CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8220
White Plains, New York 10602

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director

BY FAX: 202-502-1144 (9 pages)
BY HAND: 3/7/08

March 6, 2008

Chief Justice John G. Roberts, Jr.
c/o Executive Secretariat of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
1 Columbus Circle, Room 7-425
Washington, D.C. 20544

RE: (1) Request for Judicial Conference disapproval of the proposed new rules for federal judicial discipline as violative & non-conforming with 28 U.S.C. §§351-364 – the Judicial Conduct and Disability Act of 1980;

(2) Request for Judicial Conference hearings on the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980

Dear Chief Justice Roberts:

As you know, the Center for Judicial Accountability, Inc. (CJA) is a national, nonpartisan, nonprofit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.

This letter calls upon you, as head of the Judicial Conference of the United States, to prevent its adoption of new rules for federal judicial discipline that violate and affirmatively misrepresent the congressional statute they purport to implement[1], 28 U.S.C §§351-364, and do not comply with its requirement of "appropriate public notice and an opportunity for comment" (§358), at least not in a meaningful, good-faith way.

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[1] Pursuant to 28 U.S.C. §331, the Judicial Conference is charged with responsibility for ensuring "consistency with Federal law" with respect to the federal judiciary's general rule-making power under 28 U.S.C. §2071. The Judicial Conference's promulgation of rules for federal judicial discipline would, likewise, be expected to conform with "Federal law" – in this case 28 U.S.C. §§351-364 – especially, as such Judicial Conference rules, consistent with 28 U.S.C. §358(a), permit the judicial councils to enact non-conflicting implementing rules. These would be governed by §2071 – and its requirement that "rules shall be consistent with Acts of Congress."

Specifically, we request that you alert the Judicial Conference to the following violations and misrepresentations in the proposed rules governing judicial conduct and disability proceedings under 28 U.S.C §§351-364, that the Conference is scheduled to adopt at its March 11, 2008 annual meeting:

- Rule 3(h), entitled "Cognizable misconduct", whose subparagraph (3)(A), falsely purports that such misconduct "does not include an allegation that is directly related to the merits of a decision or procedural ruling". In fact, 28 U.S.C. §352(b)(1) does not automatically exclude "merits-related" complaints;

- Rule 11, entitled "Review by the Chief Judge", whose subparagraph (c)(1)(B) falsely purports that a complaint "must" be dismissed if the chief judge concludes that it "is directly to the merits of a decision or procedural ruling" and whose other subparagraphs similarly require dismissal of complaints embraced by the two other discretionary grounds for dismissal under 28 U.S.C. §352(b)(1). In fact, 28 U.S.C. §352(b)(1) uses the word "may" – not "must" – with respect to all three of its enumerated statutory grounds for dismissing a complaint, connoting the discretion that Congress gave the federal judiciary NOT to dismiss complaints even on the enumerated statutory grounds, and to consider such facts and circumstances as are appropriate to each complaint – an intent reinforced by §352(b)'s clause that the chief judge's dismissal be by "written order stating his or her reasons", in other words that it do more than identify the statutory ground;

- The commentary to Rule 23 purports that it is "adapted from the Illustrative Rules" and falsely states "The Act makes clear that there is a barrier of confidentiality between the judicial branch and the legislative." In fact, the commentary to Illustrative Rule 16 admits that statutorily-required confidentiality "technically applies only in cases in which an investigatory committee has been appointed". This candid admission, however, is dropped from the commentary to Rule 23.

Additionally, the "Preface" to the rules purports that the Judicial Conference has promulgated them "after public comment".[2] This is false by its implication that the rules are responsive to the legitimate "public comment" presented. This would be obvious had the Judicial Conference's Committee on Judicial Conduct and Disability disclosed such "public comment" as it had received and ignored, as well as the reasons therefor. The only "public comment" the Committee has publicly disclosed are the written statements and

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[2] The rules are silent as to the sufficiency of its "public notice". On that issue, we refer you to the significant presentation sent to you and the Judicial Conference by Dr. Richard Cordero, specifically his January 9, 2008 submission, accessible from his website, www.judicial-discipline-reform.org, as well as our own, www.judgewatch.org (*via* the sidebar link "Judicial Discipline-Federal").

testimony of the three witnesses it permitted to testify at its September 27, 2007 "hearing" on its originally-circulated draft rules.

CJA was not permitted to testify at this September 27, 2007 "hearing". However, we twice alerted the Judicial Conference Committee on Judicial Conduct and Disability to the above three fatal defects and other significant deficiencies, first by a September 27, 2007 draft statement and then by an expanded October 15, 2007 final statement. Nevertheless, all the defects and deficiencies that we had identified have been retained in the rules and commentary scheduled for the Judicial Conference's adoption.

The foregoing is elaborated upon by CJA's accompanying Critique of the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980, containing a section entitled "THE FEDERAL JUDICIARY'S CHARADE OF PUBLIC COMMENT & ITS CONTINUED SUBVERSION OF FEDERAL JUDICIAL DISCIPLINE BY ITS NEW RULES" (pp. 66-71). Our October 15, 2007 statement, with its particularization of fatal defects and deficiencies, is Exhibit T thereto.

The Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980 had been presented to you by the Judicial Conduct and Disability Act Study Committee, chaired by Associate Justice Stephen Breyer. You then presented it, with Justice Breyer, to the American People, at a press conference, held at the Supreme Court. According to The New York Times, you described the Report as a "very important step on the judiciary's behalf in responding to criticism."[3]. The Supreme Court's own September 19, 2006 press release quotes your praise of the Report as "a thorough and comprehensive study of the judiciary's implementation of the Judicial Conduct and Disability Act of 1980".

Is this really what you believe and what you would have the American People believe? As demonstrated by our Critique, the Breyer Committee Report is superficial, methodologically-flawed, and "a knowing and deliberate fraud on the public". Unless you deny or dispute the Critique's 73-page analysis and the accompanying and referred-to substantiating documentary proof, we respectfully call upon you to take such appropriate steps as Congress empowered the Judicial Conference to take pursuant to 28 U.S.C. §331:

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[3] "*Federal Judges Take Steps to Improve Accountability*", New York Times, September 20, 2006 article by Linda Greenhouse.

> "hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority."

Otherwise, we will turn to the President and Congress for their endorsement of "congressional hearings, disciplinary and criminal investigations, and radical overhaul of the façade of federal judicial discipline" – relief clearly warranted by the Critique.

Finally, on the related subject of the corruption of federal judicial selection, at issue in the "disruption of Congress" case, *Elena Ruth Sassower v. United States of America*, on last year's Court docket (#07-228)[4], I take this opportunity to bring to your attention that other than the Court's November 26, 2007 denial of my petition for rehearing, I received no response from you, from anyone on your behalf, or from the Associate Justices to my November 14, 2007 letter to you, constituting a complaint against the Court's Clerk, his staff, and the Court's Counsel for their misconduct in the case. A copy is enclosed to afford you and the Associate Justices an opportunity to rectify your disregard of constitutional, supervisory, and ethical duties therein.

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[4] As recognized by the 1993 Report of the National Commission on Judicial Discipline and Removal:

> "...the appointment process is relevant in a prophylactic sense to the question of judicial discipline and removal. If the appointments process operated perfectly to select only the most qualified and honest judges, the need for disciplinary action should be significantly reduced, if not eliminated. For this reason it has often been suggested that the solution to the problem of misconduct within the federal judiciary is not an improved disciplinary process, but rather a more careful appointments process." (at pp. 83-84).

This is highlighted by the following exhibits to CJA's accompanying Critique: Exhibit A-4 (pp. 5-7); Exhibit A-6 (pp. 2-3); Exhibit A-8 (p. 3); Exhibit I (pp. 2-4), and Exhibit L-7 (pp. 1-16), in particular, summarizing CJA's evidentiary presentations, beginning in 1992, establishing the corruption of federal judicial selection at every level of the process.

Scholars have yet to address these primary-source evidentiary presentations, ultimately culminating in the "disruption of Congress" case. This includes Professor Arthur Hellman, the most prominent commentator on the new draft rules, whose materially false and misleading article, "*The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors*", University of Pittsburgh Law Review, Vol. 69, No. 2 (forthcoming 2008 – http://ssrn.com/abstracts=1015858), actually seeks to justify the federal judiciary's nearly 100% dismissal rate of judicial misconduct complaints by purporting that federal judicial selection involves so "many levels of scrutiny" that it is "not...surprising" that "instances of misbehavior were rare" (p. 38 of web version draft, subject to revision).

By separate correspondence to Professor Hellman and other scholars, we will invite them to confront the worthlessness of these "many levels of scrutiny" – starting with the primary source documentary proof directly underlying the "disruption of Congress" case.

In any event, please advise whether, pursuant to the 1993 recommendation of the National Commission on Judicial Discipline and Removal,

> "....that the Supreme Court may wish to consider the adoption of policies and procedures for the filing and disposition of complaints alleging misconduct against Justices of the Supreme Court" (Report of the National Commission on Judicial Discipline and Removal, at p. 123),

the Justices have adopted such "policies and procedures".

Thank you.

Yours for a quality judiciary,

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

Enclosures: (1) Critique, Compendium of Exhibits, & 3 file folders
(2) November 14, 2007 letter-complaint

cc: Professor Arthur Hellman
Dr. Richard Cordero
The Public & The Press

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8220
White Plains, New York 10602

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: cja@judgewatch.org
Web site: www.judgewatch.org

Elena Ruth Sassower, Director

EXPRESS MAIL: EB 502223137 US

November 14, 2007

Chief Justice John G. Roberts
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against U.S. Supreme Court Clerk William K. Suter & His Staff – Now Expanded by a Misconduct Complaint against the Court's Counsel Scott S. Harris: Docket #07-228: *Elena Ruth Sassower v. United States of America*

Dear Chief Justice Roberts:

This follows up and supplements my October 26, 2007 misconduct complaint against U.S. Supreme Court Clerk William K. Suter and his staff, addressed to you "in your administrative capacity, as you bear ultimate supervisory oversight responsibilities over Mr. Suter and how the Supreme Court Clerk's Office operates."

Yesterday, I received a three-sentence November 6, 2007 letter from the Court's Legal Office, signed by Counsel Scott S. Harris, to which I cannot imagine you would approve.

Conspicuously, the letter – which does not identify my October 26, 2007 complaint as having been addressed to you and does not identify that you referred it to the Legal Office – also does not indicate that you were being furnished a copy of the letter.

I am, therefore, annexing a copy to support my initiation of a misconduct complaint against Mr. Harris for his deceitful cover-up of my serious and substantial complaint against Mr. Suter and his staff. Such new complaint is directly within your purview: the Legal Office "owe[s] [its] existence to the Chief Justice's general authority as Court manager" and was "created by the Chief Justice to assist in carrying out administrative needs of the Court", 22 Moore's Federal Practice, Civil §401.07[2].

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I draw your attention to the second sentence of Mr. Harris' letter, baldly purporting:

> "The actions taken by the Clerk's Office in this matter have been consistent with Court rules and policies."

Such claim by Mr. Harris is without identifying which "Court rules and policies" he is talking about. Not even Mr. Suter had the temerity to purport "consisten[cy] with Court rules and policies". Rather, as chronicled by my October 26, 2007 complaint, Mr. Suter wholly ignored my requests that he justify the actions of the Clerk's Office with respect to my decisive September 17, 2007 and October 9, 2007 motions, shown to be invidious and "protective" of the Government in shielding it from accountability. Indeed – and by way of supplement to my October 26, 2007 complaint – I have yet to receive any response from Mr. Suter to my October 26, 2007 letter to him, which accompanied and substantiated the complaint. No "Court rules and policies" could possibly permit the indecent, unprofessional behavior particularized by that October 26, 2007 letter and by my October 9, 2007 motion, with its annexed September 21, 2007 letter to Mr. Suter, also unresponded-to by him.

As for Mr. Harris' imperious third and final sentence:

> "No response will be provided to future correspondence on these issues.",

it slams the door to what Mr. Harris knew would be my responding request that he specify the "Court rules and policies" to which he was referring and that he do so in the context of the facts, law, and legal argument presented by the documents substantiating my complaint, *to wit*, my undocketed and unreturned October 9, 2007 motion, which disappeared in the Clerk's Office as if in "a black hole", and my unresponded-to October 26, 2007 letter to Mr. Suter.

I would further note that upon receipt of Mr. Harris' letter yesterday, I telephoned the Court's Legal Office (2:42 p.m.) to clarify whether a copy had been provided to you. I spoke with Tanya Powell, who told me that Mr. Harris was on the phone, but would call me back. I received no return call.

Please advise as to whether you endorse and approve of Mr. Harris' handling of my October 26, 2007 complaint against Mr. Suter and his Clerk's Office staff and, if not, what steps you will take consistent with the "guidance"[1] of Canon 3B(2) of the Code of Conduct for United States Judges, which binds all other federal judges:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."

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[1] Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

Finally, inasmuch as the Associate Justices also share responsibility for the proper functioning of the Court's Clerk's Office and Legal Office, I respectfully request that the enclosed eight copies of this letter be distributed to them. Such is additionally germane to their consideration of my October 26, 2007 petition for rehearing, whose first section is based on the same misconduct by Mr. Suter and his staff as is the subject of my October 26, 2007 complaint. The rehearing petition is on the Court's conference calendar for this Tuesday, November 20, 2007.

Thank you.

Yours for a quality judiciary,

ELENA RUTH SASSOWER
Petitioner *Pro Se*

Enclosures

cc: Supreme Court Counsel Scott S. Harris
Supreme Court Clerk William K. Suter
The Supreme Court Associate Justices
United States Solicitor General Paul D. Clement

Supreme Court of the United States
Washington, D. C. 20543

THE LEGAL OFFICE

November 6, 2007

Elena Ruth Sassower
Center for Judicial Accountability
P.O. Box 8220
White Plains, New York 10602

Dear Ms. Sassower:

Your October 26, 2007, complaint against Clerk William Suter and other employees of the Supreme Court Clerk's Office has been referred to this office. The actions taken by the Clerk's Office in this matter have been consistent with Court rules and policies. No response will be provided to future correspondence on these issues.

Very truly yours,

Scott S. Harris
Counsel

(202) 479-3282