

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

CERTIFIED/RETURN RECEIPT: 7001-0360-0002-6822-1954

February 6, 2002

New York Civil Liberties Union
Arthur Eisenberg, Legal Director
125 Broad Street
New York, New York 10004

RE: *Amicus* and other assistance in securing review by the New York Court of Appeals of the public interest lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99; Appellate Division, First Dept. #5638)

Dear Mr. Eisenberg:

Following up our telephone conversation on Monday, this is to request *amicus* and other assistance from the New York Civil Liberties Union in securing review by the New York Court of Appeals of my important public interest lawsuit against the New York State Commission on Judicial Conduct, sued for corruption.

As borne out by my February 1, 2001 letter to you, the Commission survived my appeal to the Appellate Division, First Department because that Court fashioned "a factually fabricated, legally insupportable decision". My January 17, 2002 reargument motion details the Appellate Division's total annihilation of the rule of law by its seven-sentence December 18, 2001 decision & order, which is Exhibit "A" thereto -- and a copy is enclosed¹.

Inasmuch as an important part of my reargument motion is the Appellate Division's denial, *without reasons and without findings*, of my threshold August 17, 2001 motion -- whose relief is misrepresented in the last sentence of the decision -- a copy of my notice of motion and moving

¹ The motion is now returnable February 21, 2002 by reason of the Attorney General's request for an extension of time within which to respond. A copy of the exchange of correspondence between the Attorney General and myself is enclosed.

affidavit therein (w/o exhibits) is also enclosed. You already have several of the most critical exhibits relating to that motion's second branch of relief, most importantly, my 66-page Critique of Respondent's Brief. As you know, pages 40-47 of that Critique pertain to the Appellate Division's decision in *Michael Mantell v. Commission*, 277 AD2d 96 (2000)², and the issue of my standing to sue the Commission – which we discussed at length in our telephone conversation together on August 14, 2001³.

Also enclosed is the Court of Appeals' decision in *Matter of Nicholson*, 50 NY2d 597 (1980), wherein, over twenty years ago, our state's highest court INTERPRETED the plain language of Judiciary Law §44.1:

“... the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law 44, subd 1)” (at 610-611, emphasis added).

Because such interpretation is dispositive of my Verified Petition's First and Second Claims for Relief [A-37-40], the Appellate Division purports– with NO discussion and with NO legal authority other than to its own appellate decision in *Mantel* that the Commission has “discretion” as to “whether to investigate a complaint”. As you know, the *Mantell* appellate decision cites NO legal authority to support the Commission's supposed “discretion” and the record before the *Mantell* appellate panel showed that Justice Lehner's lower court decision in *Mantell* [A-299-307] was a judicial fraud, demonstrated as such by my 13-page analysis [A-321-334]. Such analysis highlighted the *Nicholson* decision [A-329].

I long ago begged you to verify the accuracy of this 13-page analysis of Justice Lehner's decision. To further assist you, I enclose the decisions in *NYS Commission on Judicial Conduct v. Doe*, 61 NY2d 56 (1984)⁴ and *Doe v. Commission on Judicial Conduct*, 124 AD2d 1067 (4th Dept. 1986),

² The *Mantell* appellate decision is Exhibit “E-4” to my reargument motion.

³ As you have my Appellant's Brief and the Attorney General's Respondent's Brief, I am also enclosing, for purposes of completeness, my 6-page Reply Brief. It incorporates by reference (at p. 5) my August 17th motion and, like that motion (§89), identifies three dispositive “highlights” from my 66-page Critique. These “highlights” – ignored by the Appellate Division -- are focal to my reargument motion (§§13-14).

⁴ *Commission v. Doe* is cited, albeit with an erroneous page citation, in Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-193] for the proposition that “The Legislature has given the Commission broad discretion in exercising its powers and carrying out its duties” (emphasis added). In fact, *Commission v. Doe*, 60 NY2d56, 60, says the opposite: “... the Legislature has provided the Commission with broad investigatory and enforcement powers (See Judiciary Law 41, 42, 44; *Matter of Nicholson v. State Comm. On Judicial Conduct*, 50 NY2d 597, 611.)” Likewise, *Nicholson*: “the statute and Constitution give the commission broad power to inquire into the conduct of a judge, at 611, and “The Judiciary Law implements the constitutional authorization

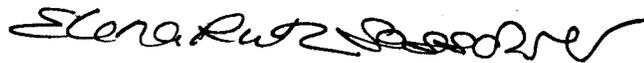
to which Justice Lehner's decision [A-300-301] and my analysis thereof [A-327-329] refer. These should readily convince you of the flagrant fraudulence of Justice Lehner's pretense as to "discretion", adopted by the Appellate Division on Mr. Mantel's appeal, as well as my own.

As to the Appellate Decision's pretense that I lack "standing" to sue the Commission – echoing its pretense in *Mantell* that he lacked "standing" – the decision does NOT cite the factual record, does NOT directly cite ANY legal authority, and does NOT identify or discuss ANY of my appellate arguments set forth at pages 40-47 of my Critique.

One doesn't have to be a civil libertarian to be repulsed by the Appellate Division's flagrant deprivation of constitutional rights by its decisions on my appeal and Mr. Mantell's – and to recognize that these two published decisions will stand as precedent to insulate the Commission from legitimate future legal challenge. Who will ever have the time, energy, and resources to challenge these pernicious decisions? I and the *non-party* Center for Judicial Accountability, Inc. (CJA) have been barred from filing further proceedings to uphold the public's rights – and the Civil Liberties Union should be no less vigorous in responding to the Appellate Division's affirmance of Justice Wetzel's *due process-less* filing injunction -- as to which there exists NO factual basis in the record and whose true purpose is to deprive the public of the ONLY champions it has had against a corrupted Commission.

The time for the New York Civil Liberties Union to act is NOW. Otherwise, the People of this State will be even more defenseless against a Commission which operates in flagrant violation of statutory and constitutional provisions – including by dismissal, *without* investigation, of *facially-meritorious* misconduct complaints against New York State judges.

Yours for a quality judiciary,



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

Enclosures:

As indicated, plus my recent Letter to the Editor, "*Judicial Reforms*" in the December 7, 2001 Daily News.

and establishes the commission, granting it broad investigatory and enforcement powers (see Judiciary Law 41, 42, 44).", at 610.

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