CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station
White Plains, New York 10605

By Priority Mail

August 14, 1995

Seth Rosner, Esq.
30 River Road
New York, New York 10044

RE: Meeting the Duty of Ethical and Professional Responsibility

Dear Mr. Rosner:

Thank you for taking the time to speak with me at the recent ABA Annual Meeting in Chicago and for expressing your willingness to review my mother's cert petition to the U.S. Supreme Court. A copy of the petition, challenging the constitutionality of New York's attorney disciplinary law is enclosed, together with the opposing and reply papers.

As discussed, twenty years ago, in Mildner v. Gulotta, 405 F. Supp. 182 (E.D.N.Y. 1975), aff'd 425 U.S. 901 (1976), New York's attorney disciplinary statute was found unconstitutional in a dissenting opinion by Judge Jack Weinstein[1], who you told me had taught you civil procedure.

Since you, like just about everyone else involved in the attorney disciplinary field in New York, indicated in our conversation that you were unfamiliar with Mildner v. Gulotta, I am enclosing a copy of the case for your convenience.

You should know that nobody in the attorney disciplinary field has been willing to discuss with us any of the critical issues raised in Mildner or in my mother's cert petition. Indeed, although I have brought to their attention the significance of the Mildner case and transmitted copies of my mother's cert papers to the so-called leaders of the New York bar--including Frank Rosiny, Chairman of the State Bar's Committee on Professional Discipline--it has been to absolutely no avail. As illustrative, I enclose a copy of my June 1, 1995 letter to Mr. Rosiny and the State Bar's appalling (non) response.

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[1] Mildner v. Gulotta is discussed at pp 13-16 of the cert petition under "Reasons for Granting the Writ" and at Points II and IV (pp. 18-21, 28).

You will note that Hal Lieberman, Chief Counsel for the Departmental Disciplinary Committee of the First Department, was a recipient of my June 1st letter. Mr. Lieberman was at the reception in Chicago, which followed your fine program on "Special Mitigation Circumstances: Should Mitigation Vary with Respondent's Characteristics?". He "brushed me off" at the reception, refusing to set any other time to discuss the constitutionality of New York's attorney disciplinary law with me. In our perfunctory conversation, Mr. Lieberman stated he had still not read Mildner, opined--in response to my inquiry as to his view of my mother's cert petition--merely that it was "okay", and refused to comment upon New York's attorney disciplinary law other than to reaffirm--without elaboration--its constitutionality.

Mr. Lieberman could not survive any debate as to the constitutionality of New York's attorney disciplinary law--which is palpably unconstitutional. Nor could he--or any other "professional responsibility lawyer"--even begin to defend the litany of horrors chronicled in my mother's cert petition, constituting a vicious and heinous retaliation against her for speaking out and seeking to protect the public from the political manipulation of judgeships in New York and the criminal conduct of lawyers and judges involved in the political deal and judicial conventions she was challenging, pro bono, in an Election Law case[2]. Such was the duty of all members of the profession under the ABA Model Rules of Professional Conduct and New York's Code of Professional Conduct.

As the enclosed correspondence with the New York State Bar Association shows, the very lawyers whose stock-in-trade is the bar's various ethical and professional codes have adopted the proverbial ostrich-like "head in the sand" approach. These lawyers--leaders of the bar, no less--have turned their back on our repeated proffers of documentary proof that New York's attorney disciplinary law is destroying the lives of countless lawyers by denying them rudimentary due process rights and that New York's court-controlled disciplinary machinery has been employed vindictively and maliciously against my mother, i.e., to retaliate against her for judicial "whistle-blowing". Indeed, although we were deluged with calls and letters from people all over the country in response to the quarter-page Op-Ed advertisement describing the retaliation to which my mother was subjected and the perversion of fundamental law and rules of judicial disqualification, appearing in the October 26, 1994 issue of The New York Times, not one bar leader or "professional

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[2] See, pp. 3-5 of the cert petition. A copy of the written political "deal" trading judgeships through judicial cross-endorsements appears in the cert appendix, A-29-30.

responsibility lawyer" responded. Instead, we were met with "thundering silence" and complete indifference from lawyers who are supposed to be the "guardians of the law". An additional copy of the New York Times ad, entitled "Where Do You Go When Judges Break the Law?"--which you told me you had not seen--is enclosed.

Because you have been in top leadership positions, as Chair of the ABA Standing Committee on Professionalism, as a member of the ABA Standing Committee on Ethics and Professional Responsibility, and as President and a founding member of the Association of Professional Responsibility Lawyers, we earnestly entreat you to show the leadership that has been so demonstrably lacking in other bar leaders.

Since, as I understand, your tenure on the ABA's Standing Committee on Professionalism has ended, I am sending a copy of this letter, with enclosures, to Dean Burnele Powell, who continues as a member of that Committee. My mother advises that Dean Powell expressed interest in reviewing the matter when she spoke to him about it at the ABA Chicago convention.

Additionally, copies are being sent to the Chairs of other relevant ABA standing committees: Raymond Trombadore, Esq. of the Standing Committee on Professional Discipline; Margaret Love of the Standing Committee on Ethics and Professional Responsibility, as well as to Jeanne Gray, Director of the ABA's Center for Professional Responsibility.

We will, of course, provide any and all further information desired upon request so that there can be no excuse for the failure of those in leadership positions--in the ABA and elsewhere--to meet their ethical and professional obligation to take steps to protect the legal profession from New York's egregiously unconstitutional disciplinary law and to redress the heinous injustice inflicted on my mother--a pre-eminent bar leader for more than thirty-five years, with countless ABA-related honors and activities to her credit[3].

Yours for a quality judiciary,

Elena Ruth Sassower

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

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[3] My mother's listing in the 1989 edition of the Martindale-Hubbell Law Directory is reprinted at A-26-28 of the cert petition.

Enclosures:

(a) Mildner v Gulotta, 405 F.Supp. 182 (1975)
(b) cert papers, Sassower v. Mangano, et al.
(c) my 6/1/95 ltr to Frank Rosiny, NYSBA
(d) 6/5/95 response from NYSBA
(e) CJA brochure with 10/26/94 NYT Op-Ed advertisement

cc: Dean Burnele Powell
Raymond Trombadore, Esq.
Margaret Love, Esq.
Jeanne Gray, Esq.

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Box 69, Gedney Station
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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 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

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

rec'd 6/7/95

# New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200


Kathleen R. Mulligan Baxter, *Counsel* • *Executive Offices* • (FAX) 518/487-5694

June 5, 1995

Ms. Elena Ruth Sassower
Center for Judicial Accountability
Box 69, Gedney Station
White Plains, New York 10605

Dear Ms. Sassower:

Your letter of June 1, 1995 requesting a meeting with the New York State Bar Association's Committee on Professional Discipline has been forwarded to me. Please be advised that a meeting of the committee will not be scheduled.

Very truly yours,

Kathleen R. Mulligan Baxter

c: Frank R. Rosiny, Esq.

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