

Affirmation of Frank A. Finnerty, Jr., Esq., in Opposition to Motion  
for Access to Entire Record (Ct. App. December 12, 1990)  
[pp. A297-A299]

COURT OF APPEALS  
STATE OF NEW YORK

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In the Matter of the Application of

ELIZABETH HOLTZMAN

Petitioner-Appellant,

To Vacate a Letter of Reprimand  
Pursuant to Section 691.6(a)  
of the Rules of the Appellate  
Division, Second Department,

AFFIRMATION IN  
OPPOSITION

GRIEVANCE COMMITTEE FOR THE  
TENTH JUDICIAL DISTRICT,

Respondent.

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FRANK A. FINNERTY, JR., an attorney duly admitted to  
the practice of law in the State of New York, under the  
penalties of perjury, affirms as follows:

1. I am Chief Counsel for the New York State  
Grievance Committee for the Tenth Judicial District, Respondent  
herein, and am fully familiar with all the facts and  
proceedings had heretofore.

2. This affirmation is submitted in opposition to  
Appellant's motion to, in essence, force disclosure of two (2)  
documents, the "Finnerty Memorandum" of June 1988, and the  
Report of the Subcommittee. Appellant's motion has been made  
returnable before this Court on December 17, 1990.

3. Your affirmant, by this affirmation in opposition,  
as well as the concurrently submitted memorandum of law in

support of Respondent's position, respectfully submits that Appellant is not entitled to either of the requested documents, and thus this Court must deny her motion in its entirety.

4. As demonstrated in Point I of Respondent's memorandum, Appellant is not entitled to disclosure of the Finnerty Memorandum because that document represents the work product of your affirmant, which was submitted solely to his client, the Grievance Committee for the Tenth Judicial District.


5. The Finnerty Memorandum should also not be transmitted to Appellant because it was never a part of the record before the Appellate Division, Second Department, and thus is irrelevant to the pending appeal. (See Point II, Respondent's memorandum in support).

6. The Subcommittee report sought by Appellant was an interim work product of the Subcommittee, prepared on behalf of the full Committee, and as such is privileged as work product and irrelevant to the current appeal. (See Point III of Respondent's memorandum.)

7. As developed more fully in Point IV of Respondent's memorandum, Appellant may not reserve to herself the right to waive the confidentiality requirements of Judiciary Law Section 90(10), because by statute that right is reserved exclusively to the Appellate Division, Second Department.

WHEREFORE, your affirmant respectfully requests that Appellant's motion be denied in its entirety.

Dated: Westbury, New York  
December 12, 1990

  
FRANK A. FINNERTY, JR.  
Chief Counsel  
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Committee for the Tenth  
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