

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

COMMISSION OF FIDUCIARY APPOINTMENT

PUBLIC HEARINGS

DECEMBER 7, 2000 - NEW YORK

-----X

SHEILA BIRNBAUM, ESQ.

CHAIRPERSON

PANEL MEMBERS:

- Honorable George Marlow
- Honorable Leo E. Milonas
- Lawrence K Marks, Esq.
- Patricia M. Hynes, Esq.
- O. Peter Sherwood, Esq.
- Honorable Seymour Boyers
- Dean Howard A. Glickstein
- John J. Reilly, Esq.
- Gary S. Brown, Esq.
- Roger Bennett Adler, Esq.

Evelyn Mysch, C.S.R, R.P.R.
John Phelps, C.S.R., R.P.R.
Official Court Reporters

1 Elena Sassower.

2 MS. SASSOWER: Give me a moment, please.

3 Good afternoon. My name is Elena Sassower, and
4 I am the coordinator and cofounder for the Center of
5 Judicial Accountability, which is a not-for-profit,
6 non-partisan and citizens organization that documents,
7 documents the dysfunction, the politicalization, and the
8 corruption of the processes of judicial selection and
9 discipline.

10 I am here to address this commission's mandate,
11 which is to examine rules, and it seems to me from the
12 testimony that I have heard in the number of hours that I
13 have been here, that there are two problems with the
14 rules, one problem is that the rules are very explicit,
15 they are just not being followed.

16 The other problem is we need more rules, more
17 explicit rules, and the ^{problem}~~probably~~ -- and the question that
18 I have to ask you is at the end of the day, when you come
19 up with more explicit rules, will we have the same problem
20 as we have with the current, explicit rules which is they
21 are just not followed.

22 Obviously there needs to be oversight and there
23 need to be oversight mechanisms, and there are. Lo and
24 behold there are. Not only are there statutes and rules
25 and provisions, but we have public agencies and public

1 officers who are charged with the duty of enforcement, and
2 so I am here to discuss with you one particular agency and
3 that is the New York State Commission on Judicial Conduct.

4 Because my time is limited, I will not discuss
5 the corruption of the Attorney ^{Disciplinary} ~~Disiplinary~~ Committees or of
6 the Attorney General's office, or of the Office of Court
7 Administration, or of the District Attorneys office, to
8 whom victims, be they lawyers or litigants, turn for
9 enforcement of the rules that are on the books already.

10 Commission on Judicial Conduct. I dare say that
11 I am something of an expert on the Commission on Judicial
12 Conduct. I have spent many years studying the Commission
13 on Judicial Conduct, examining the constitutional,
14 statutory and rule provisions relating to the commission,
15 that is, I understand very well its mandate, and let me
16 share it with you because there's a certain amount of
17 confusion generally about the Commission on Judicial
18 Conduct. The law is very specific.

19 THE CHAIRPERSON:: Let me just EXPRESS to you
20 the fact that we just -- if you have recommendations, that
21 would be helpful to what we are doing. We have no
22 authority nor anything else over that body. What we only
23 have as part of our activities are THE rule changes that
24 can be made that would assist in the fiduciary
25 appointment.

1 MS. SASSOWER: Yes. You have to understand that
2 your mandate, as reflected by your press release, is to
3 "assess the ability of the existing regulatory structure, to
4 protect against abuse, and make any necessary
5 recommendations for reform." Obviously, if you can't get
6 enforcement of existing laws and provisions relative to
7 fiduciary appointments, you can't get enforcement because
8 the enforcement mechanisms are broken down and
9 corrupted and you don't think it's within your purview to
10 address the corruption of the supervisory mechanism, then
11 we should just call it quits, because we are spinning our
12 wheels. But I happen to believe that you cannot shut your
13 eyes and indeed, Madam Chairwoman, you recognized, by
14 adopting my question to several of the individuals who
15 came up here to testify, when you asked have you filed any
16 complaints, because you understand that people who are
17 aggrieved have to have recourse, have to have redress.
18 It's only obvious, and we, the people, feel the same way.
19 That's why we pass^{ed} a constitutional amendment creating the
20 Commission on Judicial Conduct, that's why the ^{legislature,} ladies and
21 gentlemen even before the constitutional amendment, adopted
22 a statute. Let me just very, very briefly, conscious of
23 my time, but recognizing, as I hope you will, the
24 transcending importance of this, give me just five, ten
25 minutes because we are running ahead, to tell you about

1 the Commission on Judicial Conduct.

2 Judiciary Law 44.1 defines the mandate of the
3 Commission on Judicial Conduct, and it requires that the
4 Commission investigate every complaint it receives. Every
5 complaint that it receives. And the only exception to
6 that mandatory investigative duty is where the Commission
7 determines, on its face, lack of merit, but so long as
8 that complaint is facially meritorious, it must be
9 investigated.

10 Now, the Commission on Judicial Conduct in
11 violation of that statute has promulgated a rule, its own
12 rule, which ^{arrogates} ~~abrogates~~ to itself complete discretion to do
13 anything or nothing at all with the complaints it
14 receives. There's no standard in the commission's rules.
15 The consequence is and when you put this Rule which is 22
16 NYCRR 7000.3 next to Judicial ~~44~~.1, they are incompatible,
17 inconsistent. The rule must be stricken. But as applied,
18 what is happening as applied?

19 Now, you know, I am sure, that the commission is
20 cloaked in confidentiality, but the commission, the
21 Commission on Judicial Conduct by law is required to
22 produce an annual report. We, the people, as taxpayers,
23 pay for this. And what does it show? The Commission on
24 Judicial Conduct gets, on average, about 1400 complaints a
25 year and by its own statistics, it is dismissing, without

1 investigation, 85 percent. Without investigation.

2 Now, the commission will tell you that, Yes,
3 those 85 percent are frivolous, they lack merit, you know,
4 disgruntled litigants complaining, ^{they} ~~she~~ lost the case, they
5 are complaining about the Judge. Is it so?

6 Well, our citizens ^{organization,} organized the Center for
7 Judicial Accountability, ^{collects} ~~and checks~~ judicial misconduct
8 complaints. We have done it for years. We have the
9 largest archive of copies of judicial conduct complaints.
10 We have shadowed the commission. We have collected
11 complaints. We have ourselves filed complaints. And what
12 do those complaints show? Those complaints show, those
13 complaints are facially meritorious. Even beyond that,
14 they are documented. Not only are they documented as to
15 being facially meritorious, but as to heinous criminal
16 conduct. These complaints include complaints involving
17 fiduciary appointments, involving patronage. **I**ndeed,
18 because previous speakers, including Mr. Zeidman of the
19 Fund for Modern Courts, twice made reference to the tie
20 between cross endorsements and patronage.— He referred to,
21 I believe, Broome County, and other speakers as well have
22 talked about cross endorsements, including Miss Carvel.—

23 **L**et me tell you about the cross endorsements
24 that put the Surrogate of Westchester County on the bench
25 who has caused such heart break and hardship to the Carvel

1 family. That ~~is~~ Surrogate had no prior judicial
2 experience, but he did have offices in the Republican
3 party. He was cross endorsed in a deal that, ^{believe} belief it or
4 not, was put in writing, it was a package deal, and it
5 provided for the cross endorsements of seven judges over a
6 three-year period with terms and conditions including
7 resignation to create vacancies and as to patronage.

8 Let me tell you, the candidates had to pledge in
9 writing, we hereby pledge, excuse me, patronage, they
10 pledge, that they will provide equal access and
11 consideration, if any, to the recommendations of the
12 leaders of each major political party in connection with
13 proposed judicial appointments. This, my friends, is in
14 writing, and this deal, this disgusting deal, was
15 implemented in the judicial nominating convention which
16 violated the Election Law and affidavits to that effect
17 were provided to the commission with a written copy of the
18 deal. What did the commission do?

19 You get form letter A, acknowledgement, followed
20 by form letter B. Form letter B says, The commission
21 signed by the commission's clerk, the commission has asked
22 me to advise you that it has dismissed the complaint. No
23 finding → ~~th~~ that the complaints was facially lacking in
24 merit, and indeed, it was not. Not only was it not, it
25 was documented.

1 Now, to make this short, it's already been too
 2 long, I'm sorry. We have sued the commission, sued the in
 3 1995, suing the commission for its unlawful rule,
 4 violative of the statute, challenging that rule as
 5 written, ^{and} as applied. The Commission on Judicial Conduct
 6 had no defense, and so, it was defended by litigation of
 7 misconduct of its attorney, the New York State Attorney
 8 General, and although that litigation ~~of~~ misconduct was
 9 pointed up to the Court with requests for sanctions, the
 10 Court, ^{threw out} ~~throughout~~ the case, in a fraudulent judicial
 11 decision, which pretended that the rule and the statute
 12 were not ^{incompatible} ~~in position~~. Well, I guess you can call an
 13 elephant a caterpillar, but you would either be
 14 incompetent or dishonest.

15 THE CHAIRPERSON: We more than gave you time.
 16 If you can give us some concluding remarks?

17 MS. SASSOWER: I will. I propose the following:
 18 ^{the} commission not only survived that 1995 lawsuit through a
 19 fraudulent judicial decision, but two subsequent lawsuits
 20 by fraudulent judicial decisions, each time defended by
 21 the State's highest law enforcement officer, the Attorney
 22 General, with litigation of misconduct. I propose that if
 23 you plan to give any teeth to the explicit rules that
 24 already exist, mandatory rules relating to fiduciary
 25 appointments, that you make sure that the enforcing

1 mechanism provided by the ~~conduct~~ ^{Commission} is workable and that you
2 begin, since you are focused primarily on rules, that I
3 leave it to you to put 44.1 in front of you and next to it
4 22 NYC RR 7000.1 and you see whether you can make them
5 harmonious, because they are not, and when you find that
6 you cannot, and when you further find that the pretense in
7 the 1995 case that they are harmonious is a fraud, that
8 you take appropriate action, including if it's not within
9 your jurisdiction that you make it a formal
10 recommendation, not to Chief Judge Kaye, because she's
11 responsible for the ongoing coverup, but to everyone in a
12 position of power and leadership in this State who can
13 vindicate the public's rights so that the public is not
14 repeatedly deprived and raped in Estates and Trusts, and
15 all other kinds of fiduciary appointments as well as
16 everything else.

17 THE COURT: Thank you.

18 MS. SASSOWER: I just want to identify that this
19 is a -- this is the state of the record of three Article
20 78 proceedings to date and AN appeal is being perfected in
21 the next two weeks. Most of this file is in the
22 possession of ^{Sherrill} Cheryl Spatz, has been at the OCA, provided
23 by me, so that Miss Spatz can, because as you know, the
24 mandate of Miss Spatz is to work closely with the
25 Commission on Judicial Conduct.

- 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

THE COURT: Thank you.

(Whereupon, John Phelps relieved Evelyn Mysch as
the Official Court Reporter.)