CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

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BY CERTIFIED MAIL/RRR: 7001-0360-0002-6822-1923

November 25, 2003

A. Thomas Levin, President
New York State Bar Association
c/o Meyer, Suozzi, English & Klein, P.C.
1505 Kellum Place
Mineola, New York 11501

RE: EMPIRICAL EVIDENCE: The New York State Bar Association's duty – reinforced by your September 16, 2003 testimony before Chief Judge Kaye's Commission to Promote Public Confidence in Judicial Elections -- to confront case file evidence documentarily establishing the corruption of all safeguards for ensuring the integrity of judicial elections, including: (1) the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*; and (2) the corruption of the New York State Commission on Judicial Conduct.

Dear President Levin:

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization, documenting the dysfunction, politicization, and corruption of the closed-door processes of judicial selection and discipline. A copy of our informational brochure is enclosed, with our three most pertinent public interest ads, "*Where Do You Go When Judges Break the Law?*", "*A Call for Concerted Action*", and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*". A far more extensive presentation appears on our website, *www.judgewatch.org*.

Transmitted herewith are copies of CJA's November 6, 2003 letter to Brooklyn District Attorney Charles Hynes and November 13, 2003 memo to Appellate Division, Second Department Presiding Justice Gail Prudenti, et al.[1] You are an indicated recipient of

[1] These are both posted on CJA's website. *See* "*Correspondence-NYS Officials*".

this correspondence for two reasons. The first reason relates to Barry Kamins, Esq., Chairman of the State Bar's 35-member Committee on Professional Discipline, who must be promptly removed from that critical position of leadership based on his willful and deliberate failure to evaluate – and to present for the Committee's evaluation – case file evidence establishing the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. Simultaneously, Mr. Kamins withheld this case file evidence from the Second Department Committee examining whether that Department is "'acting fairly and equitably' when dealing with an attorney's right to practice law"[2] – of whose Attorney Discipline Subcommittee he is co-chair, presumably, in no small measure, because of his chairmanship of the State Bar's Committee on Professional Discipline. This misconduct by Mr. Kamins, for which he has given *no* explanation, is particularized at pages 17-21 of our letter to District Attorney Hynes.

The second reason relates to your September 16, 2003 testimony before Chief Judge Kaye's Commission to Promote Public Confidence in Judicial Elections[3], emphasizing how active and helpful the State Bar is. Such helpfulness must now include confronting the case file evidence, concealed by Mr. Kamins, that New York's attorney disciplinary law has been employed to retaliate against Doris L. Sassower, Esq. for championing the public's rights against the political manipulation of elective judgeships. Likewise, it must include confronting the case file evidence – long ago made known to Mr. Kamins and accessible to him -- that New York's judicial disciplinary mechanism – principally embodied in the New York State Commission on Judicial Conduct – is a corrupt façade. This is especially so in view of your assertion that the State Bar is a "long-time advocate of a public screening process for judicial candidates"[4]. Surely, you recognize that

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[2] "*Committee to Study Discipline Process*", New York Law Journal, Cerisse Anderson, 11/26/02.

[3] The stenographic transcription of your testimony is not yet available from the Commission to Promote Public Confidence in Judicial Elections. However, the State Bar's press release about it, "President Levin to Testify at Hearing on Judicial Elections in New York", and your testimony in written form are posted on the State Bar's website, *www.nysba.org*.

[4] We do not know what you mean by "public screening process" – since, over and again, the State Bar has "stood idly by" while public officers, such as the Governor, have denied the public the most basic information about the judicial screening process for appointive judgeships and have designated judicial nominees in violation of the rights expressly conferred upon the public by Executive Order (lower courts) and constitutional and statutory provisions (NYS Court of Appeals) and the Senate Judiciary Committee has denied the public its right to hear and be heard in opposition at confirmation "hearings". This, over and apart from the fact that the State Bar's own "screening process" for judicial candidates is the very antithesis of "public" – as well as utterly sham. *See* CJA's correspondence with the State Bar pertaining to judicial appointment of lower court judges, as well as to the Court of Appeals, posted under "*Correspondence-Bar Associations: NYS Bar Association*", and, in particular, CJA's

fundamental to *any* judicial screening process, be it for an elective or appointive judgeship, is an inquiry as to whether the candidate has been the subject of complaint and/or discipline as attorney or judge[5]. The results of such inquiry are necessarily skewed – and skew the judicial screening process -- when disciplinary mechanisms are not investigating legitimate complaints and disciplining unfit lawyers and judges, thereby enabling them to freely pursue judicial office.

Also enclosed is a copy of CJA's exchange of correspondence with Mr. Kamins -- beginning with our January 27, 2003 letter to him and including its transmitted documents: the cert petition and supplemental brief in Ms. Sassower's §1983 federal action against the Appellate Division, Second Department justices, *Doris L. Sassower v. Hon. Guy Mangano, et al* (No. 98-106). As our January 27th letter to Mr. Kamins identifies, the appendix to the cert petition contains "key documents":

November 13, 2000 report on the bar associations' complicitous role in the corruption of "merit" selection to the Court of Appeals, a copy of the report was sent to then State Bar President Michael Hassett *via* Kathleen Mulligan Baxter, the State Bar's counsel and committee liaison – without response. [*see* "*Judicial Selection-'Merit' Selection*"].

[5] See, *inter alia*, questionnaire form of the NYS Commission on Judicial Nomination:

> "To your knowledge, has any complaint or charge ever been made against you as a lawyer? If so, furnish full details, including the entity to which the charge was referred, the nature of the complaint or charge, the outcome and the dates involved." (Question #29)
>
> "(a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Your response should include any question raised or inquiry conducted of any kind by any agency or official of the judicial system. (b) If the answer to subpart (a) is 'Yes', furnish full details, including the agency or officer making or conducting the inquiry, the nature of the question or inquiry, the outcome and relevant dates." (Question #30(a))

Also, the questionnaire form of Mayor Blumberg's Advisory Committee on the Judiciary:

> "To your knowledge, have any complaints, charges or malpractice claims ever been preferred against you, whether or not sustained, as an attorney or counsel-at-law? If so, state in detail the circumstances and the outcome: Do you have documentary evidence regarding the outcome? If so, please provide copies." (Question #17)
>
> "State whether you have ever…: (d) Been the subject of any investigation by any federal, state or cit, or other governmental agency…?" (Question #18)

> "Ms. Sassower's verified complaint in her federal action [A-49-100] and the 'Questions Presented' and 'Reasons for Granting the Writ' from her cert petition in her predecessor Article 78 proceeding, *Doris L. Sassower v. Hon. Guy Mangano, et al*. (No. 94-1546) [A-117-131]"[6].

Unless you deny or dispute that these "key documents" "graphically chronicle the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*", please confirm that you will be making immediate arrangements for them to be presented to the State Bar Committee on Professional Discipline for findings of fact and conclusions of law based on the case files contained in the two cartons and redweld folder, hand-delivered to Mr. Kamins' law office on February 4, 2003, under our coverletter of that date. Upon your notification, we will transmit a duplicate set of those case files for the Committee's review. Such will additionally establish the necessity of removing such other Committee members as Gary Casella, Chief Counsel of the Grievance Committee for the Ninth Judicial District, whose depraved criminal conduct is fully-documented therein.

As to those allegations of Ms. Sassower's verified complaint pertaining to the 1989 written three-year judge-trading deal between Republican and Democratic party leaders of the Ninth Judicial District, their would-be judicial nominees, and the illegally-conducted judicial nominating conventions, challenged by Ms. Sassower as *pro bono* counsel to the Republican and Democratic petitioners in the 1990 Election Law case, *Castracan v. Colavita, et al.*[7], these should be examined by the State Bar Committee on Judicial Campaign Conduct, described by your September 16th testimony. After all, the premise of such Committee – and of comparable committees of local bar associations to which you referred – is that they are on hand for relevant electoral issues. As you put it, because of these judicial campaign conduct committees, "guidance and a response mechanism for problems are available statewide, and there will be no excuse for those who violate the rules." If so, what is their opinion of the 1989 written three-year judge-trading deal, with its terms and conditions that could easily be replicated at any time in the Ninth Judicial District or elsewhere in the state? Is it, or is it not, illegal, unethical,

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[6] The verified complaint in Ms. Sassower's federal action and "Questions Presented" and "Reasons for Granting the Writ" from her Article 78 cert petition are posted under "*Test Cases-Federal (Mangano)*".

[7] A substantial portion of the *Castracan v. Colavita* Election Law case – including the 1989 written three-year judge-trading deal, the objections to the judicial nominating conventions and specifications thereto filed with the New York State Board of Elections, and the three eyewitness affidavits/affirmation -- are posted under "*Judicial Selection-Judicial Elections*".

and unconstitutional?[8] How about the judicial nominating conventions, which, at any time, could be held with identical violations? Did the State Board of Elections properly validate the 1990 Republican and Democratic certificates of nomination, based on the objections and specifications that were before it?[9] Certainly, if such written judge-trading deals and violative judicial nominating conventions are not within the scope of such bar committees, their mandates must be expanded and new names conferred, more reflective of a broader charge: *to wit*, judicial elections committees. Or is it the bar's intention to remove itself from an advisory role with respect to the most significant facet of judicial elections pertaining to designation of candidates?

Imagining that state and local bar judicial elections committees had existed a decade and a half ago, what actions would they have taken to "back-up" their opinions and vindicate the public's rights? Would they themselves have brought an Election Law challenge? And, specifically, what would the State Bar's own Committee have done if -- as is likely -- members of the local bar committees of the Ninth Judicial District were conflicted by personal, professional and political relationships with the party leaders and judicial candidates involved in the judge-trading deal and the illegally-conducted judicial nominating conventions? Would the state bar Committee have provided legal and other assistance to Ms. Sassower when she brought the *Castracan* Election Law case, as *pro bono* counsel to the Republican and Democratic petitioners, themselves acting *pro bono publico*? Would it have moved for *amicus curiae* status – and at what stage? Would it have confronted the obliteration of fundamental adjudicative standards by Albany Supreme Court Justice Lawrence Kahn and by the Appellate Division/Third Department in *Castracan* and the similar obliteration by the Appellate Division, Second Department in the 1991 companion Election Law case, *Sady v. Murphy*?

Apart from litigation, would the State Bar Committee have filed ethics and criminal complaints with relevant state and federal agencies and public officers – and at what juncture? Against the State Board of Elections, by filing a complaint with the State

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[8] *See, inter alia*, Petitioners-Appellants' October 16, 1990 Brief, pp. 10-19: Point I, "The Cross-Endorsements Contract in Issue is an Invidious Violation of the New York State Constitution, the Election Law of New York State, and the Code of Judicial Conduct and Court Rules Relative Thereto. As Such, It is Illegal, Void, and against Public Policy"; Petitioner-Appellants' January 24, 1991 Reply Brief, pp. 14-26: Point I: "Respondents Have Failed to Refute Controlling Authority that the "Three Year Plan" is, as a Matter of Law, Illegal, Unethical and Prohibited by Public Policy"; Doris L. Sassower's March 25, 1991 oral argument before the Appellate Division, Third Department, pp. 4-10; Petitioners-Appellants' August 1, 1991 Memorandum in Support of Subject Matter Jurisdiction as of Right, pp. 1-2, 5-9.

[9] *See, inter alia*, Petitioner-Appellants' January 24, 1991 Reply Brief, pp. 2-4; 12-13.

Ethics Commission? Against the judicial candidates, by filing a complaint with

the State Commission on Judicial Conduct? Against the state judges whose fraudulent judicial decisions "threw" the *Castracan* and *Sady* challenges, by filing a complaint with the Commission on Judicial Conduct? Against the justices of the Appellate Division, Second Department for their lawless, retaliatory June 14, 1991 "interim" order suspending Ms. Sassower's law license, by filing a complaint with the Commission on Judicial Conduct? How about filing criminal complaints with the U.S. Justice Department and calling upon the Governor to appoint a special prosecutor?

What further steps would the State Bar Committee have taken when all such fully-documented ethics and criminal complaints were either dismissed, without investigation, by boiler-plate letters not addressing the facts and law, or were ignored – while, meanwhile, over and beyond the June 14, 1991 "interim" suspension of Ms. Sassower's law license, the Appellate Division, Second Department was harassing her with a barrage of bogus disciplinary proceedings and countenancing vicious retaliation against her in the lower courts under its appellate jurisdiction to exhaust her emotionally, physically, and financially? Would the State Bar Committee have brought an Article 78 proceeding against the Appellate Division, Second Department's justices, on Ms. Sassower's behalf or have assisted her? How about a §1983 federal action, after the Appellate Division, Second Department corrupted Ms. Sassower's Article 78 remedy by refusing to disqualify itself from the proceeding and dismissing it on "an outright lie"? Would the State Bar Committee have filed a judicial misconduct complaint with the Commission on Judicial Conduct against the Appellate Division, Second Department panel? And what would it have done after the Commission on Judicial Conduct dismissed such *facially-meritorious*, indeed, documented complaint, without investigation and without reasons, in violation of its mandatory investigative duty under Judiciary Law §44.1[10]? Would it have brought an Article 78 proceeding against the Commission, as Ms. Sassower did in 1995? And what would it have done when that Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141), was "thrown" by a fraudulent judicial decision?

This brings us to the present. What will the State Bar Committee do NOW to vindicate Ms. Sassower's trampled-on rights and the public's rights to competitive and honest judicial elections that she valiantly sought to vindicate? Those rights have been even

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> "…Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit. …" (Judiciary Law §44.1, emphasis added).

more dramatically eviscerated by subsequent fraudulent judicial decisions – including in the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551) – physically incorporating *Doris L. Sassower v. Commission*.

From your answers may be gauged the true level of commitment that the State Bar Committee will be bringing to upholding the integrity of judicial elections -- and to protecting from judicial retaliation lawyers who step forward to champion the public's rights in this important area.

In appearing before the Commission to Promote Public Confidence in Judicial Elections, you highlighted the State Bar's credentials:

> "As the largest voluntary organization of the legal profession in the country, representing nearly 73,000 members of the Bench and Bar, we are able to bring to our endeavors extensive practical experience on the functioning of the legal system." (emphasis added)

Until the June 14, 1991 "interim" suspension of her law license, Ms. Sassower was an active, prominent member of the State Bar Association[11]. A former president of the New York Women's Bar Association (1968-69), she was the first woman ever invited to address the National Conference of Bar Presidents (1969), the first woman ever to chair the National Conference of Lawyers and Social Workers (1970), and the first woman to head the Legal Task Force of the Professional Women's Caucus, a national organization of which Ms. Sassower was a founder (1971). As a litigator in the forefront of women's rights and matrimonial law reform, she was a sought-after speaker at colleges and law schools and was published in the major journals of the legal profession, including the State Bar Journal.

It was Ms. Sassower's stellar credentials, not political ties, that spurred her unsolicited nomination as a candidate for the New York Court of Appeals at the 1972 Democratic Judicial Nominating Convention. Her personal interview by a screening subcommittee of the State Bar's Judiciary Committee led to her becoming the first woman member of

[11] Ms. Sassower was consistently awarded the highest "AV" rating by the Martindale-Hubbell Law Directory and a copy of its 1989 listing for her is enclosed, as is a letter from the Fellows of the American Bar Foundation certifying Ms. Sassower's 1989 election as a Fellow, an honor "limited to one-third of one percent of lawyers licensed to practice in each jurisdiction".

that Committee, on which she served from 1972 to 1980. Indeed, it was as a result of her seminal article, "*Judicial Selection Panels: An Exercise in Futility*?", published on the front-page of the October 22, 1971 New York Law Journal, that the State Bar's Judiciary Committee was renamed Committee on Judicial Selection to emphasize its primary focus. She was also a member of the State Bar's Legislative Committee and drafted several pieces of subsequently adopted remedial legislation.

Yet, in the years since the 1990 *Castracan* Election Law case, the State Bar has unceremoniously turned its back on Ms. Sassower and refused to confront her "practical experience on the functioning of the legal system" – be it with respect to enforcement of New York's Election Law to judicial elections, New York's attorney disciplinary law, the Commission on Judicial Conduct – or anything else involving the corruption of lawyers and judges, no matter how completely documented and independently verifiable. This is reflected by CJA's correspondence with the State Bar, posted on our website [*see* "*Correspondence-Bar Associations: New York State Bar Association*" – "hard copies" of which we will provide you, upon request, if they have not been retained in the State Bar's files.

We, therefore, call upon you to identify what "practical experience on the functioning of the legal system" the State Bar has when it comes to enforcing New York's Election Law to judicial elections? Has the State Bar – which you refer to as "guardian of the public interest" -- ever itself filed objections and specifications to certificates nominating judicial candidates? Has it ever brought Election Law proceedings specifically to vindicate the public's rights relating to judicial elections? If not, how many of the State Bar's "nearly 73,000 members" have brought such public interest Election Law proceedings? Has the State Bar surveyed them to obtain this information and procured copies of their files to independently examine whether the State Board of Election and the courts have acted to safeguard the integrity of judicial elections by enforcement of the Election Law? Based thereon, has the State Bar ever made recommendations to the Legislature pertaining to enforcement of the Election Law with respect to judicial elections, as CJA did over eight years ago. If not, you must forthrightly acknowledge to the Commission to Promote Public Confidence in Judicial Elections that notwithstanding its large size, the State Bar has NO testimonial knowledge to offer on the subject of enforcement of New York's Election Law to judicial elections.

You testified that the concepts of an "independent, fair and competent judiciary", upholding the "rule of law" are not concepts "to be taken lightly". That being so, it is incumbent upon the State Bar – under your leadership – to examine the files of the *Castracan* and *Sady* Election Law cases and to make findings of fact and conclusions of

law as to whether these vaunted concepts are in evidence. Likewise with respect to the files pertaining to the Appellate Division, Second Department's retaliatory June 14, 1991 "interim" suspension of Ms. Sassower's law license and its barrage of malicious disciplinary proceedings against her. Similarly, with respect to Ms. Sassower's responding Article 78 proceeding and §1983 federal action against the justices of the Appellate Division, Second Department, as well as her Article 78 proceeding against the Commission on Judicial Conduct.

You further testified that "we should take great comfort" in the New York Court of Appeals' "recent[]" affirmation that

> "litigants have a right guaranteed under the Due Process clause to a fair and impartial magistrate and the State, as the steward of the judicial system, has the obligation to create such a forum and prevent corruption and the appearance of corruption, including political bias or favoritism",

which you followed by discussion of the State Bar's contribution to the Code of Judicial Conduct, calling it a "critical vehicle to be used in fostering the highest standards of conduct – standards which involve the avoidance of partiality in actuality and appearance" to which judges are "required[d]…to adhere". What is the empirical basis for your inference that there is compliance with, and enforcement of, the Code of Judicial Conduct, including by the Court of Appeals? Has the State Bar taken a survey as to the "practical experience" of its rank and file members who have sought to enforce code provisions pertaining to judicial impartiality: (1) by judicial disqualification motions; (2) by appeals from the denial of those motions; (3) by appeals expressly raising the issue of lower court bias and interest; (4) by judicial misconduct complaints filed with the Commission on Judicial Conduct? Has the State Bar requested that such members provide copies of those disqualification motions, appellate records, and judicial misconduct complaints for independent examination and evaluation? How about the "practical experience" of *pro se* litigants who have sought to enforce code provisions pertaining to judicial impartiality? – surely no less relevant to the issue of "public confidence".

The files of *Castracan* and *Sady*, of the Appellate Division, Second Department's disciplinary proceedings against Ms. Sassower, and of Ms. Sassower's Article 78 proceeding against the Appellate Division, Second Department – all of which were before the Court of Appeals -- show NO EMPIRICAL BASIS for "comfort" in either the Code of Judicial Conduct or the Court of Appeals in ensuring judicial impartiality, either

in appearance or fact.

Yet, as awesome as these case files are, it the file of *Elena Ruth Sassower v. Commission* – exposing the corruption of "merit" selection to the Court of Appeals in addition to documenting the Commission's corruption – that offers the most resounding demonstration of the worthlessness of the Code of Judicial Conduct for ensuring the appearance and actuality of judicial impartiality – and not just for New York's lower state judges, but for its highest Court of Appeals judges. This, because when the case came before the Court of Appeals on "Law Day" of last year, it was accompanied by a spectacular 68-page formal motion to disqualify the seven Court of Appeals judges for interest and bias and for disclosure – paralleling the similarly breathtaking disqualification/disclosure motions and applications addressed to the lower judges when the case was in the Appellate Division and Supreme Court[12].

What the "merit"-selected Court of Appeals judges did with respect to this fact-specific, fully-documented May 1, 2002 disqualification/disclosure motion is particularized by my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief. As shown therein, our highest state judges replicated the lower judges' *sub silentio* repudiation of statutory and rule provisions for ensuring judicial integrity and impartiality – the threshold issue on the appeal – and then proceeded to further manifest their disqualifying interest and bias by replicating the lower judges' *sub silentio* repudiation of statutory and rule provisions for ensuring the integrity of attorney conduct. This, in addition to dismissing the appeal of right and, thereafter, denying review by leave – with no acknowledgment of the expressly requested "other & further relief" of:

> "disciplinary and criminal referrals, pursuant to §§100.3D(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103A of New York's Disciplinary Rules of the Code of Professional Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll, as well as referral of the record herein to the New York State Institute on Professionalism in the Law for study and recommendations for reform." (my October 24, 2002 motion for leave to appeal, p. 2).

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[12] A substantial portion of *Elena Ruth Sassower v. Commission* is posted on CJA's website under "*Test Cases-State (Commission)*". This includes my most important judicial disqualification/disclosure motions and applications at all levels of the case.

There is no need to look beyond the case file of *Elena Ruth Sassower v. Commission* for decisive evidentiary proof that codes of judicial conduct, as likewise, codes of attorney conduct, are "not worth the paper they are written on"[13] – whether in Supreme Court, the Appellate Division, or the Court of Appeals – and that the Commission on Judicial Conduct is a corrupt facade, protected by the courts, at every level.

Conspicuously, your September 16th testimony, which offers unsubstantiated support for "merit" selection" over judicial elections, as the State Bar's position, offers NO EVALUATIVE COMMENT as to the efficacy of the Commission on Judicial Conduct. Indeed, your only mention of the Commission is in the context of identifying that the State Bar filed an *amicus curiae* brief before the Second Circuit Court of Appeals in *Spargo v. New York State Commission on Judicial Conduct.* This is not surprising, as the State Bar is long knowledgeable of the Commission's corruption – having received from us the substantiating case file evidence as far back as 1996[14]. Among the high-level recipients of this evidence: former State Bar President Steven Krane, author of the State Bar's *amicus* brief which bears your name and takes no exception to the lower federal

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[13] *Elena Ruth Sassower v. Commission* is the state companion to the §1983 federal action, *Doris L. Sassower v. Mangano, et al*., whose case file presents similarly decisive evidentiary proof as to the worthlessness of judicial and attorney codes of conduct. Indeed, obvious from the record of these cases is that they were each consciously developed to systematically "test" the efficacy of codes of judicial and attorney conduct and other supposed safeguards for ensuring the integrity of judicial proceedings. This is why CJA's website expressly identifies them as "*Test Cases*": "*State*" and "*Federal*".

[14] This is reflected by CJA's correspondence with the State Bar, posted at "*Correspondence-Bar Associations: New York State Bar Association*". Among the substantiating case file evidence that should still be in the State Bar's possession [retained by State Bar Counsel Kathleen Mulligan Baxter] are copies of my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief and my October 24, 2002 motion for leave to appeal. These motions – the last two in *Elena Ruth Sassower v. Commission* -- suffice to establish that the Commission is the beneficiary of a succession of fraudulent judicial decisions in three separate Article 78 proceedings against it, without which it would not have survived. They were furnished to substantiate my public comments and two questions at the State Bar's December 11, 2002 forum on the Commission, moderated by your presidential predecessor Lorraine Power Tharp. These two questions were whether the State Bar: (1) "would endorse, would lobby, would press for a legislative oversight hearing of the Commission at which evidence can be presented as to what has been going on over all these years"; and (2) "would address the evidence", embodied in the files of my lawsuit, and "deny and dispute what they show: that the Commission is corrupt, that it has corrupted the judicial process, and that it has been the beneficiary of a series of fraudulent judicial decisions without which it would not have survived several court challenges"

My transcription of the December 11, 2002 audiotape of my comments and questions is posted on CJA's website under "*Correspondence-Bar Associations: New York State Bar Association*"– and a copy is enclosed, as we have yet to receive any response.

court's paraphrasing of Judiciary Law §44.1 to remove its mandatory investigative language[15]. [*Cf.* footnote 10, *supra*; *Matter of Nicholson*, 50 N.Y.2d 597, 610-611, *infra*]

This mandatory investigative language of Judiciary Law §44.1 – upon which the public's rights rest -- was the subject of BOTH *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission*, each demonstrating that that Commission had promulgated a facially-inconsistent rule, 22 NYCRR §7000.3, and was dumping, without investigation, complaints which Judiciary Law §44.1 required it to investigate. Among these, complaints whose allegations were not merely *facially meritorious*, but documented – including complaints of violations of both the Code of Judicial Conduct and the Election Law by judicial candidates.

By contrast to Judge Spargo and the small handful of other state judges which the Commission prosecutes – all of whom enjoy a right of appeal to the Court of Appeals -- members of the public whose complaints are dismissed by the Commission not only have no right of appeal to the Court of Appeals, but no right of appeal to any court. Indeed, when the Court of Appeals rejected review of *Elena Ruth Sassower v. Commission*, it knowingly put its imprimatur to two appellate decisions which, unsupported by factual or legal discussion, bar complainants, on grounds of "standing", from judicial review of the Commission's dismissals of their judicial misconduct complaints AND contravene the Court of Appeals' own 1980 decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611, which had recognized the mandatory language of Judiciary Law §44.1:

> "…the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subdiv. 1)…" (emphasis added).

So that you can see for yourself the kind of *facially-meritorious*, documented complaints involving violations of both the Code of Judicial Conduct and the Election Law which the Commission – under the chairmanship of an Election Law lawyer, no less – has dismissed, without investigation, enclosed are Ms. Sassower's October 24, 1991

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[15] *See* February 20, 2003 decision of U.S. District Court Judge David Heard, 244 F. Supp.2d 72, 77:

> "The Commission may initiate an investigation based upon receipt of a written and signed complaint from an external source. [Judiciary Law] 44(1). However, if it is determined that the complaint lacks merit on its face, it may be dismissed." (emphasis added)

complaint, with its annexed copy of the written three-year judge-trading deal, and her January 2, 1992 complaint, with its annexed copy of the affidavits/affirmation of the three eyewitnesses to the 1990 judicial nominating conventions that had substantiated the verified petition in the *Castracan* Election Law case. Both the October 24, 1991 and January 2, 1992 complaints were exhibits to the verified petition in *Doris L. Sassower v. Commission*[16].

Also enclosed is the November 11, 1993 complaint of George P. Alessio, Esq. as to violations at that year's Salina Democratic Committee Caucus for town justice, to which Mr. Alessio was an eyewitness and as to which he annexed a substantiating grand jury report. Mr. Alessio, who made a June 15, 1995 motion to intervene in *Doris L. Sassower v. Commission*, based on the Commission's dismissal of this complaint, without investigation[17], is incoming president of the Onondaga County Bar Association. Like you, he also testified before the Commission to Promote Public Confidence in Judicial Elections -- at its September 30, 2003 hearing in Albany.

As Mr. Alessio is one of the State Bar's "nearly 73,000 members", you should be asking him about his "practical experience on the functioning of the legal system" in enforcing New York's Election Law and codes of conduct to judicial elections.

By copy of this letter to Mr. Alessio, we ask him to take the lead in working with you to ensure that bar association advocacy will be – <u>as it presently is not</u> -- empirically-based on the "practical experience" of the rank-and-file membership. As a priority, lest the Commission to Promote Public Confidence in Judicial Elections be misled by your testimony, this advocacy must include surveys of bar members having "practical experience" with enforcement of the Election Law and codes of conduct to judicial elections and encompass <u>findings of fact and conclusions of law</u> relating to their substantiating case file and misconduct complaint documents.

The State Bar has more than ample resources to undertake such empirically-based research, beyond its Committee on Judicial Campaign Conduct. The panoply of special committees which the State Bar's *amicus* brief in *Spargo* identifies (at p. 3) as demonstrating its "devot[ion of]…substantial resources to the goal of promoting trust

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[16] They are so-posted on CJA's website. *See, inter alia*, "*Test Cases-State (Commission)*" -- July 28, 1999 omnibus motion in Supreme Court/NY County.

[17] Mr. Alessio's intervention motion is enclosed herewith – to which his judicial misconduct complaint and correspondence with the Commission are exhibits.

and confidence in the judiciary and the judicial discipline process" can easily be enlisted: (1) its Special Committee on Procedures for Judicial Discipline; (2) its Special Committee on Public Trust and Confidence in the Legal System; (3) its Special Committee on Judicial Independence; and (4) its newly-formed Special Committee to Review the Code of Judicial Conduct.

For this reason -- and so that the State Bar can also promptly offer its assistance to the Commission to Promote Public Confidence in Judicial Elections in making findings of fact and conclusions of law as to the three Election Law proceedings involving judicial elections and the three Article 78 proceedings against the Commission on Judicial Conduct whose case files we have already provided it[18] -- copies of this letter are being sent to the respective Committee chairs, as well as to the chair of the State Bar's Committee on Judicial Selection. Additionally, copies are being furnished to State Bar Executive Director Patricia K. Bucklin and State Bar Counsel Kathleen Mulligan Baxter. Needless to say, the significance of these six case files is all the greater in the complete absence of *any* countervailing case file evidence from rank-and-file State Bar members.

We look forward to working constructively with the State Bar and await your response before making a formal written presentation to the Commission to Promote Public Confidence in Judicial Elections based on empirical evidence and the *independently-verifiable* "practical experience" of our lawyer and lay members.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures and cc's on next page

[18] The three Election Law proceedings are: *Castracan v. Colavita, et al.* (S.Ct/Albany Co. #90-6056), *Sady v. Murphy, et al.* (S.Ct/Westchester Co. # 91-12471), and *Reda v. Mehiel, et al.* (S.Ct/Rockland Co. #93-6940). The three Article 78 proceedings are: *Doris L. Sassower v. Commission* (S.Ct/NY Co. #95-109141) and *Michael Mantell v. Commission* (S.Ct/NY Co. #99-108655) – both physically incorporated in *Elena Ruth Sassower v. Commission* (S.Ct/NY Co. #99-108551).

Enclosures:

(1) CJA's informational brochure and public interest ads, "Where Do You Go When Judges Break the Law?", "*A Call for Concerted Action*", "*Restraining 'Liars in the Courtroom' and on the Public Payroll*"
(2) CJA's November 6, 2003 letter to Brooklyn District Attorney Charles Hynes
(3) CJA's November 13, 2003 memo to Appellate Division, Second Department Presiding Justice Gail Prudenti and members of Review Committee
(4) CJA's correspondence with Barry Kamins, Esq., beginning with CJA's January 27, 2003 letter and enclosed cert petition & supplemental brief in the federal action, *Doris L. Sassower v. Hon. Guy Mangano, et al.* (S.Ct. #98-106)
(5) Doris L. Sassower's 1989 Martindale-Hubbell Law Directory listing & letter confirming her 1989 election as a Fellow of the American Bar Foundation
(6) transcript excerpt from State Bar's December 11, 2002 forum on the New York State Commission on Judicial Conduct
(7) Doris Sassower's October 24, 1991 & January 2, 1992 judicial misconduct complaints and the Commission's January 7, 1992 and April 22, 1993 dismissal letters
(8) George P. Alessio's June 15, 1995 motion to intervene in *Doris L. Sassower v. Commission*, with all exhibits, including his November 11, 1993 judicial misconduct complaint and the Commission's June 21, 1994 dismissal letter

cc: All indicated recipients of CJA's November 6th letter & November 13th memo
George P. Alessio, Esq., Incoming President, Onondaga County Bar Association
New York State Bar Association:
Michael A. Klein, Chair, Committee on Judicial Campaign Conduct
A. Rene Hollyer, Chair, Special Committee on Procedures for Judicial Discipline
Ellen Lieberman, Esq., Chair, Special Committee on Public Trust and Confidence in the Legal System
Maxwell S. Pfeifer/John R. Dunn, Chairs, Special Committee on Judicial Independence
Marjorie E. Gross, Chair, Special Committee to Review the Code of Judicial Conduct
Peter V. Coffey, Esq., Chair, Committee on Judicial Selection
Patricia K. Bucklin, Executive Director
Kathleen Mulligan Baxter, Counsel