CENTER for JUDICIAL ACCOUNTABILITY, INC.

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By Fax: 212-335-8914
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January 31, 1996

District Attorney of New York County
Special Prosecutions Bureau
1 Hogan Place, Room 750
New York, New York 10013

ATT: John Pina, Trial Preparation Assistant

Dear Mr. Pina:

This letter protests the inaction and dereliction of the Manhattan District Attorney's office in handling criminal complaints filed by us in relation to the Article 78 proceeding, Doris L. Sassower v. Commission on Judicial Conduct of the State of New York, #95-109141, as well as its complete failure to respond to the Notice of Right to Seek Intervention in that proceeding.

To expedite appropriate response by your superiors, I am summarizing the content of our telephone conversation yesterday. I am also transmitting copies of the relevant documents, which will facilitate your tracking down:

(1) what--if anything--the Manhattan District Attorney has done with our criminal complaint against the Commission on Judicial Conduct of the State of New York, filed on May 19, 1995;

(2) whether--if at all--the Manhattan District Attorney made a determination as to his duty to intervene, on behalf of the public, in the Article 78 proceeding, Sassower v. Commission, as requested in our April 10, 1995 Notice of Right to Seek Intervention; and

(3) what--if anything--the Manhattan District Attorney has done with our criminal complaint, filed on September 19, 1995--requesting him to take steps at this juncture to protect the public from a demonstrably fraudulent and dishonest decision of the Supreme Court dismissing the Sassower v. Commission Article 78 proceeding.

As discussed, it is now over eight months since we filed our initial May 19, 1995 criminal complaint against the Commission on Judicial Conduct with the 7th floor walk-in complaint room--with no response from the D.A.'s office. A copy of that complaint is enclosed herewith as Exhibit "A".

Also enclosed is a copy of our May 26, 1995 letter, addressed to Assistant District Attorney Steven Nachman (Exhibit "B"). It was Mr. Nachman who I spoke with on May 19, 1995 in the walk-in complaint room. Mr. Nachman was also in the walk-in complaint room on May 23, 1995--when I had arrived with approximately twenty members of the Center who, likewise, came to file criminal complaints against the Commission on Judicial Conduct.

You will note from our May 19, 1995 complaint (Exhibit "A") that it refers to our Article 78 proceeding against the Commission on Judicial Conduct. A copy of the Article 78 Petition, together with a Notice of Right to Seek Intervention, was provided to Mr. Nachman on May 19, 1995 in support of the criminal complaint I filed on that day against the Commission on Judicial Conduct.

As discussed, in April 1995, when we commenced the Article 78 proceeding against the Commission on Judicial Conduct--whose principal offices are in Manhattan--we named the Manhattan District Attorney on the Notice of Right to Seek Intervention. A copy of that Notice is annexed hereto as Exhibit "C". The District Attorney's intervention in the Article 78 proceeding was particularly warranted because he has a direct interest in the proper functioning of the Commission on Judicial Conduct. As a matter of course, citizens seeking to file criminal complaints with him against judges are automatically referred to the Commission on Judicial Conduct[1]. Such referral is predicated on the D.A.'s belief that the Commission on Judicial Conduct investigates facially-meritorious complaints of judicial misconduct--as expressly required by the statute which created the Commission. The reality, however, is that the Commission on Judicial Conduct is not investigating facially-meritorious complaints--but dismisses them, without investigation, even when, prima facie, they document criminal acts by state court judges or provide reasonable cause to believe criminal acts have occurred. This is plainly shown by the judicial misconduct complaints annexed to the Sassower v. Commission Article 78 Petition--chronicling a pattern and practice by the Commission on Judicial Conduct of protecting high-ranking, politically powerful judges from disciplinary investigation.

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[1] The reference guide used by Assistant District Attorneys responsible for "intake" informs them to make such referral.

Following our April 11, 1995 service by priority mail of the Article 78 Petition and Notice of Right to Seek Intervention upon the Manhattan D.A., we heard nothing from the office. As the weeks passed, we telephoned several times and were continually routed around to various units. Yet, we were unable to find out who was handling the intervention issue or to locate anyone who knew anything about the Article 78 papers. Therefore, on May 19, 1995, I hand-delivered a duplicate copy to the Manhattan D.A.'s office. It was while there that I filed our initial criminal complaint against the Commission on Judicial Conduct for:

> "knowingly and deliberately protecting high-ranking, politically-connected judges by dismissing, without investigation, complaints of criminal misconduct filed against them..." (Exhibit "A").

It is my recollection that as part of my lengthy conversation with Mr. Nachman on May 19, 1995, I provided him with a copy of the further papers in the Article 78 proceeding--consisting of our May 11, 1995 Order to Show Cause for a preliminary injunction and a default judgment.

Thereafter, we heard nothing from the Manhattan D.A. as to either our May 19, 1995 complaint against the Commission on Judicial Conduct (Exhibit "A") or as to intervention in the Article 78 proceeding on the public's behalf (Exhibit "C"). Indeed, the D.A.'s only communication with us concerned a separate May 24, 1995 motion made by George Sassower, returnable June 12, 1995, to intervene in our Article 78 proceeding against the Commission and to add respondents--including District Attorney Robert Morgenthau.

Because the opposing June 9, 1995 affirmation, signed by Assistant District Attorney Marc Frazier Scholl, was, inter alia, erroneous in its reference as to the relationship between George Sassower and the Article 78 petitioner, Doris L. Sassower and erroneous in its designation of Doris Sassower's address, I telephoned Mr. Scholl--to whom I spoke for about an hour on June 14, 1995[2]. I detailed for him the profound issues involved in the Article 78 proceeding and the D.A.'s duty to intervene on behalf of the otherwise unprotected public. In that connection, I described to Mr. Scholl the litigation misconduct of the Commission on Judicial Conduct and its attorney, the State

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[2] Mr. Scholl changed Doris Sassower's address--but repeated his misrepresentation as to her relationship to George Sassower--in his largely identical June 23, 1995 affirmation opposing Mr. Sassower's resubmitted motion, returnable July 7, 1995, for the same relief.

Attorney General--making intervention by the Manhattan D.A. all the more imperative to protect the public interest.

Because none of the public officers and agencies named on the April 10, 1995 Notice of Right to Seek Intervention intervened on the public's behalf, the Commission on Judicial Conduct and its attorney were emboldened to engage in litigation misconduct. Likewise, Supreme Court Justice Herman Cahn was emboldened to violate fundamental adjudicatory standards and falsify the record so as to dismiss the Article 78 proceeding in his July 13, 1995 decision.

Judge Cahn's fraudulent and dishonest decision of dismissal was highlighted in a Letter to the Editor written by me and published in the August 14, 1995 issue of the New York Law Journal. A copy of that letter, entitled "Commissions Abandons Investigative Mandate", is annexed hereto as Exhibit "D".

The concluding paragraph of our Letter to the Editor read as follows:

> "The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (Sassower v. Commission, #95-109141)--including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct--and, in turn, is protected by them."

We received no response from the District Attorney to that public challenge, reflected in our August 14, 1995 published letter (Exhibit "D").

Therefore, on September 19, 1995, I visited the D.A.'s offices--with a copy of our Law Journal Letter to the Editor. Because it was the lunch hour and the 7th floor, walk-in complaint room was closed, the officer in the lobby--who recalled me from my May 23, 1995 visit, heading a contingent of approximately twenty members--was good enough to offer to take it up for me. However, before giving the officer the Law Journal letter, I wrote in the page margins a complaint, calling upon the Manhattan District Attorney to take affirmative steps, on behalf of the public, to protect it from Justice Cahn's fraudulent decision and the litigation misconduct of the Commission on Judicial Conduct and Attorney General.

We have received no response to that September 19, 1995 complaint.

As you confirmed, it is normal and customary procedure for the Manhattan District Attorney either to notify complainants of the dismissal of their complaints or to proceed with investigation. Plainly, the District Attorney has not followed such procedure in handling our May 19, 1995 and September 19, 1995 complaints.

We would appreciate more specific information as to the procedures employed by the Manhattan District Attorney's office, including who is responsible for decision-making. We wish to know whose responsibility it has been to evaluate our complaints against the Commission on Judicial Conduct and whose responsibility it has been to pass on the public's right to intervention by the District Attorney in Sassower v. Commission. Obviously, ultimate responsibility rests with District Attorney Morgenthau, and we request to know the extent of his personal involvement.

The Assembly Judiciary Committee, which has oversight over the Commission on Judicial Conduct, has already received from us copies of the court papers in Sassower v. Commission and of our extensive communications with the State Ethics Commission, the Commission on Judicial Conduct, and the State Attorney General. A copy of this letter is, therefore, being provided to it.

It is our position that the public agencies charged with protecting the public, served with Notice of Right to Seek Intervention in Sassower v. Commission (Exhibit "C")--among them the Manhattan District Attorney--cannot permit Justice Cahn's demonstrably corrupt decision in that proceeding to be used as a basis for exonerating the Commission on Judicial Conduct from its criminal complicity in the heinous judicial misconduct--including the criminal acts complained of in the complaints annexed to the Article 78 Petition.

So that District Attorney Morgenthau can properly assess his obligation at this juncture to ensure that Justice Cahn's criminally corrupt decision is vacated for fraud, I enclose as Exhibit "E" pages 1-3 of our December 15, 1995 letter to the Assembly Judiciary Committee[3], more fully particularizing the fraudulent and dishonest nature of Justice Cahn's decision.

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[3] As part thereof, also annexed is Exhibit "A" to that letter consisting of 3 pages: 22 NYCRR §7000.1 et seq., Judiciary Law §44.1, Article VI, §22 of NYS Constitution

In view of the gravity of the issues and the immediate threat to the public represented by the criminal conduct of the public officers involved, we expect this letter will be dealt with on an emergency basis, with the direct personal involvement of District Attorney Morgenthau.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures: As indicated plus Center brochure

cc: Assembly Judiciary Committee
Att: Patricia Gorman, Counsel

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