

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, October 13, 2011 12:22 PM
To: 'David King'
Cc: 'Doris Sassower'
Subject: Answers to most of your questions

Dear David,

The answers set forth below are all that I have time for right now – but it is more than enough to keep you VERY BUSY. Don't hesitate to call with any questions. That's what I'm here for.

Also, please alert your muckraking journalistic colleagues at the Center for Public Integrity who are assembling data for the other 49 states – and hopefully DC & the federal judicial system -- that we can provide them with powerful information, leads, and contacts.

Thank you.

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Q & A

1. Are professional criteria followed in selecting state-level judges?

The answer to this question is a resounding NO – and the evidentiary proof (NOT OPINION) is accessible to you from CJA's website, www.judgewatch.org, via the left side panel "Judicial Selection-State-NY". Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-state.htm>. This posted proof establishes the brazenness with which "professional criteria" are cast aside by screening, appointing, and confirming authorities who disregard dispositive documentary evidence of corruption and unfitness, without investigation or findings – a state of affairs in which the press, academia, bar associations, and established good government organizations are endlessly complicit. <http://www.judgewatch.org/web-pages/correspondence.htm>.

Our website chronicles many spectacular examples. Most germane to your examination of the Commission on Judicial Conduct (your below question #3) is the 2001 re-appointment & confirmation to the Court of Claims of William Wetzel, to whom our 1999 public interest lawsuit against the Commission was steered; and James J. Lack, Chairman of the Senate Judiciary Committee, whose corruption in that position by his cover-up of the Commission's corruption and disregard for his duty to adhere to "professional criteria" in the confirmation of "state-level judges", including Judge Wetzel, was no bar to his own appointment and confirmation to the Court of Claims in 2002. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-selection/nys/Judicial-Selection-NY-lowercts.htm>.

You should also examine the selection of New York's highest "state-level judges" – those of the Court of Appeals. These were elective judgeships until 1977 when New York voters passed a constitutional amendment switching to "merit selection" appointment, based on the belief that such would ensure selection based on "professional criteria", rather than "political" and other considerations. In the nearly 35 years since then, there has been NO examination by the press, academia, bar associations, and established good government organizations of the travesty that is "merit selection" to the New York Court of Appeals. The unreported scandal is chronicled by our interaction with that process, spanning from 1993 to 2009. Among those involving the Commission on Judicial Conduct: the 1998 "merit selection" of Appellate Division/Second Department Justice Albert Rosenblatt – which gave rise to our 1999 public interest lawsuit against the Commission; our 2007 opposition to the "merit selection" re-

confirmation of Court of Appeals Chief Judge Judith Kaye, whose basis was her corruption in office, including her role in perpetuating the Commission's corruption – of which she was the beneficiary; and our opposition to the 2009 “merit selection” of Appellate Division/First Department Justice Jonathan Lippman as Court of Appeals Chief Judge, also involving the corruption of the Commission which he had facilitated and of which he benefited. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-selection/nys/selection-nys-ct-appeals.htm>.

Finally, I'm sure you'll get a laugh to see how “professional criteria” – *to wit*, judicial qualifications – were actually “waived” so that Westchester County Court Judge Gerald Loehr could be an “Acting Supreme Court Justice” – and then be designated as judge for our landmark public interest lawsuit against The New York Times, in violation of random assignment rules. The lawfulness and constitutionality of that assignment was the first appellate issue on our appeal to the Appellate Division/Second Department, detailed at pp. 1-3, and 40-45 of our appellate brief – and not adjudicated by its February 5, 2008 decision, which concealed that threshold issue, as likewise ALL our other appellate issues, including our entitlement to Judge Loehr's disqualification for demonstrated actual bias – his two appealed-from decisions and the judgment he signed being judicial frauds. See side panel “Suing The New York Times”. Here's the direct link: <http://www.judgewatch.org/web-pages/suing-nyt/lawsuit-nyt.htm>.

2. Are regulations preventing judges from using state funds for personal purposes effective?

Effective regulations require effective enforcing mechanisms, which do not exist. To the extent there is enforcement of regulations barring use of state funds for personal purposes, it is because, *inter alia*, this is the kind of easy story that the press seizes on to give the illusion that it covers judicial abuse – and because oversight in this area is useful in creating an illusion of oversight in other areas, *i.e.*, on-the-bench corruption involving fraudulent judicial decisions – where there is no oversight in fact.

Upon information and belief, the state is being defrauded of monies by state judges who are unlawfully and unconstitutionally being defended by the State Attorney General in lawsuits in which they are sued in their personal, rather than official capacities – and such has been brought to the attention, *inter alia*, of Chief Judge Lippman, as well as the Commission on Judicial Conduct, which has dismissed facially-meritorious documented complaints pertaining thereto, without investigation.

3. Does the judicial disciplinary agency (or equivalent mechanism) impose penalties on offenders?

New York's “judicial disciplinary agency” is the Commission on Judicial Conduct. Because the statute relating to the Commission cloaks the complaints it receives and its proceedings in confidentiality, it has been able to conceal that it does not impose penalties on offending judges, but, rather, dismisses facially-meritorious, fully-documented complaints against them, without investigation. This is especially so when the offending judge is powerful and politically-connected and the complaint relates to on-the-bench judicial misconduct, as for instance fraudulent judicial decisions that upend all cognizable standards.

In 1989, State Comptroller Ed Regan issued a report about the Commission entitled Not Accountable to the Public, which recognized that no assessment of the Commission is possible without examining the complaints it receives and the manner in which it handles them. The report called upon the Legislature to amend the confidentiality provisions of the statute to allow for auditing of the Commission's records pertaining complaints. Yet, the Legislature did not amend the confidentiality provisions of the statute and no auditing of the Commission was ever conducted. Here's a direct link to our NYS judicial discipline webpage posting the Comptroller's 1989 report and press release: <http://www.judgewatch.org/web-pages/judicial-discipline/nys/judicial-discipline-nys.htm>.

Nor did the Legislature hold any public hearings on the Commission from 1987 until 2009. Finally, in 2009, as a result of CJA's advocacy, the Senate Judiciary Committee held hearings on the Commission at which the testimony and evidence of corruption was so explosive that it shut the hearings down, without investigation of the testimony and evidence, without findings, and without any Committee report. Here's the direct link to our webpage of the hearings: <http://www.judgewatch.org/web-pages/judicial-discipline/nys/nys-sjc-hearing.htm>.

The ONLY explanation for the Senate Judiciary Committee's failure to continue the 2009 hearings (as was promised) and to investigate, make findings, and issue a Committee report is that it knew that such would evidentially establish the Commission's corruption (see, for example, testimony of Pamela Carvel, James Montagnino, Esq., Regina Felton Esq., Catherine Wilson). That corruption is readily-verifiable from the record of CJA's two lawsuits against the Commission, suing it for corruption – the first in 1995 (*Doris L. Sassower v. Commission*), and the second in 1999-2002 (“Test Case-State (Commission): *Elena Ruth Sassower v. Commission*). In these two lawsuits, as well as in a third lawsuit against the Commission in which CJA moved to intervene in 2000 (*Mantell v. Commission*), the

Commission was the beneficiary of a succession of fraudulent judicial decisions without which it could not have survived. The record of all three lawsuits is posted on CJA's website, accessible via the sidebar panels "Judicial Discipline-State-NY" and "Test Case-State (Commission)". Here are the direct links: <http://www.judgewatch.org/web-pages/judicial-discipline/nys/judicial-discipline-nys.htm> and <http://www.judgewatch.org/web-pages/test-cases/test-cases-state-commission.htm>.

The final two motions before the Court of Appeals in "Test Case-State (Commission)" – the motions dated October 15, 2002 and October 24, 2002 – contain analyses of the seven fraudulent decisions in those three lawsuits which protected the corrupt Commission. I will happily assist you in VERIFYING the fraudulence of these seven judicial decisions. It would take no more than an hour of your time.

4. Are judges' performance evaluations made available for the public to review?

There are no "performance evaluations" of New York judges "available for the public to review" – and the most genuine "performance evaluations", complaints filed with the Commission on Judicial Conduct, are statutorily confidential. As judges are public officers, such complaints should be publicly available, just as lawsuits against judges are publicly available. Alas, public availability does not incline the press, academia, bar associations, good government organizations, or public officers, including those with investigative capacities, to examine and report on the flagrant misconduct therein chronicled – and the lack of safeguarding remedies. See, inter alia, the sidebar panels "Press Suppression" and "Searching for Champions". Here are links: <http://www.judgewatch.org/web-pages/press-suppression/press-suppression.htm> and <http://www.judgewatch.org/web-pages/correspondence.htm>.

5. Are court decisions and opinions made readily available to the public? -- are they made available in meaningful and accessible manner?

This question begins by assuming that decisions and orders are readily-available to the litigants, which is not necessarily the case. Indeed, judges can and do fail to render written orders or withhold filing their orders, thereby frustrating litigants from being able to file appeals. (see testimony of Pamela Carvel and Regina Felton, Esq. at the Senate Judiciary Committee's 2009 hearings). Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-discipline/nys/nys-sjc-hearing.htm>.

As for decisions and orders being made "readily available to the public", they would be most "readily available" if they were all posted on line, which they are not. Nor are they all published.

In any event, it is important to recognize that decisions and opinions which are internet accessible or published are not more legitimate than those which are not. An abundance of publicly-available judicial decisions and opinions are deficient, if not fraudulent, on their face – and even more fraudulent when compared to the record. Thus, for instance, "Test Cases – Commission (State-NY)": the published December 18, 2001 Appellate Division/First Department decision is even more fraudulent than Judge Wetzel's unpublished January 31, 2000 decision therein. Likewise, "Suing The New York Times": the published February 5, 2008 Appellate Division/Second Department decision is even more fraudulent than the unpublished July 5, 2006 and September 27, 2006 Supreme Court/Westchester Co. decisions therein.

These are each groundbreaking cases – which should be the subject of scholarship. The fact that the appellate decisions in these cases are "readily available to the public" and, through our website the unpublished decisions and the entire case record is not, ipso facto, any kind of remedy.

7. Are the requirements for state-level judges to recuse themselves from cases in which they may have a conflict of interest effective?

Neither the Chief Administrator's Rules Governing Judicial Conduct nor statutory provisions pertaining to disqualification for interest are worth the paper they are written on. New York's judges freely ignore them – without the slightest consequence. Judges do not disclose their conflicts, even upon formal motion, do not disqualify themselves even when those conflicts are manifested in actual bias – and such abuses on the trial level are covered up by appellate judges who likewise make no disclosure and trash disqualification procedures. Nor does the Commission on Judicial Conduct discipline judges for failure to make disclosure and for actualizing their conflicts of interest by fraudulent judicial decisions.

See, "Test Cases – Commission (State-NY)", particularly the August 17, 2001 motion for disclosure/disqualification made in the Appellate Division/First Department – denied, without reasons and without identifying the relief sought, in

the last sentence of its December 18, 2001 appellate decision; and the May 1, 2002 motion for disclosure/disqualification made in the Court of Appeals, denied by both falsehoods and no reasons by the Court of Appeal's September 12, 2002 decision. Each were the subject of fact-specific, law-supported reargument motions – dated January 17, 2002 and October 15, 2002, each denied without reasons. Here are the direct links: <http://www.judgewatch.org/web-pages/test-cases/test-cases-state-commission-app-div.htm> and <http://www.judgewatch.org/web-pages/test-cases/test-cases-state-commission-ct-appeals.htm>.

See also, “Suing The New York Times” where the focal issue on the appeal was “Acting” Supreme Court Justice's Loehr's failure to make disclosure and disqualifying actual bias – completely ignored, without adjudication, by the Appellate Division/Second Department's February 5, 2008 decision, which also failed to identify ANY of the facts, law, or legal argument presented on the appeal. Here's the direct link: <http://www.judgewatch.org/web-pages/suing-nyt/lawsuit-nyt.htm>.

Also there's a currently unfolding perfect case study of the worthlessness of judicial disclosure/disqualification provisions – at three court levels: White Plains City Court, the Appellate Term, and the Appellate Division/Second Department – whose showcasing of systemic judicial corruption involving supervisory and appellate levels includes Appellate Division, Second Department Justice Peter Skelos – brother of Temporary Senate President Dean Skelos. Here's the direct link: <http://www.judgewatch.org/web-pages/test-cases/test-case-ny-landlord-tenant.htm>. A summary of this case – and its significance to the judicial compensation issue – is set forth by CJA's August 23, 2011 letter to Chief Administrative Judge Pfau – to which the Commission on Judicial Compensation was an indicated recipient. See: sidepanel “Judicial Compensation-State-NY”, with its link to our homepage on that issue: “Bringing Transparency, Evidence & Public Accountability to the One-Sided, Media-Created View (*Swallowed Whole from the Judicial-Legal Establishment*) that NYS Judges are Underpaid & Entitled to a Raise”. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/nys-judicial-compensation.htm>.

From: David King [mailto:davidhowardking@gmail.com]
Sent: Wednesday, October 12, 2011 2:46 PM
To: elena@judgewatch.org
Subject: CPI Questions

Hi Elena,

Thank you for taking the time to consider these questions. Please shoot me back an email with your thoughts. I will be in touch on Friday and am certainly interested in the report you are releasing on Monday. Some of these questions do overlap with what we spoke about today but it would be a great help if you gave a brief response to things we may have already covered.

- 1. Are professional criteria followed in selecting state-level judges?**
- 2. Are regulations preventing judges from using state funds for personal purposes effective?**
- 3. Does the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders?**
- 4. Are judges' performance evaluations made available for the public to review?**
- 5. Are court decisions and opinions made readily available to the public?--are they made available in a meaningful and accessible manner?**
- 6. Are state-level judiciary asset disclosures are audited?**
- 7. Are the requirements for state-level judges to recuse themselves from cases in which they may have a conflict of interest effective?**
- 8. Are judicial branch actions (e.g. hiring, firing, promotions) based on nepotism, cronyism, or patronage?**
- 9. Can citizens access state-level judiciary members' asset disclosure records within a reasonable time period? At a reasonable cost? Is the information of high quality? Are they available online in a meaningful way?**

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