CENTER for JUDICIAL ACCOUNTABILITY, INC.

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

Tel. (914) 421-1200
Fax (914) 684-6554

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

BY FAX AND BY HAND
212-696-4287

August 12, 1997

Kris Fischer, Managing Editor
New York Law Journal
345 Park Avenue South
New York, New York 10010

RE: State Attorney General Vacco's Litigation Misconduct in Defending against a §1983 Federal Challenge to New York's Attorney Disciplinary Law

Dear Ms. Fischer:

As you will recall, on July 17th -- the day on which CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "A-1"), was to have been published in the New York Law Journal -- I telephoned. Ruth Hochberger was out of the office on that day and, in her absence, I spoke with you about ways in which the important information contained in our ad could be presented to the public.

I stated that notwithstanding our ad was completely true and fully documented, the purported reason why the Law Journal was not printing it was because it contained "no less than 15 libels". This was what Mr. Finkelstein said he had been advised by the Law Journal's attorney, James Goodale. However, I pointed out to you that the media is free to report on court proceedings -- and allegations set forth in court papers -- *without* fear of libel. I, therefore, proposed that the Law Journal undertake a story focused on the third case described in our ad: our §1983 federal civil rights action, which is a live case, now before the Second Circuit on appeal. It is scheduled for oral argument on August 29, 1997.

I emphasized that the case would be of profound interest to the legal community, not only because it documentarily exposes the falsity of claims emanating from Attorney General Vacco's office about its professionalism and high standards -- touted in two separate Letters to the Editor, printed by the Law Journal (Exhibits "B-1" and "B-2") -- but because it does so in the context of a case affecting every New York attorney: one challenging the constitutionality of New York's attorney disciplinary law, *as written and as applied.*

The challenge presented in that case -- *Doris L. Sassower v. Guy Mangano, et al.* (2nd Cir. #96-7805) -- is focused and stark: The Verified Complaint alleges that on June 14, 1991, the plaintiff, Doris L. Sassower, a New York attorney who had been a leader of the bar, with a distinguished 35-year practice (R-28-9: ¶¶14-16), was suspended by the Appellate Division, Second Department under

an immediate, indefinite, and unconditional "interim" order issued *without* written charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing [R-24: ¶3]. In the more than six years since, she has been repeatedly denied *any* post-suspension hearing as to the basis on which she was suspended *without* findings and denied *any* appellate review [R-25: ¶4; R-57: ¶117; R-64: ¶143; R-65: ¶145; R-82: ¶209]. There is no law -- federal or state -- that permits such egregious violation of constitutional rights. As particularized in the Verified Complaint, when the plaintiff sought independent review under Article 78, suing the accused wrong-doing justices of the Appellate Division, Second Department, their attorney, the State Attorney General argued -- *without* any legal authority [R-74: ¶178] -- that the justices were not disqualified from hearing their own case and permitted them to grant his legally insufficient and factually perjurious dismissal motion in their favor [R-71: ¶¶168-170; *See also* R-27: ¶10; R-79-82: ¶¶196, 200-208].

Underscoring the unconstitutionality of such an "interim" suspension are two very short decisions of the New York Court of Appeals -- each recited in the Verified Complaint [R-51: ¶ 94; R-83: ¶211; R-62: ¶134]. In *Matter of Nuey*, 61 N.Y.2d 513 (1984) [R-528], our state's highest court held that there is *no* constitutional authority for "interim" suspensions -- and that "interim" suspension orders, rendered without findings, must be *immediately* vacated. In *Matter of Russakoff*, 72 N.Y.2d 520 (1992) [R-529], the New York Court of Appeals reiterated this, further noting that the Second Department's "interim" suspension rule §691.4(l) is constitutionally infirm for failing to provide for a prompt post-suspension hearing. This is the very rule under which plaintiff was suspended [R-97]--a rule which *expressly* requires findings and reasons [R-51: ¶94, R-349].

How is it then that, notwithstanding *Nuey* and *Russakoff* [R-528, R-529], attorney Doris Sassower was and remains suspended under a finding-less, hearing-less "interim" order, without redress in the state courts? Is it, as the Verified Complaint contends, that the state judiciary, which controls the state disciplinary mechanism, is retaliating against for her 1990 judicial whistle-blowing lawsuit, challenging the political manipulation of elective state court judgeships? [R-24: ¶3; R-26: ¶7, R-44-45: ¶¶75-78; R-49: ¶90; R-74-75: ¶¶179-181; R-78: ¶193; R-82: ¶206; R-87: ¶¶228, 234].

The legal community is familiar with these profoundly serious allegations of judicial retaliation, which were prominently featured in CJA's ad, "*Where Do You Go When Judges Break the Law?*" [R-606], printed on November 1, 1994 in the New York Law Journal and the week earlier as an ad on the Op-Ed page of the New York Times (Exhibit "C"). Over the past three years, reprints have been widely circulated as part of CJA's informational literature. The ad's conclusion that "Now, all state remedies have been exhausted", has sparked a steady stream of inquiry about federal remedies. Indeed, when the ad was published in the Law Journal, the state defendants -- among them, the Attorney General -- had just been served with the Summons and Verified Complaint, commencing the federal action.

The legal community is entitled to know -- and needs to know -- what became of the federal remedy, provided under 28 U.S.C. §1983. As summarized in "*Restraining 'Liars in the Courtroom' and on*

the Public Payroll" (Exhibit "A-1"), the remedy was obliterated by the combined misconduct of the Attorney General and the federal District Judge.

The graphic particulars of such misconduct, rising to a level of fraud upon the court and fraud *by* the court, are set forth in plaintiff's appellant's Brief. The whole of the section entitled the "Course of the Proceedings Before the District Judge" [Br. 12-30] is devoted to such recitation, cross-referenced to documents in the Record on Appeal.

As highlighted therein [Br. 14-15], the Attorney General made a motion to dismiss the Complaint in which he affirmatively misrepresented and omitted its essential allegations and the law relative thereto [Br. 4-11]. Among the allegations he expurgated were that plaintiff had been suspended *without* written charges, *without* reasons, *without* findings, *without* any hearing prior thereto or thereafter, and *all* allegations detailing the unconstitutional, unlawful, and fraudulent manner in which the "interim" suspension order was procured [Br. 55]. Although the Verified Complaint had alleged the *explicit* jurisdictional and procedural requirements of New York's attorney disciplinary, knowingly and deliberately violated by defendants, the Attorney General's motion did not discuss these requirements [Br. 55]. Nor did it make the slightest mention of *Nuey* and *Russakoff* [Br. 15].

Plaintiff opposed the Attorney General's dismissal motion with an application for sanctions [Br. 18]. She demonstrated that it was factually false and legally insufficient and further that the Attorney General's Answer to her Verified Complaint was knowingly false and in bad faith in its responses to *over 150* of the Complaint's paragraphs. Indeed, she sought summary judgment in her favor as to the unconstitutionality of New York's attorney disciplinary law, *as written and as applied* -- entitlement to which she documented with evidentiary proof and with legal authority, including *Nuey* and *Russakoff*[1].

The Attorney General did not timely respond -- yet, thereafter, was improperly relieved of his default by District Judge John Sprizzo [Br. 22]. Even still, the Attorney General's belated opposition to plaintiff's application for sanctions and summary judgment was insufficient *as a matter of law* [Br. 23, 45-46, 63-64]. It did not deny or dispute that the Attorney General's dismissal motion misrepresented and omitted the essential allegations of the Complaint and the law relative thereto, did not deny or dispute that his Answer was knowingly false, did not present any evidence to rebut the essential allegations of plaintiff's Verified Complaint, and did not defend the constitutionality of New York's attorney disciplinary law, *as written and as applied.* Again, the Attorney General

---

[1] Plaintiff's legal presentation as to the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*, was succinctly set forth in her Petition for a Writ of Certiorari to the U.S. Supreme Court in her Article 78 proceeding against the Appellate Division, Second Department justices -- which she physically annexed to her application for summary judgment in her §1983 federal action [R-303-439] and incorporated by reference [R-173: ¶¶22-23]. *See* "Questions Presented": R-304; and "Reasons for Granting the Writ": R-326-342].

did not mention *Nuey* and *Russakoff*.

As particularized in the "Argument" section of plaintiff's Brief [Br. 38-76], the record before Judge Sprizzo thus established plaintiff's absolute right to sanctions [Br. 38-50] and summary judgment against the defendants [Br. 61-64], as well as to the immediate relief sought by her preliminary injunction to enjoin the continued enforcement of the "interim" suspension order [Br. 50-56]. This required Judge Sprizzo to overturn New York's attorney disciplinary law and expose the flagrant manner in which it had been misused by Appellate Division, Second Department justices and their at-will grievance committee appointees for retaliatory purposes -- aided and abetted by the State Attorney General. Such exposure would have led to their being prosecuted for official misconduct, obstruction of justice, conspiracy, and other criminal acts.

The *only* way to avoid this politically-explosive result was by obliterating and falsifying the record -- which is what Judge Sprizzo did in awarding summary judgment to the state defendants. His decision omits, without mention, plaintiff's fully-documented and uncontroverted sanctions applications against the Attorney General -- which he does *not* adjudicate [Br. 38-50] -- and follows the *identical* misconduct of the Attorney General, gutting the plaintiff's Complaint of its essential allegations of defendants' unlawful and constitutionally-violative conduct [Br. 65-66, fn. 37]. Thus, he expurgates the Complaint's allegations that plaintiff was suspended *without* reasons and *without* findings and, with it, any mention of *Nuey* [Br. 56]. He misrepresents *Russakoff* as pertaining to a post-suspension hearing -- *without* addressing that plaintiff was deprived of any post-suspension hearing, which allegation he does not identify [Br. 56, 71][2]. And his decision *mis*identifies the very court rule under which plaintiff was suspended -- the correct rule, §691.4(l), having been found to be constitutionally infirm in *Russakoff* for failing to provide for a prompt post-suspension hearing [Br. 56]. Like the Attorney General, Judge Sprizzo fails to discuss the *explicit* requirements of New York's attorney disciplinary law alleged by the Complaint to be violated [Br. 56][3]. And nowhere does his decision even hint that the Complaint alleges that plaintiff's illegal suspension was in retaliation for her judicial whistle-blowing [Br. 66-67]. Only by such wholesale distortion and falsification of the allegations of the Verified Complaint -- and by total disregard for the most fundamental standards of adjudication [Br. 57-75] -- not the least of which is the complete absence of any evidence from defendants on which to rest summary judgment in their favor [Br. 68] -- has Judge Sprizzo preserved New York's attorney disciplinary law, *as written and applied*.

---

[2] As pointed out at footnote 40 of plaintiff's Brief, "plaintiff's allegation that she was suspended without a [pre-suspension] hearing is the *only* due process violation relative to her suspension identified by the Decision". Judge Sprizzo then conceals the egregiousness of that violation. [Br. 71]

[3] As to the Complaint's allegation that plaintiff's "interim" suspension did not rest on any disciplinary petition, setting forth written charges, Judge Sprizzo's decision conceals and misrepresents the issue [Br. 43-44]

Consequently, on appeal, this is a particularly dramatic case. It involves not only the constitutionality of New York's attorney disciplinary law, but the integrity of the judicial process, eviscerated on the federal District Court level. For this reason, the conclusion of plaintiff's appellant's Brief reads:

> "All Defendants, their counsel, as well as the District Judge, should be referred for disciplinary and criminal action based upon their filing of false, fraudulent, and deceptive instruments, obstruction of justice, collusion, corruption, and other official misconduct". [at p. 76]

Indeed, the Record on Appeal so thoroughly documents the combined misconduct of the Attorney General and District Judge that, if the rule of law means anything on the Circuit level, this case will not only bring down New York's attorney disciplinary law -- a plainly historic accomplishment -- but Attorney General Vacco and his co-defendant clients, the justices of the Appellate Division, Second Department, their grievance committee appointees, as well as a complicitous federal District Judge.

At the time we spoke, I offered to provide the Law Journal with the appellate papers so that a story about it could be run in advance of the August 29th oral argument. You stated that the Briefs and Record on Appeal were available to the Law Journal from the Second Circuit. Not having heard from you since -- and time being of the essence -- I hand-delivered to the Law Journal a copy of the appellate papers on Tuesday, August 5th, consisting of: (1) the Appellant's Brief; (2) the Record on Appeal; (3) the Attorney General's Brief for the Defendants-Appellees; and (4) the Appellant's Reply Brief. These documents[4] are -- as I long ago stated to Ms. Hochberger -- "shocking beyond words". A copy of my hand-written transmittal note to you and Ms. Hochberger, which I scrawled on a full copy of our ad, is annexed as Exhibit "A-2".

Last Thursday, August 7th, Mr. Finkelstein was good enough to personally return my telephone calls about Mr. Goodale's failure to identify the precise "libels" in our public interest ad, "*Restraining 'Liars'*" (Exhibit "A-1") -- before leaving on a month's vacation. Mr. Finkelstein recognized that if our ad's description of the subversion of legal remedies designed to protect the public from governmental abuse and corruption is true, the public -- and, particularly, the legal community -- needs to know about it. I assured him they were completely true -- and told him that you had the appellate papers in the §1983 federal action to prove it. I further pointed out that he had in his possession copies of our correspondence to Attorney General Vacco relative to the Law Department's fraudulent conduct in the three cases described by our ad, including in the §1983

---

[4] CJA is not a profit-making mega-firm. Please recognize that the appellate records are extremely costly for us to reproduce and bind. Under no circumstances should they be discarded, since we would be glad to have them returned to us.

federal action[5]. As highlighted by our ad, those documents establish Attorney General Vacco's knowledge of and acquiescence in the Law Department's litigation misconduct, including fraud, "before, during, and after the fact". For your convenience, a copy of our January 14, 1997 letter to Attorney General Vacco is annexed, together with the fax coversheet and certified mail, return receipt (Exhibit "D"). Its opening paragraphs read:

> "This is to put you on notice of the criminally fraudulent and unethical conduct of your office in the ...[§1983] federal action before the U.S. District Court, Southern District of New York....
>
> By reason of your office's litigation misconduct, my appellate Brief to the Second Circuit seeks criminal and disciplinary penalties, as well as civil damages -- entitlement to which the Brief details and the Record on Appeal fully documents."

The *only* response by Attorney General Vacco was further litigation misconduct by his Law Department -- to whom we also provided copies of the letter [Rep. Br. 4]. Such litigation misconduct is particularized by plaintiff' Reply Brief, whose very first sentence reads:

> "This Reply Brief demonstrates the bad-faith and frivolous nature of Defendants' Appellees' Brief and Plaintiff's entitlement to maximum sanctions under all applicable statutory and rule provisions, 28 U.S.C. §1927, Fed.R.Civ.P. Rule 11, F.R.A.P. Rules 31 and 38, as well as criminal and disciplinary referral of Defendants and their counsel, the New York State Attorney General, himself a Defendant." [at p. 1]

Should you wish to see our fully-documented April 1, 1997 sanctions motion against the Attorney General for his further misconduct -- including fraud -- in the case management phase of the appeal, which motion is reflected by footnote 1 of our Reply Brief and described by our ad as having been denied by the Second Circuit *without* reasons (Exhibit "A-1"), we will readily supply it to you. It too is "shocking beyond words".

---

[5] Those documents are Exhibits "E" and "F" to CJA's July 24, 1997 letter to Floyd Abrams, New York Law Journal Board member and First Amendment expert.

Please let us hear from you as soon as possible. Nothing remains of the judicial process when those on the public payroll -- our State Attorney General and our judges -- jettison the most basic standards of conduct and their sacred oaths of office. From bitter past experience, we know that *only* the media spotlight can safeguard the integrity of the appellate process when the issues are as politically-explosive and tied to judicial self-interest as those involved in *Sassower v. Mangano, et al.*

Yours for a quality judiciary,

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

Enclosures: Exhibits "A" - "D"

cc: James Finkelstein, Publisher, New York Law Journal
Ruth Hochberger, Editor-in-Chief, New York Law Journal
Floyd Abrams, Board of Editors, New York Law Journal
Kevin Vermeulin, Advertising Manager, New York Law Journal
Peter Hano, Account Executive, New York Law Journal
James Goodale, Esq.