

## CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

Post Office Box 3002  
Southampton, New York 11969

Tel. (631) 377-3583  
Fax (631) 377-3582

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Director

BY FAX: 212-336-2222 (10 pages)  
BY E-MAIL: [spyounger@pbwt.com](mailto:spyounger@pbwt.com)

August 12, 2009

New York State Commission on Judicial Nomination  
1133 Avenue of the Americas  
New York, New York 10036-6710

ATT: Stephen P. Younger, Counsel

RE: The Commission on Judicial Nomination's Compliance with its Obligations  
under F.O.I.L. and its Interpretation of Judiciary Law §66

Dear Mr. Younger,

Reference is made to the Commission on Judicial Nomination's Part 7101 "Rules for Public Access to Records of the State of New York Commission on Judicial Nomination" – accessible via a link at the bottom of the Commission's website, [nysegov.com/cjn](http://nysegov.com/cjn).

Over the years, the Center for Judicial Accountability, Inc. (CJA) has repeatedly inquired about the Commission's promulgation of such rules – without response from the Commission. To refresh your recollection, enclosed is a copy of CJA's January 5, 2004 letter to the Commission, reiterating and inventorying our prior inquiries and requests.<sup>1</sup>

As Part 7101 appears to be the rules that CJA repeatedly requested, kindly advise as to the date the Commission promulgated them and the dates of any and all amendments thereto.

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\* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful. Its administrative/corporate office is in White Plains, New York.

<sup>1</sup> The correspondence presenting these prior inquiries and requests is accessible from CJA's website, [www.judgewatch.org](http://www.judgewatch.org), via the sidebar panel "Searching for Champions-NYS", which brings up a webpage with a link to the Commission, posting the correspondence and our related ethics and criminal complaints.

Please also advise as to whether – and when – the Commission compiled the “subject matter” list of “all records” in its possession, as Public Officers Law §87.3(c) requires<sup>2</sup>. Such was also the subject of CJA’s January 5, 2004 letter and prior correspondence.

Assuming the Commission has compiled such “subject matter” list, would Wednesday, August 19, 2009 be convenient for my inspecting it at the Commission’s office and possibly copying same?

As for the Commission’s publicly-accessible “records”, Section 7101.2 defines them as:

“only those written documents relating to the nomination process which may, pursuant to section 66 of the Judiciary Law, be made public. Such records shall include the reports issued by the commission to the Governor of nominations made by the commission, press releases issued by the commission and such other documents as the commission has made publicly available in the course of its functions.”

Upon my visit to the Commission, I request to inspect, and possibly copy, the publicly-accessible records encompassed by Section 7101.2.

By the way, has the Commission located – or recovered – its eight “older reports” to the Governor, copies of which it had been unable to furnish us in 2000. These eight reports were itemized by CJA’s November 16, 2000 letter to the Commission – a copy of which is enclosed to facilitate your belatedly providing the reports to us.

Finally, please advise – or supply records reflecting – the date the Commission’s website went on-line.

Thank you.

Yours for a quality judiciary,



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

Enclosures: CJA’s January 5, 2004 letter to the Commission  
CJA’s November 16, 2000 letter to the Commission

cc: Senate Judiciary Committee Chairman John L. Sampson

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<sup>2</sup> Public Officers Law 87.3(c) requires “a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.”

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](mailto:judgewatch@aol.com)  
Web site: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Coordinator

BY FAX: 212-262-5152 (3 pages)

BY MAIL

January 5, 2004

New York State Commission on Judicial Nomination  
666 Fifth Avenue, 28<sup>th</sup> Floor  
New York, New York 10103-0084

ATT: Stuart A. Summit, Counsel

RE: NYS Commission on Judicial Nomination's Threshold Obligations under the Freedom of Information Law (F.O.I.L.), Etc.

Dear Mr. Summit:

Please advise as to whether the Commission on Judicial Nomination has finally promulgated rules and regulations for records access pursuant to F.O.I.L., as required by §87.1 of the Public Officers Law, and compiled a "subject matter" list of "all records" in its possession, as Public Officers Law §87.3(c) requires?

As you know, by letter dated April 26, 1999, Robert Freeman, Executive Director of the Committee on Open Government, stated to us that you had informed him that

"the Commission is taking all necessary steps to comply with the Freedom of Information Law, including the promulgation of procedural rules and regulations."

Nevertheless, over the ensuing years, you have consistently ignored our inquiries as to whether rules and regulations had been promulgated and a "subject matter" list compiled. Likewise, you have consistently ignored our requests for copies of these documents, which we again reiterate<sup>1</sup>. For your convenience, a copy of Mr. Freeman's April 26, 1999 letter,

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<sup>1</sup> For CJA's prior inquiries and requests, *see*, CJA's May 3, 1999 letter to you (at p. 1); CJA's September 15, 1999 supplemental ethics complaint to the NYS Ethics Commission (at p. 4); CJA's October 11, 2000 letter to you (at p. 4); CJA's November 16, 2000 letter to you (at p. 3); CJA's April 16, 2001 (at p. 1).

reflecting his conversation with you and your advice to him, is enclosed.

On a separate, but related subject, we have repeatedly requested<sup>2</sup> that you mail us a "hard copy" of the Commission's October 15, 2003 "written report" of the seven candidates recommended to the Governor as "well qualified", as well as a copy of the informational literature which the Commission provided to this most recent set of candidates for the New York Court of Appeals, including the Commission's current brochure and application packet containing its questionnaire form(s) and waivers. Please confirm that you are mailing these requested documents without further delay.

Thank you.

Yours for a quality judiciary,



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

cc: Robert Freeman, Executive Director  
Committee on Open Government

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<sup>2</sup> CJA's October 16, 2003 faxed letter, refaxed on October 17, 2003; CJA's December 8, 2003 faxed letter, refaxed on December 23, 2003; telephone messages on December 23, 2003 (with Allison Korn), and today (on your voice mail).



STATE OF NEW YORK  
DEPARTMENT OF STATE  
COMMITTEE ON OPEN GOVERNMENT

rec'd 4/30/99

Committee Members

Mary O. Donohue  
Alan Jay Gerson  
Walter Grunfeld  
Robert L. King  
Gary Lewi  
Warren Mitofsky  
Wade S. Norwood  
David A. Schulz  
Joseph J. Seymour  
Alexander F. Treadwell

Executive Director

Robert J. Freeman

41 State Street, Albany, New York 12231

(518) 474-2518

Fax (518) 474-1927

Website Address: <http://www.dos.state.ny.us/coog/coogwww.html>

April 26, 1999

Ms. Elena Ruth Sassower  
Center for Judicial Accountability, Inc.  
P.O. Box 69  
Gedney Station  
White Plains, NY 10605-0069

Dear Ms. Sassower:

As you are aware, I have received your letter of March 8 concerning the status of the Commission on Judicial Nomination under the Freedom of Information Law.

In this regard, having discussed the matter with Mr. Stuart Summit, Chair of the Commission, I was informed that the Commission is taking all necessary steps to comply with the Freedom of Information Law, including the promulgation of procedural rules and regulations.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:jm

cc: Stuart Summit

TRANSMISSION VERIFICATION REPORT

TIME : 01/05/2004 14:39

NAME : OJA

FAX : 9144284894

TEL : 9144211200

DATE, TIME	01/05 14:28
FAX NO. / NAME	12122625152
DURATION	00:01:31
PAGE(S)	03
RESULT	OK
MODE	STANDARD
	ECM

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Web site: [www.judgewidth.org](http://www.judgewidth.org)*

*Elena Ruth Sassower, Coordinator*

BY FAX: 212-262-5152 (3 pages)  
CERTIFIED MAIL/RRR: 7099-3400-0001-2791-8462

November 16, 2000

New York State Commission on Judicial Nomination  
666 Fifth Avenue, 28<sup>th</sup> Floor  
New York, New York 10103-0084

ATT: Stuart A. Summit, Counsel

RE: The Commission's Older Reports to the Governor

Dear Mr. Summit:

This responds to your October 18<sup>th</sup> letter, transmitting copies of eight of the Commission's reports to the Governor<sup>1</sup> -- for which we thank you. You state, however, "we have been unable to locate a number of older reports".

Based on your enclosed list, there appear to be eight missing "older reports". These are:

- For vacancy #1: the report that culminated in Lawrence Cooke's appointment as Chief Judge in 1979;
- For vacancy #2: the report that culminated in Bernard Meyer's appointment as an Associate Judge in 1979;
- For vacancy #3: the report that culminated in Matthew Jason's appointment as an Associate Judge in 1981;
- For vacancy #4: the report that culminated in Richard Simons' appointment as an Associate Judge in 1983;

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<sup>1</sup> The copy of the Commission's November 12, 1998 report transmitted with your letter -- unlike the copy transmitted with your February 24, 1999 letter-- omits the heading that it is "CONFIDENTIAL".

- For vacancy #5: the report that culminated in Judith Kaye's appointment as an Associate Judge in 1983;
- For vacancy #8: the report that culminated in Vito Titone's appointment as an Associate Judge in 1985;
- For vacancy #9: the report that culminated in Stewart Hancock's appointment as an Associate Judge in 1986;
- For vacancy #10: the report that culminated in Joseph Bellacosa's appointment as an Associate Judge in 1987.

Presumably, you have some independent recollection of these "older reports", as you have been counsel to the Commission on Judicial Nomination since its inception in 1978. Please advise whether the generic presentation in the extent reports also characterized the earlier reports. Specifically, did none of these earlier reports "include the *Commission's findings* relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of *each candidate* recommended to the governor"<sup>2</sup>, but only the boilerplate that all recommended candidates are "in the collective judgment of the Commission" "well qualified by *their* character, temperament, professional aptitude..."<sup>3</sup>? Did these "older reports" also annex a "summary of the careers"?

While "[t]he Governor may have copies of the missing reports", it is hard to believe that, years ago, *immediately* following your discovery of the "unfortunate incident" of the landlord "dispos[ing] of the Commission's files", you made no attempt to reconstitute those files, at very least by obtaining copies of the Commission's reports from the Governor, from the nominees, and from other sources.

Based on CJA's past experience with the Governor, where for over a year and a half he has yet to respond to CJA's several requests for a copy of Justice Rosenblatt's publicly-accessible financial statement, pursuant to both Judiciary Law §63.4 and F.O.I.L.<sup>4</sup>, it is unlikely he would respond to our request for copies of the Commission's "missing reports".

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<sup>2</sup> Judiciary Law §63.3, emphasis added.

<sup>3</sup> Emphasis added.

<sup>4</sup> This non-response has continued even after CJA filed its March 26, 1999 ethics complaint (at p. 22) and September 15, 1999 supplemental complaint (at p. 3), annexed to CJA's October 16, 2000 report as Exhibits "A-2" and "B", respectively.



Assuredly, the Governor is far more likely to respond to a Commission request for copies of these reports. Consequently, CJA requests that you take steps to recover copies of these “missing reports” from the Governor – and that you apprise us of the outcome.

Finally, inasmuch as your October 18th letter is “in further response” to CJA’s October 11<sup>th</sup> letter, please note that our October 11<sup>th</sup> letter also requests that you identify whether the Commission has finally promulgated rules and regulations for record access pursuant the F.O.I.L. – and, if so, that you provide us with a copy, as well as a copy of the required “subject matter” list of “all records” in the Commission’s possession. [§87.3c of the Public Officers Law]<sup>5</sup>.

Thank you.

Yours for a quality judiciary,



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

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<sup>5</sup> This request is also highlighted at page 5 of CJA’s October 16, 2000 report.

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

NYS Commission on Judicial Nominations

Postage	\$ 3.33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 2.98</b>



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Summit Cassel  
666 Fish Ave 28th floor  
NY NY 10103-0084

PS Form 3800, July 1999

See Reverse for Instructions

2968 1622 1000 001E 6602

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NYS Commission on  
Judicial  
Nominations  
666 Fish Avenue  
28th floor  
NY NY 10103-0084  
ATT: Summit Cassel

2. Article Number (Copy from service label)

7099 3400 0001 2791 8462

PS Form 3811, July 1999

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery  
HARRIS 11/20/00  
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X [Signature]  Agent  Addressee  
D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

TRANSMISSION VERIFICATION REPORT

TIME : 11/16/2000 09:13

NAME : CJA

FAX : 9144284994

TEL : 9144211200

DATE, TIME	11/16 09:11
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MODE	STANDARD
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