

Commission On Judicial Conduct May Refuse To Investigate Judge

BY LAZAR EMANUEL

Manhattan Supreme Court Judge Edward H. Lehner has ruled that the Commission on Judicial Conduct may exercise its discretion to refuse to consider charges brought against a judge by an attorney.

Attorney Michael Mantell of Mantell & Haskell directed his six-page complaint against Manhattan Criminal Court Judge Donna G. Recant. He alleged that Judge Recant had changed a decision favorable to his client solely because of a courtroom dispute with him (Mantell).

Attorney Mantell argued that his complaint against Judge Recant was the same as the complaint in any action and that his allegations should be considered as true. But Judge Lehner ruled that the Commission could refuse to consider the complaint if, in its judgment, "the complaint on its face lacks merit." Judge Lehner held that Mantell could not rely on an Article 78 writ of mandamus to compel an investigation of his charges.

Judge Lehner reasoned that the Commission functioned in the same way as any prosecutor who considers a criminal complaint. The prosecutor has sole discretion whether to pursue the complaint to indictment; the Commission is similarly entitled to reject a complaint on its face.

The Commission on Judicial Conduct considers complaints against New York judges. The Commission has eleven members - five lawyers, four judges and two laypersons.

Attorney Mantell represented himself before the Commission. He intends to appeal Judge Lehner's decision to the Appellate Division, First Department.