

STATE OF NEW YORK  
COURT OF APPEALS

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

Appellate Division  
Docket No. 5638

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE  
STATE OF NEW YORK,

Respondent-Respondent.  
-----x

MEMORANDUM OF LAW OF RESPONDENT  
IN OPPOSITION TO MOTION FOR LEAVE TO APPEAL

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Dated: November 8, 2002

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**STATEMENT OF THE CASE**

Respondent-respondent the Commission on Judicial Conduct of the State of New York ("Commission") opposes petitioner-appellant Elena Ruth Sassower's ("petitioner") October 24, 2002 motion for leave to appeal to this Court the December 18, 2001 decision and order of the Appellate Division, First Department, Sassower v. Comm'n on Judicial Conduct of New York. Petitioner's attempt to appeal this decision as of right was denied by this Court in its September 12, 2002 decision and order. Her current attempt to seek leave on the ground of its purported "public importance" is without merit.

## STATEMENT OF THE CASE

The underlying facts of this case are summarized briefly below. The brief the Commission submitted to the First Department, which discussed the case's background in greater detail, was previously submitted to the Court.

### A. The Underlying Article 78 Proceeding

Petitioner's CPLR article 78 proceeding alleged that the Commission, which oversees judicial conduct, was required by Judiciary Law §44.1 to conduct a comprehensive investigation of every "facially-meritorious" complaint of judicial misconduct, and therefore was without the discretion to dismiss complaints that petitioner filed, notwithstanding its conclusion that they did not warrant a full-scale investigation. Petitioner sought, inter alia, an order of mandamus directing the Commission to vacate its dismissal of her complaint concerning Judge Albert Rosenblatt (then an Appellate Division, Second Department Justice), and to "receive" and "determine" her complaint concerning Justice Daniel W. Joy, also of the Appellate Division, Second Department.

In a Decision and Order dated January 31, 2000 (Exhibit C to Petitioner's Statement in Support of Motion for Leave to Appeal ("Stat.")), Supreme Court, New York County (Wetzel, Acting Justice) dismissed the petition (and denied petitioner's motion for recusal and for sanctions against the Attorney General and

the Commission due to their alleged "litigation misconduct"). Supreme Court held that the Commission had the power to make discretionary preliminary determinations as to whether to undertake more comprehensive investigations, and therefore could not be compelled to undertake a comprehensive investigation.

Supreme Court also relied on Mantell v. New York State Comm'n on Judicial Conduct, 181 Misc. 2d 1027 (Sup. Ct. N.Y. Co. 1999), affirmed, 715 N.Y.S.2d 316 (1<sup>st</sup> Dep't 2000), app. den., 96 N.Y.2d 706 (2001), holding that petitioner had no standing to seek an order compelling the Commission to investigate a particular complaint, because such an investigation was a discretionary, rather than an administrative act (Stat., Ex. C, pp. 4-5). In addition, citing petitioner's frivolous and harassing conduct during the litigation, Supreme Court enjoined both petitioner and her pro bono organization, the Center for Judicial Accountability, Inc. ("CJA") from instituting "any further actions or proceedings relating to the issues decided herein." (Stat., Ex. C, p. 5). Petitioner appealed to the Appellate Division, First Department.

**B. Proceedings Before The Appellate Division**

The First Department unanimously affirmed Justice Wetzel's decision. (Stat., Ex. A). The court held that the "petition to compel respondent's investigation of a complaint was properly dismissed since respondent's determination whether to investigate

a complaint involves an exercise of discretion and accordingly is not amenable to mandamus." (Stat., Ex. A, p. 1). With respect to the filing injunction imposed against both petitioner and CJA, the First Department concluded that it was "justified given petitioner's vitriolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions." (Stat., Ex. A, p. 2).

On January 17, 2002, petitioner moved before the First Department for reargument, and, on February 20, 2002, for leave to appeal to this Court. On March 26, 2002, the First Department denied both motions.

#### ARGUMENT

##### PETITIONER HAS NO BASIS FOR SEEKING LEAVE TO APPEAL

This case raises no issue that is "novel, or of public importance, or [which] involve[s] a conflict with prior decisions of this Court, or [as to which] there is a conflict among the Appellate Divisions." 22 NYCRR § 500.11(d)(1)(v). Petitioner's only support for her claim that her case merits review is the assertion she has repeated in every filing submitted to this Court: that Sassower, Mantell, and every related, unfavorable decision are "judicial frauds," "deceit[s]," "hoax[es]." (Stat., pp. 6, 8, 9). Petitioner's practice of declaring every decision that displeases her to be a "fraud," and relentlessly vilifying

anyone who opposes her, is by now too well-documented to require further comment.

Sassower not only does not concern a matter of public significant, it is also not "novel." A year earlier, Mantell had held that a petitioner had no standing to seek an order compelling the Commission to investigate a particular complaint, because such an investigation was a discretionary, rather than an administrative act. This Court denied petitioner's motion for leave to appeal that decision, Mantell v. New York State Comm'n on Judicial Conduct, 96 N.Y.2d 706 (2001). Sassower, supra, followed Mantell, holding that the "petition to compel respondent's investigation of a complaint was properly dismissed since respondent's determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to mandamus." (Stat., Ex. C, p. 2).

Petitioner's proceeding, therefore, concerned straightforward application of a well-established rule of law, that mandamus will not lie to compel performance of a discretionary act. Particularly in view of petitioner's consistently reckless and abusive litigation tactics, her case does not merit this Court's review.

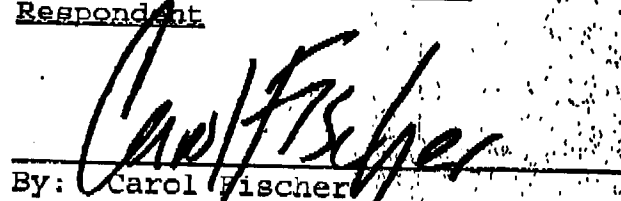
CONCLUSION

For all of the reasons stated above, petitioner's motion for leave to appeal should be denied.

Dated: New York, New York  
November 8, 2002

Respectfully submitted,

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