

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Coordinator*

BY FAX: 212-608-1240 (9 pages)

December 14, 1999

Mr. David Rohde/The New York Times  
100 Centre Street  
New York, New York

RE: Times coverage of pending Article 78 proceeding against the NYS Commission on Judicial Conduct (NY Co. #99-108551)

Dear Mr. Rohde:

Following up our phone conversation earlier today:

(1) enclosed is a copy of a November 6<sup>th</sup> front-page Metro article from the Times reporting on the ALLEGATIONS of a lawsuit, "*Ex-Officials Allege Fraud at City Union*". Please note that you have in your possession *more than allegations* pertaining to my Article 78 proceeding against the NYS Commission on Judicial Conduct. You have *documentary proof* in support of those allegations: (1) the exhibits annexed to my Verified Petition – including CJA's two facially-meritorious judicial misconduct complaints and correspondence with the Commission based thereon; and (2) my Affidavit in Support of my Omnibus Motion – including CJA's correspondence with Attorney General Spitzer. These were provided to you shortly after your August 28<sup>th</sup> article, "*If a Judge Gets Out of Line: Seeking a Cure*", NYT, 8/28/99 to enable you to write an *accurate* story about the Commission on Judicial Conduct, as well as about the Attorney General's so-called "public corruption unit", which John Sullivan had reported on in "*Spitzer Sets Up Unit to Investigate Both State and Local Corruption*" NYT, 8/26/99 – and which he passed on to you as part of this case.

(2) enclosed is a copy of footnote 5 of Gerald Stern's 1987 law review article, "*Is Judicial Discipline in New York State a Threat to Judicial Independence*" (Pace Law Review, Vol. 7, No. 2, winter 1987): reflecting that the Commission on Judicial Conduct "opened its principal office in New York City in **January 1975**" (emphasis added). That means the Commission will shortly be celebrating its 25<sup>th</sup> anniversary. The document-supported allegations of my Article 78 proceeding

provide a natural context for the Times to examine the closed-door operations of this vital state agency -- which it has never undertaken over these past 25 years -- as likewise to examine the closed-door operations of the NYS Commission on Judicial Nomination. That vital state agency is *also* reaching its quarter-century mark, having been created by constitutional amendment presented to NY voters at the *same time* as the constitutional amendment which first created the Commission on Judicial Conduct.

(3) enclosed is a copy of two exhibits supporting the allegations of my currently-pending application for Judge Wetzel's recusal, based on his self-interest in the Article 78 proceeding: (1) a "Guest Editorial" in the November 4<sup>th</sup> issue of Martinelli Publications' Home News & Times about a May 21, 1999 judicial misconduct complaint against Judge Wetzel, based, *inter alia*, on his fundraiser for Governor Pataki, while he was a village town justice -- a complaint wrongfully dismissed by the Commission last September; and (2) Governor Pataki's June 12, 1995 certificate nominating Judge Wetzel to the Court of Claims for a term which expired NEARLY SIX MONTHS AGO -- June 30, 1999. As discussed, Administrative Judge Stephen Crane directed this case to Judge Wetzel, interferring with the random assignment of the case. This is the second time Judge Crane has done this -- both times for reasons unknown. In total, FIVE judges have already recused themselves from the case, with an additional judge having been removed by Judge Crane. Clearly, this politically-explosive Article 78 proceeding provides an important opportunity for educating the public about how judges are assigned to cases -- and the law and ethical rules governing judicial disqualification and disclosure. **Please call Justice Wetzel as to when a decision can be expected on my recusal application (212-374-8007) and let me know if you'd like me to provide you with a copy of the application.**

Finally, after I gave you the phone number of City Bar counsel Alan Rothstein (212-382-6623) for comment on the Commission case, I called Mr. Rothstein to advise him that I had done so. Mr. Rothstein has long had in his possession a copy of the litigation file of the case, except for copies of my correspondence to Judges Zweibel, Kapnick, and Wetzel from October to the present relating to disqualification, which I told him I would be sending. That correspondence includes my analysis of Justice Lehner's fraudulent decision dismissing the Article 78 proceeding against the Commission brought by Michael Mantell, based on its refusal to investigate his judicial misconduct complaint against Judge Recant<sup>1</sup>.

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<sup>1</sup> My analysis of Justice Lehner's decision in *Mantell v. NYS Commission on Judicial Conduct* is Exhibit "D" to my December 9<sup>th</sup> letter to Justice Wetzel.

David Rohde

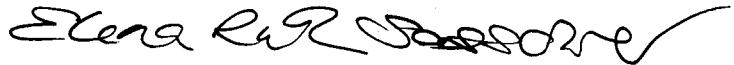
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As set forth in that correspondence, the fact that Mr. Mantell's Article 78 proceeding against the Commission was recently "thown" by a fraudulent decision of a justice of the Supreme Court, New York County, much as four and a half years ago a different justice of the Supreme Court, New York County "threw" Doris Sassower's Article 78 proceeding against the Commission supports my application that my instant Article 78 proceeding be referred for special assignment to a fair and impartial tribunal - lest it too be "thrown" by a fraudulent judicial decision of Supreme Court, New York County.

Please let me hear from you as to what more you need to move forward with this important story.

Yours for a quality judiciary,

A handwritten signature in cursive script, reading "Elena Ruth Sassower".

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

Enclosures

SATURDAY, NOVEMBER 6, 1999

# Ex-Officials Allege Fraud At City Union

## Benefits Fund Misused, Two Charge in Lawsuit

By STEVEN GREENHOUSE

Two former officials of District Council 37, the giant union for New York City municipal employees, have accused its benefits fund of illegally diverting fund money toward the union's political activities and fraudulently obtaining large overpayments in contributions from the city.

Harold Hofmann, the fund's former director of computer systems, and a second official have filed a civil racketeering lawsuit that charges the union, the benefits fund and several union executives with using fund money for politics, no-show jobs, a girlfriend and other improper expenses.

Dan Cherner, the plaintiffs' lawyer, said, "My clients are convinced that the fund's monies were being used not to the benefit of the union's members, as was required, but for a large range of unrelated matters."

The lawsuit, filed in Federal District Court in Manhattan, is the latest blow to a union in which 27 people have been charged with embezzlement, receiving kickbacks or vote fraud; 15 of those charged have pleaded guilty.

The lawsuit raises serious questions about the union's benefits fund, which had not figured in any of the criminal charges. The fund, which receives more than \$100 million in annual contributions from the city, helps the union's 125,000 members pay for college courses, legal services, prescriptions, and dental and optical benefits.

Union officials acknowledged that the Manhattan district attorney, Robert M. Morgenthau, had subpoenaed many documents from the union and from the benefits fund.

Daniel Castleman, the district attorney's chief of investigations, said, "Our investigation continues, and while I can't comment upon the specifics of what we're doing, we are examining matters beyond those we've already announced."

The lawsuit, which seeks more than \$10 million in damages, said fund officials cheated the city by submitting inflated counts of the number of unionized workers for whom the city had agreed to pay the fund \$925 annually each. The lawsuit made no estimate of the size of the city's overpayments, although it said Mr. Hofmann told senior fund executives about the overpayments and was ordered not to do anything about them.

The lawsuit stated that for virtually all the years that Mr. Hofmann worked at the fund, the city "was paying more monies to the welfare funds than it was obligated."

Mr. Hofmann, 56, worked at the fund from 1988 until August 1998, when he was dismissed along with the fund's associate director of computer systems, Anthony Law-

*Continued on Page B7*

# Ex-Officials Allege in Suit That City Union Benefits Fund Was Used Illegally

Continued From Page B1

son, 59, who is his co-plaintiff. In their lawsuit, the two men also made an age discrimination charge, saying age was the reason they were dismissed.

Several lawyers said the fact that the two plaintiffs were fired might undercut the credibility of their charges. But the many details in Mr. Hofmann's legal papers demonstrate that he had considerable knowledge of what went on behind the scenes at District Council 37 of the American Federation of State, County and Municipal Employees.

Chris Policano, spokesman for District Council 37, said, "It is inappropriate for us to comment on unsubstantiated charges brought in a civil suit by two former employees who were fired for cause."

Mr. Policano added: "Our records are an open book. The city has been conducting a regular audit of the benefit funds for the past 18 months."

He said that the union is cooperating with prosecutors and that it even gave Mr. Morgenthau a copy of the lawsuit.

Regarding no-show employees, the plaintiffs asserted that there were at least two dozen people on the payroll

of the fund's computer department who, as far as they could tell, did no work for the fund. Their lawsuit also said the fund paid for the mistress of one union official, Charles Hughes, to work on a project not related to the fund. It also accused Mr. Hughes, who was named as a defendant in the lawsuit, of having the benefits fund pay for him to take friends with him to Honolulu, Las Vegas and other cities.

Mr. Hughes's lawyer, Gerald Shar- gel, declined to comment.

The lawsuit states that the benefit fund's employees and equipment were often used for political activities at the request of Stanley Hill, the

district council's executive director, who was ousted last November in an effort by the parent union to clean house.

In the lawsuit, Mr. Hofmann asserts that he was told by union and benefits fund officials that his department had to do whatever work was required of it for a union political action committee that was run by Mr. Hill. Federal law bars benefits funds from using their money to help in political campaigns.

Mr. Hill has repeatedly denied any wrongdoing.

Mr. Hofmann described a dispute involving the fund's hiring of Perot Systems to adapt its computers to

avoid year 2000 problems. Mr. Hofmann said he opposed the contract with Perot Systems partly because it did not provide the union with protections against the company's raising its contract price.

Originally, the lawsuit said, Perot Systems was hired to do the year 2000 computer work for \$4.6 million, but later it more than doubled the price, saying the work had turned out to be far more complicated than anticipated.

Mr. Hofmann said fund officials told him that Mr. Lawson was too old to learn new computer technology and should be dismissed. Mr. Hofmann declined to do that.

may differ as to the significance of these statistics, it is clear that the establishment in 1975 of a State Commission on Judicial Conduct, with jurisdiction over all judges within the state court system, was a major factor in the dramatic increase in judicial discipline.<sup>5</sup> For the first time, a single state agency was empow-

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N.E.2d 370, 474 N.Y.S.2d 270 (1984). Of 146 censures, 120 have been by the Commission and 26 by the courts on cases presented by Commission counsel. In addition, five judges were censured by the Court of Appeals in proceedings in which Commission determinations for removal were not accepted. The Commission publicly admonished 75 judges. The Court of Appeals admonished two judges upon review of censure determinations filed by the Commission. These two cases are: *In re Dixon*, 47 N.Y.2d 523, 393 N.E.2d 441, 419 N.Y.S.2d 445 (1979); *In re Lonschein*, 50 N.Y.2d 569, 408 N.E.2d 901, 430 N.Y.S.2d 571 (1980).

\* 5. A Temporary State Commission on Judicial Conduct was created by legislation in June 1974, effective August 15, 1974. Ch. 739 [1974] N.Y. LAWS 1907. The nine-member Temporary Commission appointed an Administrator in December 1974 and opened its principal office in New York City in January 1975. Thereafter, the Commission began receiving complaints and initiating investigations, pursuant to Article 2-A of the Judiciary Law. Removal proceedings were commenced by the Commission through the then existing channels: charges were filed in the Court on the Judiciary for higher court judges and in the respective Appellate Divisions for lower court judges. First passage of a constitutional amendment establishing the State Commission on Judicial Conduct occurred in 1974, the same year the temporary Commission was established. Second passage occurred in 1975, and later that year the resolution was approved by referendum. The (first) permanent Commission, which became effective September 1, 1976, initiated removal proceedings in the Courts on the Judiciary, which were given power to remove judges of all courts in the state unified court system. Then, by another constitutional amendment (first passage by the legislature in 1976, second passage in 1977, and approved by the voters in 1977), a newly-constituted State Commission on Judicial Conduct became effective on April 1, 1978. N.Y. CONST. art. 6, § 22; N.Y. JUD. LAW §§ 40-48 (McKinney 1978). The Courts on the Judiciary were abolished, except for cases already pending in such courts, and the new Commission was given power to determine, following due process hearings, that judges be admonished, censured or removed from office, subject to review in the Court of Appeals at the request of the judge facing discipline. If a judge who is the subject of a Commission determination does not seek review within 30 days of being served with the determination, the determination becomes final. If within that period the judge does seek review, the Court of Appeals has jurisdiction, with full authority to render discipline. It may, after consideration of the existing record, briefs and oral argument, take any action available under the law. The Constitution specifically provides that in reviewing a Commission determination, the Court of Appeals "may impose a less or more severe sanction. . . than the one determined by the commission . . ." N.Y. CONST. art. 6, § 22(d).

The 1978 constitutional amendment provided for an 11-member Commission. The Governor appoints four members; each of the four legislative leaders appoints one member; and the Chief Judge of the Court of Appeals appoints three members. The Governor's appointees must be: a judge, a lawyer, and "two [persons who are] not. . . members of the bar, justices or judges or retired justices or judges of the unified court system." N.Y. CONST. art. 6, § 22(b)(1). The legislative leaders may appoint any person except a

"Is Judicial Discipline in New York State a Threat to Judicial Independence?  
Face Law Review: Vol 7 No 2 Under 1987  
by David Stern

UNIVERSITY MICROFILMS

ered to receive complaints against judges and to conduct investigations; and, most importantly, sufficient resources were made available to implement these powers. The establishment of the Commission did not diminish the constitutional authority of the legislature to conduct judicial disciplinary proceedings and remove judges. The Assembly has "the power of impeachment by a vote of a majority of all the members elected thereto,"<sup>6</sup> and a "court for the trial of impeachments"<sup>7</sup> consists of the lieutenant governor, at least a majority of the Senate and "the judges of the court of appeals, or the major part of them."<sup>8</sup> Another legislative method of removal of judges of the Court of Appeals and Supreme Court is by concurrent resolution of the Senate and Assembly "if two-thirds of all the members elected to each house concur thereto."<sup>9</sup> Judges of the Court of Claims, County Court, Surrogate's Court, Family Court, Civil and Criminal Courts of the City of New York, and District Court may be removed on the recommendation of the Governor with the concurrence of two-thirds of the Senate.<sup>10</sup>

Only one judge, a Supreme Court Justice, was removed after an impeachment trial.<sup>11</sup> That was in 1872, the same year the Senate removed a New York City judge on the recommendation of the governor.<sup>12</sup>

Prior to the establishment of a State Commission, judges of the Court of Appeals, Supreme Court, Court of Claims, Surrogate's Court, County Court and Family Court were subject to removal by specially-convened Courts on the Judiciary, which

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judge or retired judge. The Chief Judge's appointees must be judges, one an Appellate Division Justice. *Id.* The members serve four-year staggered terms. N.Y. Const. art. 6, § 22(b)(2). The Commission appoints an administrator, who serves at the pleasure of the Commission. The administrator appoints and supervises staff. N.Y. JUD. LAW § 41(7) (McKinney 1978).

6. N.Y. CONST. art. 6, § 24. For a discussion of the only case of a judge removed by impeachment, see *infra* notes 192-95 and accompanying text.

7. *Id.*

8. *Id.* See also N.Y. JUD. LAW § 240 (McKinney 1971).

9. N.Y. CONST. art. 6, § 23. For a discussion of an unsuccessful attempt to remove a Supreme Court Justice by concurrent resolution, see *infra* note 270 and accompanying text.

10. *Id.*

11. See IV C. LINCOLN, *supra* note 1, at 605-07.

12. *Id.* at 585-86.

# Second Section

Places To Go . . . People To



Guest Editorial

## Clay Tiffany, TV Reporter, Reveals Pataki's Ethical Problems

By Clay Tiffany

On September 14, 1999, responding to a May 21, 1999 complaint filed by this reporter regarding allegations of judicial misconduct by New York State Judge William Wetzel, the New York State Commission On Judicial Conduct wrote: "Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to warrant an investigation." This refusal to even investigate was done despite this reporter having made the Commission aware of serious allegations of illegal gambling by Judge William Wetzel and the substantial accusation that, while a sitting Village of Briarcliff Manor Justice, William Wetzel held a fundraiser at his Central Drive residence for then-gubernatorial candidate George Pataki in 1994.

Subsequent to Wetzel's fundraiser, where money was given to the Pataki campaign, according to an attendee, Wetzel was appointed by Governor Pataki to a New York State Court of Claims judgeship, despite Wetzel's minimal judicial experience. Is this not another example of

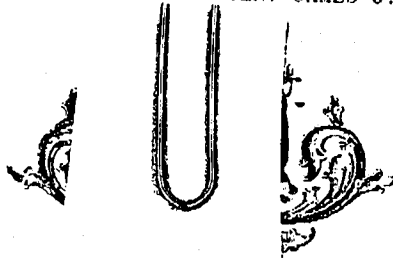
Governor Pataki's ethical problems? Was it ethical for sitting Village Justice William Wetzel to have held an alleged fundraiser for a political candidate at his home? What about the apparent quid pro quo aspects?

Why did the Commission, on June 16, 1999, write this reporter that: "All Commission members vote on complaints unless there is a manifest conflict. There is no conflict in this matter. Accordingly, Commission members appointed by the Governor will participate." Do you believe Pataki appointees should not have recused themselves? According to an attendee, among the fundraiser attendees were George Pachiana, whose Thalle construction company does big business with the state government, Hank D'Amato, a reputed Ossining gambler and Larry Montague, an alleged illegal gambling operator. Ossining sources have told this reporter that Judge William Wetzel has long associated with Hank D'Amato, Larry Montague and other Ossining gamblers and that Judge Wetzel has participated in illegal gambling with them.

All of the above has been reported on this reporter's television show, *Dirge For The Charlatans*. Stay tuned for more revelations.



A message from the Governor  
as received and read in the words  
following



# State of New York

## Executive Chamber

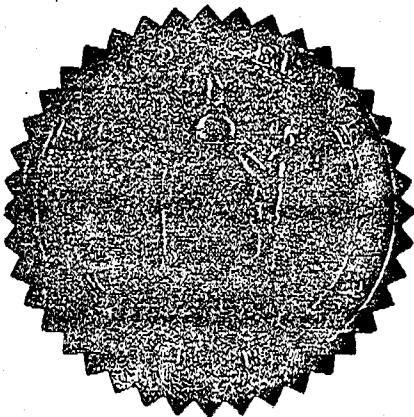
June 12, 1995

TO THE SENATE:

I hereby nominate as a Judge of the Court of Claims

WILLIAM A. WETZEL

of Briarcliff Manor, for a term expiring on June 30, 1999.



*May E. Pataki*