

289 A.D.2d 119, 734 N.Y.S.2d 68, 2001 N.Y. Slip Op. 10204
(Cite as: 289 A.D.2d 119, 734 N.Y.S.2d 68)

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Supreme Court, Appellate Division, First Department, New York.
Elena Ruth SASSOWER, etc., Petitioner–Appellant,
v.

COMMISSION ON JUDICIAL CONDUCT OF
THE STATE OF NEW YORK, Respondent–
Respondent.

Dec. 18, 2001.

Petitioner brought Article 78 proceeding, seeking recusal of judge and order that state Commission on Judicial Conduct investigate charges of judicial misconduct. The Supreme Court, New York County, William Wetzel, J., dismissed petition and appeal was taken. The Supreme Court, Appellate Division, held that: (1) as decision to investigate was within discretion of Commission, mandamus relief was unavailable; (2) petitioner lacked standing to sue; and (3) imposition of filing injunction against petitioner was warranted.

Affirmed.

West Headnotes

[1] Mandamus 250 ⚡73(1)

250 Mandamus

250II Subjects and Purposes of Relief

250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities

250k73 Specific Acts

250k73(1) k. In general. Most Cited Cases

Petitioner could not bring Article 78 proceeding to compel state Commission on Judicial Conduct to investigate claim of judicial misconduct, as investigation was matter within discretion of Commission not amenable to mandamus. McKinney's CPLR 7800 et seq.

[2] Judges 227 ⚡11(1)

227 Judges

227I Appointment, Qualification, and Tenure

227k11 Removal or Discipline

227k11(1) k. In general; constitutional and statutory provisions. Most Cited Cases

Petitioner lacked standing to sue state Commission on Judicial Conduct for failure to investigate claim that judge engaged in judicial misconduct, through failure to show she personally suffered actual or threatened injury as result of putatively illegal conduct.

[3] Injunction 212 ⚡1170

212 Injunction

212IV Particular Subjects of Relief

212IV(A) Courts and Actions in General

212k1168 Abusive, Vexatious, or Harassing Litigation

212k1170 k. Particular cases. Most Cited Cases (Formerly 212k26(5))

Imposition of filing injunction against petitioner, suing state Commission on Judicial Conduct for failure to investigate claims of judicial misconduct, was warranted by petitioner's vitriolic ad hominem attacks on participants in present case, her voluminous correspondence, motion papers, and recusal motions in present litigation, and her frivolous requests for criminal sanctions.

*69 Petitioner–Appellant, Pro Se.

Carol Fischer, for Respondent–Respondent.

NARDELLI, J.P., MAZZARELLI, ANDRIAS, ELLERIN and RUBIN, JJ.

[1] Order and judgment (one paper), Supreme Court, New York County (William Wetzel, J.), entered February 18, 2000, which, in a proceeding pursuant to CPLR article 78, *inter alia*, denied petitioner's recusal motion and her application to compel respondent Commission to investigate her complaint

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of judicial misconduct and granted the motion by respondent Commission to dismiss the petition, unanimously affirmed, without costs.

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[2] The petition to compel respondent's investigation of a complaint was properly dismissed since respondent's determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to mandamus (Mantell v. New York State Comm. on Judicial Conduct, 277 A.D.2d 96, 715 N.Y.S.2d 316, lv. denied 96 N.Y.2d 706, 725 N.Y.S.2d 278, 748 N.E.2d 1074). Moreover, inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct, she lacks standing to sue the Commission (see, Valley Forge Christian Coll. v. Am. United for Separation of Church and State, 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700; Soc'y. of the Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761, 772, 570 N.Y.S.2d 778, 573 N.E.2d 1034; Matter of Dairylea Coop. v. Walkley, 38 N.Y.2d 6, 9, 377 N.Y.S.2d 451, 339 N.E.2d 865).

The fact that the court ultimately ruled against petitioner has no relevance to the merits of petitioner's application for his recusal (see, Ocasio v. Fashion Inst. of Technology, 86 F.Supp.2d 371, 374, aff'd, 9 Fed.Appx. 66, 2001 WL 514318, 2001 U.S. App LEXIS 9418), and the court's denial of the recusal application constituted a proper exercise of its discretion (see, People v. Moreno, 70 N.Y.2d 403, 405, 521 N.Y.S.2d 663, 516 N.E.2d 200).

[3] The imposition of a filing injunction against both petitioner and the Center for Judicial Accountability was justified given petitioner's vitriolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions (see, Miller v. Lanzisera, 273 A.D.2d 866, 869, 709 N.Y.S.2d 286, appeal dismissed 95 N.Y.2d 887, 715 N.Y.S.2d 378, 738 N.E.2d 782).

*70 We have considered petitioner's remaining contentions and find them unavailing.

N.Y.A.D. 1 Dept., 2001.
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