

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 716-855-1580 (5 pages)

BY CERTIFIED MAIL/RRR: 7099-3400-0001-2791-8585

June 26, 2000

Eugene W. Salisbury, Chairman
New York State Commission on Judicial Conduct
c/o Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria
42 Delaware Avenue
Buffalo, New York 14202

RE: Your Non-Response to CJA's May 17, 2000 letter for (1) "a probative statement" regarding the Commission's purported dismissal of CJA's March 3, 2000 judicial misconduct complaint; and (2) cancellation of the 1994 authorization the Commission received from the State Archives and Records Administration to destroy files

Dear Chairman Salisbury:

Please advise when we can expect your response to CJA's May 17, 2000 letter to Mr. Stern. That letter not only *expressly* requested your response, both in its "RE" clause and in its text (at pp. 2-3, 11), but *expressly* identified (at p. 11) that CJA would await your response *before* making a presentation to the State Archives and Records Administration for revocation of its 1994 authorization allowing the Commission to destroy, after a five-year retention, the files of judicial misconduct complaints dismissed by the Commission, *without* investigation.

According to the certified mail postal receipt (#7099-3400-0001-2791-8646), on May 19th your law office received the copy of the May 17th letter we sent you. Nonetheless, to date, we have received no response from you. Likewise, we have received no response from Mr. Stern, for whom we hand-delivered the May 17th letter to the Commission's New York office on that date. Nor have we received any response from Mr. Lawrence, to whom a copy of the letter was mailed to the Commission's Albany office.

Moreover, according to Robert McDonnell, Associate Archivist of the State Archives and Records Administration, with whom I spoke today (518-473-8498), no one from the Commission has notified the State Archives and Record Administration that the Commission is canceling the 1994 authorization, as CJA's May 17th letter *expressly* requested be done (at p. 10, last paragraph). Mr. McDonnell is listed by the May 17th letter as an "eventual recipient" thereof.

Should you not respond within the next ten days to CJA's May 17th letter, CJA will assume that you, on behalf of the other ten Commissioners, do NOT challenge the evidentiary and legal showing therein that Mr. Stern's April 27th letter to CJA: (1) is non-probative as to the Commission's purported dismissal of CJA's *facially-meritorious* March 3, 2000 judicial misconduct complaint; (2) falsifies the Commission's disciplinary jurisdiction so as to conceal the unlawfulness of the Commission's purported dismissal of that complaint, whose fact-specific, document-supported allegations are also concealed by Mr. Stern's April 27th letter; and (3) is unable to justify the 1994 authorization that the Commission procured from the State Archives and Records Administration to destroy, after a five-year retention, the files of judicial misconduct complaints dismissed by the Commission *without* investigation.

Absent receipt of some response from you by next Friday, July 7th, CJA will go forward with its formal presentation to the State Archives and Records Administration. As set forth at page 10 of CJA's May 17th letter:

"Such presentation will demonstrate the continuing probative value of the complaints that the Commission has been dismissing, *without* investigation, both as to the unfitness of judges and judicial candidates who continue to sit on the bench and seek higher judicial office, as well as to the unlawfulness of Commission's dismissals of these complaints in the first instance, in violation of Judiciary Law §44.1. Indeed, CJA will show that the Commission had a self-interest in securing the 1994 authorization because it could thereby "cover its tracks" by obliterating the *prima facie* proof of its long-standing pattern and practice of protecting unfit judges and judicial candidates – proof which might one day have been obtained by an investigative or prosecutorial body, if not by subpoena then by legislative emendation of Judiciary Law §45."

In the context of such formal presentation to the State Archives and Records Administration, CJA will highlight your failure and refusal to respond to the question at page 11 of the May 17th letter as to

“whether among the already-destroyed files of *uninvestigated*, dismissed complaints are the eight *facially-meritorious* complaints against high-ranking, politically-connected judges which were the subject of the verified petition in *Doris L. Sassower v. Commission* and, prior thereto, of CJA’s March 22, 1995 ethics complaint against the Commission, filed with the New York State Ethics Commission.”

Presumably, if the Commission destroyed those eight complaints, it has likewise destroyed the *uninvestigated* dismissed judicial misconduct complaints that spawned prior legal challenges to the Commission. For your convenience, enclosed is a copy of a list of prior legal challenges, which the Commission prepared in April 1995 following intercession by Robert Freeman, the Executive Director of the Committee for Open Government, in response to CJA’s F.O.I.L. requests¹.

Yours for a quality judiciary,



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

cc: *Immediate Recipients:*
Gerald Stern, Administrator and Counsel
NYS Commission on Judicial Conduct
Albert Lawrence, Clerk
NYS Commission on Judicial Conduct

¹ CJA’s exchange of correspondence with the Commission relative to its 1995 F.O.I.L. requests are annexed as Exhibit “C” to its March 11, 1999 letter to Mr. Stern. [See, in particular, Exhibits “C-8” and “C-9”]. The March 11, 1999 letter is Exhibit “G” to the verified petition in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551) – a fact highlighted in CJA’s May 17, 2000 letter to Mr. Stern (at p. 3).

Eventual Recipients:

Robert W. McDonnell, Associate Archivist
State Archives and Records Administration
Governor George Pataki
Chief Judge Judith Kaye
New York State Attorney General Eliot Spitzer
Robert M. Morgenthau, District Attorney, New York County
Mary Jo White, U.S. Attorney, Southern District of New York
New York State Ethics Commission
Loretta E. Lynch, U.S. Attorney, Eastern District of New York
Sherrill R. Spatz, Special Inspector General for Fiduciary Appointments
NYS Assembly and Senate Judiciary Committees
Association of the Bar of the City of New York
Media

TRANSMISSION IDENTIFICATION REPORT

TIME : 06/26/2000 16:49
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TEL : 9144211200

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PAGE(S)	05
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ACTIONS BY COMPLAINANTS AGAINST THE COMMISSION

Raysor v. Stern, 68 AD2d 786 (4th Dept. 1979), lv. to app. denied, 48 NY2d 605 (1979), cert. denied, 446 US 942 (1980), rehearing denied, 102 Sct 2950 (1982).

Raysor v. State Comm. on Jud. Conduct, No. 17004-79 (Sup Ct NY Co., Dec. 15, 1979), aff'd, 83 AD2d 996 (1st Dept 1981).

Raysor v. State Comm. on Jud. Conduct, NYLJ, 9/25/80, p. 12, col. 6, (Sup Ct. NY Co., 9/19/80), aff'd, 83 AD2d 996 (1st Dept 1981).

Raysor v. Gabbey et al., Index No. unknown (Dist Ct., WDNY, date of disposition unknown) (argued 12/1/79).

Muka v. Temporary State Comm. on Jud. Conduct, No. 16206-75 (Sup Ct. NY Co., 10/9/75).

Muka v. State Comm. on Jud. Conduct, 77-CV-512 (Dist. Ct., NDNY, 10/30/78).

Muka v. State Comm. on Jud. Conduct, No. 132058 (Sup. Ct. Tompkins Co., 11/12/82)

Rosendale v. Stern, Dist Ct (SDNY) (Index No. unknown), summons served 3/19/91, date of disposition unknown.

Carter v. State Comm. on Jud. Conduct, Index No. unknown, Art 78 motion filed 4/91, dismissed 6/11/91.

Collins v. Carella et al., No. F-60-85 (Family Ct. Saratoga Co. 8/21/90).

Lombardi v. Sise et al., No. 84-A-2440 (Sup Ct.), aff'd, 9/1/86 (3d Dept).

Hallum v. State Comm. on Jud. Conduct, No. 16619-87 (Sup Ct NY Co.), complaint served 7/17/87, date of disposition unknown.

Hallum v. State Comm. on Jud. Conduct, No. 31826/87 (Sup Ct Kings Co.), complaint served 11/13/87, date of disposition unknown.

Harley v. Perkinson et al., No. 174143 (Sup Ct. Rensselaer Co. 6/9/91).

Schiller v. State Comm. on Jud. Conduct, No. CV 94-4861, Dist Ct. EDNY, 3/23/95)

AMA v. Hodge v. Applewhite et al., No. CV-0410-E(F), Dist Ct (WDNY) (pending).

Lagana v. Dillon et al., No. CV 94-4636-8, Dist Ct (EDNY) (pending)

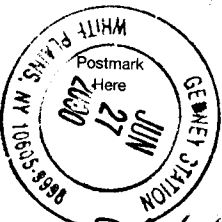
Sassower v. Comm. on Jud. Conduct, No. 95-109141 (Sup Ct NY Co.) (pending)

7099 3400 0001 2791 8585

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NYS Criminal Justice
Judicial Endow
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Buffalo, NY 14202

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