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January 20, 2010

New York State Commission on Judicial Nomination
1133 Avenue of the Americas
New York, New York 10036-6710

ATT: Norman W. Kee, Assistant Counsel

RE: Clarification & Follow-Up: Your December 23, 2009 letter

Dear Mr. Kee,

This follows up your December 23, 2009 letter, responding to both my November 24, 2009 and November 27, 2009 letters to the Commission's Counsel and Records Access Officer, Stephen P. Younger.

You state:

"All members of the Commission received copies of all of the comments received, including [CJA's], and all comments were considered by the Commissioners and counsel to the Commission."

You reiterate this in your January 15, 2010 letter:

"...all members of the Commission received copies of all of the comments received, and all comments were considered by the Commissioners and counsel to the Commission."

* Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

Exhibit H

I interpret this as answering the penultimate paragraph of my November 27, 2009 letter, requesting confirmation:

“that each of the Commission’s members was furnished with CJA’s comment – and not just, for example, the Commission’s chair, former New York Court of Appeals Chief Judge Judith Kaye, a ‘constitutional scholar’, as to whose receipt of our comment we specifically request confirmation.” (underlining in the original).

However, unanswered is my broader request in the first paragraph of that letter for:

“information as to the procedures employed by the Commission on Judicial Nomination in reviewing comments received by it to its first draft of its proposed revised rules – and, pursuant to F.O.I.L. and the Commission’s Part 7101 (‘Rules for Public Access to Records’), any documents reflecting those procedures and compliance therewith.”

Thus, I do not know from your December 23, 2009 letter whether, when “all members of the Commission” “considered” “all comments”, they did so at a meeting at which a quorum was physically present or present by phone or other technology, whether discussion was automatically had by the Commissioners and counsel as to every objection and recommendation of each comment – or whether one or more Commissioners had to request discussion of specific comment, objections, and/or recommendations. If so, how many Commissioners had to so-request – or was it left to counsel (meaning only Mr. Younger or also the Commission’s deputy, assistant, and special counsel) and/or Chairwoman Kaye to place specific comment, objections, and/or recommendations on the agenda for discussion? How many Commissions were then required to agree to the discussed objections and/or recommendations in order for them to be reflected in the Commission’s post-comment proposed rule revisions? Assuming a vote was taken, was it open or confidential? Where are the Commission’s written procedures governing its rule revision process, including as relates to conflicts of interest of its chair, counsel, and members – or does it have none?

As for your response to my November 24, 2009 letter by your statement: “At this time, there are no plans to post the comment on our website”, what procedures, if any, did the Commission employ in rejecting my letter’s request that:

“the Commission post, on its website, all written comments received by the Commission to its first draft of proposed revised rules. This includes, most importantly, the written comments the Commission did not ‘carefully consider[]’ and/or ‘incorporate’ in its second draft.” (underlining in the original).

According to the Commission's proposed Rule 7100.11: "The website will be maintained by commission staff at the direction of the chairperson." Is this already the procedure? – and was it Chairwoman Kaye alone who rejected my request that the Commission's website post all comments received by the Commission to its proposed rule revisions? If so, what review is available by Commission members? – as none is set forth by 7100.11.

Inasmuch as comment to the Commission's post-comment proposed rule revisions is due on January 22, 2010 – and the foregoing is an integral part thereof – I would appreciate your response as expeditiously as possible.

Thank you.

Yours for a quality judiciary,



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

cc: Stephen P. Younger, Counsel & Records Access Officer
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