

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index #1788-14

Plaintiffs,

**Reply Affidavit in Further
Support Cross-Motion**

-against-

Oral Argument Requested

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity as
Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants.

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STATE OF NEW YORK)
WESTCHESTER COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff, fully familiar with all the facts, papers, and proceedings heretofore had. I submit this affidavit to swear to the truth of plaintiffs' accompanying June 6, 2014 reply memorandum of law – and to set forth further facts bearing upon the integrity of these proceedings.

2. At the outset of this litigation I stated that there was no legitimate defense to this citizen-taxpayer action and that the Attorney General's duty, pursuant to Executive Law §63.1 and State Finance Law 7-A, was to represent plaintiffs and/or intervene on their behalf.¹

3. My exhaustive efforts to ascertain who in the Attorney General's office was independently evaluating plaintiffs' entitlement to the Attorney General's representation and/or intervention herein pursuant to Executive Law §63.1 and State Finance Law Article 7-A – and to alert the highest echelons of the Attorney General's Office and the Comptroller's Office of AAG Kerwin's litigation fraud, aided and abetted by her immediate superior, AAG McGowan – are detailed by my May 16, 2014 affidavit in opposition to her dismissal motion and in support of plaintiffs' cross-motion.

4. The last of my efforts recited by my May 16, 2014 affidavit (¶¶34-35) are the phone conversations I had on May 7, 2014 with the executive assistants of both Attorney General Schneiderman and Comptroller DiNapoli about their duty to withdraw AAG Kerwin's fraudulent dismissal motion. In the absence of their response, the particulars of AAG Kerwin's litigation fraud were particularized by my May 16, 2014 affidavit and at pages 1-24 of its accompanying memorandum of law.

5. This affidavit picks up where my May 16, 2014 affidavit left off so that the Court will have the facts establishing that even after Attorney General Schneiderman, Comptroller DiNapoli, and high-ranking legal staff were furnished with plaintiffs' May 16, 2014 opposition/cross-motion, dispositive of the fraudulence of AAG Kerwin's dismissal motion, they not only failed to take any belated steps to withdraw it and remove her from the case – as was their duty to do – but allowed her

¹ See my May 16, 2014 affidavit, ¶¶14(a), 16-17, 19, 24.

to interpose a fraudulent May 30, 2014 affirmation and memorandum of law in further support of her dismissal motion and in opposition to plaintiffs' cross-motion. The facts are as follows:

6. Plaintiffs' May 16, 2014 opposition/cross-motion was e-mailed to AAG Kerwin and AAG McGowan on May 17, 2014, with a message stating:

"Please forward this e-mail to your superiors, including Deputy Attorney General Levine and Attorney General Schneiderman, for whom I have no e-mail addresses.

To ensure Comptroller DiNapoli is alerted, this e-mail is being simultaneously furnished to his counsel, Nancy Groenwegen, his deputy counsel, Helen Fanshawe, and to his Deputy Comptroller for Budget and Policy Analysis, Robert Ward, with a request that they forward it to Comptroller DiNapoli.
..." (Exhibit CC²).

7. Three days later, on May 20, 2014, Attorney General Schneiderman held a community forum in Suffolk County (Exhibit DD-1)³, which I attended in the hope of being able to personally speak with him about his obligations with respect to this case. Although I was unable to speak with him personally, I did speak with Michael Meade, his Intergovernmental Affairs Bureau Director,

² The exhibits to this affidavit continue the sequence begun by plaintiffs' March 28, 2014 verified complaint, which appends Exhibits A-V, and my May 16, 2014 affidavit, which appends Exhibits W-BB.

³ The brochure for the Attorney General's community forum included the following description of him and his office:

"...As Attorney General, Schneiderman is the highest ranking law enforcer officer for the State, responsible for representing New York, and its residents in legal matters. Schneiderman has worked to restore the public's faith in its public...sector institutions by focusing on areas including public integrity...

In his first weeks in office, Attorney General Schneiderman launched a new 'Taxpayer Protection bureau' to root out fraud and return money illegally stolen from New York taxpayers at no additional cost to the state.... As part of his effort to crack down on corruption and restore the public's trust in government, he launched a groundbreaking initiative expanding his office's authority to investigate public corruption involving taxpayer funds by partnering with the state Comptroller.

furnishing him the question I had written for the Attorney General's response, on a card that had been provided for that purpose (Exhibit DD-2). My question was:

“Executive Law 63.1 predicates the Attorney General's litigation posture on ‘the interest of the state’. State Finance Law Article 7-A contemplates the Attorney General's advocacy on behalf of the People of the State, including as plaintiff. I brought a citizen-taxpayer action under Article 7-A on behalf of the People of the State and could not get any answer as to who at the Attorney General's office was evaluating my right to the Attorney General's representation and intervention. Worse still, the Attorney General, having no legitimate defense, is corrupting the judicial process, most recently by a fraudulent dismissal motion. My requests for supervisory oversight by higher-ups in the Attorney General's office – including Deputy Attorney General Meg Levine and Attorney General Schneiderman – are ignored.

Here's my [notice of] cross-motion that I have just made. Full record of cross-motion and case posted on website, www.judgewatch.org, via the homepage link ‘CJA Leads the Way to NYS Budget Reform...’

Please advise as to who has been evaluating my right to the Attorney General's representation and intervention and his obligation to withdraw the motion.”

8. The next morning, May 21, 2014, I sent Mr. Meade an e-mail, reiterating our conversation together. In pertinent part, it stated:

“I greatly appreciated being able to speak with you yesterday evening at Attorney General Schneiderman's excellent Suffolk County Community Forum – and I look forward to getting a response to my completed question card, with the notice of cross-motion I had attached – consistent with what is written on the printed card ‘If we are unable to answer your question during the event, we will provide a response to your question via e-mail’. My e-mail is elena@judgewatch.org.

May I suggest that you send the question card and its attached cross-motion to Deputy Attorney General for State Counsel Meg Levine, for whom I left two messages – each unreturned – and to Attorney General Schneiderman, whose Executive Assistant, Siovone Kennedy, told me someone would get back to me – but then no one did. This is recounted at ¶¶28-30, 32, 34, 36 of my affidavit in

support of the cross-motion. The direct link to the webpage from which the full record of the case can be conveniently accessed is here: <http://www.judgewatch.org/web-pages/searching-nys/budget-2014-2015/lawsuit-citizen-taxpayer%20action.htm>. My cross-motion affidavit recounts my exhaustive efforts to secure responsiveness at the Attorney General's office in many, many paragraphs under the title heading 'Plaintiffs' Efforts to Secure Supervisory Oversight by the Attorney General & Comptroller of AAG Kerwin's Fraudulent Dismissal Motion' (pp. 15-20).

To facilitate your transmittal to Deputy Attorney General Levine and Attorney General Schneiderman, I have attached the notice of cross-motion to this e-mail and have typed below the same question as I wrote on the question card that I gave you....

Genuine thanks to you, Mr. Meade, for your promised assistance. It was a wonderful event and I wish that what Attorney General Schneiderman said about his 'zero tolerance for public corruption' and about being 'a true believer in equal justice under law'; with 'one set of rules for everyone' and 'no one above the law' – and about safeguarding the public by a 'public integrity bureau' and tax dollars not only by his 'taxpayer protection bureau', but by his collaboration with the Comptroller – were remotely true. We will see from his response." (Exhibit DD-3, underlining in the original).

9. This is the context in which, nine days later – and without any response from higher-ups in the Attorney General's office or Comptroller's office – AAG Kerwin filed her May 30, 2014 affirmation and memorandum of law in further support of her dismissal motion and in opposition to plaintiffs' cross-motion – the fraudulence of which plaintiffs' June 6, 2014 reply memorandum of law now fully documents.

Postscript

10. No fair and impartial tribunal would tolerate AAG Kerwin's litigation fraud, upending the most basic legal standards and ethical rules. Yet AAG Kerwin, Attorney General Schneiderman, Comptroller DiNapoli, and their high-ranking staff are seemingly unconcerned about any consequences for their violative conduct. Apparently, they believe the Court will let them get away with anything.

11. This belief is understandable. The Court has a direct financial interest in this citizen-taxpayer action, challenging, as it does, not only the monies for the Judiciary in the Governor's Budget Bill #S.6351/A.8551, but the third phase of the judicial salary increase by which, on April 1, 2014, this Court's own annual salary rose from \$167,000 to \$174,000.

12. Plaintiffs have a summary judgment entitlement to a declaration that the third phase of the judicial salary increase is statutorily-violative, fraudulent, and unconstitutional. This will be evident to the Court upon its ordering defendants to produce the documents I handed up to the Legislature at its February 6, 2013 joint budget hearing on "public protection" in substantiation of my oral testimony opposing the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation. That is why these documents have not been voluntarily produced by AAG Kerwin in response to plaintiffs' Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit X-2, p. 3). Indeed, it is why her dismissal motion conceals that plaintiffs' complaint even challenges the third phase of the judicial salary increase – a fraud in and of itself requiring denial of her dismissal motion, *as a matter of law*. (see plaintiffs' May 16, 2014 memorandum of law, pp. 8-9, 10-11, 29).

13. Suffice to say, with the fall of the third phase of the judicial salary increase – the first two phases will also fall – bringing this Court's yearly salary down to \$136,700 – a whopping drop of nearly \$40,000 a year.

14. Although the "rule of necessity" holds that where all judges are disqualified, none are disqualified, that does not mean that a judge who is unable to rise above his direct and substantial financial interest is not required to disqualify himself; or that a judge not disqualifying himself is not required to acknowledge his self-interest and make other appropriate disclosure, such as the extent to

which he is dependent upon defendants for his continuance on the bench and relevant personal, professional, and political relationships impacting on his fairness and impartiality.

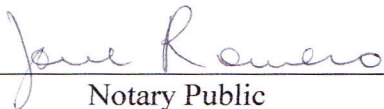
15. This Court can powerfully model fairness and impartiality. All it takes is making disclosure and addressing the fundamental, black-letter, legal and ethical standards, laid out by plaintiffs' May 16, 2014 memorandum of law, that AAG Kerwin and her high-level accomplices would have the Court completely ignore.



ELENA RUTH SASSOWER

Sworn to before me this
16th day of May 2014

Jane



Notary Public

JANE ROMERO
Notary Public, State of New York
No. 01RO6176895
Qualified in Westchester County
Commission Expires Nov. 5, 2015

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