

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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February 10, 1997

Alan Rothstein, General Counsel
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690

Dear Mr. Rothstein:

It is now more than two weeks since our Friday, January 24th telephone conversation in which you agreed to transmit the file of our Article 78 proceeding against the New York State Commission on Judicial Conduct to Robert Jossen, Chair of the City Bar's Judicial Conduct Committee.

You further agreed to send us confirmation of that transmittal, which was supposed to have occurred in the week following our conversation (i.e. January 27-31). Although you asked me for our fax number for that purpose, I am unaware that any such confirmation was received.

Kindly apprise us whether the file was transmitted. This should have included -- in addition to the Article 78 litigation papers themselves -- the supplemental materials which accompanied the file, as particularized on the Inventory to our *hand-delivered* January 25, 1996 letter (Exhibit "A").

We further request that Mr. Jossen be given our subsequent correspondence with the City Bar regarding our case against the Commission, in particular, our March 18, 1996 and April 12, 1996 letters to then President Barbara Paul Robinson, as well as our May 23, 1996 letter to the Assembly Judiciary Committee, a copy of which, as I recall, I gave you *in hand* on the evening of the installation of Barbara Robinson's successor as City Bar President, Michael Cardozo.

Needless to say, I was *shocked* by the unqualified endorsement of the Commission on Judicial Conduct, appearing in the June 26, 1996 report of the City Bar's Task Force on Judicial Selection and Merger, published in the October 1996 issue of The Record under the title "Judicial Accountability and Judicial Independence: The Judge Lorin Duckman Case Should Not Be Referred to the State Senate". And I was even more shocked when, on November 19, 1996, in my first conversation with Victor Kovner, Chair of the Task Force, he responded to my assertion as to the irreconcilable contradiction between the Commission's self-promulgated rule §7000.3 and

Judiciary Law §44.1¹ by asking me whether we had ever challenged it in court -- a question revealing that Mr. Kovner was *unaware* of our litigation against the Commission. Indeed, Mr. Kovner stated to me he *was* unaware of it.

Coincidentally, our New York Law Journal ad, "*A Call for Concerted Action*" (Exhibit "B"), which referred to the City Bar's refusal to address the profound public issues presented by our litigation against the Commission, was scheduled to be published the following day, November 20th, and I told Mr. Kovner to be sure to watch for it.

On January 20th, when I next spoke with Mr. Kovner, he responded to my various queries by acknowledging that he had seen our ad, by reiterating that he had *not* known about our Commission case prior to our conversation together two months earlier, and by telling me about the City Bar's Judicial Conduct Committee, about whose existence I had until then been unaware.

My phone calls to your office on January 23 and 24, 1997 for information about the Judicial Conduct Committee followed immediately. I am most interested in the specifics as to when it was formed and what its mandate is -- information about which you were rather vague. I would imagine that a committee with that kind of name would be *very* interested in the completely unchecked judicial misconduct CJA has spent years documenting, both on the state and federal levels.

As to the Task Force's report examining the efficacy of the Commission on Judicial Conduct, I must state that it was incumbent upon you as the City Bar's counsel, upon President Cardozo, a Task Force member *ex officio*, and upon Fern Schair, co-chair of the Task Force with Mr. Kovner, who shares with you top administrative responsibilities at the City Bar, to ensure that the Task Force had that the file of our ground-breaking litigation against the Commission. Plainly, had that file been examined by the Task Force, its assessment of the Commission would have been radically different. Indeed, its view that the Commission is a politically-neutral body, served by a professionally competent staff, and its conclusion that the Commission "not only implements the Constitutional

¹ In varying places, the Task Force's report refers to the Commission's self promulgated rules, *without* examination of them:

"...it has a professional staff devoted solely to dealing with judicial conduct, and it has written standards and procedures." [630]

"A permanent staff governed by written standards and rules institutionalized professional and non-partisan decision making." [632]

"The Commission is empowered to establish its own rules and procedures. Judiciary Law §42(5). Its operating procedures and rules are published at 22 NYCRR Part 7000." [at 649]

standard for improper judicial behavior...but also implements the Rules Governing Judicial Conduct and the Code of Judicial Conduct" [at 652] is resoundingly belied by the eight facially-meritorious, detailed and documented complaints against politically-connected, high-ranking judges, annexed to our Article 78 petition -- each summarily dismissed, *without* investigation [See, particularly, Exhibit "G"].


Mind you, this still does not explain why the Task Force's other members who knew about our case against the Commission did not ensure that it was presented and examined. This includes, most specifically, Gary Brown, a member of the Task Force who, as Executive Director of the Fund for Modern Courts, has had in his possession a *separate* copy of the file of our litigation against the Commission. Indeed, Mr. Cardozo has known of such file since our August 22, 1995 letter to Fund Chairman and former City Bar President John Feerick -- to which he was an indicated recipient (Exhibit "C-1").

Additionally, Daniel Kolb, Chairman of the City Bar's Judiciary Committee and a member of the Task Force, knew about our Commission case, having spoken with me at length by phone on December 28, 1995. This is reflected by my January 9, 1996 letter to him (Exhibit "D").

This is over and apart from the fact at least some of the members of the Task Force must read the New York Law Journal and may have seen our Letter to the Editor, "*Commission Abandons Investigative Mandate*", published in August 14, 1995 (Exhibit "E"). Frankly, a letter such as that, which gives specific statutory and rule citations -- Judiciary Law §44.1 and 22 NYCRR §7000.3 -- a case docket number -- #95-109141 -- and concludes with a challenge to the public and legal community to verify the protectionism and cover-up between the Commission and judges, is memorable.

Your prompt response would be greatly appreciated.

Yours for a quality judiciary,


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

Enclosures

cc: Victor Kovner, Esq.
City Bar President Michael Cardozo
Robert Jossen, Judicial Conduct Committee
Daniel Kolb, Judiciary Committee
Fern Schair, Executive Secretary, Chief Administrative Officer
John Feerick, Chairman, Fund for Modern Courts
Gary Brown, Executive Director, Fund for Modern Courts
Ron Russo, Esq. (attorney for Judge Lorin Duckman)