

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

Written Statement of Elena Ruth Sassower **Furnished to the Commission on Statewide Attorney Discipline** **at its August 11, 2015 Hearing, Manhattan, New York**

My name is Elena Sassower. I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a nonpartisan, nonprofit citizens' organization that for more than a quarter of a century has documented the corruption of judicial selection, judicial discipline – and the judicial process itself. This includes the judiciary's corruption of the system of attorney discipline, all aspects of which it controls and which it uses to "protect" and insulate from accountability politically-connected attorneys and to retaliate against judicial whistle-blowing ones.

I am also privileged to be the daughter of two such judicial whistle-blowing attorneys. My father, George Sassower, was disbarred by a February 23, 1987 order of the Appellate Division, Second Department, for violating court orders requiring him to acquiesce to the court's cover-up of lawyer larceny of assets of an involuntarily-dissolved corporation – assets which have yet to be accounted for by the court nearly 30 years later. My mother, Doris L. Sassower, was indefinitely suspended by a June 14, 1991 so-called "interim" order of the Appellate Division, Second Department, without reasons, without findings, unsupported by a petition, or by any hearing – as to which, to date, nearly 25 years later, there have been no findings, no hearing, no appellate review.

New York's court-controlled system of attorney discipline is 35 years old – and it has survived because no one in a position of power or influence has confronted the proof of its dysfunction, corruption, and politicization. That proof includes:

- (1) the casefiles of grievance committee disciplinary proceedings against attorneys, as, for instance, my parents;
- (2) the casefiles of lawsuits against grievance committees, the Appellate Divisions, and the State brought by attorneys challenging disciplinary proceedings and discipline against them, as for instance, my parents;
- (3) the records of attorney misconduct complaints, filed with grievance committees, and rejected as failing to allege misconduct or dismissed on other grounds, without requiring an answer from the complained-against attorneys;
- (4) the casefiles of lawsuits against grievance committees brought by complainants whose complaints have been dumped.

My presentation here today is about all this documentary evidence on which your “top to bottom”, “comprehensive” review must rest.

Six and a half years ago, I had planned to give similar testimony at the December 16, 2009 hearing that then Senate Judiciary Committee Chairman John Sampson was holding on the attorney disciplinary system and Commission on Judicial Conduct. That hearing was cancelled – and not rescheduled. As for the devastating testimony and documents that witnesses had presented to Senator Sampson at two prior hearings, on June 8, 2009 and September 24, 2009, the Senate Judiciary Committee undertook no investigation, made no findings, and rendered no committee report – reflective of its knowledge that to do so would spell the end of attorney discipline, reposed in the judiciary – and of the Commission on Judicial Conduct, as currently exists.

Just as Senator Sampson’s 2009 hearings on attorney discipline and the Commission on Judicial Conduct were largely triggered by my advocacy before him in January and February 2009, so the hearings of this Commission, announced on its website that went live on or about June 25, 2015, were largely prompted by my inquiries and advocacy in the weeks preceding.

By these hearings and the Commission’s website, former Chief Administrative Judge Prudenti and now Chair Cozier are to be commended for bringing this Commission out from “under the radar”, which is where it had been operating – and for scrapping the August 1, 2015 date for the Commission’s report to Chief Judge Lippman, identified in the OCA’s March 30, 2015 press release announcing the appointment of the Commission’s members.

In my e-mail requesting to testify at today’s hearing, I stated that the statement I had drafted for the aborted December 16, 2009 hearing¹ was “no less germane and methodologically-sound today than six years ago” – and I offered it and the mountain of casefile and other primary source evidence to which it referred as “the requisite prepared statement or...detailed outline of [my] proposed testimony” – further stating that such “establishes RESOUNDINGLY and scandalously, that New York’s attorney disciplinary system is corrupt, unconstitutional, and utilized by the court system to retaliate against judicial whistle-blowing attorneys, while ‘protecting’ unethical and corrupt attorneys and the bar associations.”

Here presented is that dispositive casefile evidence – beginning with my mother’s 1995 cert petition to the U.S. Supreme Court. The cert petition is identified on the first page of the December 16, 2009 statement, which sets forth its “Question Presented”:

¹ Consistent with the final paragraph of the December 16, 2009 statement (at p. 17), I handed up a copy of the statement to the Commission on Judicial Compensation when I testified before it at its July 20, 2011 hearing – and thereafter annexed it as Exhibit F-2 to CJA’s October 27, 2011 Opposition to the Commission’s August 29, 2011 Final Report.

“Whether New York’s attorney disciplinary law is unconstitutional, *as written and as applied*:

1. where an attorney can be immediately, indefinitely, and unconditionally suspended from the practice of law by an interim order, without findings, reasons, notice of charges, a pre-suspension hearing, or a post-suspension hearing...
2. where a disciplined attorney has no absolute right of judicial review, either by direct appeal or by the codified common law writs;
3. where adjudicative and prosecutorial functions are wholly under the control of the courts, enabling them to retaliate against attorneys who are judicial whistleblowers;
4. where disciplinary proceedings: (a) do not comply with the court’s own disciplinary rules; (b) are commenced by ex parte applications, without notice or opportunity to be heard; (c) deny the accused attorney all discovery rights, including access to the very documents on which the proceedings purport to be based; (d) do not rest on sworn complaints; (e) do not rest on an accusatory instrument or are asserted ‘on information and belief’, not based on any probable cause finding of guilt.”

What is your judgment on the subject? Here is a complete copy of the record underlying that cert petition from which you can verify the facts recited by the “Question Presented” and in the cert petition.

Here is the record of the subsequent disciplinary proceedings. All told, from beginning to end, 27 Appellate Division decision/orders – virtually all making dispositions without reasons, or findings – and utterly insupportable and fraudulent upon comparison with the record. And here’s the record in the Court of Appeals. My mother made six attempts for its review, by leave and by right, all denied by its standard boiler-plate. These six attempts are summarized by my mother’s March 6, 2007 statement in opposition to Senate confirmation of Chief Judge Judith Kaye’s reappointment – and here it is.

And here is my mother’s 1998 cert petition to the U.S. Supreme Court, identified on the second page of my December 16, 2009 statement. The underlying record is here.

Alas, I am only now beginning to chronicle my father’s herculean fight for his law license and the rule of law. Last month I requisitioned his disciplinary file from the Appellate Division, Second Department, which is bringing it out from storage. Consequently, it will also be accessible for your review, in addition to my own. Suffice to quote from my father’s jurisdictional statement in support of his appeal of the disbarment order to the Court of Appeals. He stated: “Appellant was Denied Due Process...Denied Equal Protection of the Law...Denied the Right to Show Double Jeopardy”.

The foregoing gives context to Professor Gillers' last year's law review article "*Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public*", with its devastating critique of Appellate Division decisions disciplining attorneys. Its recommendation:

“the New York courts should authorize a study of the state's disciplinary process and performance, including decisions that state law makes secret and which, therefore, outside researchers like me cannot evaluate” (at p. 490),

doubtless gave rise to Chief Judge Lippman's establishment of this Commission, to which he appointed Professor Gillers. Perhaps this is the Professor's reward for an article that for all its power, only skims the surface, never going beyond the face of Appellate Division attorney disciplinary decisions to where the greater problem – and unabashed corruption – lies. Surely Professor Gillers could have delved into the underlying attorney disciplinary casefiles, especially for those decisions he found most questionable and lacking in relevant information, since – as he knows – Judiciary Law §90(10) makes “the records and documents” of publicly-disciplined attorneys “public records” And, of course, attorneys, such as my parents, disbarred and suspended by Appellate Division decisions within the 1982-2008 range he “selectively” reviewed (at p. 488), would have readily furnished him with such access and information as he required to assess the situation – one far more grave than his conclusion: “the lawyer disciplinary system in New York is deficient in design and operation” (p. 489).

Likewise in reaching his further conclusion “as to the need for a statewide body that can bring consistency to sanctioning decisions” (at p. 489), Professor Gillers completely disregards that New York has, in fact, such a body – the Court of Appeals – to which disciplined attorneys, such as my parents, raise constitutional arguments, including of disparate treatment and invidiousness. Instead, and without offering even a statistic as to the number of disciplined attorneys who seek Court of Appeals' review in any given year – or how many attorney disciplinary cases the Court of Appeals accepts, Professor Gillers writes, in a footnote: “An appellate division's choice of sanction is final. The jurisdiction of the New York Court of Appeals, the state's highest court, is limited to appeals raising questions of law. N.Y. Jud. Law §90(8).” (p. 489, fn. 9). In other words, he absolves the Court of Appeals of any responsibility for the facial inadequacy of Appellate Division decisions and lack of uniformity and consistency between and within the four Judicial Departments with respect to attorney discipline – also concealing throughout his article that these present questions of constitutional magnitude.

Mind you, on July 28th, at this Commission's first hearing at the Court of Appeals, I popped into the Clerk's Office and discovered a “Guide For Counsel in Cases to be Argued before the Court of Appeals”. Its second sentence reads: “The Court was established to articulate Statewide principles of law in the context of deciding particular lawsuits.”

Time does not permit me to do more than hand-up the kind of case file evidence and record of grievance committee complaints that Professor Gillers' scholarship lacks – and that this Commission's report to the Chief Judge must confront, with findings of fact and conclusions of law, if it is to overcome the appearance and actuality of its interest, being comprised virtually entirely of

attorney disciplinary insiders and those with undisclosed relationships with such insiders, as, for instance, Professor Gillers, whose wife served as the First Department Disciplinary Committee's First Deputy Chief Counsel (1989-1998).

To facilitate the Commission's fidelity to evidence, I will be creating a webpage for the Commission on CJA's website, www.judgewatch.org, posting the evidence it has received from CJA and so many others. It will be accessible *via* the left sidebar panel "Searching for Champions – NYS", bringing up a link for the Unified Court System – Office of Court Administration.

A handwritten signature in blue ink, consisting of two lines of cursive script. The first line appears to read "Elong EW" and the second line is more complex, possibly reading "J. P. ...".