

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10605

By Certified Mail, RRR: P-021-850-184

September 18, 1996

President Timothy Burke
Association of Professional Responsibility Lawyers
Fennemore Craig
2 N. Central Avenue, Suite 2200
Phoenix, Arizona 85004-2390

RE: Your Professional and Ethical Responsibility

Dear President Burke:

I am writing you about serious and shocking conduct on the part of your presidential predecessors. For your convenience and that of the other APRL officers to whom I am sending this letter (their names and addresses appearing on the APRL letterhead), I annex the August 7, 1996 letter of APRL's immediate past president Ellen Pansky (Exhibit "A"), as well as our February 8, 1996 memorandum (Exhibit "B")--to which Ms. Pansky purports to respond.

Ms. Pansky's letter states that she met with me "on August 3, 1996...just prior to the board meeting of the Association of Professional Responsibility Lawyers at the Grosvenor Hotel"¹ and that the issues raised in our memorandum were discussed with APRL Board members "on that date".

According to Ms. Pansky's letter:

"The APRL Board considered your request for assistance in connection with the situation described in your February 8, 1996 memo and its attachments. Having reviewed our Bylaws, we find that (as a non-profit corporation duly authorized pursuant to Articles of Incorporation and Bylaws governing our activities), we have no authority to provide assistance to you and the Center for Judicial Accountability, Inc. Our Bylaws do not permit APRL to file amicus briefs, to represent individual interests, or to advocate on behalf of other organizations. Thus, we must respectfully decline your request for assistance."

We believe the foregoing paragraph misrepresents APRL's Articles of Incorporation and Bylaws and respectfully request to see a copy of both documents. Indeed, it is plain from documents contained in APRL's August 1993 notebook volume that APRL's Bylaws do not bar filing of amicus briefs. These documents include: (1) the minutes from APRL's February 5, 1993 meeting, noting the appointment of a chairman of APRL's "Amicus Brief Committee" and his

¹ In fact, it was August 1st that I met Ms. Pansky at the Grosvenor Hotel.

agreement to draft an amicus brief for a particular case; and (2) a page identified as a draft of APRL's "Guidelines for Amicus Curiae Participation". Copies of those documents are annexed hereto as Exhibit "C", together with APRL's "Table of Contents" to its August 1993 notebook volume.

Moreover, on September 13, 1996, in an effort to verify the status of the draft "Guidelines for Amicus Curiae Participation", I spoke with Sarah McShea, indicated by APRL's letterhead as its secretary. Ms. McShea informed me that she is now APRL's President-Elect and further identified herself as chairing APRL's amicus committee. Ms. McShea was unfamiliar with the aforesaid 1993 draft Guidelines and simply told me that requests for amicus participation should be in writing, submitted to her.

From my conversation with Ms. McShea, it was evident that she knew nothing about any amicus request from us. Unfortunately, she became snide and hostile in response to my further inquiries, particularly, when I disclosed to her the pertinent portion of Ms. Pansky's letter "Our Bylaws do not permit APRL to file amicus briefs".

In addition to misrepresenting the Articles of Incorporation and By-Laws--as well as their supposed review by APRL's Board--the above-quoted paragraph from Ms. Pansky's letter also distorts and misrepresents what our memorandum requested. Since Ms. Pansky returned the memorandum to us in the same *uncreased* condition in which we had provided it to her, it may well be that neither Ms. Pansky nor the Board ever read the memorandum (Exhibit "B").

Conspicuously, Ms. Pansky's letter fails to identify a single issue raised by our memorandum. These included the unconstitutionality of New York's attorney disciplinary law, so-found more than twenty years ago in the dissenting opinion of Judge Jack Weinstein in *Mildner v. Gulotta*, 405 F.Supp. 182 (1975); the retaliatory suspension of my mother's law license for challenging political manipulation of judicial elections in New York state, highlighted in our ad published on the Op-Ed page of the October 24, 1994 *New York Times*², and the dereliction and complicity of leaders of the professional and ethical responsibility community--who, not denying or disputing that the law is unconstitutional and that it has been employed to retaliate against my mother--have nonetheless failed and refused to take any corrective action. Among these leaders is Seth Rosner, one of APRL's founders and its president prior to Ms. Pansky, whose ignominious behavior is detailed in the first and second pages of the memorandum (Exhibit "B").

I have reason to believe that Mr. Rosner was at APRL's August 1st Board meeting--albeit arriving late--and that he played a significant role in misleading Ms. Pansky about the issues and discouraging her and APRL Board members from themselves reviewing the February 3, 1996 memorandum--or the cert petition to the U.S. Supreme Court, which we transmitted to Mr. Rosner under our August 14, 1995 coverletter to him. As set forth on the first page of our memorandum (Exhibit "B"),

² The ad was an insert to CJA's brochure, copies of which I left for APRL's Board members on August 1st. Yet another copy is enclosed.

Mr. Rosner did not respond to our August 14, 1995 letter³. Nor has he responded to date--more than a year later. Indeed, on August 1, 1996, as I was waiting for the APRL meeting at the Grosvenor Hotel to begin, Mr. Rosner entered the meeting room. He refused to answer my question as to when we could expect his response to our that letter. After flinging upon me personal aspersions--which he refused to elaborate upon--he fled the room.

Contrary to Ms. Pansky's letter (Exhibit "A"), our February 8, 1996 memorandum did not seek assistance on behalf of "individual interests" or advocacy on behalf of "other organizations". The foremost issue presented by our memorandum--which I *expressly* discussed with Ms. Pansky shortly before the Board meeting began--was the necessity of developing protective structures to enable lawyers to meet their ethical and professional duty of reporting judicial misconduct, without fear of retaliation.

I direct your attention to page 2 of our memorandum (Exhibit "B"), which--continuing to page 3--reads as follows:

"On the subject of judicial retaliation--and the obligations of the bar--I wish to draw your attention to the 1993 Report of the National Commission on Judicial Discipline and Removal, pertinent pages of which are annexed hereto as Exhibit 'C' (pp. 70-72, 100-102). That Report recognized as 'widespread' the reluctance of lawyers--including government lawyers--to even file complaints against judges because of 'fear(s) of adverse consequences' (at p. 100). Its solution was:

'the birth and nourishment of a culture in which the bar stands together...in defending lawyers against retaliation by vindictive judges.' (Exhibit 'C': p. 101)

Therefore, by this letter, the Center for Judicial Accountability specifically calls upon your ABA committees and the ABA Center for Professional Responsibility to develop such 'culture', as well as implementing structures, for 'defending lawyers against retaliation by vindictive judges'. Otherwise, the ethical and professional duty of lawyers under EC 8-6 of the ABA's Model Code of Professional Responsibility ('protest earnestly against the appointment or election of those who are unsuited for the bench...') and Rule 8.3(b) of the ABA's Model Rules of Professional Conduct ('inform the appropriate authority') will continue to be--as they presently are---'just words'."

³ Our August 14, 1995 letter to Mr. Rosner is Exhibit "B" to our February 8, 1996 memorandum (Exhibit "B" herein).

The foregoing is certainly not some "individual" matter--but one pivotal to the ability of the legal community to protect clients and society at large from unfit judges. As pointed out by our memorandum (Exhibit "B", p. 3), grappling with such transcendent and relevant issues requires the context of *real-life* situations, not theoretical abstractions.

The *real-life* facts presented by my mother's case demonstrates that the bar turns its back on lawyers who meet their professional and ethical duty to take action against unfit judicial candidates and judges. Whereas, *theoretically*, one would expect lawyers specializing in professional and ethical responsibility and attorney discipline to be the obvious "first line of defense" in protecting courageous whistle-blowing lawyers from judicial retaliation, the February 8, 1996 memorandum--and its attached documentation--shows the diametric opposite: such lawyers refuse to become involved *on any level at all*.

This despicable state of affairs, underscoring the critical need that appropriate protective mechanisms be developed, is **not** addressed by Ms. Pansky's letter. Rather, her letter exemplifies that **judicial whistle-blowers have no place to go for help**. Indeed, Ms. Pansky's letter not only falsely claims that APRL has "no authority" to assist us (Exhibit "A", p. 2), it does not even come forth with a single suggestion as to where assistance might be found.

Interestingly, the *sole* response we received to our February 8, 1996 memorandum was from Jeanne Gray, Director of the ABA Center for Professional Responsibility. Her February 14, 1996 letter stated (Exhibit "D"):

"As discussed with you at the ABA Midyear Meeting in Baltimore, I will contact on your behalf the Association of Professional Responsibility Lawyers (APRL) and its president, Ellen Pansky, to determine if this organization is able to provide assistance to you with regard to the matter of *Sassower v. Mangano, et al.* Either Ms. Pansky or I will be in further contact with you."

Our February 8, 1996 memorandum (Exhibit "B", pp. 4-5) provides the background to Ms. Gray's statement to me in Baltimore that she would contact APRL on our behalf. However, from my August 1st conversation with Ms. Pansky, it was apparent that Ms. Gray had **not** done so.

Instead, what Ms. Gray did--to avoid a repeat of the embarrassment to her and the Chairs of the constituent committees of the ABA Center for Professional Responsibility, occasioned by my appearance at the Baltimore Midyear meeting (Exhibit "B", pp. 1, 4-5), was to *pre-arrange* with hotel security at the Grosvenor Hotel--several days *before* the scheduled Orlando Annual Meeting--that they be on the "alert" for myself and my mother in the event we should arrive there. Consequently, shortly after I arrived at the Grosvenor Hotel on August 1st for the scheduled 1:00 p.m. APRL meeting--and I took a taxi so as not to be late--the Director of the Grosvenor's hotel security entered the empty meeting room in which I was quietly sitting, completely alone. He

introduced himself as Anthony Diez, gave me his card, and apologetically informed me of the instructions he had received from two individuals from the Center, coordinating the events. He told me that they had specifically identified my mother and myself as persons they wished to have removed as "trespassers" should we appear. It was while Mr. Diez and I were speaking together--which was a lengthy period of time (APRL's meeting having been rescheduled for a later hour)--that Mr. Rosner popped in--and then left.

Mr. Diez thereafter departed, after he saw that I was a well-mannered, perfectly reasonable individual, who was a registered ABA participant besides. Subsequently, two or three other APRL Board members arrived and then Ms. Pansky--with whom I spoke out in the corridor. The focus of our brief discussion was lawyers' fears of retaliation for reporting judicial misconduct, recognized by the National Commission on Judicial Discipline and Removal's Report and realized by my mother's case. Indeed, I pointed out that I believed this matter would be of particular relevance to APRL, in view of its scheduled program in Orlando on the subject of lawyers and First Amendment rights.

Unfortunately, Ms. Pansky did not extend an invitation to me to join that program. Instead, she told me--after inquiring whether I was a lawyer--that it was open only to lawyers. I left after Ms. Pansky stated that APRL was a separate organization from the ABA and its Board of Directors meeting closed.

By way of post-script, I would add that I thereafter went to find Ms. Gray to speak with her about her failure to follow-up with Ms. Pansky, pursuant to her February 14, 1996 letter (Exhibit "D"). I assumed that Ms. Gray might be at a concurrent meeting sponsored by the Center for Professional Responsibility. However, as I stood in the open doorway, I did not see her. Mr. Trombadore, Chairman of the ABA's Committee on Professional Discipline, was there, as was Mr. Rosner, who shortly thereafter left--I believe for the APRL meeting. As I quietly listened from the doorway to a discussion about lawyer discipline in Scotland, Mary Devlin, the Center's "Regulation Counsel", got up from her seat in the room and went out the door, passed me. I asked her if she knew where Jeanne Gray was, but Ms. Devlin would not respond. Some minutes later, Mr. Diez and another security guard arrived, having been called by Ms. Devlin to remove me. I told them that I hadn't done anything to warrant removal, that I hadn't uttered a word to disturb the meeting, and that no one had told me to leave or indicated that the meeting was private. I stated that I was perfectly willing to leave voluntarily, but--before that--I wished to make known to the members present at the meeting the despicable fashion in which I was being ejected--for absolutely no reason and without even the courtesy of a prior request by them for me to leave. I then entered the meeting room and made such statement--to which neither Mr. Trombadore nor anyone else responded.

Since this letter is being sent to Ms. Gray, to the Chairs of the constituent ABA professional discipline and ethical responsibility committees, as well as to ABA President N. Lee Cooper--it is worth quoting from the ABA's Insider's Guide: Everything You Always Wanted to Know About the ABA Annual Meeting (Exhibit "E"):

"The ABA has an **open meetings policy** and only occasionally does a Section Executive Council or other body choose to meet in executive or private session. Section Committee meetings are generally small and informal, so if you'd like to sit in on a meeting to learn what it means to be an active ABA member, introduce yourself and take a seat." (Emphasis in the original).

As APRL's new president, we hope that you will show the "professional responsibility" and leadership that has been demonstrably lacking in your two immediate predecessors, as well as the ABA's so-called "Center for Professional Responsibility".

The penultimate paragraph to our February 8, 1996 memorandum *expressly* left it to the ABA community of ethics and professional responsibility lawyers to devise the appropriate course of action, calling upon it:

"to examine and evaluate what steps it should take in the face of the clear and convincing evidence we have presented that New York's attorney disciplinary law is unconstitutional and that it is being used to retaliate against judicial whistleblowers, such as my mother." (Exhibit "B", p. 5)

We include APRL, an ABA affiliated organization, in that request--and, for that purpose, enclose a copy of the cert petition we transmitted to Mr. Rosner over a year ago. This is additional to our request that APRL assist in developing mechanisms to protect judicial whistle-blowing lawyers (Exhibit "B", p. 3).

We ask that you and the indicated ABA recipients to this letter respond expeditiously. Time is of the essence. We must perfect an appeal to the U.S. Court of Appeals for the Second Circuit from the wholly improper dismissal of our §1983 federal challenge to New York's attorney disciplinary law and the retaliatory, due process-less suspension of my mother's law license.

Yours for a quality judiciary,



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

Enclosures

cc: See next page

- cc: Ellen Pansky, APRL Immediate Past President
 Seth Rosner, APRL Past President
 Chairman, ABA Committee on Lawyer Competence
 Sarah McShea, APRL President-Elect
 William Wernz, APRL Treasurer
 Anthony E. Davis, APRL Director
 Diane L. Karpman, APRL Director
 Michael J. Flaherty, APRL Director
 David Ross Rosenfeld, APRL Director
 Anthony Diez, Director of Security, Grosvenor Hotel
 Jeanne Gray, Director, ABA Center for Professional Responsibility
 Raymond Trombadore, Chairman, ABA Committee for Professional Discipline
 Margaret Love, Chairwoman, ABA Committee on Ethics and Professional Responsibility
 Edward Waller, Chairman, ABA Committee on Professionalism
 N. Lee Cooper, President, American Bar Association
 Herbert Sledd, Chairman, Fellows of the American Bar Foundation

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