

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station
White Plains, New York 10605

By Fax: 518-487-5694

June 1, 1995

Frank Rosiny, Chairman
Committee on Professional Discipline
New York State Bar Association
One Elk Street
Albany, New York 12207

RE: Unconstitutionality of New York's attorney disciplinary law,
as written and as applied

Dear Chairman Rosiny:

This follows up my conversation with you on May 19th at the seminar sponsored by the Committee on Professional Discipline.

Although you were initially quite curt with me and refused my request for a meeting, indicating further that your *non*-response to my prior letters to Committee members was all the response I would be getting, you subsequently told me that I should call your Albany office. Such change of heart may have been prompted by your embarrassment over the fact that I was approaching several participants and attendees at the seminar involved in disciplinary matters to discuss with them the patent unconstitutionality of New York's attorney disciplinary law, discussed more fully at pp. 13-29 of my mother's cert petition to the U.S. Supreme Court, *Sassower v. Mangano, et al.* -- copies of which I gave them.

Among the individuals I spoke to and provided copies of the cert petition were Hal Lieberman, Chief Counsel to the First Department's Departmental Disciplinary Committee and a member of the State Bar's Committee on Professional Discipline, who initially stated he was unfamiliar with *Mildner v. Gulotta*, 405 F. Supp. 182 (1975), Sheldon Elsen, Esq, a member of the First Department's Departmental Disciplinary Committee, also unfamiliar with *Mildner*, and Martin Adelman, Esq., likewise unfamiliar with *Mildner*.

You will recall that Mr. Adelman, as moderator of the program on cameras in the courtroom entitled "The Continuing Search for Empirical Evidence", had referred to bar proposals to open New York's attorney disciplinary proceedings to the public in response to my comment that if such proceedings were opened to camera scrutiny it would expose grotesque perversion of fundamental due process rights.

EX * J-2 "

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In my subsequent conversation with Mr. Adelman, however, he conceded that what is being proposed is opening up the disciplinary process *after* disciplinary proceedings are authorized by the court, which position Mr. Adelman, likewise, conceded is predicated on the belief being that such authorizations are based on "probable cause" findings.

Mr. Adelman was most interested in my statement to him that such belief was *erroneous* and that available empirical evidence definitively proves that disciplinary proceedings are authorized where there is *no* "probable cause" finding -- and *no* possibility of a "probable cause" finding.

Mr. Adelman expressed the view that this information should be made known to the State Bar's House of Delegates before it discusses and votes on proposals to open up disciplinary proceedings. Such meeting is just three weeks away.

I believe the State Bar has a right to expect that its standing Committee on Professional Discipline will make such essential presentation. This letter, therefore, confirms my telephone request to your Albany office today that an *immediate* meeting with you and members of the Committee be arranged.

As I mentioned to you, counsel at the Assembly Judiciary Committee has expressed concern over the information I have conveyed to her that the Committee's review of the "480 closed files selected at random", upon which it based its recommendation of "Uniform Rules for Lawyer Discipline", was "rigged".

I myself have reviewed files of a number of disciplined attorneys, which I have requisitioned at the clerk's office of the Appellate Division, Second Department. Such files further confirm that the "Uniform Rules" proposed by your Committee are frighteningly out-of-touch with what is actually going on in attorney disciplinary proceedings in this state. Let there be no mistake, what is taking place is a due process travesty, *inter alia*, because, at least in the Second Department, the Appellate Division is authorizing disciplinary proceedings *without* "probable cause" findings and committee recommendations based thereon.

Because time is rapidly passing -- without any discernible expression of leadership by those with information that should make their "hair stand on end" -- copies of this letter and my *three* previous on the same subject to Committee members Carlisle and Grayson -- are being sent to Mr. Lieberman, Mr. Elsen, and Mr. Adelman, as well as to Haliburton Fales, who, in addition to being Chairman of the First Department's Departmental Disciplinary Committee is Chairman of the Task Force on the Profession.

As reflected by the enclosed Law Journal's April 11, 1995 article "Lawyer Discipline Debated by State Bar", Mr. Fales' Task Force has proposed the most dramatic modification of Judiciary Law §90(10), followed by the more "limited" proposal of your Committee on Professional Discipline, which seeks to give yet more power over attorney discipline to the court. Apparently a third proposal -- one by Mr. Adelman -- will be presented at the House of Delegates meeting. *All* are based

on the erroneous premise that a "probable cause" finding precedes court authorization of disciplinary proceedings.

I understand that this is Maxwell Pfeifer's first day in office as the State Bar's new president. So as to permit President Pfeifer to immediately show leadership on an issue which should so *directly* concern the State Bar's members -- the constitutionality of New York's attorney disciplinary law -- copies of my aforesaid correspondence are being sent to him as well.

I await your response.

Yours for a quality judiciary,



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

- Enclosures: (1) NYLJ, 4/11/95, "Lawyer Discipline Proposals Debated by State Bar"
 (2) Duplicates of my letters to Committee members Carlisle and Grayson

- cc: President Maxwell Pfeifer
 New York State Bar Association
 Haliburton Fales, Esq.
 Chairman, First Department Departmental Disciplinary Committee
 Chairman, Task Force on the Profession
 Martin Adelman, Esq.
 Professor Jay Carlisle, Committee on Professional Discipline
 Richard Grayson, Esq., Committee on Professional Discipline
 Hal Lieberman, Esq., Committee on Professional Discipline
 Chief Counsel, First Departmental Disciplinary Committee
 Sheldon Elsen, Esq.
 First Department Departmental Disciplinary Committee
 Patricia Gorman, Counsel
 Assembly Judiciary Committee

Lawyer Discipline Proposals Debated By State Bar

BY GARY SPENCER

ALBANY — State Bar leaders aired rival visions for reforming the attorney discipline system on Saturday, setting the stage for a showdown over confidentiality and uniform rules for grievance proceedings when the House of Delegates meets again in June.

The New York State Bar Association's Task Force on the Profession is proposing that Judiciary Law §10 be amended to make disciplinary proceedings public once probable cause has been found, a system adopted by 32 other states and endorsed by the

State Bar Discipline Proposals

Continued from page 1, column 3

American Bar Association and the Association of the Bar of the City of New York.

The Committee on Professional Discipline concedes that greater openness is inevitable, but it is urging a much more limited approach under existing law — one that would require a finding by an Appellate Division Justice in each case not only that probable cause was established, but that open proceedings would be in the "public interest." It also proposed uniform rules that would require major changes in the disciplinary procedures followed in the First Department.

Task force chairman Haliburton Fales 2d told the House of Delegates, "We do not think that is a meaningful way to open up the disciplinary system to the light of day." He complained the committee's case-by-case approach to making proceedings public requires "too many steps involving too many people" and that it "will consume large amounts of staff and judicial time."

The Committee on Professional Discipline offered its plan as a way to answer growing demands for public access with only incremental change. Chairman Frank R. Rosiny said it is "fully consistent" with the long-standing position of the State Bar, which

has defended confidentiality for decades.

The two groups also took different approaches to reforming the structure of the grievance system, with Mr. Rosiny's committee drafting detailed rules for uniform application in all four judicial departments. The Fales task force agreed there should be greater uniformity, but would leave the details to the Appellate Divisions.

The committee proposal would have the greatest effect on the First Department, eliminating its use of hearing panels to decide cases and substituting special referees. The plan would also require the chief counsel to get approval of the entire Disciplinary Committee to bring formal charges against an attorney, rather than approval from just one committee member.

The House of Delegates will weigh these competing proposals along with a third alternative on disclosure of misconduct complaints at its June meeting. Manhattan attorney Martin B. Adelman, former chairman of the Criminal Justice Section, is drafting a proposal that would maintain the confidentiality of proceedings, but would disclose to the public the fact that a lawyer is facing formal charges once probable cause is found.

In other developments, the delegates passed a resolution opposing tort law restrictions approved by the House of Representatives.

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By Hand

May 16, 1995

*Rec'd
5/17/95
J. Carlisle
of
J. Johnson
JC*

Richard E. Grayson, Esq.
New York State Bar Association
Committee on Professional Discipline
175 Main Street
White Plains, New York 10601

Dear Mr. Grayson:

Following up our telephone conversation yesterday, transmitted herewith are copies of my February 3, 1995 and April 7, 1995 letters to Professor Carlisle--duplicates of which were sent to Frank Rosiny, Chairman of the New York State Bar Association's Committee on Professional Discipline.

Notwithstanding the profoundly serious allegations therein, among them, that the study upon which the Committee based its draft set of uniform rules was "rigged", we have received no response whatever from either Professor Carlisle, who participated in the study, or Chairman Rosiny.

Inasmuch as you yourself, as a member of the Committee on Professional Discipline, did not know the identities of the members of the subcommittee who had reviewed the "480 closed files" or how and by whom the "random" selection of such files was made, I believe it incumbent upon you to ascertain that basic information upon which the integrity of the Committee's study depends.

Apart from my two letters to Professor Carlisle, I have made several calls to the State Bar's offices in Albany requesting such information. No one seems to know anything--and I am always told to contact Chairman Rosiny, who, as hereinabove described, has not responded to the aforesaid letters I have sent him.

According to the Introduction to the 1993 Annual Report of the Committee on Professional Discipline, which bears Mr. Rosiny's name at the end, one of the reasons why only "incremental" modifications of the rules were proposed by the Committee is because:

"the present system has been in operation without substantial change for the last 20 years. Yet, the system has avoided serious scandal and...has maintained a reputation for

*Rec'd
5/16/95
RJ*

integrity. This is an impressive record of accomplishment...". (at p.4)

Yet two years ago, when--to no avail--my mother offered the files in her disciplinary proceeding to Professor Carlisle and Chairman Rosiny for review as part of the study then being conducted, she made plain to them that what those files revealed was a scandal of the first magnitude: the undisguised perversion of the disciplinary process by the courts, aided and abetted by a demonstrably unscrupulous chief counsel and a complicitous and non-functional grievance committee.

As reflected by my aforesaid letters, I also made known to Professor Carlisle and Chairman Rosiny the scandalous contents of my mother's disciplinary files, similarly proffering those files to permit them to:

"...verify what a monstrous perversion of constitutional rights the present disciplinary system allows and meet your ethical duty to recommend the major and structural changes that must be made without delay." (2/3/95, at p. 3, emphasis in the original)

That Chairman Rosiny and Professor Carlisle have simply ignored such proffer--and, likewise, ignored my mother's cert petition in Sassower v. Mangano, et al., transmitted with my April 7th letter--reflects the fact that to the extent "the system has avoided serious scandal" it is not because "serious scandal" does not exist, but because it has been deliberately covered up by those in leadership positions.

As to my mother's cert petition, my April 7th letter stated:

"...this letter constitutes our formal request that the issues raised by the cert petition be placed on the agenda of the Committee's next meeting." (at p. 2, emphasis in the original)

Even the most cursory review of the cert petition in Sassower v. Mangano, et al.--a copy of which I enclose to you¹--shows that my mother's case meets the standard described by Chairman Rosiny in his Introduction:

¹ Also enclosed, for purposes of completeness, are the Attorney General's subsequent opposition to the cert petition and my mother's reply thereto.

"...anyone proposing change to the disciplinary system must be prepared to demonstrate both why such change is necessary and that the benefits of the present system will not be imperiled by what is proposed."
(at p. 4)

Indeed, the cert petition shows that what the State Bar's Committee on Professional Discipline is proposing is not only wholly inadequate, but, in fundamental respects, clearly unconstitutional.

As discussed by phone, I have apprised the Assembly Judiciary Committee in Albany of the State Bar's "inadequate and dishonest report and recommendations", with a request that it obtain a response from the Committee on Professional Discipline to my February 3rd and April 7th letters, copies of which I sent it.

I have further requested that the Assembly Judiciary Committee obtain an opinion from the Committee on Professional Discipline to Judge Jack Weinstein's powerful dissent in Mildner v. Gulotta, 405 F.Supp. 182 (1975), in which--20 years ago--he held New York's attorney disciplinary statute (Judiciary Law §90) to be unconstitutional. On that subject, my April 7th letter stated:

"I am unable to conceive how any attorney in this state, let alone the New York State Bar Association, can be complacent in the face of such frightening case--actually the consolidation of three frightening cases of attorneys disciplined under Judiciary law §90."

I would point out that discussion of Mildner, including Judge Weinstein's dissent, appears in my mother's cert petition under "Reasons for Granting the Writ", commencing at page 13.

Finally, notwithstanding your past tenure as Assistant Counsel at the Grievance Committee for the Ninth Judicial District--and your personal friendship with its present Chief Counsel, Gary Casella, who, like yourself sits as a member of the Committee on Professional Discipline--we expect you will not shirk your professional obligation and ethical duty to ensure that these matters, directly affecting the integrity the Committee's study and recommendations, will be brought to the attention of the full Committee.

Richard Grayson, Esq.

Page Four

May 16, 1995

To that end, I reiterate our readiness to transmit my mother's disciplinary files, establishing, prima facie, systemic corruption of the disciplinary mechanism, as well as its patent unconstitutionality.

Yours for a quality judiciary,

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

Enclosures:

- (a) 2/3/95 and 4/7/95 ltrs to Professor Carlisle
- (b) Sasower v. Mangano, et al.,
cert petition, opposing memo, and reply

FYI, a copy of the Center's brochure is also enclosed.

- cc: Patricia Gorman, Counsel, Assembly Judiciary Committee
Chairman Frank Rosiny,
NYSBA Committee on Professional Discipline
- Professor Jay Carlisle,
NYSBA Committee on Professional Discipline
- Professor Janet Johnson, Chair,
Grievance Committee for the Ninth Judicial District

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Box 69, Gedney Station
White Plains, New York 10605

By Hand

April 7, 1995

Professor J. Carlisle, II
New York State Bar Association
Committee on Professional Discipline
c/o Pace University Law School
78 North Broadway
Preston Hall, #201
White Plains, New York 10603

*Received for
Professor Carlisle
4/7/95
Carol Musant
Jennifer Chin for
Janet Johnson*

Dear Professor Carlisle:

Following delivery of my February 3rd letter to you, I called Professor Janet Johnson's office to verify that the files from my mother's disciplinary proceedings, which I had hand-delivered to her last October, would be transmitted to you for your review. I was shocked to be informed that although the files had been proffered to you by Professor Johnson's office, you had refused to receive them.

Immediately thereafter, I spoke with your secretary. She assured me that she would telephone you and verify the situation. I requested that if you were not intending to review my mother's disciplinary files that you be good enough to confirm such fact in a letter and that you refer my mother's matter to another member of the New York State Bar Association's Committee on Professional Discipline for review.

I also requested that you provide me with the names of the other members of the Committee on Professional Discipline who, together with you, had been assigned the review of the "480 closed files" of the grievance committees--on which the Committee on Professional Discipline had based its recommendations.

Finally, I reiterated the query, set forth at page 2 of my February 3rd letter, as to how the "random" selection of those "480 closed [grievance] files" was made and by whom.

Nonetheless, in all this time, we have heard nothing from you--or from Frank Rosiny, Chairman of the Committee on Professional Discipline, to whom I sent a copy of my February 3rd letter. This is absolutely extraordinary inasmuch as my letter, in addition to proffering my mother's disciplinary files as proof that her "interim" suspension and the disciplinary proceedings against her are fraudulent and that New York's attorney disciplinary system permits "a monstrous perversion of constitutional rights", requiring immediate "major and structural changes", suggested that the Committee's study was "rigged", inter alia, by its members who are grievance committee counsel.

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April 7, 1995

On the subject of the flagrant unconstitutionality of Judiciary Law §90, my letter provided the citation for Mildner v. Gulotta, 405 F. Supp. 182 (1975), and referred to Judge Jack Weinstein's scholarly dissent. I am unable to conceive how any attorney in this state, let alone the New York State Bar Association, can be complacent in the face of such frightening case--actually the consolidation of three frightening cases of attorneys disciplined under Judiciary Law §90.

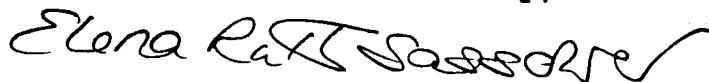
The significance of Mildner and the unconstitutionality of Judiciary Law §90 is detailed in my mother's cert petition to the U.S. Supreme Court, a copy of which is enclosed.

That cert petition should be read by every member of the New York State Bar Association's Committee on Professional Discipline. Such reading should rightly begin with you--not only because you are a member of the Committee on Professional Discipline, with a responsibility to do so--but because, in our telephone conversation last January, you professed to "like" both my mother (suspended under Judiciary Law §90) and my father (disbarred thereunder).

Please let us know what arrangements you and Chairman Rosiny will make to put this matter before the members of the New York State Bar Association's Committee on Professional Discipline. To that end, this letter constitutes our formal request that the issues raised by the cert petition be placed on the agenda of the Committee's next meeting.

Needless to say, we are ready to supply my mother's complete disciplinary files so that the Committee may see for itself prima facie evidence of the heinous fraud committed by one of its own members, Gary Casella, chief counsel of the Grievance Committee for the Ninth Judicial District.

Yours for a quality judiciary,



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

cc: Frank Rosiny, Chairman
NYSBA Committee on Professional Discipline
Professor Janet Johnson, Chair
Grievance Committee for the Ninth Judicial District

Enclosure

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/664-6554

BY HAND

February 3, 1994⁵

Received
By 2/3/95

Professor J. Carlisle, II
New York State Bar Association
Committee on Professional Discipline
c/o Pace University Law School
78 North Broadway
Preston Hall, #201
White Plains, New York 10603

Dear Professor Carlisle:

In our recent telephone conversation you acknowledged that as part of the "comprehensive study" conducted by the New York State Bar Association's Committee on Professional Discipline--of which you and Gary Casella are members--you had not reviewed any of the disciplinary files relating to my mother. However, you were good enough to agree to review those files if I provided them to you.

Accordingly, I have requested that materials from my mother's disciplinary files, hand-delivered on October 19, 1994 to Professor Janet Johnson, Chair of the Grievance Committee for the Ninth Judicial District, be turned over to you for your review. You should, therefore, shortly be receiving from her the following documents:

- (a) my mother's November 19, 1993 motion for dismissal/summary judgment directed to the three disciplinary petitions pending against her, as well as to the Appellate Division, Second Department's June 14, 1991 interim order of suspension, which was unsupported by any petition and unrelated to any pending disciplinary proceeding; Mr. Casella's December 7, 1993 affirmation in opposition, my mother's December 10, 1993 letter to the Appellate Division, Second Department, and its January 28, 1994 order.
- (b) the testimony of then Chairman Edward Sumber, as well as of former Chairman William Daly at the hearings on the February 6, 1990 petition (pp. 484, 490-552, 579-684; 685, 731-783). The testimony of Mr. Sumber is referred to at ¶7 of my

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mother's dismissal/summary judgment motion¹, wherein she describes Referee Galfunt's refusal to address her jurisdictional objections and his allowing Mr. Casella to without establishing jurisdiction, notwithstanding same had been placed in issue by my mother's March 7, 1990 Verified Answer to the February 6, 1990 Petition.

- (c) pertinent exhibits introduced by my mother during Chairman Sumber's aforesaid testimony (Resps. Exhs. "KK", "MM", "NN", "LL", "OO")--relative to her right to immediate vacatur of her interim suspension, in all respects a fortiori to that of attorney Russakoff, whose interim suspension order was vacated in In Re Russakoff, 72 NY2d 520, 583 NYS2d 949 (1992).

The aforesaid documents are illustrative of what the rest of the underlying disciplinary files under A.D. #90-00315 show: utter lawlessness by the Appellate Division, Second Department, its appointed Referee, and its appointed Chief Counsel of the Grievance Committee for the Ninth Judicial District, Mr. Casella, (who, ironically, teaches "ethics" at Pace Law School), as well as the professional irresponsibility of its appointed Chairmen and Committee Members, who have aided and abetted in the wrongful suspension of my mother's license--now in its fourth year--and in the succession of factually and legally groundless disciplinary proceedings that have been generated against her.

I note that the State Bar Association's 1993 Annual Report on Lawyer Discipline in New York State describes its "comprehensive study" of the discipline system as having included:

"on site inspections of all eight district offices, and a review of 480 closed files selected at random". (at p. 3)

I would be most interested in knowing how such "random selection" was made and who participated in making that "random selection". I recall my mother telling me that she had spoken to you in the summer of 1993 about the possibility of your reviewing her disciplinary files--at which time she said you mentioned that you had been assigned to review disciplinary files throughout the state. Although you agreed to review her files, you thereafter informed her that you could not do so and suggested that she

¹ Mr. Daly's shocking testimony did not occur until nearly two months after my mother made her dismissal/summary judgment motion.

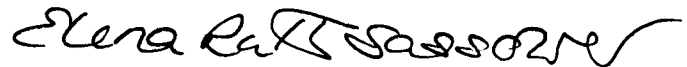
February 3, 1995

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notice of charges, no hearing, no findings of professional misconduct and no reasons", that, "more than three years later, the suspension remains in effect, and the court refuses to even provide a hearing as to the bias of the suspension" and that "[n]o appellate review has been allowed", I would have expected an immediate call from someone from the Committee on Professional Discipline--to verify the facts. Indeed, in light of the Committee's solicitation of comments on its draft rules on attorney discipline, appearing on the frontispiece to its 1993 Annual Report, the Committee should have been eager for the empiric evidence to back up the shocking statements made in that ad. However, no one from the Committee on Professional Discipline--or from the New York State Bar Association--ever contacted us.

I would certainly hope that with the materials which you will be receiving from Professor Johnson, you will bring some responsible leadership to bear--both on the Committee on Professional Discipline, as well as upon the Grievance Committee for the Ninth Judicial District.

Very truly yours,



ELENA RUTH SASSOWER

Enclosure: 10/26/94 New York Times Op-Ed ad,
"Where Do You Go When Judges Break the Law"

cc: Professor Janet Johnson
Chair, Grievance Committee for the Ninth Judicial District
Frank R. Rosiny
Chair, NYSBA, Committee on Professional Discipline