CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR: Z-471-049-573
April 23, 1999

New York State Ethics Commission
39 Columbus Street
Albany, New York 12207-2717

ATT: Walter Ayres, Public Information Officer

Dear Walter:

Enclosed, for PRESENTMENT to the Ethics Commissioners, is a Notice of Right to Seek Intervention in CJA's newly-commenced Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against the Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551).

Assumedly, it will be reviewed, initially, by the Ethics Commission's new Executive Director, Donald P. Berens, Jr.. As discussed, it was Mr. Berens' May 16, 1997 Letter to the Editor in the New York Law Journal which prompted CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4). The ad is Exhibit "B" to the Verified Petition, enclosed with the Notice of Right to Seek Intervention.

Mr. Berens' knowledge of that ad, in the period of his tenure as Deputy Assistant Attorney General to Mr. Vacco, may be presumed not only because it was prominently-placed, cited his Letter to the Editor in its *very first* sentence (on p. 4), and concerned a pattern of *readily-verifiable* litigation misconduct by the Attorney General's office, but because, within a week on its publication, I hand-delivered a copy for him to his Albany office. This is reflected by the enclosed signed acknowledgment.

Concerning CJA's March 26, 1999 letter to the Ethics Commission, which you stated had been presented at the Ethics Commissioner's April 14th meeting -- but as to which you had no response to report, enclosed are:

(a) certified mail/return receipts to the indicated recipients;
(b) hard copies of replacement pages 28-29, faxed to you on April 13th, as well as replacement page 20 (correcting an upper case letter to lower case);
(c) clearer xerox of Exhibit "D": New York Observer 2/8/99 column, "*Republicans Get a Pass from Spitzer -- For Now*"

Ex "D"

Also enclosed, FYI, is the very inspiring "Legislative Declaration", which is Public Officers Law §84 (Article VI).

Thanks again for your help.

Yours for a quality judiciary,

Elena

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures

Z 471 049 573

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to NYS Ethics Commissn	
Street & Number 39 Columbus Street	
Post Office, State, & ZIP Code Albany NY 12207-2717	
Postage	$ 4.35
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	1.25
TOTAL Postage & Fees	$ 6.55
Postmark or Date	APR 23 1999 MARTINE STA NY

PS Form 3800, April 1995

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
NYS Ethics Commissn
ATT: Gail Ayres
39 Columbus Street
Albany, NY 12207-2717

4a. Article Number
Z 471-049-573

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
APR 26 1999

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
Gina Greenfield

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

Your RETURN ADDRESS co... reverse side?

**** U.S. POSTAL SERVICE ****
MARTINE STA. 1060192?8
359350 30.00
IVYS G. # 03
04-23-99 17:38:03

CUSTOMER RECEIPT

102 POST VAL INF	6.55
TOTAL	6.55
CASH T	7.00
CHANGE	.05

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid $3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

— a $3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. —

(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view -- expressed in Matthew Lifflander's otherwise incisive Perspective Column "*Liars Go Free in the Courtroom*" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has *no* legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without *any* probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "*Commission Abandons Investigative Mandate*" and, on November 20, 1996, printed our $1,650 ad, "*A Call for Concerted Action*".

The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by *any* standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or *any* factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing them] from the

Example query for statute: "Public Officers" /5 100
Also, see the WESTLAW Electronic Research Guide following the Explanation.

§ 84. Legislative declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

(Added L.1977, c. 933, § 1.)

Historical Note

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

Derivation. Former section 85, added L.1974, c. 578, § 2; amended L.1974, c. 579, § 1; repealed by L.1977, c. 933, § 1.

Library References

American Digest System

Freedom of information laws in general, see Records ⇐50 et seq.

Encyclopedia

Access to and right to use records, see C.J.S. Records § 35.