

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Coordinator*

BY FAX & MAIL: 518-473-8940 (3 pages)

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Shelly Brown, Records Access Officer  
New York State Comptroller  
Alfred E. Smith State Office Building, 6<sup>th</sup> Floor  
Albany, New York 12236

RE: F.O.I.L. Request: 1989 Audit of the NYS  
Commission on Judicial Conduct

Dear Ms. Brown:

Pursuant to F.O.I.L. (Article VI of the Public Officers Law), request is made to inspect all publicly-available records relating to the New York State Comptroller's 1989 audit of the New York State Commission on Judicial Conduct, its report on the Commission's "financial records and procedures", the Commission's response thereto, and any subsequent recommendation by the Comptroller to the Governor and Legislature.

Such audit, report, and response are summarized at pages 49-50 of the Commission's 1990 Annual Report – and a copy of those pages is enclosed for your convenience.

Pursuant to §89.3 of the Public Officers Law, your response is required within *five* business days of receipt of this written request.

Thank you.

Yours for a quality judiciary,



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

Enclosure

STATE COMPTROLLER'S REPORT ON COMMISSION FINANCES

In 1989, the Office of the State Comptroller conducted a financial audit of the Commission's operations. A team of auditors spent approximately 135 person-days reviewing financial records and procedures in the Commission's three offices. Their study included extensive interviews of staff and examination of the records underlying various disbursements. For example, the auditors correlated the public records in certain cases (e.g. transcripts, motion papers and referee reports) with the financial disbursements made in those cases.

In a public report issued at the conclusion of the audit, the Comptroller's office noted that the Commission's finances were in order and that its financial expenditures, records and policies were consistent with state policy and rules.

The Comptroller made no recommendations for change in the Commission's financial practices.

The only dispute between the Commission and the Comptroller's office was over a non-financial matter. In seeking to expand the scope of their review beyond the area of financial accountability into an assessment of the merits of the Commission's decisions in particular cases, the auditors sought access to investigatory material and other records which, by statute, are confidential. They sought, for example, to see files of dismissed complaints and to observe Commission staff in the course of conducting ongoing investigations.

The Commission, citing the strict mandate of confidentiality set forth in Section 45 of the Judiciary Law, declined to reveal statutorily confidential material or to permit the presence of auditors in ongoing inquiries. The Comptroller's report criticized the Commission for this decision, but the auditors never sought through formal means, such as a court order, to contest the Commission's statutory obligation to deny access to confidential files.

Indeed, in the only recommendation contained in his final report, the Comptroller recommended that the Commission urge the Legislature to amend Section 45 of the Judiciary Law and loosen the confidentiality constraints. The Commission has declined to do so.

In a response to the Comptroller's report, the Commission advised the Governor, Comptroller and leaders of the Legislature that it has "serious doubts" about the wisdom of the Comptroller's recommendation to amend Section 45. The Commission also raised "serious questions whether the Comptroller should determine from an 'audit' whether the Commission is exercising its discretion wisely" as to individual complaints and determinations. Thus, the Commission was constrained to reject the Comptroller's recommendation, suggesting that any legislative change desired by the Comptroller be proposed directly by the Comptroller to the Governor and Legislature.