

At the Appellate Division, Third Department of the State of New York, located at the Robert Abrams Building for Law and Justice on State Street, Albany, New York 12223, on the _____ day of November, 2018.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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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,

Plaintiffs-Appellants,

ORDER TO SHOW CAUSE (#4)
to Disqualify the Appeal Panel
for Demonstrated Actual Bias,
including its Willful Violation of
Judiciary Law §14, for Certification
of Questions to the Court of
Appeals, & Other Relief

-against-

App. Div. 3rd Dept. Docket #527081
Albany Co. Index #5122-16

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, 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, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants-Respondents.

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Upon the annexed affidavit of the unrepresented individual plaintiff-appellant ELENA
RUTH SASSOWER, sworn to on November 27, 2018, the exhibits annexed thereto, plaintiffs-
appellants’ perfected appeal, and upon all the papers and proceedings heretofore had,

LET defendants-respondents show cause before this Court at the Robert Abrams Building for Law and Justice on State Street, Albany, New York 12223, on the _____ day of December 2018 at 10:00 a.m. or as soon thereafter as the parties or their counsel may be heard, why an order should not issue:

1. disqualifying the appeal panel for demonstrated actual bias, as manifested by its November 13, 2018 decision and order on motion and conduct at the November 13, 2018 oral argument of the appeal, including its willful violation of Judiciary Law §14 and §§100.3E and F of the Chief Administrator’s Rules Governing Judicial Conduct;
2. enjoining the appeal panel from rendering any decision on the appeal until its justices have ruled on the threshold issue that Judiciary Law §14 bars them from sitting and rendering any decision herein because they are “interested”;
3. pursuant to Article VI, §3b(4) of the New York State Constitution, certifying to the New York Court of Appeals the following or comparable questions:
 - (a) Inasmuch as Judiciary Law §14 bars judges from adjudicating matters in which they are “interested”, are there any state judges who, pursuant to Judiciary Law §14, would not be barred by HUGE financial interest from adjudicating this citizen-taxpayer action, challenging the constitutionality and lawfulness of commission-based judicial salary increases, the judiciary budget, and the state budget “process”?
 - (b) Can retired judges, not benefiting from the commission-based judicial salary increases, be vouched in? Or can the case be transferred/removed to the federal courts, including pursuant to Article IV, §4 of the United States Constitution: “The United States shall guarantee to every State in this Union a Republican Form of Government...”?
 - (c) Can “interested” judges who Judiciary Law §14 divests of jurisdiction nonetheless invoke the judge-made “rule of necessity” to give themselves the jurisdiction the statute removes from them?
 - (d) What are the safeguarding prerequisites to ensure that a judge invoking the “rule of necessity” will not use it for purposes of acting on bias born of interest? Would the “remittal of disqualification” procedures specified by §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct be applicable – starting with a statement by the judge that he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E.

- (e) As Executive Law §63.1 predicates the attorney general’s litigation posture on “the interest of the state”, does his representation of defendants-respondents by litigation fraud, because he has no legitimate defense, establish that his representation of them is unlawful and that his duty is to be representing plaintiffs-appellants, or intervening on their behalf, in upholding public rights?
- 4. transferring this appeal to an Appellate Division that has not yet manifested any bias with respect to this case – preferably the Appellate Division, Fourth Department;
- 5. granting such other and further relief as may be just and proper, including, if the foregoing is denied:
 - (a) disclosure, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct – and in keeping with *Oakley v. Aspinwall*, 3 N.Y. 547, 548, 551 (1850) – of the financial and other interests of the justices, as well as their personal, professional, and political relationships, impacting on their fair and impartial judgment;
 - (b) vacating the November 13, 2018 decision and order on motion upon the granting of reargument and renewal, pursuant to CPLR §2221;
 - (c) “appropriate action”, pursuant to §100.3D(2) of the Chief Administrator’s Rules Governing Judicial Conduct, for the frivolous and fraudulent November 13, 2018 oral argument of Assistant Solicitor General Frederick Brodie, including a show cause order as to why he and supervising and managerial attorneys in the attorney general’s office should not be disciplined (*Cf. Matter of Greenberg*, 15 N.J. 132 (1954));
 - (d) \$100 motion costs pursuant to CPLR §8202.

LET SERVICE of this order to show cause, together with the papers on which it is based, be made on or before the _____ day of November 2018 upon counsel for the defendants-respondents herein, by e-mail and first-class mail, be deemed good and sufficient service.

ANSWERING PAPERS, if any, are to be served by defendants-respondents, *via* e-mail and first-class mail, at least _____ days prior to the return date of this order to show cause, *to wit*, December _____, 2018.

AND IT IS FURTHER ORDERED that this motion brought on by order to show cause shall not be orally argued unless counsel and the unrepresented plaintiffs-appellants are notified to the contrary by the Clerk of the Court.

Associate Justice
Appellate Division, Third Department