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BY FAX 212-949-8864 (6 pages)
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February 3, 1999

Gerald Stern, Administrator
New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

RE: CJA's unanswered December 29, 1998 information request AND, based thereon, its judicial misconduct complaint against Appellate Division, Second Department Justice Daniel Joy

Dear Mr. Stern:

Enclosed is a copy of Mr. Lawrence's January 25, 1999 letter in response to our December 29, 1998 letter[1], which sought information about the Commission's purported dismissal of our October 6, 1998 judicial misconduct complaint "against Appellate Division, Second Department Justice Rosenblatt and against his co-defendant Appellate Division, Second Department justices in the *Sassower v. Mangano, et al.* federal civil rights action".

Mr. Lawrence claims that he is "unable to answer the questions" posed by our December 29th letter because the Commission's records "are confidential by law" and, further, that his December 23, 1998 letter, to which our December 29th letter sought clarification, "constitutes the full extent of the notice and disclosure allowed by law". Since Mr. Lawrence does not specify the "law" to which he twice cites, we request that you, as the Commission's Administrator, do so.

If Judiciary Law §45, "Confidentiality of Records", is the unspecified law to which Mr. Lawrence is referring, it is *expressly* limited by Judiciary Law §44. That section states that the Commission "shall"

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[1] Mr. Lawrence's January 25th letter arrived by mail on January 28th -- the day following hand-delivery to you of our January 27th letter, complaining that we had received no response from the Commission to our December 29th letter.

notify the complainant of the dismissal of his/her complaint, but places NO limitation whatever on its form or content. It does not bar the Commission from providing the complainant with relevant facts explaining the dismissal and establishing its lawfulness and propriety. Where, as here, the Commission purports to have dismissed a judicial misconduct complaint, *without* investigation, the fact most relevant is whether the Commission first determined that the complaint "on its face lacks merit" -- the ONLY ground for the Commission to predicate dismissal, *without* investigation, under Judiciary Law §44.1. Needless to say, such determination could only be made by a duly-constituted Commission, with members untainted by bias or self-interest.

Based on Judiciary Law §43, "Panels, Referees", and 22 NYCRR §7000.11, "Quorum Voting", it appears that summary dismissal of a judicial misconduct complaint under Judiciary Law §44.1 can be accomplished by only two Commissioners, forming a majority of a three-member panel. Please advise if this interpretation is incorrect.

Unlike two of Mr. Lawrence's past notification letters, which identified that Appellate Division, Second Department Commissioner William Thompson "did not participate in the consideration" of three of CJA's judicial misconduct complaints[2], Mr. Lawrence's December 23rd notification letter made no such identification as to any Commissioner -- including, most particularly, Commissioner Thompson's successor, Appellate Division, Second Department Justice Daniel Joy.

As pointed out by our December 29th letter, Commissioner Joy -- like Commissioner Thompson -- was a defendant in the §1983 federal action, *Sassower v. Mangano, et al.*, served with a copy of the summons and verified complaint therein. As such, he is a complicitous beneficiary of the fraudulent defense tactics therein, whose particulars were set forth in the *unopposed* cert petition and supplemental brief, provided to the Commission in support of the October 6, 1998 complaint.

Mr. Lawrence's failure to respond, in his January 25th letter, as to whether Justice Joy participated in the consideration of our October 6, 1998 complaint, under the false claim that the "law" prevents him from doing so lends strength to the inference that he did. Absent express notice to the contrary, please consider this letter a judicial misconduct complaint against Justice Joy, who had a direct, personal interest in the outcome of the October 6, 1998 complaint. Such direct, personal interest, proscribed by Judiciary Law §14, Canon 3C of the Code of Judicial Conduct, and §100.3 of the Chief Administrator's Rules Governing Judicial Conduct[3], required Justice Joy to recuse himself -- and, if necessary, that the Commission ensure his recusal by *sua sponte* initiation of a judicial misconduct

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[2] *See* Mr. Lawrence's January 7, 1992 letter dismissing our October 24, 1991 complaint and December 14, 1994 letters dismissing our September 19, 1994 and October 26, 1994 complaints.

[3] *Cf.* 22 NYCRR §7000.9 "Standards of Conduct" setting forth the guides used by the Commission "in evaluating the conduct of judges".

complaint against him, pursuant to Judiciary Law §44.2. Indeed, Judiciary Law §41.4 explicitly disqualifies a judicial member of the Commission from participating in "any and all proceedings" concerning a complaint of which he is the subject.

It must be noted that our October 6, 1998 judicial misconduct complaint is the FIRST we have filed since 1995, when we sued the Commission for corruption in our Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (#95-109141). Our vigorous public advocacy against the Commission in the years since has not only exposed the fact that the Commission survived the case ONLY because it was the beneficiary of fraud, committed by its attorney, the State Attorney General, and by Justice Herman Cahn, but the Commission's on-going official misconduct by its failure to take corrective steps -- misconduct that is criminal. Presumably, this has engendered considerable animosity among the Commissioners[4], who, additionally, have reason to fear any "break" in the high-level cover-up that has protected them thus far.

That high-level cover-up would have been exposed by the Commission's meeting its mandatory duty under Judiciary Law §44.1 to investigate CJA's *facially-meritorious* October 6, 1998 complaint. This, because a copy of that complaint was in the possession of the Commission on Judicial Nomination when it, nonetheless, recommended Justice Rosenblatt as a "highly qualified" candidate for the Court of Appeals -- and because notice of the complaint was given to Governor Pataki, who, nonetheless, proceeded to nominate Justice Rosenblatt to the Court of Appeals. That they could each advance Justice Rosenblatt, notwithstanding the October 6, 1998 *facially-meritorious* (and documented) complaint against him was pending before the Commission, bespeaks their complete confidence that the Commission would unlawfully dismiss it -- much as the Commission had unlawfully dismissed CJA's *facially-meritorious* and documented September 19, 1994, October 26, 1994, and December 5, 1994 complaints against Justice Rosenblatt. These earlier complaints, provided to the Commission on Judicial Nomination under CJA's October 5, 1998 letter opposing Justice Rosenblatt's candidacy -- and in the Governor's possession as part of the file of our Article 78 proceeding against the Commission, long ago transmitted to him[5] -- established that but for the Commission's protection of high-ranking, politically-

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[4] This would include, most particularly, Commissioner Juanita Bing Newton, whose 1996 reappointment by the Governor to the Court of Claims and Senate confirmation we vigorously opposed, based on her complicity in the Commission on Judicial Conduct's corruption. It would also include Chairman Henry Berger, whose complicity in the Commission's corruption was publicly identified in CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97). In that connection, we note that Judiciary Law §41.2 limits the term to which a Commission member may be elected chairman to "his term in office or for a period of two years, whichever is shorter". Please confirm that Mr. Berger has been Chairman of the Commission since 1990 or 1991 -- and provide us with the legal authority for his continuation in that office.

[5] A copy of the Article 78 file was hand-delivered to the Governor's office, at the Capitol, on May 7, 1996. The aforesaid three judicial misconduct complaints [without attachments] are Exhibits "G", "I", "J" to the Article 78 petition. The Commission's acknowledgment letters are annexed thereto as Exhibits "K-5", "K-7", and

connected judges, Justice Rosenblatt would have been long ago removed from judicial office for corruption and wilful abuse of his judicial powers.

Lest the December 23rd date on Mr. Lawrence's dismissal letter not reflect what it would seem to, namely, that the Commission's dismissal of our October 6, 1998 complaint was not only AFTER the Governor's December 9, 1998 nomination of Justice Rosenblatt, but AFTER the Senate's December 17, 1998 confirmation[6], please confirm that this is the case.

Finally, it should be obvious that there is no "law" barring Mr. Lawrence from responding to the final information request in our December 29th letter for advice as to "any and all procedures for review of the Commission's purported dismissal of CJA's *facially-meritorious* October 6, 1998 judicial misconduct complaint." In the interest of avoiding new litigation, please supply us that information forthwith, as well as the other information reasonably requested hereinabove or relevant thereto.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosure

cc: NYS Attorney General Eliot Spitzer
NYS Ethics Commission
Albert Lawrence, Clerk, NYS Commission on Judicial Conduct

"K-8", with its dismissal letters annexed as Exhibits "L-5" and "L-6".

[6] You already have notice of the fraudulent manner in which that confirmation was accomplished, since, on January 27th, I also hand-delivered to you a copy of CJA's published Letter to the Editor, "*An Appeal to Fairness: Revist the Court of Appeals*", New York Post, 12/28/98. A copy of the receipted Letter is attached.

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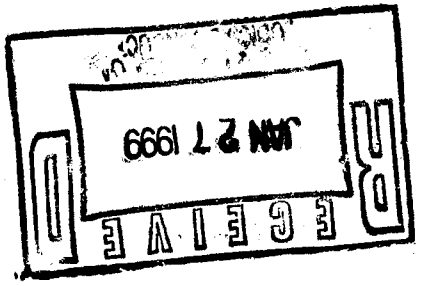

letters@nypost.com

An Appeal to Fairness: Revisit the Court of Appeals

•Your editorial "Reclaiming the Court of Appeals" (Dec. 18) asserts that Albert Rosenblatt will be judged by how well he upholds the democratic process "from those who would seek to short-circuit" it.

On that score, it is not too early to judge him. He permitted the state Senate to make a mockery of the democratic process and the public's rights when it confirmed him last Thursday.

The Senate Judiciary Committee's hearing on Justice Rosenblatt's confirmation to our state's highest court was by invitation only.

The Committee denied invitations to citizens wishing to testify in opposition and prevented them from even attending the hearing by withholding information of its date, which was never publicly announced.

Even reporters at the Capitol did not know when the confirmation hearing would be held until last Thursday, the very day of the hearing.

The result was worthy of the former Soviet Union: a rubber-stamp confirmation "hearing," with no opposition testimony — followed by unanimous Senate approval.

In the 20 years since elections to the Court of Appeals were scrapped in favor of what was purported to be "merit selection," we do not believe the Senate Judiciary Committee ever — until last Thursday — conducted a confirmation hearing to the Court of Appeals without notice to the public and opportunity for it to be heard in opposition.

That it did so in confirming Justice Rosenblatt reflects its conscious knowledge — and that of Justice Rosenblatt — that his confirmation would not survive publicly presented opposition testimony. It certainly would not have survived the testimony of our non-partisan citizens' organization.

This is why we will be calling upon our new state attorney general as the "People's lawyer," to launch an official investigation. **Elena Ruth Sassower**
Center for Judicial Accountability
White Plains

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