CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

By Priority Mail

PERSONAL AND CONFIDENTIAL

September 14, 1995

Gerald Stern, Administrator
New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10007

Dear Mr. Stern:

The enclosed is self-explanatory--as is the Appellate Division, Second Department's decision in Colin v. Appellate Division, 159 NYS2d 99 (1957), which I gave you during my last visit to the Commission's office. That case establishes that over and above the legal authority cited in our September 19, 1994 complaint against Justice Thompson and his Appellate Division, Second Department associate justices for their conduct in Sassower v. Mangano, et al., the Appellate Division, Second Department long ago recognized that it had no jurisdiction to decide an Article 78 proceeding against a judicial tribunal which was not inferior to it.

Hopefully, you have by now received from Alan Friedberg the copy of the cert petition in Sassower v. Mangano, et al., which I gave him some weeks ago. Please add it to the file of our September 19, 1994 complaint so that it will be available to the Commission members when they reconsider the summary dismissal of that complaint.

For purposes of completeness, the Attorney General's bad-faith opposition to our cert petition and our reply are transmitted herewith--in the event I did not previously provide them to Mr. Friedberg.

As succinctly delineated in the cert papers--and, seemingly unappreciated by you--is the absolute lawlessness of the Appellate Division, Second Department's findingless, hearingless suspension of my mother's license, which it has perpetuated for over four years. Not only is there no legal authority to permit such a suspension, but all legal authority is expressly to the contrary. In that connection, I quote from your own Pace Law Review article on the subject of "Determining Generally When 'Error' is Misconduct":

> "Judicial 'independence' encompasses making mistakes and committing 'error', but was <u>not intended to afford protection to judges who ignore the law</u> or otherwise pose a threat to the administration of justice." (emphasis added, at 304-5)

The record, highlighted in the cert petition, leaves <u>no</u> doubt as to the deliberateness with which the Appellate Division, Second Department has perpetuated the unlawful suspension of my mother's license by wilfully flouting black-letter law again and again, over a period of years.

Finally, I am compelled to tell you that I cannot conceive how you, as Administrator, can advise the Commission members as to the disposition to be given to judicial misconduct complaints, when you seem so unfamiliar with the <u>black-letter</u> decisional law and fundamental ethical principles to which those complaints refer. For starters, I enclose for your convenience <u>Matter of Nuey</u>, 61 NY2d 513 (1984) and <u>Matter of Russakoff</u>, 79 NY2d 520 (1992), which are two and three pages, respectively. Additionally, if, apart from your posturing for my benefit, you actually believe that by some stretch of the ethical imagination judges sued in an Article 78 proceeding can, nonetheless, adjudicate <u>that proceeding</u>--as was done in <u>Sassower v. Mangano, et al.</u> by Justice Thompson and his Second Department brethren--I request that you produce some legal authority to that effect. Considering the seriousness of what is involved here, I do not think that is too much to ask.

Please don't delay. The longer it takes you and the Commissioners to recognize and perform your constitutional and statutory duty, the greater will be the number of innocent victims of grotesque judicial abuse.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures:
    (a) <u>Sassower v. Mangano, et al.</u>
        opposing memorandum, reply
    (b) <u>Matter of Nuey</u>
    (c) <u>Matter of Russakoff</u>
    (d) 9/14/94 ltr to NYS Ethics Commission
    (e) 9/14/94 ltr to Chairman Berger