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PRESS RELEASE

The Center for Judicial Accountability, Inc., a national, non-profit, non-partisan citizens' organization working to reform the processes of judicial selection and discipline, supports Bill #7484, on today's agenda of the Senate Judiciary Committee. The Bill, designed to "give the public greater knowledge about the workings of the system...and instill greater public confidence in the process of disciplining judges", marks the first step in opening to the public the now confidential proceedings of the New York State Commission on Judicial Conduct. It would require that, once the Commission institutes disciplinary proceedings against a judge, the hearings be public.

However, the Center's position is that this Bill does not go far enough. Only the smallest percentage of complaints filed with the Commission each year result in disciplinary proceedings against a judge. Last year, out of more than 1400 new complaints, the Commission commenced disciplinary proceedings against only 19 judges. The Commission justifies these minuscule numbers by claiming that the vast majority of the complaints it receives--which it dumps without investigation--are frivolous or do not constitute misconduct. It is able to maintain this pretense because these complaints are statutorily confidential--which means the Commission can say whatever it wants about the complaints, without anyone, including legislators, being able to verify the true facts. The Bill does nothing to remove the confidentiality surrounding these complaints

Ex "A"

against judges which, overwhelmingly, never reach the investigative stage.

Last year, the Center brought a ground-breaking public interest lawsuit against the Commission. It demonstrated, by annexing copies of eight facially-meritorious, documented complaints it had filed with the Commission since 1989--each dismissed, without investigation--that the Commission has been covering up judicial misconduct and protecting powerful, politically-connected judges. It showed that the Commission had been able to accomplish this because it had rewritten its statutory mandate (Judiciary Law Sec. 44.1), which requires it to investigate facially-meritorious complaints, by promulgating a rule (22 NYCRR Sec. 7000.3), by which it had arrogated to itself the power to summarily dismiss complaints, unbounded by any standard.

Because the Commission could not survive the Center's legal challenge, the case had to be dumped by the Supreme Court of New York County. A summary of that court's legally insupportable and factually fabricated decision was published in the August 14, 1995 *New York Law Journal* in a Letter to the Editor from the Center, entitled, "Commission Abandons Investigative Mandate". A copy is annexed.

The litigation file of that case establishes that the Commission on Judicial Conduct is not just dysfunctional, but corrupt and, further, that it has corrupted the judicial process. A copy of the file is being delivered today to the Senate Judiciary Committee, as well as to Governor Pataki's office. Accompanying the file are petitions, signed by almost 1,500 New Yorkers, urging public hearings and investigation of judicial corruption in this State.

Monday, August 14, 1995

LETTERS

*To the Editor*Comm'n Abandons
Investigative Mandate

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (*NYLJ*, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR §7000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigation, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-con-

nected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commission, with no finding that the complaints were facially without merit.

In "round one" of the litigation, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

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.

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