

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Fax and Mail:
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November 17, 1995

Professor Monroe Freedman
Hofstra University School of Law
121 Hofstra University
Hempstead, New York 11550-1090

RE: BNN: A & E Investigative Documentary
Independent Evaluation

Dear Professor Freedman:

As discussed this morning, I enclose--by way of a summary of our Article 78 proceeding against the New York State Commission on Judicial Conduct--a copy of my Letter to the Editor, published in the August 14, 1995 issue of the New York Law Journal. Not only does it sum up the significance of our ground-breaking litigation against the Commission--but it challenges the public and legal community to confirm--by review of the court papers:

"...that the commission protects judges from the consequences of their judicial misconduct--and, in turn, is protected by them."

Also enclosed is a copy of the "Questions to be Answered" by the independent evaluator, which we had prepared for BNN and which I understood had been faxed to you, together with an Inventory itemizing the court papers and correspondence related to the litigation which BNN sent you.

Plainly, only through an independent evaluation can BNN verify that the lower court's decision dismissing the case is factually fabricated and legally indefensible and that, as a matter of law, we were entitled to summary judgment against the Commission. Such adjudication, however, would have exposed--once and for all--the Commission's scandalous subversion of its mandate to police the judiciary.

Because you have courageously gone on-record about dishonest decision-writing by judges, we not only believed you were a "natural" for BNN's independent evaluation of this case, but that you would be excited by the incredible irony of what it shows: the New York State Commission on Judicial Conduct not only defending itself through litigation misconduct, but as the

November 17, 1995

contented beneficiary of dishonest judicial decision-writing.

If you could possibly spare the time, we would be more than ready to provide you with a critique of the lower court's decision to expedite your review.

However, if you are not available to independently evaluate this dynamite public interest case, we hope you would be good enough to assist BNN in locating someone else who could properly serve as its "legal expert" for that purpose.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures:

- (a) New York Law Journal, 8/14/95 Letter to the Editor
- (b) "Questions to be Answered"
- (c) CJA brochure, with NYT ad

cc: BNN/Robin Hutt, Producer
Alison Winkler, Associate Producer

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INDEPENDENT EVALUATION OF ARTICLE 78 PROCEEDING AGAINST THE NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

Based on the Letter to the Editor of Elena Ruth Sassower, "Commission Abandons Investigative Mandate", published in the New York Law Journal, 8/14/95:

"...The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (Sassower v. Commission, #95-109141)...What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct--and, in turn, is protected by them."

INVENTORY OF TRANSMITTAL

- I. Questions to be Answered
- II. Letter to the Editor, "Commission Abandons Investigative Mandate", New York Law Journal, 8/14/95
- III. Litigation File: Sassower v. Commission, documents numbered 1-9 (itemization annexed)
- IV. Correspondence File: documents numbered A-D (itemization annexed)

INDEPENDENT EVALUATION

QUESTIONS TO BE ANSWERED

- (1) Assess the significance of the Center for Judicial Accountability's legal challenge to the New York State Commission on Judicial Conduct. What was the duty of the New York State Attorney General when served with Notice of Right to Seek Intervention? Is this the kind of public interest case calling for intervention or other involvement by the government agencies listed on the Notice of Right to Seek Intervention so as to protect the public interest?
- (2) Did the New York State Commission on Judicial Conduct engage in litigation misconduct? Was the dismissal motion of its attorney, the New York State Attorney General, legally insufficient and factually unsupported?
- (3) Is the Supreme Court's decision dismissing the case legally indefensible and factually fabricated, as the Center for Judicial Accountability contends. Based on the record before the court, is its decision dishonest, in bad faith, and an example of judicial misconduct?
- (4) If the Supreme Court decision is an example of judicial misconduct, can the New York State Commission on Judicial Conduct permit itself to be the beneficiary of it? What is the New York State Commission on Judicial Conduct's ethical duty--and that of its attorney, the New York State Attorney General?
- (5) Should the Supreme Court's decision be vacated for fraud and/or appealed? If so, should the public officers and agencies whose duty it is to protect the public from judicial misconduct be the ones to take the necessary litigation steps?

Monday, August 14, 1995

LETTERS

*To the Editor***Comm'n Abandons
Investigative Mandate**

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (*NYLJ*, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR 87000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigation, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-con-

nected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commission, with no finding that the complaints were facially without merit.

In "round one" of the litigation, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (*Sassower v. Commission*, #95-109141) — including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct — and, in turn, is protected by them.

Elena Ruth Sassower
White Plains, N.Y.

ITEMIZATION OF LITIGATION FILE

DORIS L. SASSOWER v. COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK

Supreme Court, New York County:
Article 78 Proceeding, Index # 109141/95

- Doc. 1. DLS' Article 78 Petition, with Notice of Petition and Notice of Right to Seek Intervention, 4/10/95
- Doc. 2. DLS' Order to Show Cause for Preliminary Injunction, Default, 5/11/95
- Doc. 3. AG Affidavit in Opposition to Preliminary Injunction, 5/22/95
- Doc. 4. AG Dismissal Motion, 5/30/95
- Doc. 5. DLS' Affidavit in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions, 6/8/95
- Doc. 6. DLS' Memorandum of Law in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions, 6/8/95
- Doc. 7. DLS' Notice to Furnish Record to the Court Pursuant to CPLR §§409, 7804(e), and 2214(c), 6/9/95
- Doc. 8. DLS' Affidavit in Support of Proposed Intervenors, 6/9/95
- Doc. 9. 7/13/95 Supreme Court Memorandum Decision, per Herman Cahn--as printed in New York Law Journal, 7/31/95

ITEMIZATION OF CORRESPONDENCE FILE

- Doc. A: 9/14/95 letter to Henry Berger, Esq., Chairman of
New York State Commission on Judicial Conduct
- Doc. B: 9/14/95 letter to Robert Rifkin, Esq., Executive
Director, New York State Ethics Commission
- Doc. C: 9/19/95 letter to New York State Attorney General
Dennis Vacco
- Doc. D: 10/3/95 letter from Robert Rifkin, Esq., Executive
Director, New York State Ethics Commission