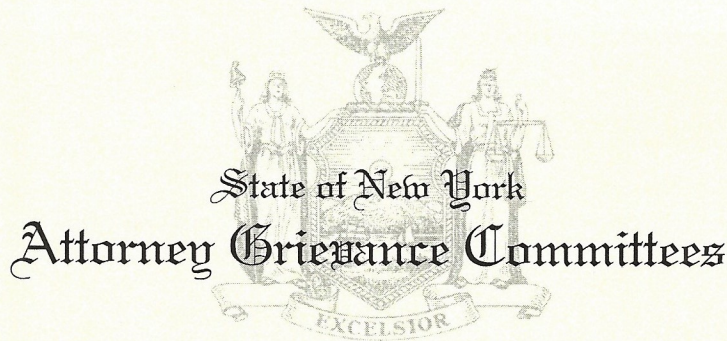


SEVENTH JUDICIAL DISTRICT  
ROCHESTER

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CHAIRPERSON  
STEVEN V. MODICA



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KELLY A. PAGE

January 11, 2022

**CONFIDENTIAL**

Elena Ruth Sassower  
Center for Judicial Accountability, Inc.  
P.O. Box 8101  
White Plains, NY 10602

Re: Complaints of Elena Ruth Sassower, Dated Nov 9, 2021,  
and April 3, 2021

Dear Ms. Sassower:

By decision and order dated December 16, 2021, the Appellate Division, Second Department transferred the above referenced complaints to the Attorney Grievance Committee of the Appellate Division, Fourth Department.

As Chief Counsel for the Appellate Division, Fourth Department's Attorney Grievance Committee, I have reviewed the materials submitted to this office regarding the above matters, and am writing to advise you of my determination to close these matters.

The above complaints arise from a larger, ongoing series of complaints and challenges you have made from your dispute with the Commission on Judicial Compensation and the Commission on Legislative, Judicial, and Executive Compensation over approval of pay-raises for various members of State government. You have filed multiple complaints against numerous attorneys with various Appellate Division Grievance Committees, which have either been denied or transferred to the proper Appellate Division having jurisdiction over the complained of attorney based on their registration and address. You have similarly filed complaints with the Commission on Judicial Conduct against numerous judges for their performance of their duties in presiding over litigation that you have filed in your challenges. And you have sought appellate review of the trial court's adverse determination to the Appellate Division and the Court of Appeals, and have been denied at every level.



Elena Ruth Sassower

January 11, 2022

Page 2

The above referenced complaint of November 9, 2021, was filed against Chief Counsel Catherine Sheridan, of the Tenth District, Second Department's Attorney Grievance Committee, and Chairperson of that Committee, Mr. Dorian Glover. You alleged that Ms. Sheridan had a "conflict of interest"; Mr. Glover's letter denying reconsideration was "unauthorized", and should be "recalled"; you sought "full reconsideration by the entire Committee" of Ms. Merker's September 15, 2021, letter denying your complaint against Assistant Attorney General Helena Lynch; and investigation of your February 11, 2021, complaint against Assistant A.G. Lynch.

Included was your objection to the treatment of your letter to Ms. Sheridan as a "request for reconsideration", asserting that you were instead seeking an explanation from Ms. Sheridan as to Ms. Merker's authority to send her September 15, 2021, letter on behalf of Ms. Sheridan. You indicated that you had sought "reconsideration" of the Third Department's letter transferring your complaint to the proper Department, and you were "considering" seeking reconsideration of the Second Department's letter from Ms. Merker, but were not explicitly asking for that relief. Nevertheless, Chairperson Glover wrote to you on October 18, 2021, advising you of his determination.

By letter of October 18, 2021, Ms. Sheridan answered your request for an explanation, and stated that she had reviewed and approved the letter by Ms. Merker. It appears clear from your own submissions and reference to the applicable rule that you were fully aware that you had a 30 day time limit in which to seek reconsideration of Chief Counsel Sheridan's declination, which by then had passed. You elected not to do so.

Your "complaint" of April 3, 2021, was responded to by Ms. Merker's letter of September 15, 2021, which denied your complaint pursuant to the authority of 22 NYCRR 1240.7 (d)(1). Your further response to that denial in your letter of September 24, 2021, to Chief Counsel Sheridan disputed whether you had filed a "complaint" dated April 8, 2021, stating on page two "...Indeed, that the so-called "complaint dated April 8, 2021" is NOT itself a complaint is obvious, *on its face*."

This was despite the reference thereafter to the "April 3, 2021 Complaint Form for the February 2021 Complaint against ASSISTANT ATTORNEY GENERAL HELENA LYNCH". You also went on to reference "The top of the third page bears the title:

**"Details of the February 11, 2021 Complaint against Assitant Attorney General Helena Lynch"**. (Emphasis added.)

Assuming *arguendo* that your April 8, 2021, submission was not a complaint, your subsequent objections to Ms. Merker's letter, and Chairperson Glover's letter would be without merit, and would therefore be considered matters for which you were simply seeking an explanation from Ms. Sheridan. Your concerns with that process were answered by Ms. Sheridan's letter of October 18, 2021. Whether you made a request for reconsideration, there are no grounds upon which to object to the letters of Ms. Merker or Mr. Glover by your assertion that you did not make a complaint. Their letters were simply the required announcement of the declination to investigate, and a letter confirming that determination by the Chairperson. If either or both misconstrued your letter as a complaint to which they responded, that does not affect the validity or authority of either person to announce their determination. The former was required pursuant to 1240.7(d)(1). The latter was a



Elena Ruth Sassower  
January 11, 2022  
Page 3

proper determination in the discretion of the Chairperson pursuant to 1240.7(e)(3), even if not triggered by a timely request for reconsideration. If you didn't request reconsideration, there are no grounds upon which to object to his determination and letter, and no basis for it to be "recalled."

You argued in your September 24, 2021, response letter that you were NOT seeking reconsideration of Chief Counsel Sheridan's decision on September 15, 2021, as provided by Ms. Merker's letter of that date. However, the decision to not investigate began the 30 day period in which to file a request for reconsideration pursuant to 1240.7(e)(3). The 30 day period for seeking reconsideration is not triggered by your request for reconsideration, nor tolled by your not requesting that relief. It began from the date of Ms. Merker's letter, advising you the matter was being closed, and which Ms. Sheridan confirmed in her October 18, 2021, letter to you confirming that she had reviewed and approved of the Merker letter. There is nothing inherently improper or unauthorized where Ms. Merker, as a Principal Court Attorney, wrote on behalf of that office and Ms. Sheridan.

Despite having avowed that you were NOT making a request for reconsideration of the Merker letter in the attachments to your November 9, 2021 complaint, ( see your letter of September 24, 2021, at page 2), you also did make a request for reconsideration on page seven of your November 9, 2021, submission. You requested Vice-Chair Pascarella and the full Committee "exercise his discretion to refer the reconsideration request "to the full Committee."

Such request was untimely, and contrary to your other pronouncements that you were not seeking reconsideration, while also having acknowledged your full familiarity with such procedure in seeking reconsideration of the Third Department's decision, yet specifically declaring you were NOT seeking reconsideration from Ms. Sheridan, but rather, her "explanation".

Further, there is no provision for creation of the remedy you propose after the Chairperson already acted by his letter of October 18, 2021. You are effectively seeking to disregard an adverse decision, trying to create a remedy not allowed or referred to by the rule itself, and ignoring the clearly expired time limits with which you are fully familiar.

A review of the applicable rule does not authorize such further review by the Vice-Chair, after having been decided already by Chairperson Glover's letter of October 18, 2021, denying reconsideration of your April submission.

If your letter of April 3, 2021, was NOT a complaint, then reconsideration of the decision declining to investigate and the Chairperson's determination is not available since your submission was NOT a complaint. Also, if you didn't ask for reconsideration originally within 30 days of Ms. Merker's letter of September 15, 2021, while fully cognizant of the 30 day requirement to make such an appeal, you waived your right to seek that relief. Further, to later attempt to characterize the April 2021 submission as a complaint and seek reconsideration by the Vice-Chair and full Committee, after strenuously objecting to that same characterization previously, is disingenuous and untenable.



Elena Ruth Sassower  
January 11, 2022  
Page 4

It appears that you have exhausted all remedies available through litigation, appeals, and through the grievance process. It is well settled that the *administrative* review of a decision to dismiss a complaint is authorized by 22 NYCRR 1240.7 (d)(3). That occurred here. The rules do not authorize any *judicial* review however. For example, an Article 78 proceeding does not lie to challenge a decision to decline to investigate a complaint against an attorney. See Matter of Taylor, 73 AD3d, 937,938 (2d Department, 2010.) Only the Appellate Division of Supreme Court has jurisdiction over attorney disciplinary matters ( see Judiciary Law Section 90.)

Further, complainants lack standing to compel authorities to investigate misconduct to bring charges against other individuals. See Matter of Izzo v. Department of Health, 134 AD3d 1514, (4<sup>th</sup> Dept. 2015); Matter of Davis v. New York State Dept. Of Educ., 96 AD3d 1261,1262(3d Dept. 2012); Sassower v Commission on Judicial Conduct of State of New York, 289 AD2d 110 (1<sup>st</sup> Dept. 2001.)

The remedy is limited to that prescribed by the rule at 22 NYCRR 1240.7(e)(3). Given the positions you asserted regarding the complaints you have submitted, the decisions of the Second Department's Chief Counsel and Chairperson as to your submissions of April and November 2021 is hereby affirmed. This matter will be closed pursuant to 22 NYCRR 1240.7(d)(1) for the reasons set forth herein.

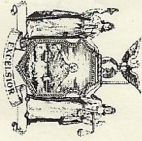
Very truly yours,



Gregory J. Huether  
Chief Counsel

GJH/kr

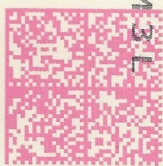




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