

OCT 26 1994

CENTER for
JUDICIAL
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Again, we ask
that this complaint
be expedited.

JS

*For Vaughn Wilkins
State Commission on
Judicial Conduct.*

BY HAND

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October 26, 1994

Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

RE: Complaint against the Justices of the Appellate Division, Second Department and, in particular, Justices William C. Thompson, Albert M. Rosenblatt, Cornelius J. O'Brien, Anita R. Florio and Presiding Justice Guy Mangano

Dear Commission Members:

This letter supplements my September 19, 1994 formal complaint against the justices of the Appellate Division, Second Department and, in particular, against Justice William C. Thompson, a member of your Commission. My September 19, 1994 complaint was faxed to you on that date (Exhibit "A")--with receipt confirmed by your office.

This letter is also intended as a new and separate complaint, specifically against Associate Justices Albert M. Rosenblatt, Cornelius J. O'Brien, and Anita R. Florio. Those justices, as hereinafter detailed: (1) witnessed, without protest, Justice Thompson's abusive treatment of me on October 5, 1994 and his total denial of due process; and (2) deliberately failed to take any corrective action when a Clerk of the Court, acting on Justice Thompson's direction, falsified the facts as to what had taken place "in open court" on that date.

By way of background to this new complaint, on September 20, 1994, the day after I faxed my September 19th complaint to your office (Exhibit "A"), there were seven appeals in an unrelated civil action in which my law firm and I were named as defendants on the appeals calendar of the Appellate Division, Second Department for oral argument.

Justice Thompson was not one of the justices assigned to the panel scheduled to hear the appeals set down for that day. However, without explanation, he came onto the panel on that date after the sua sponte recusal of Justice David Ritter, an assigned panel member.

What occurred on September 20, 1994 is summarized by a contemporaneous Memorandum from Eric Portuguese, Esq., who appeared on my behalf for the sole purpose of requesting a first-time adjournment of the scheduled oral argument (Exhibit "B").

The Court's September 20, 1994 Order (Exhibit "C"), adjourning the seven appeals to October 5, 1994, gave no reason for the entry of Justice Thompson into the case on that date. It made no reference to the sua sponte recusal of Justice Ritter from the appellate panel. Nor did it explain, in light of Justice Ritter's subsequent sua sponte recognition that he was disqualified from deciding the appeals, how Justice Ritter could have properly participated in the August 26, 1994 Order (Exhibit "D"). Such Order, over my objection, relieved my counsel on the seven appeals.

As pointed out by Mr. Portuguese's Memorandum (Exhibit "B"), although the September 20, 1994 Order (Exhibit "C") refers to Justice Thompson as the Justice Presiding, there was no announcement during that day's proceeding of any change in Justice Rosenblatt's published status as Justice Presiding--nor did the seating arrangement change to reflect any alteration in Justice Rosenblatt's status. Indeed, it was Justice Rosenblatt who announced the decision of the Court on September 20th, granting the adjournment to October 5th.

As Mr. Portuguese's Memorandum shows (Exhibit "B"), following Justice Rosenblatt's announcement of the Court's decision, Justice Thompson added an announcement that the adjournment would be "final" and that "no more applications" would be entertained. Since there was no indication that Justice Thompson was personally familiar with the briefs and record of the seven appeals and there was no basis in the record for a peremptory adjournment, such gratuitous addition by him reflects his actual bias toward me, which I detailed in my September 19th formal complaint to the Commission.

Such bias--reaching a virulent level--was personally witnessed by Justices Rosenblatt, O'Brien, and Florio on the October 5th adjourned date, when I appeared personally before the Court in support of two unsigned Orders to Show Cause: one seeking a

further adjournment (Exhibit "E")¹ and one seeking vacatur, recusal, and transfer (Exhibit "F").

The events of that day's court session, over which Justice Thompson presided, were shocking. Indeed, they were so shocking as to cause me to proceed directly from the courthouse in Brooklyn to your offices in Manhattan so that I could deliver the original Order to Show Cause for vacatur, recusal and transfer, which Presiding Justice Thompson had refused to allow me to present or orally argue. Such fact is reflected by my handwritten covernote (Exhibit "G"), which your receptionist attached to that document. In pertinent part that covernote stated:

"This is the original OSC presented to the Appellate Division, Second Department today. Justice Thompson who was presiding refused to allow me to present or even argue it after refusing to receive it prior to oral argument of the appeals..." (emphasis added)

It may be noted that prior to my leaving the courthouse on October 5th, I gave a copy of the Order to Show Cause for vacatur, recusal and transfer (Exhibit "F") to James Pelzer, a clerk of the Court, to be filed for the record.

Said Order to Show Cause (Exhibit "F") annexed four exhibits: the Appellate Division, Second Department's August 26, 1994 and October 20, 1994 Orders, Mr. Portuguese' Memorandum, and my September 19, 1994 complaint to the Commission on Judicial Conduct against the Justices of the Appellate Division, Second Department and, particularly, Justice Thompson.

The following day, I received from Mr. Pelzer a faxed letter (Exhibit "H"), advising me that, upon the Court's direction, my Order to Show Cause would not be accepted for filing by reason of facts set forth by him, purporting to be a recitation of what had allegedly occurred on October 5th. Such recitation was a complete fabrication of the material facts. This is highlighted by Mr. Pelzer's absolutely false claim that I was granted leave

¹ As reflected by that Order to Show Cause, which was presented to Justice Rosenblatt on October 4th, he declined to sign same, stating it could "be presented at the oral argument of the appeal on October 5, 1994". However, at the oral argument, Justice Thompson summarily cut me off from presenting the Order to Show Cause, after proclaiming, without any basis therefor, that he found it "unbelievable" that I had been unable to find substitute counsel. This was notwithstanding letters from four major law firms annexed to my supporting affidavit (Exhibits "C", "D", "E", and "F" thereto).

to orally argue the vacatur, recusal/transfer application, that I did so, and that my opponent responded thereto.

In an October 6th telephone conversation with Mr. Pelzer, he admitted that he had not been in the courtroom at the time of the events in question, and that the basis for such information was the hearsay reported to him by Justice Thompson. He further stated that his October 6th letter (Exhibit "H") had been reviewed by Justice Mangano, who, it must be noted, likewise, was not present in the courtroom.

Annexed hereto is a copy of my October 17th hand-delivered response (Exhibit "I") to Mr. Pelzer's October 6th letter. I specifically requested him to "confirm that Justice Thompson was the source of the information therein contained" and went on to detail the falsifications, distortions, and omissions in his letter.

As of this date, more than a week later, Mr. Pelzer has failed to respond to my hand-delivered letter. Nor have I received any response from Justices Thompson and Mangano or the three panel members who witnessed the events in open court on October 5th.

As reflected by my letter (Exhibit "I"), I explicitly called upon those justices to confirm the true facts as to what had occurred. In pertinent part, I stated:

"By copy of this letter to Presiding Justice Thompson and to Justices Rosenblatt, O'Brien, and Florio, the three Associate Justices who sat on the panel, I call upon all four Justices to confirm the truth of my aforesaid statements as to what took place 'in open court'.

The Associate Justices all witnessed Justice Thompson's categorical refusal to permit me to argue my aforesaid application orally, after denying me the opportunity to hand up my Order to Show Cause. Indeed, even after my adversary was served with the unsigned Order to Show Cause during the brief recess, Presiding Justice Thompson refused to permit me to hand up same to the Court.

...As hereinabove set forth, copies of this letter and your October 6th letter are being sent to Justice Thompson and the three other justices of the panel so that they can correct the false record created by you, and especially your statement that my motion for

October 26, 1994

vacatur, recusal, and transfer was orally argued.

Consonant with the justices' obligations under §100.3(b)(1), (2), and (3) of the Rules Governing Judicial Conduct, I hereby request that they issue a corrective memorandum." (at pp. 2-3, emphasis in the original)

This instant complaint, therefor, is filed against Justices Thompson, Rosenblatt, O'Brien, and Florio for their failure to meet their obligations under the aforesaid Rules Governing Judicial Conduct. Indeed, what is now taking place by the justices involved is criminal conduct inasmuch as they are knowingly falsifying a matter which is part of a court proceeding, constituting the crime of obstruction of governmental administration, in violation of §195.05 of the Penal Law.

Finally, by Justice Mangano's failure to require immediate response by the panel justices to my October 17th letter he has knowingly and deliberately condoned such criminal conduct. Indeed, as documented by the record under A.D. #90-00315, the docket number for the files of the Appellate Division, Second Department's disciplinary proceedings against me--which you have yet to ask me to deliver--Justice Mangano has, for many years, actively used his judicial office for ulterior, retaliatory ends.

Very truly yours,

DORIS L. SASSOWER, Director
Center for Judicial Accountability

DLS/er
Enclosures