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TODAY'S NEWS

Update

The Appellate Division, First Department, has upheld a ruling that the State Commission on Judicial Conduct has the discretion to refuse to investigate charges brought to it by an attorney against a judge. In a two-paragraph unsigned opinion, a five-justice panel affirmed a September 1999 decision by Manhattan Supreme Court Justice Edward Lehner not to require the commission to investigate allegations that a Manhattan Criminal Court Judge changed a ruling based on personal animus against the complaining lawyer. The appeals court last week said that the lawyer who brought the charges lacks standing to assert that the commission is required to investigate all meritorious complaints of judicial misconduct. The case is *Mantell v. New York State Commission on Judicial Conduct*, 2291.

2291. MICHAEL MANTELL, pet-ap, v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, res-res QDS:12118527 — Judgment, Supreme Court, New York County (Edward Lehner, J.), entered on or about September 30, 1999, which, in a proceeding pursuant to CPLR article 78 to compel respondent Commission to investigate petitioner attorney's complaint of judicial misconduct, granted respondent's motion to dismiss the petition, unanimously affirmed, without costs.

Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus (*cf.*, *Matter of Dyno v. Rose*, 260 AD2d 694, 698, appeal dismissed 93 NY2d 998, lv denied 94 NY2d 753).

M-5760. MANTELL v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT — Motion seeking leave to intervene and for other related relief denied.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

By Williams, J.P.; Mazzaelli, Lerner, Buckley and Friedman, JJ.

Thursday, December 20, 2001

DECISIONS

*First Judicial Department***APPELLATE DIVISION**By Nardelli, J.P., Mazzarelli, Andrias,
Ellerin, Rubin, JJ.

5638. ELENA RUTH SASSOWER, ETC., pet-ap, v. COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK, res-res — Order and judgment (one paper), Supreme Court, New York County (William Wetzel, J.), entered February 18, 2000, which, in a proceeding pursuant to CPLR article 78, *inter alia*, denied petitioner's recusal motion and her application to compel respondent Commission to investigate her complaint of judicial misconduct and granted the motion by respondent Commission to dismiss the petition, unanimously affirmed, without costs.

The petition to compel respondent's investigation of a complaint was properly dismissed since respondent's determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to mandamus (*Mantell v. New York State Commn. on Judicial Conduct*, 277 AD2d 96, *lv denied* 96 NY2d 706). Moreover, inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct, she lacks standing to sue the Commission (*see, Valley Forge Christian Coll. v. Am. United for Separation of Church and State*, 454 US 464, 472; *Soc'y. of the Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 772; *Matter of Dairylea Coop. v. Walkley*, 38 NY2d 6, 9).

The fact that the court ultimately ruled against petitioner has no relevance to the merits of petitioner's application for his recusal (*see, Ocasio v. Fashion Inst. of Technology*, 86 F Supp 2d 371, 374, *affd* ___ F3d ___, 2001 US App LEXIS 9418), and the court's denial of the recusal application constituted a proper exercise of its discretion (*see, People v. Moreno*, 70 NY2d 403, 405).

The imposition of a filing injunction against both petitioner and the Center for Judicial Accountability was justified given petitioner's vitriolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions (*see, Miller v. Lanzisera*, 273 AD2d 866, 869, *appeal dismissed* 95 NY2d 887).

We have considered petitioner's remaining contentions and find them unavailing.

M-4755. SASSOWER, etc. v. COMMISSION ON JUDICIAL CONDUCT — Motion seeking leave to adjourn oral argument of this appeal and for other related relief denied.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

Ex B-2