

## CENTER *for* JUDICIAL ACCOUNTABILITY, INC.\*

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*Elena Ruth Sassower, Director*

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November 27, 2009

New York State Commission on Judicial Nomination  
1133 Avenue of the Americas  
New York, New York 10036-6710

ATT: Stephen P. Younger, Counsel & Records Access Officer

RE: The Commission's "Transparency" –  
& Compliance with F.O.I.L. & 22 N.Y.C.R.R. §7101

Dear Mr. Younger,

This is to request information as to the procedures employed by the Commission on Judicial Nomination in reviewing comments received by it to its first draft of its proposed revised rules – and, pursuant to F.O.I.L. and the Commission's Part 7101 ("Rules for Public Access to Records"), any documents reflecting those procedures and compliance therewith. Under F.O.I.L. and 22 N.Y.C.R.R. §7101.6(c), your response to our request for documents is required within five business days of receipt.

Such request arises because the Center for Judicial Accountability's September 21, 2009 comment to the Commission's first draft of its proposed rules is, for all practical purposes, not reflected in the Commission's second draft.<sup>1</sup>

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\* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

<sup>1</sup> The only respect in which the Commission's second draft reflects CJA's comment is by its deletion of proposed Rule 7100.6(b): "The chairperson will request a meeting between the Commission and the governor or governor-elect to discuss the vacancy and efforts to recruit candidates."

This provision was noted, by our comment (at p. 11), to "inject[] politics into the evaluative process – and unconstitutional by reason thereof", being "contrary to the theory of 'merit selection', whereby the Commission constrains the Governor – rather than serving as a means for his securing from it the nominee of

Therefore, please confirm that each of the Commission's members was furnished with CJA's comment – and not just, for example, the Commission's chair, former New York Court of Appeals Chief Judge Judith Kaye, a “constitutional scholar”, as to whose receipt of our comment we specifically request confirmation.

Thank you.

Yours for a quality judiciary,



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

cc: Senate Judiciary Committee

ATT: Chairman John L. Sampson

Ranking Member George D. Maziarz

Assembly Judiciary Committee Member Rory I. Lancman

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its choice.”

In view of the Commission's disregard of every other aspect of our comment, there is no reason to believe that the Commission's deletion of proposed Rule 7100.6(b) was a response to our particularized objection, rather than to the New York City Bar Association's more general comment (at p. 5): “WE RECOMMEND THIS PROPOSED PROVISION (b) BE DELETED FROM THE PROPOSED RULES. WE ARE CONCERNED THE PROPOSED PROVISION (b) WOULD CREATE A PERCEPTION ISSUE AND WOULD APPEAR TO RE-POLITICIZE THE NOMINATION AND SELECTION PROCESS.”