

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 518-463-3712 (10 pages)

February 26, 2002

Erin Sullivan, Metroland

RE: Getting Answers to Specific Questions about the NYS
Commission on Judicial Conduct

Dear Erin:

Bravo on the ground-breaking work you are doing to VERIFY this important story.

Enclosed is a copy of my faxed "release" to Professor Bonventre, transmitting to him the first four pages of my yesterday's letter to you, with its listing of specific issues to be addressed in my lawsuit against the NYS Commission on Judicial Conduct.

Except for those four pages, which you already have, the balance of my enclosures to my fax to Professor Bonventre are herein enclosed.

Finally, FYI, enclosed is my yesterday's letter to Michael Aronson of the Daily News editorial board – which you can add to your collection of my correspondence with him. Hopefully, a meeting will be scheduled within the coming week or so.

Again, thanks.

Yours for a quality judiciary,



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

Enclosures

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Elena Ruth Sassower, Coordinator

BY FAX: 518-472-5878 (11 pages)

February 26, 2002

Professor Vincent Martin Bonventre
Albany Law School
80 New Scotland Avenue
Albany, New York 12208

RE: Recapting the title of my February 4, 2002 letter: Assisting the media with evaluative comment as to the *readily-verifiable* corruption of the NYS Commission on Judicial Conduct, documented by the appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York*

Dear Professor Bonventre:

A short while ago I received a phone call from Erin Sullivan of Metroland, indicating that she had telephoned you for comment about my public interest lawsuit against the Commission, but that you indicated you wanted a "release" from me.

No one needs a "release" to discuss the specifics of my lawsuit against the Commission. As you know, you refused to discuss those specifics when we met together on Friday – even to the limited extent of giving your opinion as to whether 22 NYCRR §7000.3 is inconsistent and irreconcilable with Judiciary Law §44.1 and whether my October 6, 1999 judicial misconduct complaint based, *inter alia*, on Justice Rosenblatt's believed perjury on his *publicly-inaccessible* application for the Court of Appeals is *facially-meritorious*. However, I would be most pleased if you would answer Erin's direct questions about these and other specifics of my lawsuit so that, through her, the public can have the benefit of your professional expertise.

February 26, 2002

For your convenience, faxed herewith, are the first four pages of the letter I sent to Erin yesterday, recapping some of the specifics, for which she has a right to expect evaluative comment from those, like yourself, in leadership positions. In the event you are unable to answer her questions as to these important specifics, please advise her as to where she can turn.

As Professor David Siegel is also at Albany Law School and, as you know, has his *own* copy of my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief, which I provided him under a May 11, 2001 coverletter so that, at very least, he could give his expert opinion as to the "standing" issue, discussed at pages 40-47 of my Critique, I would especially appreciate if you would act as an intermediary to Professor Siegel, from whom I have received NO response whatever. For your convenience, I again enclose a copy of my May 11, 2001 coverletter to Professor Siegel and, additionally, the appellate decisions, invoking "lack of standing", in Mr. Mantell's appeal and my own¹.

Thank you.

Yours for a quality judiciary,



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

Enclosures

cc: Erin Sullivan/Metroland
[By Fax: 518-463-3712]

¹ My analysis of the "lack of standing" claim in the third sentence of the appellate decision in my case is set forth in my January 17, 2002 reargument motion: Exhibit "B-2", pp. 15-16; See also my February 20, 2002 motion for leave to appeal to the Court of Appeals, p. 14.

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Elena Ruth Sassower, Coordinator

BY HAND

"Windows on the World"

May 11, 2001

Professor David D. Siegel, Honoree
Law Day Celebration/New York County Lawyers Association

RE: Clarifying Principles of New York Law

Dear Professor Siegel:

Congratulations on your well-deserved award, recognizing your extraordinary contribution to the law by your teaching and informative commentaries.

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization, documenting the dysfunction, politicization, and corruption of the closed-door processes of judicial selection and discipline on federal, state, and local levels. A copy of our informational brochure is enclosed.

Our members have long admired your work and consistently rely on it in litigation. We do not know how you select the cases from which you discern trends and developments in the law. However, we take the occasion of this Law Day celebration to bring to your attention a troubling series of cases against the New York State Commission on Judicial Conduct, which fly in the face of principles of law articulated in your commentaries.

The lower court records of two of these cases are *physically* encompassed in the appeal of the third, calendared for the September 2001 Term of the Appellate Division, First Department. To enable you to examine for yourself the many principles of law up-ended in these important cases -- and to buttress this request for your *amicus* support for those principles whose viability this appeal seeks to vindicate -- I have taken the liberty of enclosing a copy of the appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99)¹. Also enclosed are copies of my January 10th, April 18th, and May 3rd letters to the Commission's attorney, New York

¹ The Appellant's Brief cites your various commentaries at pages 38, 39, 58.

State Attorney General Eliot Spitzer, who, pursuant to Executive Law §63.1, should be disavowing his representation of the Commission and supporting the appeal.

Threshold on the appeal is the legal principle of “standing”. Your New York Practice, §136 (1999 ed., pp. 223-5) states:

“Although a question of ‘standing’ is not common in New York, its infrequent appearance is likely to be where administrative action is involved. A good example is *Dairylea Cooperative, Inc. v. Walkley*... The court said that ‘[o]nly where there is a clear legislative intent negating review... or lack of injury in fact will standing be denied.’ The test today is a liberal one, according to *Dairylea*, and the right to challenge administrative action, articulated under the ‘standing’ caption, is an expanding one.

... With the taxpayer suit having been expressly adopted in New York, and with the Court of Appeals having acknowledged that in general ‘standing’ is to be measured generously, the occasion for closing the court’s doors to a plaintiff by finding that his interest is not even sufficient to let him address the merits, which is what a ‘standing’ dismissal means, should be infrequent. Ordinarily only the most officious interloper should be ousted for want of standing.”

Nevertheless, the Attorney General’s Point I appellate argument is that “Petitioner Has No Standing to Sue the Commission”². For this proposition, our State’s highest legal officer does *not* address your above-quoted commentary from New York Practice – which, *verbatim*, is part of the appellate record: having been placed before the lower court in opposition to the Attorney General’s dismissal motion which had asserted a defense based on “standing” – a defense the lower court implicitly rejected by its decision predicated dismissal on other grounds [A-9-14]. Instead, his Respondent’s Brief, *without* citation to any commentary, cites only a single New York case. This case is the Appellate Division, First Department’s decision in *Michael Mantell v. Commission on Judicial Conduct*, 715 N.Y.S.2d 316 (1st Dept. 2000) – one of the two cases against the Commission, whose lower court record is part of the instant appeal.

You may already be familiar with the Appellate Division’s two-paragraph, unsigned decision in *Mantell*-- as it was highlighted in the front-page “Update” of the November 20, 2000 New

² See Respondent’s Brief, “Point I”, pp. 14-15

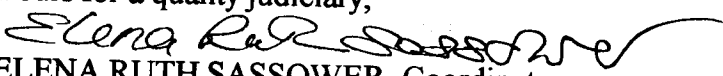
York Law Journal³. By that decision, the Appellate Division held, *without* citation to any legal authority – and in face of an appellate record containing your above-cited commentary from New York Practice⁴, “Petitioner *lacks standing* to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct”. (emphasis added). Such holding, ignoring that Mr. Mantell was seeking investigation of HIS facially-meritorious judicial misconduct complaint, was an add-on to the lower court’s decision [A-299-307], which implicitly rejected a defense based on “standing”, asserted by the Attorney General’s dismissal motion.

My opposition to the Attorney General’s Point I is particularized at pages 40-47 of my enclosed critique to his Respondent’s Brief. This recites your above-quoted commentary on “standing” from New York Practice, as well as your commentary on declaratory actions, also from New York Practice. Especially if you are unable to provide *amicus* assistance, I would greatly appreciate if – at very least – you would be good enough to review my argument, set forth in those seven pages, and provide me with the benefit of your evaluative comments. This, so I can vindicate the public’s right to redress, through the courts, of legitimate grievances against a corrupted State Commission on Judicial Conduct.

Needless to say, I would also greatly appreciate your evaluative comments as to the other transcending principles of law presented by this public interest appeal. Should you wish to see the underlying lower court record and the *Mantell* appellate record containing my intervention motion, I would be pleased to transmit copies to you.

With sincerest respect and thanks.

Yours for a quality judiciary,


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

Enclosures

cc: Robert L. Schulz, Chairman

We the People Foundation for Constitutional Education, Inc.

³ A copy of the front-page “Update” and decision, as published in the Law Journal, is annexed to CJA’s December 1, 2000 letter to the Commission and Attorney General, attached to my enclosed January 10th letter to Attorney General Spitzer.

⁴ Your commentary on “standing” from New York Practice was before the Appellate Division on the *Mantell* appeal by way of my motion to intervene therein, which set it forth in opposition to the Attorney General’s Respondent’s appellate argument as to Mr. Mantell supposed lack of “standing”. The Appellate Division denied my intervention motion, *without* reasons.



New York Law Journal®

Official Publication for the First and Second Judicial Departments

Established in 1888

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SERVING THE BENCH AND BAR SINCE 1888

VOLUME 224—NO. 97

NEW YORK, MONDAY, NOVEMBER 20, 2000

TODAY'S NEWS

Update

The Appellate Division, First Department, has upheld a ruling that the State Commission on Judicial Conduct has the discretion to refuse to investigate charges brought to it by an attorney against a judge. In a two-paragraph unsigned opinion, a five-justice panel affirmed a September 1999 decision by Manhattan Supreme Court Justice Edward Lehner not to require the commission to investigate allegations that a Manhattan Criminal Court Judge changed a ruling based on personal animus against the complaining lawyer. The appeals court last week said that the lawyer who brought the charges lacks standing to assert that the commission is required to investigate all meritorious complaints of judicial misconduct. The case is *Mantell v. New York State Commission on Judicial Conduct*, 2291.

2291. MICHAEL MANTELL, *pet-ap*, v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, *res-res* QDS:12118527 — Judgment, Supreme Court, New York County (Edward Lehner, J.), entered on or about September 30, 1999, which, in a proceeding pursuant to CPLR article 78 to compel respondent Commission to investigate petitioner attorney's complaint of judicial misconduct, granted respondent's motion to dismiss the petition, unanimously affirmed, without costs.

Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus (*cf.*, *Matter of Dyno v. Rose*, 260 AD2d 694, 698, *appeal dismissed* 93 NY2d 998, *lv denied* 94 NY2d 753).

M-5760. MANTELL v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT—Motion seeking leave to intervene and for other related relief denied.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

By Williams, J.P.; Mazzairelli, Lerner, Buckley and Friedman, JJ.

standing

Thursday, December 20, 2001

DECISIONS

*First Judicial Department***APPELLATE DIVISION**

By Nardelli, J.P., Mazzarelli, Andrias,
Ellerin, Rubin, JJ.

5638. ELENA RUTH SASSOWER, ETC.,
pet-ap, v. COMMISSION ON JUDICIAL CON-
DUCT OF THE STATE OF NEW YORK, res-
res — Order and judgment (one paper),
Supreme Court, New York County (William
Wetzel, J.), entered February 18, 2000,
which, in a proceeding pursuant to CPLR
article 78, *inter alia*, denied petitioner's
recusal motion and her application to
compel respondent Commission to investi-
gate her complaint of judicial misconduct
and granted the motion by respondent
Commission to dismiss the petition, unani-
mously affirmed, without costs.

The petition to compel respondent's
investigation of a complaint was properly
dismissed since respondent's determina-
tion whether to investigate a complaint
involves an exercise of discretion and
accordingly is not amenable to mandamus
(*Mantell v. New York State Commn. on Judi-
cial Conduct*, 277 AD2d 96, *lv denied* 96
NY2d 706). Moreover, inasmuch as peti-
tioner has failed to demonstrate that she
personally suffered some actual or threat-
ened injury as a result of the putatively
illegal conduct, she lacks standing to sue
the Commission (*see, Valley Forge Christ-
ian Coll. v. Am. United for Separation of
Church and State*, 454 US 464, 472; *Soc'y. of
the Plastics Indus. v. County of Suffolk*, 77
NY2d 761, 772; *Matter of Dairylea Coop. v.
Walkley*, 38 NY2d 6, 9).

The fact that the court ultimately ruled
against petitioner has no relevance to the
merits of petitioner's application for his
recusal (*see, Ocasio v. Fashion Inst. of Tech-
nology*, 86 F Supp 2d 371, 374, *affd* __ F3d
__, 2001 US App LEXIS 9418), and the
court's denial of the recusal application
constituted a proper exercise of its discre-
tion (*see, People v. Moreno*, 70 NY2d 403,
405).

The imposition of a filing injunction
against both petitioner and the Center for
Judicial Accountability was justified given
petitioner's vitriolic ad hominem attacks
on the participants in this case, her volu-
minous correspondence, motion papers
and recusal motions in this litigation and
her frivolous requests for criminal sanc-
tions (*see, Miller v. Lanzisera*, 273 AD2d
866, 869, *appeal dismissed* 95 NY2d 887).

We have considered petitioner's remain-
ing contentions and find them unavailing.

M-4755. SASSOWER, etc. v. COMMISSION
ON JUDICIAL CONDUCT — Motion seeking
leave to adjourn oral argument of this
appeal and for other related relief denied.

This constitutes the decision and order
of the Supreme Court, Appellate Division,
First Department.

standing

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Elena Ruth Sassower, Coordinator

BY FAX: 212-643-7828 (12 pages)

February 25, 2002

Michael Aronson, Editorial Board
New York Daily News
450 West 33rd Street
New York, New York 10001

RE: Scheduling a Meeting for the Center for Judicial Accountability, Inc. (CJA)
to make an *Evidence-Based* Presentation as to the Corruption of the NYS
Commission on Judicial Conduct, etc.

Dear Mr. Aronson:

Following up our phone conversation earlier today, I look forward to your finally scheduling a meeting for me to meet with you and other members of the Daily News editorial board and reportorial staff, if not this week then next, so that I can provide an overview of the *readily-verifiable* EVIDENCE of the corruption of the NYS Commission on Judicial Conduct – and the man at the Commission most responsible, Gerald Stern. Today's full-page "Judging the Judges" editorial, "*Lax Discipline Lacks Effectiveness*" -- powerful as it is -- continues to "protect" the Commission by concealing that the Commission is corrupt and that *readily-verifiable* EVIDENCE establishes this corruption. This is then reinforced by the editorial's commendation of Mr. Stern as having "done yeoman service", with a "commitment... unquestioned" -- notwithstanding the Daily News cannot possibly have evidence to support this accolade in view of the confidentiality of the Commission's operations.

By contrast, the file of my public interest lawsuit against the Commission – including the appellate papers I transmitted to you nearly three months ago -- documentarily proves Mr. Stern's unprofessional and corrupt conduct and that the Commission long ago subverted what today's editorial refers to as "its crucial mandate". That "mandate" is not only to appropriately punish judicial misconduct, but, pursuant to Judiciary Law §44.1, to investigate each judicial misconduct complaint not determined by the Commission to facially lack merit. What the Commission has done instead is to unlawfully promulgate 22 NYCRR §7000.3 so as to give itself unfettered discretion, unbounded by *any* standard, to do anything or nothing with the complaints it receives.

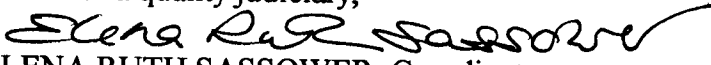
The result is that each year the Commission dismisses more than 80% of received complaints *without investigation*. This includes complaints which are not only *facially-meritorious*, but which are substantiated by *prima facie* proof of the judicial misconduct complained of.

The Commission's demonstrable subversion of this "crucial mandate", which, since 1995, has been the subject of CJA's very public advocacy [A-50, 51-52, 55-56], is embodied in the first two of my Verified Petition's six Claims for Relief [A-37-40]. As discussed, the Verified Petition's other Claims include my (Fifth) Claim [A-44-45] addressed to the unlawfulness of Henry Berger's lengthy tenure as Chairman – noted in today's editorial as spanning "13 of the last 14 years". Whereas today's editorial states, "[t]here is no suggestion of improper behavior on Berger's part", the file of my lawsuit chronicles Mr. Berger's unprofessional and corrupt behavior – and its catastrophic consequences. This includes the Commission's "pattern and practice of protecting powerful, politically-favored judges" by unlawfully dismissing, *without investigation, facially-meritorious* complaints against them (see ¶¶ FIFTY-FIFTH, SIXTY-FOURTH, SIXTY-SEVENTH, SEVENTY-FOURTH). Indeed, whereas today's editorial reports that "the mere perception" that the Commission "may be tainted by politics" "rightly troubles many in the legal community", the file of my lawsuit presents powerful evidence that politics and self-interest at the Commission are NOT "mere perception[s]", but fact. When this is exposed – by the Daily News or some other newspaper -- Mr. Berger will rightfully be disbarred, as likewise Mr. Stern and a long list of other attorneys who have transformed the Commission into a worthless façade, causing irreparable injury to countless innocent victims of judicial misconduct.

Enclosed, for your convenience, is a copy of my Verified Petition's six Claims for Relief [A-37-45] – inasmuch as you told me that the file of my lawsuit had been "borrowed" by Larry Cohler-Esses. I believe it would be most beneficial if Mr. Cohler-Esses and his editors in the investigative division of the Daily News were invited to our upcoming meeting.

Finally, I have *no* objection – and, indeed, would welcome -- your also inviting Mr. Stern, Mr. Berger, and anyone else on the Commission's behalf to our meeting. The Daily News could then witness "live" what the file of my lawsuit documentarily establishes: the Commission's *total* inability to confront the six Claims for Relief [A-37-45] and its massive defense misconduct to thwart my decisive litigation challenge.

Yours for a quality judiciary,


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

Enclosure

cc: Larry Cohler-Esses [By Fax: 212-643-7831]