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January 11, 2017

Confidential

Elena Ruth Sassower
c/o Center for Judicial Accountability, Inc.
P. O. Box 8101
White Plains, NY 10602

Re: Our File Nos.: N-2292-16; N-2293-16; S-2294-16

Dear Ms. Sassower:

This letter responds to your December 28, 2016 letter seeking reconsideration of the Committee's determination not to open investigations into your complaints against the former and current Nassau County and Suffolk County District Attorneys. As Chairman of the Grievance Committee for the Tenth Judicial District, pursuant to the New York Rules for Attorney Disciplinary Matters §1240.7(e)(3) [22 NYCRR part 1240], I reviewed your October 14, 2016 complaint and all related and material Correspondence, including Chief Counsel Mitchell T. Borkowsky's November 28, 2016 letter. You were previously advised of the Committee's function and applicable criteria to determine whether an investigation is warranted in a particular instance. Having reviewed your file, I concur with our counsel's reasoning, opinions and decision that the allegations of your complaint do not give the Committee cause to open investigations.

Our Committee's responsibilities do not include the policing of District Attorney conflicts of interest, corruption allegations, following the money references¹, District Attorney salaries, enforcement of the New York State Penal Law, duties of the District Attorney, application of The National Prosecution Standards of the National District

¹ The Committee does deal with escrow matters

Attorneys' Association, or prosecutor's office's procedures for handling actual or potential conflicts of interest. In your correspondence you acknowledge that the Committee's jurisdiction is disciplinary, not criminal.


To the extent your December 23, 2016 letter constitutes a FOIL request for written conflict-of-interest procedures utilized by the five district attorney offices within the Committee's jurisdiction- including that relating to their handling of public corruption complaints, this Committee is part of the judiciary and as such is not subject to FOIL requests, (see Public Officers Law § 86[3]). The Appellate Division, Second Department has exclusive jurisdiction over Committee records and proceedings involving attorney disciplinary matters pursuant to Judiciary Law § 90; 22 NYCRR Parts 603, 691, 806, and 1022. Pursuant to section 90(10) of the Judiciary Law, disciplinary records are sealed and only the Appellate Division has the authority to provide access to those records, upon application for a written order showing good cause.

The Committee's records are also exempt from FOIL disclosure under Public Officers Law § 87[2][a]. FOIL also does not require compilation of information or creation of records under Public Officers Law § 89[3]. Where disciplinary records are not maintained by categories of complaints or job titles of attorneys, such as "prosecutors" or "assistant district attorneys," FOIL does not require compilation of information or creation of records in response to requests.

I hope this letter helps you to more succinctly frame and direct your complaints, respecting privacy confidentiality, due process, jurisdiction and civility considerations.

For the reasons stated above, the Committee is unable to assist you. This determination does not preclude you from pursuing other legal remedies that may be available. Any further requests for reconsideration should be made in writing to the attention of the Appellate Division Second Department, care of the Office of the Clerk.

Very truly yours and respectfully,



Abraham B. Krieger,
Chairman

cc: Mitchell Borkowsky, Chief Counsel
Aprilanne Agostino, Esq., Chief Clerk, App. Div. 2nd Dept.