

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10605

By Fax: 312-988-5491

By Priority Mail/Certified-RRR: Z-124-353-177

DATE: February 8, 1996

TO: All Recipients of my October 13, 1995 letter, to wit,
Chairs and Counsel of the
ABA Standing Committee on Professional Discipline
ABA Standing Committee on Ethics and Professional
Responsibility
ABA Standing Committee on Professionalism
ABA Standing Committee on Lawyer Competence
ABA Center for Professional Responsibility,
Jeanne Gray, Director

FROM: Elena Ruth Sassower, CJA Coordinator

RE: Your Ethical and Professional Responsibility

This letter is intended to place on record what I made known orally at the Saturday, February 3, 1996 meeting of the Standing Committee on Professional Discipline, held in conjunction with the ABA Mid-Year Convention in Baltimore, at which Chairman Trombadore presided and, separately, to George Kuhlman, counsel to the Committee on Ethics and Professional Responsibility, Edward Waller, Chairman of the Committee on Professionalism, and Jeanne Gray, Director of the Center for Professional Responsibility, i.e., that I have received no response to my October 13, 1995 letter, to which you were each indicated recipients. A copy of that letter is annexed (Exhibit "A").

For that matter, I have received no response to my August 14, 1995 letter to Seth Rosner, Chairman of the Committee on Competence (Exhibit "B"), referred to and enclosed with my October 13, 1995 letter. Indeed, on Friday, January 26, 1996, following a program chaired by Mr. Rosner at the New York State Bar Association's Annual Convention in Manhattan, I inquired as to his failure to respond to my August 14th letter, sent to him more than five months earlier. In the face of my pleas that bar leaders involved in attorney disciplinary matters address the unconstitutionality of New York's attorney disciplinary law, recognized more than twenty years ago in Judge Jack Weinstein's dissenting opinion in Mildner v. Gulotta, 405 F.Supp. 182 (1975), and reflected by the immediate, indefinite, and unconditional suspension of my mother's license without charges, without a hearing, without findings, without reasons, and without any appellate review--as more fully set forth in her cert petition Sassower v. Mangano, et al.--Mr. Rosner abruptly told me he had his own practice to worry about.

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In such fashion, Mr. Rosner, who has voluntarily assumed positions of leadership on committees dealing with attorney ethics and discipline in the American Bar Association, as well as in the New York State Bar Association, shirks the ethical obligations imposed on all lawyers by the ABA Code of Professional Responsibility. These include Canon 8, EC 8-1, 8-2, 8-9, adopted as well by the New York State Bar Association.

From the deliberate non-response and inaction of the American Bar Association and New York State Bar leadership, it would appear that bar leaders and lawyers serving on bar committees have exempted themselves from those rules.

The unlawful suspension of my mother's license--perpetuated for nearly five years now--is a vicious retaliation against her by New York courts for challenging the political manipulation of judicial elections and criminal and unethical conduct by sitting judges and would-be judges. Other lawyers would not undertake such challenge: they cowered in fear at the consequences to themselves and their clients. But my mother--putting aside her own professional self-interest--stepped forward, pro bono, to protect the public against the corruption of judicial elections and judicial misconduct. This is the ethical duty imposed upon lawyers by EC 8-6 of the ABA's Model Code of Professional Responsibility to "protest earnestly against the appointment or election of those who are unsuited to the bench..." and by Rule 8.3(b) of the ABA's Model Rules of Professional Conduct, requiring lawyers to "inform the appropriate authority" of judicial misconduct.

Yet, as reflected by my August 14, 1995 and October 13, 1995 letters and your individual and collective non-response to them, the American Bar Association and New York State Bar Association have rewarded my mother's courageous adherence to ethical rules you have promulgated and promoted by deliberately and repeatedly ignoring the judicial retaliation to which she has been subjected as a result.

On the subject of judicial retaliation--and the obligations of the bar--I wish to draw your attention to the 1993 Report of the National Commission on Judicial Discipline and Removal, pertinent pages of which are annexed hereto as Exhibit "C" (pp. 70-72, 100-102). That Report recognized as "widespread" the reluctance of lawyers--including government lawyers--to even file complaints against judges because of "fear(s) of adverse consequences" (at p.100). Its solution was:

"the birth and nourishment of a culture in which the bar stands together...in defending lawyers against retaliation by vindictive judges." (Exhibit "C": p. 101)

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Therefore, by this letter, the Center for Judicial Accountability specifically calls upon your ABA committees and the ABA Center for Professional Responsibility to develop such "culture", as well as implementing structures, for "defending lawyers against retaliation by vindictive judges". Otherwise, the ethical and professional duty of lawyers under EC 8-6 of the ABA's Model Code of Professional Responsibility ("protest earnestly against the appointment or election of those who are unsuited to the bench...") and Rule 8.3(b) of the ABA's Model Rules of Professional Conduct ("inform the appropriate authority") will continue to be--as they presently are--"just words".

The due process-less suspension of my mother's license, summarized in our October 26, 1994 Op-Ed ad in The New York Times "Where Do You Go When Judges Break the Law?" (Exhibit "D")¹, is a real-life context for your committees and the Center for Professional Responsibility to explore the catastrophic reality of judicial retaliation against a whistleblowing attorney and to devise meaningful solutions. We, therefore, request that this letter, the annexed exhibits, as well as the Sassower v. Mangano, et al. cert papers, be distributed to the membership of your respective committees for that purpose.

Unfortunately, it appears that you have ignored our previous request for presentment of the issues to your committee membership, thereby thwarting the democratic process.

As reflected by my October 13, 1995 letter (Exhibit "A"), we explicitly requested that the serious issues presented by my August 14, 1995 letter "be placed on your Committee's agenda" and further requested that the committee members review the pertinent documents.

Such explicit request was precipitated by a September 26, 1995 letter from Ms. Gray, advising:

"if you are seeking ABA assistance, you should first submit your written request to the Standing Committee on Professional Discipline...The next meeting of the Professional Discipline Committee is scheduled for October 14, 1995 in Chicago.

It is important for you to follow the procedures of the ABA when seeking its assistance in challenging the loss of your law license."

¹ A copy of my mother's 1989 listing in the Martindale-Hubbell Law Directory is annexed thereto.

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A copy of Ms. Gray's letter--which indicates no recipients other than my mother, to whom it was addressed--is annexed hereto as Exhibit "E".

Although my October 13, 1995 faxed letter (Exhibit "A") complied with Ms. Gray's instruction, it was not presented on October 14, 1995 to the members of the Committee on Professional Discipline--and so stated by Chairman Trombadore on February 3, 1996. Chairman Trombadore told me that this was because he had directed Ms. Gray to respond to it. When I informed Chairman Trombadore that there had been no response from Ms. Gray², he directed Ms. Gray to speak with me.

What Ms. Gray had to say to me on February 3, 1996--in the lobby of the Marriott hotel--was so shocking that I asked her to put it in writing. She misrepresented her September 26, 1995 letter to my mother (Exhibit "D") as a response to my October 13, 1995 letter (Exhibit "A")--when, clearly, it is the other way around. She also misrepresented that filing an amicus brief was the only thing the ABA committees could do--further misrepresenting that this would be done only at the U.S. Supreme Court level following the granting of a cert petition. She maintained that position even when I told her that our cert petition had been denied last May, but that we were challenging New York's attorney disciplinary law and the retaliatory suspension of my mother's license in other venues, i.e., before the New York State Court of Appeals and in a federal action under 42 USC §1983. Additionally, Ms. Gray misrepresented that the U.S. Supreme Court's denial of our cert petition was a decision "on the merits"--although the Court has repeatedly emphasized that such denial is not a merits adjudication.

² Ms. Gray has also not responded to my August 21, 1995 letter to her (Exhibit "F"). Such letter proposed an easily-implemented way for the Center for Professional Responsibility to improve and balance its one-sided data collection. We suggested that the Center "build an archive of cert papers of attorneys challenging the constitutionality of the various state/federal disciplinary laws". We pointed out that "such papers would be an invaluable resource, permitting study and comparison of the 'on the ground' operation of attorney disciplinary laws and procedures from the perspective of attorneys who are the subject of discipline". That value is exemplified by the Sassower v. Mangano, et al. cert petition which shows a "vastly different and more graphic view of how these [disciplinary] systems actually operate than the questionnaire data which the Center receives and compiles from the counsel and staff of the state disciplinary systems."

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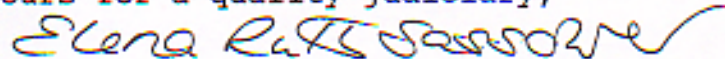
I might add that it was my distinct impression that Ms. Gray had not, in fact, read the Sassower v. Mangano, et al. cert petition.

Ms. Gray's sole advice was to tell me that what we needed was a crusading lawyer like William Kunstler. To this I reminded Ms. Gray that Mr. Kunstler is dead. I did, however, request that if the ABA committees did not view their ethical and professional responsibility as requiring them to themselves take action--which I found difficult to believe--that they locate such lawyer. As I told Ms. Gray, individual lawyers are so fearful of retaliation that they are unwilling to be associated with the case.

I further told Ms. Gray that it is for the Committee on Professional Discipline--by its membership--to examine and evaluate what steps it should take in the face of the clear and convincing evidence we have presented that New York's attorney disciplinary law is unconstitutional and that it is being used to retaliate against judicial whistleblowers such as my mother. Assuredly, that Committee could--and should--solicit an advisory opinion from the Committee on Ethics and Professional Responsibility, as well as seek the aid of other related ABA committees or affiliated organizations.

Please confirm that this letter, its annexed exhibits, and a copy of the Sassower v. Mangano, et al. cert papers will be transmitted to the members of the ABA committees without further delay. To assist the members, we are, of course, ready to make a personal presentation and respond to any and all questions or requests for documents.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

cc: Roberta Cooper Ramo, President
American Bar Association
Marna S. Tucker, Chair
Fellows of the American Bar Foundation

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3. Article Addressed to: Committees

ABA: Gender Roles
Professional Responsibility
140 West Fairbanks St
Chicago, Illinois 60611

4a. Article Number
2-124 353 177

5. Signature (Addresser)
[Signature]

4b. Service Type
 Registered Insured
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PS Form 3811, December 1991

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Postage	\$ <u>3.34</u>
Certified Fee	\$ <u>0.00</u>
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