

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-428-2155 (6 pages)

BY CERTIFIED MAIL/RRR: 7001-0320-0004-7860-0367

January 13, 2003

John Eiseman, Records Access Officer
Office of Court Administration
25 Beaver Street
New York, New York 10004

RE: CJA's April 8, 2002 Document Request Pursuant
to FOIL and Part 124 of the Chief Administrator's
Rules for Public Access to Records

Dear Mr. Eiseman:

Following up my January 6, 2003 letter stating that "our files do not reflect any response [from you] to our April 8, 2002 document request", I have since located the enclosed responding June 20, 2002 letter from Assistant Deputy Counsel Shawn Kerby, which had been misfiled. Apologies for any inconvenience this may have caused.

The documents transmitted by Ms. Kerby's June 20, 2002 letter consisted of:

- (1) Chief Administrative Judge Lippman's June 22, 2001 memorandum;
- (2) Chief Administrative Judge Lippman's July 3, 2001 administrative order;
- (3) Office of Court Administration June 22, 1994 press release;
- (4) Chief Administrative Judge Milonas' April 8, 1994 administrative order¹;
- (5) Chief Administrator Bellacosa's April 11, 1985 administrative order;
- (6) Part 100 of the Rules of the Chief Administrator Governing Judicial Conduct.

The initial paragraph of Chief Administrative Judge Lippman's June 22, 2001 memorandum states that the attached administrative order – which, notwithstanding its date, I presume to be that of July 3, 2001 –

“replaces the cumbersome and ultimately unworkable procedure adopted in 1994 that called for the use of a seven-member fact-

¹ The June 22, 1994 press release cites to an April 18, 1994 administrative order. Presumably, there is an error either in the press release or in the April 8, 1994 date of the administrative order.

finding body from outside our administrative structure.”

Are there no publicly-available documents pertaining to that “unworkable” body – including annual reports, disciplinary statistics, public decisions, changes in its membership during its seven-year operation, etc.?

After summarizing the superseding administrative order, Chief Administrative Judge Lippman’s June 22, 2001 memorandum contains a concluding paragraph stating,

“I will keep you posted on the use of this procedure”.

Are there no publicly-available follow-up memoranda and other documents pertaining to the efficacy of the revised disciplinary mechanism? No annual report, disciplinary statistics, public decisions, etc.?

Paragraph 8 of Chief Judge Lippman’s July 3, 2001 administrative order reads:

“The Housing Court Disciplinary Committee shall maintain a file of complaints made against Housing Judges. The Administrative Judge of the Civil Court shall ensure that copies of all complaints received by judges and nonjudicial personnel of the Civil Court are sent to the Housing Court Disciplinary Committee.”

Where does the Housing Court Disciplinary Committee have its office and where is the referred to “file of complaints against Housing Judges” maintained? Since no confidentiality provision is set forth in the July 3, 2001 administrative order, CJA requests access to such file of complaints, as well as to the records of disciplinary proceedings had before the Housing Court Disciplinary Committee.

Additionally, CJA requests access to the files of complaints and records of the predecessor “unworkable” Housing Court Disciplinary Committee, established by Chief Administrator Milonas’ April 8, 1994 administrative order, without any provision of confidentiality.

Chief Administrator Bellacosa’s April 11, 1985 administrative order also contains no provision for confidentiality – unless such is contained in the referred-to 22 NYCRR §25.32 *et seq.*, a copy of which is requested. Absent any confidentiality

provision, CJA requests access to the file of complaints and records of the disciplinary procedure which the April 11, 1985 administrative order created. Likewise, we request access to the files and records of the predecessor process under 22 NYCRR §25.32 *et seq.* In any event, please advise as to the Office of Court Administration's retention policy for the files of complaints and records of disciplinary proceedings against Housing Court judges.

I note that the April 8, 1994 and July 3, 2001 administrative orders, in virtually identical language, state

“Charges shall be preferred against the Housing Judge by the Chief Administrator of the Courts, upon consultation with the Administrative Judge of the New York Civil Court”.

Neither identifies the process that necessarily precedes the drawing of “charges” from a complaint. As with Judiciary Law §44 pertaining to the New York State Commission on Judicial Conduct, a complaint is presumably first investigated to see if it would support charges being proffered against the judge. Consequently, request is made for documents setting forth the standard for investigating judicial misconduct complaints against Housing Court judges, such as “facial merit” – as well as documents pertaining to the staff and other resources available to investigate “facially meritorious” complaints.

According to the enclosed item from the February 13, 1996 New York Law Journal, the Office of Court Administration has made repeated efforts

“to persuade state legislators to let voters decide whether the Housing Court system should come under the State Constitution. The proposed constitutional amendment would enable Housing Court judges to be disciplined by the State Commission on Judicial Conduct...”

Request is made for access to all records pertaining to such legislative efforts – spanning to the present.

Finally, insofar as CJA's April 8, 2002 document request sought

“publicly-available records pertaining to amendments to the Chief Administrator's Rules Governing Judicial Conduct,

effective January 1, 1996, upon approval of the Court of Appeals – and, in particular, §100.3(D)(1) & (2) ‘requir[ing] a judge to report misconduct by lawyers and judges when there is evidence of a ‘substantial likelihood’ of a ‘substantial violation’ of a rule’.”,

we were not requesting a copy of the amended rules – which is what Ms. Kerby supplied – but documents reflecting the reason for promulgation of such amendments and the different phases of the amendment process, including deliberations and discussions. Please supply.

Thank you.

Yours for a quality judiciary,

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

Enclosures (2)

*OCA - John Eiseman
Records Access
Officer*

TO : 01/13/2003 12:15
FROM : CJA
SUBJECT : 011112003
FILE : 011112003

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 13 2003	
FBI - NEW YORK	



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
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JONATHAN LIPPMAN
Chief Administrative Judge

MICHAEL COLODNER
Counsel

June 20, 2002

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.
Box 69, Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

In response to your Freedom of Information Law ("FOIL") request concerning the Housing Court Disciplinary Committee and the Rules of the Chief Administrator governing judicial conduct, enclosed please find a copies of records responsive to your request.

Very truly yours,

A handwritten signature in cursive script that reads "Shawn Kerby".

Shawn Kerby
Assistant Deputy Counsel

2/13/96

5—NO. 29

S NEWS

update

Court administrators, for the fourth time in six years, are trying to persuade state legislators to let voters decide whether the Housing Court system should come under the State Constitution. The proposed constitutional amendment would enable Housing Court judges to be disciplined by the State Commission on Judicial Conduct. The ballot proposal would increase the terms for housing judges to 10 years from five years and make them mayoral appointments. Housing judges are currently appointed by court administrators.



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UNIFIED COURT SYSTEM
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JONATHAN LIPPMAN
Chief Administrative Judge

MICHAEL COLODNER
Counsel

January 16, 2003

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.
Box 69, Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

In response to your recent Freedom of Information Law ("FOIL") follow-up request concerning the Housing Court Disciplinary Committee, please be advised that FOIL does not require the compilation or creation of records or a response to questions. See Public Officers Law, § 89(3). For your information, you may submit your requests for information to Judge Fern Fisher-Brandveen, the Committee Chair for the Housing Court Disciplinary Committee, 111 Centre Street, New York, New York. Complaints involving Housing Court Judges also may be filed with Judge Fisher-Brandveen at that address.

With regard to your request for records reflecting the deliberations and discussions pertaining to Part 100 of the Rules of the Chief Administrator Governing Judicial Conduct, a copy of which I provided you in response to one of your previous requests, FOIL exempts from disclosure intra-agency materials that are not final agency policy or determinations. Public Officers Law, § 87(2)(g)(iii).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Shawn Kerby".

Shawn Kerby
Assistant Deputy Counsel