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By Fax: 518-487-5694

June 1, 1995

Frank Rosiny, Chairman
Committee on Professional Discipline
New York State Bar Association
One Elk Street
Albany, New York 12207

RE: Unconstitutionality of New York's attorney disciplinary law,
as written and as applied

Dear Chairman Rosiny:

This follows up my conversation with you on May 19th at the seminar sponsored by the Committee on Professional Discipline.

Although you were initially quite curt with me and refused my request for a meeting, indicating further that your *non*-response to my prior letters to Committee members was all the response I would be getting, you subsequently told me that I should call your Albany office. Such change of heart may have been prompted by your embarrassment over the fact that I was approaching several participants and attendees at the seminar involved in disciplinary matters to discuss with them the patent the unconstitutionality of New York's attorney disciplinary law, discussed more fully at pp. 13-29 of my mother's cert petition to the U.S. Supreme Court, *Sassower v. Mangano, et al.* -- copies of which I gave them.

Among the individuals I spoke to and provided copies of the cert petition were Hal Lieberman, Chief Counsel to the First Department's Departmental Disciplinary Committee and a member of the State Bar's Committee on Professional Discipline, who initially stated he was unfamiliar with *Mildner v. Gulotta*, 405 F. Supp. 182 (1975), Sheldon Elsen, Esq, a member of the First Department's Departmental Disciplinary Committee, also unfamiliar with *Mildner*, and Martin Adelman, Esq., likewise unfamiliar with *Mildner*.

You will recall that Mr. Adelman, as moderator of the program on cameras in the courtroom entitled "The Continuing Search for Empirical Evidence", had referred to bar proposals to open New York's attorney disciplinary proceedings to the public in response to my comment that if such proceedings were opened to camera scrutiny it would expose grotesque perversion of fundamental due process rights.

In my subsequent conversation with Mr. Adelman, however, he conceded that what is being proposed is opening up the disciplinary process *after* disciplinary proceedings are authorized by the court, which position Mr. Adelman, likewise, conceded is predicated on the belief being that such authorizations are based on "probable cause" findings.

Mr. Adelman was most interested in my statement to him that such belief was *erroneous* and that available empirical evidence definitively proves that disciplinary proceedings are authorized where there is *no* "probable cause" finding -- and *no* possibility of a "probable cause" finding.

Mr. Adelman expressed the view that this information should be made known to the State Bar's House of Delegates before it discusses and votes on proposals to open up disciplinary proceedings. Such meeting is just three weeks away.

I believe the State Bar has a right to expect that its standing Committee on Professional Discipline will make such essential presentation. This letter, therefore, confirms my telephone request to your Albany office today that an *immediate* meeting with you and members of the Committee be arranged.

As I mentioned to you, counsel at the Assembly Judiciary Committee has expressed concern over the information I have conveyed to her that the Committee's review of the "480 closed files selected at random", upon which it based its recommendation of "Uniform Rules for Lawyer Discipline", was "rigged".

I myself have reviewed files of a number of disciplined attorneys, which I have requisitioned at the clerk's office of the Appellate Division, Second Department. Such files further confirm that the "Uniform Rules" proposed by your Committee are frighteningly out-of-touch with what is actually going on in attorney disciplinary proceedings in this state. Let there be no mistake, what is taking place is a due process travesty, *inter alia*, because, at least in the Second Department, the Appellate Division is authorizing disciplinary proceedings *without* "probable cause" findings and committee recommendations based thereon.

Because time is rapidly passing -- without any discernible expression of leadership by those with information that should make their "hair stand on end" -- copies of this letter and my *three* previous on the same subject to Committee members Carlisle and Grayson -- are being sent to Mr. Lieberman, Mr. Elsen, and Mr. Adelman, as well as to Haliburton Fales, who, in addition to being Chairman of the First Department's Departmental Disciplinary Committee is Chairman of the Task Force on the Profession.

As reflected by the enclosed Law Journal's April 11, 1995 article "Lawyer Discipline Debated by State Bar", Mr. Fales' Task Force has proposed the most dramatic modification of Judiciary Law §90(10), followed by the more "limited" proposal of your Committee on Professional Discipline, which seeks to give yet more power over attorney discipline to the court. Apparently a third proposal -- one by Mr. Adelman -- will be presented at the House of Delegates meeting. *All* are based

on the erroneous premise that a "probable cause" finding precedes court authorization of disciplinary proceedings.

I understand that this is Maxwell Pfeifer's first day in office as the State Bar's new president. So as to permit President Pfeifer to immediately show leadership on an issue which should so *directly* concern the State Bar's members -- the constitutionality of New York's attorney disciplinary law -- copies of my aforesaid correspondence are being sent to him as well.

I await your response.

Yours for a quality judiciary,



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

Enclosures: (1) NYLJ, 4/11/95, "Lawyer Discipline Proposals Debated by State Bar"
(2) Duplicates of my letters to Committee members Carlisle and Grayson

cc: President Maxwell Pfeifer
New York State Bar Association
Haliburton Fales, Esq.
Chairman, First Department Departmental Disciplinary Committee
Chairman, Task Force on the Profession
Martin Adelman, Esq.
Professor Jay Carlisle, Committee on Professional Discipline
Richard Grayson, Esq., Committee on Professional Discipline
Hal Lieberman, Esq., Committee on Professional Discipline
Chief Counsel, First Departmental Disciplinary Committee
Sheldon Elsen, Esq.
First Department Departmental Disciplinary Committee
Patricia Gorman, Counsel
Assembly Judiciary Committee