

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

By Hand and By Fax: 212-335-8914

March 5, 1996

Robert M. Morgenthau, District Attorney
New York County
1 Hogan Place
New York, New York 10013

ATT: Assistant District Attorney Thomas A. Wornom
Deputy Chief, Special Prosecutions Bureau

Dear Mr. Wornom:

This follows up our February 13, 1996 telephone conversation in which I detailed the respects in which your February 7th response to our January 31st letter is in bad-faith.

The first inquiry enumerated in our January 31st letter asked:

"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." (at p. 1)

The answer is obviously nothing. Your February 7th letter conclusory response that:

"the information contained in [our] criminal complaint is insufficient to warrant or support a criminal prosecution of the Commission on Judicial Conduct and its members"

is palpably spurious, in light of the fact that our May 19, 1995 criminal complaint transmitted a second copy of our verified Article 78 Petition. The exhibits thereto documentarily established the complicity by the Commission on Judicial Conduct in criminal and corrupt conduct by judges and judicial candidates, which had been the subject of facially-meritorious misconduct complaints to the Commission--dismissed by it, without investigation, in violation of Judiciary Law §44.1. Such summary dismissals by the Commission, shown by the Article 78 Petition to be part of a knowing and deliberate pattern of protectionism, including of its own highest-ranking judicial member--satisfies the essential elements of the crime of "Official Misconduct", as defined in Penal Law §195.00. Additionally, as to our

E "D"

March 5, 1996

September 19, 1995 complaint, based on the Commission's litigation misconduct in our Article 78 proceeding against it and complicity in a fraudulent judgment of dismissal, the record establishes additional crimes committed by the Commission, inter alia, Obstructing Governmental Administration (\$195.05) through Perjury (§§210.05, 210.10), Offering a False Instrument for Filing (§§175.30, 175.35), several of which are Class E felonies. This is quite apart from criminal conspiracy.

Even cursory review of the misconduct complaints annexed as Exhibits "C" through "J" to the verified Article 78 Petition reveals that corroborating documentation of the criminal acts was submitted to the Commission, with proffers of yet further corroborating documentation to support the filed complaints.

This is further highlighted at paragraphs "TWENTY-FIRST" and "TWENTY-SECOND" of the verified Article 78 Petition (Exhibit "A"), which explicitly stated that such substantiating documentation:

"...established, prima facie, judicial misconduct by the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed." (paragraph "TWENTY-SECOND").

The Addendum to our May 19, 1995 criminal complaint to the Manhattan District Attorney¹ further emphasized this point, as follows:

"If there is the slightest question as to the serious and criminal nature of the complaints filed with the Commission on Judicial Conduct, the documentary evidence submitted to the Commission should be requisitioned.

Alternatively, we will expeditiously make available to you 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 complainants whose complaints of serious misconduct were summarily dismissed by the Commission--without any finding by it that the complaints so-dismissed were facially 'without merit'.

¹ See Exhibit "A" to our January 31, 1996 letter.

Yet, you have confirmed that the Manhattan District Attorney did not request from the Commission on Judicial Conduct the corroborating proof we submitted to substantiate the serious and criminal allegations of our facially-meritorious misconduct complaints. You also confirmed that the District Attorney did not request from us copies of those materials or ask us to produce other complainants, as we offered to do. Indeed, as set forth at page 2 of our January 31st letter and detailed in Exhibit "B" thereto, on May 23, 1995, when we brought approximately 20 people to the Manhattan D.A.'s office, ready to file their own complaints against the Commission, they were barred from even entering the "walk-in" complaint room, even on a one-by-one basis.

It is thus plain that the Manhattan District Attorney--in concluding, without specification of the particulars, that our "criminal complaint is insufficient to warrant or support a criminal prosecution"--has not only not undertaken the most obvious and fundamental investigation to verify our criminal complaint of protectionism and corruption by the Commission on Judicial Conduct, but has resisted undertaking such investigation.

This letter, therefore, constitutes our formal demand that the Manhattan District Attorney immediately requisition from the Commission on Judicial Conduct the corroborating documentation that we provided it in connection with the facially-meritorious complaints annexed to our Article 78 Petition.

As I emphasized in our telephone conversation, the Commission failed and refused to provide such corroborating documentation to the Court, as requested by paragraph "TWENTY-FIRST" of our Article 78 Petition (Exhibit "A")--and reiterated in a separate NOTICE TO FURNISH RECORD TO THE COURT PURSUANT TO CPLR §§409, 7804(e), AND 2214(c) (Exhibit "B").

As to the second inquiry enumerated in our January 31st letter:

"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" (at p. 1),

your February 7th response is, again, palpably spurious. Indeed, your claim therein that a "decision not to intervene" is reflected by a June 23, 1995 affirmation is belied by that very document (Exhibit "C"), which has nothing whatever to do with our requested intervention by the Manhattan District Attorney on

on behalf of the public. Such fact was even pointed out--expressly--in our January 31st letter (see p. 3 and fn. 2).

Consequently, we reiterate our inquiry as to whether the Manhattan District Attorney ever determined that he would not intervene, on behalf of the public, in our Article 78 proceeding against the Commission.

As to the third inquiry enumerated in our January 31st letter:

"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" (at p. 3),

your February 7th letter gives no response whatever. Instead, by your advice that we consider undertaking an appeal, you leave it to us to continue, as we have, single-handedly, to protect the public. This is totally outrageous and inappropriate--since that is the job of the Manhattan District Attorney and the other public officials and government agencies, which have resources and staffs paid-for by taxpayer dollars.

It would appear that the Manhattan District Attorney has not compared Justice Cahn's decision dismissing the Article 78 proceeding with the court file, requisitioned from the County Clerk's office. Had he done so, you would have been able to address the demonstrably fraudulent nature of Justice Cahn's decision, which was not only detailed in our January 31st letter, but which was the subject of our September 19, 1995 criminal complaint to the Manhattan District Attorney.

Because of the danger to the public represented by a corrupted Commission on Judicial Conduct, which now is the beneficiary of a demonstrably fraudulent decision of dismissal, we have already transmitted duplicate copies of the file in the Article 78 proceeding to both Mayor Giuliani and to Manhattan Borough President Messinger--with a request that they take steps to secure a criminal investigation of the Commission. A copy of the hand-delivered letter of transmittal to Mayor Giuliani, dated February 20, 1996, is enclosed.

So that the Manhattan District Attorney does not have to requisition the readily-available court file or request access to the file we have provided to the Mayor and Manhattan Borough President, we enclose a duplicate set of papers--with the exception of the Article 78 Petition--since he already has two

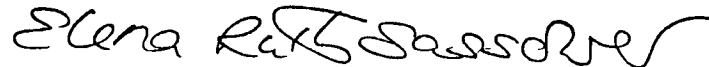
copies in his possession--and the motions of citizen intervenors.

We believe that the Mayor, the Manhattan Borough President, and the Assembly Judiciary Committee will be particularly interested in knowing the extent to which District Attorney Morgenthau has been personally involved in the decision-making regarding our criminal complaint against the Commission and our request for his intervention in the Article 78 proceeding. Although page 5 of our January 31st letter expressly requested that information--as well as information as to other procedural matters--your February 7th letter conspicuously gives no response.

Under the circumstances, we strongly reiterate the last paragraph of our January 31st letter:

"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 to be dealt with on an emergency basis, with the direct personal involvement of District Attorney Morgenthau."

Yours for a quality judiciary,



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

Enclosures

cc: Assembly Judiciary Committee
Mayor Rudolph Giuliani
Manhattan Borough President Ruth Messinger
United States Attorney for the Southern District of New York

TWENTY-FIRST: Copies of the aforesaid eight complaints are annexed hereto as Exhibits "C" through "J", without the voluminous supporting exhibits and evidentiary proof. Pursuant to CPLR §409 and §7804(e), Petitioner requests that Respondent file with the Court a certified transcript of the record of the proceedings, including the original complaints filed by Petitioner, together with the exhibits and evidentiary proof supplied by Petitioner in support thereof, so that the Court may further verify the substantial and documented nature of her complaints.

TWENTY-SECOND: That the supporting exhibits and evidentiary proof supplied and proffered by Petitioner in support of her aforesaid complaints established, prima facie, judicial misconduct by the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed.

TWENTY-THIRD: That the judicial misconduct alleged and documented by Petitioner's aforesaid eight complaints was of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate disciplinary sanction of removal. Pursuant to Article VI, §22.a of the New York State Constitution and §44.1 of the Judiciary Law, Petitioner was constitutionally and statutorily entitled to investigation of such complaints.

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

DORIS L. SASSOWER,

-against-

Petitioner,

SUPREME COURT
STATE OF NEW YORK
RECEIVED
JUN 9 1995
I.A.S. MOTION
SUPPORT OFFICE
Index No
95-109141

NOTICE TO FURNISH
RECORD TO THE COURT
PURSUANT TO CPLR
§§409, 7804(e), AND
2214(c)

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

S I R :

PLEASE TAKE NOTICE that on the return date of Respondent's dismissal motion, to wit, on June 12, 1995, you are required, pursuant to CPLR §§409, 7804(e) and 2214(c), to furnish the full and complete record before Respondent as to all complaints filed by Petitioner, together with all of the documentation submitted by her in support thereof and to certify same as the true and complete record.

Please be further advised that your failure to do so in accordance with this request may result in the dismissal of Respondent's motion and other sanctions.

Dated: White Plains, New York
June 9, 1995

Yours, etc.

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

Attorney General of the State of New York
Attorney for Respondent
120 Broadway
New York, New York 10271

RECEIVED
N.Y.S. DEPARTMENT OF LAW
NEW YORK CITY OFFICE
TO: 95 JUN -9 PM 2:42

Ex "B"

-----X
DORIS L. SASSOWER,

Petitioner,

GEORGE SASSOWER, individually and on
behalf of the STATE OF NEW YORK and
the GRAND JURY OF NEW YORK COUNTY,

Intervenor,

- against -

COMMISSION ON JUDICIAL CONDUCT OF THE
STATE OF NEW YORK; WILLIAM C. THOMPSON;
Hon. DENNIS C. VACCO; Hon. CARL McCALL;
Hon. ROBERT MORGANTHAU [sic]; OFFICE
OF COURT ADMINISTRATION; ETHICS
COMMISSION FOR THE UNIFIED COURT
SYSTEM; and THE DEPARTMENTAL
DISCIPLINARY COMMITTEE,

Respondents.
-----X

: INDEX No.
: 95-109141
:
: Assigned to
: Hon. HERMAN CAHN

Marc Frazier Scholl, an attorney duly admitted to practice law
in the courts of this state affirms, under penalties of perjury,
that:

1. I am an Assistant District Attorney, of counsel to Robert
M. Morgenthau, District Attorney, County of New York, State of New
York. I submit this affirmation in connection with what I
understand to be a petition and notice of motion, by George
Sassower, to intervene into a matter brought by petitioner's wife
that is pending before this Court. From the petition and the
notice of motion, it appears that Sassower seeks not only to
intervene, but, in addition, to add District Attorney Morgenthau as

EX "C"

a respondent and to compel District Attorney Morgenthau to communicate to a grand jury certain allegations by petitioner relating to misconduct in connection with a previously dissolved entity known as Puccini Clothes, Ltd.

2. District Attorney Morgenthau opposes the relief sought by petitioner. First, there is good reason to believe that petitioner's application is an effort to bypass a previously entered injunction enjoining petitioner from filing complaints relating to the dissolution of Puccini Clothes, Ltd. While District Attorney Morgenthau does not have a copy of that injunction, it is cited in a recent federal district court decision in which other, federal bars were imposed on petitioner. In Sassower v. Abrams, 833 F.Supp. 253, 257 (S.D.N.Y. 1993), Judge Peter K. Leisure wrote,

The New York Supreme Court subsequently granted the motion and entered an order permanently enjoining Raffe and Sassower from filing any complaint or proceeding relating to Puccini dissolution in state court. See In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. January 23, 1985) (Exhibit 24); see also In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. March 11, 1986) (Exhibit 25); In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. March 1987) (Exhibit 26); In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. September 2, 1988) (Exhibit 27)

3. Second, and, in any event, what petitioner seeks is to control the discretion of a publicly-elected prosecutor in deciding what matters are appropriate to investigate for purposes of

potential prosecution. As set forth in section 190.55(1)(c) of the Criminal Procedure Law, the public prosecutor:

may submit to a grand jury any available evidence concerning an offense prosecutable in the courts of the county, or concerning misconduct, nonfeasance or neglect in public office by a public servant, whether criminal or otherwise

(emphasis supplied).

4. The right to allocate the resources of the prosecutor's office in the manner perceived best by the elected District Attorney of any county is a right necessitated by finite and limited prosecutorial resources. Thus, the public prosecutor is elected to decide how and in what manner to investigate and prosecute claims of wrong-doing. If the public is dissatisfied with the choices made by the public prosecutor in the exercise of his or her discretion, the public will make that dissatisfaction known at the ballot box.

5. It is not for any single, unelected individual to bring an action to compel a prosecutor to exercise discretion in a particular manner. Indeed, forcing a prosecutor to devote resources to one end necessarily means that other investigations and prosecutions will not be pursued. In such instance, it becomes the single, unelected, individual who exercises the discretion and the public in the form of the voters. In short, petitioner has no right to arrogate to himself a privilege to control of the public prosecutor's discretion.

4. Moreover, petitioner's effort is nothing more than an

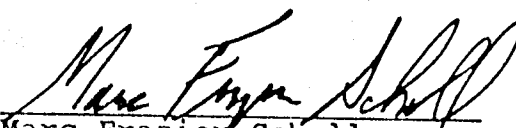
attempt to have the judicial branch of government interfere in the discretionary determinations reserved to the executive branch. The fundamental separation of powers doctrine requires that that effort be rejected.

5. Further, because what petitioner seeks is to control a discretionary act, it is not even clear what jurisdictional basis he has to bring his action. After all, as a proceeding under a theory of mandamus, petitioner can only seek to compel a ministerial act. The fundamental determinations of a public prosecutor over what to present to a grand jury, what investigations to pursue, and how to pursue them simply are not ministerial. Nor is this an action grounded in prohibition since petitioner's theory is that a public prosecutor is not acting as the petitioner would have him or her do, not that the prosecutor is acting in excess of his or her jurisdiction.

6. If the Court desires this response to be in a different form, it is respectfully requested that the Court grant District Attorney Morgenthau a reasonable time to prepare such.

WHEREFORE, it is respectfully requested that the relief requested in the petition be denied.

Dated: New York, New York
June 23, 1995


Marc Frazier Scholl

To: George Sassower
16 Lake Street
White Plains, NY 10603

Doris L. Sassower
283 Soundview Ave.
White Plains, NY 10606

Dennis Vacco
Attorney General -- New York State
Department of Law
120 Broadway
New York, NY 10271
Attn: Amy Abramowitz

Affidavit of Service

State of New York :

: ss.

County of New York:

VICTOR CERDA, being duly sworn, deposes and says that:

I am not a party to the within action, and I am over eighteen years of age.

On June 23, 1995, I served a copy of this Affirmation on parties and persons below at the addresses below, by

[] delivering the copy to said persons listed personally

[] delivering the copy to the offices of said persons and leaving it with a suitable person in each office or in a conspicuous place therein

[x] mailing the copy in the United States Mails, in a first-class, postage-paid wrapper, addressed to said persons

George Sassower
16 Lake Street
White Plains, NY 10603

Doris L. Sassower
283 Soundview Ave.
White Plains, NY 10606

Dennis Vacco
Attorney General -- New York State
Department of Law
120 Broadway
New York, NY 10271
Attn: Amy Abramowitz

Sworn to before me

June 23 . 1995

[Signature]
Notary Public

[Signature: Victor Cerda]

ALAN GADLIN
Notary Public, State of New York
No. 02GA4960172
Qualified in Kings County
Commission Expires December 18, 1995

=====

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS Part 49

=====

DORIS L. SASSOWER,

Petitioner,

GEORGE SASSOWER, individually and on
behalf of the STATE OF NEW YORK and
the GRAND JURY OF NEW YORK COUNTY,

Intervenor,

- against -

COMMISSION ON JUDICIAL CONDUCT OF THE
STATE OF NEW YORK; WILLIAM C. THOMPSON;
Hon. DENNIS C. VACCO; Hon. CARL McCALL;
Hon. ROBERT MORGANTHAU [sic]; OFFICE
OF COURT ADMINISTRATION; ETHICS
COMMISSION FOR THE UNIFIED COURT
SYSTEM; and THE DEPARTMENTAL
DISCIPLINARY COMMITTEE,

Respondents.

=====

AFFIRMATION
95-109141

=====

ROBERT M. MORGENTHAU
District Attorney
New York County
One Hogan Place
New York, New York 10013
(212) 335-9000

Marc Frazier Scholl
Assistant District Attorney
Of Counsel