

**From:** judgewatchers@aol.com

**To:** Dahlia.Lithwick@slate.com; tmauro@alm.com

**Cc:** tschoenberg@alm.com; mmcquilken@alm.com

**Subject:** A Law Unto Itself -- The U.S. Supreme Court Clerk's Office

**Date:** Fri, 21 Sep 2007 4:51 pm

**Attachments:** 9-21-07-ltr-suter.pdf (1793K)

---

Dear Dahlia,

Following up our extensive phone conversation earlier today, for which I sincerely thank you,

& Dear Tony,

Following up my voice mail message for your a short while ago and previous e-mails, as to which I am hopeful,

attached is my letter of today's date to Supreme Court Clerk William K. Suter, summarizing the lawless, unprofessional conduct of the Supreme Court Clerk's Office -- prejudicing the "disruption of Congress" case, calendared for conference this Monday, September 24th.

The letter will enable you to put some "sunshine" into the operations of our nation's highest Clerk's Office -- and into the frequency and significance of the Solicitor General's waivers of the Government's "right to file a response" to cert petitions in criminal cases.

To quote Chief Justice Roberts, "Don't blow it".

Regards.

Elena  
914-421-1200  
cell: 646-220-7987

---

Email and AIM finally together. You've gotta check out free [AOL Mail!](#)

CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

Post Office Box 8220  
White Plains, New York 10602

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [judgewidth@aol.com](mailto:judgewidth@aol.com)  
Website: [www.judgewidth.org](http://www.judgewidth.org)

Elena Ruth Sassower, Director  
Direct E-Mail: [judgewidthers@aol.com](mailto:judgewidthers@aol.com)

By Express Mail: EB 502217763 US

September 21, 2007

William K. Sutter, Clerk  
United States Supreme Court  
1 First Street, N.E.  
Washington, D.C. 20543

RE: Clarification of Practices & Procedures at the U.S. Supreme Court Clerk's Office  
& Misconduct Complaint against Clerk Office Staff  
Elena Ruth Sassower v. United States of America, #07-228

Dear Mr. Suter:

This letter follows up my many phone calls to the Clerk's Office yesterday afternoon, urgently requesting to speak with you or your secretary about the misconduct of Clerk Office staff under your supervision. Notwithstanding the exigency of the situation – with the above-entitled case calendared for court conference on Monday, September 24<sup>th</sup> – I was told that you do not take phone calls, that I could also not speak with your secretary, that there was no way for me to leave a voice mail message for you, and that the only manner in which I could communicate with you was by letter.

Although I know from past experience that any letters to you inquiring about the practices and procedures of the Clerk's Office and complaining about the misconduct of its staff are an exercise in futility<sup>1</sup>, due process and fundamental decency require that you be afforded an opportunity to address the situation prior to my turning to Chief Justice Roberts, who bears ultimate supervisory

---

\* The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.

<sup>1</sup> These prior unresponded-to letters are posted on CJA's website, [www.judgewidth.org](http://www.judgewidth.org). The October 14, 1998 and October 26, 1998 letters to you are accessible via the sidebar panel, "Test Cases-Federal (Mangano)", in the section pertaining to the U.S. Supreme Court. My March 12, 2004 letter to you is accessible via the sidebar panel "Searching for Champions-Federal" which links to a webpage for "Chief Justice Rehnquist & Associate Justices".

responsibilities over how the United States Supreme Court Clerk's Office operates.

The facts are as follows: Yesterday, at about 1:30 p.m., I called the Clerk's Office to inquire as to the status of my motion to Chief Justice Roberts, as Circuit Justice for the District of Columbia. Such motion asked that he "request", if not order, the United States Solicitor General to file the Government's response to my petition for a writ of certiorari, or, alternatively, that he present the motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response. I had express mailed an original and ten copies of the motion to the Clerk's Office on Monday, September 17<sup>th</sup>, for delivery the following day, September 18<sup>th</sup>.

My initial phone call yesterday, September 20<sup>th</sup>, was directed to Jeffrey Atkins, a case analyst supervisor, who stated that the motion had been returned to me. The sole reason Mr. Atkins gave was that the Court, of its own volition, can request the U.S. Solicitor General to file a response, which is what Mr. Atkins had stated to me on Monday, when I first called him about my intended motion. My reply to Mr. Atkins yesterday was similar to what I had told him three days earlier, namely, that I could not reasonably rely on a busy Court to exercise its *sua sponte* power; that it was my position that the Solicitor General's waiver, in the case at bar, was violative of ethical rules of professional responsibility and of his official duty; and that nothing in the Court's rules, which I had read, precluded me from making a motion for the Court to direct the Solicitor General to file the Government's response to my cert petition.

I then asked Mr. Atkins which of the Court's rules allowed the Clerk's Office to take over for Chief Justice Roberts in deciding my motion by returning it to me. His answer was to tell me to "Have a good day" and disconnect the phone conversation.

Upon calling him back – which I did twice within the next 15 minutes, the second call being shortly before 2:00 p.m. – I got only his voice mail. My voice messages for him asked that he confirm whether – as it seemed – he had hung up on me. I reiterated my request that he identify which Court rules authorized the Clerk's Office to return my motion. Indeed, I also asked which Court rules authorized it to do so without even recording my motion or its return on the case docket, thereby creating a false case history. I asked Mr. Atkins to get back to me soon as possible, as I would otherwise have no choice but to seek supervisory oversight from his superiors.

By 3:40 p.m., I telephoned the Clerk's Office and requested to speak with your Chief Deputy Clerk, Chris Vasil – your "second in command" – who does take phone calls. Mr. Vasil picked up the phone, but immediately put me "on hold" when I identified myself. I remained "on hold" for over five minutes, before hanging up. At 4:05 p.m., I again phoned Mr. Vasil, but now got his voice mail. My voice message for him summarized the urgency of the situation and requested a return call.

It is now nearly 4:30 p.m., Friday, September 21<sup>st</sup>, and I have received no return call from either Mr. Atkins or Mr. Vasil about a case that must be removed from Monday's conference calendar, so that the Chief Justice Roberts – as Circuit Justice for the District of Columbia – can first decide my motion for the Solicitor General's response, including my motion's alternative request that he present it to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response.

So that I may protect my rights and those of the public, prejudiced by the actions of the Clerk's Office, please promptly advise, including by fax and/or e-mail, as to:

- (1) whether you approve of the conduct of Mr. Atkins and Mr. Vasil, as hereinabove recited<sup>2</sup>;
- (2) which Court rules, if any, permit the Clerk's Office to have returned my September 17<sup>th</sup> motion for the Solicitor General's response to my cert petition<sup>3</sup> – and to have returned it without any record having been made in the Court's docket of either the motion or its return; and
- (3) who in the Clerk's Office decided that Chief Justice Roberts should not make his own decision with respect to my motion. Was it Mr. Vasil, Mr. Atkins, yourself, or others, individually or collectively?

Please also advise as to:

- (4) the percentage of criminal cases in which the Solicitor General waives the Government's "right to file a response" to cert petitions; and
- (5) whether in any of those criminal cases, the petitioners ever made motions to either a single justice or to the Court for the Government's response. If so, please confirm that the Clerk's Office also sent those motions back to the petitioners, and did so without entering them on the case dockets – supplying me with the case numbers or names.

---

<sup>2</sup> Recitations of Mr. Vasil's prior misconduct appears in my October 26, 1998 letter to you (at p. 2) and in my March 12, 2004 letter to you (at p. 5). My March 12, 2004 letter also recites Mr. Atkins' prior misconduct (at pp. 4-6). That being said, it is incumbent upon me to note – and thank – Mr. Atkins for his assistance in connection with my August 7, 2007 motion to add 5-1/2 pages to my cert petition.

<sup>3</sup> In the event, you were not aware of my motion – and no copies of it were made or retained by the Clerk's Office before being sent back to me – it is posted on CJA's website, accessible *via* the sidebar panel "Disruption of Congress'-The Appeals".

William K. Suter, Clerk

Page Four

September 21, 2007

Thank you.

Yours for a quality judiciary,

A handwritten signature in black ink, reading "Elena Ruth Sassower". The signature is written in a cursive style with a long horizontal flourish at the end.

ELENA RUTH SASSOWER  
Petitioner *Pro Se*

cc: Chris Vasil, Chief Deputy Clerk  
Jeffrey Atkins, Supervisory Case Analyst  
Paul D. Clement, United States Solicitor General