

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPREME COURT OF THE STATE OF NEW YORK
1st JUDICIAL DISTRICT

-----X
HEARING RE:

COMMISSION ON STATEWIDE ATTORNEY DISCIPLINE

-----X

New York County Lawyers Association
14 Vesey Street
New York, New York 10007


August 11, 2015

BEFORE:

COMMISSION MEMBERS:
HONORABLE BARRY A. COZIER, Chair
HONORABLE PETER SKELOS
MARK C. ZAUDERER, ESQ.
ROBERT P. GUIDO, ESQ.
DEVIKA KEWALRAMANI, ESQ.
SEAN MORTON, ESQ.

Claudette Gumbs, Official Court Reporter
Monica Horvath, Official Court Reporter
60 Centre Street
New York, New York 10007
646.386.3693

Claudette Gumbs

NYCtranscript.txt
9 JUDGE SKELOS: Orientation?
10 MR. KRINSKY: Orientation, yes. Thank you.
11 Orientation programs. Unfortunately, for
12 better or worse it is not perhaps ten years into your
13 career where you are actually faced with that
14 disciplinary complaint.
15 And why aren't we reeducating lawyers at that
16 point and at the same time why aren't we educating
17 complainants about the proper use of the disciplinary
18 processes versus the improper use of the disciplinary
19 process.
20 JUDGE COZIER: Thank you both for your testimony.
21 MR. KRINSKY: Thank you.
22 MS. BONINA: Thank you.
23 JUDGE COZIER: Our next witness is an attorney
24  Karen Winner.
25 Miss Winner?
26 MS. WINNER: Good morning, distinguished panel

Monica S. Horvath - Senior Court Reporter

26

1 Proceedings
2 members, good morning, audience members.
3 My name is Karen Winner. I am a New York
4 attorney. And for years I have had a deep interest in
5 how legal consumers are effected by the secrecy
6 surrounding the discipline of lawyers.
7 Before I became a lawyer, I wrote a report more
8 than 20 years ago for the New York City Department of
9 Consumer Affairs -- Mark Green was the Commissioner --

NYCtranscript.txt

10 "Women In Divorce, Lawyer's Ethics, Fees and Fairness,"
11 and it found that the public is not protected from
12 dangerous lawyers.

13 I drafted the Client Bill of Rights that
14 divorce lawyers are now required to give their clients.

15 For decades it has been publicly known that the
16 New York Lawyer Disciplinary System fails to protect
17 consumers from unscrupulous, or incompetent, attorneys.
18 We know that the New York system is too secret and metes
19 out inconsistent discipline due to ^{regional} individual Practices.
20 And we also know that the system is being held captive
21 to vested interests of lawyers who don't want any
22 changes to the status quo.

23 Consumers have no way of knowing which lawyers
24 are being investigated for serious misconduct. This
25 secrecy leaves consumers vulnerable to financial
26 predators with law licenses.

Monica S. Horvath - Senior Court Reporter

27

1

Proceedings

2

What are the ramifications to the secrecy?

3

Because the client is left in the dark about the

4

lawyer's pending disciplinary matter, the unsuspecting

5

client will go to the Office of Court Administration's,

6

web cite, look up the lawyer and see no public

7

discipline under the lawyer's name. And that client

8

then believes he or she is perfectly safe to hire that

9

attorney. The client does not know that the unscrupulous

10 lawyer can keep practicing all the way up until the very
11 end of the process. And that can take years. And that
12 whole process remains secret.

13 So what happens when a client unknowingly,
14 hires an unscrupulous attorney who has serious
15 allegations pending?

16 That unsuspecting client hires the lawyer and
17 then the trouble begins. The lawyer won't return calls,
18 or, drags out the case with unnecessary motions or,
19 won't follow the client's objectives, or, starts
20 engaging, in myriad forms of fee abuse, like fee
21 padding, where fraudulent charges are added to the bill.
22 These are real problems and they are ethics violations.
23 The client becomes concerned, starts to lose confidence
24 in the attorney and then finally the client has to
25 terminate the attorney for the client's own best
26 interest.

Monica S. Horvath - Senior Court Reporter

♀

28

1 Proceedings

2 Especially, in divorce proceedings where I'm
3 most familiar there is another ramification, changing
4 attorneys carries a stigma. The opposing lawyer will
5 invariably use it as a tactic with the judge that the
6 client who changes attorneys is a difficult client. The
7 judge has no way of knowing due to the secrecy that the
8 client was victimized and terminated the lawyer for his
9 or her own self interest. Even the judge has no way of
10 knowing that the discharged lawyer is under

11 investigation.

12 Secondly, the client who has had to terminate
13 his or her relationship with an unscrupulous lawyer has
14 wasted the client's financial investment and a new
15 lawyer has to be hired and the client has to start all
16 over again with no recompense for the lost money.

17 why should lawyers have special protections,
18 when they are under investigation, business people
19 don't. The average citizen doesn't. If the New York
20 disciplinary system would lift the secrecy and allow the
21 public to see the complaint histories lodged against a
22 particular attorney maybe clients wouldn't need to
23 change attorneys so often because they would have the
24 ^{opportunity} attorney to be informed and know who has a record. The
25 client would know how to protect him or herself before
26 it is too late.

Monica S. Horvath - Senior Court Reporter

♀

29

1 Proceedings

2 And publishing a report of complaint histories
3 while they are pending would protect honest attorneys.
4 Because the whole system is affected. The profession is
5 being tainted and honest attorneys are being tainted.

6 Here is some solutions. There should be a
7 consumer alert to warn consumers against lawyers who are
8 under investigation for major misappropriation of funds.
9 Abolish the gag rules that prevent people from speaking
10 publicly about the complaints they have filed. Disclose

11 a lawyer's disciplinary history so the public can be
12 informed including private admonitions. Open the
13 hearings to the public just the way that they are opened
14 in criminal and civil proceedings. It will take courage
15 and leadership to institute these reforms. There are
16 powerful interests as everyone knows who will urge the
17 leaders to maintain secrecy but the public's safety
18 should come first.

19 Thank you.

20 (Applause.)

21 JUDGE COZIER: Mr. Zauderer?

22 MR. ZAUDERER: Thank you for your testimony. I
23 have two related questions on this issue of openness.

24 MS. WINNER: Yes?

25 MR. ZAUDERER: First of all, you referred to
26 criminal proceedings, the fact that they are open. May I

Monica S. Horvath - Senior Court Reporter

♀

30

1 Proceedings
2 remind you that the reason for opening ^{ness of} criminal
3 proceedings has been for hundred of years and has been
4 in our Constitution to protect the accused person from
5 secret proceedings. So the analogy of professional
6 discipline proceedings ^{some say,} is not exactly accurate.

7 So, relatedly, I would ask you if you are an
8 individual practitioner doing your best and practice
9 honorably and you are a very competent lawyer and as
10 often happens you have a dispute with a client and the
11 client makes a complaint to the Disciplinary Committee

12 and says things which in your judgment are either just
13 totally wrong or just ^atotally distortional~~is~~ is it your
14 view that the public should have access to that
15 complaint and would you not be concerned that the lawyer
16 and the lawyer's profession is being unfairly interfered
17 with?

18 MS. WINNER: You know, there are already states
19 that do that. They already have open records.

20 I spoke to West Virginia's disciplinary
21 personnel a few days ago and they gave me the
22 statistics, showing the closed complaints. Including,
23 meritless complaints and all the others. And the
24 lawyers in West Virginia aren't having any problem with
25 it.

26 It is the same in Florida and it is the same in

Monica S. Horvath - Senior Court Reporter

♀

31

1
2
3
4
5
6
7
8
9
10
11

Proceedings

Oregon. And, so, I think that this is like a -- I think
that this is a real worry of lawyers. But I think it is
a real worry but that is really kind of contemptuous of
the public. You know why? Because most people who bring
complaints are very serious and sincere, just like
people that bring allegations in Criminal Court. And to
separate those people and, say, oh, yeah, they are just
trying to retaliate because they don't like how it
happened, they don't like how the case turned out is
really not doing justice to the American people. They

NYCtranscript.txt
12 deserve, you know, more better thinking about them.
13 (Applause.)
14 MR. ZAUDERER: Thank you.
15 MS. WINNER: You're welcome.
16 JUDGE COZIER: Justice Skelos?
17 JUDGE SKELOS: I think that you have suggested
18 that there is perhaps a pattern of recidivism that
19 happens with respect to the lawyers who are under
20 investigation. Is that a fair summary of what you are
21 saying? That a lawyer who is under investigation is more
22 likely to be one who is committing further ethical
23 violations while that attorney is under investigation,
24 is that the claim that you are making?
25 MS. WINNER: Yes. Anecdotally, I have been
26 receiving --

Monica S. Horvath - Senior Court Reporter

♀

32

1 Proceedings
2 JUDGE SKELOS: So, my question becomes --
3 MS. WINNER: Yes, yes.
4 JUDGE SKELOS: With the number of complaints that
5 we have in this state is there any empirical evidence to
6 support the fact that once an attorney has a complaint
7 filed against him or her that during the course of that
8 investigation that attorney is then committing further
9 ethical violations jeopardizing other litigants?
10 MS. WINNER: What I can tell you is that I have
11 been receiving complaints about attorneys -- I wrote a
12 book, a national expose, about this in 1996, "Divorce

13 From Justice," published by Harper Collins. And I have
14 received complaints for over 20 years about attorneys.
15 And invariably, there have always been multiple
16 complaints about certain attorneys. And when there is
17 just one complaint about an attorney, it seems like
18 aberration, but when there are multiple complaints about
19 attorneys --

20 JUDGE SKELOS: That is what I'm asking you.

21 Okay, you are sort of an academic, I will say.
22 You have written a paper and you have written a book,
23 okay, and I'm asking you in the course of your study of
24 this issue --

25 MS. WINNER: Yeah.

26 JUDGE SKELOS: Which apparently is going on

Monica S. Horvath - Senior Court Reporter

♀

33

1 Proceedings

2 20 years, have you accumulated empirical data to support
3 the suggestion that while an attorney is under
4 investigation that attorney is then committing other
5 ethical violations involving other clients?

6 MS. WINNER: Well, that is a really good
7 question and I don't know if any researchers can answer
8 that empirically, because the system is secret.

9 VOICE: Yeah.

10 (Applause.)

11 JUDGE SKELOS: If the first complaint is founded
12 and another complaint is filed and that complaint is

NYCtranscript.txt
13 founded, would you be able to match up the date of the
14 first complaint which was founded and then if the second
15 complaint or third complaint was founded you would be
16 able to match up those dates and you would be able to
17 establish that during the course of an investigation,
18 there were indeed further violations --

19 MS. WINNER: I understand.

20 JUDGE SKELOS: I'm just asking, have you done
21 that study or do you know of any such study?

22 MS. WINNER: I can't do it because it is secret.
23 We don't know about the investigations.

24 (Laughter and applause.)

25 MS. WINNER: But I can tell you something, I
26 can tell you something. Because of the way the system is

Monica S. Horvath - Senior Court Reporter

♀

34

1 Proceedings
2 set up, lawyers will, they will retire.

3 I have had situations where a complaint has
4 been made and pending that the lawyer will retire and
5 then there will be other complaints that come up but
6 then they won't be investigated because the lawyer
7 retires.

8 And I helped a family from India, recover
9 \$70,000 in funds because their lawyer stole from the
10 settlement agreement when the father was killed in a
11 temple and the lawyer -- the wrongful death reward --
12 stole part of the money from the widow and the children,
13 and that lawyer retired. And there were other

14 complaints pending and they never saw the light of day.
15 And I think this is serious problem. And I don't mean
16 to sound strident.

17 (Applause.)

18 JUDGE COZIER: All right, thank you very much for
19 your testimony.

20 MS. WINNER: You're welcome.

21 VOICE: Yeah. Brilliant, brilliant.

22 (Applause.)

23 JUDGE COZIER: Now, I want to ask all of the
24 participants today to try and maintain some control. We
25 have many witnesses to hear from. This is a fact
26 gathering session so we cannot really have outbursts

Monica S. Horvath - Senior Court Reporter

♀

35

1 Proceedings

2 from people who are not, you know, testifying. We have
3 to have a record here. So I'm going to ask for your
4 cooperation.

5 The next witness is Deborah Scalise, from
6 Scalise, Hamilton & Sheridan, in Scarsdale.

7 VOICE: Sir, could you maybe move your
8 microphone a little closer because we have a hard time
9 hearing back here?

10 Thank you.

11 JUDGE COZIER: Deborah Scalise.

12 VOICE: Much better. Thank you.

13 JUDGE SKELOS: Thank you and good morning.