

Notice of Motion for Access to Entire Record and Supporting
Affidavit of Norman Redlich, Esq. (Exhibit Omitted)
(2d Dep't November 17, 1989)
[pp. A132-A140]

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION -- SECOND DEPARTMENT

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In the Matter of :
The Application of ELIZABETH HOLTZMAN, :
Petitioner, :
To Vacate a Letter of Reprimand :
Pursuant to Section 691.6(a) of :
the Rules of the Appellate Division, :
Second Department, :
- against - :
GRIEVANCE COMMITTEE FOR THE :
TENTH JUDICIAL DISTRICT, :
Respondent. :

NOTICE OF MOTION

Index No.

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PLEASE TAKE NOTICE that, upon the annexed affidavit
Norman Redlich, Esq., sworn to November 17, 1989, the petition
of Elizabeth Holtzman, Esq., dated November 17, 1989, the Letter
of Reprimand of the Grievance Committee of the Tenth Judicial
District dated October 19, 1989, upon all the papers, pleadings
and proceedings had therein, and upon all the papers, pleadings
and proceedings had herein, petitioner will move this Court, at
the Courthouse, on December 1, 1989, at 9:30 a.m., or as soon
thereafter as counsel can be heard, for an order, pursuant to
Section 691.6 of the Rules of this Court and Section 90 of the
Judiciary Law, directing that:

- (1) the Grievance Committee for the Tenth Judicial
District transmit to the Clerk of this Court the entire

record of the proceedings before the Committee which issued the Letter of Reprimand and before the Subcommittee which held a hearing in this matter, including, but not limited to, the findings delivered by the Subcommittee to the Committee on October 4, 1989;

(2) the Grievance Committee furnish petitioner with a list of the materials transmitted pursuant to paragraph 1 of this Order and provide to petitioner or her counsel copies of those materials or any of them as they may request;

(3) the Clerk of this Court grant petitioner and her counsel access to the entire record of the proceedings before the Grievance Committee and the Subcommittee; and

(4) the proceedings in this matter be confidential and the record and all papers filed herein be maintained by the Clerk of this Court under seal.

Dated: New York, New York
November 17, 1989

WACHTELL, LIPTON, ROSEN & KATZ

By: Robert B. Mazur
Robert B. Mazur
George T. Conway III

299 Park Avenue
New York, New York 10171
(212) 371-9200

Norman Redlich
- Of Counsel -

Attorneys for Petitioner
Elizabeth Holtzman

TO: Frank A. Finnerty, Jr., Esq.,
Chief Counsel
Grievance Committee for the Tenth
Judicial District
900 Ellison Avenue
Westbury, New York 11590
(516) 832-8585

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION -- SECOND DEPARTMENT

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In the Matter of :

The Application of ELIZABETH HOLTZMAN, :

Petitioner, :

To Vacate a Letter of Reprimand : AFFIDAVIT OF
 Pursuant to Section 691.6(a) of : NORMAN REDLICH
 the Rules of the Appellate Division, :
 Second Department, :

- against - : Index No.

GRIEVANCE COMMITTEE FOR THE :
 TENTH JUDICIAL DISTRICT, :

Respondent. :

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STATE OF NEW YORK)
 : ss.:
 COUNTY OF NEW YORK)

NORMAN REDLICH, being duly sworn, deposes and says:

1. I am counsel to the firm of Wachtell, Lipton, Rosen & Katz, attorneys for petitioner Elizabeth Holtzman, and I am familiar with the prior proceedings had herein. I make this affidavit in support of petitioner's motion for the transmittal of, and access to, the entire record of the proceedings below, and for confidentiality of this proceeding.

2. This matter involves a petition to vacate a letter of reprimand (the "Letter of Reprimand") issued by the

Grievance Committee to petitioner, the District Attorney of Kings County. As set forth in the petition herein (a copy of which is annexed hereto as Exhibit A), the Letter of Reprimand arises from petitioner's public release of a letter which she sent to Judge Kathryn McDonald, Chair of the Committee to Implement Recommendations of the New York Task Force on Women in the Courts, complaining about misconduct on the part of Judge Irving M. Levine, and from petitioner's issuance of a press release explaining the reasons for her complaint letter.

Petitioner's motion for transmittal of, and access to, the entire record of the proceedings below

3. Section 691.6(a) of the Rules of this Court, pursuant to which the petition to vacate the Letter of Reprimand has been filed, provides:

Upon such petition, this Court may consider the entire record and may vacate the reprimand or impose such other discipline as the record may warrant. (Emphasis added.)

4. During the period December 7, 1988 through September 13, 1989, a Subcommittee of the Grievance Committee conducted a hearing in this matter. Petitioner has obtained copies of the transcript of that hearing and the exhibits which were received in evidence during the course of the hearing.

5. While petitioner may have copies of all materials that were before the Subcommittee, it is the full Grievance Committee -- and not the Subcommittee -- that reprimanded her.

6. Upon information and belief, following the Subcommittee hearing the Subcommittee issued a report to the Grievance Committee which included, at a minimum, findings of fact. According to the Letter of Reprimand, the findings of the Subcommittee "were presented to the Grievance Committee on October 4, 1989." The Letter of Reprimand itself contains no findings of fact. It appears that the Grievance Committee's actions sustaining two of the three charges against petitioner and issuing the Letter of Reprimand were predicated on the Subcommittee's findings.

7. Petitioner does not know what else was presented to the full Grievance Committee which reprimanded her. She believes, however, that the Committee's counsel made a presentation to the full Committee.

8. Following the receipt of the Letter of Reprimand, I spoke by telephone with Frank A. Finnerty, Jr., Chief Counsel to the Grievance Committee, and requested a copy of the Subcommittee's findings. He informed me that the entire record would be forwarded to the Appellate Division at the appropriate time, and that the Subcommittee's findings would be part of the record.

9. I asked Mr. Finnerty for a copy of those findings. He denied my request.

10. Because the Subcommittee's findings are an essential part of the "entire record" that this Court will consider on the petition, and because respondent and its counsel has knowledge of the findings, it is submitted that it would be unfair to deny petitioner access to those findings. And absent the findings, petitioner's presentation to this Court will necessarily be far less focused and less likely to address the precise basis for the Letter of Reprimand.

11. Moreover, in order to insure that petitioner and this Court know what the "entire record" before the Grievance Committee and the Subcommittee was, it is submitted that this Court should direct the Committee to transmit the entire record to this Court and to furnish petitioner with a list of the materials transmitted. Thereafter, in order to insure that petitioner has a full and fair opportunity to make her presentation to this Court in opposition to the Letter of Reprimand: the Committee should be directed to provide to petitioner or her counsel copies of those materials or any of them as they may request; and the Clerk of this Court should be directed to grant petitioner and her counsel access to the entire record of the proceedings below.

Petitioner's motion for confidentiality of this proceeding

12. Confidentiality of the proceedings before this Court are required in order to implement the confidentiality requirements of the Judiciary Law and the Rules of this Court.

13. Section 90(10) of the Judiciary Law provides: "any statute or rule to the contrary notwithstanding, all papers, records and documents . . . upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney . . . shall be valid and be deemed private and confidential." And Section 691.6(c) of the Rules of this Court provides that the record of grievance committee proceedings resulting in a letter of reprimand, letter of admonition or letter of caution must be kept permanently confidential, "except that the complainant shall be notified of any reprimand or admonition or letter of caution which has become final and is not subject to further review." (Emphasis added.)

14. Thus, under the Judiciary Law and the Rules of this Court, petitioner has an absolute right to confidentiality. Ordinarily, however, papers filed and proceedings had before this Court are matters of public record freely accessible to the public. To preserve the right of confidentiality granted to petitioner under the Judiciary Law and the Rules of this Court, it is necessary that this Court issue an order directing that the proceedings in this Court be confidential and that the

record and all papers filed in this Court be maintained by the Clerk under seal.

WHEREFORE, it is respectfully submitted that petitioner's motion should be granted in all respects.

Norman Redlich
Norman Redlich

Sworn to before me this
17th day of November 1989.

Sheila Ashby
Notary Public

SHEILA ASHBY
Notary Public, State of New York
No. 31-6115250
Qualified in New York County
Commission Expires 11/15/90