

GEORGE P. ALESSIO

Attorney at Law

(315) 424-0300

615 State Tower Bldg.

Syracuse, N.Y. 13202

Fax (315) 424-0680

November 11, 1993

Mr. Gerald Stern, Esq., Administrator
State of New York Commission on Judicial Conduct
801 Second Avenue, 17th floor
New York, NY 10017

212-949-8860

Re: Complaint Regarding Judicial Candidate Andrew N. Piraino
for Salina Town Justice, County of Onondaga, NY

Dear Mr. Stern:

Pursuant to our telephone conversation of November 3, Article 2-A of the Judiciary Law and New York Constitutional Article 6, Section 22, I respectfully request an investigation be conducted into the candidacy and subsequent fitness of the above named individual for Justice of the Town of Salina.

The Onondaga County District Attorney's office has indicated its willingness to cooperate in the investigation. The point of contact is:

Chief Assistant District Attorney Jordan Fiske
Office of the District Attorney
421 Montgomery Street
Syracuse, NY 13202
315-435-2470

Mr. Fiske was in charge of the investigation by the Grand Jury of the May 6 Salina Democratic Committee "Caucus."

I have included all relevant materials in my possession to assist the Commission in the investigation. I have identified the materials by exhibit number for ease of identification.

Exhibit A, the Report of the Onondaga County Grand Jury investigating the Salina Democratic "Caucus" of May 6, 1993, is of paramount importance since the Grand Jury's findings provide the basis for the complaint. It is alleged that the conduct of the Salina Democratic Chairwoman, who was ultimately charged with misdemeanor election fraud, facilitated the nomination of candidates she solely supported, including Mr. Piraino. Counseling her throughout the "Caucus" was her attorney, Mr. Aaron Zimmerman, the law associate of Mr. Piraino. A thorough review of the evidence should reveal judicial candidate Piraino's complicity in a conspiracy to disenfranchise a portion of the electorate, designed to thwart competition and better ensure his election.

Close attention should be given to the testimony of individuals present at the "Caucus," through the examination of actual grand jury testimony and affidavits filed during the proceedings brought to challenge the nominating petition. Of

Ex A

Mr. Gerald Stern, Esq.
Letter of November 11, 1993
Page Two

particular note are the challenges to the nominating petition made by two individuals actually nominated at the "Caucus" for their respective offices. They expressed "outrage and "disgust" as to how the "Caucus" was conducted. (Exhibit B, at page 68).

Furthermore, approximately 25 people entered the "Caucus" about 20 minutes before a vote was called for by the Chairwoman. They were led into the room by James Wallace, a Salina Town Councilman, and the husband of the Chairwoman. Having been personally present, I thought this highly unusual since most presentations were completed, including the candidates for Town Justice. These individuals participated in the selection process despite doubts whether they were validly registered Salina Democrats. (Exhibit A, paragraph n., at page 3.) Other attendees at the "Caucus" identified some of these individuals as relatives of Mr. Piraino.

It would appear inconceivable that the individuals described above, arriving minutes before a vote was to be held, were present without the knowledge of the Chairwoman, Mr. Zimmerman, or Mr. Piraino. Furthermore, the circumstances indicate that they were schooled on how and for whom to cast a vote. Indeed, I personally recall how several individuals in the "group" had small slips of paper in their hand, with something written upon the paper. The vote for Town Justice took place outside the building, with the "group" huddled around the Chairwoman and Mr. Zimmerman, amidst several Sheriff deputies attempting to restore order and forcing people not in the group into their cars. (Exhibit B, at pages 137-138).

I have been assured that a "list" of the above described "group" is available from the District Attorney or the law firm that handled the petitioners' claim to challenge the filing of the nominating certificate with the Board of Elections. Attorneys Jan Kublick and Elizabeth McGinty are contact points for the petitioners' claim. The address of the law firm is:

Davoli, McMahon, & Kublick, P.C.
500 South Salina Street
Syracuse, NY 13202
315-424-1105

I have a reasonable concern, based upon the entirety of the circumstances and my training as a prosecutor, that if the above described individuals were to be contacted by investigators, they would be "coached" on how to respond. However, I must be frank and say that I have nothing other than my suspicion that this could happen.

Mr. Gerald Stern, Esq.
Letter of November 11, 1993
Page Three

The "conspiracy" was effected by Mr. Piraino's avoidance of service, effectively frustrating judicial review of the nominating procedures at the "Caucus." Exhibit A, at paragraph r., page 5, found in pertinent part, that "... the intentional action of one of the respondents might have made service difficult or impossible in that three day curtain of opportunity..." (Emphasis added). Mr. Piraino asserted that "... (he was) proceeding with (his) normal routine as a practicing lawyer, appearing in open court in (his) usual professional manner, and attending high profile public functions that were an integral part of (his) candidacy for public office in the Town of Salina." (Exhibit B, at paragraph 26, page 200). As indicated above, this contention was rejected by the Grand Jury.

Exhibit B, at pages 175-183, indicates that all the other necessary parties to the action were served with relative ease, apparently on the first attempt, all within the time prescribed. Your attention is invited to the affidavit of the process server, found in Exhibit B, at pages 165-168. In most pertinent part, the process server's affidavit indicates that on the last day that service could be effected pursuant to the Court's then-existing order, he found the law offices of Mr. Piraino and Mr. Zimmerman closed. My investigative sense dictates that a review of Mr. Piraino's testimony before the Grand Jury will reveal his attempt to distance himself from any association with Mr. Zimmerman.

For your information, I have discussed the feasibility of filing a complaint with the Fifth Judicial District Grievance Committee. A Salina Democratic Committee person has also requested the Grievance Committee's review of the conduct of Mr. Piraino and his associate, Mr. Aaron Zimmerman, along with the conduct of another attorney, Ms. Anne M. Wood. I have made contact with Mr. Paul Ginnelly, Esq., attorney-in-charge of the above office. I have not yet decided what action to take at this time, considering that if an investigation is conducted by the Commission, perhaps many of the findings could be presented to the Grievance Committee to serve as a basis for a complaint.

Mr. Piraino, a Salina Republican Committee member, received the Republican nomination in that Party's Primary, winning by 29 votes. As such, Mr. Piraino won the general election, running on both major party lines, by a plurality of over 900 votes. I ran solely on the Conservative line.

While I respectfully emphasize Mr. Piraino's conduct in the "Caucus" of May 6 as the most important part of the complaint,

Mr. Gerald Stern, Esq.
Letter of November 11, 1993
Page Four

exhibits C - H, dealing with the literature disseminated by all the candidates for Town Justice, are also included for review by the Committee.

It appears that even a preliminary review of the case law regarding the function of the Commission and its findings in particular situations supports an investigation of Mr. Piraino's fitness to serve as a judge. Furthermore, it is respectfully requested that the Commission act with as much speed as possible and prevent the individual from assuming office, considering how judicial review of the totality of the circumstances surrounding Mr. Piraino's assuming office has been effectively thwarted.

Indeed, there could be no question that if the allegations are supported by the evidence, such demeanor is "inconsistent with proper judicial demeanor and subjects the judiciary as a whole to disrespect and impairs the usefulness of an individual judge to carry out his or her constitutionally mandated function." In Re Steinberg v. State Commission on Judicial Conduct, (Ct. App), 431 N.Y.S.2d 704, at 709 (1980). Many have expressed outrage as to how such conduct cannot be corrected by our legal institutions. To allow the above described events to completely surpass legal scrutiny would create a dangerous precedent in the selection of judicial candidates and other public officials.

I, along with my fellow Salina citizenry, only seek justice and a fair review of the events that we allege were violative of all that is considered decent and fair play. In our electoral process, we cannot allow those to unduly profit from the selfish motives of a few.

Indeed, as the Grand Jury Investigation found, (Exhibit A, at paragraph 3, page 6):

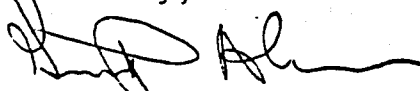
"That under the present state of the law, the situation presented in the instant case could be repeated in a caucus system where a small group of people could use subterfuge to play the system to their own advantage without regard to fair play and common decency." (Emphasis added).

The above passage from the Grand Jury Report presents its most troublesome finding: That the framework is in place for another "Banana Republic Coup," (Exhibit A, paragraph 4, at page 6), unless corrective measures are taken by the Legislature.

Mr. Gerald Stern, Esq.
Letter November 11, 1993
Page Five

Your kind assistance in this matter is genuinely appreciated.
I stand prepared to submit further material or assist the
Commission in any fashion you deem appropriate.

Sincerely,



George P. Alessio
Salina Town Justice

mtb

pc, ltr Jordan Fiske, Esq.
Mr. Paul Ginnelly, Esq.
Jan Kublick, Esq.

Enclosures

Ex B