

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

-----x
DORIS L. SASSOWER,

Petitioner,

Index No.
95-109141

GEORGE P. ALESSIO,

Intervenor,

-against-

I N T E R V E N O R ' S
PROPOSED VERIFIED
PETITION

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.
-----x

To: SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK:

As and for his Petition, Intervenor, GEORGE P. ALESSIO,
respectfully sets forth and alleges:

FIRST: That incorporated herein by reference and
made part hereof, are the allegations set forth in the Verified
Petition of DORIS L. SASSOWER, dated and verified April 10, 1995,
under the above index number and the relief sought therein to the
extent applicable to the instant Verified Petition.

SECOND: That at all times hereinafter mentioned,
Intervenor was and is a citizen of the United States of America
and the State of New York and a resident, elector, and taxpayer
thereof, presently residing in the County of Onondaga.

THIRD: That Intervenor has been a practicing
attorney since November 1981 and currently has offices in
Syracuse, New York. From January 1982 until September 1986, he
served on active duty in the Judge Advocate General's Corp. of

the U.S. Navy. From December 1986 to December 1991, he served as a public prosecutor as an Assistant District Attorney of Onondaga County. Intervenor has also been a judge, in 1993 serving as Town Justice of Salina, Onondaga County.

FOURTH: That Intervenor is a party personally aggrieved by certain rules, procedures, and determinations of Respondent, severely, seriously, and substantially prejudicial to him and to the general public.

FIFTH: That at all times hereinafter mentioned, Respondent was, and is, the public body created, organized, and existing under and by virtue of the laws of the State of New York, charged, inter alia, with the duty to "receive, initiate, investigate and hear complaints" against "any judge or justice of the unified court system" (New York State Constitution, Article VI, §22.a), with broad investigatory powers, including the power of subpoena (Judiciary Law, §42).

SIXTH: That pursuant to the venue provisions of CPLR §506(b), this proceeding was properly brought in New York County, which is where Respondent's principal office is located.

SEVENTH: That pursuant to CPLR §7801 et seq., Intervenor is seeking a judgment for relief available under such statutory provisions, including a declaration of unconstitutionality of certain rules promulgated by Respondent, inter alia, 22 NYCRR §7000.3, and of Respondent's determinations and rulings thereunder, whereby Respondent pursues a pattern and practice of dismissing, without investigation, facially

meritorious complaints alleging judicial unfitness and misconduct.

EIGHTH: That under the New York State Constitution, Article VI, §22.c, the People of this State have expressly empowered Respondent to "establish its own rules and procedures not inconsistent with law."

NINTH: That by Judiciary Law, Article 2-A, the Legislature of this State has similarly commanded that the rules and procedures to be adopted by Respondent be "not otherwise inconsistent with law" (§42.5).

TENTH: That Judiciary Law §44.1 imposes upon Respondent a mandatory duty, to wit, that it:

"...shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge... Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit..."
(emphasis added)

ELEVENTH: That nevertheless and notwithstanding the clear and unequivocal constitutional and statutory mandate defining its official duties, Respondent has failed and refused to perform such duties as are enjoined upon it by law and has, instead, promulgated rules and procedures flagrantly inconsistent therewith. Such rules include, without limitation by reason of specification, 22 NYCRR §7000.3, providing as follows:

(b) Upon receipt of a complaint, or after an initial review and inquiry, the complaint may be dismissed by the commission or, when

authorized by the commission, an investigation may be undertaken." (emphases added)

TWELFTH: That by its self-promulgated 22 NYCRR §7000.3, Respondent has subverted the public interest and frustrated and thwarted the intent of the People and their elected representatives by transforming its mandatory duty to "investigate and hear" into an optional one, with no requirement, as called for by Judiciary Law §44.1, that such summary dismissal be based on a determination by Respondent that the "complaint on its face lacks merit...".

THIRTEENTH: That as written, 22 NYCRR §7000.3 is flagrantly unconstitutional, in that, contrary to the explicit requirements of Judiciary Law, §44.1, it permits Respondent to act without and in excess of its jurisdiction by summarily dismissing, without investigation and without the requisite determination, facially-meritorious complaints of judicial unfitness and misconduct and to do so arbitrarily, capriciously, and without a fixed, objective standard by which any exercise of discretion can be measured.

FOURTEENTH: That as applied, 22 NYCRR §7000.3 has enabled Respondent to violate its mandate to protect the public, inter alia, from unfit judicial candidates.

FIFTEENTH: That Intervenor filed a written complaint, dated November 11, 1993 (Exhibit "A"), with Respondent alleging facts and making an evidentiary showing as to the fraudulent manner in which a Republican candidate for Town

Justice of Onondaga County in the State of New York gained his judicial office, reflecting adversely on his fitness therefor.

SIXTEENTH: That the Intervenor had held the judicial office in question until the aforesaid fraud was committed by and on behalf of the Town Justice complained of.

SEVENTEENTH: That the opening paragraph of Intervenor's November 11, 1993 complaint (Exhibit "A") specifically drew Respondent's attention to its duty under Article 2-A of the Judiciary Law and New York Constitutional Article 6, Section 22.

EIGHTEENTH: That Intervenor appended eight separate exhibits to support his November 11, 1993 complaint (Exhibit "A"), including a Report of the Onondaga County Grand Jury Investigation of the criminal election fraud complained of. A copy of that Report is annexed hereto as Exhibit "B".

NINETEENTH: That by no objective legal standard, could Intervenor's aforesaid complaint be determined to be "on its face without merit."

TWENTIETH: That subsequent to Intervenor's filing of his November 11, 1993 complaint (Exhibit "A"), he filed numerous additional documents in further support thereof with Respondent, receipt of which Respondent acknowledged in writing.

TWENTY-FIRST: That pursuant to CPLR §409 and §7804(e), Intervenor requests that Respondent file with the Court a certified transcript of the record of the proceeding of Petitioner's November 11, 1993 complaint, including the exhibits

and evidentiary proof supplied by him in support thereof, so that the Court may further verify the substantial and documented nature of his aforesaid complaint.

TWENTY-SECOND: That the aforesaid exhibits and evidentiary proof supplied and proffered by Intervenor in substantiation of his November 11, 1993 complaint established, prima facie, probable cause to believe that the misconduct complained of by a judicial candidate had occurred and by reason of which said candidate had unlawfully, unethically, and improperly gained his judicial office.

TWENTY-THIRD: That notwithstanding Article VI, §22.a of the New York State Constitution and Judiciary Law §44.1, Respondent summarily dismissed Intervenor's November 11, 1993 complaint (Exhibit "A") without investigation and without making the requisite determination that said complaint was "on its face lacking in merit".

TWENTY-FOURTH: That by letter dated June 21, 1994 (Exhibit "C"), Respondent notified Intervenor that his complaint was summarily dismissed because "there was insufficient indication of judicial misconduct to warrant an investigation".

TWENTY-FIFTH: That thereafter, by letter dated June 27, 1994 (Exhibit "D"), Intervenor wrote Respondent, requesting clarification as to the basis upon which, without investigation, it dismissed his complaint.

TWENTY-SIXTH: That Respondent rejected Intervenor's request for information as to the basis of its summary dismissal

of his complaint in a letter dated July 15, 1994 (Exhibit "E").

TWENTY-SEVENTH: That Respondent has, by the foregoing acts of commission and omission, violated Intervenor's due process and equal protection rights, guaranteed under the Fourteenth Amendment of the U.S. Constitution and Article I, §§6 and §11 of the New York State Constitution, by arbitrarily, capriciously, and unreasonably, if not knowingly and deliberately, denying his right to the investigatory and other relief to which his November 11, 1993 complaint (Exhibit "A") entitled him, including, but not limited to, referral thereof, pursuant to Judiciary Law, §44.10, to other governmental agencies similarly designed to protect the public against judicial misconduct and abuse by those aspiring to judicial office.

TWENTY-EIGHTH: That based on Respondent's own 1994 Annual Report -- the latest Report available -- in 1993, members of the public filed 1457 complaints with Respondent, "the largest number ever". Upon information and belief, of that number, Respondent dismissed 1275 complaints, without investigation and without any determination that the complaints on their face lacked merit -- representing 87.5% of all complaints filed with it.

TWENTY-NINTH: That such summary dismissals are constitutionally and statutorily unauthorized and defeat the will and intent of the People of the State of New York and its duly-elected legislative representatives, as expressed in Article VI,

§22.a of the Constitution of the State of New York and Article 20-A of the Judiciary Law.

THIRTIETH: That all such summary dismissals without investigation and without the requisite determination that the complaints so-dismissed on their face lack merit represent a massive "consumer fraud" upon the taxpayers of this State, whose hard-earned dollars -- over \$1.5 million annually -- fund Respondent. Such tax burden is borne by the public in the belief that Respondent's rules, procedures, and practices comport, not contravene, the explicitly-mandated constitutional and statutory requirements so as to carry out their intended purposes of effectuating and ensuring a quality judiciary.

THIRTY-FIRST: That Intervenor has no remedy by appeal from Respondent's aforesaid unconstitutional and statutorily- unauthorized acts and failures to act, and no adequate relief therefrom or redress therefor is obtainable, except by this Article 78 proceeding.

WHEREFORE, Intervenor joins Petitioner herein in praying for a judgment as prayed for in her Verified Petition, and, as to Intervenor specifically: (a) granting mandamus to review Respondent's dismissal of his complaint, pursuant to CPLR §7804, so as to declare 22 NYCRR §7000.3, as written and as applied, unconstitutional and illegal and to compel Respondent to cease, discontinue, and terminate its pattern and practice of summarily dismissing facially meritorious complaints thereunder, such as that of Petitioner and Intervenor; (b) reversing,

annulling, and setting aside Respondent's summary dismissal, without investigation, of Intervenor's facially meritorious complaints of judicial unfitness on the part of the Town Justice complained of; (c) requesting the Governor to appoint a Special Commission to investigate judicial corruption in the State of New York based on the documentary showing of Petitioner and Intervenor that Respondent has knowingly and deliberately engaged in a "cover-up" and acted in collusion and complicity with judges and others engaged in high-level judicial corruption; (d) referring Respondent, both its members and its staff, to the Attorney General of the State of New York, the United States Attorney, and the District Attorney in New York, and the New York State Ethics Commission for appropriate criminal and disciplinary investigation of Respondent; (e) granting Intervenor, pursuant to Public Officers Law §79, the statutory fine of \$250 payable to the State Treasurer and such other and further relief as to the Court may seem just and proper, including the costs and disbursements of this proceeding.

Dated: June 15, 1995
Syracuse, New York



GEORGE P. ALESSIO
Intervenor Pro Se
215 East Water Street, First Floor
Syracuse, New York 13202
(315) 424-0300

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

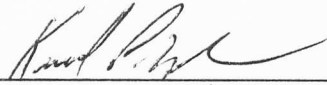
and says: GEORGE ALESSIO, first being duly sworn, deposes

He is the Intervenor in the above-entitled matter, has read the Proposed Verified Petition, knows the content thereof, and that same is true to his own knowledge, except as to matters stated therein on information and belief, and as to those matters he believes them to be true.



GEORGE P. ALESSIO

Sworn to before me this
15th day of June 1995


Notary Public

KENNETH P. LYNCH
Notary Public in the State of New York
Qualified in Onondaga County No. 4948943
My Commission Expires March 27, 1997