

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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4 pages

January 30, 1998

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

RE: Reconsideration and Withdrawal of OCA Waiver to Court of
Claims Judge Andrew O'Rourke and Informational Requests

Dear Mr. Eiseman:

At approximately 12:15 p.m., I called your office and asked to speak with you. I was told that you were in, but not available. The urgent message that I left was that I wished to speak with you in connection with the letter I had faxed you at approximately 10:00 a.m. because I was concerned that it might be erroneous.

Two and a half hours later, with no return call from you, I again telephoned your office. The secretary momentarily put me on hold and when she came back on the line told me that you had instructed her to tell me that you did not wish to speak with me and that whatever I had to say had to be in writing. I told the secretary, who identified herself as Lourdes, that I had already given you a "writing" -- my letter faxed earlier in the day -- and that I wished to discuss it with you. I stated to her that I had withheld sending the letter to all the indicated recipients because I wanted to further clarify Mr. Colodner's interpretation of §211 of the Retirement and Social Security Law against my own. I asked that you return the call within the following half hour, to wit, by 3:15 p.m.

I also asked that she convey to you our immediate request for Mr. O'Rourke's waiver application -- as well as the "written report of [his] prospective employer", with the "finding[s], on evidence" based thereon. We are absolutely entitled to these under §211 and inspection of these documents would plainly -- and promptly -- shed light on the interpretation of §211.

It is now 4:15 p.m. -- an hour and a half later since my second call to you -- with no return call from you.

Under the circumstances, I can only conclude that you and Mr. Colodner are unwilling to intelligently discuss §211 because my interpretation is an appropriate and correct one. Based thereon, I will go ahead and distribute the letter to the indicated recipients.

So that the record is clear, I believe that §211 is internally inconsistent. However, based on the wording of subdivision 2(a) "No retired person may be employed in a position in public service pursuant to subdivision one hereof except upon approval of...", it seems obvious that subdivision 1 of §211 does not stand independently of subdivision 2 -- in which case what is involved is a "waiver", as to which the conditions precedent set forth in subdivision 2(b) must be met.

Finally, I enclose a copy of my coverletter to Chief Administrative Judge Lippman for you and Mr. Colodner.

Yours for a quality judiciary,



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

Enclosures

cc: Jonathan Lippman, Chief Administrative Judge, OCA
Michael Colodner, OCA Counsel
Chief Judge Judith Kaye
Senator Richard Dollinger
Senator Franz Leichter
Michael Cardozo, President, Association of the Bar of the City of New York
Joshua Pruzansky, President, New York State Bar Association
Blair Horner, Legislative Director, NYPIRG
Rachel Leon, Executive Director, Common Cause
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