

SUPREME COURT OF THE STATE OF NEW YORK  
FOURTH DEPARTMENT

CHIEF JUDGE'S HEARING:

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COMMISSION ON STATEWIDE ATTORNEY DISCIPLINE

92 Franklin Street Buffalo, New  
York August 4, 2015

COMMISSION MEMBERS:

- HONORABLE BARRY A. COZIER
- HONORABLE STEPHEN K. LINDLEY
- MARK C. ZAUDERER, ESQ.
- ROBERT P. GUIDO, ESQ.
- PROFESSOR W. BRADLEY WENDEL
- VINCENT E. DOYLE, III, ESQ.

JUSTICE COZIER: Good afternoon and welcome to the second of three public hearings scheduled by the Commission on the Statewide Attorney Discipline. My name is Barry A. Cozier and I am the chair of the Commission. I am currently senior counselor at LeClair Ryan in New York City and have been practicing for approximately 40 years in one capacity or another. From 1986 through 2006, I served as a member of the New York State Judiciary as a Family Court judge, a justice of the Supreme Court, and an associate justice of the Appellate Division, Second Department. On behalf of Chief Judge Jonathan Lippman and myself and all of the members of the commission, I want to thank each of you for taking the time to come before us today and share your thoughts and insights about the important issues the Commission is tasked with addressing.

DANIELLE M. GREGORY DAIGLER, RPR, CRR

1 it can also look like the, the odds are stacked against clients and the public. It can look  
2 very protectionist I think.

3 JUSTICE COZIER: Thank you very much,  
4 Professor Milles.

5  PROFESSOR MILLES: Thank you.

6 JUSTICE COZIER: Our final witness this afternoon is Chris Kochan,  
7 a legal consumer from Buffalo. Mr. Kochan?

8 MR. KOCHAN: Thank you very much for allowing me to testify in  
9 such a short notice. The law profession should be considered one of the most noble  
10 of all professions in American society. Each lawyer, when they take on a client,  
11 literally becomes responsible for the life of their client, whether it be a public  
12 corporation, or a private natural person. And depending on their client's status in  
13 society, that client's families, friends and society itself can be greatly affected by the  
14 quality of the attorney's representation.

15 Further, when an attorney takes on a client, that is all they should have to  
16 worry about. However, this is not the case. The honest attorney is bound by an  
17 unwritten code of economics, that code being: Do not challenge the status quo, for if  
18 you do, your career could be ruined as well as your family may suffer the  
19 consequences.

20 The only example I need to point out is former Erie County Assistant  
21 District Attorney Mark Sacha. The Attorney Grievance Committee has looked at  
22 nothing more than the fox guarding of the hen house. What occurred in my complaint  
23 is a prime example of that. Further, if you take any average citizen who has any  
24 feelings with these types of oversight committees, most of them, most of them feel  
25 they are ineffective and a complete waste of time. The damage from this train of

1 thought can easily be seen in the exodus of people from this state  
2 which is one of the highest in the nation, not something any of us should be proud  
3 about in this once great state.

4 What type of evidence must be provided and at what point should a  
5 Committee member be mandated to take action against an attorney who violates the  
6 laws and/or rules of professional conduct and it should be the same across all  
7 departments?

8 As I've reviewed four departments and their procedures in filing the  
9 complaints and what is to occur thereafter, all vary in one degree or another. As to the  
10 procedures and flow for filing complaints, I have created many websites throughout  
11 my career. My first one being in 1995 so I know what I'm talking about. Some of the  
12 Grievance Committee pages for their  
13 departments do not appear to have been updated for quite some time. For example,  
14 the Third Department's page on nycourts.org reminds me of my first website I  
15 designed in 1995. Of all of these departments, this one lacks the most.

16 The grievance procedures for all the departments are on the same  
17 website so they should be, they should provide for a uniformed design as well as  
18 procedural guidelines so the average layman can easily find and file the documents  
19 needed for the Committee to review and investigate and render a proper decision.  
20 Why is it called the Unified Court System if it's not unified?

21 Further, all the rights of the citizens and taxpayers, as a complainant,  
22 should be clearly spelled out and easily found on the official website, as well as the  
23 pages of the various committees and departments. Our rights as citizens and taxpayers  
24 should not be hidden through the art of words and voluminous amounts of laws that  
25 only the most skilled of researchers spending long hours on a subject have the ability

1 to uncover.

2 I can give you a recent example of the difficulty of locating these  
3 rights. I only discovered last week that I, as a complainant, would have the right to a  
4 copy of the response the attorney provided against my complaint pursuant to 22  
5 NYCRR 1022. However, it took  
6 hours to locate this right.

7 Presently, the law provides that all attorneys that have a complaint  
8 filed against them are provided a copy of the complaint, and the attorney is required  
9 — if the attorney is required to respond to the complaint, who for the most part to the  
10 complainant — who for the most part is a citizen taxpayer, the citizen taxpayer is  
11 only allowed a copy of the attorney's response upon the approval of the staff attorneys  
12 of the committee. This is not fair. If a response is filed, the complainant should have  
13 every right to a copy of the response if they wish. This should not be left to the  
14 discretion of the staff attorneys. That can easily be seen as a conflict of interest,  
15 especially when the complainant is not an attorney.

16 Another important issue this Committee needs to address is the claim  
17 that the Grievance Committees do not have jurisdiction over the conduct for attorneys  
18 acting in an official capacity as a DA or ADA. 22 NYCRR part 1200 does not  
19 delineate between attorneys acting in a public or private capacity. Therefore, it  
20 demands that all attorneys are mandated to abide by the Code of Professional  
21 Conduct. Further, the American Bar Association clearly shows that all attorneys, and  
22 I repeat, all attorneys, are governed by the Rules of

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1 Professional Conduct.

2           The news is full of examples of ADAs and DAs who acted in  
3 questionable manners concerning questionable conduct of other public officials. This  
4 inevitably leads to accusations of cover-ups. It is evident that the law is not clear on  
5 whether or not a person can file a grievance against a DA or ADA. You talk, you  
6 write to one public official versed in the law, their response is, yes, you can. Then you  
7 talk or write to another public official versed in the law and their response is the exact  
8 opposite. The most disturbing response I have received concerning this matter of  
9 authority is that the Committee will not act unless there is a judicial finding of  
10 professional misconduct. With this response they admit that the Committee has the  
11 authority to review, investigate and act upon the complaints; however, they won't do  
12 so until there has been a judicial finding of misconduct.

13           I can find no law to support this claim, and if indeed it is a  
14 requirement, what is the purpose of the Committee in the first place? They should,  
15 they should be, there should be more than an adequate solution to that. James I.  
16 Meyerson, the attorney for the Staten Island Branch of the NAACP, wrote in a recent  
17 Article 78 proceeding that there was a disturbing proposition that a  
18 district attorney was free to do almost anything, maybe everything, with impunity  
19 and without review or oversight of that attorney's conduct except the prosecutor  
20 attorney's own self-oversight. This thought is a prime example of conflict of interest  
21 and why people no longer trust the system.

22           This statement was made against the Second, 11th and 13th Judicial  
23 District Committees concerning the Eric Gardner matter. These Committees claimed  
24 it was not the proper forum to raise issues of misconduct. If the issue — if the issue  
25 of not the proper forum is indeed fact, then the law must be changed to ensure that it



1 clearly authorizes the Committees to review and investigate DAs or  
2 ADAs and to act if the evidence warrants it. And the powers of the Committees must  
3 be clearly and thoroughly documented so that all can understand it, including, but not  
4 limited to, the Committees themselves.

5 To this day I have not received a clear precise answer as to whether or  
6 not grievance committees have jurisdictions over questions of conduct of DAs and  
7 ADAs. As such, the committees now appear to actually shield DAs and ADAs from  
8 such allegations as echoed in Mr. Meyerson's statement.

9 This is exactly what happened in my matter. I  
10 alleged serious acts of misconduct by a DA, an ADA, and the Eighth Judicial  
11 District's response was that while they didn't have the authority to act on a matter,  
12 they had the authority to forward a copy of my complaint to the very DA and ADAs I  
13 complained about. If this — if they don't have the jurisdiction to act upon the  
14 complaints, then they should not be allowed to forward a copy of the complaint. By  
15 providing a copy of the complaint to the very DA and ADAs I complained about, the  
16 Committee added fuel to the fire which can easily act as a catalyst for them to, for  
17 them to engage in further unethical behavior because they believe they are  
18 untouchable.

19 This is especially worrisome when the same DA is presently subject to  
20 a lawsuit because of substantially similar misconduct in another matter. Other  
21 obvious shares, others obviously share my concerns. There appears to be a bill right  
22 now pending before the state Legislature. Its purpose is for forming a committee to  
23 look into prosecutorial misconduct. It did not just mysteriously appear. It is there for a  
24 reason.

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1                   If the New York State Commission on Judicial Conduct can take  
2 action and remove a judge from the bench for misconduct, the Attorney Grievance  
3 Committee should be able to do the same for a DA or ADA. However, the Committee  
4 -- if the committees do actually have the power  
5 now, will they exercise the standard kitchen sink approach that the New York State  
6 Commission on Judicial Conduct constantly utilizes? That approach being the officials  
7 in question is immune because they have a broad range of discretion. No district  
8 attorney, assistant district attorney, or judge, for that matter, has discretion that they are  
9 acting outside their legal authority and/or procedural professional guidelines.

10                   I will provide you with clear recent example of acting out of, of acting  
11 outside of legal authority, where actions should have been taken but were not. In my  
12 case, I provided a verified complaint with a corresponding evidence packet that was, in  
13 the words of the chief counsel, voluminous. This is what I, what I provided.

14                   In this packet, in this packet and affidavit I proved that one DA had no  
15 authority to prosecute. Of the four charges, three were not verified and the fourth  
16 clearly showed I was acting within my rights. That charge was obstruction of  
17 governmental administration in the second degree for remaining silent. Their conduct in  
18 my matter is one for the history books. One has to wonder if these three simplified  
19 informations which are presently not verified well after the alleged arraignment  
20 occurred will mysteriously appear in the file with signatures upon them. I will not put  
21 anything past the DA or ADA in the  
22 matter. I have videotaped the contents of the court file many times to ensure that if  
23 this happens I have proof that they were unsigned well up to and well past the alleged  
24 arraignment.

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1 Over 40 percent of the documents I have provided in the evidence  
2 packets were created by the very attorneys I filed the complaints against, or other public  
3 officials involved in the matter, in their own words, sworn to in their own signatures, as  
4 well as certified court transcripts and so forth. Yet I was told I did not offer any proof.

5 JUSTICE COZIER: Mr. Kochan, you'll have to wrap up your remarks.

6 MR. KOCHAN: I've got two more pages to go.

7 JUSTICE COZIER: Well, it's not a question of pages. You'll have to  
8 wrap up your remarks. But you have been speaking very, very quickly which is pretty  
9 taxing on the court reporter. So I'll ask you just to conclude your remarks 'cause your  
10 time is up.

11 MR. KOCHAN: Okay. I'll give you one perfect example. The one  
12 perfect example I was told I was no longer allowed to file any more motions because  
13 the omnibus motion rule of Article 55 of the Criminal Procedure Act. This was by an  
14 ADA. Article 55 of the Criminal Procedure Act does not exist. It's a complete  
15 fabrication and lie. This was placed in there. The purpose I believe our best bet is to  
16 fully inform, have fully informed grand juries where the citizen/complainant can go  
17 in front of these grand juries and present their evidence under the powers granted to  
18 the grand juries and the Article One of the New York State Constitution. This way,  
19 this will help eliminate any unfounded complaints and make the system much more  
20 open for the public to see and transparent.

21 JUSTICE COZIER: All right. Thank you, Mr. Kochan. Are there any  
22 questions?

23 MR. KOCHAN: Yes, sir.

24 JUSTICE COZIER: Mr. Zauderer?  
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Mr. Kochan 68

MR. ZAUDERER: Just two quick questions. See if we can focus on it. First of all, is there an extant, an existing order prohibiting from making filings of any kind? Is that —

MR. KOCHAN: That was the answer to my omnibus motion where the ADA claimed that I was not allowed to file at issue. And she swore to it under penalties of perjury, sir.

MR. ZAUDERER: And that's false?

MR. KOCHAN: I cannot find any Article 55 anywhere.

MR. ZAUDERER: So what was the essence of what

1 the DA charged you with or investigated you for that gave rise to this concern you  
2 had?

3 MR. KOCHAN: Well, this was for three or four charges total, three  
4 which were traffic violations, one was refusal to, refusal to blow into a Breathalyzer.  
5 I was, I was handcuffed to a metal chair and knocked out by a deputy sheriff who's  
6 been sued in federal court for the same thing, plus perjury.

7 MR. ZAUDERER: But refusal to take a Breathalyzer  
8 test is not a crime, right?

9 MR. KOCHAN: Well, that is a civil matter, but it does have criminal  
10 ramifications because you are tried for it, but also it was a DWI.

11 MR. ZAUDERER: DWI gave rise to this?

12 MR. KOCHAN: Yes, sir.

13 MR. ZAUDERER: Thank you.

14 JUSTICE COZIER: Any other questions? Thank you very much.

15 MR. KOCHAN: You're welcome.

16 JUSTICE COZIER: That concludes the testimony for today's hearing.  
17 On behalf of the Chief Judge and the Commission, I want to thank everyone who has  
18 joined us today, particularly the witnesses and the members of the public. And over  
19 this next several weeks, the Commission will be reviewing both the oral and written  
20 comments that had been submitted and take that into consideration in preparing its  
21 report. Thank you. The hearing is concluded.  
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