

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

BY FAX: 518-432-8255

BY MAIL

December 16, 1997

New York State Ethics Commission
39 Columbia Street
Albany, New York 12207-2717

RE: Agenda Items for the December 17, 1997 Meeting and Supplement to our Complaint against the New York State Attorney General, filed September 14, 1995

Dear Commissioners:

We understand that you are meeting tomorrow, December 17th -- and wish to draw your attention to the fact that we have received *no* response from the Ethics Commission to our June 9, 1997 letter. That letter, copies of which were sent to *each* of the four then Ethics Commissioners (Exhibit "A-1"), complained of their non-response to our April 11th letter, which was itself sent to *each* of them (Exhibit "A-2"), excepting Paul Shechtman, who, as of April 11th, had not been appointed by the Governor to the Ethics Commission -- or, if appointed, was not known to have been appointed even by the Ethics Commission itself. Indeed, our June 9, 1997 letter raised questions about the Governor's appointment of Mr. Shechtman to the Ethics Commission -- and expressly requested Mr. Shechtman to identify the date on which he was notified of that appointment, as well to provide us with a copy of the letter appointing him. Mr. Shechtman has not responded to that reasonable request¹.

It was -- and remains -- our belief that Mr. Shechtman's appointment to the Ethics Commission was the result of our April 15, 1997 letter to the Governor, which pointed out that the Governor was in violation of Executive Law §94.5, requiring vacancies on the Ethics Commission to be filled within 60 days. We noted that despite the lapse of nearly a year, the Governor had failed to fill the vacancy created by the departure of Joseph Bress, the Ethics Commission's Chairman, and, additionally, had failed to designate a successor Chairman, pursuant to Executive Law §94.4. Each of the then Ethics Commissioners

¹ Our most recent letter to Mr. Shechtman was yesterday, requesting information about his appointment by the Governor as Chairman of the State Judicial Screening Committee. A copy of that letter -- to which the Ethics Commissioners are indicated recipients -- is annexed hereto as Exhibit "B".

received a copy of that April 15th letter together with our April 11th letter which asked them to clarify whether there had been any communications with the Governor's office on the subject of the unfilled vacancies -- since the Commission's Executive Director, Richard Rifkin, declined to provide that information.

The only response we received was a telephone call following our June 9, 1997 letter from then Commissioner Reverend Eggenschiller. He stated that the Commission did not have a quorum, that he and Commissioner Odell were "hold-overs" and that, throughout the preceding year the Governor had been repeatedly notified of the need to make appointments to the Ethics Commission, but that these had not been forthcoming. Reverend Eggenschiller expressed great frustration about his tenure on the Ethics Commission, describing its work as "swatting flies".

We have now learned from Walter Ayres, the Commission's Public Information Officer, that the Governor has since replaced the "hold-overs", appointing (in September 1997) Peter O. Sherwood to replace Reverend Eggenschiller and appointing (in August 1997) Henry Gossel to replace Mr. Odell. However, there is a further vacancy created by last June's resignation of Commissioner Angelo Constanza -- which, in violation of Executive Law §94.5, the Governor has still not filled after six months. Additionally, the Governor has still not designated a chairman -- although it is now a year and a half since Chairman Bress resigned.

Our April 15th letter to the Governor identified the consequences of these kinds of violations as enabling

"the Executive Director of the State Ethics Commission, Richard Rifkin, to more easily manipulate the four unchaired volunteer Commission members so as to wholly transform the Ethics Commission to an agency that covers up -- rather than investigates -- conduct by state officers and agencies which is not only unethical, but criminally corrupt. In the event you are unaware, a *confidential* resolution -- inaccessible to the tax-paying public -- purports to empower the Commission's Executive Director to dismiss filed ethics complaints *without* presentment to the members of the Ethics Commission. Mr. Rifkin has dishonestly used such power to shamelessly pervert the very purpose of the Commission." (at p. 2)

By this letter, we specifically call upon the new crop of Ethics Commissioners -- namely, Mr. Sherwood and Mr. Gossel -- to familiarize themselves with our aforesaid correspondence with the Ethics Commission and, together with Mr. Brewster and Mr. Shechtman, ensure that the Ethics Commission functions, as the Executive Law intends, with a *full* complement of five Commissioners and with a Chairman. If necessary, the Ethics Commission should commence a *mandamus* proceeding against the Governor compelling him to make the requisite appointments, whose importance we pointed out more than eight months ago to both the Governor and the Ethics Commission.

Additionally, since Executive Law §94.9(c) empowers the Ethics Commission to "adopt, amend, and rescind rules and regulations to govern procedures of the commission...", we also call upon the Commission to RESCIND the *confidential* resolution that purports to delegate to its Executive Director the power to dismiss filed ethics complaints *without* presentment to the Ethics Commissioners. In support thereof, we ask the Commissioners to review Mr. Rifkin's cover-up dismissals of our fully-documented ethics complaints against state agencies and officials -- including the state agency with which Mr. Rifkin was associated at the highest echelons -- the New York State Attorney General's office. We also ask the Commissioners to review Mr. Rifkin's peremptory rejection, *without* presentment to the Commissioners, of our requests for the Ethics Commission's intervention in our Article 78 proceeding against the New York State Commission on Judicial Conduct. That lawsuit was defended by the Attorney General's office by fraud and other litigation misconduct because it had *no legitimate defense* to the allegations and evidentiary proof of that state agency's corruption and protectionism. This was pointed out in our September 14, 1995 ethics complaint against the New York State Attorney General -- which complaint also supplemented our March 22, 1995 ethics complaint against the State Commission on Judicial Conduct.

Based upon such review, we request the Ethics Commission, which has authority to appoint the Commission's Executive Director under Executive Law §94.9(a), to remove Mr. Rifkin from that important position by reason of his official misconduct and to initiate a complaint against him, pursuant to Executive Law §94.12(a) for his gross and wilful violations of Public Officers Law §74(2) and §74.3, in particular, §74.3(d), while in office.

In support of our fully-documented September 14, 1995 ethics complaint against the State Attorney General's office -- embracing its fraudulent litigation tactics during the period in which Mr. Rifkin worked there -- annexed hereto is a copy of CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", which appeared in the August 27, 1997 New York Law Journal (Exhibit "C"). From the ad may be seen the dire consequences of Mr. Rifkin's failure to present such complaint to the Ethics Commissioners for investigation: the metastecy of the Attorney General's misconduct and fraud to the federal court.

Please consider "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" as a supplement to that September 14, 1995 complaint against the State Attorney General's office -- and against Dennis Vacco, personally. Let us know when you would like to receive the substantiating litigation file in the federal civil rights action, *Sassower v. Mangano, et al.* (2d Cir. #96-7805) -- the Summons and Complaint of which were Exhibit "D" to our January 24, 1996 letter.

Inasmuch as Commissioner Brewster has been appointed to the Ethics Commission based upon a recommendation by the Attorney General (indeed, by Attorney General Vacco), he may wish to recuse himself for that reason.

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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

Enclosures

cc: Governor George Pataki
Attorney General Dennis Vacco
Reverend Robert Eggenchiller