

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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October 1, 1995

Jeffrey N. Barr, Assistant General Counsel
Administrative Office of the United States Courts
One Columbus Circle
Washington, D.C. 20005

Dear Mr. Barr:

At the ABA meeting in Chicago last August, I had the pleasure of speaking with Hon. Patricia Wald, former Chief Judge of the Court of Appeals for the D.C. Circuit. I specifically inquired about her memo to Judge Elmo Hunter on the subject of justiciability of "merits related" complaints under §372(c).

As you know, a substantial portion of Judge Wald's September 25, 1987 memo on this important subject is quoted in your consultants' report (Research Papers, Vol. I, p. 524). Her memo is also quoted in the consultant report of Professor Richard Marcus (Research Papers, Vol. I, p. 418), as well as in Professor Charles Geyh's consultant report (Research Papers, Vol. I, p. 730). For your convenience, the pertinent pages of the reports are annexed hereto as Exhibits "A-1", "A-2", and "A-3").

In clear, straight-forward language, Judge Wald's memo to Judge Hunter posed the fundamental question relating to §372(c):

"Since the vast majority of complaints we receive come out of judicial proceedings, some clarification in this area would be most helpful. Is anything that arose in the course of a proceeding out of bounds for a complaint, or is behavior that might have been appealed as a fundamental deprivation of due process (i.e., the lack of an unbiased judge) still a permissible subject of a complaint?" (Exhibit "A-1": Research Papers, Vol. I, p. 524)

Yet, I have found no succinct answer to Judge Wald's question in any of the aforesaid three consultants' reports. To the best of my knowledge, none of the three reports make reference to any response from Judge Hunter or any other judge to Judge Wald's question. Nor do they identify that there was no response. Indeed, from my conversation with Judge Wald in August, it was unclear to me whether there had been a response to her memo.

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Additionally, none of the three consultants' reports provide an independent answer to Judge Wald's question based on analysis of dismissals of "merits related" §372(c) complaints--although two of the three reports were plainly in a position to do so.

The result is that although the statistics of the Administrative Office, cited at page 730 of Professor Geyh's report (Exhibit "A-3"), show that 83% of complaints filed in 1991 under §372(c) were dismissed as "merits related", the National Commission has sloughed off the unanswered "merits-related" justiciability issue raised by Judge Wald's memo--and done so with the extraordinary statement that it did "not believe...that the problem is readily amenable to formal clarification" (Exhibit "B": Report, at p. 93).


Certainly, had the judges and consultants directed themselves to Judge Wald's memo query, "formal clarification" of the "merits related" standard--which was absolutely essential--would have been eminently possible. Indeed, the National Commission's recommendations on the issue of "delay" [Exhibit "C": Report, at p. 95] show that the National Commission was quite capable of refining key elements relevant to justiciability when it chose to, to wit, "habitual" practice, "improper animus or prejudice", and "egregious[ness]...constituting a clear dereliction of judicial responsibilities".

Judge Wald told me that she no longer had a copy of her memo immediately accessible, but that I could obtain one from the Administrative Office. And she was gracious enough to voluntarily offer that if the Administrative Office were unable to provide me with a copy, she would make an effort to locate one from her records.

I, therefore, request a copy of Judge Wald's September 25, 1987 memo--as well as a copy of any response to it.

Finally, may I take this opportunity to remind you of my July 20, 1995 letter, a copy of which is annexed hereto as Exhibit "C". Although it is now more than two months that I have been awaiting a response from you, to date I have received nothing.

Yours for a quality judiciary,



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

Enclosures

cc: Judge Patricia M. Wald
House Judiciary Committee
Subcommittee on Courts and Intellectual Property
Federal Judicial Center