

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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September 28, 2015

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel  
Office of Court Administration  
25 Beaver Street, 11<sup>th</sup> Floor  
New York, New York 10004

RE: Records Request: the “written comments” received by the Commission on Statewide Attorney Discipline – referred to by its Final Report

Dear Ms. Kerby:

On September 24, 2015, the Commission on Statewide Attorney Discipline released its “Final Report to Chief Judge Jonathan Lippman, the Court of Appeals, and the Administrative Board of the Courts”.

Under the heading “The Commission’s Work” (pp. 29-36), a section entitled “Public Outreach” states:

“The Commission pursued input and insight from a broad spectrum of stakeholders – including consumers as well as attorneys – and made a concerted effort to publicize its public hearings and encourage commentary (either at a hearing or through a written submission). Dozens of comments were received and reviewed.<sup>fn.48</sup>” (pp. 31-32, underlining added).

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fn. 48 reads:

“A considerable number of the comments received by the Commission dealt with complaints which, if true, could form the basis for a claim of legal malpractice. The Commission finds it advisable to briefly address misconduct vis-à-vis malpractice, beginning with the acknowledgment that those two concepts are not necessarily mutually exclusive nor mutually inclusive: legal malpractice may well include professional misconduct, professional misconduct may well give rise to a parallel complaint of malpractice. On the other hand, malpractice and misconduct, while perhaps parallel, are different issues. Quite simply, attorney malpractice is a failure to exercise ordinary skill and knowledge, where the negligence results in damages to a client. By contrast, attorney misconduct is the failure to comply with the rules of conduct adopted by the courts. This Commission’s focus was exclusively on attorney misconduct and, more specifically, the process from the initiation of a complaint through a finding of misconduct through the imposition of a sanction.”

The immediately-following section entitled "Public Hearings" further states:

"A total of 31 individual witnesses appeared at the hearings and approximately 50 interested parties submitted written comment." (p. 32, underlining added).

Pursuant to §124 of the Chief Administrator's Rules, Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], and the Commission's notice of its public hearings which concluded by saying:

"Please note that any materials, submissions or statements provided to the Commission are subject to the provisions of the Freedom of Information Law and subject to publication by the Office of Court Administration"

this is to request access to the referred-to "Dozens of comments...received and reviewed" and the "written comment" submitted by "approximately 50 interested parties".

Pursuant to §124.6 of the Chief Administrator's Rules and Public Officers Law §89.3, your response is required "within five business days" of your receipt of this request. I would appreciate if you e-mailed it to me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.

Yours for a quality judiciary,



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