

## QUESTIONS PRESENTED

**Whether New York's attorney disciplinary law is unconstitutional, as written and as applied:**

1. where an attorney can be immediately, indefinitely, and unconditionally suspended from the practice of law by an interim order, without findings, reasons, notice of charges, a pre-suspension hearing, or a post-suspension hearing for nearly four years;
2. where a disciplined attorney has no absolute right of judicial review, either by direct appeal or by the codified common law writs;
3. where adjudicative and prosecutorial functions are wholly under the control of the courts, enabling them to retaliate against attorneys who are judicial whistle-blowers;
4. where disciplinary proceedings: (a) do not comply with the court's own disciplinary rules; (b) are commenced by *ex parte* applications, without notice or opportunity to be heard ; (c) deny the accused attorney all discovery rights, including access to the very documents on which the proceedings purport to be based; (d) do not rest on sworn complaints; (e) do not rest on an accusatory instrument or are asserted "on information and belief", not based on any probable cause finding of guilt.

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station  
White Plains, New York 10605

BY PRIORITY MAIL

November 15, 1995

Court of Appeals  
20 Eagle Street  
Albany, New York 12207-1095

Att: Donald M. Sheraw, Clerk

RE: ACCESS

Dear Mr. Sheraw:

Some weeks ago, I visited the Court and requested access to the appellate papers of attorneys, who had been the subject of discipline by the appellate divisions and had sought to appeal to the Court of Appeals.

Martin Strnad, the Clerk with whom I spoke, was very helpful and provided me with a copy of the papers I requested relating to the appeal of Bernard Hanft from the May 15, 1995 Disbarment Order of the Appellate Division, Second Department. However, as to the earlier appeal filed by Mr. Hanft and the appeals of other attorneys, Mr. Strnad told me that more advance notice was necessary and that I should put forth my request to you in writing.

I, therefore, respectfully request access to the appellate papers of all attorneys who, having been the subject of discipline by this state's appellate divisions, have sought review by the Court of Appeals during the past three years.

Additionally, I request access to the appellate papers to this Court of Benjamin B. Hersh, who was disbarred by Order of the Appellate Division, Second Department, dated May 19, 1986. This includes Mr. Hersh's attempt to appeal to this Court from the Second Department's November 14, 1986 denial of his motion for reargument, transfer, and leave to appeal. For your convenience, I enclose a copy of his attorney's December 19, 1986 letter relating to that appeal to the Appellate Division--which indicates a copy to the Court of Appeals. Mr. Hersh also made a motion to this Court, dated April 2, 1987--a copy of which is enclosed for your convenience, together with two letters, including one, dated April 6, 1987 from the Appellate Division, Second Department to this Court. I would also like to see the papers on that motion--as well as any papers relating to any subsequent attempts by Mr. Hersh to appeal to this Court.



Donald Sheraw, Clerk

Page Two


November 15, 1995

The citations I presently have for Mr. Hersh's matters are as follows: Matter of Hersh, 117 A.D.2d 264 (2d Dept. 1986), appeal dismissed, 69 N.Y.2d 812 (1987), appeal denied, 69 N.Y.2d 1023 (1987).

Finally, I request access to the appellate papers filed with the Court of Appeals relating to the disciplinary proceedings against Charles Sutton in the Appellate Division, Second Department--for which I have the following citations: Matter of Sutton, 70 A.D.2d 467 (2d Dept. 1979), appeal dismissed, 49 N.Y.2d 799 (1980), motion dismissed, 49 N.Y.2d 802 (1980), appeal denied, 49 N.Y.2d 706 (1980), motion denied, 49 N.Y.2d 919 (1980), motion denied, 49 N.Y.2d 918 (1980), motion dismissed, 50 N.Y.2d 929 (1980), motion denied, 50 N.Y.2d 929 (1980), cert. denied, 449 U.S. 944 (1981), reh'g denied, 449 U.S. 1104 (1981).

Thank you very much.

Yours for a quality judiciary,



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

Enclosures



*State of New York*  
*Court of Appeals*

*Donald M. Sheraw*  
*Clerk of the Court*

*Clerk's Office*  
*Albany, New York 12207*

November 30, 1995

Elena Ruth Sassower, Coordinator  
Center for Judicial Accountability, Inc.  
Box 69 Gedney Station  
White Plains, New York 10605

Dear Ms. Sassower,

This acknowledges receipt of your letter November 15, 1995.

Papers retained by the Court which are available to the public can be reviewed at the Court. Arrangements in advance must be made. Please be advised that motion papers are retained by the Court for five years only.

The Court cannot accommodate requests to identify and provide papers by subject matter category. Written requests to review the Court's papers must identify by title the specific appeal or motion papers sought.

Very truly yours,

*Stuart M. Cohen*

Stuart M. Cohen  
Deputy Clerk of the Court

cc: Judges of the Court