

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 518-486-1850 (8 pages)

BY MAIL

April 24, 2000

New York State Commission on Judicial Conduct
38-40 State Street
Albany, New York 12207

ATT: Albert Lawrence, Clerk

RE: CJA's March 3, 2000 Judicial Misconduct Complaint against Acting Supreme Court Justice William A. Wetzel and Administrative Judge Stephen G. Crane for their official misconduct in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551)

Dear Mr. Lawrence:

Reference is made to your two-sentence April 6, 2000 letter¹.

Once again², you address me individually and not in my capacity as coordinator of the Center for Judicial Accountability, Inc. (CJA), which is the capacity in which I filed the March 3, 2000 judicial misconduct complaint with the Commission and the prior February 7, 2000 notice³.

¹ For the benefit of the indicated recipients of this letter, your April 6, 2000 letter is Exhibit "C-3" to CJA's April 18, 2000 letter to Chief Judge Judith Kaye.

² See your three-sentence December 23, 1998 dismissal letter to me and my December 29, 1998 response thereto, annexed as Exhibits "F-3" and "F-4" to the Verified Petition in *Elena Ruth Sassower v. Commission*.

³ For the benefit of the indicated recipients of this letter, CJA's March 3, 2000 complaint is Exhibit "C-1" to CJA's April 18, 2000 letter to Chief Judge Kaye. CJA's February 7, 2000 notice is part of Exhibit "A" to its February 23, 2000 letter to Governor Pataki.

You purport that the Commission has reviewed each of these "letters of complaint" and has asked you to advise me that it has "dismissed the complaint". However, you provide *no* information to substantiate such bald claim. This would include information as to:

- (1) the date on which the Commission purported to review and dismiss CJA's March 3, 2000 judicial misconduct complaint and February 7, 2000 notice;
- (2) the number of Commissioners present and voting;
- (3) the names of the Commissioners present and voting;
- (4) the basis for the purported dismissal; and
- (5) the legal authority for the purported dismissal.

Indeed, your April 6, 2000 letter, which gives *no* reason for the purported dismissal, makes *no* claim that the Commission ever determined that CJA's March 3, 2000 complaint "on its face lacks merit". This, notwithstanding the complaint itself pointed out (at p. 2) that absent such determination, Judiciary Law §44.1 imposes upon the Commission a "mandatory investigative duty".

As particularized in the enclosed copy of the Third Claim for Relief from the Verified Petition in *Elena Ruth Sassower v. Commission* (at pp. 19-21), nothing in Judiciary Law §45, *as written*, restricts the Commission from providing a complainant with basic information substantiating the legality and propriety of its purported dismissal of his complaint, because it expressly excepts disclosure pursuant to Judiciary Law §44. Moreover, *as applied*, you yourself have demonstrated that Judiciary Law §45 poses no restriction.

Reflecting this are your signed dismissal letters to complainants, which routinely identify the basis for the Commission's dismissals of their judicial misconduct complaints. Your usual boiler-plate is that "the Commission concluded" that there was either "no indication" or "insufficient indication of judicial misconduct to warrant an investigation". Thus, your September 14, 1999 letter to Clay Tiffany⁴

⁴ That letter is Exhibit "G" to Elena Sassower's December 2, 1999 application for Justice Wetzel's recusal in *Elena Ruth Sassower v. Commission*. Mr. Tiffany's complaint is Exhibit "F"

notified him of the dismissal of his May 21, 1999 complaint against Justice Wetzel due to "insufficient indication of judicial misconduct to warrant an investigation". Your September 17, 1999 letter to Camou Bey⁵ notified him of the dismissal of his May 27, 1999 complaint against Justice Wetzel due to "no indication of judicial misconduct to warrant an investigation"⁶. As to your September 28, 1999 letter to Mr. Bey⁷, notifying him of the dismissal of his June 25, 1999 complaint against Justice Wetzel due to "no indication of judicial misconduct to warrant an investigation", you added that:

"the Commission is not a court of law and does not have appellate authority to review the merits of matters within a judge's discretion, such as the rulings and decision in a particular case"⁸.

This addition is an often recurrent element of your boiler-plate, one which not only disregards *facially-meritorious* allegations of misconduct in the summarily-dismissed complaints, but the very principles of disciplinary review that Commission Administrator and Counsel Gerald Stern, himself, long ago articulated in his Law Review Article, "*Is Judicial Discipline in New York State a Threat to Judicial Independence?*" (*Pace Law Review*, Vol. 7, No. 2, winter 1987, pp. 291-388) under the heading, "*Disciplining Judges for On-Bench Conduct: Can 'Legal Error' Constitute Misconduct?*" (pp. 303-344)).

thereto.

⁵ That letter is Exhibit "J-7" to CJA's February 23, 2000 letter to Governor Pataki. Mr. Bey's May 27, 1999 complaint is Exhibit "J-1" thereto.

⁶ See also your January 4, 1999 dismissal letter to Michael Mantell, annexed as Exhibit "B" to his Amended Petition in *Michael Mantell v. Commission* (NY Co. #99-108655). Mr. Mantell's September 28, 1998 complaint is Exhibit "A" thereto. See also your November 28, 1989 dismissal letter to Doris Sassower, annexed as Exhibit "L-1" to the Verified Petition in *Doris L. Sassower v. Commission* (NY Co. #95-109141). Ms. Sassower's October 6, 1989 complaint is Exhibit "C" thereto.

⁷ That letter is Exhibit "J-8" to CJA's February 23, 2000 letter to Governor Pataki. Mr. Bey's June 25, 2000 complaint and subsequent July 23, 2000 complaint are Exhibits "J-3" and "J-5" thereto.

⁸ See also your April 22, 1992 dismissal letter to Doris Sassower, annexed as Exhibit "L-3" to the Verified Petition in *Doris L. Sassower v. Commission*. Ms. Sassower's January 2, 1992 complaint is Exhibit "E" thereto.

As reflected by Exhibit "G" to the Verified Petition in *Elena Ruth Sassower v. Commission*, over twelve years ago, you apprised Alfred Kuhnle of the dismissal of his judicial misconduct complaint with near-identical language to that of your September 28, 1987 letter to Mr. Bey. Mr. Kuhnle testified as to the content of your July 24, 1987 dismissal letter to him at the September 22, 1987 hearing of the New York State Assembly Judiciary Committee. He also testified as to his August 3, 1987 written request for further information about the dismissal of his complaint and your August 27, 1987 response, which furnished him with the date and place of the meeting at which his complaint was dismissed and the names of the Commissioners who did not participate in the dismissal. Obviously, in supplying Mr. Kuhnle with such names, you were also providing him with the information he had requested as to the number and names of the Commissioners who participated in the dismissal.

Consequently, there should be no bar in your providing CJA with the aforesaid enumerated information relative the Commission's purported dismissal of its *facially-meritorious* March 3, 2000 judicial misconduct complaint and February 7, 2000 notification. CJA hereby requests your responses to those informational requests, as well as confirmation that the purported dismissal, *without* reasons, was also *without* investigation. Please also clarify whether the Commission's purported dismissal and disregard for its manifest conflict of interest therein, as detailed at pages 3-4 of the complaint, was during the chairmanship of Henry T. Berger or his successor Judge Eugene W. Salisbury.

Finally, please specify any and all procedures for review of the Commission's purported dismissal of CJA's March 3, 2000 *facially-meritorious* judicial misconduct complaint and February 7, 2000 notice – as to which the Commission has flagrantly violated its mandatory investigative duty under Judiciary Law §44.1, in addition to fundamental conflict of interest rules.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

cc: Governor George Pataki
Chief Judge Judith Kaye

New York State Attorney General Eliot Spitzer
Gerald Stern, Administrator and Counsel,
New York State Commission on Judicial Conduct
Robert M. Morgenthau, District Attorney, New York County
Mary Jo White, U.S. Attorney, Southern District of New York
New York State Ethics Commission
Loretta E. Lynch, U.S. Attorney, Eastern District of New York
Sherrill R. Spatz, Special Inspector General for Fiduciary Appointments
Association of the Bar of the City of New York
Media

TRANSMISSION VERIFICATION REPORT

TIME : 04/24/2000 09:07
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	04/24 09:03
FAX NO./NAME	15184861350
DURATION	00:04:04
PAGE(S)	08
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out their intended purposes of effectuating and ensuring a quality judiciary

AS AND FOR A THIRD CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through FIFTY-EIGHTH, with the same force and effect as if more fully set forth herein.

FIFTY-NINTH: *As applied* by Respondent, the confidentiality provision of Judiciary Law §45 is, and as part of a long-standing pattern and practice has been, used to conceal its misfeasance and corruption in dismissing, without investigation, legitimate judicial misconduct complaints that are facially meritorious and to insulate itself from accountability for its official misconduct.

SIXTY: Respondent's position, as asserted to Petitioner and others, is that Judiciary Law §45 precludes its disclosure of any information substantiating the legitimacy, or even actuality, of its purported dismissal of a judicial misconduct complaint, without investigation. This includes the most basic information, such as identifying the legal authority for its summary dismissals, and whether, why, and by whom such purported dismissals were made.

SIXTY-FIRST: *As written*, Judiciary Law §45 does not prevent Respondent's disclosure of information to a complainant substantiating the legality and propriety of its dismissal of his complaint. -- because it expressly excepts disclosure pursuant to Judiciary Law §44.

SIXTY-SECOND: *As written*, Judiciary Law §44 requires that Respondent "shall" notify a complainant whose complaint has been dismissed, with no limitation as to its form or content.

SIXTY-THIRD: Where Respondent purports to dismiss a complaint, without investigation, the fact most relevant is whether it first determined the complaint "on its face lacks merit" -- the only ground for it to predicate dismissal, without investigation, under Judiciary Law §44.1.

SIXTY-FOURTH: Respondent cannot constitutionally and legally dispose of a judicial misconduct complaint unless it is duly constituted, with Commissioners untainted by bias and unconflicted by self-interest.

SIXTY-FIFTH: Withholding from complainants information substantiating the lawfulness and propriety of Respondent's purported dismissals of their complaints, without investigation, and whether Respondent is duly-constituted and free from bias and self-interest, deprives complainants of information vital to determining the basis for review -- be it administrative or judicial.

SIXTY-SIXTH: As to any review rights complainants might have of Respondent's purported dismissals of their complaints, Respondent takes the position that such information is also confidential -- even upon a complainant's specific written request.

SIXTY-SEVENTH: Upon information and belief, Respondent has an invidious, discriminatory, and selective standard for its application of Judiciary Law §45, based, *inter alia*, on who the complainant is and who the complained-of judge is. For example, at a public hearing about Respondent before the New York State Assembly Judiciary Committee on September 22, 1987, a complainant testified that in response to his written inquiry for details concerning Respondent's dismissal of his judicial misconduct complaint against an upstate town justice, Respondent provided him with the date of its meeting at which the

complaint was considered, the place of the meeting, and the identify of three commissioners who did not participate (Exhibit "H": 9/22/87 transcript, pp. 368-372). This contrasts sharply with Respondent's refusal to provide Petitioner with similarly-requested information

SIXTY-EIGHTH: Denying complainants access to the substantiating particulars of Respondent's dismissals, without investigation, of their complaints serves no legitimate public interest and is contrary thereto.

SIXTY-NINTH: Withholding from complainants information substantiating the lawfulness and propriety of Respondent's dismissals, without investigations, of their complaints makes a mockery of the judicial complaint process and fosters cynicism and contempt of Respondent among the very constituency Respondent was created to serve.

SEVENTY: Were Judiciary Law §45 to be interpreted as precluding disclosure to complainants of information substantiating the legality and propriety of Respondent's dismissals of their complaints, the statute would, for that reason, be unconstitutional *as written* -- as it is unconstitutional for other reasons as well.

AS AND FOR A FOURTH CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through SEVENTY, with the same force and effect as if more fully set forth herein.

SEVENTY-FIRST: *As written*, Judiciary Law §§43.1 and 41.6 are constitutionally unauthorized, there being no provision in the New York State Constitution for formation of, and dispositions of judicial misconduct complaints by, panels, rather than the full eleven-member Commission.

SEVENTY-SECOND: *As written*, Judiciary Law §43.1 is unlawful in that: