

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*

Elena Ruth Sassower, Coordinator

BY FAX AND BY MAIL: 212-949-8864

August 3, 2000

New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

ATT: Lee Kiklier, Administrative Assistant

RE: Judicial Misconduct Complaint against Judge Judith Kaye,
Chief Judge of the State of New York

Dear Mr. Kiklier:

This responds to your July 12, 2000 letter inquiring whether CJA's June 30, 2000 letter to Chief Judge Judith Kaye should be deemed a judicial misconduct complaint and, if so, against whom (Exhibit "A").

The answer to those two questions, respectively, are "Yes" and "against Judge Kaye, in her capacity as Chief Judge of the State of New York".

Pursuant to Article VI, §22(a) of the New York State Constitution and Judiciary Law §44.1, the Commission has jurisdiction with respect to the "... performance of official duties of any judge" and may discipline and remove a judge for conduct "prejudicial to the administration of justice"¹. According to 22 NYCRR §7000.9(b)(2), the Commission's evaluation of a judge's conduct is to be guided by:

"the requirement that judges abide by the Code of Judicial Conduct, the rules of the Chief Administrator and the rules of the respective Appellate Divisions governing judicial conduct".

¹ See also 22 NYCRR §§7000.2 and 7000.9(a).

EX-0-1

The basis for this *facially-meritorious* judicial misconduct complaint against Chief Judge Kaye – the highest judge under this Commission’s jurisdiction -- is her wilful refusal to discharge the official duties imposed upon even the lowliest judge under §§100.3C and D of the Chief Administrator’s Rules Governing Judicial Conduct pertaining to administrative and disciplinary responsibilities², as well as her wilful refusal to discharge her supervisory duties as “chief judicial officer” of the Unified Court System (NYS Constitution, Article VI, §28(a); Judiciary Law §210.1).

These administrative, disciplinary, and supervisory duties required Chief Judge Kaye to respond – and without delay -- to CJA’s April 18, 2000 letter to her pertaining to the corruption of the administration of justice. That letter constituted a formal complaint against Michael Colodner, Counsel for the Unified Court System, based on his official misconduct by his March 27, 2000 letter response, on Chief Judge Kaye’s behalf, to CJA’s March 3, 2000 letter to her. It particularized (at pp. 2-3) the ethical rules of professional responsibility obligating Chief Judge Kaye to take steps to discipline, if not remove, Mr. Colodner for the deceitfulness of his March 27th letter. Such letter was shown to be a protective “cover-up”, concealing the Chief Judge’s duty to act upon the relief requested by CJA’s March 3rd letter pursuant to §§100.3C and D of the Chief Administrator’s Rules. Primary among this relief:

- (1) demotion of Administrative Judge Stephen Crane from his administrative position for his unlawful interference with “random

² §100.3: “A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently”

(C) “Administrative responsibilities”

(1) “A judge shall diligently discharge the judge’s administrative responsibilities without bias or prejudice...”

(2) “A judge shall require staff, court officials and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.”

(D) “Disciplinary responsibilities”

(1) “A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) “A judge who received information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.”

selection” rules in the Article 78 proceeding *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc. acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551) to “steer” it to Acting Supreme Court Justice William Wetzel, who he had reason to know and, thereafter was expressly informed, was disqualified by bias and self-interest, as well as steps to secure Administrative Judge Crane’s removal from the bench and criminal prosecution, as likewise, the removal and criminal prosecution of Justice Wetzel, who “protected” the Commission in a fraudulent judicial decision; and

- (2) designation of a Special Inspector General to investigate the Commission’s *readily-verifiable* corruption by its unlawful dismissal, without investigation, of *facially-meritorious* judicial misconduct complaints in violation of Judiciary Law §44.1, as well as by its deliberate subversion of the judicial process through the defense fraud of its attorney, the State Attorney General, to defeat three separate Article 78 proceedings against it – as to which, in each proceeding, it has been the beneficiary of fraudulent judicial decisions, without which it could not have survived.

CJA’s April 18th letter specifically requested (at pp. 11-12) that if Chief Judge Kaye had any doubts as to her duty either to appoint a Special Inspector General to investigate the Commission’s corruption or, alternatively, to secure investigation by referral to the Executive and Legislative Branches, she seek an advisory opinion from the Advisory Committee on Judicial Ethics, pursuant to Part 101 of the Chief Administrator’s Rules. It also requested (at p. 12) that inasmuch as Mr. Colodner’s March 27th letter had ignored the Chief Judge’s “conflicts between private interests and official duties”, which CJA’s March 3rd letter had identified (at pp. 7-8), that the Chief Judge obtain guidance thereon from the Advisory Committee, as well as on Mr. Colodner’s own palpable conflicts of interest, which he had failed to disclose³.

To date, Chief Judge Kaye has *not* responded to CJA’s April 18th letter. Indeed, she has *not* even responded to “when” her response will be forthcoming – *a question posed to her by the very first sentence of CJA’s follow-up June 30th letter.*

³

As to Mr. Colodner’s conflicts of interest, *see* p. 1, fn. 5 of CJA’s April 18th letter.

In view of the emphasis which CJA's March 3rd, April 18th, and June 30th letters gives to the mandatory ethical rules of professional responsibility, there can be no dispute that the Chief Judge's violation of them is knowing and deliberate. Indeed, examination of the April 18th letter makes plain that Chief Judge Kaye cannot respond without conceding her administrative, disciplinary, and supervisory duties – which, in the circumstances particularized by CJA's March 3rd and April 18th letters, are transcendent

According to the preface to the Chief Administrator's Rules Governing Judicial Conduct, appearing in the Commission's Annual Reports, "the text of the rules is intended to govern conduct of judges... and to be binding upon them." However,

"[w]hether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system."

Applying this standard, it is clear that discipline must be imposed – and that discipline must include her removal from the bench. The Chief Administrator's Rules Governing Judicial Conduct apply to the Chief Judge, no less than to other judges. She cannot credibly continue to preside over the Court of Appeals, which adjudges the Commission's recommendations for disciplinary sanctions against lower court judges for misconduct invariably predicated on violations of those Rules – and those Rules alone.

Unless §§100.3C and D are to be entirely stripped of meaning, the fact-specific, legally-supported, evidentiary presentations in CJA's March 3rd and April 18th letters *triggered* the Chief Judge's obligations thereunder under any "reasonable and reasoned application of the text". Certainly, it defies reasonableness that these specific rules would have disciplinary application against other judges if they are not given disciplinary application here, where the knowing and deliberate nature of their violation – and of its injurious consequences to the public and to public confidence – is clear from the evidentiary record.

No judge is capable of causing the magnitude of injury to the public and to public confidence as the Chief Judge. Practically, as well as symbolically, she is New

York's most powerful state judge. Her disregard for the Chief Administrator's Rules Governing Judicial Conduct sends a message to every state judge that they may also disregard them. Indeed, it is hard to imagine any state judge seeing himself bound by §§100.3C and D, where those rules did not bind the Chief Judge in the circumstances at bar. As for the general public, it can only view the Chief Judge's non-response to CJA's April 18th letter as fully justifying its cynicism, distrust, and loss of confidence in the integrity of our courts.

In addition to her pre-eminent position on the Court of Appeals, Article VI, §28(a) of the New York State Constitution vests the Chief Judge with ultimate responsibility over the Unified Court System. Its administrative operations -- as likewise, the justice system it supports -- cannot properly be carried out -- nor be seen to be properly carried out -- when the Chief Judge allows its highest echelons -- its Counsel, Michael Colodner -- to engage in the official misconduct highlighted by CJA's April 18th letter. Nor can they be properly carried out, in actuality or appearance, when the Chief Judge allows an administrative judge to engage in the egregious official misconduct particularized by CJA's March 3rd letter as having been committed by Administrative Judge Crane⁴. That Chief Judge Kaye has not only failed to notify CJA that discipline will be imposed upon Mr. Colodner and Administrative Judge Crane, but has failed to respond, or direct Mr. Colodner to respond, to the explicit request in CJA's April 18th letter (at p. 6) for information as to the applicable procedure for securing Justice Crane's demotion as administrative judge only underscores how intent she is on shielding from accountability those who corrupt the Court's administrative operations.

The fact that the official misconduct of Mr. Colodner and Administrative Judge Crane has perpetuated the Commission's corruption, causing incalculable and irreparable injury of the People of this State, further accentuates the seriousness of Chief Judge Kaye's "transgression" in protecting them from disciplinary sanction.

Of course, the seriousness of the Chief Judge's "transgression" extends beyond her protectionism of Mr. Colodner and Administrative Judge Crane and her readiness to eviscerate any administrative apparatus to discipline administrative functionaries in the Unified Court System. It extends to the pretense in Mr. Colodner's March 27th letter, which she has not renounced, that in the face of *readily-verifiable*

⁴ See p. 5 therein and pp. 6-14 of CJA's referred-to February 23, 2000 letter to Governor Pataki.

proof that the apparatus for imposing judicial discipline embodied by the Commission is corrupt – she has no jurisdiction to undertake an investigation, nor even responsibility, including under §100.3D of the Chief Administrator’s Rules, to take steps to secure an investigation by the jurisdictionally-proper body. CJA’s April 18th letter (at pp. 7-11) puts the lie to this repugnant pretense, which Chief Judge Kaye, by her non-response, continues to perpetuate, without facts or law to do so.

Chief Judge Kaye’s failure to respond to CJA’s subsequent June 30th letter underscores that hers is a “pattern of improper activity”. Indeed, in addition to *not* responding to the first question in the June 30th letter as to when her response to the April 18th letter would be forthcoming, she has *not* responded to the seven additional questions in the June 30th letter (at p. 8). As reflected by the June 30th letter, the purpose of these additional questions was to enable accurate assessment of the extent to which Susan Knipps, the Chief Judge’s Deputy Counsel, who was then poised to become a civil court judge, shared culpability for the Chief Judge’s official misconduct, including in connection with CJA’s March 3rd and April 18th letters. Among this misconduct,

“whether, following receipt of CJA’s March 3rd letter and/or receipt of CJA’s April 18th letter, [she] instructed Ms. Knipps to continue to refer victims of judicial misconduct, who turn to [her] for help, to the Commission on Judicial Conduct.”

CJA’s June 30th letter (at pp. 4, 6, 8) – as likewise CJA’s March 3rd and April 18th letters (at p. 7 and p. 11, respectively) -- had all sharply criticized the propriety of the Chief Judge’s continuing to refer victims of judicial misconduct to the Commission – while, simultaneously, taking no action on the proof of the Commission’s corruption.

The public can have no respect for a Chief Judge who would do this – any more than it can have respect for a Chief Judge who pollutes the court’s administrative operations by retaining persons unworthy of its trust, such as Mr. Colodner and Administrative Judge Crane, and then pollutes its judicial operations with the complicitous Ms. Knipps.

Finally, this *facially-meritorious* judicial misconduct complaint against Chief Judge Kaye should also be deemed to rest on her wilful and deliberate violation of §100.2

of the Chief Administrator's Rules Governing Judicial Conduct⁵. The Chief Judge has obvious personal and professional relationships with Mr. Colodner, Administrative Judge Crane, and Ms. Knipps – and/or with those whose illegitimate, ulterior interests are advanced by their official misconduct in maintaining the Commission as a corrupt façade. These include Court of Appeals Judges Albert Rosenblatt and Carmen Ciparick and Court of Claims Judge Juanita Bing Newton. As was pointed out by CJA's March 3rd letter (at pp. 7-8), each would be exposed by an investigation of the Commission. These multiple conflicts of interest, reiterated in CJA's April 18th and June 30th letters (at p. 12 and p. 6, respectively) would explain the Chief Judge's inaction in either appointing a Special Inspector General to investigate the Commission or pursuing an investigation from the Executive or Legislative branches.

Of course, the Chief Judge has her own self-interest in keeping the Commission a corrupt façade since she herself is subject to the Commission's disciplinary jurisdiction. This, too, was pointed out by CJA's March 3rd letter (at p. 8) and reiterated in its April 18th and June 30th letters (at pp. 3-4 and pp. 5-7, respectively) in the prescient context that a *facially-meritorious* disciplinary complaint could properly be filed against her in the event she failed and refused to discharge her mandatory administrative and disciplinary responsibilities under §§100.3C and 100.3D of the Chief Administrator's Rules, based on the *prima facie* proof of corruption, which CJA had transmitted to her.

Obviously, the Commission has its own self-interest in this *facially-meritorious* complaint against Chief Judge Kaye – not the least reason because the Commission would find itself the subject of a corruption investigation were the Chief Judge to be faithful to the administrative, disciplinary, and supervisory responsibilities with which CJA's April 18th letter confronted her. CJA, therefore, requests that the Commission advise as to what steps it will take to ensure that this complaint is impartially determined – a request also made by CJA's March 3, 2000 *facially-meritorious* judicial complaint against Administrative Judge Crane and Wetzel (at

⁵ §100.2: "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities":

(A) "A judge shall respect and comply with the law and shall act in all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

(B) "A judge shall not allow... social, political, or other relationships to influence the judge's judicial conduct or judgment."

pp. 3-4)⁶. The Commission simply ignored that request when, in violation of Judiciary Law §44.1, it dismissed that complaint, *without* any investigation and *without* any determination that it lacked facial merit.

Yours for a quality judiciary,



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

cc: Immediate Recipients:

- Chief Judge Judith Kaye, Chief Judge of the State of New York
- Chief Administrative Judge Jonathan Lippman
- Michael Colodner, Counsel, Unified Court System
- Sherrill R. Spatz, Special Inspector General for Fiduciary Appointments
- Thomas Thornton, President, Children's Rights Council

Eventual Recipients:

- Governor George Pataki
- New York State Attorney General Eliot Spitzer
- Robert M. Morgenthau, District Attorney, New York County
- Mary Jo White, U.S. Attorney, Southern District of New York
- New York State Ethics Commission
- Loretta E. Lynch, U.S. Attorney, Eastern District of New York
- Association of the Bar of the City of New York

⁶ CJA's March 3rd judicial misconduct complaint and the Commission's March 7th letter of acknowledgment and April 7th letter of dismissal are annexed to CJA's April 18th letter to Chief Judge Kaye as Exhibits "C-1" - "C-3", respectively.

rec'd 7/24/00
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NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

801 SECOND AVENUE
NEW YORK, NEW YORK 10017

212-949-8860 212-949-8864
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EXT 232

ALAN W. FRIEDBERG
SENIOR ATTORNEY
EXT 235

JEAN M. SAVANYU
SENIOR ATTORNEY
EXT 233

July 12, 2000

Ms. Elena R. Sassower
Coordinator
Center for Judicial Accountability
P.O. Box 69
Gedney Station
White Plains, New York 10605

Dear Ms. Sassower:

The Commission is in receipt of a copy of your letter of June 30, 2000 to Chief Judge Kaye and subsequent attachments.

Did you intend these to be a complaint to the Commission? If so, against whom?

Very truly yours,

Lee Kiklier
Administrative Assistant

Ex "A"