

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

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ELENA RUTH SASSOWER, Coordinator of :  
The Center For Judicial Accountability, :  
Inc., Acting Pro Bono Publico, : **NOTICE OF**  
 : **MOTION TO**  
 Petitioner, : **DISMISS THE**  
 : **VERIFIED PETITION**  
 -against- :  
 : **Index No.: 99-108551**  
 COMMISSION ON JUDICIAL CONDUCT :  
 OF THE STATE OF NEW YORK, :  
 Respondent. :  
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PLEASE TAKE NOTICE that, upon the verified petition of Elena Sassower, Coordinator of the Center for Judicial Accountability, Inc. ("Center"), dated April 22, 1999, with its annexed exhibits, and upon the accompanying Affirmation of MICHAEL KENNEDY, dated May 24, 1999, Affidavit of Albert B. Lawrence, Esq., sworn to on May 17, 1999, and Respondents' Memorandum of Law, the undersigned, on behalf of respondent the Commission on Judicial Conduct of the State of New York, will move this Court at the Motion Support Office, Room 130, 60 Centre Street, New York, New York, on the \_\_\_th day of June, 1999 at 9:30 a.m. or as soon thereafter as counsel can be heard for a judgment pursuant to CPLR 7804(f) and 3211(a)(3), (5) and (7), dismissing the verified petition against the respondent upon the ground that (a) petitioner lacks the legal capacity to sue on behalf of a corporation and lacks standing to sue the Commission for the relief requested; (b)

this proceeding is barred, in whole or in part, by res judicata and collateral estoppel; (c) the claims are non-justiciable or petitioner lacks standing to raise them; and, in any event, (d) the petition fails to state a cause of action, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York  
May 24, 1999

Yours, etc.,

ELIOT SPITZER  
Attorney General of the  
State of New York  
Attorney for Respondent, the  
Commission on Judicial Conduct  
of the State of New York

By:

Michael Kennedy  
MICHAEL KENNEDY  
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TO: ELENA RUTH SASSOWER,  
Coordinator of the Center for  
Judicial Accountability, Inc.  
Petitioner Pro Se  
Box 69, Gedney Station  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ELENA RUTH SASSOWER, Coordinator of	:	AFFIRMATION IN
The Center For Judicial Accountability,	:	SUPPORT OF
Inc., Acting Pro Bono Publico,	:	RESPONDENT'S
	:	MOTION TO
Petitioner,	:	DISMISS THE
	:	<u>VERIFIED PETITION</u>
-against-	:	
	:	Index No.: 99-108551
COMMISSION ON JUDICIAL CONDUCT	:	
OF THE STATE OF NEW YORK,	:	
	:	
Respondent.	:	
	:	

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MICHAEL KENNEDY, an attorney admitted to practice in the courts of the State of New York, under penalty of perjury, affirms as follows:

1. I am an Assistant Attorney General in the office of ELIOT SPITZER, Attorney General of the State of New York, attorney for respondent, Commission on Judicial Conduct of the State of New York (the "Commission"). I make this affirmation in support of the Commission's motion to dismiss this Article 78 proceeding pursuant to CPLR 7804(f) and 3211(a)(3), (5), (2) and (7).

2. In this CPLR Article 78 proceeding, petitioner Elena Sassower, the coordinator of the Center for Judicial Accountability, Inc. ("CJA"), seeks a judgment, by way of CPLR Article 78 and a declaratory judgment, that:

(1) declares 22 NYCRR §§7000.3 and 7000.11, and Judiciary Law §§ 45, 41.6 and 43.1 to be unconstitutional;

(2) vacates the Commission's December 23, 1998 dismissal of petitioner's October 6, 1998 complaint against a judicial candidate for the Court of Appeals<sup>1</sup> -- which, according to petitioner, was not filed by her as an individual, but rather in her capacity as coordinator of the Center for Judicial Accountability, Inc., see Petition ("Pet."), Exhibit F-4;

(3) compels removal of Commission member Harold Berger;

(4) compels the Commission to "receive" and "determine" petitioner's February 3, 1999 complaint against a Justice of the Appellate Division<sup>2</sup>, Pet. Exh. F-6;

(5) requests the Governor to appoint a special prosecutor to investigate judicial corruption; and

(6) refers the Commission to authorities for "appropriate criminal and disciplinary investigation," and

(7) imposes a \$250 fine against the Commission pursuant to POL § 79.

See Pet., ¶ Fifth.

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<sup>1</sup> A copy of petitioner's October 6, 1998 letter complaint is annexed to the Petition as Exhibit C. A copy of the Commission's December 23, 1998 notice of dismissal is annexed to the petition as Exhibit F-3.

<sup>2</sup> Petitioner's complaint against the Appellate Division Justice is allegedly contained in the February 3, 1999 letter annexed to the petition as Exhibit F-6. Respondent's February 5, 1999 reply to petitioner's letter is annexed to the petition as Exhibit F-7.

3. However, for the reason set forth in the accompanying memorandum of law, dismissal is required pursuant to CPLR 7804(f) and 3211(a)(3), (5) and (2) because

(a) petitioner Elena Sassower, who is not an attorney, lacks the capacity to sue on behalf of a corporation, see CPLR 321;

(b) the claims are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel by reason of a prior lawsuit, Sassower v. Commission on Judicial Conduct, NY Co. Index No.95-109141 (Cahn, J.) ("Action #1) (A copy of the petition in Action #1 is annexed hereto as Exhibit 1, and a copy of the Court's decision dated July 13, 1999 is annexed hereto as Exhibit 2);

(c) some or all of the claims are non-justiciable and the Court, therefore, lacks subject matter jurisdiction to entertain them; and

(d) petitioner lacks standing to raise some or all of the claims asserted in the petition.

4. Additionally, dismissal is required pursuant to CPLR 7804(f) and 3211(a)(7) because the petition, in any event, fails to state a claim upon which relief can be granted as against the Commission. Mandamus does not lie to compel the Commission to formally investigate each and every complaint it receives. Moreover, mandamus does not lie to review the Commission's

determination to dismiss petitioner's complaints pursuant to Jud. L. § 44.1(b) and 22 NYCRR § 7000.3 upon the ground that "the complaint lacks merit on its face," and, even if it did, the Commission's determination to dismiss petitioner's complaint -- which was based solely on "innuendo" and her unsupported "belief" that "fraud" was involved in prior decisions -- is not arbitrary or capricious and should be upheld.

5. Finally, petitioner's constitutional challenge to the confidentiality provisions of Jud. L § 45 and to Jud. L. § 43.1, 46 and 22 NYCRR §7000.11, which authorize the work of the Commission to be performed by panels, are without merit. Additionally, petitioner's challenge to the term of Commission Chair Henry Berger as allegedly exceeding the 2 year term limit of Jud. L. § 41.2 is without merit because he has been reappointed to successive 2 year terms. See the annexed Affidavit of Albert B. Lawrence, sworn to on May 17, 1999.

WHEREFORE, for all of the foregoing reasons, the verified petition should be dismissed in its entirety, or in the event this cross-motion is denied, respondent should be afforded an additional twenty (20) days after service of this Court's order in which to serve and file its answer pursuant to CPLR 7804(f).

Dated: New York, New York  
May 24, 1999

Michael Kennedy  
MICHAEL KENNEDY