

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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By Fax and Mail:
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January 24, 1996

Richard Rifkin, Executive Director
New York State Ethics Commission
39 Columbia Street
Albany, New York 12207-2717

Dear Mr. Rifkin:

This letter protests the fact that you have ignored our immediate telephone response to your October 3, 1995 letter, mailed in an envelope postmarked October 6th and received by us on October 10th. As your records should reflect, I left repeated telephone messages for you. These include messages on October 10th, 11th, and 13th--when, each time, I was told you were "at a meeting".

I did speak, at least twice, I believe, with Suzanne Dugan, the Associate Counsel who had been involved in the handling of our March 22, 1995 ethics complaint against the Commission on Judicial Conduct. I particularized for Ms. Dugan the numerous specific respects in which your October 3, 1995 letter dodged, misrepresented, and omitted the issues presented by our September 14, 1995 letter--to which your October 3, 1995 letter purported to respond. I also emphasized our desire to meet with you in person and, if convenient, to do so on the October 24th date when we would be up in Albany for our scheduled meeting with the Assembly Judiciary Committee.

Although Ms. Dugan assured me that she would get a response from you on the issues I discussed with her concerning your October 3, 1995 letter and our meeting request, we never heard back from her or from you. Therefore, I now take this opportunity to highlight, in written form, my telephone remarks to Ms. Dugan relative to your October 3, 1995 letter.

Before getting to the issue of your recusal, I wish to point out that you continue to dodge the critical issue of intervention by the Ethics Commission in the Sassower v. Commission Article 78 proceeding. As pointed out by our September 14, 1995 letter (at p. 5), there is "no statement that the Ethics Commission determined that it would not intervene" in the Article 78 proceeding. Your October 3, 1995 letter does not deny this.

Yet, you refuse to answer the question we posed as to:

"when--if ever--the Ethics Commission members determined that the transcending public issues at stake in the Article 78 proceeding Sassower v. Commission did not require the Ethics Commission's intervention" (9/14/95 ltr, p. 6).

Likewise, your October 3, 1995 letter makes no statement as to "intervention by the Ethics Commission at this juncture"--a request explicitly made in our September 14, 1995 letter (at p. 6, emphasis in the original).

As discussed at pages 5-6 of our September 14 1995 letter, the only statement relating to intervention by the Ethics Commission in Sassower v. Commission is contained in Assistant Attorney General Oliver Williams' May 22, 1995 unusual letter to Justice Cahn¹, purporting to be "on behalf of the New York State Ethics Commission".

Yet you refuse to provide any statement that the Ethics Commissioners have, in fact, passed on the intervention issue--which you fail even to identify in your October 3, 1995 letter. Instead, you baldly state:

"With respect to the nature of the decision making process within the Commission and our contacts, if any, with the Attorney General's office, this is confidential and protected by statute and/or privilege." (at p. 2)

We assert our right to know what procedures are employed by the Ethics Commission when it is served with a formal Notice of Right to Seek Intervention in legal proceedings and in which request is made for its intervention on behalf of the public. If the procedures are anything like those relating to ethics complaints², the Ethics Commissioners are "in the dark" about

1 See Exhibit "F" to our September 14, 1995 letter.

2 According to a May 10, 1994 letter from the Ethics Commission's Director of Communications, Walter Ayres (Exhibit "A"):

"the Commission has delegated to the Executive Director and the staff the authority to dismiss complaints without bringing them to the attention of the Commission members"

Sassower v. Commission, all decisions, including those as to intervention, having been made by you without consultation of the Ethics Commissioners.

We have been unable to confirm what powers the Ethics Commission has delegated to the Executive Director. Although Executive Law §94.9(a) (Exhibit "B") requires any delegation to be "in writing" with the specific powers to be delegated...enumerated", we have been told that:

"the resolution delegating this authority is not one of the documents that is public under the law [see Executive Law §94(17)(a)]" (Exhibit "A")

We strenuously object to such restrictive view of the public's right of access--serving no legitimate purpose but to cloak the Ethics Commission's dysfunction and perversion of its mandate, which, ironically, is to restore faith in government. We request proof that you have authority to act for the Ethics Commission in dismissing ethics complaints and in making litigation decisions bearing adversely upon the Commission's affirmative duty to protect the public--as you have done in dismissing our March 22, 1995 complaint, expanded by our September 14, 1995 letter, and in ignoring the intervention issue presented by our April 10, 1995 Notice of Intervention and by our September 14, 1995 letter. From your conspicuous failure to make a statement on the intervention issue, it seems fair to infer that you lack authority to make such determination.

We direct your attention to pertinent pages of the Committee on Open Government's December 1994 "Report to the Governor and Legislature" relative to the overexpansive interpretation of the confidentiality provisions--copies of which we annex hereto as Exhibit "C". As reflected therein, such pages were faxed to Ms. Dugan on October 13, 1995, following a discussion in which I requested to know what steps, if any, have been taken by the Ethics Commission in response to the Committee on Open Government's aforesaid Report. We, hereby, reiterate such request.

We further request to know whether the Ethics Commissioners have been made aware of the question we have raised as to the appearance of impropriety in your involvement herein, resulting from your work in the Attorney General's office. Plainly to the extent that there is a written delegation of authority permitting you to act "single-handedly", it is predicated on your being untainted by conflict-of-interest.

On that threshold issue, your October 3, 1995 letter disingenuously asserts that you are not disqualified because you left the Attorney General's office before we commenced the Sassower v. Commission Article 78 proceeding. You, thereby, disregard the pertinent fact, identified by our September 14, 1995 letter, that you occupied high-level positions in the Attorney General's office

"during the critical period in which it engaged in the litigation misconduct in Sassower v. Mangano, et al., on behalf of the judges of the Appellate Division, Second Department." (p. 6).

As may be seen from the face of our March 22, 1995 ethics complaint against the Commission on Judicial Conduct (p. 2, last paragraph) and as established by the voluminous supporting documentation transmitted therewith, the Justices of the Appellate Division, Second Department were aided and abetted in their judicial misconduct by the Attorney General's office--which permitted the very judges who were the subject of the Sassower v. Mangano, et al. Article 78 challenge to decide the proceeding themselves. Such misconduct was the subject of our September 19, 1994 complaint to the Commission on Judicial Conduct, which--without reasons--it summarily dismissed³.

That you are conscious of the Attorney General's vulnerability for its misconduct in the Sassower v. Mangano, et al. Article 78 proceeding, encompassed by our March 22, 1995 ethics complaint and documented by the file of that proceeding in your possession, may be further inferred from the manner in which you seek to dispose of that complaint. Thus, you pretend that dismissal of the Article 78 petition is tantamount to there being "no support for the allegations in [our March 22, 1995] complaint to the Ethics Commission"--which is a non-sequitur. The Article 78 petition was dismissed for purported failure to state a cause of action--which, as you well know, is based on sufficiency of the pleadings--not proof. Moreover, on the issue of proof, the Attorney General disobeyed its obligations of production pursuant to CPLR §§7804(e), 409, 214(c) so as to withhold the substantiating documentation of the Commission on Judicial Conduct's protectionism of powerful, politically-connected

³ Supporting the September 19, 1994 complaint was a complete set of the papers that were before the Appellate Division, Second Department in the Article 78 proceeding Sassower v. Mangano, et al., when it refused to recuse itself. A copy of that substantiating documentation--from a period in which you were at the Attorney General's office--was transmitted to the Ethics Commission in support of our March 22, 1995 complaint.

judges. This was complained of by us at page 3 of our September 14, 1995 letter--with record references contained in footnote 6.

As to your false claim that Justice Cahn's decision in Sassower v. Commission "has decided the matters...presented to the [Ethics] Commission in [the March 22, 1995] complaint", this is not only not the case, as hereinabove set forth, but pages 3-4 of our September 14, 1995 letter were quite specific on the subject--concluding with the following sentence:

"Thus, by this letter, we give you notice that in view of Justice Cahn's pretense that the prima facie evidence of the Commission on Judicial Conduct's protectionism, reflected by its summary disposition of our facially-meritorious complaints, was 'not before the court', the Ethics Commission may now proceed to investigate such evidence, encompassed as it was by our March 22, 1995 ethics complaint..." (at p. 4)

Examination of our September 14, 1995 letter shows that your October 3, 1995 letter wholly ignores our particularization of the fraudulent nature of Justice Cahn's decision and the litigation misconduct of the Attorney General--readily verifiable from the file in Sassower v. Commission transmitted therewith.

As you know, neither the Attorney General nor the Commission on Judicial Conduct--both of whom were provided copies of our September 14, 1995 letter, as well as of our December 15, 1995 letter to the Assembly Judiciary Committee⁴--have denied that Justice Cahn's decision in Sassower v. Commission is legally insupportable and factually fabricated. Nor have they denied their litigation misconduct, as particularized in our September 14, 1995 letter.

As to that litigation misconduct, you take the extraordinary position that you will not "second guess" the Attorney General for zealous representation of a client. Conspicuously, the only "client" of the Attorney General to whom your October 3, 1995 letter refers is the Commission on Judicial Conduct--omitting any mention of the Attorney General's foremost "client"--namely, the People of the State of New York, to whom the Attorney General has a separate and distinct duty. The Attorney General's

⁴ Pages 1-3 of our December 15, 1995 letter to the Assembly Judiciary Committee further particularize the respects in which Justice Cahn's decision is legally insupportable and factually fabricated. They are incorporated herein by reference.

demonstrated violation of "elementary conflict-of-interest" rules, subverting its duty to the People, is particularized at pages 1-2 of our September 14, 1995 letter--which you similarly ignore.

I would further point out that, contrary to your misstatement, we did allege that the Attorney General's conduct was for the "personal benefit or gain of an individual or for some other reason in violation of Public Officers Law §73 and §74". The very first paragraph of our September 14, 1995 letter recites that the Attorney General's litigation misconduct was:

"to protect the Commission from the consequences of our Article 78 challenge because it had no facts and no law on which to otherwise found a defense." (p. 1, emphasis in the original).

Such protectionism by the Attorney General, documented by the Sassower v. Commission file, is plainly violative of Public Officers Law §74.3(d), (f), and (h).

Moreover, in violation of Public Officers Law §74.2, the Attorney General had its own interest in the outcome of Sassower v. Commission. This interest stemmed from the fact that the September 19, 1994 complaint filed with the Commission on Judicial Conduct--annexed to the Article 78 petition as Exhibit "G"--described the complicity of the Attorney General in the Second Department's judicial misconduct in the Sassower v. Mangano, et al. Article 78 proceeding. The Attorney General, therefore, was--and continues to be--motivated to ensure that there is no judicial review of the Commission on Judicial Conduct's summary dismissal of the September 19, 1994 complaint, which was squarely before Justice Cahn in Sassower v. Commission.

The Attorney General's interest in the outcome of Sassower v. Commission is even more substantial inasmuch as its aforementioned complicity has resulted in its being named a party defendant in a federal action under 42 USC §1983, entitled, Sassower v. Mangano, et al., 94 Civ. 4514 (JES), wherein it is being sued for money damages. A copy of the Summons and Complaint is annexed hereto as Exhibit "D". The paragraphs of the Complaint relating to the complicity of the Attorney General for the judicial misconduct in Sassower v. Mangano, et al. include: ¶10, 24, 166-170, 173-178, 182-184, 195-196, 198-209.

Service upon the Attorney General of the Summons and Complaint in the §1983 action was effected on October 17, 1994--nearly six months prior to commencement of the Sassower v. Commission Article 78 proceeding. A copy of the legal back, reflecting service, is annexed hereto as Exhibit "E".

As may be seen from the initial correspondence of the Attorney General's office, dated November 2, 1994 (Exhibit "F"), the Assistant Attorney General who defended the §1983 action was Oliver Williams. Six months later, when we brought Sassower v. Commission, it was Assistant Attorney General Williams who, in violation of fundamental conflict of interest rules, determined the conflicting interests of the Commission and the People of New York in Sassower v. Commission--as more fully alleged at page 1 of our September 14, 1995 letter.

Indeed, it was Mr. Williams whose signature appears on the unusual May 22, 1995 letter submitted by him to the Court in Sassower v. Commission, purportedly "on behalf of the New York State Ethics Commission". As you know, the paragraph of our September 14, 1995 letter (at p. 6) dealing with your disqualification, opened with the following reference to Mr. Williams' letter:

"...we do not know the particulars of the contact between the Ethics Commission and the Attorney General's office reflected by the May 22, 1995 letter...--or the representations made by the Attorney General, upon which, to the public's detriment, the Ethics Commission may have relied in not intervening at that time..."

We believe we have a right to know whether the §1983 action was discussed. Plainly, a favorable adjudication in Sassower v. Commission would have disadvantaged the Attorney General in the §1983 action. Such favorable adjudication would have been inevitable had Justice Cahn respected fundamental adjudicatory standards--a prospect more likely to have occurred had the Ethics Commission notified him of its intervention on behalf of the public interest. Consequently, it was in the Attorney General's interest that the Ethics Commission not intervene. This coincided with your own self-interest since, as hereinabove stated, you were working at the Attorney General's office during the critical period of its misconduct in the Sassower v. Mangano, et al. Article 78 proceeding, encompassed in the §1983 federal action.

January 24, 1996

Incredibly, your October 3, 1995 not only refuses to disclose the particulars of the Ethics Commission's contact with the Attorney General's office leading up to Mr. Williams' peculiar May 22, 1995 letter--but pretends that contact may not have even taken place⁵. Plainly, were such the case, the Ethics Commission should be moving swiftly against the Attorney General's office for having acted, without authorization, "on behalf of the New York State Ethics Commission".

We request that this letter be directed to the Ethics Commissioners for response--since the dishonesty of your October 3, 1995 letter shows that your involvement is not only tainted by the "appearance of impropriety", but manifests the actuality of your bias. So that the Ethics Commissioners may discern this themselves, we ask that they be given "the litigation papers in Sassower v. Commission...together with all documentation provided by us in support of our March 22, 1995 ethics complaint"--a request made previously in our September 14, 1995 letter (at p. 6).

We await response from them.

Yours for a quality judiciary,



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

Enclosures

cc: New York State Assembly Judiciary Committee
New York State Committee on Open Government
New York State Commission on Judicial Conduct
New York State Attorney General

⁵ See, the penultimate paragraph of your October 3, 1995 letter, referring to "our contacts, if any, with the Attorney General's office"