebedeff

Exhibit "L": Petitioner's May 17, 1999 notice to Respondent

Exhibit "M": Assistant Attorney General Carolyn Cairns Olson's May 25, 1999 letter to Justice Ronald Zweibel

Exhibit "N": Petitioner's May 28, 1999 letter to Justice Zweibel -- with hand-delivered copies to Respondent and Litigation Bureau Chief Assistant Attorney General Henly/Assistant Attorney Generasl Olson

Exhibit "O": Transcript of June 14, 1999 court conference before Justice Zweibel

Exhibit "P": Doris L. Sassower's April 6, 1999 fax to Petitioner