

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

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

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY FAX: 518-473-5514 (6 pages)

January 14, 2000

Patricia K. Bucklin, Director, Office of Public Affairs
Office of Court Administration/Unified Court System
Empire State Plaza
Agency Building 4, Suite 2001
Albany, New York 12223-5514

RE: Informational Requests

Dear Ms. Bucklin:

Thank you for your prompt return call. Enclosed is my December 1, 1999 letter to OCA Deputy Counsel John Eiseman, containing informational requests at the bottom of its second page.

Such letter was necessitated by Mr. Eiseman's insistence that I put my informational inquiries in writing before he would respond. He then responded – *not* in writing – but by phone. The only information Mr. Eiseman provided was that requested at #4 of my letter: the legal authority for a Court of Claims judge remaining on the bench beyond expiration of his appointive term. By then, the Senate Judiciary Committee had already faxed me the enclosed §2, subdivision 4 of the Court of Claims Act, in response to my December 1st letter, which I had earlier faxed to its clerk and senior counsel.

As to the remainder of the information requested at the bottom of the second page of my December 1st letter, Mr. Eiseman told me that I should contact you. Consequently, please respond to the informational requests denominated #1, #2, #3.

Additionally, since you readily conceded that Court of Claims Judge William Wetzel is *not* the only Court of Claims judge who is sitting on the bench as a hold over, kindly advise how many other Court of Claims judges are sitting on the

bench after expiration of their appointed terms – and the dates on which their terms expired. This is the information ultimately sought by the last paragraph of the second page of my December 1st letter. It is also information which Nan Weiner, Executive Director of Governor Pataki's State Judicial Screening Committees, stated I could obtain from the OCA, when, on grounds of confidentiality, she declined to provide me with that information when I spoke with her by phone yesterday.

From my reading of §2, subdivision 4 of the Court of Claims Act, it would seem that a Court of Claims judge who continues as a hold over beyond expiration of his term cannot be reappointed for the vacancy thereby created since it would strain the English language to suppose that such a judge can succeed himself – or, as in the words of the Act, be “his successor”. Mr. Eiseman refused to discuss this, other than to baldly assert that a Court of Claims hold over could be reappointed. Do you have any legal authority or case law on the subject?

Finally, please confirm whether the “successor” appointed to fill the vacant seat of a Court of Claims hold over serves for a full nine-year term – and whether that term runs from the date of appointment or confirmation.

As discussed, I would appreciate your response in writing.

Thank you.

Yours for a quality judiciary,



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

Enclosure

cc: John Eiseman, Deputy Counsel, Office of Court Administration
[by fax: 212-428-2155]

Senate Judiciary Committee

[by fax: 518-426-6904]

ATT: David Gruenberg, Senior Counsel

Susan Zimmer, Clerk

Nan Weiner, Executive Director, NYS Judicial Screening Committees

[by fax: 518-486-9693]

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Elena Ruth Sassower, Coordinator

BY FAX: 212-428-2155 (4 pages)

December 1, 1999

John Eiseman, Deputy Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: (1) Record-Keeping at the OCA
(2) Legal Authority for the Continuation in Office of Court
of Claims Judge William A. Wetzel Five Months *After* the
Expiration of his Appointive Term and in the *Absence* of
Reappointment

Dear Mr. Eiseman:

This follows up my telephone call to you at approximately 10:45 this morning (212-428-2150), speaking to you in the absence of OCA counsel, Michael Colodner, for whom I left a phone message at 9:15 a.m. this morning.

In our conversation, I recounted my attempts to obtain information from the OCA regarding the date of expiration of the term of William A. Wetzel, appointed to the Court of Claims in June 1995. According to Ed Borelli of the Education and Training Office (212-428-2523), with whom I spoke on Friday, November 26th and Monday, November 29th, the OCA, as a general practice, does *not* maintain records showing the day, month, and year on which a particular judge's term expires, but only the year. I believe such advice was given after he consulted with counsel's office.

Thus, Mr. Borelli stated that he could only tell me that Judge Wetzel's term expires in 1999, but not the month and day. He further stated, and again I believe this was after consulting with counsel's office, that the OCA did not have any records showing whether or not Judge Wetzel had, as yet, been reappointed and that this, too, followed a general practice.

On Monday afternoon, I obtained that information about Judge Wetzel from the Senate Judiciary Committee's clerk, Susan Zimmer. She advised that Judge Wetzel's term expired on June 30, 1999 and provided me with the enclosed copy of the Governor's certificate of nomination *expressly* reflecting that fact. Ms. Zimmer also stated that the Senate Judiciary Committee had not received *any* reappointment for Judge Wetzel. When I asked her for the legal authority by which Judge Wetzel was continuing to sit on the bench, five months after expiration of his term, she did not have that information.

Before speaking with you this morning, I again called Ms. Zimmer to ask whether she had had an opportunity to consider whether there was legal authority for a judge sitting past the expiration of his term. She stated no, but that she was not an attorney and suggested that I could get that information from the Court. Ms. Zimmer also stated her belief that the Court would have information about whether, and how many, other Court of Claims judges, whose terms have expired, are continuing to sit, without reappointment. I asked Ms. Zimmer if, by the word "Court" she was referring to the OCA, to which she responded yes.

Therefore, this is to make written request for the following:

1. whether and through what office, the OCA provides members of the public with such basic information about state judges as when and to what court they were elected or appointed, the expiration of their terms, the date of their resignations, promotions, demotions, etc.
2. confirmation that, in fact, the OCA's record-keeping -- including that used for issuing paychecks -- does not indicate the full date for expiration of terms;
3. information as to whose responsibility it is to ensure that the OCA is notified of reappointments, re-elections, promotions, demotions, etc -- presumably necessary for issuing paychecks, etc;
4. legal authority, if any, for permitting a judge whose appointive term has expired to remain on the bench, in the absence of reappointment.

Additionally, I request that the OCA provide the Senate Judiciary Committee with a list of ALL sitting Court of Claims judges so that it can compare their names with the certificates of their nomination, in the Committee's possession, and verify who, other than Judge Wetzel, is sitting beyond the expiration of his term.

December 1, 1999

By copy of this letter to David Gruenberg, senior counsel of the Senate Judiciary Committee, for whom I left two phone messages at his law office this morning, I request information as to the result of that comparison, as well as information as to how many Court of Claims judgeships there are, the expiration dates for their 9-year terms; and the existence of records showing who – and for what duration – each judgeship has been occupied.

To the extent that the above-requested information may be obtainable through F.O.I.L, requiring your response within five business days of receipt, I hereby invoke that statutory provision.

Yours for a quality judiciary,



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

Enclosure

cc: David Gruenberg, senior counsel, Senate Judiciary Committee
[by fax: 518-274-0348]
Susan Zimmer, clerk, Senate Judiciary Committee
[by fax: 518-426-6904]
Robert Freeman, Executive Director, Committee on Open Government
[by fax: 518-474-1927]

McKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED

COURT OF CLAIMS ACT

ARTICLE I—THE COURT, JUDGES AND OFFICERS

§ 1. Short title

Law Review and Journal Commentaries

New York Court of Claims: A procedural guide. William Kleen. 19 Trial Law Q. 49 (Spring, 1988).

Notes of Decisions

3. Substantial compliance peal denied 50 N.Y.2d 802, 430 N.Y.S.2d
Welch v. State (4 Dept. 1979) 71 A.D.2d 1026, 407 N.E.2d 1354.
494, 423 N.Y.S.2d 102, [main volume] ap.

§ 2. Organization of court of claims

1. The court of claims is hereby continued.
2. Such court shall consist of (a) twenty-two judges, who shall be appointed by the governor, by and with the advice and consent of the senate; (b) such number of additional judges not exceeding seventeen to and including December thirty-first, nineteen hundred eighty-two, and not exceeding fifteen on and after January first, nineteen hundred eighty-three, as shall be appointed by the governor, by and with the advice and consent of the senate; (c) such number of additional judges not exceeding nineteen as shall be appointed by the governor, by and with the advice and consent of the senate prior to December thirty-first, nineteen hundred eighty-two; (d) such number of additional judges not exceeding twenty-three as shall be appointed by the governor, by and with the advice and consent of the senate, prior to December thirty-first, nineteen hundred eighty-six; (e) such number of additional judges not exceeding twelve as shall be appointed by the governor, by and with the advice and consent of the senate, provided that no more than five of such judges shall be appointed prior to July first, nineteen hundred ninety.

[See main volume for 3]

- * 4. Whenever the term of office of a judge shall expire, or his office become vacant from any cause, his successor shall be appointed for the unexpired term. Notwithstanding the provisions of section five of the public officers law, a judge of the court of claims shall hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been appointed, until his successor shall have been chosen and qualified but after the expiration of such term the office shall be deemed vacant for the purpose of choosing his successor.