

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gadney Station  
White Plains, New York 10605

By Fax: 212-997-7597  
and By Certified Mail: RRR: Z-124-353-176

February 1, 1996

Lawrence S. Goldman, Esq.  
Goldman & Hafetz  
500 Fifth Avenue  
New York, New York 10110

Dear Mr. Goldman:

I thank you for instructing your secretary to so promptly return my call. Presumably, she has conveyed my message back to you as to why I wished to speak with you directly, rather than--as you have requested--by correspondence, with copies to the other members of the Commission.

As the record before the Commission shows, we already have had an extensive correspondence with the Commission on Judicial Conduct--to which we have had no response whatever from the Commissioners. This includes letters which were, specifically, addressed to the Commissioners--as opposed to the Commission's Administrator, Gerald Stern, or its Clerk, Albert Lawrence--or letters which expressly requested that they be provided to the Commission members.

As illustrative, I enclose a copy of our September 14, 1995 letter to Chairman Henry T. Berger (Exhibit "A")--to which we have had no response at all. As you can see, the September 14, 1995 letter itself refers to earlier correspondence, specifically, our March 10, 1995 letter to the members of the Commission on Judicial Conduct. As discussed in our September 14, 1995 letter, the only response we received to our March 10, 1995 letter was confirmation from Mr. Stern that it "was distributed to the Commission" and that "no disciplinary action has been taken against Mr. Lawrence". This remains true to this date--as does the fact, referred to in our September 14, 1995 letter, that the Commission has ignored our Letter to the Editor, published in the August 14, 1995 New York Law Journal. A copy of that published letter, entitled, "Commission Abandons Investigative Mandate", is enclosed (Exhibit "B").

As may be seen from our September 14, 1995 letter to Chairman Berger (Exhibit "A"), the Assembly Judiciary Committee was an indicated recipient. Two months later, we sent a letter to the Assembly Judiciary Committee, dated December 15, 1995. Not only was a copy of that December 15, 1995 letter to the Assembly

Judiciary Committee sent to the Commission on Judicial Conduct, but, as expressly stated in the final paragraph of that letter, it was being

"sent to the Commission on Judicial Conduct, for distribution to the members..." (emphasis in the original.

In pertinent part, our December 15, 1995 letter stated:

"...there has been no response from the Commission on Judicial Conduct to my August 15, 1995 "Letter to the Editor", published in the New York Law Journal...Likewise, it has failed to respond to my September 14, 1995 letter addressed to its Chairman, Henry Berger, Esq....

In view of the seriousness of those letters, the Commission's non-response can only be viewed as further evidence of its contempt for the public, as well as for [the Assembly Judiciary] Committee."

We received no response from the Commission on Judicial Conduct to our December 15, 1995 letter--except for a December 26, 1995 letter from Mr. Stern, with a copy to the Assembly Judiciary Committee, falsely claiming that the Commission had responded to our September 14, 1995 letter to Chairman Berger. Mr. Stern's false claim rested on his own September 26, 1995 letter responding to my separate September 14, 1995 letter, addressed to him.

By letter to Mr. Stern, dated January 9, 1996, I afforded him an opportunity to retract his December 26, 1995 letter, the falsity of which I meticulously demonstrated. He has refused to do so in an arrogant letter, dated January 17, 1996, which does not deny or dispute that there has been no Commission response to our September 14, 1995 letter to Chairman Berger.

To mitigate the significance of his conceded falsehood as to the existence of a Commission response, Mr. Stern's January 17, 1996 letter claims:

"I have already dealt with issues you raised in your letter of September 14, 1995 to Mr. Berger." (emphasis added)

This statement by Mr. Stern is also untrue. Indeed, the foremost issue presented by our September 15, 1995 letter to Chairman Berger is the pattern of non-response by the Commission when

response was and is required as a matter of professional and ethical responsibility. Such non-response by the Commission is a fact.

Mr. Stern's January 17, 1996 letter ignores, distorts, or refuses to respond to all evidentiary and legal issues presented by our correspondence, including those relating to the Commission's jurisdiction<sup>1</sup>--which Mr. Stern deliberately misrepresents. However, because he concludes his letter by informing me that I should "feel free to communicate with whomever [I] choose, I decided to telephone you.

There was no particular "science" employed by me in picking you from among the Commission members. Quite simply, I selected you because your biographic profile in the 1995 Annual Report notes that you are "an honorary trustee of Congregation Rodeph Shalom in New York City". I myself am active in the Jewish community. By this, I mean that I am not only a synagogue member (B'nai Jeshurun, NYC), a leader of the Shabbat family service (Anshe Chesed, NYC), and a teacher of Torah (Westchester Reform Temple, Scarsdale, NY), but that I take seriously the teachings of our faith which, over and again, emphasize the importance of honest judges, the pursuit of justice, and our obligation not to "stand idly by".

I expect the same of you. Therefore, I, respectfully request that you examine and assess for yourself the record of our unresponded-to correspondence relative to our summarily-dismissed filed complaints against powerful, politically-connected judges--among them, the Commission's own judicial member, William Thompson.

I also, respectfully request that you examine the record of the Article 78 proceeding, Doris L. Sassower v. Commission on Judicial Conduct of the State of New York, #95-109141. Such examination--which, since last summer, I pleaded with Mr. Stern to do, but which he refused to undertake--will prove to you that the Commission defended itself by demonstrated and unrefuted litigation misconduct and was rewarded by a decision, dismissing our meritorious proceeding--a decision, which it knows to be legally insupportable and factually fabricated.

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<sup>1</sup> See, "Determining Generally When 'Error' is Misconduct" (at p. 303) from Gerald Stern's own article in Face Law Review, "Is Judicial Discipline in New York State a Threat to Judicial Independence?", Vol 7, No. 1, Winter 1987, pp. 291-388. The important legal principles described therein, were quoted and referred to by me in my September 14, 1995 and January 9, 1996 letters to Mr. Stern--which Mr. Stern has ignored (cf. his September 26, 1995 and January 17, 1996 letters to me)

The Commission on Judicial Conduct cannot permit itself to be the beneficiary of a decision it knows to be legally and factually indefensible--as particularized at pages 1-3 of our December 15, 1995 letter to the Assembly Judiciary Committee (Exhibit "C"). It has an affirmative duty to take corrective steps--as we pointed out in that letter, as well as previously in our unresponded-to September 14, 1995 letter to Chairman Berger.

We will assist you in any way we can. We are ready to meet with with you--and the other members of the Commission--and to provide duplicate sets of documents for your convenience so that you can meet your professional and ethical responsibility to the People of this State.


Yours for a quality judiciary,

*Elena Ruth Sassower*

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

Enclosures: As indicated, plus Center brochure with inserts

2 124 453 176

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PS Form 3800, March 1993

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CENTER for JUDICIAL ACCOUNTABILITY, INC.

P. O. Box 69  
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White Plains, New York 10605-0069

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Fax (914) 684-6554  
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FAX COVER SHEET

This fax transmission consists of a total of 16 pages including this cover page. If you have not received all the pages, please call (914) 421-1200

DATE: 2/1/96 TIME: 3<sup>15</sup> pm  
TO: Lourence Goldman, Esq. TITLE: 3<sup>10</sup> pm  
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FROM: Elena Sasseville

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MESSAGE: 2/1/96 rtr for you  
immediate attention  
Feel free to distribute it to  
the other members of the  
Commission

CENTER for JUDICIAL ACCOUNTABILITY, INC. is a national, non-partisan, not-for-profit citizens' organization raising public consciousness about how judges break the law and get away with it.

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CENTER for JUDICIAL ACCOUNTABILITY, INC.

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E-Mail: probano@dolph.com

Box 89, Gedney Station  
White Plains, New York 10605

By Certified Mail: RRR  
P-801-449-679

September 14, 1995

Henry T. Berger, Chairman  
New York State Commission on Judicial Conduct  
c/o Fisher, Fisher & Berger  
1 Whitehall Street, 21st Floor  
New York, New York 10004

Dear Mr. Berger:

So as to permit the members of the New York State Commission on Judicial Conduct to meet their ethical and professional responsibilities, we request that they be provided with copies of the enclosed September 14, 1995 ethics complaint against them for review and appropriate remedial action.

As may be seen from Exhibit "A" to our instant ethics complaint, our earlier ethics complaint against them, dated March 22, 1995, enclosed a copy of our March 10, 1995 letter to the members of the Commission on Judicial Conduct requesting information about the summary-dismissal of eight misconduct complaints we had filed since 1989 against powerful, politically-connected judges. Indeed, our March 10, 1995 letter itself reflected that it was being furnished to the New York State Ethics Commission and that a complaint was being filed, pursuant to Executive Law §94.9(g), against the Commission on Judicial Conduct.

Yet, as of this date--more than half a year since we hand-delivered our March 10, 1995 letter to the members of the Commission on Judicial Conduct--we have had no response, other than confirmation by Mr. Stern that our March 10, 1995 letter "was distributed to the Commission" and that "no disciplinary action has been taken against Mr. Lawrence".

We would note that our March 10, 1995 letter complained that our previous informational requests to Mr. Lawrence had been ignored--most egregiously, our letter to him from more than two years earlier, January 22, 1993<sup>1</sup>. That letter, like our March 10, 1995 letter, detailed evidentiary support for the allegation that the Commission on Judicial Conduct was engaging in "protectionism" of powerful, politically-connected judges.

<sup>1</sup> See Exhibit "B-1" to our March 10, 1995 letter; Exhibit "M" to our Article 78 Petition.

Exhibit "A"

September 14, 1995

Since Justice Cahn's disposition of our Article 78 proceeding has now freed the Ethics Commission to proceed with its investigation of our March 22, 1995 ethics complaint of "protectionism" by the Commission on Judicial Conduct, it will surely want answers to the straight-forward information we reasonably requested in our heretofore unanswered March 10, 1995 letter and enclosures.

Because one of the matters about which our March 10, 1995 letter inquires is the dismissal, without reasons, of our September 19, 1994 complaint against Justice William Thompson, the Commission on Judicial Conduct's highest-ranking judicial member, and his Appellate Division, Second Department brethren, we believe the Commission should familiarize itself with our cert papers in Sassower v. Mangano, et al. We, therefore, enclose copies.

Assuredly, the Assembly Judiciary Committee will also expect answers and explanations. Unlike the Commission you chair--which, in addition to ignoring our March 10, 1995 letter, has also ignored our "Letter to the Editor" published in the August 14, 1995 issue of the New York Law Journal<sup>2</sup>--we expect the Assembly Judiciary Committee will verify the profoundly serious allegations of that published letter and demand an accounting from you.

Yours for a quality judiciary,



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

Enclosure: 9/14/95 ltr to Ethics Commission  
Sassower v. Mangano, et al.  
cert petition, opposition, reply

cc: New York State Ethics Commission  
New York State Assembly Judiciary Committee  
New York State Commission on Judicial Conduct  
Gerald Stern, Administrator  
New York State Attorney General Dennis Vacco

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<sup>2</sup> See Exhibit "D" to my enclosed September 14, 1995 ethics complaint.

P 801 449 679  
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DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

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 §7000.3) 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.

EX-  
"B"

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 89, Sadrey Station  
White Plains, New York 10605

By Priority Mail

December 15, 1995

Assembly Judiciary Committee  
L.O.B. Room 831  
Empire State Plaza  
Albany, New York 12248

ATTN: Patricia Gorman, Counsel

Dear Pat:

Time moves faster than I do. Ever since our meeting in Albany on October 24th, I have been meaning to write a note of thanks to you and Joanne Barker, counsel to the Assembly Judiciary Committee, to Anthony Profaci, associate counsel of the Assembly Judiciary Committee, to Joan Byalin, counsel to Chairwoman Weinstein, and to Josh Ehrlich, counsel to the Assembly Election Law Committee, for the two hours time each of you gave us to discuss CJA's recommendations for imperatively-required legislative action.

I did telephone Joan Byalin on October 26th and conveyed our appreciation. I hope it was passed on to Chairwoman Weinstein and to the counsel present at the October 24th meeting.

We trust you have now had sufficient time to review the documents we supplied the Assembly Judiciary Committee and to verify their extraordinary significance. This includes the court papers in our Article 78 proceeding against the New York State Commission on Judicial Conduct<sup>1</sup>--and our related correspondence.

By your review of Point II of our Memorandum of Law<sup>2</sup>--detailed with legislative history and caselaw--there should be no question but that the self-promulgated rule of the Commission (22 NYCRR §7000.3) is, on its face, irreconcilable with the statute defining the Commission's duty to investigate facially meritorious complaints (Judiciary Law, §44.1) and with the constitutional amendments based thereon. For your convenience, copies of the rule and statutory and constitutional provisions are annexed hereto as Exhibits "A-1", "A-2", and "A-3", respectively.

<sup>1</sup> For ease of reference, the court papers in the Article 78 proceeding against the Commission are designated herein by the numbers assigned them by our Inventory of Transmittal.

<sup>2</sup> See Doc. 6, pp. 10-17.

*EXHIBIT "C"*

Moreover, you should now be convinced that the Supreme Court's decision of dismissal, justifying §7000.3, as written,--by an argument not advanced by the Commission--is palpably insupportable.

The definitions section of §7000.1 (Exhibit "A-1"), which the Court itself quotes in its decision<sup>3</sup>, belies its claim that "initial review and inquiry" is subsumed within "investigation". Such definitions section expressly distinguishes "initial review and inquiry" from "investigation"<sup>4</sup>.

Even more importantly, the Court's aforesaid sub sponte argument, which it pretends to be the Commission's "correct[] interpretation[]" of the statute and constitution, does NOTHING to reconcile §7000.3, as written, with Judiciary Law, §44.1 (Exhibit "A-2"). This is because §7000.3 (Exhibit "A-1") uses the discretionary "may" language in relation to both "initial review and inquiry" and "investigation"--THUS MANDATING NEITHER. Additionally, as written, §7000.3 fixes NO objective standard by which the Commission is required to do anything with a complaint--be it "review and inquiry" or "investigation". This contrasts irreconcilably with Judiciary Law §44.1, which uses the mandatory "shall" for investigation of complaints not determined by the Commission to facially lack merit.

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<sup>3</sup> The Supreme Court decision does not quote the entire definition of "investigation", set forth in §7000.1(j). Omitted from the decision is the specification of what "investigation" includes. The omitted text reads as follows:

"An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members."

<sup>4</sup> Accordingly, the "initial review and inquiry" is conducted by the "commission staff" and is

"intended to aid the commission in determining whether or not to authorize an investigation." (emphases added).

As to the issue of the constitutionality of §7000.3, as applied, your review of the papers should have persuaded you that such important issue was squarely before the Court<sup>5</sup>--contrary to the Supreme Court's bold representation that it was not.

Finally, we expect you have also confirmed that the threshold issues which the Supreme Court was required to adjudicate before it could grant the Commission's dismissal motion were entirely ignored by it. Those threshold issues--fully developed in the record before the Supreme Court--included the uncontroverted default of the Commission on Judicial Conduct<sup>6</sup> and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law<sup>7</sup>. This is over and beyond the conflict of interest issues affecting the Attorney General's representation of the Commission, which we made the subject of repeated objection to the Court<sup>8</sup>.

Consequently, based on the record before you, you should have now confirmed that the Supreme Court's decision of dismissal is a knowing and deliberate fraud upon the public--and is known to be such by the Commission on Judicial Conduct, the State Attorney General, and the State Ethics Commission, who have each received explicit and extensive communications from us on that subject (Exhibits "C", "D", and "E").

Since none of these public agencies and offices have taken steps to vacate for fraud the Supreme Court's decision of dismissal--which was pointed out as their duty to do<sup>9</sup>--it now falls to the Assembly Judiciary to take action to protect the public. As a first priority, the Assembly Judiciary Committee must require the Commission on Judicial Conduct to address the specific issues raised herein as to the false and fraudulent nature of the Supreme Court's decision.

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<sup>5</sup> See Doc. 1: Notice of Petition: (a)(b)(c); Article 78 Petition: ¶¶ NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTY-THIRD, "WHEREFORE" clause: (a), (b), (c).

<sup>6</sup> See Doc. 2, Aff. of DLS in Support of Default Judgment; Doc. 5, ¶¶2-3, 7; Doc. 6, pp. 1-2.

<sup>7</sup> See Doc. 6, pp. 2-9.

<sup>8</sup> See Doc. 2: DLS Aff. in Support of Default Judgment, ¶¶9, 14, EX. "B" thereto, p. 3; Doc. 5, ¶¶10, 30-4

<sup>9</sup> See Exhibit "D", p. 6; Exhibit "E".