COURT OF APPEALS
STATE OF NEW YORK

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

Petitioner-Appellant,

REPLY AFFIDAVIT
to "Affirmation" in
Opposition to
MOTION TO STRIKE, etc.

-against-

Motion #719/02

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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

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

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings heretofore had in this important public interest lawsuit against the New York State Commission on Judicial Conduct.

2. Pursuant to §500.11(c) of this Court's rules and its referred-to §500.12, this is to request permission to file this affidavit in reply to the non-probative and knowingly false, deceitful, and frivolous June 28, 2002 "affirmation" of Assistant Solicitor General Carol Fischer in opposition to my June 17, 2002 motion.

3. Although 22 NYCRR §130-1.1(d) empowers the Court to act "upon the court's own initative", this reply affidavit is also submitted to expressly request an

award of maximum costs and sanctions thereunder against Ms. Fischer and her superiors at the Attorney General's office and members and culpable staff of the Commission, based on her June 28, 2002 opposing "affirmation". This is additional to the maximum award requested by my June 17, 2002 motion based on Ms. Fischer's knowingly false, deceitful, and frivolous May 17, 2002 opposing memorandum of law and May 28, 2002 letter to the Court[1].

4. This reply, like the June 17, 2002 motion itself, is necessitated by the on-going refusal of Ms. Fischer's superiors at the Attorney General's office and the Commission's members and culpable staff to discharge their mandatory supervisory responsibilities over the misbehaving Ms. Fischer, pursuant to DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility [22 NYCRR §1200.5] and 22 NYCRR §130-1.1. Ms. Fischer's ultimate superior is New York's highest legal officer, Attorney General Eliot Spitzer, against whom my notice of motion, as likewise this reply, seeks to impose personal liability by reason of his direct knowledge of, and assent to, his office's violative conduct herein. This includes his office's unlawful and improper representation of the Commission in violation of Executive Law §63.1 and conflict of interest rules.

5. By faxed letter, dated July 3, 2002 (Exhibit "A-1"), I put Mr. Spitzer on notice of his duty to withdraw Ms. Fischer's June 28, 2002 opposing "affirmation",

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[1] An award of further maximum costs and sanctions would be consistent with the meaning and intent of the 1998 amendment to 22 NYCRR §130-1.2. This removed the prior limit of $10,000 costs and sanctions "in any action or proceeding" to allow $10,000 costs and sanctions for "any single occurrence of frivolous conduct", without restriction on the number of occurrences.

absent which I would "have no choice but to burden the Court with reply papers" – including a request for maximum additional monetary sanctions and costs against him *personally*, pursuant to 22 NYCRR §130-1.1. I faxed copies to Solicitor General Caitlin Halligan, Deputy Solicitor General Michael Belohlavek, the Commission, as well as to Ms. Fischer under a coverletter (Exhibit "A-2") stating that unless Ms. Fischer's June 28, 2002 opposing "affirmation" were withdrawn, I would also seek additional sanctions against them.

6. As previously, Mr. Spitzer, his supervisory staff, and the Commission have wilfully failed and refused to take "reasonable remedial action" upon being notified of Ms. Fischer's litigation misconduct (Exhibits "B-1", "B-2", "C-1", "C-2"). They thereby leave it to the Court to severely discipline not just Ms. Fischer, but themselves[2].

7. In that regard, neither Ms. Fischer nor those responsible for her misconduct deny or dispute ¶¶2-10 of my motion relative to the mandatory nature of this Court's disciplinary responsibilities, pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct and related obligations under DR 1-103(A) of New York's Code of Professional Responsibility, or that the relief my motion seeks is

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[2] As stated in my July 12, 2002 letter to Mr. Spitzer (Exhibit "C-1", p. 2), this motion provides a powerful opportunity for the Court to address issues it deferred twelve years ago in the first case in which it imposed sanctions under 22 NYCRR §130-1.1, *Matter of Minister, Elders and Deacons of the Reformed Protestant Church of the City of New York v. 198 Broadway, Inc.*, 76 N.Y.2d 411, 415 (1990), as to "when, and in what situations, the parties' attorneys should be penalized for 'frivolous conduct'."

"independent of my entitlement to the Court's disqualification/disclosure and to an appeal of right because no tribunal – and certainly not our state's highest – can permit fraud and deceit in advocacy before it" (at ¶2).

8. Such mandatory disciplinary responsibilities are all the more compelled when the fraud and deceit are committed by our state's highest legal officer, aided and abetted by the state agency whose duty is to enforce judicial standards. That such misconduct is for the purpose of torpedoing a public interest lawsuit seeking to vindicate the public's rights and safeguard its welfare further reinforces the mandatory nature of those disciplinary responsibilities[3].

9. Ms. Fischer's six-paragraph "affirmation" replicates, now for the FOURTH TIME, the *modus operandi* of her litigation misconduct in the Appellate Division, First Department, where, with the knowledge and consent of her superiors at the Attorney General's office and the Commission, she signed THREE similarly non-probative, knowingly false, deceitful, and frivolous "affirmations" in opposition to three separate motions – as to which, in reply, I expressly sought sanctions[4]. These three motions, each denied by the appellate panel *without* reasons and *without*

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[3] That the culpable parties are "all seasoned attorneys, fully familiar with fundamental litigation and professional norms" is discussed at ¶¶6-12 of my October 15, 2001 affidavit in further support of my August 17, 2001 motion, providing pertinent biographic and other relevant information.

[4] Ms. Fischer's misconduct in the Appellate Division itself replicated the misconduct of her predecessors in Supreme Court/New York County – likewise with the knowledge and consent of Mr. Spitzer, his supervisory staff, and the Commission. This includes the non-probative, knowingly false, deceitful, and frivolous "affirmations" of Assistant Attorneys General Carolyn Cairns Olson and Michael Kennedy – as to which my particularized objections were in the record before Ms. Fischer, as part of my July 28, 1999 omnibus motion, when she inherited the case on appeal [*See*, *inter alia*, my July 28, 1999 memorandum of law, p. 13, especially fn. 18].

findings[5], were: (1) my August 17, 2001 motion whose relief included striking Ms. Fischer's March 22, 2001 Respondent's Brief as "a fraud on the court"; (2) my January 17, 2002 reargument motion; and (3) my February 20, 2002 motion for leave to appeal.

10. I incorporate by reference the record of these three motions so that the Court can verify the long history of Ms. Fischer's documented litigation misconduct, ratified by her superiors and client and covered-up by the Appellate Division. This especially includes my October 15, 2001, February 20, 2002, and March 6, 2002 reply affidavits. These provide virtual *line-by-line* analyses of Ms. Fischer's August 31, 2001, February 7, 2002, and February 27, 2002 "affirmations" opposing my motions[6]. They also annex copies of my correspondence with Mr. Spitzer, his supervisory staff, and the Commission relative to their mandatory supervisory and legal obligations, ignored by them[7].

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[5] Ms. Fischer's ¶3 omits the pertinent fact that my motions against the Attorney General and Commission were ALL denied *without* reasons and *without* findings.

[6] The line-by-line analysis of Ms. Fischer's opposition to my August 17, 2001 motion was initially set forth in a September 17, 2001 Critique, whose 58 pages were "presented to those charged with supervisory responsibilities in the office of the New York State Attorney General to assist them in meeting their professional and ethical obligations". Their wilful refusal to do so, without reasons, resulted in my October 15, 2001 reply affidavit, to which the Critique was annexed as Exhibit "AA" [*See* Exhibit "D" herein].

[7] In connection with this motion, Ms. Fischer conceals my pertinent correspondence with Mr. Spitzer, his supervisory staff, and the Commission. Thus her ¶3 purports that the reason my instant motion was "not unexpected" was because I had made prior motions "to strike respondent's papers, and to sanction and disqualify respondent's counsel". She thereby omits the actual and proximate reason, *explicitly stated at ¶10 of my moving affidavit*: the failure and refusal of Mr. Spitzer, his supervisory staff, and the Commission "to take corrective steps in face of explicit notice, by letter dated May 21, 2002, that I would otherwise have no choice but to burden the Court with this motion". Each of my two June 7, 2002 affidavits underlying this motion also identify this May 21, 2002 letter and related correspondence.

11. To give the Court a "taste" of how *even as to form* Ms. Fischer has wilfully refused to comply with the most basic rules, thereby vitiating the probative value of her prior and instant "affirmations", annexed hereto are pertinent pages from my three prior reply affidavits (Exhibits "D", pp. 5-7[8], "E", and "F"). The same violations recited therein as to Ms. Fischer's prior "affirmations" apply to her instant "affirmation".

12. Thus, notwithstanding I three times brought to Ms. Fischer's direct attention that CPLR §2106 explicitly requires affirmations be "affirmed... to be true under the penalties of perjury", her instant "affirmation" again deliberately omits the requisite phrase "to be true"[9]. This deficiency in form then carries over to substance. As hereinafter demonstrated, Ms. Fischer's instant "affirmation", like her past "affirmations", when compared to the record, is NOT true and, by reason thereof, is known by her to be NOT true.

13. As highlighted by my October 15, 2001 reply affidavit (Exhibit "D", p. 6), reiterating what was then already in the record[10]:

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[8] Exhibit "D" (pp. 8-9) further recites the basic evidentiary principles pertinent to affidavits and affirmations opposing motions – applicable to Ms. Fischer's instant opposing "affirmation, as it was to her prior "affirmations".

[9] The deliberateness of this omission may be seen from the fact that this is now the first time that Ms. Fischer has adjusted the prefatory wording of her instant "affirmation" to "affirms the following under penalty of perjury" from the way it had appeared in her three prior "affirmations", "states the following under penalty of perjury".

[10] *See* p. 14 of my September 24, 1999 reply affidavit in further support of my July 28, 1999 omnibus motion.

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

14. I also three times brought to Ms. Fischer's direct attention a further requirement for affirmations, violated by her prior "affirmations" and now again violated: an affirmation must set forth the basis upon which it is made – whether on personal knowledge or upon information and belief, and if the latter, the source of the information and belief. As stated by my October 15, 2001 reply affidavit (Exhibit "D", pp. 6-7), reiterating what was then already in the record:

"It has too long been the rule to need the citation to authority, that such averments in an affidavit have not [sic] probative force. The court has a right to know whether the affiant had any reason to believe that which he alleges in his affidavit.' *Fox v. Peabody*, 97 App. Div. 500, 501 (1904).
Pachucki v. Walters, 56 A.D.2d 677, 391 N.Y.S.2d 917, 919 (3rd Dept. 1977); *Soybel v. Gruber*, 132 Misc. 2d 343, 346 (NY. Co. 1986), citing *Koump v. Smith*, 25 N.Y.2d 287, for the proposition, 'An affirmation by an attorney without personal knowledge of the facts is without probative value and must be disregarded."

15. As with her prior "affirmations", ¶1 of Ms. Fischer's instant "affirmation" states that she is an Assistant Solicitor General, but provides no information as to the basis of her testimonial knowledge different from any other Assistant Solicitor General having no contact with this case. Thus, she does not identify that her entry into this case was at the appellate level and that she handled the appeal in the Appellate Division and now before this Court. Indeed, Ms. Fischer does not even identify that she is the signator of the May 17, 2002 opposing memorandum of law

and May 28, 2002 letter, each of which my subject motion seeks to strike as "a fraud on the court".

16. As to Ms. Fischer's bald claim in her ¶1 that she is "fully familiar with the matters set forth in this Affirmation" – departing from the usual phraseology of being "fully familiar with the facts, papers, and proceedings heretofore had" – the deceitful nature of the "matters" her "affirmation" sets forth is evidenced by the continuation of her sentence about being "fully familiar". That sentence falsely makes it appear that the whole relief sought by my June 17, 2002 motion, which she is opposing, is:

> "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." (¶1).

17. Most materially omitted is that my motion seeks to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules – relief clearly identified by my notice of motion and discussed at ¶¶15-24 of my moving affidavit. It is not until Ms. Fischer's "WHEREFORE" clause that she discloses that my motion seeks the Attorney General's disqualification – at which point she does not specify the basis therefor.

18. This basis is fundamental. As particularized by my ¶¶15-16, Executive Law §63.1 is the *sole* statutory authority on which the Attorney General has predicated his representation of the Commission. Such statute requires a determination as to "the interests of the state". Ms. Fischer does not deny or dispute this. Nor does she deny or dispute that the record of this litigation, now more than

three years old, is devoid of even a claim that the Attorney General's representation of the Commission is consistent with "the interests of the state". Indeed, Ms. Fischer makes no claim of her own that the Attorney General's representation herein is in "the interests of the state".

19. Ms. Fischer also has not provided any affidavit from the Commission that it "requires the services of attorney or counsel" pursuant to Executive Law §63.1", as expressly called for by ¶24 of my motion. This, apart from not herself claiming that the Commission requires the Attorney General's services – including before this Court.

20. Consequently, my showing of entitlement to the Attorney General's disqualification for violation of Executive Law §63.1 is entirely unopposed.

21. Likewise, entirely unopposed is my showing of entitlement to the Attorney General's disqualification for violation of conflict of interest rules. Thus, Ms. Fischer does not deny or dispute ¶¶17- 21 of my motion, outlining the multiple conflicts of interest that afflict Mr. Spitzer and his upper echelon staff, as to which I asserted that absent responsive affidavits from Mr. Spitzer, his staff, and the Commission, this Court would be required, *as a matter of law*, to grant disqualification based on those conflicts. No affidavits accompany Ms. Fischer's "affirmation".

22. Insofar as ¶6 of Ms. Fischer's "affirmation" cites to ¶¶11-19 of my moving affidavit as

> "discuss[ing] [my] July 28, 1999 motion for disqualification and sanctions, made before Supreme Court, and [my] August 17, 2001

> motion, for substantially the same relief, before the Appellate Division, First Department",

this is a material distortion of those paragraphs to advance her false pretense (at ¶6) that I am "premature[ly] seeking to reargue these motions" and that "[m]atters related to those motions will not be before this Court unless it concludes that it has subject matter jurisdiction over petitioner's appeal". That I am NOT seeking reargument and that "matters related to those motions" are properly before the Court *on this motion* would have been evident had Ms. Fischer identified *any* of the particulars of my ¶¶11-19, which she does not do. These paragraphs, whose accuracy Ms. Fischer does not contest, demonstrate that my discussion of the July 28, 1999 and August 17, 2001 motions is to show that:

> "Mr. Spitzer, his staff, and the Commission are long familiar with the 'existing laws and codes of conduct' for ensuring their accountability invoked by this motion, as they were invoked by my prior motions for similar relief against them for comparably violative conduct" (at my ¶11)

and, further, that such prior motions are:

> "each essential to the Court's adjudication of *this* motion. Indeed, the Court will necessarily be required to adjudicate, *with findings*, the second branch of my August 17, 2001 motion to have Ms. Fischer's respondent's brief stricken as "a fraud on the court" [fn], precisely because her May 17, 2002 opposing memorandum PHYSICALLY encloses [fn] that very respondent's brief for the express purpose of providing the Court with "a more complete statement of the facts of this proceeding".... Likewise, the Court will necessarily be required to adjudicate, *with findings*, the first branch of my July 28, 1999 omnibus motion to "disqualify the Attorney General from representing [the Commission] for non-compliance with Executive Law §63.1 and for multiple conflicts of interest" [A-195], as ALL

the facts therein particularized underlay the identical relief herein sought." (at my ¶12, emphasis in the original).

These paragraphs also identify the specific facts from my July 28, 1999 motion pertinent to the requested relief in my instant motion for the Attorney General's disqualification for violation of Executive Law §63.1 and multiple conflicts of interest – requested relief Ms. Fischer conceals in pretending that I am seeking "reargument" and that "matters" from my prior motions are not now before the Court[11].

23. In view of Ms. Fischer's failure to come forth with ANY law and facts in opposition to my motion's challenge to the lawfulness and propriety of the Attorney General representing the Commission pursuant to Executive Law §63.1 and conflict of interest rules, she could not lawfully or properly submit ANY opposing "affirmation" on the Commission's behalf. For the same reason, her May 17, 2002 opposing memorandum of law and May 28, 2002 letter had to be withdrawn – quite apart from their demonstrated fraudulence. This further explains Ms. Fischer's concealment of my motion's requested relief for the Attorney General's disqualification for violation of Executive Law §63.1 and conflict of interest rules.

24. As with her three "affirmations" in the Appellate Division and her May 17, 2002 opposing memorandum of law and May 28, 2002 letter, Ms. Fischer's strategy is to conceal ALL the material facts and law entitling me to the relief I seek.

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[11] In that connection, neither Ms. Fischer's ¶6 nor her ¶3 specify the grounds upon which my prior motions sought the Attorney General's disqualification.

This, by substituting disparaging insinuations and false and maligning characterizations*. Thus, her ¶2 calls my motion "a wholly frivolous request for sanctions" and her ¶3 purports that it, like "[my] previous motions have all been based on the same fundamental premise that failure to agree with [my] view of the facts and law is 'fraud and deceit'".

25. To this end, Ms. Fischer conceals that "[my] view of the facts" on my prior motions in the Appellate Division was set forth in record-referenced *line-by-line* analyses, including of her court submissions[12], the accuracy of which she did NOT deny or dispute in any respect. Likewise, she conceals that my instant motion sets forth "[my] view of the facts" in two Critiques, analyzing, *line-by-line* and with record references, her May 17, 2002 opposing memorandum of law and May 28, 2002 letter[13].

26. These two Critiques – (1) my 31-page analysis of Ms. Fischer's May 17, 2002 opposing memorandum of law (annexed as Exhibit "C" to my June 7, 2002 reply affidavit on my disqualification/disclosure motion); and (2) my 19-page affidavit on the Court's *sua sponte* jurisdictional inquiry, replying to Ms. Fischer's

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* This includes Ms. Fischer's inflamatory and misleading characterization of my May 1, 2002 motion as "demanding the recusal" of this Court's judges (at ¶2).

[12] Likewise "[my] view of the facts" on my July 28, 1999 omnibus motion in Supreme Court was particularized by a *line-by-line* analysis of the May 24, 1999 dismissal motion of Assistant Attorneys General Olson and Kennedy [*See* my 99-page July 28, 1999 memorandum of law] – with a similar *line-by-line* analysis of Ms. Olson's opposition thereto [*See* my 63-page September 24, 1999 reply memorandum of law].

[13] Underscoring the wilfulness of Ms. Fischer's concealment of my two Critiques is that her ¶¶4 and 5 each cite ¶9 of my June 17, 2002 moving affidavit which refers to them.

May 28, 2002 letter -- are the dispositive documents on this motion. Here, too, Ms. Fischer does NOT deny or dispute their accuracy in any respect, including as to the "one example" her ¶4 cites as "suffic[ing]". This "one example", from my June 7, 2002 affidavit responding to the Court's *sua sponte* jurisdictional inquiry, concerns the "textual differences" between the third, fourth, and fifth paragraphs of Ms. Fischer's May 28, 2002 letter and the comparable paragraphs of her May 17, 2002 memorandum of law. Ms. Fischer does not deny or dispute these "textual differences", whose specifics she fails to identify, or that her May 28, 2002 letter thereby "'conceal[s]' from the Court the content of the decision [I] wish[] to appeal".

27. Similarly, Ms. Fischer's "affirmation" conceals that "my view of the...law" is set forth in my discussion of "existing law and codes of conduct" from my July 28, 1999 and August 17, 2001 motions, which ¶13 of my motion requests "be deemed my memorandum of law before this Court on that subject" "to avoid needless duplication".

28. Ms. Fischer does not deny or dispute the accuracy of this discussion of "existing law and codes of conduct", including the discussion in the pages my motion annexes as Exhibits "B" and "C". Nevertheless, her ¶5 baldly proclaims:

> "on its face, [my] argument makes no sense, and demonstrates that [I] do[] not understand the disciplinary rules [I] purportedly seek[] to enforce."

29. Ms. Fischer's ¶5 then replays the deceit she employed in opposing my August 17, 2001 motion, notwithstanding it was already exposed by my reply thereto (Exhibit "D", pp. 49-52). Here, as there, she purports "petitioner does not understand the disciplinary rules she purportedly seeks to enforce". In so doing, she again omits from her recital of rules invoked by my motion 22 NYCRR §130-1.1. This omission is despite the fact that §130-1.1 is the first rule invoked by my notice of motion and the only rule twice cited -- the second time as legal authority for imposition of monetary sanctions and costs. As before, the reason is obvious. §130-1.1 is THE rule for imposing sanctions and costs upon Ms. Fischer, upon her superiors at the Attorney General's office and upon the Commission. Moreover, its proscription against "frivolous conduct" has nothing to do with "fraud" on which Ms. Fischer's ¶5 focuses.

30. Consequently, my showing of entitlement to imposition of maximum costs and sanctions, pursuant to §130-1.1, is entirely unopposed, including imposition against Mr. Spitzer, *personally*, as well as against culpable staff at the Attorney General's office and culpable members and staff of the Commission, *personally*.

31. As for Ms. Fischer's claim (at ¶5) that I do not understand 22 NYCRR §1200.3(a)(4), §1200.3(a)(5), §1200.33(a)(5) and Judiciary Law §487, examination of Exhibits "B" and "C" to my motion makes obvious that I understand them perfectly well and that Ms. Fischer's misleading inference notwithstanding, they embrace more than "fraud". Thus, they also proscribe

"dishonesty", deceit", "misrepresentation", "conduct that is prejudicial to the administration of justice" and "knowingly...false statement[s] of law or fact" – in other words, all the violative conduct established by my uncontested Critiques of Ms. Fischer's May 17, 2002 opposing memorandum of law and May 28, 2002 letter.

32. Ms. Fischer's conclusory pretense (¶5) that "Petitioner does not explain how any of the supposed 'falsification[s], distortion[s], and concealment[s] of the material facts and law'...could possibly 'induce detrimental reliance" is belied by my two Critiques – each explaining with innumerable examples the "detrimental reliance" intended by Ms. Fischer's May 17, 2002 opposing memorandum of law and May 28, 2002 letter. This includes by the "one example" cited by Ms. Fischer's ¶4 relating to "textual differences".

33. Further, as my October 15, 2001 reply affidavit pointed out (Exhibit "D", p. 12), quoting from *Schindler v. Issler & Schrage, P.C.*, 262 A.D.226, 229 (1st Dept 1999), a case which Ms. Fischer had cited:

> "It is well settled that when there is a duty to speak, silence may very well constitute fraudulent concealment (*see, Donovan v. Aeolian Co.*, 270 NY 267, 271), which is itself the equivalent of affirmative misrepresentations of fact (*Nasaba Corp. v. Harfred Realty Corp.*, 287 NY 290, 295). This is especially true where an officer of the court owes such an obligation to the tribunal (Code of Professional Responsibility DR 7-102[A][3] [22 NYCRR 1200.33(a)(3)])' (*Guardian Life Ins. Co. v. Handel*, 190 AD2d 57, 61)."

34. As for Ms. Fischer's declaration (¶5) that "Nothing could, or has been, concealed" because "The record of this case (augmented, of course, by [my] extensive submissions of documents from other cases) contains all of the 'material facts and law'", she supplies NO law to support the shameful proposition, more clearly set forth in her opposition to my August 17, 2001 motion, that her filings become less violative of disciplinary rules because I have gone to the enormous effort and expense to place before the Court the relevant document-supported facts and law exposing their deceit (Exhibit "D", pp. 51-52).

35. Finally, as for Ms. Fischer's footnote to her ¶5, wherein she attempts to buttress her deceit that my motion is "baseless" by quoting from the scurrilous decision of U.S. District Judge Gerard Goettel in *Sassower v. Field*, 138 F.R.D. 369 (S.D.N.Y. 1991), 973 F.2d 75 (2d Cir. 1992) this is a despicable replay of litigation misconduct she committed in the Appellate Division. There, she attempted to buttress her deceit that my August 17, 2001 motion was unsupported and harassing by similarly quoting from Judge Goettel's decision in her opposing "affirmation".

36. Annexed hereto are the pertinent pages of my reply affidavit (Exhibit "D", pp. 14-16) wherein I exposed Ms. Fischer's vile conduct. In addition to pointing out that Ms. Fischer had *no* personal knowledge of Judge Goettel's decision – or of the record underlying it – I stated that based on the record of *this proceeding*, Ms. Fischer knew that "Judge Goettel's decision, *even if true*, ha[d]

NO application because my advocacy herein, at every juncture, ha[d] met the highest evidentiary and professional standards". My reply also gave Ms. Fischer's strong and unequivocal notice, reiterating what the record of this proceeding already before her reflected, that Judge Goettel's decision and the Second Circuit affirmance were "*not true*" and were "fraudulent and retaliatory" – as to which I supplied the pertinent record references for particularizing details.

37. That Ms. Fischer, having no testimonial knowledge as to *Sassower v. Field*, would nonetheless put before the Court Judge Goettel's decision and affirmance, without identifying, let alone denying or disputing, my sworn statement, from personal knowledge, as to their utter baselessness, further underscores her totally dishonest and unconscionable advocacy.

38. Ms. Fischer does have testimonial knowledge as to the state of the record herein. Her failure to provide any statement in response to my assertion that her duty is to do so[14] – or to deny or dispute any aspect of what I have sworn as to the state of the record -- is a concession as to the truth of the facts I have sworn to be true[15]. This is further reinforced by Mr. Spitzer's failure and the failure of the Commission to come forward with statements as to the record – as I asserted they too were duty-bound to do in view of the seriousness of the issues

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[14] ¶¶37-39 of my June 7, 2002 reply affidavit on the Court's *sua sponte* Jurisdictional Inquiry; ¶¶10-11 of my June 7, 2002 reply affidavit on my disqualification/disclosure motion.

[15] *See* Exhibit "D", pp. 8-9: "...'Failing to respond to a fact attested to in the moving papers...will be deemed to admit it', Siegel, New York Practice, §281 (1999 ed., p. 442)...".

herein, impacting not only on my rights, but those of the public in whose interest this lawsuit has been brought.

39. The uncontested facts to which I have sworn – whose truth is obvious from the most cursory review of the record – are dispositive of my entitlement to ALL the relief sought on this motion, as likewise to disqualification of, and disclosure by, this Court's judges and to an appeal by leave, if not by right.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
13th day of July 2002

Beth Avery

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 3/11/06

TABLE OF EXHIBITS