

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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E-Mail: [probono@delphi.com](mailto:probono@delphi.com)

Box 69, Gedney Station  
White Plains, New York 10605

By Certified Mail/RRR: P-801-449-993

April 18, 1996

David Gruenberg, Counsel  
Senate Judiciary Committee  
Senator James J. Lack, Chairman  
Room 413, The Capitol  
Albany, New York 12247

RE: Opposition to Senate Confirmation of Judge Newton  
Member, New York State Commission on Judicial Conduct

Dear Mr. Gruenberg:

This confirms our telephone conversation yesterday in which I notified you of the Center's intention to oppose Senate confirmation of Juanita Bing Newton--should Governor Pataki reappoint her to the Court of Claims. As hereinafter set forth, the basis for our opposition is Judge Bing's self-serving betrayal of the public trust in her capacity as a judicial member of the New York State Commission on Judicial Conduct.

Although last week's New York Law Journal reported that Ms. Newton was being interviewed by Governor Pataki's temporary judicial screening commission (Exhibit "A"), we have been unable to reach the Governor's temporary judicial screening commission directly. This is because the Governor's office has refused to provide us with any information as to how to do so.

Indeed, it is now four months that we have been endeavoring, without success, to obtain the names of the members of the temporary judicial screening commission from the Governor's office. The Governor's office has not only refused to provide us with such basic information--as may be seen from the enclosed repeatedly faxed letter request (Exhibits "B-1", "B-2")--it varyingly pretends that it has no liaison to the temporary judicial screening commission who can provide us with procedural information as to how the Governor's temporary judicial screening commission operates.

Between the non-information and misinformation we have received from the Governor's office over the past many months, it would seem that the Governor wants to make it as difficult as possible for the public to contribute anything to his behind-closed-doors selection of judges. Such private conduct of government business is consistent with what was reported by Andrea Bernstein in her piece "Pataki's Secrets" that appeared on the Op-Ed page of the March 23, 1996 New York Times (Exhibit "C").

20 "A"

You told me you also had no information about the membership and rules and procedures of the Governor's temporary judicial screening commission. Nor could you explain why Governor Pataki, now in his second year in office, has not yet established a permanent judicial screening commission.

We believe it is absolutely essential that the public--as well as the Senate Judiciary Committee--have such information. Therefore, we are sending a copy of this letter to Michael Finnegan, the Governor's counsel, so that he can enlighten both you and us on the subject.

You did tell me that the Governor has made no judicial nominations since last June. We would greatly appreciate your written confirmation of that fact, as well as information as to:

- (1) how many judicial nominations were made by the Governor up until that time;
- (2) their names;
- (3) the dates on which they were nominated;
- (4) the dates on which the nominees were confirmed by the Senate Judiciary Committee and full Senate.

Although you assured me that you would contact us immediately should Governor Pataki reappoint Judge Newton to the Court of Claims, we would like to provide you with a bit more specificity--in the interim--as to the serious and substantial nature of our opposition to Judge Newton.

In her capacity as a judicial member of the New York State Commission on Judicial Conduct, Judge Newton has not protected the public from unfit judges--as has been her duty to do. Rather, she has used her position as Commissioner to protect high-ranking, politically-connected judges from the consequences of their official misconduct. She has done this by permitting fully documented complaints against them--including complaints of heinous criminal acts--to be summarily dismissed. Such summary dismissals, without any determination by the Commission that the complaints facially lack merit (because indeed they do not), violate the Commission's explicit statutory investigative duty under Judiciary Law §44.1.

Last year, we brought an Article 78 proceeding against the Commission on Judicial Conduct. Included among the relief was a request for referral to the Governor so that a special prosecutor might be appointed to investigate the Commission's complicity in high-level judicial corruption, demonstrated by its aforesaid contrary-to law dismissal of documented complaints of

criminal conduct by powerful judges.

Our Article 78 challenge was so devastating that the only way the Commission on Judicial Conduct could survive it was by engaging in litigation misconduct before a Supreme Court Justice who, by a fraudulent decision of dismissal, would dump the case. This is proven by the litigation file--a copy of which is in the possession of the Assembly Judiciary Committee, together with voluminous correspondence from us on the subject.

As reflected by that correspondence, Judge Newton, as a member of the Commission on Judicial Conduct, has been on notice of the Commission's litigation misconduct in the Article 78 proceeding and of the fraudulent dismissal--of which it is the beneficiary. Indeed, on August 14, 1995, the New York Law Journal, published our Letter to the Editor "Commission Abandons Investigative Mandate", which publicly proclaimed that the dismissal was an insupportable fraud (Exhibit "D")--a charge the Commissioners have not denied, let alone controverted.

Yet, Judge Newton--like the rest of the Commissioners--has refused to meet her ethical and professional duty to take corrective steps. Such an individual is unworthy of any judicial office.

We would expect that the Senate--under the leadership of Senate Majority Leader Joseph Bruno--will be particularly interested in clarifying the facts relative to the Commission on Judicial Conduct. As may be seen from the article "State Politicians to Scrutinize Judicial Conduct Panel", which appeared in the March 1, 1996 issue of The New York Post (Exhibit "E"), Majority Leader Bruno has expressed great concern at indications that the Commission on Judicial Conduct is "ineffective". As documented by the Article 78 file, the Commission is not merely "ineffective" or dysfunctional, it is corrupt.

Consequently, by copy of this letter directly to Judge Newton, we call upon her to demonstrate that the dismissal of our Article 78 proceeding against the Commission on Judicial Conduct is not a fraud--and to justify the constitutionality of the Commission's rule, 22 NYCRR §7000.3, as written and as applied--challenged in that proceeding.

To assist Judge Newton in meeting the specific legal and factual issues involved, we enclose the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee (Exhibit "F")--a copy of which was sent to the Administrator of the

David Gruenberg, Esq.

Page Four

April 18, 1996

Commission on Judicial Conduct, with a request that it be distributed to the Commissioners.

Yours for a quality judiciary,



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

**Enclosures**

cc: Michael Finnegan, Counsel to Governor Pataki  
By Certified Mail/RRR: P-801-449-994  
Senate Majority Leader Joseph Bruno  
By Certified Mail/RRR: P-801-449-995  
Judge Juanita Bing Newton  
By Certified Mail/RRR: P-801-449-996  
Assembly Judiciary Committee  
By Certified Mail/RRR: P-801-449-997  
Andrea Bernstein, New York Observer  
The New York Times  
The New York Law Journal  
Al Guart, The New York Post

Monday, August 14, 1995

## LETTERS

*To the Editor***Comm'n Abandons  
Investigative Mandate**

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (*NYLJ*, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR §7000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigation, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-con-

nected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commission, with no finding that the complaints were facially without merit.

In "round one" of the litigation, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (*Sassower v. Commission*, #95-109141) — including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct — and, in turn, is protected by them.

**Elena Ruth Sassower**  
*White Plains, N.Y.*

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

E-Mail: probono@delphi.com

Box 69, Gedney Station  
White Plains, New York 10605

By Priority Mail

December 15, 1995

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

ATT: Patricia Gorman, Counsel

Dear Pat:

Time moves faster than I do. Ever since our meeting in Albany on October 24th, I have been meaning to write a note of thanks to you and Joanne Barker, counsel to the Assembly Judiciary Committee, to Anthony Profaci, associate counsel of the Assembly Judiciary Committee, to Joan Byalin, counsel to Chairwoman Weinstein, and to Josh Ehrlich, counsel to the Assembly Election Law Committee, for the two hours time each of you gave us to discuss CJA's recommendations for imperatively-required legislative action.

I did telephone Joan Byalin on October 26th and conveyed our appreciation. I hope it was passed on to Chairwoman Weinstein and to the counsel present at the October 24th meeting.

We trust you have now had sufficient time to review the documents we supplied the Assembly Judiciary Committee and to verify their extraordinary significance. This includes the court papers in our Article 78 proceeding against the New York State Commission on Judicial Conduct<sup>1</sup>--and our related correspondence.

By your review of Point II of our Memorandum of Law<sup>2</sup>--detailed with legislative history and caselaw--there should be no question but that the self-promulgated rule of the Commission (22 NYCRR §7000.3) is, on its face, irreconcilable with the statute defining the Commission's duty to investigate facially meritorious complaints (Judiciary Law, §44.1) and with the constitutional amendments based thereon. For your convenience, copies of the rule and statutory and constitutional provisions are annexed hereto as Exhibits "A-1", "A-2", and "A-3", respectively.

<sup>1</sup> For ease of reference, the court papers in the Article 78 proceeding against the Commission are designated herein by the numbers assigned them by our Inventory of Transmittal.

<sup>2</sup> See Doc. 6, pp. 10-17.

Moreover, you should now be convinced that the Supreme Court's decision of dismissal, justifying §7000.3, as written,--by an argument not advanced by the Commission--is palpably insupportable.

The definitions section of §7000.1 (Exhibit "A-1"), which the Court itself quotes in its decision<sup>3</sup>, believes its claim that "initial review and inquiry" is subsumed within "investigation". Such definitions section expressly distinguishes "initial review and inquiry" from "investigation"<sup>4</sup>.

Even more importantly, the Court's aforesaid sua sponte argument, which it pretends to be the Commission's "correct[] interpret[ation]" of the statute and constitution, does NOTHING to reconcile §7000.3, as written, with Judiciary Law, §44.1 (Exhibit "A-2"). This is because §7000.3 (Exhibit "A-1") uses the discretionary "may" language in relation to both "initial review and inquiry" and "investigation"--THUS MANDATING NEITHER. Additionally, as written, §7000.3 fixes NO objective standard by which the Commission is required to do anything with a complaint--be it "review and inquiry" or "investigation". This contrasts irreconcilably with Judiciary Law §44.1, which uses the mandatory "shall" for investigation of complaints not determined by the Commission to facially lack merit.

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<sup>3</sup> The Supreme Court decision does not quote the entire definition of "investigation", set forth in §7000.1(j). Omitted from the decision is the specification of what "investigation" includes. The omitted text reads as follows:

"An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members."

<sup>4</sup> Accordingly, the "initial review and inquiry" is conducted by the "commission staff" and is

"intended to aid the commission in determining whether or not to authorize an investigation." (emphases added).

As to the issue of the constitutionality of §7000.3, as applied, your review of the papers should have persuaded you that such important issue was squarely before the Court<sup>5</sup>--contrary to the Supreme Court's bald representation that it was not.

Finally, we expect you have also confirmed that the threshold issues which the Supreme Court was required to adjudicate before it could grant the Commission's dismissal motion were entirely ignored by it. Those threshold issues--fully developed in the record before the Supreme Court--included the uncontroverted default of the Commission on Judicial Conduct<sup>6</sup> and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law<sup>7</sup>. This is over and beyond the conflict of interest issues affecting the Attorney General's representation of the Commission, which we made the subject of repeated objection to the Court<sup>8</sup>.

Consequently, based on the record before you, you should have now confirmed that the Supreme Court's decision of dismissal is a knowing and deliberate fraud upon the public--and is known to be such by the Commission on Judicial Conduct, the State Attorney General, and the State Ethics Commission, who have each received explicit and extensive communications from us on that subject (Exhibits "C", "D", and "E").

Since none of these public agencies and offices have taken steps to vacate for fraud the Supreme Court's decision of dismissal--which was pointed out as their duty to do<sup>9</sup>--it now falls to the Assembly Judiciary to take action to protect the public. As a first priority, the Assembly Judiciary Committee must require the Commission on Judicial Conduct to address the specific issues raised herein as to the false and fraudulent nature of the Supreme Court's decision.

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<sup>5</sup> See Doc. 1: Notice of Petition: (a)(b)(c); Article 78 Petition: §§ NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTY-THIRD, "WHEREFORE" clause: (a), (b), (c).

<sup>6</sup> See Doc. 2, Aff. of DLS in Support of Default Judgment; Doc. 5, §§2-3, 7; Doc. 6, pp. 1-2.

<sup>7</sup> See Doc. 6, pp. 2-9.

<sup>8</sup> See Doc. 2: DLS Aff. in Support of Default Judgment, §§9, 14, Ex. "B" thereto, p. 3; Doc. 5, §§10, 50-4

<sup>9</sup> See Exhibit "D", p. 6; Exhibit "E".



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DATE, TIME	04/29 14:27
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 Certified Fee \$ *1.10*  
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*Senate Judiciary Committee*  
*Room 413, The Capitol*  
*Albany, NY 12247*

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*Committee*  
*Pat J. Moran, Counsel*  
*LOB 831 Empire State Plaza*  
*Albany, NY 12248*

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*LOB 831 Empire State Plaza*  
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 Postage \$ *1.24*  
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NYS Senate  
Albany, NY 12247

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PS Form 3800, June 1985

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Judge Joanita B...  
New York, Commiss.  
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801 Second Avenue  
NY C 10017

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4b. Service Type

<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Certified
<input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured
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