SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY, DEAN G. SKELOS and JEFFREY D. KLEIN, as members and as Temporary Presidents of the New York State Senate, and SHELDON SILVER, as member and as Speaker of the New York State Assembly,

Plaintiffs,

-against-

KATHLEEN RICE, WILLIAM J. FITZPATRICK and MILTON L. WILLIAMS, JR., in their official capacities as Co-Chairs of the Moreland Commission on Public Corruption, and THE MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION,

Defendants.

Index No. 160941/2013
I.A.S. Part: 16
Justice Alice Schlesinger

**AFFIRMATION IN OPPOSITION TO MOTION FOR REARGUMENT AND RENEWAL**

JUDITH VALE, an attorney duly admitted to practice in the Courts of this State, affirms the following under penalty of perjury:

1. I am an Assistant Solicitor General in the Office of Eric T. Schneiderman, Attorney General of the State of New York, counsel for defendants Kathleen Rice, William J. Fitzpatrick, Milton L. Williams, and the Commission to Investigate Public Corruption (Commission) in this action.

2. I make this affirmation in opposition to movant *pro se* Elena Sassower's motion for reargument of the rejection of her proposed order to show cause, renewal of that failed proposed order, and vacatur of the stipulation of

discontinuance so-ordered by this Court on April 30, 2014 (among other requested relief). This affirmation is based on my review of the record in this proceeding and of this Office's records.

3. This Court should exercise its discretion to deny Sassower's motion. Reargument is not warranted because Sassower fails to identify any facts or legal authority that this Court misapprehended in declining to sign her proposed order to show cause. Nor has Sassower identified any mistake this Court made when it properly accepted the parties' stipulation of discontinuance after determining that the issues in this litigation were moot. Moreover, both Sassower's demand to renew her proposed order to show cause based on purported judicial bias and her claims of "litigation fraud" are baseless. Accordingly, this Court should deny the motion.

## BACKGROUND

### A. This Litigation

4. This litigation arose out of an investigation conducted by the Commission. Governor Andrew M. Cuomo formed the Commission in July 2013 to conduct a broad investigation into the laws and public agencies that regulate and oversee government ethics, conflicts of interest, and campaign finance. As one small part of that investigation, the Commission issued subpoenas to law firms and other businesses that employ New York legislators and provide them with a source of income from outside of the Legislature.

5. Six law firms ("Law Firms") representing themselves and other employers refused to comply with the Commission's subpoenas and instead filed motions to quash. The Commission opposed these motions and filed cross-motions to compel. Senators Dean G. Skelos and Jeffrey D. Klein and Speaker Sheldon Silver (together, "Legislators"), purportedly on behalf of the Senate, Assembly, and all legislators, also attempted to challenge the Commission's subpoenas by filing their own motion to quash and motions to intervene in the six lawsuits initiated by the Law Firms. The Commission opposed these motions as well. The Legislators also sought to challenge the subpoenas and the Commission's investigation by commencing this declaratory-judgment action. The defendants filed a motion to dismiss the Legislators' declaratory-judgment complaint.

6. While the parties were still briefing the various motions and cross-motions, Governor Cuomo publicly announced that he would end the Commission's investigation after the enactment of the New York State budget, which included various ethics reforms. After the budget passed on April 1, 2014, the parties executed a stipulation agreeing to adjourn the return dates of all of the motions and cross-motions in the expectation that the proceedings and the Commission's subpoenas would become moot. (Stipulation of Adjournment, NYSECF Doc. No. 51.) This Court so-ordered the parties' stipulation to adjourn on April 4, 2014.

7. After the Governor announced that he was ending the Commission's investigation, the Commission's staff was withdrawn, and all of its documents were provided to the United States Attorney's Office for the Southern District of New

York. In light of these events, the Commission's Co-Chairs withdrew the subpoenas to the Law Firms and the related motions to compel because the issues raised therein were moot. (*See* Letter from J. Vale to Justice A. Schlesigner, NYSECF Doc. No. 53.) On April 24, 2014, the parties to this litigation filed a proposed stipulation of discontinuance. The stipulation explained that the parties had agreed to withdraw all of their motions and cross-motions and to discontinue all of the above-described proceedings because the motions and proceedings had been rendered moot by the withdrawal of the subpoenas. (Stipulation of Discontinuance (to be so ordered), NYECF Doc. No. 54.)

### B. Sassower's Proposed Order to Show Cause

8. On April 23, 2014, Sassower filed a proposed order to show cause seeking to intervene in this litigation "on her own behalf and on behalf of the People of the State of New York." (Proposed Order to Show Cause to Intervene & for TRO at 2.) Sassower also sought a temporary restraining order that would prevent the parties from agreeing to discontinue this litigation. (*Id.*) Sassower further submitted a proposed complaint alleging, among other things, that the Governor's creation of the Commission violated separation of powers. (Proposed Compl. ¶ 1, NYSECF Doc Nos. 61-64.) A few days prior to filing, Sassower had contacted the parties' counsel regarding her intention to file a proposed order to show cause.

### C. The So-Ordered Stipulation and Rejection of Sassower's Proposed Order to Show Cause

9. On April 28, 2014, this Court heard oral argument on Sassower's proposed order to show cause, giving Sassower a full and fair opportunity to present her arguments.

10. On April 30, 2014, this Court so-ordered the parties' stipulation of discontinuance. (Order & So-Ordered Stipulation of Discontinuance, *Matter of Subpoena Issued by the Comm'n to Investigate Pub. Corruption to Farrell Fritz, P.C.*, No. 160876/2013, NYSECF Doc. No. 52 (Sup Ct. N.Y. County Apr. 30, 2014).) In furtherance of this stipulation, the Court issued orders disposing of all of the subpoena-related proceedings, including this litigation.

11. On the same day, the Court also issued an order declining to sign Sassower's proposed order to show cause. The Court explained that because it had accepted the parties' stipulation of discontinuance, "no viable action exist[ed] in which" Sassower could intervene. (Order, NYSCEF Doc. No. 57.) The Court further explained that the issues raised in this litigation were moot and that no exception to the mootness doctrine applied because the situation presented was "unique and not likely to recur." (*Id.*)

## REASONS TO DENY THE MOTION

12. A party requesting reargument must establish that the court "overlooked or misapprehended" the relevant facts or law in reaching its prior determination. *1735 Univ. Ave. Assocs. v. Andrews Dev. Corp.*, 92 A.D.3d 516, 516 (1st Dep't 2012); *see also* C.P.L.R. 2221(d). Because this Court did not misunderstand any facts or law in correctly rejecting Sassower's attempt to intervene in a moot litigation, the Court should exercise its discretion to deny her request for reargument. *See Ahmed v. Pannone*, 116 A.D.3d 802, 805 (2d Dep't 2014) (denial of reargument "lies within the sound discretion of the court").

13. Sassower fails to show that this Court misapprehended any particular fact or legal authority. Instead, Sassower makes the conclusory assertion that this Court must have ignored "ALL [of] the facts, law and legal argument" that she presented in her prior affidavit and at oral argument because the Court did not rule in her favor. (*See* Aff. of E. Sassower ("Sassower Aff.") ¶¶ 8-13.) But Sassower cannot use a reargument motion to rehash every single issue that this Court previously considered and rejected. *See Ahmed*, 116 A.D.3d at 805; *Matter of Patriot Sec., Inc. v. Cantor Fitzgerald Sec.*, 226 A.D.2d 216, 216 (1st Dep't 1996). Moreover, this Court's disagreement with Sassower's legal conclusions does not show that the Court ignored her arguments. To the contrary, after providing Sassower with a full opportunity to present her arguments, this Court explained that it had read Sassower's papers, understood her views, and would consider her contentions. (Tr. of Oral Argument at 31:22-23.)

14. In any event, Sassower's renewed attempt to intervene in this litigation is meritless. This Court correctly determined that the issues raised in this proceeding were rendered moot by the Governor's decision to end the Commission's investigation and the resulting withdrawal of the subpoenas. Because the Commission is no longer functioning and the subpoenas are no longer effective, any declaration by this Court regarding the validity of the Commission or its subpoenas could not affect the rights or obligations of the parties and would be a purely advisory opinion. *See Reyes v. Sequeira*, 64 A.D.3d 500, 505 (1st Dep't 2009). This Court also correctly determined that no exception to the mootness doctrine applies here because the unusual circumstances presented are not likely to recur. *See People v. Rikers Island Corr. Facility Warden*, 112 A.D.3d 1350, 1351 (4th Dep't), *lv. denied*, 22 N.Y.3d 864 (2014).

15. Accordingly, Sassower cannot intervene in this litigation because the Court properly accepted the parties' stipulation to discontinue this action as moot. As this Court succinctly explained, no proceeding exists in which Sassower can intervene. Put another way, Sassower's attempt to intervene is itself moot because this litigation has been terminated. *See McDonald v. Capital Dist. Transp. Auth.*, 199 A.D.2d 671, 671 (3d Dep't 1993) (upholding Supreme Court's dismissal of complaint and denial of intervention motion as moot); *Matter of Masjid-At-Taqwa, Inc. v. Bernstein*, 157 A.D.2d 782, 782 (2d Dep't 1990) (denying intervention motion as academic after dismissing proceeding).

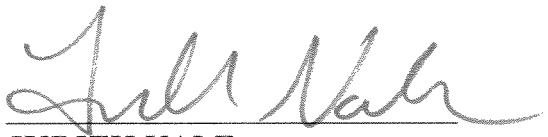
16. Sassower's alternative request to "renew" her proposed order to show cause is equally meritless. A renewal motion must be based on "new facts . . . that would change the prior determination." C.P.L.R. 2221(e)(2); *see Lower E. Side II Assocs., L.P. v. 349 E. 10th St., LLC*, 118 A.D.3d 607, 607 (1st Dep't 2014). Here, Sassower presents no new facts but instead baselessly claims that this Court was biased because of an annual judicial salary increase that was approved by the Special Commission on Judicial Compensation several years before this lawsuit began and that has no connection to this litigation. (Sassower Aff. ¶¶ 6, 14-17.) Such conclusory and speculative assertions do not come close to demonstrating new facts that could have changed this Court's prior determination to accept the parties' stipulation of discontinuance and to reject Sassower's proposed order to show cause.

17. Finally, Sassower's contention (*id.* ¶¶ 11, 18) that the parties' counsel and/or the Court have engaged in a conspiracy or "litigation fraud" is patently frivolous. Sassower complains that the Commission wrote a letter to the Court requesting termination of this action and that the parties filed a proposed stipulation of discontinuance after Sassower notified them of her intention to file an order to show cause. (*Id.* ¶ 18.) But the parties and the Court had contemplated that this litigation would become moot when the motion return dates were adjourned via a so-ordered stipulation in the first week of April, several weeks before Sassower ever contacted counsel regarding her proposed order to show cause. In any event, Sassower's filing of an unsigned, proposed order could not prevent the parties to this litigation from agreeing to discontinue the action. Moreover, no prejudice

resulted to Sassower from the filing of the stipulation because the Court did not accept or so-order the stipulation until Sassower had a full and fair opportunity to be heard.

WHEREFORE, the Commission Defendants respectfully request that this Court deny Sassower's motion and all of the relief requested therein.

Dated: New York, New York
July 22, 2014



JUDITH VALE
Assistant Solicitor General

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# AFFIDAVIT OF SERVICE

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK ):

Meagan Barrera, being duly sworn, deposes and says:

(1) I am over eighteen years of age and an employee in the office of Eric T. Schneiderman, Attorney General of the State of New York, attorney for the State Defendants herein.

(2) On the 22nd day of July, 2014, I served one paper copy of the attached Affirmation, by U.S. Postal Service first-class/priority mail upon the following named person(s):

Elena Ruth Sassower
10 Stewart Place, Apartment 2D-E
White Plains, New York 10603

Meagan Barrera

Sworn to before me this
22nd day of July, 2014,

Assistant Solicitor General