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BY FAX: 212-262-5152 (4 pages)

BY CERTIFIED MAIL/RRR: Z-509-073-630

March 12, 1999

State of New York Commission on Judicial Nomination
666 Fifth Avenue
New York, New York 10103-0084

ATT: Stuart A. Summit, Counsel

RE: The Public's Access Rights under Judiciary Law §63.3 and under Article 6 of the Public Officer's Law: The Freedom of Information Law (F.O.I.L.)

Dear Mr. Summit:

This letter responds to your three-sentence letter, dated February 24, 1999.

As requested by our February 5, 1999 letter, you enclose a copy of what you purport to be "the Commission's Report to the Governor, which was delivered November 12, 1998". However, you state that you "will not respond to the balance" of our letter.

The information requested by our February 5, 1999 letter -- to which you have refused to respond -- is as follows:

- (1) the manner in which the "Report" was publicly released by the Commission "at the time it [was] submitted to the governor", as required by Judiciary Law §63.3;
- (2) why you failed to inform CJA of such public release; and
- (3) why the Commission's informational brochure conceals the existence of such publicly-available "Report" by its blanket assertion that "[a]ll proceedings and records of the Commission are confidential".

Your refusal to provide this reasonably requested information suggests that doing so would implicate you and the Commission in misfeasance. Indeed, this refusal, combined with the presence of the word "CONFIDENTIAL" at the outset of the Commission's November 12, 1998 "Report", supports the

inference that the "Report" was not publicly disclosed "at the time it [was] submitted to the governor", as Judiciary Law §63.3 expressly requires.

Non-disclosure would be in the Commission's interest since, on its face, the "Report", which purports to be "pursuant to Judiciary Law §63.3¹, does not meet the further statutory requirements that it:

"shall include the commission's findings relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of each candidate who is recommended to the governor". (Judiciary Law §63.3, emphases added)

The "Report" contains no such "findings" as to "each candidate". Instead, there is only a bald conclusory statement that, "in the collective judgment of the Commission", all seven candidates are "well qualified" according to those criteria. As to these, the "Report" claims they "are considered the best qualified of those who filed applications..."

Although the "Report" states that "the Commission caused an investigation to be conducted of the large number of applicants it determined to interview", no information is provided as to either the total number of applicants or the number interviewed. Nor is there any information as to the manner in which the Commission conducted its "investigations"² to establish the qualifications of the applicants, let alone the specifics of its investigations of the seven "best qualified" candidates. The only "particulars" provided by this boiler-plate, completely uninformative "Report" is by an attached "summary of the careers of the recommended candidates" -- a distillation of résumé-type biographic information, without qualitative assessment.

Clearly, we would be better equipped to evaluate this so-called "Report", had you responded to that portion of our February 5, 1999 letter which requested "copies of ALL the Commission's prior 'single written report[s]' transmitted to Governors, pursuant to Judiciary Law §63.3, since the Commission's inception twenty years ago" (at p. 2, fn. 3). Our letter expressly identified such request as being

¹ The Commission's Rule, 22 NYCRR §7100.8, "Report to the Governor", reinforces that the "report shall be in conformance with section 63(3) of the Judiciary Law".

² To ensure the thoroughness and reliability of the Commission's evaluations, the Judiciary Law confers upon the Commission the power to (1) "...administer oaths or affirmations, subpoena witnesses and compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence that it may deem relevant or material to its evaluation of candidates", Judiciary Law §64.2; (2) "require from any court, department, division, or board, bureau, commission, or other agency of the state or political subdivision thereof or any public authority such assistance, information, and data, as will enable it properly to evaluate the qualifications of candidates...", and, specifically, the Commission on Judicial Conduct, Judiciary Law §64.3; (3) "...interview any person concerning the qualifications of any candidate", Judiciary Law §64.4. This is reiterated by the Commission's Rule, 22 NYCRR §7100.6, "Investigation of Candidates".

"[f]or comparison and other research purposes". Your failure to provide these past "written reports"-- although same are statutorily required to be publicly disclosed by the Commission -- suggests that the Commission's November 12, 1999 "Report" is not only non-conforming with Judiciary Law §63.3, but also with its prior reports. This would further underscore the fraud perpetrated by the Commission by its purported "investigation" and "highly qualified" rating of Justice Rosenblatt -- in face of the documentary proof of his unfitness, presented by our October 5, 1998 letter.

By this letter, we specifically reiterate our right, pursuant to Judiciary Law §63.3, to copies of these prior Commission "reports". Additionally, we invoke our rights to same under Article 6 of the Public Officers Law: the Freedom of Information Law [F.O.I.L.]. Under F.O.I.L., your response is required within *five* business days of receipt of a request.

As to the indicated recipients of our February 5, 1999 letter, we have received no response from the Governor to our request therein for a copy of Justice Rosenblatt's "financial statement", pursuant to Judiciary Law §63.4. We, therefore, reiterate that request and, likewise, invoke our rights to same under F.O.I.L. For such purpose, a copy of this letter is being sent to the Governor's Public Records Officer, Rosario Vizzie.

As for the Senate Judiciary Committee, the sole response we have received -- presumably in answer to our February 5, 1999 letter -- was the much-awaited transcript of its December 17, 1998 confirmation "hearing", requested by us on January 13, 1999 by phone and letter. By copy of this letter to Senate Judiciary Committee Chairman James Lack, we reiterate our still outstanding request for ALL publicly-available relating to Justice Rosenblatt's nomination. At minimum, this includes copies of the "written report", the "financial statement", and the Governor's certification of the nomination.

Yours for a quality judiciary,



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

cc: Governor George Pataki

ATT: James McGuire, Counsel

Richard Platkin, Senior Assistant

[certified mail/rrr: Z-509-073-631]

Rosario Vizzie, Records Access Officer

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Senate Judiciary Committee Chairman James Lack

ATT: David Gruenberg, Senior Counsel

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New York State Attorney General Eliot Spitzer
[certified mail/rrr: Z-471-036-406]
New York State Ethics Commission
[certified mail/rrr: Z-471-036-407]
Committee on Open Government
ATT: Robert J. Freeman, Executive Director
New York media

TRANSMISSION VERIFICATION REPORT

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