

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director

BY FAX: 518-486-1850 & 646-458-0037

BY E-MAIL: cjc@cjc.ny.gov

November 23, 2011

Jean M. Savanyu, Clerk
New York State Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

RE: Revocation of Appellate Term Designations of Supreme Court Justices Denise F. Molia & Angela G. Iannacci Based on their Corruption in Office & Other Relief Mandated by Unimpeachable & Readily-Verifiable Court Records
File Nos. 2011/N-0526, 2011/N-0527

Dear Ms. Savanyu,

Reference is made to your three-sentence November 15, 2011 letter, informing me that the Commission has “reviewed” and “dismissed”:

“[my] letter of complaint dated June 14, 2011, which was forwarded to the Commission by the Chief Administrative Judge.”

Your letter does not identify the Chief Administrative Judge, Ann Pfau, as an indicated recipient.¹ Why is that? Have you not furnished her a copy – or have you furnished her some other letter about the Commission’s disposition? Please advise and provide a copy of such letter, if any, to me.

It is understandable that you would not furnish a copy of your November 15, 2011 letter to Chief Administrative Judge Pfau, as it contains no information to substantiate that the Commission “reviewed” and “dismissed” the June 14, 2011 “letter of complaint”. Nor does it even baldly claim

¹ By contrast, Chief Administrative Judge Pfau’s June 16, 2011 letter to me, informing me that she was forwarding my June 14, 2011 letter and “all of the materials” I had provided with it to the Commission for its “review and determination”, indicated as a recipient “Robert Tembeckjian, Esq.”, the Commission’s Administrator and Counsel.

that such purported review and dismissal were in conformity with law. Most importantly, your letter does not claim that the Commission determined that the complaint “on its face lacks merit” – the ONLY ground on which the Commission may dismiss a complaint under Judiciary Law §44.1(a),² without investigating it. Indeed, your letter makes no claim that the Commission investigated the complaint, as investigation is defined by the Commission’s own rule, 22 NYCRR §7000.1(j)³.

Instead, you purport:

“Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline.”

Eleven years ago, when you first became the Commission’s Clerk, taking over from your predecessor Albert Lawrence, you used a similar phrase in a September 19, 2000 letter advising me of the dismissal of CJA’s August 3, 2000 complaint against New York’s then Chief Judge, Judith Kaye:

“Upon careful consideration, the Commission concluded that there was no indication of judicial misconduct to justify judicial discipline”.

I questioned you about that in a September 25, 2000 letter, stating:

“This is the first I am aware of the phrase ‘no indication of judicial misconduct to justify judicial discipline’. What does it mean? Is it equivalent to the phrase ‘no indication of judicial misconduct on which to base an investigation’, used by Albert Lawrence during his long-time tenure as the Commission’s Clerk? Such phrase was something of a ‘standard’ in Mr. Lawrence’s dismissal letters, varied by the phrase ‘insufficient indication of judicial misconduct to warrant an investigation’.

² Judiciary Law §44.1: “...Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.”

³ 22 NYCRR §7000.1(j) – “Definitions”: “*Investigation*, which may be undertaken only at the direction of the commission, means the activities of the commission or its staff intended to ascertain facts relating to the accuracy, truthfulness or reliability of the matters alleged in a complaint. An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members.”

Also, 22 NYCRR §7000.3(d) – “Investigations and Dispositions: “Any member of the commission, or the administrator, may administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence that may be deemed relevant or material to an investigation. The commission may, by resolution, delegate to staff attorneys and other employees designated by the commission the power to administer oaths and take testimony during investigations authorized by the commission. ...”

In contrast to Mr. Lawrence's phraseology, which, at least, told complainants that their complaints had been dismissed without 'investigation', your new phraseology conceals whether any 'investigation' has been conducted. Therefore, please clarify the meaning of your ambiguous phrase and confirm that, prior to the Commission's purported 'dismissal' of CJA's August 3, 2000 complaint, no 'investigation' was conducted – as 'investigation' is defined in 22 NYCRR §7000.1(j)."

You did not answer that question⁴ – which I herein reiterate in the context of asking you to confirm that the meaning of “insufficient indication of judicial misconduct to justify judicial discipline” – used in your November 15, 2011 letter – and “no indication of judicial misconduct to justify judicial discipline” – used in your September 19, 2000 letter – means, identically, that NO investigation was conducted. Certainly, at no time during the nearly five months that the June 14, 2011 complaint was before the Commission was I ever contacted by a Commission investigator, suggestive that not even the first step of an “initial review and inquiry” was undertaken by Commission staff, preliminary to an investigation being authorized by the Commission.⁵

With respect to the June 14, 2011 complaint, please also identify: (1) the date on which the Commission purportedly “reviewed” and “dismissed” it; (2) the number of Commissioners present and voting on it; (3) their identities; (4) the legal authority for the purported dismissal; (5) the specifics of the “insufficient indication of judicial misconduct” on which the purported dismissal was based; and (6) any and all appeal/review procedures.

⁴ Your responding October 5, 2000 letter and all correspondence pertaining to CJA's facially-meritorious and fully-documented August 3, 2000 complaint against former Chief Judge Kaye are posted on CJA's website, www.judgewatch.org, on the webpage devoted to the Commission on Judicial Conduct, accessible *via* the left side panel “Searching for Champions-NYS”.

⁵ 22 NYCRR 7000.1(i) – “Definitions”: “*Initial review and inquiry* means the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint.”.

As to this, the Commission's March 2011 Policy Manual states:

“The Commission's Operating Procedures and Rules defines a pre-investigation ‘initial review and inquiry’ as the ‘preliminary analysis and clarification’ of a complaint and the ‘preliminary fact-finding activities of Commission staff intended to aid the Commission in determining whether or not to authorize an investigation with respect to such complaint.’ See 22 NYCRR §7000.1(i)

In carrying out an initial review and inquiry, staff may clarify complaints by interviewing complainants...” (§2.4 Initial Review and Inquiry, p. 5, underlining added).

Finally, so that Chief Administrative Judge Pfau may take “appropriate action” before stepping down as Chief Administrative Judge on November 30, 2011 – including with respect to the judges and lawyers who are members of the Commission and staff⁶ – please IMMEDIATELY return to her my June 14, 2011 letter and “all of the materials” I provided her in substantiation, these being:

(1) my January 2, 2010 motion to disqualify Appellate Term Justice Molia & other relief– & the two *reason-less* February 19, 2010 decisions thereon;

(2) my April 25, 2010 motion to disqualify Appellate Term Justice Iannacci & other relief – & the *reason-less* July 8, 2010 decision & order thereon

Thank you.

Yours for a quality judiciary,



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

cc: Chief Administrative Judge Ann Pfau
Robert Tembeckjian, Administrator & Counsel

⁶ §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct:

- “(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.
- (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.”
(underlining added).