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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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DORIS L. SASSOWER, :  
 : AFFIRMATION IN  
 : OPPOSITION TO  
 Petitioner, : APPLICATION FOR A  
 : PRELIMINARY  
 -against- : INJUNCTION

COMMISSION ON JUDICIAL CONDUCT OF THE :  
STATE OF NEW YORK, : Index No. 95-109141  
 :  
 Respondent. :

-----X

OLIVER W. WILLIAMS, an attorney at law, duly admitted to practice in the courts of the State of New York, affirms under penalties of perjury:

1. I am an Assistant Attorney General in the office of DENNIS C. VACCO, Attorney General of the State of New York, attorney for respondent, Commission On Judicial Conduct of the State of New York. I make this affirmation in opposition to petitioner's application for a preliminary injunction, because petitioner has failed to satisfy the elements needed for the issuance of a preliminary injunction.

2. According to the petition, Respondent violated Art. VI, § 22.a of the New York State Constitution as well as § 44.1 of the New York State Judiciary Law. Specifically, petitioner maintains that respondent's rule 22 NYCRR, § 7000.3 is unconstitutional as written and applied in that it permits Respondent to summarily dismiss complaints without an investigation. Complaint ("Compl."), ¶¶ 10, 13, 14 and 18.

3. Petitioner maintains Respondent summarily dismissed eight complaints she filed with it from 1989 through December of

1994. Further, petitioner contends that in summarily dismissing her complaints, Respondent conspired with "judicial wrongdoing" in aiding and abetting them in violating petitioner's rights under the First and Fourteenth Amendments to the United States Constitution, and Article 1, §§ 6, 8 and 11 of the New York State Constitution insofar as she was statutorily and constitutionally entitled to have each complaint investigated. Compl., ¶¶ 20, 19 and 23.

4. Petitioner then commenced this Article 78 proceeding by Verified Petition dated April 10, 1995. Petitioner seeks, by way of mandamus, prohibition and certiorari to have 22 NYCRR § 7000.3 declared unconstitutional, to have Respondent conduct an investigation of each complaint it receives and to have an investigation of Respondent's conduct by the State's Attorney General, the United States Attorney and the New York State Ethics Commission. Compl., ¶ 10 and "Wherefore" clause.

5. Further, on May 11, 1995, by way of an Order to Show Cause signed by this Court, but undated, petitioner applied for a temporary restraining order ("TRO") and preliminary injunction ("PI"), prohibiting Respondent from summarily dismissing complaints of judicial misconduct until the merits of this proceeding are

determined.<sup>1</sup> Petitioner's request for a TRO was stricken with her request for a PI set for hearing on May 23, 1995 at 2:00 p.m.

6. The granting of interim relief or a preliminary injunction is a drastic remedy requiring "a clear showing of likelihood of ultimate success on the merits, that the movant will suffer irreparable injury unless the relief sought is granted and that the balancing of the equities lies in favor of the movant." Faberge International, Inc. v. DiPino, 109 A.D.2d 235, 240 (1st Dept. 1985) ("Faberge"). See also James v. Board of Education, 42 N.Y.2d 357, 363 (1977); County of Orange v. Lockey, 111 A.D.2d 896, 897 (2d Dept. 1985); Little India Stores, Inc. v. Singh, 101 A.D.2d 727, 728 (1st Dept. 1984) ("Little India"); Gulf & Western Corp. v. New York Times Co., 81 A.D.2d 772 (1st Dept. 1981) ("Gulf & Western"); Shelborne Beach Club, Inc. v. Hellmarn, 49 A.D.2d 933 (2d Dept. 1975). Such relief is to be used sparingly and only after the applicant has satisfied his heavy burden of establishing the required elements. City of Buffalo v. Mangan, 49 A.D.2d 697 (4th Dept. 1975). See also New York Telephone Co. v. Public Service Commission, 36 A.D.2d 261, 270-71 (3d Dept.), modified on other grounds, 29 N.Y.2d 164 (1971). Petitioner does not meet this three-pronged test.

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<sup>1</sup> On May 16, 1995, I spoke to petitioner by telephone and advised her that she failed to provide me with an affirmation in support of her request for injunctive relief. She stated that she had prepared an affirmation in support of injunctive relief and that she would forward it. On the morning of May 22, 1995, petitioner telephoned me and stated that she did not prepare an affirmation in support of her request for injunctive relief, and that she would verbally support her request.

7. The first requirement compels a party seeking a preliminary injunction to establish a "clear right" to relief. See 7A Weinstein, Korn & Miller, New York Civil Practice, ¶ 6301.14, 6301.20a. See also Little India, 101 A.D.2d at 728; Gulf & Western, 81 A.D.2d at 773. Moreover, this clear right must be:

established by the moving papers (Park Terrace Caterers v. McDonough, 9 A.D.2d 113). The plaintiff's rights must be certain as to the law and the facts and the burden of establishing such an undisputed right rests upon the plaintiff. (Pine Hill-Kingston Bus Corp. v. Davis, 225 App. Div. 1982)." (Emphasis supplied).

Town of Southeast v. Gonnella, 26 A.D.2d 550 (2d Dept.), appeal dismissed, 18 N.Y.2d 579 (1966). Accord, Faberge, 109 A.D.2d at 240.

8. First, she cannot show a likelihood of success on the merits. Petitioner maintains Art. VI, § 22.1 of the New York State Constitution and § 44.1 of the New York State Judiciary Law mandate that Respondent investigate each complaint submitted. Compl. ¶ 23. This analysis is flawed. Section 22.a imposes a duty to investigate allegation of judicial misconduct if a complaint on its face presents a legally cognizable allegations of judicial misconduct; if it does not, as was the case with petitioner's complaints, there is nothing to investigate. As respondent's responses to her complaints indicate, "[u]pon careful consideration, the Commissioner concluded that there [were] no indications of judicial misconduct...". Exhibit ("Exh.") A in globo.

9. Further, § 44(b) of the Judiciary Law provides Respondent with a choice. In lieu of an investigation of a

complaint, respondent may dismiss the complaint if "on its face it lacks merit." Moreover, petitioner may not compel respondents to conduct an investigation of her complaints of judicial misconduct. Muller v. Axelrod, 74 N.Y.2d 484, 491 (1988); see also Matter of Department of Independent Counsel, 766 F. 2d 70 (2d Cir. 1984) ("separation of powers precludes individual from invoking power of court to compel government to act to vindicate administration of justice"), cert. denied, 474 U.S. 1020 (1985).

10. The second prong which must be established by an applicant for preliminary relief is that irreparable injury will result unless the relief requested is granted. McEwan v. Brod, 91 N.Y.S.2d 565 (Sup. Ct. Westch. Co. 1949). More than a century ago, in New York v. Canal Board, 55 N.Y. 390, 397 (1874), the Court of Appeals stated:

"injury, material and actual, not fanciful or theoretical, or merely possible, must be shown as the necessary or probable results of the action sought to be restrained." [Cited with approval in Arthur Young & Co. v. Black, 97 A.D.2d 369, 370 (1st Dept. 1983), appeal dismissed, 61 N.Y.2d 712 (1984)].

11. Further, petitioner will not, and has not, suffered irreparable harm as a result of respondent's refusal to investigate complaints which are on their face without merit. Moreover, petitioner has not attempted to show that she would be injured if her complaints are not investigated. The most she alleges is that the "summary dismissals ... will defeat the will and interest of the People of the State of New York...". Compl., ¶ 31. This is

not sufficient to demonstrate even a possibility of irreparable harm.

12. Finally, petitioner must prove that the balancing of the equities favors her and not the public interest, which is served by permitting respondents to carry out its statutory and constitutional responsibilities in instances of judicial misconduct. It has long been the rule in determining whether to grant preliminary injunctive relief that the courts will balance the interests of the respective parties. Where the potential harm in granting injunctive relief outweighs the potential harm to the movant in denying it, no injunction will issue. Frostmann v. Joray Holding Co., 244 N.Y. 2d 22, 32 (1926); Gilbert v. Burnside, 6 A.D.2d 834, 835 (2d Dept. 1958).

13. With respect to the third prong of the test, petitioner is not entitled to a preliminary injunction because the balance of equities is not in her favor. On the contrary, the equities are with defendant in its effort to abide by the law and to uphold the integrity of the judiciary by investigating only those complaints which on their face plead allegations of judicial misconduct. In this instance, petitioner's complaints did not on their face allege judicial misconduct. Thus, the potential harm in granting a preliminary injunction outweighs the potential harm to the movant.

WHEREFORE, for the aforementioned reasons, petitioner's application for a preliminary injunction should be denied.

Dated: New York, New York  
May 22, 1995



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OLIVER W. WILLIAMS



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

801 SECOND AVENUE  
NEW YORK, NY 10017  
(212) 949-8860

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DEPUTY ADMINISTRATOR

October 17, 1989

Doris L. Sassower, P.C.  
50 Main Street  
White Plains, New York 10606

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your complaint dated October 5, 1989.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

For your information, we have enclosed some background material about the Commission, its jurisdiction and its limitations.

Very truly yours,

Lee Kiklier  
Administrative Assistant

LK:fb  
Enclosure





STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

801 SECOND AVENUE  
NEW YORK, NY 10017  
(212) 949-8860

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DEPUTY ADMINISTRATOR

FACSIMILE

(212) 949-8864

October 31, 1991

Ms. Doris L. Sassower  
283 Soundview Avenue  
White Plains, New York 10606

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your complaint dated October 24, 1991.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

Very truly yours,

Lee Kiklier

Administrative Assistant

LK:fb



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

AGENCY BUILDING I

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THE NELSON A ROCKEFELLER EMPIRE STATE PLAZA

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STEPHEN F. DOWNS  
CHIEF ATTORNEY

FACSIMILE  
(518) 486-1850

January 13, 1992

CONFIDENTIAL

Doris L. Sassower, Esq.  
Ninth Judicial Committee  
Box 70 Gedney Station  
White Plains, New York 10605-0070

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your letter of complaint dated January 2, 1992.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

For your information, we have enclosed some background material about the Commission, its jurisdiction and its limitations.

Very truly yours,

*Diane B. Eckert*

Diane B. Eckert  
Administrative Officer

DBE:slc  
Enclosure



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

801 SECOND AVENUE  
NEW YORK, NY 10017  
(212) 949-8860

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ROBERT H TEMBECKJIAN  
DEPUTY ADMINISTRATOR

January 15, 1993

FACSIMILE  
(212) 949-8864

Ms. Doris L. Sassower  
283 Soundview Avenue  
White Plain, New York 10606

Dear Ms. Sassower:

This will acknowledge receipt on December 7, 1992 of your complaint dated December 4, 1992.

We will be in touch with you after a determination has been made concerning your complaint.

Very truly yours,

Lee Kiklier  
Administrative Assistant

LK:sl

K-4



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT  
801 SECOND AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-8860

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Deputy Administrator

September 28, 1994 Facsimile (212) 949-8864

Ms. Doris L. Sassower  
Director  
Center for Judicial Accountability  
P.O. Box 69  
Gedney Station  
White Plains, New York 10605

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your complaint dated September 19, 1994.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

Very truly yours,

Lee Kiklier  
Administrative Assistant

LK:ew



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COMMISSION ON JUDICIAL CONDUCT  
801 SECOND AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-8860

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Facsimile (212) 949-8864

October 18, 1994

Ms. Doris L. Sassower  
Director  
Center for Judicial Accountability  
P.O. Box 69, Gedney Station  
White Plains, New York 10605

Dear Ms. Sassower:

This will acknowledge receipt of your letter dated October 5, 1994. Your letter will be added to the file of your complaint which will be presented to the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Lee Kiklier'.

Lee Kiklier  
Administrative Assistant

LK:ew



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT  
801 SECOND AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-8860

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Deputy Administrator

Facsimile (212) 949-8864

November 4, 1994

Ms. Doris L. Sassower  
Center for Judicial Accountability  
P.O. Box 69  
Gedney Station  
White Plains, New York 10605

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your complaint dated October 26, 1994.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

Very truly yours,

*Lee Kiklier (wq)*

Lee Kiklier  
Administrative Assistant

LK:ew



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT  
801 SECOND AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-8860

1000 11/20/94

Gerald Stern  
Administrator

Robert H. Tembeckjian  
Deputy Administrator

Facsimile (212) 949-8864

December 14, 1994

Members

Henry T. Berger, Chair  
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Lawrence S. Goldman  
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Albert B. Lawrence

Ms. Doris L. Sassower  
Director, Center for Judicial  
Accountability, Inc.  
Box 59, Gedney Station  
White Plains, New York 10605

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your complaint dated December 5, 1994.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

Very truly yours,

A handwritten signature in cursive script that reads 'Lee Kiklier'.

Lee Kiklier  
Administrative Assistant

LK:sl