

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY FAX: 212-416-6009 (14 pages)

BY MAIL

May 12, 1999

Attorney General Eliot Spitzer
120 Broadway
New York, New York 10271

ATT: Assistant Attorney General William Toran

RE: *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)*
Stipulation of Adjournment Requested by the Attorney General

99 MAY 14 AM 11:53
MANAGING ATTY'S OFC.
NYSDA - RECEIVED

Dear Mr. Toran:

This responds to your faxed stipulation of adjournment and two letters, dated May 11, 1999.

I do not believe it appropriate that I sign a stipulation of adjournment bearing *only* a single signature line for the Attorney General as "Attorney for Respondent", with no signature line for him as "the People's Lawyer". As stated at the outset of our first phone conversation yesterday morning and reiterated even more forcefully in our second conversation yesterday afternoon, the above-captioned Article 78 proceeding is the People's case against the Commission on Judicial Conduct, being brought by me *pro bono publico*. You surely know that such stipulation, though seemingly innocuous, prejudices that case since the Commission is actually in default. I, therefore, would not want to sign same without the advice and consent of "the People's lawyer", the State Attorney General, who, because I am a citizen and taxpayer of this State, I have a right to consider my lawyer, as well.

By such stipulation of adjournment, "the People's lawyer" might find that you are seeking to take advantage of an unrepresented litigant and might further regard it as suspicious that you, an Assistant Attorney General in Section "G", with no prior contact with this case and not intending to handle it, are endeavoring to obtain that stipulation, rather than the Assistant

EX "I"

May 12, 1999

Attorneys General who have been involved in the case and who have had previous conversations with me: Michael Kennedy, who phoned me on May 3rd, when he identified himself as having been assigned the case by the head of Section "D", Assistant Attorney General Charles F. Sanders, and Mr. Sanders, to whom I spoke in person at the Attorney General's New York office on May 6th -- each of whom promised to get back to me as to who, in the Attorney General's office, was evaluating the People's right to the intervention of the Attorney General.

Although Attorney General Spitzer proudly promotes himself as "*The People's Lawyer* -- ... dedicated to aggressively prosecuting and defending the interests of all New Yorkers",¹ it is now several months that I have been attempting -- without success -- to ascertain the identity of the person or persons at the Attorney General's office with responsibility for evaluating the People's right to have the Attorney General "aggressively prosecuting" their interests against the Commission. As discussed, I began contacting the Attorney General's office long before this Article 78 proceeding was commenced -- in the hope that the Attorney General would, himself, bring this proceeding on the People's behalf and that the Commission would be investigated by his publicly-announced, but yet unstaffed, "public integrity unit". Such contacts may be gleaned from my enclosed April 2, 1999 letter to Joe Palozzola, Assistant to Attorney General Spitzer's Chief of Staff², and have continued in these three weeks since the Attorney General was served with Notice of Right to Seek Intervention -- when my *repeated* queries on the subject were not only directed to Mr. Palozzola, but to Assistant Attorney General James Henly, Chief of the Attorney General's Litigation Bureau, with whom I spoke by phone on April 30th, and, thereafter, to Mr. Kennedy (on May 3rd), Mr. Sanders (May 6th), and to yourself (on May 11th). No one has provided me with that straight-forward, reasonably-requested information.

Moreover, in addition to my extensive May 6th in-person conversation with Mr. Sanders about the Attorney General's actual, apparent, and potential conflicts of interest -- and the need for the People's rights to be independently evaluated, apart from the rights of the Commission -- I left two voice mail messages for Mr. Sanders yesterday, immediately following each of my

¹ Emphasis in the original, *see* introduction to the Attorney General's website: www.oag.state.ny.us/

² My phone communications for and with Mr. Palozzola include: my first message, left for him with Bill Estes, on February 4th; voice mail messages on March 18th and March 19th; a telephone conversation on March 23rd; a voice mail message on April 2nd; a phone conversation on April 6th; voice mail messages on April 12th, April 13th, April 14th and April 23rd; a phone conversation on April 30th.

two phone conversations with you, wherein I reiterated my request for the identity of the person(s) in the Attorney General's office evaluating the People's rights. I am still awaiting a return call.

I would remind you that you yourself recognized that "outside counsel" may be required to evaluate the People's rights. Indeed, in view of the fact that Richard Rifkin, the Deputy Attorney General for State Counsel whose name appears on the letterhead of your two letters, is directly involved in the Commission's on-going corruption of its constitutional and statutory mandate -- the subject of this documented Article 78 proceeding -- as well as the fact that Attorney General Spitzer is himself the subject of a formal ethics complaint, dated March 26, 1999, which CJA filed with the NYS Ethics Commission, based, *inter alia*, on his protectionism of Mr. Rifkin and other public officials who have been complicitous in the Commission's corruption, Mr. Rifkin and Mr. Spitzer have a direct, personal interest in ensuring that there be no independent evaluation of the People's rights in this Article 78 proceeding, which would serve to expose their misconduct.

As you know, in our first conversation yesterday morning, I emphasized that this case has an extensive "background" history, set forth in correspondence from me to Attorney General Spitzer, and referred you to my May 10th letter to Mr. Palozzola, confirming my request to him that such document-supported correspondence in his possession be provided to those handling the Article 78 proceeding. It appears that you were asked to assist on this case sometime after I faxed a copy of that letter to Mr. Sanders and Mr. Kennedy, which was after 3:00 p.m. on May 10th.

Now that you are affirmatively asserting that the Attorney General is representing the Commission in this Article 78 proceeding -- which no other Assistant Attorney General before you asserted -- please identify the legal basis therefor. Executive Law §63.1 makes plain that the Commission does NOT have an automatic right to defense by the Attorney General. Rather, the Attorney General's involvement in litigation must be guided by the interests of the state, requiring him to both "*prosecute and defend all actions and proceedings in which the state is interested...*"; "*have charge and control of all the legal business...in order to protect the interest of the state*"; and participate in actions or proceedings involving state agencies "*if in his opinion the interests of the state so warrant*" (emphases added). Indeed, pursuant to Public Officers Law §72, the notice that the Commission was required to give to the Attorney General of this Article 78 proceeding against it was to include "such other information and evidence as the attorney-general may direct or deem necessary", with the Attorney General then making "such investigation of the facts, relating to any matter so reported, as he may deem necessary."

Request is hereby made for a copy of such "notice" or "other information and evidence" as the Commission was required to provide to the Attorney General, pursuant to Public Officers Law §72, to secure his representation -- presumably including the number of lawyers on the Commission's staff able to defend the Commission, without utilizing the Attorney General -- as well as information as to any "investigation of the facts" by the Attorney General, preliminary to establishing the Commission's entitlement to representation.

As discussed with you yesterday -- and prior thereto with Mr. Henly, Mr. Kennedy, and Mr. Sanders -- the Commission has NO LEGITIMATE defense to this Article 78 proceeding against it for corruption and unlawful conduct. Consequently, the "state interest" in this litigation is being upheld by me, as petitioner, acting *pro bono publico* -- and the Attorney General's duty is to intervene to uphold the public's rights which I am single-handedly championing at great effort and expense.

Indeed, I explicitly stated to Mr. Sanders and to you that *IF* the Commission has a LEGITIMATE defense to the Article 78 petition against it, I would withdraw the proceeding. Inasmuch as the Attorney General cannot properly be representing the Commission without having first ascertained its LEGITIMATE defense to the Article proceeding, you should not be seeking from me a stipulation of adjournment, but, following identification to me of such LEGITIMATE defense, a stipulation of discontinuance. This would be additionally advisable in view of the posture of the case, where the Commission is in default.

Again, I reiterate to you -- as to Mr. Sanders -- that the record of CJA's prior Article 78 proceeding establishes the absolute necessity of the Attorney General intervention on the public's behalf. Without it, or the intervention of the other public officers and agencies listed on my Notice of Right to Seek Intervention, the integrity of the judicial process cannot be assured. Indeed, the ONLY way for the Commission to survive this Article 78 proceeding and for the public officials complicitous in its corruption to escape scandal and criminal prosecution, will be if the case is "thrown" by a fraudulent court decision. This is what happened in CJA's prior Article 78 proceeding, which was "thrown" by a fraudulent decision four years ago, when the Attorney General and all public officers and agencies failed to respond to a similar intervention notice.

May 12, 1999

Please have someone get back to me, ASAP, as to the foregoing so that, if possible, we can obviate the need for a court appearance on May 14th, necessitated by the Attorney General's demonstrably bad-faith and frivolous conduct.

Yours for a quality judiciary,



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

Enclosures: (1) my April 2, 1999 letter to Joe Palozzola
(2) my May 10, 1999 letter to Joe Palozzola

cc: Joe Palozzola, Assistant to Chief of Staff [By Fax: 212-416-8942]
Assistant Attorney General James B. Henly, Litigation Chief [By Fax: 212-416-6009]
Assistant Attorney General Charles F. Sanders [By Fax: 212-416-6009]
Assistant Attorney General Michael Kennedy [By Fax: 212-416-6009]

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FAX COVER SHEET

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DATE: 5/12/99 TIME: 3:30 pm FAX #: 212-416-6009

TO: ^① Asst. A.G. William Toran, ^② Asst. A.G. Henly,
^③ Asst. A.G. Sanders, ^④ Asst. A.G. Kennedy

RE: E.R. Sassower v. Commission on Judicial

FROM: ELENA RUTH SASSOWER, Coordinator

Involved
#99-108587

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MESSAGE: _____
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Thank you.

COUNTABILITY, INC.

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FAX #: 212-416-6009
Asst. A. G. Herly,
A. G. Kennedy
as in on judicial
Conduct
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DATE: 5/12/99 TIME: 3⁴⁰ pm FAX #: 212-416-8942

TO: Joe Palozzola, Asst to Chief of Staff

RE: E.R. Sassower v. Commission on Judicial Conduct

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: Enclosed is my letter of
today's date to
Asst. A.S. Moran
(without the enclosed two
HS to you, dated 4/2/99 +
5/10/99, already in your
possession)

COUNTABILITY, INC.

700
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E-mail: judgewatch@aol.com
Website: www.judgewatch.org

TIME : 05/12/1999 15:4
NAME : CJA
FAX : 9144284994
TEL : 9144211200

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Chief of Staff

in Medical Center

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