

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.
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**AFFIRMATION OF
CAROL FISCHER
IN OPPOSITION TO
PETITIONER'S MOTION
TO STRIKE AND FOR
SANCTIONS, ETC.**

CAROL FISCHER, an attorney duly admitted to practice
law before the Courts of the State of New York, affirms as
follows under penalty of perjury:

1. I am an Assistant Solicitor General in the Office
of the Attorney General of the State of New York, counsel for the
respondent-respondent Commission on Judicial Conduct of the State
of New York ("respondent" or "Commission"). I am fully familiar
with the matters set forth in this Affirmation, which is
submitted in opposition to the June 17, 2002 motion of
petitioner-appellant Elena Ruth Sassower ("petitioner") to strike
filings with this Court, to sanction respondent's counsel, and to
refer the Attorney General and various members of his staff for
disciplinary and criminal investigation and prosecution. For the
reasons detailed below, petitioner's motion should be denied.

2. The Court has not yet assumed jurisdiction over
petitioner's appeal from the December 18, 2001 Decision and Order

of the Appellate Division, First Department. Two motions are currently pending: the Court's sua sponte inquiry into whether it has subject matter jurisdiction, and petitioner's May 1, 2002 motion demanding the recusal of the members of this Court from hearing her appeal. To this, petitioner now adds a wholly frivolous request for sanctions. The conduct petitioner purports to find sanctionable is respondent's May 17, 2002 memorandum of law, filed in opposition to her disqualification motion, and respondent's May 28, 2002 letter responding to the Court's jurisdictional inquiry.

3. Petitioner's motion was not unexpected. From the inception of this case, an article 78 proceeding brought in Supreme Court, New York County, to its appeal to the Appellate Division, Department, petitioner has repeatedly made motions (all denied) to strike respondent's papers, and to sanction and disqualify respondent's counsel. See the Affidavit of Elena Ruth Sassower, sworn to June 17, 2002, in support of her motion ("Sassower Aff."), ¶¶13-16. Her current motion and her previous motions have all been based on the same fundamental premise, that failure to agree with petitioner's view of the facts and the law is "fraud and deceit." (Sassower Aff. ¶2).

4. One example from her present motion will suffice. In her June 7, 2002 Affidavit in Response to Sua Sponte Jurisdictional Inquiry, ¶¶4-13 (to which petitioner refers for

substantiation of her claim that respondent's submissions have been "frauds on the court" (Sassower Aff. ¶¶9-10)), petitioner analyzes what she believes are important textual differences between respondent's discussion of the Court's lack of subject matter jurisdiction in its May 17, 2002 memorandum of law and its discussion of the same point in its May 28, 2002 letter. To her, these differences demonstrate an intent to "conceal" from the Court the content of the decision petitioner wishes to appeal. June 7, 2002 Sassower Affidavit in Response to Sua Sponte Jurisdictional Inquiry, ¶11.

5. On its face, her argument makes no sense, and demonstrates that petitioner does not understand the disciplinary rules she purportedly seeks to enforce. "Fraud," as used in 22 NYCRR §§1200.3(a)(4), 1200.3(a)(5), 1200.33(a)(5) and Judiciary Law §487 refers to misrepresentations which are both intentionally made and which "can be reasonably expected to induce detrimental reliance by another." 22 NYCRR §1200.1(i) (defining "fraud" as used in the Disciplinary Rules). Petitioner does not explain how any of the supposed "falsification[s], distortion[s] and concealment[s] of the material facts and law" (Sassower Aff. ¶9) allegedly contained in respondent's submissions could possibly "induce detrimental reliance." The record of this case (augmented, of course, by petitioner's extensive submissions of documents from other cases) contains all

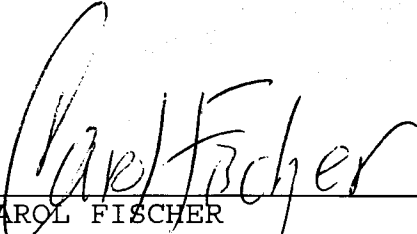
of the "material facts and law." Nothing could, or has been, "concealed."¹

6. The remaining portion petitioner's motion (Sassower Aff. ¶¶11-19) discusses her July 28, 1999 motion for disqualification and sanctions, made before Supreme Court, and her August 17, 2001 motion, for substantially the same relief, before the Appellate Division, First Department. Petitioner's attempt to re-argue these motions is premature. Matters related to those motions will not be before this Court unless it concludes it has subject matter jurisdiction over petitioner's appeal.

¹ Petitioner has previously been sanctioned for this kind of baseless motion. See Sassower v. Field, 138 F.R.D. 369, 383 (S.D.N.Y. 1991), in which District Court Judge Gerhard L. Goettel awarded fees and sanctions against petitioner and her mother, noting that the Sassowers had, without factual support, accused opposing counsel of "fraud, perjury and chicanery:" "[the Sassowers'] view of any factual disputes has been, all along, that their claims are to be acknowledged without dispute and contrary evidence of the defendants is to be rejected as fraud and perjury." The Second Circuit, Sassower v. Field, 973 F.2d 75 (2d Cir. 1992), vacating the amount assessed against petitioner personally and remanding for reconsideration in light of her claim to be indigent.

WHEREFORE, for all of the reasons noted above, and in its previous submissions to the Court, the Commission respectfully requests this Court to deny petitioner's motion to strike its prior submissions, and to disqualify and otherwise sanction its counsel, in its entirety.

Dated: New York, New York
June 28, 2002



CAROL FISCHER
Assistant Solicitor General