

CENTER for JUDICIAL ACCOUNTABILITY, INC. *

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September 21, 2007

William K. Sutter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Clarification of Practices & Procedures at the U.S. Supreme Court Clerk's Office
& Misconduct Complaint against Clerk Office Staff
Elena Ruth Sassower v. United States of America, #07-228

Dear Mr. Suter:

This letter follows up my many phone calls to the Clerk's Office yesterday afternoon, urgently requesting to speak with you or your secretary about the misconduct of Clerk Office staff under your supervision. Notwithstanding the exigency of the situation – with the above-entitled case calendared for court conference on Monday, September 24th – I was told that you do not take phone calls, that I could also not speak with your secretary, that there was no way for me to leave a voice mail message for you, and that the only manner in which I could communicate with you was by letter.

Although I know from past experience that any letters to you inquiring about the practices and procedures of the Clerk's Office and complaining about the misconduct of its staff are an exercise in futility¹, due process and fundamental decency require that you be afforded an opportunity to address the situation prior to my turning to Chief Justice Roberts, who bears ultimate supervisory

* The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.

¹ These prior unresponded-to letters are posted on CJA's website, www.judgewatch.org. The October 14, 1998 and October 26, 1998 letters to you are accessible via the sidebar panel, "Test Cases-Federal (Mangano)", in the section pertaining to the U.S. Supreme Court. My March 12, 2004 letter to you is accessible via the sidebar panel "Searching for Champions-Federal" which links to a webpage for "Chief Justice Rehnquist & Associate Justices".

responsibilities over how the United States Supreme Court Clerk's Office operates.

The facts are as follows: Yesterday, at about 1:30 p.m., I called the Clerk's Office to inquire as to the status of my motion to Chief Justice Roberts, as Circuit Justice for the District of Columbia. Such motion asked that he "request", if not order, the United States Solicitor General to file the Government's response to my petition for a writ of certiorari, or, alternatively, that he present the motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response. I had express mailed an original and ten copies of the motion to the Clerk's Office on Monday, September 17th, for delivery the following day, September 18th.

My initial phone call yesterday, September 20th, was directed to Jeffrey Atkins, a case analyst supervisor, who stated that the motion had been returned to me. The sole reason Mr. Atkins gave was that the Court, of its own volition, can request the U.S. Solicitor General to file a response, which is what Mr. Atkins had stated to me on Monday, when I first called him about my intended motion. My reply to Mr. Atkins yesterday was similar to what I had told him three days earlier, namely, that I could not reasonably rely on a busy Court to exercise its *sua sponte* power; that it was my position that the Solicitor General's waiver, in the case at bar, was violative of ethical rules of professional responsibility and of his official duty; and that nothing in the Court's rules, which I had read, precluded me from making a motion for the Court to direct the Solicitor General to file the Government's response to my cert petition.

I then asked Mr. Atkins which of the Court's rules allowed the Clerk's Office to take over for Chief Justice Roberts in deciding my motion by returning it to me. His answer was to tell me to "Have a good day" and disconnect the phone conversation.

Upon calling him back – which I did twice within the next 15 minutes, the second call being shortly before 2:00 p.m. – I got only his voice mail. My voice messages for him asked that he confirm whether – as it seemed – he had hung up on me. I reiterated my request that he identify which Court rules authorized the Clerk's Office to return my motion. Indeed, I also asked which Court rules authorized it to do so without even recording my motion or its return on the case docket, thereby creating a false case history. I asked Mr. Atkins to get back to me soon as possible, as I would otherwise have no choice but to seek supervisory oversight from his superiors.

By 3:40 p.m., I telephoned the Clerk's Office and requested to speak with your Chief Deputy Clerk, Chris Vasil – your "second in command" – who does take phone calls. Mr. Vasil picked up the phone, but immediately put me "on hold" when I identified myself. I remained "on hold" for over five minutes, before hanging up. At 4:05 p.m., I again phoned Mr. Vasil, but now got his voice mail. My voice message for him summarized the urgency of the situation and requested a return call.

It is now nearly 4:30 p.m., Friday, September 21st, and I have received no return call from either Mr. Atkins or Mr. Vasil about a case that must be removed from Monday's conference calendar, so that the Chief Justice Roberts – as Circuit Justice for the District of Columbia – can first decide my motion for the Solicitor General's response, including my motion's alternative request that he present it to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response.

So that I may protect my rights and those of the public, prejudiced by the actions of the Clerk's Office, please promptly advise, including by fax and/or e-mail, as to:

- (1) whether you approve of the conduct of Mr. Atkins and Mr. Vasil, as hereinabove recited²;
- (2) which Court rules, if any, permit the Clerk's Office to have returned my September 17th motion for the Solicitor General's response to my cert petition³ – and to have returned it without any record having been made in the Court's docket of either the motion or its return; and
- (3) who in the Clerk's Office decided that Chief Justice Roberts should not make his own decision with respect to my motion. Was it Mr. Vasil, Mr. Atkins, yourself, or others, individually or collectively?

Please also advise as to:

- (4) the percentage of criminal cases in which the Solicitor General waives the Government's "right to file a response" to cert petitions; and
- (5) whether in any of those criminal cases, the petitioners ever made motions to either a single justice or to the Court for the Government's response. If so, please confirm that the Clerk's Office also sent those motions back to the petitioners, and did so without entering them on the case dockets – supplying me with the case numbers or names.

² Recitations of Mr. Vasil's prior misconduct appears in my October 26, 1998 letter to you (at p. 2) and in my March 12, 2004 letter to you (at p. 5). My March 12, 2004 letter also recites Mr. Atkins' prior misconduct (at pp. 4-6). That being said, it is incumbent upon me to note – and thank – Mr. Atkins for his assistance in connection with my August 7, 2007 motion to add 5-1/2 pages to my cert petition.

³ In the event, you were not aware of my motion – and no copies of it were made or retained by the Clerk's Office before being sent back to me – it is posted on CJA's website, accessible *via* the sidebar panel "Disruption of Congress'-The Appeals".

William K. Suter, Clerk

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Thank you.

Yours for a quality judiciary,

A handwritten signature in black ink, reading "Elena Ruth Sassower". The signature is written in a cursive style with a long horizontal flourish at the end.

ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Chris Vasil, Chief Deputy Clerk
Jeffrey Atkins, Supervisory Case Analyst
Paul D. Clement, United States Solicitor General