CENTER for JUDICIAL ACCOUNTABILITY, INC.

Box 69, Gedney Station
White Plains, New York 10605-0069

Tel: (914) 421-1200
Fax: (914) 684-6554

E-Mail: judgewatch@aol.com
Web site: http://www.judgewatch.org

TO: Governor George Pataki
New York State Commission on Judicial Conduct
New York State Attorney General
New York State Assembly Judiciary Committee
New York State Senate Judiciary Committee
New York State Ethics Commission
Manhattan District Attorney Robert Morganthau
U.S. Attorney for the Southern District of New York
Mayor Rudolph Giuliani
Manhattan Borough President Ruth Messinger
Association of the Bar of the City of New York
New York State Bar Association
"Committee to Preserve the Independence of the Judiciary"
c/o New York County Lawyers' Association
Fund for Modern Courts

FROM: Elena Ruth Sassower, CJA Coordinator

RE: File of Article 78 proceeding,
Doris L. Sassower v. Commission on Judicial Conduct
N.Y. Co. Clerk # 95-109141

DATE: May 5, 1997

On May 14, 1997, the Special Committee on Judicial Conduct of the Association of the Bar of the City of New York will be holding a public hearing, specifically inquiring into the New York State Commission on Judicial Conduct.

CJA will be presenting testimony that the Commission on Judicial Conduct is corrupt: that it unlawfully dismisses, *without* investigation, facially-meritorious, documented complaints of judicial misconduct -- including complaints of criminal conduct by high-ranking, politically-connected judges -- and that it is the beneficiary of a fraudulent state court decision, without which it could *not* have survived our Article 78 challenge, *Sassower v. Commission*, in which it was sued for corruption.

These assertions are not new to any of you -- public officials and agencies responsible for the public welfare or with specific oversight over the Commission on Judicial Conduct and eminent bar associations and professional and civic groups rhetorically supportive of the Commission. During the past two years, CJA has repeatedly and very publicly articulated them. This includes in a Letter to the Editor, "*Commission Abandons Investigative Mandate*", in the August 14, 1995 New York Law Journal, and in a $1,650 paid ad, "*A Call for Concerted Action*"in the November 20, 1996 Law Journal (Exhibits "A-1" and "A-2").

Ex "A"

The proof of these assertions -- that the Commission is corrupt and that it has corrupted the judicial process -- is *readily-verifiable* from the file of the Article 78 proceeding. This fact was publicly-proclaimed in both those published pieces, each of which gave the New York County Clerk index number of the file.

However, you did not have to rely on easy-access to the County Clerk file since CJA duplicated its own litigation file and provided each of you with a copy. Each, except the New York State Attorney General, who having represented the Commission in the Article 78 proceeding, has his own litigation file -- which, obviously, the Commission has available to it.

Other than the New York State Senate Judiciary Committee, which unceremoniously returned to us the copy of the file we gave it, the copies we provided each of you are, presumably, still in your possession, together with our correspondence relative thereto -- some of which is quite, quite voluminous. This correspondence included an analysis, buttressed by file references, showing that the court decision dismissing the Article 78 proceeding is a fraud, being legally insupportable and factually fabricated. A copy of that analysis, as set forth at pages 1-3 of CJA's December 15, 1995 letter to the New York State Assembly Judiciary Committee, is annexed (Exhibit "B").

Your standard response to that analysis and the transmitted file has been no response and complete inaction. As highlighted by our November 20, 1996 Law Journal ad, we have yet to "find anyone in a leadership position willing to even comment on the Commission file".

Since such file establishes that the Commission is corrupt and has corrupted the judicial process, your failure to take corrective steps, when specifically called upon to do so, constitutes knowing complicity in corruption and gross violation of your professional and ethical responsibilities to the public.

By this letter, we call upon you to defend -- if you can -- the record of your wilful inaction, as established by our correspondence with you, which we intend to fully present at the hearing. We specifically invite your testimony about CJA's challenge to the Commission's self-promulgated rule, 22 NYCRR §7000.3, *as written and as applied*, and your rebuttal to our analysis that the court's dismissal decision is a fraud.

Needless to say, you have an on-going professional and ethical responsibility to take steps to protect the public from the extraordinary governmental corruption and cover-up that is revealed by the file and correspondence.

Elena Ruth Sassower

Elena Ruth Sassower, CJA Coordinator

NEW YORK LAW JOURNAL

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 investigaiton, 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-connected. 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 commisison, with no finding that the complaints were facially without merit.

In "round one" of the litigaiton, 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 "A-1"

New York Law Journal

Wednesday, November 20, 1996

A CALL FOR CONCERTED ACTION

Last Saturday,* The New York Times *printed our Letter to the Editor,"On Choosing Judges, Pataki Creates Problems", about the Governor's manipulation of appointive judgeships. Meanwhile, the* New York Law Journal *has failed to print the following Letter to the Editor, which we submitted last month, and ignored our repeated inquiries. We think you should see it.

In his candid Perspective piece "*The Importance of Being Critical*" (10/17/96), Richard Kuh expresses concern that the Committee to Preserve the Independence of the Judiciary, in its rush to defend judges from personal attack, will ignore legitimate criticism against judges. He therefore suggests that the now seven-month old Committee be countered by formation of "an up-front, outspoken, courageous group...to publicly attack bench shortcomings".

In fact, such "up-front, outspoken, courageous group" already exists and has not only challenged "bench shortcomings", but the rhetorical posturing of the Committee to Preserve the Independence of the Judiciary.

The group is the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit organization of lawyers and laypeople. For the past seven years, CJA has documented the dysfunction and politicization of judicial selection and discipline processes on local, state, and national levels and has been on the front-lines in taking action to protect the public. Two years ago, we ran an ad on the Op-Ed page of *The New York Times* entitled, "*Where Do You Go When Judges Break the Law?*", about our in-the-trenches formative background in battling political manipulation of judicial elections in this state and about judicial retaliation against a judicial whistleblower. On November 1, 1994, we re-ran that ad in this newspaper.

CJA's work has received growing media attention: in an A&E cable television Investigative Report on the American justice system, in *Reader's Digest* and, most recently, in an article entitled "*Playing Politics with Justice*" in the November issue of *Penthouse*.

Both this year and last, the *New York Law Journal* has printed Letters to the Editor from us. In "*No Justification for Process's Secrecy*" (1/24/96), we recounted our testimony at the so-called "public" hearing of Mayor Giuliani's Advisory Committee on the Judiciary, protesting the public's exclusion from the Mayor's behind-closed-doors judicial selection process and demonstrating that such secrecy makes "merit selection" impossible. In "*Commission Abandons Investigative Mandate*" (8/14/95), we described our ground-breaking litigation against the New York State Commission on Judicial Conduct, challenging the constitutionality of its self-promulgated rule (22 NYCRR §7000.3) by which it has unlawfully converted its statutory duty to investigate facially-meritorious complaints (Judiciary Law §44.1) into a discretionary option, unbounded by any standard. Our published Letter invited the legal community to review the New York County Clerk's file (#95-109141) to verify the evidentiary proof therein that the Commission protects politically-connected, powerful judges from disciplinary investigation and that it survived our legal challenge *only* because of a judge's fraudulent dismissal decision.

Back in February of this year, at a time when bar leaders were hemming and hawing on the sidelines as Mayor Giuliani and Governor Pataki were calling for the removal of Judge Lorin Duckman based on their selected readings of transcript excerpts from hearings at which Judge Duckman lowered bail for Benito Oliver, CJA had already obtained the full transcript. We wasted no time in publicly rising to the defense of Judge Duckman. We wrote to the Mayor, the Governor, and the Brooklyn District Attorney, charging them with inciting the public by deliberately misrepresenting and distorting the transcript. Indeed, because of Mayor Giuliani's professed concern in protecting New Yorkers from "unfit judges", we delivered to him a copy of the file of our case against the Commission on Judicial Conduct so that he could take action against it for endangering the public by its demonstrable cover-up of judicial misconduct and corruption.

Ex "A-2"

It was against this dazzling record of *pro bono* civic activism by CJA, protecting the public from self-serving politicians, no less than from unfit judges, that bar leaders and law schools formed the Committee to Preserve the Independence of the Judiciary in early March. Prior to its organizational meeting at the New York County Lawyers Association, CJA requested the opportunity to be present. We made known to the Committee's organizers our public defense of Judge Duckman, as well as the significance of our case against the Commission on Judicial Conduct -- the file of which we had provided six weeks earlier to the City Bar. Nevertheless, when we arrived for the Committee meeting, with yet another copy of the file of our case against the Commission, the room was *literally* locked with a key to bar our entry. Meantime, Judge Duckman's attorney was ushered in to address the assembled bar leaders and law school deans and was present while the Committee reviewed its draft Statement. This Statement, of course, included rhetorical support for "the independent functioning of the constitutionally created New York State Commission on Judicial Conduct".

Since then, the Committee to Preserve the Independence of the Judiciary has continued to shut us out and ignore the file evidence in its possession that the Commission is "not merely dysfunctional, but corrupt". Likewise, the politicians to whom we have given copies of the court file, including Governor Pataki, have ignored it. Indeed, we cannot find anyone in a leadership position willing even to comment on the Commission file.

Such conduct by bar leaders, law school deans, and public officials only further reinforces the conclusion that if the real and pressing issues of judicial independence and accountability are to be addressed, including protection for judicial "whistleblowers", it will require the participation of those outside the circles of power in the legal establishment.

CJA invites lawyers who care about the integrity of the judicial process -- and the quality of judges around which the process pivots -- to join us for *concerted action*. Requests for anonymity are respected.

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If you share CJA's view that our reply to Mr. Kuh's Perspective piece is an important one and deserved to be seen by the legal community, help defray the cost of this ad. It cost us $1,648.36. All donations are tax-deductible. Better still, join CJA as a member. Your participation, up-front or behind-the-scenes, will make change happen.

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554
E-Mail: probono@delphi.com

Box 69, Gedney 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

ATT: 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[1]--and our related correspondence.

By your review of Point II of our Memorandum of Law[2]--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.

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[1] 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.

[2] See Doc. 6, pp. 10-17.

Ex "B"

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[3], belies its claim that "initial review and inquiry" is subsumed within "investigation". Such definitions section expressly distinguishes "initial review and inquiry" from "investigation"[4].

Even more importantly, the Court's aforesaid sua sponte argument, which it pretends to be the Commission's "correct[] interpret[ation]" 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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[3] 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."

[4] 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[5]--contrary to the Supreme Court's bald 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[6] and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law[7]. 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[8].

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[9]--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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5 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).

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

7 See Doc. 6, pp. 2-9.

8 See Doc. 2: DLS Aff. in Support of Default Judgment, ¶¶9, 14, Ex. "B" thereto, p. 3; Doc. 5, ¶¶10, 50-4

9 See Exhibit "D", p. 6; Exhibit "E".