

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

By Fax: 212-335-8914
By Certified Mail: Z-124-353-501

January 31, 1996

District Attorney of New York County
Special Prosecutions Bureau
1 Hogan Place, Room 750
New York, New York 10013

ATT: John Pina, Trial Preparation Assistant

Dear Mr. Pina:

This letter protests the inaction and dereliction of the Manhattan District Attorney's office in handling criminal complaints filed by us in relation to the Article 78 proceeding, Doris L. Sassower v. Commission on Judicial Conduct of the State of New York, #95-109141, as well as its complete failure to respond to the Notice of Right to Seek Intervention in that proceeding.

To expedite appropriate response by your superiors, I am summarizing the content of our telephone conversation yesterday. I am also transmitting copies of the relevant documents, which will facilitate your tracking down:

- (1) what--if anything--the Manhattan District Attorney has done with our criminal complaint against the Commission on Judicial Conduct of the State of New York, filed on May 19, 1995;
- (2) whether--if at all--the Manhattan District Attorney made a determination as to his duty to intervene, on behalf of the public, in the Article 78 proceeding, Sassower v. Commission, as requested in our April 10, 1995 Notice of Right to Seek Intervention; and
- (3) what--if anything--the Manhattan District Attorney has done with our criminal complaint, filed on September 19, 1995--requesting him to take steps at this juncture to protect the public from a demonstrably fraudulent and dishonest decision of the Supreme Court dismissing the Sassower v. Commission Article 78 proceeding.

SK "B"

As discussed, it is now over eight months since we filed our initial May 19, 1995 criminal complaint against the Commission on Judicial Conduct with the 7th floor walk-in complaint room--with no response from the D.A.'s office. A copy of that complaint is enclosed herewith as Exhibit "A".

Also enclosed is a copy of our May 26, 1995 letter, addressed to Assistant District Attorney Steven Nachman (Exhibit "B"). It was Mr. Nachman who I spoke with on May 19, 1995 in the walk-in complaint room. Mr. Nachman was also in the walk-in complaint room on May 23, 1995--when I had arrived with approximately twenty members of the Center who, likewise, came to file criminal complaints against the Commission on Judicial Conduct.

You will note from our May 19, 1995 complaint (Exhibit "A") that it refers to our Article 78 proceeding against the Commission on Judicial Conduct. A copy of the Article 78 Petition, together with a Notice of Right to Seek Intervention, was provided to Mr. Nachman on May 19, 1995 in support of the criminal complaint I filed on that day against the Commission on Judicial Conduct.

As discussed, in April 1995, when we commenced the Article 78 proceeding against the Commission on Judicial Conduct--whose principal offices are in Manhattan--we named the Manhattan District Attorney on the Notice of Right to Seek Intervention. A copy of that Notice is annexed hereto as Exhibit "C". The District Attorney's intervention in the Article 78 proceeding was particularly warranted because he has a direct interest in the proper functioning of the Commission on Judicial Conduct. As a matter of course, citizens seeking to file criminal complaints with him against judges are automatically referred to the Commission on Judicial Conduct¹. Such referral is predicated on the D.A.'s belief that the Commission on Judicial Conduct investigates facially-meritorious complaints of judicial misconduct--as expressly required by the statute which created the Commission. The reality, however, is that the Commission on Judicial Conduct is not investigating facially-meritorious complaints--but dismisses them, without investigation, even when, prima facie, they document criminal acts by state court judges or provide reasonable cause to believe criminal acts have occurred. This is plainly shown by the judicial misconduct complaints annexed to the Sassower v. Commission Article 78 Petition--chronicling a pattern and practice by the Commission on Judicial Conduct of protecting high-ranking, politically powerful judges from disciplinary investigation.

¹ The reference guide used by Assistant District Attorneys responsible for "intake" informs them to make such referral.

Following our April 11, 1995 service by priority mail of the Article 78 Petition and Notice of Right to Seek Intervention upon the Manhattan D.A., we heard nothing from the office. As the weeks passed, we telephoned several times and were continually routed around to various units. Yet, we were unable to find out who was handling the intervention issue or to locate anyone who knew anything about the Article 78 papers. Therefore, on May 19, 1995, I hand-delivered a duplicate copy to the Manhattan D.A.'s office. It was while there that I filed our initial criminal complaint against the Commission on Judicial Conduct for:

"knowingly and deliberately protecting high-ranking, politically-connected judges by dismissing, without investigation, complaints of criminal misconduct filed against them..." (Exhibit "A").

It is my recollection that as part of my lengthy conversation with Mr. Nachman on May 19, 1995, I provided him with a copy of the further papers in the Article 78 proceeding--consisting of our May 11, 1995 Order to Show Cause for a preliminary injunction and a default judgment.

Thereafter, we heard nothing from the Manhattan D.A. as to either our May 19, 1995 complaint against the Commission on Judicial Conduct (Exhibit "A") or as to intervention in the Article 78 proceeding on the public's behalf (Exhibit "C"). Indeed, the D.A.'s only communication with us concerned a separate May 24, 1995 motion made by George Sassower, returnable June 12, 1995, to intervene in our Article 78 proceeding against the Commission and to add respondents--including District Attorney Robert Morgenthau.

Because the opposing June 9, 1995 affirmation, signed by Assistant District Attorney Marc Frazier Scholl, was, inter alia, erroneous in its reference as to the relationship between George Sassower and the Article 78 petitioner, Doris L. Sassower and erroneous in its designation of Doris Sassower's address, I telephoned Mr. Scholl--to whom I spoke for about an hour on June 14, 1995². I detailed for him the profound issues involved in the Article 78 proceeding and the D.A.'s duty to intervene on behalf of the otherwise unprotected public. In that connection, I described to Mr. Scholl the litigation misconduct of the Commission on Judicial Conduct and its attorney, the State

² Mr. Scholl changed Doris Sassower's address--but repeated his misrepresentation as to her relationship to George Sassower--in his largely identical June 23, 1995 affirmation opposing Mr. Sassower's resubmitted motion, returnable July 7, 1995, for the same relief.

Attorney General--making intervention by the Manhattan D.A. all the more imperative to protect the public interest.

Because none of the public officers and agencies named on the April 10, 1995 Notice of Right to Seek Intervention intervened on the public's behalf, the Commission on Judicial Conduct and its attorney were emboldened to engage in litigation misconduct. Likewise, Supreme Court Justice Herman Cahn was emboldened to violate fundamental adjudicatory standards and falsify the record so as to dismiss the Article 78 proceeding in his July 13, 1995 decision.

Judge Cahn's fraudulent and dishonest decision of dismissal was highlighted in a Letter to the Editor written by me and published in the August 14, 1995 issue of the New York Law Journal. A copy of that letter, entitled "Commissions Abandons Investigative Mandate", is annexed hereto as Exhibit "D".

The concluding paragraph of our Letter to the Editor read as follows:

"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."

We received no response from the District Attorney to that public challenge, reflected in our August 14, 1995 published letter (Exhibit "D").

Therefore, on September 19, 1995, I visited the D.A.'s offices--with a copy of our Law Journal Letter to the Editor. Because it was the lunch hour and the 7th floor, walk-in complaint room was closed, the officer in the lobby--who recalled me from my May 23, 1995 visit, heading a contingent of approximately twenty members--was good enough to offer to take it up for me. However, before giving the officer the Law Journal letter, I wrote in the page margins a complaint, calling upon the Manhattan District Attorney to take affirmative steps, on behalf of the public, to protect it from Justice Cahn's fraudulent decision and the litigation misconduct of the Commission on Judicial Conduct and Attorney General.

We have received no response to that September 19, 1995 complaint.

As you confirmed, it is normal and customary procedure for the Manhattan District Attorney either to notify complainants of the dismissal of their complaints or to proceed with investigation. Plainly, the District Attorney has not followed such procedure in handling our May 19, 1995 and September 19, 1995 complaints.

We would appreciate more specific information as to the procedures employed by the Manhattan District Attorney's office, including who is responsible for decision-making. We wish to know whose responsibility it has been to evaluate our complaints against the Commission on Judicial Conduct and whose responsibility it has been to pass on the public's right to intervention by the District Attorney in Sassower v. Commission. Obviously, ultimate responsibility rests with District Attorney Morgenthau, and we request to know the extent of his personal involvement.

The Assembly Judiciary Committee, which has oversight over the Commission on Judicial Conduct, has already received from us copies of the court papers in Sassower v. Commission and of our extensive communications with the State Ethics Commission, the Commission on Judicial Conduct, and the State Attorney General. A copy of this letter is, therefore, being provided to it.

It is our position that the public agencies charged with protecting the public, served with Notice of Right to Seek Intervention in Sassower v. Commission (Exhibit "C")--among them the Manhattan District Attorney--cannot permit Justice Cahn's demonstrably corrupt decision in that proceeding to be used as a basis for exonerating the Commission on Judicial Conduct from its criminal complicity in the heinous judicial misconduct--including the criminal acts complained of in the complaints annexed to the Article 78 Petition.

So that District Attorney Morgenthau can properly assess his obligation at this juncture to ensure that Justice Cahn's criminally corrupt decision is vacated for fraud, I enclose as Exhibit "E" pages 1-3 of our December 15, 1995 letter to the Assembly Judiciary Committee³, more fully particularizing the fraudulent and dishonest nature of Justice Cahn's decision.

³ As part thereof, also annexed is Exhibit "A" to that letter consisting of 3 pages: 22 NYCRR §7000.1 et seq., Judiciary Law §44.1, Article VI, §22 of NYS Constitution

In view of the gravity of the issues and the immediate threat to the public represented by the criminal conduct of the public officers involved, we expect this letter will be dealt with on an emergency basis, with the direct personal involvement of District Attorney Morgenthau.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures: As indicated plus Center brochure

cc: Assembly Judiciary Committee
Att: Patricia Gorman, Counsel

Z 124 353 501



Receipt for Certified Mail

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Restricted Delivery Fee	
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Is your RETURN ADDRESS completed on the reverse side?

PS Form 3811, December 1991 U.S. GPO: 1993-352-714 DOMESTIC RETURN RECEIPT	6. Signature (Agent) <i>NY, NY 10013 DISTRICT ATTORNEY SPECIAL PROSECUTIONS BUREAU 11 HOGAN PLACE Rm 250 NY, NY 10013</i>	5. Signature (Addressee) <i>NY, NY 10013 DISTRICT ATTORNEY SPECIAL PROSECUTIONS BUREAU 11 HOGAN PLACE Rm 250 NY, NY 10013</i>	3. Article Addressed to: <i>District Attorney of NY County Special Prosecutions Bureau 11 Hogan Place Rm 250 NY, NY 10013</i>	SENDER: • Complete items 1 and/or 2 for additional services. • Complete items 3, and 4a & b. • 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.	1. <input type="checkbox"/> I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.
	4a. Article Number: <i>2124353501</i>	4b. Service Type: <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Insured <input type="checkbox"/> COD <input type="checkbox"/> Return Receipt for Merchandise	7. Date of Delivery	8. Addressee's Address (Only if requested and fee is paid)	1. <input type="checkbox"/> I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.

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DRIS L SASSOGER v. COMMISSION ON JUDICIAL CANDIDACY

NY Supreme Ct # 95-109141 (Berman card assigned 1/18/8)

NAME ELENA RUTH SASSOGER (DATE) _____, 19____

HOME ADDRESS Coordinator

HOME TELEPHONE NO. Center for Judicial Accountability

BUSINESS NAME AND ADDRESS Box 69, Greenvale Station, Inc.

NAME White Plains, NY 10605-0069

ADDRESS Fax - 914-684-6514

CITY, STATE, ZIP CODE _____

BUSINESS TELEPHONE NUMBER _____

NAME, ADDRESS AND HOME TELEPHONE NUMBER OF PERSON YOU ARE COMPLAINING ABOUT

NAME Commissioner of Judicial Conduct of the State of NY

ADDRESS 801 Second Avenue

CITY, STATE, ZIP CODE New York, New York

TELEPHONE NUMBER _____

DO YOU HAVE A LAWYER REPRESENTING YOU IN THIS MATTER?

YES NO

IF YES, LAWYER'S NAME, ADDRESS AND TELEPHONE NUMBER

NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE NUMBER _____

BRIEFLY DESCRIBE YOUR PROBLEM OR COMPLAINT.

This complaint charges the Commission on Judicial Conduct with knowingly & deliberately protecting high-ranking judicial connected judges ~~from~~ by dismissing ~~complaints~~ ^{pleadings} ~~of~~ ^{criminal} ~~investigation~~ ~~of~~ ^{pleadings} ~~these~~ ^{criminal} ~~pleadings~~

PLEASE TURN PAGE OVER

accomplishing this ^{investigation} ~~investigation~~ of rules violative of its statutory mandate that ~~the~~ ^{the} Commission investigate all complaints except those it determines to be facially unobjectionable

Exhibit "A"

See 78 Article 67 Proceeding

5/19/95 addendum to complaint
to Mr. Letter
D.A.

If there is the slightest question as to the serious & criminal nature of the complaints filed with the Commission in Judicial Circuit, the documentary evidence submitted to the Commission should be ~~re~~ requisitioned.

Alternatively, we will assist you in expeditiously making such documentary proof establishing either "probable cause" to believe that the misconduct complained of had occurred * or the "prima facie" evidence.

Additionally, we will produce for you scores of complaints whose complaints ~~were~~ of serious misconduct were summarily dismissed by the Commission - without any finding by ~~it~~ that the complaints so-dismissed were facially "without merit".

Thank you
Elna Bessert

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

May 26, 1995

District Attorney of New York County
Special Prosecutions Bureau
1 Hogan Place, Room 750
New York, New York 10013

ATT: Steven Nachman, Assistant District Attorney
Walk-In Complaint Room

RE: Sassower v. Commission on Judicial Conduct of the State of New York
Index # 95-109141

Dear Mr. Nachman:

You will recall that on Tuesday, May 23rd, your office would not permit the approximately twenty members of our organization who came to file criminal complaints with the Special Prosecutions Bureau against the Commission on Judicial Conduct to do so.

Although they were peaceable, they were not only denied entry to the seventh floor -- even one by one -- but, despite my repeated requests, you refused to give me complaint forms to bring down to them so that they could fill them out in the lobby.

It was only after tremendous delay and insistence on my part -- and with an officer from the lobby beside me -- that finally you agreed to provide us with copies of the District Attorney's complaint form.

However, as we struggled to fill out the forms in the lobby and outside, we found it additionally difficult because the form used by the Special Prosecutions Bureau has been photocopied many generations from the original. Additionally, there appeared to be traces of writing already entered on the first four lines of the copied form.

I, myself, found the same difficulty with the complaint form on Friday, May 19th, when I filled out the form.

Our members also found it embarrassing that the Manhattan D.A.'s office should be using such a shoddy-looking form.

Consequently, as an aid to our members and to others who come to the Special Prosecutions Bureau to file complaints, we have taken the initiative to retype your complaint form. It has been exactly reproduced, with the exception of the addition of a line at the bottom of the first page for

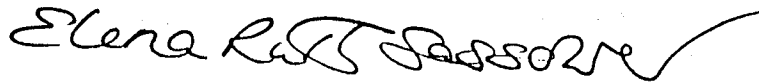
Exhibit "B"

May 26, 1995

"Complainant's signature" -- since our members felt that complaints should properly be signed by those who have filed them.

In a spirit of public service and cooperation, such retyped original is enclosed herewith for use by the District Attorney's office. A brochure about CJA is also enclosed.

Yours for a quality judiciary,

A handwritten signature in cursive script that reads "Elena Ruth Sassower". The signature is written in black ink and is positioned above the typed name.

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

Enclosures

cc: Assistant District Attorney Thomas Wornam

(DATE) _____, 19__

NAME _____

HOME ADDRESS _____

HOME TELEPHONE NO. _____

BUSINESS NAME AND ADDRESS _____

NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

BUSINESS TELEPHONE NUMBER _____

NAME, ADDRESS AND HOME TELEPHONE NUMBER OF PERSON YOU ARE COMPLAINING ABOUT

NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE NUMBER _____

DO YOU HAVE A LAWYER REPRESENTING YOU IN THIS MATTER?

[] YES [] NO

IF YES, LAWYER'S NAME, ADDRESS AND TELEPHONE NUMBER

NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE NUMBER _____

BRIFELY DESCRIBE YOUR PROBLEM OR COMPLAINT.

COMPLAINANT'S SIGNATURE _____

DOES THIS OTHER PERSON HAVE A LAWYER REPRESENTING HIM/HER?

YES NO

IF YES, LAWYER'S NAME, ADDRESS AND TELEPHONE NUMBER

NAME

ADDRESS

CITY, STATE, ZIP CODE

TELEPHONE NUMBER

HAVE YOU SUED THE PERSON YOU ARE COMPLAINING ABOUT?

YES NO

HAS THE PERSON YOU ARE COMPLAINING ABOUT SUED YOU?

YES NO

HAVE YOU SPOKEN TO THE POLICE ABOUT THIS MATTER?

YES NO

IF YES, PLEASE GIVE DATE, PRECINCT AND NAME OF POLICE OFFICER(S)

DATE

PRECINCT

NAME OF POLICE OFFICER(S)

HAVE YOU COMPLAINED TO ANY OTHER AGENCY ABOUT THIS MATTER?

YES NO

IF YES, WHAT AGENCY?

NAME OF AGENCY

PERSON YOU SPOKE TO

ADDRESS

CITY, STATE, ZIP CODE

HAVE YOU SPOKEN TO ANY DISTRICT ATTORNEY ABOUT THIS MATTER BEFORE?

YES NO

IF YES, PLEASE GIVE DATE AND NAME OF ASSISTANT DISTRICT ATTORNEY SPOKEN TO

DATE

NAME OF ASSISTANT DISTRICT ATTORNEY

HAS THIS PERSON YOU ARE COMPLAINING ABOUT STARTED CRIMINAL PROCEEDINGS ABOUT YOU?

YES NO

HAVE YOU OR THE PERSON YOU ARE COMPLAINING ABOUT TAKEN OR TRIED TO TAKE THIS MATTER TO A DISPUTE RESOLUTION CENTER (IMCR)?

YES NO

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DORIS L. SASSOWER,

Petitioner,

Index No.
95-109141

-against-

NOTICE OF RIGHT
TO SEEK INTERVENTION

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.
-----X

S I R S:

PLEASE TAKE NOTICE that upon the annexed Notice of Petition and Verified Petition of DORIS L. SASSOWER, sworn to on the 10th day of April 1995, the exhibits annexed hereto, and upon all the papers and proceedings heretofore had, you are entitled, as a person or agency charged with the duty to protect the public interest, which will or may be affected by the outcome of the above-entitled proceeding, raising constitutional issues of magnitude, to seek intervention therein, pursuant to CPLR §§1012 and 1013.

Dated: April 10, 1995
White Plains, New York

Yours, etc.

DORIS L. SASSOWER
Petitioner Pro Se
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
120 Broadway
New York, New York 10271

DISTRICT ATTORNEY OF NEW YORK COUNTY
1 Hogan Place
New York, New York 10013

NEW YORK STATE ETHICS COMMISSION
39 Columbia Street
Albany, New York 12207-2717

UNITED STATES ATTORNEY
Southern District of New York
U.S. Courthouse Annex
1 St. Andrew's Plaza
New York, New York 10017

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" (844.1).

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 87000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigation, 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-con-

nected. 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 commission, with no finding that the complaints were facially without merit.

In "round one" of the litigation, 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.

Exhibit
"D"

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 10608

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 Conduct¹--and our related correspondence.

By your review of Point II of our Memorandum of Law²--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.

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.

Exhibit "E"

December 15, 1995

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 decision³, 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.

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 Court⁵--contrary to the Supreme Court's bold 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 Conduct⁶ and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law⁷. 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 Court⁸.

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 do⁹--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.

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".

STATE COMMISSION ON JUDICIAL CONDUCT

Part 7000

Operating Procedures and Rules

(Added, former part repealed, filed Nov 21, 1978, eff Nov 1, 1978.)

- Sec.
7000.1. Definitions.
7000.2. Complaints.
7000.3. Investigations and dispositions.
7000.4. Use in subsequent proceedings of letter of dismissal and caution issued prior to a hearing.
7000.5. Use of letter of suggestions and recommendations of former State Commission on Judicial Conduct and Temporary State Commission on Judicial Conduct.
7000.6. Procedure upon a formal written complaint.
7000.7. Procedure for consideration of referee's report or agreed statement of facts.
7000.8. Confidentiality of records.
7000.9. Standards of conduct.
7000.10. Amending rules.
7000.11. Quorum voting.
7000.12. Commission's principal office.

* § 7000.1. **Definitions.**—For the purpose of this Part, the following terms have the meanings indicated below:

(a) **Administrator** means the person appointed by the commission as administrator.

(b) **Administrator's complaint** means a complaint signed by the administrator at the direction of the commission, which is filed as part of the commission's records.

(c) **Answer** means a verified response, in writing, to a formal written complaint.

(d) **Complaint** means a written communication to the commission signed by the complainant, making allegations against a judge as to his qualifications, conduct, fitness to perform, or the performance of his official duties, or an administrator's complaint.

(e) **Commission** means the State Commission on Judicial Conduct.

(f) **Dismissal** means a decision at any stage not to proceed further.

(g) **Formal written complaint** means a writing, signed and verified by the administrator of the commission, containing allegations of judicial misconduct against a judge for determination at a hearing.

(h) **Hearing** means an adversary proceeding at which testimony of witnesses may be taken and evidentiary data and material relevant to the formal written complaint may be received, and at which the respondent judge is entitled to call and cross-examine witnesses and present evidentiary data and material relevant to the formal written complaint.

(i) **Initial review and inquiry** means the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize and investigation with respect to such complaint.

* (j) **Investigation**, which may be undertaken only at the direction of the commission, means the activities of the commission or its staff intended to ascertain facts relating to the accuracy, truthfulness or reliability of the matters alleged in a complaint. An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commis-

sion 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.

(k) **Judge** means a judge or justice of any court in the unified court system of the State of New York.

(l) **Letter of dismissal and caution** means the written confidential suggestions and recommendations referred to in sections 7000.3(c) and 7000.7(c) of this Part. (Am Jan 10, 1983.)

(m) **Retirement** means a retirement for physical or mental disability preventing the proper performance of judicial duties.

(n) **Referee** means any person designated by the commission pursuant to section 43, subdivision 2, of the Judiciary Law to hear and report on any matter in accordance with the provisions of section 44, subdivision 4, of the Judiciary Law.

§ 7000.2. **Complaints.**—The commission shall receive, initiate, investigate and hear complaints against any judge with respect to his qualifications, conduct, fitness to perform, or the performance of his official duties. Prior to commencing an investigation of a complaint initiated by the commission, the commission shall file as part of its records an administrator's complaint.

§ 7000.3. **Investigations and dispositions.**—(a) When a complaint is received or when the administrator's complaint is filed, an initial review and inquiry may be undertaken.

(b) Upon receipt of a complaint, or after an initial review and inquiry, the complaint may be dismissed by the commission or, when authorized by the commission, an investigation may be undertaken.

(c) During the course of, or after, an investigation, the commission may dismiss the complaint, direct further investigation, request a written response from the judge who is the subject of the complaint, direct the filing of a formal written complaint or take any other action authorized by section 22 of article 6 of the Constitution or article 2-A of the Judiciary Law. Notwithstanding the dismissal of a complaint, the commission, in connection with such dismissal, may issue to the judge a letter of dismissal and caution containing confidential suggestions and recommendations with respect to the complaint, the commission's initial review and inquiry, or the commission's investigation as they pertain to the judge.

(d) Any member of the commission, or the administrator, may administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence that may be deemed relevant or material to an investigation. The commission may, by resolution, delegate to staff attorneys and other employees designated by the commission the power to administer oaths and take testimony during investigations authorized by the commission. If testimony is taken of a judge under investigation, during the course of an investigation authorized by the commission, at least one member of the commission shall be present.

(e) In the course of the investigation, the commission may require the appearance of the judge involved before the commission, or any of its members, in which event the judge shall be notified in writing of his required appearance either personally, at least three days prior to such appearance, or by certified mail, return receipt requested, at least five days prior

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Operating procedures and rules, state commission on judicial conduct. 22 NYCRR §§ 7000.1 et seq. (CLS State Commission on Judicial Conduct Rules §§ 7000.1 et seq.).

§ 44. Complaint; investigation; hearing and disposition

1. The commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge, and, in accordance with the provisions of subdivision d of section twenty-two of article six of the constitution, may determine that a judge be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge be retired for mental or physical disability preventing the proper performance of his judicial duties. A complaint shall be in writing and signed by the complainant and, if directed by the commission, shall be verified. Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit. If the complaint is dismissed, the commission shall so notify the complainant. If the commission shall have notified the judge of the complaint, the commission shall also notify the judge of such dismissal. *

2. The commission may, on its own motion, initiate an investigation of a judge with respect to his qualifications, conduct, fitness to perform or the performance of his official duties. Prior to initiating any such investigation, the commission shall file as part of its record a written complaint, signed by the administrator of the commission, which complaint shall serve as the basis for such investigation.

3. In the course of an investigation, the commission may require the appearance of the judge involved before it, in which event the judge shall be notified in writing of his required appearance, either personally, at least three days prior to such appearance, or by certified mail, return receipt requested, at least five days prior to such appearance. In either case a copy of the complaint shall be served upon the judge at the time of such notification. The judge shall have the right to be represented by counsel during any and all stages of the investigation in which his appearance is required and to present evidentiary data and material relevant to the complaint. A transcript shall be made and kept with respect to all proceedings at which testimony or statements under oath of any party or witness shall be taken, and the transcript of the judge's testimony shall be made available to the judge without cost. Such transcript shall be confidential except as otherwise permitted by section forty-five of this article.

4. If in the course of an investigation, the commission determines that a hearing is warranted it shall direct that a formal written complaint signed and verified by the administrator be drawn and served upon the judge involved, either personally or by certified mail, return receipt requested. The judge shall file a written answer to the the complaint with the commission within twenty days of such service. If, upon receipt of the answer, or upon

which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

* [Commission on judicial conduct; composition; organization and procedure; review by court of appeals; discipline of judges or justices.] § 22. a. There shall be a commission on judicial conduct. The commission on judicial conduct shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system, in the manner provided by law; and, in accordance with subdivision d of this section, may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties. The commission shall transmit any such determination to the chief judge of the court of appeals who shall cause written notice of such determination to be given to the judge or justice involved. Such judge or justice may either accept the commission's determination or make written request to the chief judge, within thirty days after receipt of such notice, for a review of such determination by the court of appeals.

b. (1) The commission on judicial conduct shall consist of eleven members, of whom four shall be appointed by the governor, one by the temporary president of the senate, one by the minority leader of the senate, one by the speaker of the assembly, one by the minority leader of the assembly and three by the chief judge of the court of appeals. Of the members appointed by the governor one person shall be a member of the bar of the state but not a judge or justice, two shall not be members of the bar, justices or judges or retired justices or judges of the unified court system, and one shall be a judge or justice of the unified court system. Of the members appointed by the chief judge one person shall be a justice of the appellate division of the supreme court and two shall be judges or justices of a court or courts other than the court of appeals or appellate divisions. None of the persons to be appointed by the legislative leaders shall be justices or judges or retired justices or judges.

(2) The persons first appointed by the governor shall have respectively one, two, three, and four-year terms as he shall designate. The persons first appointed by the chief judge of the court of appeals shall have respectively two, three, and four-year terms as he shall designate. The person first appointed by the temporary president of the senate shall have a one-year term. The person first appointed by the minority leader of the senate shall have a two-year term. The person first appointed by the speaker of the assembly shall have a four-year term. The person first appointed by the minority leader of the assembly shall have a three-year term. Each member of the commission shall be appointed thereafter for a term of four years. Commission membership of a judge or justice appointed by the governor or the chief judge shall terminate if such member ceases to hold the judicial position which qualified him for such appointment. Membership shall also terminate if a member attains a position which would have rendered him ineligible for appointment at the time of his appointment. A vacancy shall be filled by the appointing officer for the remainder of the term.

c. The organization and procedure of the commission on judicial conduct shall be as provided by law. The commission on judicial conduct may establish its own rules and procedures not inconsistent with law. Unless the legislature shall provide otherwise, the commission shall be empowered to designate one of its members or any other person as a referee to hear and report concerning any matter before the commission.

d. In reviewing a determination of the commission on judicial conduct, the court of appeals may admonish, censure, remove or retire, for the reasons set forth in subdivision a of this section, any judge of the unified court system. In reviewing a determination of the commission on judicial conduct, the court of appeals shall review the commission's findings of fact and conclusions of law on the record of the proceedings upon which the commission's determination was based. The court of appeals may impose a less or more severe sanction prescribed by this section than the one determined by the commission, or impose no sanction.

e. The court of appeals may suspend a judge or justice from exercising the powers of his office while there is pending a determination by the commission on judicial conduct for his removal or retirement, or while he is charged in this state with a felony by an indictment or an information filed pursuant to section six of article one. The suspension shall continue upon conviction and, if the conviction becomes final, he shall be removed from office. The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument. Nothing in this subdivision shall prevent the commission on judicial conduct from determining that a judge or justice be admonished, censured, removed, or retired pursuant to subdivision a of this section.

f. Upon the recommendation of the commission on judicial conduct or on its own motion, the court of appeals may suspend a judge or justice from office when he is charged with a crime punishable as a felony under the laws of this state, or any other crime which involves moral turpitude. The suspension shall continue upon conviction and, if the conviction becomes final, he shall be removed from office. The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument. Nothing in this subdivision shall prevent the commission on judicial conduct from determining that a judge or justice be admonished, censured, removed, or retired pursuant to subdivision a of this section.

g. A judge or justice who is suspended from office by the court of appeals shall receive his judicial salary during such period of suspension, unless the court directs otherwise. If the court has so directed and such suspension is thereafter terminated, the court may direct that he shall be paid his salary for such period of suspension.

h. A judge or justice retired by the court of appeals shall be considered to have retired voluntarily. A judge or justice removed by the court of appeals shall be ineligible to hold other judicial office.

i. Notwithstanding any other provision of this section, the legislature may provide by law for review of determinations of the commission on judicial conduct with respect to justices of town and village courts by an appellate division of the supreme court. In such event, all references in this section to the court of appeals and the chief judge thereof shall be deemed references to an appellate division and the presiding justice thereof, respectively.

j. If a court on the judiciary shall have been convened before the effective date of this section and the proceeding shall not be concluded by that date, the court on the judiciary shall have continuing jurisdiction beyond the effective date of this section to conclude the proceeding. All matters pending before the former commission on judicial conduct on the effective date of this section shall be disposed of in such manner as shall be provided by law. (Section 22 repealed and new section 22 added by vote of the people November 8, 1977.)

[Removal of judges.] § 23. a. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein.