

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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PERSONAL AND CONFIDENTIAL

January 9, 1996

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

Dear Mr. Stern:

This letter responds to your two-sentence letter to me, dated December 26, 1995, claiming that my December 15, 1995 letter to the Assembly Judiciary Committee:

"states incorrectly that the Commission has failed to respond to [my] letter of September 14, 1995." (emphasis added)

In support thereof, you attach a copy of your September 26, 1995 letter to me.

You've got to be kidding. As you well know, your September 26, 1995 letter does not respond to my September 14, 1995 letter to Commission Chairman Henry Berger, Esq.--which is the September 14, 1995 letter expressly referred to in my December 15, 1995 letter to the Assembly Judiciary Committee in a paragraph which reads as follows:

"In that connection, I would point out that there has been no response from the Commission on Judicial Conduct to my August 14, 1995 'Letter to the Editor', published in the New York Law Journal (Exhibit 'B'). Likewise, it has failed to respond to my September 14, 1995 letter addressed to its Chairman, Henry Berger, Esq. (Exhibit 'C')." (my 12/15/95 ltr, at p. 4) (emphasis added)

Rather, your September 26, 1995 letter, marked "confidential" on top, responds to my separate September 14, 1995 letter addressed to you and marked "personal and confidential". This is glaringly obvious from comparison of the content of your September 26, 1995 letter with the content of my September 14, 1995 letter to you. There is no such correlation to my September 14, 1995 letter to Chairman Berger--to which you surely know there has been no response from you or from the Commission.

It is, additionally, disturbing that you represent your September 26, 1995 letter as a "Commission" response. You appear to be confusing yourself with the Commission--much as you did early on in your correspondence with us as to our rights under FOIL and §7001 et seq. of the Commission's rules (see my 4/20/95 ltr responding to yours of 4/6/95).

Consequently, unless you make known to the Assembly Judiciary Committee that you retract your palpably misleading December 26, 1995 letter--a copy of which you sent it--I will have no choice but to disclose to the Committee the content of my aforesaid September 14, 1995 to you. I would sincerely regret doing so since the very reason I designated (and highlighted in yellow magic marker) that letter as "personal and confidential" was to spare you the embarrassment of having it known that you actually stated to me that you did not see anything wrong with judges sued in an Article 78 proceeding refusing to recuse themselves from deciding that very proceeding to which they were parties.

It was--and is--utterly shameful and revolting to me that you could take such position. Not only is it totally violative of §14 of the Judiciary Law and §100.3(c) of the Rules Governing Judicial Conduct, but it wholly subverts the important and historic purpose of the common law writs, codified under Article 78. Because of this, my September 14, 1995 letter to you opened by referring you to Colin v. Appellate Division, 159 NYS2d 99 (1957)--a copy of which I had already provided you--and concluded by requesting that you "provide some legal authority", on such fundamental disqualification issue. The pertinent portion of my letter read as follows:

"...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 that proceeding--as was done in Sassower v. Mangano, et al. 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."
(emphasis in the original)

To this, your September 26, 1995 letter, in its first paragraph, declined production.

Although you state no reason for such declination--it is obvious: There is no legal authority which would permit the abomination that you, as Administrator of the Commission, have pretended is not judicial misconduct.

January 9, 1996

This refusal--and your refusal to address the few pages of black-letter decisional law represented by Colin v. Appellate Division, supra, Matter of Nuey, 61 NY2d 513 (1984), and Matter of Russakoff, 79 NY2d 520 (1992)--copies of which I gave you--only reinforces that you cannot do so--without exposing the judicial misconduct you are endeavoring to conceal.

The fact that your September 26, 1995 letter further ignores your own discussion from your article in Pace Law Review¹ as to "...When 'Error' is Misconduct" (pp. 303-305) only underscores the bad-faith of your pretense that what we are seeking is the Commission's review of "wrong" decisions.

As you well know--and as I have reinforced in our several discussions together--what we are rightfully seeking from the Commission is investigation of knowingly lawless and demonstrably retaliatory conduct by sitting judges--as to which, moreover, no appellate review has even been permitted.

The Commission does not need "new information" to authorize an investigation of the lawless and tyrannical judicial conduct of which we have long been complaining. What it needs is an Administrator who will forthrightly instruct it as to "when 'error' is misconduct" and as to its mandatory duty of investigation under Judiciary Law §44.1(a).

As may be seen from the foregoing, it is easy for us to demonstrate to the Assembly Judiciary Committee that your December 26, 1995 letter--no less than your September 26, 1995 letter--is false and misleading.

In undeserved deference to you, I will delay communicating with the Assembly Judiciary Committee about this matter until I hear from you.

For your sake, don't disappoint me.

Yours for a quality judiciary,



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

¹ "Is Judicial Discipline in New York State a Threat to Judicial Independence?", Vol. 7, No. 1, Winter 1987, pp. 291-388.