

**DENVER COUNTY COURT
JUDICIAL DISCIPLINE COMMISSION**

Commission Members:

Dennis A. Jakubowski
Robert Johns
Nora D. Kimball, Chairperson
Christopher Miranda
Judge Michael Mullins
Lee Rudofsky
Judge Sheila Rappaport
Judge Raymond Satter, Ex-Officio

March 10, 2003

In re: Complaint to the Denver County Court, Judicial Discipline Commission
S83651, Magistrate Terry Tomsick

Dear

This letter is in response to your various complaints and correspondence regarding the above-captioned matter. As a result of your grievances, a special sub-committee of the Judicial Performance Commission ("Commission") was formed and your complaint was thoroughly investigated. The Commission finds as follows:

1. Complaint against the Honorable Raymond N. Satter, Presiding Judge of the Denver County Courts. (January 3, 2003)

The Commission finds no basis in support of this complaint. The reasons are set forth with specificity and particularity below in response to your complaint against Magistrate Terry Tomsick. In addition to those reasons, the Commission will also advise you that it is not the duty or responsibility of the presiding judge to handle any matters requiring appeal as a remedy. It appears you filed an appeal motion with the Denver District Court. Judge Satter has no authority whatsoever over the District Court. His responsibilities are limited to the administration and operations of the Denver *County* Court system.

Further, your complaint against Judge Satter is without merit because of your demands. The mere fact that you received no response from Judge Satter about a district court matter does not demonstrate that Judge Satter failed to diligently discharge his administrative responsibilities as you contend. As stated, it was a District Court matter requiring a proper appeal in that court and was not a matter for Judge Satter to oversee.

2. Complaint against Clerk of the Court for Denver County District Court. (December 14, 2002)

The City and County of Denver Judicial Performance Commission was created for the following purpose:

There is hereby created a Denver County Court Judicial Performance Commission established for the purposes of recommending to the Mayor censure, reprimand, or other discipline of Judges of the County Court of the City and County of Denver and recommending to the Mayor the suspension, removal, or retirement from Office of any Judge of the County Court for the City and County of Denver, The Denver County Court Judicial Performance Commission may also recommend to the Presiding Judge of the County Court the discipline or removal of any magistrate of the County Court of the City and County of Denver.

Revised Municipal Code of the City and County of Denver, Vol. 1; Subtitle B-Charter, Part 4. §4, 4, 1 (A).

Administration and oversight of the Clerk of the Denver County Court is not within the umbrella of responsibility of either the Commission or the Presiding Judge. Please direct all complaints in that regard to Mr. Matthew M. McConville, County Court Administrator, 1437 Bannock Street, # 111 C, Denver, Colorado 80202.

Also please be aware that the City and County of Denver, *County Court*, and the City and County of Denver, *District Court* are two separate courts with separate administrations, different oversight bodies, and separate jurisdictions. Your complaint was made against the "Denver County District Court," which is an inaccurate combination of the two separate courts.

3. Complaint to the Denver County Court Judicial Performance Commission against Magistrate Terry Tomsick. (December 24, 2002).

A thorough review of the file indicates that you filed a Summons and Complaint in Small Claims Court, City and County of Denver, Colorado on October 3, 2002. This Complaint claimed against the Denver District Office of the NASD, Nation Association of Securities Dealers. An appearance date of November 13, 2002, was docketed with the Small Claims Court,

Prior to the scheduled trial date, specifically November 4, 2002, Magistrate Tomsick entered an order dismissing the case. This order was entered upon the Court's own motion. All judicial officers may act within their own jurisdiction based upon motions made by the judicial officer himself or herself. In your case, Magistrate Tomsick made a determination, as a matter of law, that an arbitration decision by the NASD was binding and therefore final for purposes of appeal. Magistrate Tomsick further decided that the appeal to the District Court of the adverse arbitration decision against you was your exclusive remedy and you were precluded from bringing a separate action against the NASD in Small Claims Court. This ruling, made as a matter of law, prevented you from asserting any claim against the NASD and therefore the matter was to be dismissed in the Small Claims Court. Magistrate Tomsick took this action on her own motion which she had the authority to do.

Your motion, before Magistrate Tomsick, asking her to reconsider the decision to dismiss the case and vacate the order of dismissal, filed November 11, 2002, was also denied. At that point, the dismissal of the action was reclassified as "with prejudice" instead of "without prejudice" so that the ruling would be final and you would then have the right to appeal Magistrate Tomsick's decision to the Denver District Court. This action was also within the authority and discretion of Magistrate Tomsick. The record further indicates that the Small Claims Court advised both parties of the Court's rulings.

A thorough review of the facts and circumstances of your case and subsequent complaints indicate that Magistrate Tomsick did in fact act within her authority and discretion and your remedy was an appeal to the City and County of Denver, District Court. In the view of the Commission, Magistrate Tomsick took no action that would warrant any kind of disciplinary action.

Thank you in advance for your attention to this correspondence.

Very truly yours,

Nora A Kimball, Chair Judicial
Discipline Commission