

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8220  
White Plains, New York 10602

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)  
Web site: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Director  
Direct E-Mail: [judgewatchers@aol.com](mailto:judgewatchers@aol.com)

BY FAX: 212-428-2155 (9 pages)  
& MAIL

February 2, 2007

Office of Court Administration  
25 Beaver Street, 11<sup>th</sup> Floor  
New York, New York 10004

ATT: Michael Colodner, Counsel & Appeals Officer

RE: (1) Entitlement to the Information Sought by CJA's November 22, 2006 letter;  
(2) Certification pursuant to Article VI, §89.3 of the Public Officers Law [FOIL]

Dear Mr. Colodner:

This responds to the January 4, 2007 letter of Administrative Director Lawrence K. Marks, purporting to dispose of my December 29, 2006 letter, which I had addressed to you as the Unified Court System's "Counsel and Appeals Officer".

Mr. Marks does not state why he is responding, rather than you, or that you have designated him to respond on your behalf, or that you would be authorized to do so. Please be advised that Mr. Marks' conclusory one-paragraph January 4, 2007 letter is demonstrably false and in bad faith – beginning with its failure to confront ANY of the content of my fact-specific, three-page December 29, 2006 letter, none of which Mr. Marks even identifies in denying my FOIL appeal.

Among the content of my December 29, 2006 letter: that my November 22, 2006 letter, which I had addressed to you, not Records Access Officer John Eiseman, was NOT a FOIL request as it did NOT seek documents. Nonetheless Mr. Marks – in his one and only footnote – disingenuously asserts that I "should note" that my November 22, 2006 letter to you "has been treated as a FOIL request" – making it appear as if I hadn't already surmised this from Mr. Eiseman's December 14, 2006 letter and hadn't already objected in my December 29, 2006 letter, which I had.

It might be concluded that the reason you did not respond to my November 22, 2006 letter and allowed it to be initially mishandled by Mr. Eiseman (who would improperly encompass it with my November 27, 2006 FOIL request and then deny it as not being covered by FOIL) was the same reason you did not respond to my December 29, 2006 letter and allowed it to be mishandled by

Mr. Marks (who would affirm what Mr. Eiseman had done). Namely, you wanted to evade your responsibility to provide the information sought by my November 22, 2006 letter:

(1) "the identities of the members of the evaluatory panels which, pursuant to §121.2(a) of the Rules of the Chief Administrator, recommended Westchester County Court Judge Gerald E. Loehr for temporary assignment as an Acting Supreme Court Justice for 2005 and 2006 – and which will be evaluating him for 2007" and.

(2) "the procedures by which these evaluatory panels make their evaluations – and the manner by which lawyers and litigants having direct, first-hand experience with Judge Loehr's on-the-bench conduct can provide information as to his unfitness for any and all future judicial assignments."

Is it you view that the public is not entitled to this information? Or are you not providing it because there is NO information to provide as NO evaluatory panels reviewed Judge Loehr's qualifications for 2005 or 2006 – and NONE were evaluating his qualifications for 2007? Perhaps, notwithstanding §121.2(a) & (b) of the Rules of the Chief Administrator, evaluatory panels do NOT exist for any other judge seeking temporary assignment to the Supreme Court – which is why, additionally, you would not provide information as to their procedures for making evaluations.

Mr. Marks' January 4, 2007 letter only serves to reinforce the non-existence of these panels by its adamant assertion:

"No records were withheld from you. A search was made of the offices where responsive documents were likely to be located, and the results of that search were provided to you without exception. There are no other existing documents responsive to your requests."

If true, such can only mean there are no evaluatory panels. If panels existed, there would obviously be records identifying their membership and procedures – such as requested by my November 27, 2006 letter to Mr. Eiseman, which – unlike my November 22, 2006 letter to you – was a "Request for documents pursuant to §124 of the Rules of the Chief Administrator and FOIL".

Thus, among the 15 enumerated items sought by my November 27, 2006 letter to Mr. Eiseman:

"(4) copies of documents reflecting the membership of all evaluatory panels which, pursuant to §121.2(a) of the Rules of the Chief Administrator, recommended Westchester County Court Judge Gerald E. Loehr for temporary assignment to the Supreme Court, the dates of such recommendations, and the basis therefor;

- (5) copies of all implementing rules, procedures, and guidelines by which, pursuant to §121.2(a) of the Rules of the Chief Administrator, the evaluatory panels make their recommendations as to the selection of judges for temporary assignment to the Supreme Court, and, specifically, as to 'the need for judges to be assigned' and 'the availability of judges for assignment'".

Mr. Eiseman produced no documents responsive to these 2 requests. Nor did he produce any documents responsive to 12 other enumerated document requests made by my November 27, 2006 letter. This was pointed out by my December 29, 2006 appeal, as was the deceit of Mr. Eiseman's cover-up claim – which Mr. Marks adopts – that "all" the unresponded-to requests had "required" "legal or factual explanations, or both, and there is nothing in FOIL that requires that you be provided with legal research, explanations, or answers to your questions." As detailed by my appeal, ALL 15 of the enumerated requests of my November 27, 2006 letter were for documents covered by FOIL – NOT "explanations, or answers to [] questions". Nor did they seek "legal research", but, rather, copies of such rules and procedures as have been promulgated pursuant to specific authority, which the itemized requests cited.

Pursuant to Article VI, §89.3 of the Public Officers Law [FOIL], I request that you certify that the 21 pages produced by Mr. Eiseman's December 14, 2006 letter in response to my November 27, 2006 FOIL request for documents are the extent of the Unified Court System's record and that no other documents can be found "after diligent search".

In so doing, perhaps you'll explain why, among the documents NOT produced by Mr. Eiseman were the following:

- (1) an Administrative Order dated December 29, 2004, signed by Chief Administrative Judge Jonathan Lippman, which was also signed by Appellate Division, Second Department Presiding Justice A. Gail Prudenti, reflecting an attached assignment of judges and justices. Upon information and belief, such attachments included: (2) a page entitled "2005 JUDICIAL ASSIGNMENTS - NINTH JUDICIAL DISTRICT";

- (3) an Administrative Orders dated December 20, 2005, signed by Chief Administrative Judge Lippman, also signed by Appellate Division, Second Department Presiding Justice Prudenti, reflecting an attached assignment of judges and justices. Upon information and belief, the page bearing the title "2006 JUDICIAL ASSIGNMENTS - NINTH JUDICIAL DISTRICT", identified by my December 29, 2006 letter as having been produced by Mr. Eiseman, is an attachment to the December 20, 2005 Administrative Order. Upon information and belief, other pages of attachments to that Administrative Order include (4) a page reflecting cross-assignments of Judge Loehr to "Supreme & Surrogate" Courts.

February 2, 2007

Further, the 20 assignment notices produced by Mr. Eiseman for Judge Loehr<sup>1</sup> were all for 2006, and all were to Supreme Court, except for a single notice dated November 3, 2006, involving the estate of Margaret A. McKeown, which was an assignment to Surrogate's Court. Mr. Eiseman failed to produce any assignment notices for Judge Loehr for 2005, notwithstanding there was at least one assignment: (5) an assignment to Surrogate's Court, by an August 11, 2005 notice, also involving the estate of Margaret A. McKeown.

Copies of these five documents, which should have been part of Mr. Eiseman's production, but were not, are enclosed for your convenience:

Thank you.

Yours for a quality judiciary,



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

Enclosures

cc: Committee on Open Government

---

<sup>1</sup> My December 29, 2006 letter identified these 20 assignment notices as "signed by Administrative Judge Francis A. Nicolai". I did not then realize that 2 of these notices are signed by Supreme Court Justice Nicolas Colabella as "Acting Administrative Judge" for the Ninth Judicial District.



## ADMINISTRATIVE ORDER

Pursuant to the authority vested in me, and with the consultation and agreement of the Honorable A. Gail Prudenti on behalf of the Appellate Division, Second Department, I establish the following regular terms, parts and hours of court for the Supreme, County, Surrogate's, Family and City Courts in the Ninth, Nassau and Suffolk Judicial Districts for 2005, assign the Justices and Judges thereto, except for certificated Justices of the Supreme Court who have been assigned to terms and parts of court by the Appellate Division; and designate the terms of court for the impaneling of grand jurors. In addition, in consultation with the Appellate Division, I adopt the following administrative and calendar rules.

A handwritten signature in black ink, appearing to read "Jonathan Lippman", is written over a horizontal line.

Jonathan Lippman  
Chief Administrative Judge

Dated: December 29, 2004

On behalf of the Appellate Division, Second Judicial Department, I approve the attached schedule of regular hours, terms and parts of court, the assignment of Justices or Judges to them, and the designation of terms of court for which grand juries are to be impaneled.

A handwritten signature in black ink, appearing to read "A. Gail Prudenti", is written over a horizontal line.

Presiding Justice  
Appellate Division  
Second Judicial Department

Dated: December 26, 2004

AO/510/04

OF COURT  
ISTRATION

Y BUILDING 4  
TH FLOOR  
E STATE PLAZA  
NEW YORK 12223

**2005 JUDICIAL ASSIGNMENTS  
NINTH JUDICIAL DISTRICT**

With respect to the following judges who have not yet served for more than two (2) years, the requirements of §121.2(b) of the Rules of the Chief Administrator are waived, and they are designated for assignment to Supreme Court on a temporary, ad hoc basis to matters expected to take twenty (20) calendar days or less to complete, particularly to matters brought pursuant to CPLR Article 78:

Hon. Joseph Alessandro  
Hon. Rory Bellantoni  
Hon. Robert DiBella  
Hon. Gerald Loehr

**2005 CITY COURT JUDGES ELIGIBLE FOR TEMPORARY  
ASSIGNMENTS TO COUNTY OR FAMILY COURTS IN THE NINTH  
JUDICIAL DISTRICT**

The following City Court Judges are designated pursuant to Article VI, Section 26, of the New York State Constitution as eligible for being selected by the District Administrative Judge for temporary assignments to County or Family Courts within his or her county of residence or any adjoining county during the calendar year 2005. These assignments are not to exceed five working days without the approval of the Deputy Chief Administrative Judge and the Presiding Justice of the Appellate Division, unless the assignment is to a particular case taking more than five days which may be handled until completion.

Hon. Preston Scher  
Hon. Richard Liebowitz  
Hon. John Colangelo  
Hon. Ronald McGaw

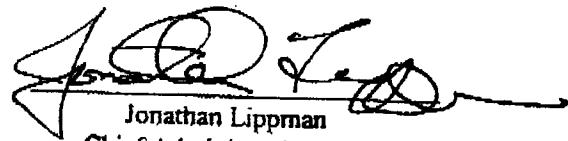
New Rochelle City Court  
Yonkers City Court  
New Rochelle City Court  
Poughkeepsie City Court

All of the above are full-time City Court Judges.



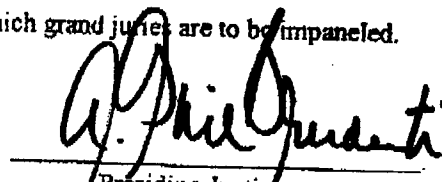
## ADMINISTRATIVE ORDER

Pursuant to the authority vested in me, and with the consultation and agreement of the Honorable A. Gail Prudenti on behalf of the Appellate Division, Second Department, I establish the following regular terms, parts and hours of court for the Supreme, County, Surrogate's, Family and City Courts in the Ninth, Nassau and Suffolk Judicial Districts for 2006, assign the Justices and Judges thereto, except for certificated Justices of the Supreme Court who have been assigned to terms and parts of court by the Appellate Division; and designate the terms of court for the impaneling of grand jurors. In addition, in consultation with the Appellate Division, I adopt the following administrative and calendar rules.

  
Jonathan Lippman  
Chief Administrative Judge

Dated: December 20, 2005

On behalf of the Appellate Division, Second Judicial Department, I approve the attached schedule of regular hours, terms and parts of court, the assignment of Justices or Judges to them, and the designation of terms of court for which grand jurors are to be impaneled.

  
Presiding Justice  
Appellate Division  
Second Judicial Department

Dated: December 21, 2005

ICE OF COURT  
MINISTRATION

OFFICE BUILDING -  
30TH FLOOR  
100 STATE PLAZA  
NY, NEW YORK 10038

AO/444/05

**COUNTY****JUDGE****CROSS ASSIGNED TO****PUTNAM**

Robert Miller  
Multi-Bench

Supreme Court

James Rooney  
Multi-Bench

Supreme Court

**ROCKLAND**

William K. Nelson  
County Court

Supreme, Family & Surrogate Courts

William P. Warren  
Family Court

Supreme, County & Surrogate Courts

Linda Christopher  
Family Court

Supreme, County & Surrogate Courts

Robert Berliner  
Surrogate

Supreme, County & Family Court

**WESTCHESTER**

Francis A. Nicolai  
County Court

Supreme, Family & Surrogate  
9<sup>th</sup> Judicial District

Anthony A. Scarpino  
Surrogate

Supreme & County  
Westchester County

Rory J. Bellantoni  
County Court

Supreme & Family Court

Sam D. Walker  
County Court

Supreme & Family Court

Barbara G. Zambelli  
County Court

Supreme & Surrogate Courts

Susan Cacace  
County Court

Supreme & Family Court

Gerald Lochr  
County Court

Supreme & Surrogate

Robert DiBella  
County Court

Supreme, Surrogate & Family

9-ADMJ-0811-05

The HON. FRANCIS A. NICOLAI, pursuant to the authority vested  
in him as Administrative Judge of the Ninth Judicial District,  
DOES HEREBY:

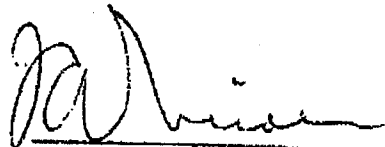
REASSIGN the following matter presently pending  
in Surrogate's Court, Westchester County,  
to the HON. GERALD E. LOEHR,  
Acting Surrogate, Westchester County,  
until disposition.

Probate Proceeding, Will of Margaret A. McKeown, Deceased  
Surrogate File No. 2239/03

and

In the Matter of the Application of Mary McKeown Virga,  
as Former Preliminary Co-Executor of the Estate of  
Margaret A. McKeown, Deceased, for a Decree Revoking  
Preliminary Letters Testamentary of Kevin McKeown  
Surrogate File No. 2239/03

This assignment is in addition to his other duties and  
reassignments.



FRANCIS A. NICOLAI  
Administrative Judge  
Ninth Judicial District

Dated: White Plains, New York  
August 11, 2005

Hon. Anthony A. Scarpino  
Hon. Gerald E. Loehr  
John Kelly  
Donna Minort