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BY FAX: 212-428-2155 (4 pages)
& CERTIFIED MAIL/RRR #7005-3110-0001-3206-0140

December 29, 2006

Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

ATT: Michael Colodner, Counsel & Appeals Officer

RE: (1) Freedom of Information Law Appeal
(2) CJA's November 22, 2006 letter to you, which was not pursuant
to the Freedom of Information Law

Dear Mr. Colodner:

Pursuant to §89.4(a) of the Freedom of Information Law [Public Officers Law, Article VI], I hereby appeal from the knowingly false and deceitful December 14, 2006 letter of Records Access Officer John Eiseman, denying virtually every enumerated item of my November 27, 2006 letter request for documents.

Mr. Eiseman purports to be responding to "all of [my] recent letters to [him] and to [you]" by enclosing "copies of all the assignment orders that we have been able to locate for Judge Gerald E. Loehr for calendar year 2006".

These "recent letters" to him and you are two in number. They are: (1) my November 22, 2006 letter to you, which was NOT a FOIL request for documents and not addressed to him for that reason – and improperly included by his letter; and (2) my November 27, 2006 letter to Mr. Eiseman, which was a request for documents pursuant to §124 of the Rules of the Chief Administrator & FOIL.

As for Mr. Eiseman's enclosures, they consist of 21 pages.¹ Twenty of these are assignment notices signed by Administrative Judge Francis A. Nicolai. They are:

(1) January 9, 2006 (*Nelson v. Dept of Correctional Services*, #160/06)

¹ A \$5.25 check in payment thereof is enclosed herewith.

- (2) February 7, 2006 (*People v. LaSalle*, Indictment #1754-93;
People v. Cabrera, Indictment #1760-02;
People v. McColl, Indictment # 9051-06)
- (3) February 7, 2006 (*Penas v. Goord*, #1906/06)
- (4) February 28, 2006 (*Williams v. Goord*, #1908/06)
- (5) March 14, 2006 (*Oakman v. Ginquitti*, #17995/03)
- (6) March 15, 2006 (*Fields v. People of the State of NY*, #3825/06)
- (7) March 16, 2006 (*People v. Green*, Indictment #1439/02)
- (8) April 11, 2006 (*Williams v. Westchester Co. DA's Office*, #3836/06)
- (9) April 27, 2006 (*State of NY ex rel Focarile on behalf of McNeil v. Goord*, # 6984/06)
- (10) May 8, 2006 (*Sassower v. The New York Times Company, et al.*, #19841/05)
- (11) May 18, 2006 (*Thomas v. Perez, Superintendent, Bedford Hill Corr. Facility*, #3850/06)
- (12) June 6, 2006 (*People v. Yarborough*, Indictment #1103/02)
- (13) June 21, 2006 (*People v. Twitty*, Indictment #13/93)
- (14) August 2, 2006 (*Hines v. State of NY*, #9408/06)
- (15) August 3, 2006 (*Majette v. Fischer & NYS Division of Parole*, #9409/06)
- (16) September 11, 2006 (*Hutzenlaub v. Goord*, #14768/06)
- (17) September 28, 2006 (*Davis v. Amicucci*, #14762/06)
- (17) October 4, 2006 (*Matta v. Dennison, as Chairman of NYS Division of Parole*, #16751/06)
- (18) October 24, 2006 (*Reyes v. Leclair, Jr.*, #16756/06)
- (19) November 3, 2006 (*McKeown*, Surrogate's Court #2239/03).

These would appear to be responsive to item #11 of my November 27, 2006 letter, requesting:

“(11) copies of all orders and/or notices signed by Appellate Division, Second Department Presiding Justice A. Gail Prudenti or Ninth Judicial District Administrative Judge Francis A. Nicolai assigning specific Supreme Court cases and Surrogate's Court cases to Westchester County Court Judge Gerald E. Loehr, from January 2005 to the present”.

Mr. Eiseman has additionally enclosed a single page bearing the title “2006 JUDICIAL ASSIGNMENTS, listing Judge Loehr as a judge “designated for assignment to Supreme Court on a temporary, ad hoc basis to matters expected to take twenty (20) calendar days or less to complete, particularly to matters brought pursuant to CPLR Article 78” – and for whom “the requirements of §121.2(b) of the Rules of the Chief Administrator are waived”. As the page bears no signature or identification as to who has made such “designation for assignment”, it is not responsive to items #1 or #3.

“(1) copies of all orders and/or notices of Chief Administrative Judge Jonathan Lippman authorizing the temporary assignment of Westchester County Court Judge Gerald E. Loehr to other courts, pursuant to §33.0 of the Rules of the Chief Judge”;

“(3) copies of all orders and/or notices of Chief Administrative Judge Jonathan Lippman authorizing the temporary assignment of Westchester County Court Judge Gerald E. Loehr to the Supreme Court, pursuant to §121.1 of the Rules of the Chief Administrator”.

Nor does it purport to be responsive to these or any other enumerated requests.

Having thus not responded to 14 of the 15 itemized requests for documents presented by my November 27, 2006 letter, Mr. Eiseman has the temerity to state: “To the extent that your requests seek additional information” -- as if there could be doubt and making it appear as if he has already supplied most of what has been requested. Mr. Eiseman then denies these further requests:

“on the grounds that either no such records exist, or, as you have repeatedly been informed, the Freedom of Information Law does not require a response to questions, the creation of compilation of records, legal research, or the parsing of overbroad requests that are not ‘reasonably described.’ Public Officers Law, §89.3.”

This is altogether improper. I am entitled to know – as are you – the basis upon which each of my 14 items are being denied and such cannot be discerned from the hodge-podge, grab-bag of grounds Mr. Eiseman provides – which, moreover, include grounds which are demonstrably false.

Thus, not a single one of my 14 itemized requests seeks “a response to questions”, as opposed to production of documents, in contrast to my November 22, 2006 letter to you, which seeks a response to questions, but not as part of any Freedom of Information Law request.

Nor did any of the 14 itemized requests of my November 27, 2006 letter require “parsing” because they are “overbroad” and do not “reasonable describe[]” the documents sought. Indeed, they also do not seek “legal research”, but, rather copies of such rules and procedures as have been promulgated pursuant to specific authority, to which the itemized requests cite.

I believe that any “reasonably detailed current list by subject matter, of all records”, which the Office of Court Administration is required to keep pursuant to §87.3(c) of the Freedom of Information Law, would have allowed Mr. Eiseman to readily locate the records I seek. Nonetheless, I draw your attention to 21 NYCRR §1401.2(b)(2), which requires that a records access officer ensure that persons seeking records are assisted, “to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.”

Pursuant to §89.4(a) of the Freedom of Information Law, you are required to respond within 10 business days of receipt of an appeal. Such provision additionally requires that if the records are denied on appeal, you “fully explain in writing” the reason therefor. It also requires that you “immediately forward” to the Committee on Open Government a copy of this appeal “when

received” and “the ensuing determination thereon”.

As for my separate November 22, 2006 letter to you seeking information unrelated to FOIL, I also await your response.

Thank you.

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower", with a long horizontal flourish extending to the right.

ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

Enclosure