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BY FAX: 518-454-5819 (4 pages)

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Howard Healy, Editorial Page
Albany Times Union

RE: Your Current Editorial Series on the NYS Commission on Judicial Conduct

Dear Mr. Healy:

This follows up our telephone conversation together on October 12, 2001 and the two telephone messages I left on your voice mail yesterday.

As you know, back in May 2001, Ron Loeber – whose compelling story you used to launch your editorial series on Sunday – provided you with appellate papers in my public interest lawsuit against the New York State Commission on Judicial Conduct. This, so that you could see that the problem with the Commission is NOT simply that it metes out minimal discipline against judges whose misconduct causes irreparable injury to innocent citizens, but that it is CORRUPT.

The lawsuit, commenced by a Verified Petition with six Claims for Relief [A-37-45], details the opposite of the impression conveyed by your Sunday's editorial, *to wit*, that the Commission is NOT "follow[ing] its mandate as outlined in state law". Indeed, perhaps the most critical part of its mandate, from the public's standpoint, is the requirement in Judiciary Law §44.1 that the Commission investigate EVERY judicial misconduct complaint it receives, with the exception of complaints it determines to be *facially lacking in merit*. Yet, as detailed by my Verified Petition, the Commission has unlawfully promulgated a rule, 22 NYCRR §7000.3, which contravenes Judiciary Law §44.1 and permits the Commission to not only dismiss, *without investigation*, complaints which are *facially-meritorious* complaints, but complaints which are *fully-documented* as to the serious judicial misconduct committed.

That the Commission had NO legitimate defense to my six Claims for Relief was chronicled by the appellate papers Ron Loeber provided you. These particularized that the Commission – the state agency charged with the duty of enforcing judicial standards – corrupted the judicial process through fraudulent defense tactics of its

attorney, the State Attorney General – New York's highest law enforcement officer -- and was rewarded by a fraudulent judicial decision without which it would *not* have survived. Indeed, the appellate papers identified that the same scenario had repeated itself in two other lawsuits against the Commission. These two lawsuits, like my own, had been brought by complainants whose *facially-meritorious* complaints the Commission had dismissed, *without investigation*.

It is not the case, as you state in your Sunday's editorial, that the result of the secrecy that enshrouds the Commission's disciplinary proceedings is that "the public can't judge whether [the] process should be reformed". As illustrative, my appellate papers present *readily-verifiable* evidence PROVING that the Commission is corrupt. From this evidence the public can easily judge the imperative for reform – including reform of Judiciary Law §45 relative to confidentiality of the Commission's proceedings – which my third Claim for Relief challenges [A-40-42].

Further, notwithstanding your expectation in Sunday's editorial of a response by Governor Pataki and state lawmakers to your "wake-up call" as to the deficiencies of "New York's system", my appellate papers detail [A-26-27; 51-51a; 52, 55-56; Br. 6, 17, 47] that the Governor and state legislators long ago received the case file evidence of the Commission's corruption, have not denied or disputed its significance, yet have refused to take any investigative or other steps to protect the public.

As to your Monday's editorial, please be advised that you have made SIGNIFICANT AND SUBSTANTIAL ERRORS – *in the Commission's favor*. Among these, the Commission did NOT recommend "disciplinary action[1]" in 69 cases involving lower level judges, but rather, based on the Commission's 2001 Annual Report containing statistics for 2000, the correct number is 5. Likewise, it did NOT recommend "formal measures ranging from admonition to censure to removal from office" in 17 cases involving Supreme Court justices. The correct number is 2.

Further, your Monday's editorial not only entirely omits ALL statistics relative to the number of judicial misconduct complaints that the Commission has dismissed *without* investigation[2] -- which at 80% and more is the overwhelming majority -- but

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[1] The cumulative statistics table from the 2001 Annual Report – from which, presumably, you obtained your data, defines "action" to include, since 1978, "determinations of admonition, censure and removal". In other words, it does not include "cautions", which, moreover, is listed in a separate column. Further, to be parallel to your subsequent editorial paragraph relating to Supreme Court justices, which substitutes the phrase "formal measures ranging from admonition to censure to removal from office", "cautions" would have to be excluded from your tally.

[2] You report that the Commission "examined" a cumulative total of 27,006 complaints.

presents a FALSE standard for the Commission's dismissal of a complaint, *to wit*, that it is "without merit" because it challenges "the judge's rulings, not conduct". Indeed, that rulings CAN constitute grounds for a judge's removal is reflected by the Commission's 2001 Annual Report (at p. 2) – and is specifically identified at the outset of my Appellant's Brief (p. 3), quoting from New York caselaw nearly 100 years old[3].

Please telephone ASAP so that we can arrange for a meeting at the Times Union, at which I can provide you with an overview of the Commission's *readily-verifiable* corruption – and the status of my politically-explosive lawsuit against the Commission, *en route* to the Court of Appeals. Indeed, the criminal ramifications of the lawsuit will rightfully torpedo the re-election prospects of BOTH Governor Pataki and Attorney General Spitzer.

As I will be out until late in the day, please leave a voice mail message for me if you would like me to come up for a meeting as soon as tomorrow. I am ready and willing to make the three hour trip up to Albany so that your important editorial series may present the public with the *readily-verifiable* facts as to the Commission's corruption and the wilful cover up by those in the preeminent positions of leadership in this state.

Yours for a quality judiciary,

Elena Ruth Sassower

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

P.S. In view of your scheduled tomorrow's editorial, "*Starving the Watchdog*", you should read my Letter to the Editor, "*Commission Abandons Investigative Mandate*", published in the August 14, 1995 New York Law Journal. Although it appears at A-50 of my Appellant's Appendix, a copy is faxed herewith for your convenience – so that your editorial may be sure to note the fact that for years the Commission was requesting *less* funding.

cc: Ron Loeber

According to the Commission's 2001 Annual Report, 21,556 of these were dismissed *without investigation* (this is the meaning of "first review"). In other words, the Commission investigated only 20% of the complaints it received since 1975 – or 5,450. As to the 2,500 (actually 2,474) complaints which the Commission received alleging violation of a defendant's rights, the 2001 Annual Report reflects that the Commission dismissed 1,946 *without* investigation, leaving 528 of such complaints investigated by the Commission since 1975. That's 21%.

[3] *See* also, Gerald Stern's article in Pace Law Review [Vol 7, No. 2, pp. 291-388 (winter 1987)] as to "...*When 'Error' is Misconduct*" (at pp. 303-5) – reference to which appears at A-105 of my Appellant's Appendix.

LETTERS

To the Editor

Comm'n Abandons Investigative Mandate

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (*NYLJ*, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR §7000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigaiton, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-connected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commisison, with no finding that the complaints were facially without merit.

In "round one" of the litigaiton, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (*Sassower v. Commission*, #95-109141) — including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct — and, in turn, is protected by them.

Elena Ruth Sassower
White Plains, N.Y.

Ex "A-1"