

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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and By Hand

May 18, 1995

RECEIVED  
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State of New York Commission on Judicial Conduct  
801 Second Avenue  
New York, New York 10017

ATT: Gerald Stern, Administrator

Dear Mr. Stern:

Following up your April 21, 1995 letter responding to ours of April 20th, although you state that we may appeal your decision on our records request to the Commission's Clerk, Albert B. Lawrence, we again point out that 22 NYCRR §7001.8 *explicitly* states that it is the Commission on Judicial Conduct which "shall hear appeals for denial of access to records under the Freedom of Information Law" (§7001.8(c)).

Your explanation that "[t]he rules were prepared when the Commission met two days each month" does *not* answer the question raised in our April 20th letter as to whether the Commission ever amended §7001.8 -- in which case, we requested a copy of such amendment.

Since the CPLR has *not* published any such amendment and you have *not* represented that the Commission undertook to amend §7001.8 -- but only that the Commission no longer meets "two days each month" -- it would appear that the rules were *not* amended pursuant to §7000.10. Under such circumstances, you, as Administrator of the Commission, must surely recognize that §7001.8 remains controlling, and we are entitled to review by the Commission of our April 20th letter appeal.

Moreover, your referring us to Mr. Lawrence is absolutely astonishing, when, *as you know*, Mr. Lawrence has utterly failed and refused to answer our previous correspondence, which we sent him. Specifically, Mr. Lawrence has still *not* responded to our January 22, 1993 and January 19, 1995 letters, copies of which were annexed to our *hand-delivered* March 10, 1995 letter to the Commission, referred to in the last sentence of our April 20th letter to you. For the Commission's convenience, a copy of our March 10th letter is annexed hereto as Exhibit "1".

To date, we have received *no* response from the Commission to that letter (Exhibit "1"). Nor have you informed us that *any* disciplinary steps have been taken relative to Mr. Lawrence's demonstrated nonfeasance and misfeasance. From your April 21st letter, it would appear there have been none.

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We, therefore, request confirmation that our March 10th letter to the Commissioners was, in fact, ever distributed and reviewed *by them*.

On the subject of misconduct, despite your hearsay defense of Ms. Savanyu, who has not come forth herself to controvert what your April 21st letter characterizes as my "version" of my telephone conversation with her, the fact is you have *not* even acknowledged Ms. Savanyu's failure to meet her basic obligation under §7001.8(a) to inform us of our right to appeal the denial of our information request -- even though such failure is reflected by the *face* of her March 21st letter to us.

We are most appreciative for the listing of litigations commenced by complainants whose complaints have been dismissed by the Commission. However, for purposes of our appeal to the Commission of your ruling that the litigation files in those cases "will not be available to the public", we wish to make plain that we are *not* seeking any "work product", but rather copies maintained in your files of court documents and decisions.

Following receipt of your April 21st letter, I spoke with Robert Freeman, Executive Director of the Committee on Open Government, who expressed the view that such documents should be accessible from the Commission under FOIL.

Mr. Freeman also reiterated that the "up-to-date subject matter list", which the Commission is required to maintain pursuant to §7001.3(c)(1) and §7001.7, should also be accessible to us. Quite apart from the "detailed, 77 page list of determinations rendered on public disciplinary cases" (referred to at ¶4 of your letter) -- which we wish to make arrangements to review -- we also wish to review the aforesaid "subject matter list".

We look forward to the Commission's determination of our April 20th letter appeal. Based on its review, it may well adopt our position that the public has a right to expect that when the self-promulgated rules of the Commission on Judicial Conduct are so patently inconsistent with the statutory mandate, the Commission's Administrator will provide some explanation. Indeed, the Commission may rightfully conclude that the abusive and arrogant conduct toward the public of yourself and Mr. Lawrence -- refusing to answer legitimate inquiries and ignoring and denying our reasonable requests for a meeting or telephone conference -- has eroded public confidence in the Commission and contributed to embroiling it in a scandalous, embarrassing, and otherwise avoidable litigation.

Yours for a quality judiciary,



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

Enclosure: our March 10, 1995 letter to the Commissioners

Gerald Stern, Administrator

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cc: Robert J. Freeman, Executive Director, Committee on Open Government  
New York State Ethics Commission  
District Attorney, New York County