

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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May 23, 1996

Assembly Judiciary Committee
L.O.B. Room 831
Empire State Plaza
New York, New York 12248

ATT: Anthony Profaci, Associate Counsel

RE: New York State Commission on Judicial Conduct

Dear Anthony:

We thank you and Ember Brillhart for meeting with us on May 7th when we were up in Albany in connection with Senate Bill #7484. Although the Center supports the Bill, which will open to the public the hearings of the Commission on Judicial Conduct after it brings a formal complaint against a judge, the fact is the Bill cannot fulfill its noble purpose.

That purpose is expressed in the Introducer's Memorandum in Support as follows: to "give the public greater knowledge about the workings of the system, and ...instill greater public confidence in the process of disciplining judges".

The "workings of the system" and the "process of disciplining judges", however, do not begin at the point when hearings are held and a formal complaint is brought against a Judge. Indeed, only 1% of the more than 1400 complaints filed last year with the Commission ever reached that stage.

The process starts when complaints are filed with the Commission. And, as far as the public is concerned, that's also where the process ends and the system breaks down. This is because the standard response from the Commission when a complaint is filed is a form letter acknowledgment of receipt, followed by a form letter announcement of dismissal--without investigation. The dismissal letters give no reasons or else make boiler-plate statements that are demonstrably untrue when compared to the complaint or distort and otherwise misrepresent the disciplinary jurisdiction of the Commission. By the Commission's own statistics, 85% of the complaints it receives are dismissed without investigation.

Thus, the current Bill cannot "instill public confidence in the process of disciplining judges" because it does nothing to address the initial stage at which the Commission is dumping the overwhelming majority of complaints. It only opens a stage of the disciplinary proceedings to which an infinitesimally small number of complainants ever get and as to which there are few, if any, allegations of cover-up. Indeed, by the disciplinary hearing stage--which the amendment seeks to make public--it is in the interest of the Commission's Administrator, who has signed the formal complaint, not to cover-up the wrongdoing of the accused judge, but, rather, to make as strong a case as he can, so as to justify having brought the formal complaint.

Obviously, it is the 85% of complainants, whose complaints of judicial misconduct are dismissed without investigation, whose "confidence in the process of disciplining judges" is most shaken. And their confidence is shaken even more when they write to the Commission after they receive the letters dismissing their complaints. These citizens want to know why their complaints were dismissed. Frequently, they point out the inapplicability of the vague grounds for dismissal stated in the Commission's form letters. Sometimes, they ask--because they can scarcely believe it possible--whether the Commissioners themselves actually reviewed their complaints, whether they were discussed and voted on at a formal meeting, and how many Commissioners voted. In other words, because the end result is so inexplicable to them, the complainants want confirmation that the Commission adhered to proper procedures.

And how does the Commission respond to these citizens' reasonable informational requests? The Commission either ignores them entirely or tells them that the information they seek is confidential under Judiciary Law §45.

Senate Bill #7484 does nothing to address what these citizens know about the Commission from their direct, first-hand personal experience: that it is dumping legitimate complaints against judges and that its treatment of complainants is dishonest, arrogant, and unaccountable.

Such experiences are also known to the general public. For years and years, it has read stories in the newspapers about how the Commission has dismissed, without investigation, complaints of abusive and tyrannical behavior by judges and, further, how the focus of the Commission's limited disciplinary prosecutions has been directed to lower court, non-lawyer judges.

Until now, the Legislature has not had unequivocal, hard-evidence presented to it of the Commission's dysfunction and protectionism--and not in a fashion that would lend itself to the Legislature understanding the extent of the problem. Thus, although legislators and this Committee have received a steady stream of complaining letters from citizens, reporting their experiences with the Commission, the Legislature has not had the benefit of a wider and cohesive presentation of evidence. This is because the confidentiality of Judiciary Law §45 does not provide any mechanism by which the Legislature--or any designated body--can have access to the complaints filed with the Commission and effect oversight. As a result, the Legislature, in holding two prior hearings on the Commission--in 1981 and 1987--was forced to rely on the Commission's self-serving, self-reporting about the complaints it has received.

Then, too, the Commission's self-promulgated rules, 22 NYCRR §7000 et seq., have never been carefully examined so as to verify that they were not "inconsistent" with the constitutional and statutory provisions creating the Commission--both of which expressly prohibit inconsistency (Article VI, §22(c); Judiciary Law §42.5).

The Center has changed that. We have provided the Assembly Judiciary Committee, as well as the Senate Judiciary Committee and the Governor, with clear, unambiguous evidence documenting that the Commission on Judicial Conduct is not just dysfunctional, but corrupt--and, further, that it has corrupted the judicial process.

Such evidence, consisting of the litigation file in our ground-breaking Article 78 lawsuit against the Commission on Judicial Conduct shows:

(a) that the Commission has unlawfully converted its statutory duty under Judiciary Law §44.1 to investigate facially-meritorious complaints into a discretionary option, unbounded by any standard (22 NYCRR §7000.3);

(b) that the Commission has been dumping complaints which are not only facially-meritorious, but fully documented, and has protected from disciplinary investigation high-ranking, politically-connected judges who are the subject of such complaints to it; and

(c) that the Commission is the beneficiary of a legally insupportable, factually fabricated decision of the Supreme Court, dismissing our Article 78 challenge--which it otherwise could not have survived.

As you know, the purpose of our May 7th meeting was to summarize and bring closure to the voluminous correspondence about our Article 78 lawsuit that the Assembly Judiciary Committee has been receiving from us over the past many, many months.

That correspondence shows that the Commission on Judicial Conduct has refused to voluntarily address the documented proof, presented by the Article 78 file, that 22 NYCRR §7000.3 is unconstitutional, as written and as applied, and that the dismissal decision in its favor is a fraud. Such proof was specifically identified in our December 15, 1995 letter to the Assembly Judiciary Committee--at pages 1-3.

Likewise, our correspondence shows that state agencies and officials charged with oversight over the Commission--among them, the New York State Attorney General, the New York State Ethics Commission, and the Manhattan District Attorney--have also refused to address that proof, which each of them have.

Further, our correspondence shows that bar and court reform organizations--which are otherwise only too pleased to offer the Legislature the benefit of their expertise--have refused to state their view as to the constitutionality of §7000.3, as written and as applied, and as to our contention that the Supreme Court dismissal of our Article 78 challenge is legally insupportable and factually fabricated. These include the Fund for Modern Courts, instrumental in the creation of the Commission and, in 1987 and 1991, issuing two reports about the Commission--each of which failed to analyze the Commission's self-promulgated rules or examine complaints the Commission had dismissed, as well as the Association of the Bar of the City of New York, which issues a pamphlet to the public advising it that the Commission is the proper venue for complaints against judges and which has just issued an unsolicited May 10, 1996 statement in connection with the confidentiality issues presented by Senate Bill #7484. Also refusing to comment are the bar associations involved in the formation of the Committee for an Independent Judiciary, among them, the New York County Lawyers' Association and the New York State Bar Association¹.

We were gratified by your statement during our May 7th meeting that the Assembly Judiciary Committee will now require the Commission on Judicial Conduct, as well as the relevant state agencies and officials, to respond to the serious issues raised by our Article 78 litigation and correspondence and that it will also be soliciting the views of bar associations and the Fund for Modern Courts. We trust that the Assembly Judiciary Committee

¹ See our March 18, 1996 and April 12, 1996 letters to City Bar President Barbara Robinson.

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will do so expeditiously--in view of the relevance of our Article 78 challenge to discussion in the Assembly of Senate Bill #7484.

In addition to our Press Release, which we gave you at the time of our May 7th meeting, our Memo on Senate Bill #7484, which you requested, is enclosed.

Yours for a quality judiciary,



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

Enclosures

cc: New York State Commission on Judicial Conduct
Gerald Stern, Administrator
New York State Attorney General
New York State Ethics Commission
District Attorney, New York County
Association of Bar of the City of New York
President-Elect Michael Cardozo
New York State Bar Association
Maxwell Pfeifer, President
New York County Lawyers' Association
Klaus Eppler, President
Fund for Modern Courts
Gary Brown, Executive Director
Ronald Russo, Esq.
Attorney for Judge Lorin Duckman