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BY FAX: 212-608-1240 (4 pages)

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Mr. David Rohde/The New York Times

RE: Arranging a Meeting with your Editors

Dear David:

Following up your late evening return phone call on Tuesday – for which I thank you -- I must again request that you arrange to have your editors meet with me about the document-supported government corruption stories I have been proposing to you since last September involving, *inter alia*: (1) the NYS Commission on Judicial Conduct; (2) the NYS Commission on Judicial Nomination¹; and (3) the NYS Attorney General – all at issue in the politically-explosive Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. the Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551).

It is now nearly nine months that I have been patiently waiting for you to move forward with a story about this important public interest case. Yet on Tuesday you told me that it may yet be several more months until you can do a story, without any commitment that even then you'll write one – let alone that it will be the kind of investigative reportage that is called for. As to your suggestion that I try other Times reporters, it is unfair for you to expect me to again invest endless amounts of time starting “from square one” with new reporters – whose names you have not even given me and who you have not offered to contact on my behalf. Besides, what would be the point of doing so, if, behind your footdragging, is not just your conflict of interest by reason of your friendship with your Daily News colleague Barbara Ross, with whom you share an office and whose husband is Deputy Administrator of the Commission on Judicial Conduct, but Times' protectionism of vested interests and powerful leaders, who are the perpetrators and beneficiaries of the corruption the case documents.

¹ As reflected by the item appearing in today's New York Law Journal, the Commission on Judicial Nomination, which recommends candidates to fill vacancies on the Court of Appeals has just announced that it is screening candidates for the vacancy that will be created when Judge Bellacosa leaves the bench on September 1st. A copy is enclosed, as likewise a copy of the front-page item that appeared in last Friday's Law Journal (5/12/00).

So that no further time is wasted either with you or other Times reporters, let's clarify whether Times editors will give a "green light" to coverage of the kind of systemic government corruption presented by *Elena Ruth Sassower v. Commission*. Please, therefore, immediately transmit to them the raft of story proposals I have presented to you since last September, along with the supporting documentary materials I also provided. This should include CJA's February 23, 2000 letter to Governor Pataki, detailing (at pp. 6-14) Administrative Judge Crane's interference with "random assignment" to "steer" the case to Court of Claims holdover William Wetzel, who then "threw" it by a fraudulent judicial decision (pp. 15-29). As you know, the letter calls upon the Governor to appoint a Special Prosecutor or investigative commission to examine the corruption issues. It should also include CJA's March 3, 2000 and April 18, 2000 letters to Chief Judge Kaye, calling for her to appoint a Special Inspector General.

Frankly, despite my repeated requests that you read CJA's correspondence to the Governor and to the Chief Judge, I am still not sure you have. Nor am I sure that you ever read the verified petition in *Elena Ruth Sassower v. Commission* – which was among the documents I hand-delivered to the Times for you on September 7, 1999. Indeed, I rather suspect that you have not.

I look forward to your telephoning me next week, as you promised. By then, I would hope you will be ready to offer dates and times at which you and your editors will be able to meet with me.

Thanks.

Yours for a quality judiciary,



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

Enclosures

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SERVING THE BENCH AND BAR SINCE 1888

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CORPORATE UPDATE

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- **NEWS:** Attorneys say the SEC's new guidelines for on-line trading clarify the rules for offering securities on the Web and keeping investors informed.
- **NEWS:** The second-longest case in the history of Delaware's Court of Chancery has resulted in an \$11.1 million fee request.
- **COLUMN:** In his Corporate Securities column, John C. Coffee Jr., of Columbia University explores legal ethics and the lead counsel bidding process in the *Auction Houses* litigation.
- **NEW DEALS:** The attorneys involved in Cisco System's \$5.7 billion acquisition of ArrowPoint Communications and other transactions.

TODAY'S NEWS

Update



An Onondaga County lawyer who is writing a book on how to qualify as a contestant on the game show "Who Wants to Be a Millionaire?" is facing 20 years in prison on charges that he embezzled more than \$190,000. The lawyer, Paul Barbour, and a registered nurse, Kellie Moran, were indicted last year for allegedly defrauding Nationwide Insurance Co. by authorizing 145 payments to a phony medical services company in 1998. Mr. Barbour, who appeared on the game show last August but did not advance to the so-called "hot seat," is writing a book called *Who Wants to Be a Contestant?* that is to be published by Harper-Collins this summer. He said he has disclosed the charges to the publisher.

Manhattan District Attorney Robert M. Morgenthau will be honored with the Pursuit of Justice Award by the American Section of the International Association of Jewish Lawyers and Jurists. The award will be presented in a ceremony June 12 at 7:30 p.m. at Congregation Emanu-El, Fifth Avenue and 65th Street in Manhattan. Chief Judge Judith S. Kaye will give the keynote address.

The New York State Commission on Judicial Nomination yesterday announced that it is seeking applicants for the vacancy that will occur when Court of Appeals Judge Joseph W. Bellacosa leaves the bench on Sept. 1. Recommendations may be made to and applications procured from Counsel to the Commission Stuart A. Summit, 666 Fifth Avenue, 28th floor, New York, N.Y. 10103, 212-841-0715. Among those mentioned as potential replacements for Judge Bellacosa are Appellate Division, Third Department, Justices Victoria A. Graffeo, Anthony J. Carpinello and Thomas E. Mercure; Lieutenant Governor Mary O. Donohue; Albany Law School Professor Michael Hutter; Appellate Division, First Department, Justice Richard T. Andrias; and Court of Claims Presiding Judge Susan Phillips Read.

A memorial service for the late former Court of Appeals Judge Fritz W. Alexander II will be held Saturday at 1 p.m. at Riverside Church, 120th Street and Riverside Drive in Manhattan. Judge Alexander died April 22 at the age of 73 after a long battle with cancer.

Malpractice Applied To Insurance Brokers

Appellate Panels Split on Statute of Limitations

BY CERISSE ANDERSON

INSURANCE BROKERS are capable of committing malpractice, the Appellate Division, Second Department ruled this week, pointedly disagreeing with the Appellate Division, First Department, which declared last year that insurance brokers and agents were not professionals.

The distinction determines whether the three-year statute of limitations that applies to non-medical malpractice actions, or the six-year statute that applies to a breach of contract action, is applicable in a Westchester County corporation's suit against its former insurance brokers.

Justice William D. Friedmann, writing for the unanimous five-judge Second Department panel in *Chase Scientific Research Inc. v. NIA Group Inc.*, 1999-05335, agreed with Justice W. Denis Donovan who had dismissed the proceeding in Supreme Court, Westchester County, as time-barred.

Justice Donovan ruled in 1999 that Chase Scientific Research's claim against the insurance brokers, NIA Group, alleging NIA had not obtained

adequate insurance from Chase Scientific's policy in a 1995 storm, had expired in 1995 when NIA procured a new policy from Chase Scientific.

New York's Civil Rights Law §214(6) provides that a three-year statute of limitations applies to malpractice actions — other than medical malpractice — whether the underlying claim was based on contract or tort. Therefore, said the court, the statute of limitations when Chase Scientific filed its suit on Jan. 7, 1999, the three-year statute of limitations had already expired.

However, a similar statute of limitations in the Bronx would apply to a claim to be filed under a Fire Insurance Policy No. 1370 Broadway Association.

There the appellate court found that a third-party contractor and flatly stated that a contractor is not capable of committing professional malpractice under CPLR §214(6) year statute of limitations based on the relationship of the contractor to the insured.

The First Department ruled that the three-year time limit for malpractice to sue

The decision is on NYLJ.com and will be in the paper on Monday.



New York Law

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NEW YORK, FRIDAY, MAY 12, 2000

Today on The Back Page

■ An associate with Paul, Weiss, Rifkind, Wharton & Garrison is running for State Assembly.

■ A New Jersey lawyer also serves as an agent for professional baseball players.

■ In his Money Matters column, Clarence Kehoe talks about investing in a volatile stock market.



TODAY'S NEWS

Update

* **The Court of Appeals** may be short-handed this fall, following the departure of Senior Associate Judge Joseph W. Bellacosa. The judge will officially leave Sept. 2 to become dean of St. John's University School of Law. The Commission on Judicial Nomination said it cannot present a list of candidates, from which the Governor must select the new jurist, until Judge Bellacosa's departure, though the Court is trying to persuade the Commission to move sooner. After receiving the candidate list, the Governor must wait 15 days before nominating a judge and then must nominate one within 30 days. Among those rumored to be in contention are Justices Victoria A. Graefo, Anthony J. Carpinello and Thomas E. Mercure, all Third Department, Appellate Division, judges; Court of Claims Presiding Judge Susan Phillips Read; Justice Richard T. Andrias of the Appellate Division, First Department; and Lieutenant Governor Mary O. Donohue.

A legal obstacle has been removed from the construction of a minor league baseball stadium in the Coney Island section of Brooklyn. Federal Eastern District Judge I. Leo Glasser yesterday refused to impose a temporary injunction against development of the project by the City government. Coney Island Resorts Inc. owns parcels of land near the site, and has filed suit in federal court to block the project. It argued that the ballpark would make it impossible to develop the parcels, which would be separated by the stadium. Judge Glasser scheduled a hearing for May 26 to consider the City's motion to dismiss the lawsuit entirely. The opinion, *Coney Island Resorts v. Giuliani*, 00 CV 2233 (ILG), will be published Tuesday. Details are published on page 6.

◆ **With an expected 800-page** brief in the offing, lawyers seeking to overturn the first death verdict handed down under New York state's 1995 statute asked the Court of Appeals

Appeals Court Highlights

The State Court of Appeals yesterday:

■ **Ruled** in lead-based paint litigation that a mother of an impaired boy cannot be ordered to undergo an IQ test whether the impairment in question has a genetic basis.



■ **Held** that the dismissal of a claim of champerty made in the Continental A bankruptcy was improper.

■ **Decided** that in valuing an attorney's license and practice for determining alimony, two methods — reducing maintenance awards to avoid dipping or reducing property awards — is valid, so long as the trial court explains how it derives its figures and avoids double counting.

Court Rules on Valuation

BY JOHN CAHER

ALBANY — Five years after ruling that an income stream can be considered once — and only once — for purposes of spousal maintenance and equitable distribution, the Court of Appeals yesterday provided some guidance on just how to achieve a fair valuation.

The Court used *Grunfeld v. Grunfeld*, 56, to refine its holding in *McSparron v. McSparron*, 87 NY2d 275 (1995), and once again address the murky questions of the valuation of an attorney's license and practice in the context of alimony.

In *McSparron*, the Court held that a professional license is subject to equitable distribution, and provided guidance on the valuation of that license.

It warned judges against the double-counting on which maintenance is premised, but offered no guidance on how trial courts were to be more objective. Consequently, the Court has generally nance awards to avoid double counting while upstate courts have reduced property awards.

Yesterday, the Court addressed either approach is a long as the trial court explains how it derives its figures and thus avoids double-counting. *Grunfeld v. Grunfeld*

◆ **Yesterday's Court of Appeals decisions begin on page 28 and are on NYLJ.com.**

Circuit Questions

News