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June 24, 2014

Supreme Court Justice Alice Schlesinger
60 Centre Street
New York, New York

RE: Declaratory Judgment Action – NYS Senate, et al. v. Rice, et al., #160941/2013
(1) Safeguarding the Integrity & Usability of the Record;
(2) Renewed Request for Authorization for E-Filing

Dear Justice Schlesinger:

This is to request that the Court take steps to secure an investigation of the whereabouts of the hard-filed original of my April 23, 2014 order to show cause to intervene to oppose mootness and for summary judgment in the above-entitled declaratory judgment action – such being necessary for the Court's proper determination of my June 17, 2014 motion for reargument/renewal, vacatur and other relief, returnable on July 8, 2014.

At present, this hard-filed original of my order to show cause and supporting papers is missing – and the posting of my copy of the supporting papers on the Unified Court System's e-docket by Clerk Office personnel is a deficient, unusable mishmash.¹ As I can do a far better job than the Clerk's Office in posting my own court submissions – and I am certainly willing to take the Court System's "Free Online Training" – I also renew the request made by my order to show cause that the Court authorize my e-filing herein.

The facts are as follows:

On April 23, 2014, I hard-filed my order to show cause because I was told that I could not register for e-filing without the Court's authorization. This was set forth by my "Affidavit in Support of E-Filing", which my order to show cause annexed in support of authorization.²

At the April 28, 2014 oral argument, I raised the e-filing issue:

Sassower "Your Honor, I want to be sure that these papers are going to be on the electronic docket, accessible to the public. This motion to intervene has been – a

¹ A print-out of the e-docket is enclosed (Enclosure #1), as is a list of what posted documents #58 - #119 actually are (Enclosure #2).

² As hereinafter detailed, my two-page order to show cause and its two-page appended "Affidavit in Support of E-Filing" are MISSING from the e-docket posting of my motion papers. A copy is enclosed (Enclosure #3).

motion was made in this proceeding, in this action, and it needs to be reflected on the electronic docket.”

Court: “Ms. Sassower, I am not directing the E-filing people to do anything. This is not where my authority is at all. So whatever you choose to do, you know, try to do it.” (Exhibit 14, pp. 34-35)³.

By a five-sentence decision dated April 30, 2014,⁴ the Court declined to sign my order to show cause and accepted the stipulation of discontinuance, signed by counsel for the alleged parties. On May 8th, a senior court analyst, Clifford Reig, posted this as document #57 on the Unified Court System’s e-docket for the case, with the description: “Decision + Order on Motion Entered in the Office of the County Clerk on May 08, 2014”. Aside from whether the April 30th decision is an order – an issue raised by my June 17th reargument/renewal/vacatur motion – Mr. Reig’s posting incorrectly marked it “Motion #001”, notwithstanding the April 30th decision, on its face, identifies “Motion Seq. No. 002” and three days earlier, on May 5th, Mr. Reig had posted, as document #56, the Court’s April 30th decision/order for “Sequence Number: 001”.

The motion referred to by document #57 is my April 23, 2014 order to show cause to intervene, which neither Mr. Reig nor other court personnel had posted on the e-docket. Consequently, on May 9th, I telephoned your chambers, inquiring about the hard-filed original. Having received no call-back, I left a further message on May 19th. Your secretary, Cherise Canton, returned my call and told me that the order to show cause had been sent down to Room 119.⁵

Upon calling Room 119, however, I was told that the Clerk’s Office did not have the order to show cause. Indeed, it was suggested – I believe by J.T. Lyton – that it might have been destroyed. I questioned why, and by whom, my order to show cause would have been destroyed, as it was part of the case record, had not been uploaded onto the e-docket, and had so recently been decided by the

³ The transcript of the April 28, 2014 oral argument is Exhibit 14 to my June 17, 2014 reargument/renewal/vacatur motion. The June 17, 2014 reargument/renewal/vacatur motion, as likewise my April 23, 2014 order to show cause and supporting papers, are posted on CJA’s website, www.judgewatch.org, accessible, via the prominent homepage link: “*Intervening on behalf of the People of the State of New York & the Public Interest for a Declaration of Unconstitutionality, etc. against the Commission to Investigate Public Corruption*”. This letter, with its enclosures, is also accessible via that homepage link.

⁴ The Court’s April 30, 2014 decision is Exhibit 8-b to my reargument/renewal/vacatur motion.

⁵ This is consistent with the notice to the Court that the *ex parte* office affixed to its folder for the order to show cause that it had me bring up to the Court on April 23, 2014. It instructs:

“Whether you grant or decline the attached order to show cause, you should send (hand deliver by court personnel) this order to show cause with supporting papers to Room 119. **Regardless of the disposition (e.g., signed or declined), orders to show cause should not be returned to the attorney or moving party.**” (bold and underlining in the original).

Handwritten on the notice were the words: “Movant is not authorized for e-filing”. A photo is enclosed (Enclosure #4).

Court's April 30th decision that I still had time for a reargument/renewal motion.

I asked about the Unified Court System's protocol for uploading court records onto the e-docket and for preserving original records not uploaded. However, supervisory personnel with whom I thereafter spoke – Karen Makin, a supervisor in the statewide E-Filing Resource Center (646-386-3188), and Ed Kvarantan, supervisor of New York County E-Filing (646-386-3230), expressed no concern when I related to them that my recently-decided, hard-filed order to show cause with supporting papers was missing and had possibly been destroyed without being posted on the e-docket. Mr. Kvarantan was especially hostile as I sought to discuss with him what had taken place and the Court System's presumed protocol for safeguarding the court record, be it in hard or electronic form.

The only assistance I got was from Ronnie Schmachtenberg, with whom I spoke on May 21st, in the absence of Jeffrey Carucci, the Unified Court System's Statewide Coordinator for Electronic Filing. Following my telephone conversation with her, she called me back to say that court personnel would look for the order to show cause, I believe suggesting it had not been destroyed. As for posting it on the e-docket, Ms. Schmachtenberg first suggested that I come in with my own copy so that it could be uploaded by the *pro se* office. However, she thereafter proposed that I could e-mail pdfs of it to her for posting, after it was checked for viruses. I promptly did this and, from 2:36 p.m. to 9:57 p.m. on May 21st, sent Ms. Schmachtenberg one e-mail after another, transmitting every component piece of my order to show cause as a pdf, each pdf named so as to identify what it was. The "subject" line of each e-mail also identified what each component piece was and, for virtually all the e-mail, an additional identification appeared in the message portion. As for documents that were too large to e-mail by a single pdf, such as my 41-page affidavit in support of my order to show cause and my 46-page proposed verified complaint, I sent them in separate parts, labelling each part.⁶ So you can appreciate all this time-consuming work, on my part – necessitated because fear of viruses precluded Ms. Schmachtenberg from utilizing the links to the pdfs of my April 23, 2014 order to show cause, posted on the Center for Judicial Accountability's webpage: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/4-23-14-osc-with-notice-to-produce.htm>, enclosed are the succession of e-mails I sent to Ms. Schmachtenberg (Enclosure #5).⁷

The next day, May 22nd, Ms. Schmachtenberg confirmed her receipt of all my many e-mails and stated that there were no viruses in the pdfs and that they would be uploaded by Erlon Hodge. I

⁶ A further example of this is Exhibit S-2, my December 11, 2013 letter pertaining to the Judiciary budget, whose enclosure, my March 11, 2013 letter, I had to send separately.

⁷ The "subject" line for my first e-mail was "osc". It attached a pdf named "4-23-14-osc-with-efiling-affidavit.pdf" and expressed my gratitude to Ms. Schmachtenberg very simply: "xxoo". Ms. Schmachtenberg's response, following my e-mailing of many further pdfs, was "Keep sending what you need to send. I will be back in the office at nine tomorrow and will continue to take care of this filing. Have a good night. Don't work too hard." – to which I e-mailed back: "bless you... You are wonderful. If only there were more like you..."

expressed concern that my order to show cause be posted in the proper sequence in the e-docket, namely before the stipulation of discontinuance, which had been signed and filed on April 24th. I explained to her that this was important because the Court's April 30th decision had falsely made it appear that the stipulation of discontinuance had preceded my order to show cause, which it had not.

I do not recall whether I spoke with Mr. Hodge on May 22nd, but I may have telephoned him upon learning from Ms. Schmachtenberg that he would be doing the posting. In any event, I called and spoke with him on May 28th (646-386-3997), telling him that if he had any questions or problems, he should be sure to call me. On June 9th, with no posting of the order to show cause on the e-docket, I called Mr. Hodge again. He stated he had been very busy, was the only one available for the job, and that it would be done by the end of the week.

On June 16th, Mr. Hodge posted documents #58 - #119, continuing the posting sequence of document #57, the so-called "Decision + Order on Motion Entered in the Office of the County Clerk on May 08, 2014". As hereinafter particularized, his posting is utterly deficient.

Inexplicably, Mr. Hodge's posted documents bear NONE of the concise, accurate names I had furnished by my e-mails and pdfs (Enclosure #5). Instead, he used generic, identical names which are essentially useless, where not inaccurate. Aside from repeating six documents twice⁸, another six documents are omitted entirely, most notably, my two-page order to show cause to intervene, bearing, on its first page, a stamp imprinted "RECEIVED APR 23 2014 NEW YORK COUNTY CLERK'S OFFICE" and whose pdf was combined with my 2-page affidavit in support of e-filing (Enclosure #3). Also omitted, my April 15, 2013 corruption complaint to U.S. Attorney Preet Bharara, Exhibit B-2 to my proposed verified complaint – on which all my subsequent corruption complaints rest, including to defendant Commission to Investigate Public Corruption.

Consistent with Mr. Hodge's omission of my order to show cause to intervene is his labelling of his first three documents, #58, #59, and #60. These three documents are, in his words, "Affidavit or Affirmation in Support" – concealing that they are in support of my order to show cause to intervene. Likewise, his further descriptions for #59 and #60, "Affirmation Continued" (underlining added), conceal the order to show cause to intervene.

Suffice to note that Mr. Hodge did not have to open the pdf of the document he posted as his #58 to know that it was, quite simply, an affidavit in support of intervention. I had named the pdf: "4-23-14 affidavit-pp.1-25.pdf". The subject line of the e-mail which attached it was "affidavit in support of intervention-pp. 1-25".

⁸ The following are duplicates: Document #60 & #119 are each my Notice to Furnish Papers to the Court Pursuant to 2214(c); Document #70 & #85 are each Exhibit B-5 of the proposed verified complaint; Document #72 & #73 are each Exhibit B-7 to the proposed verified complaint; Document #75 & #76 are each Exhibit B-9 to the proposed verified complaint; Document #77 & #78 are each Exhibit B-10 to the proposed verified complaint; Document #106 & #107 are each Exhibit T-1 to the proposed verified complaint.

Mr Hodge's #59 is the continuation of that same affidavit in support of intervention. Here, too, I had named the pdf "4-23-14-affidavit-pp26-41.pdf". The subject line of the e-mail attaching it was "affidavit in support of intervention pp. 26-41, plus exhibits".

As for the exhibits, the pdf I furnished was named: "4-23-14 affidavit-exhibits-1-7.pdf" – with the transmitting e-mail further identifying them as "Affidavit Exhibits 1-7". Yet, Mr. Hodge's #60 is not these collective seven exhibits, which are nowhere to be found. Rather, his #60 is my April 28, 2014 "Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) – which he additionally posts as his document #119.

Mr. Hodge's next four documents, his #61, #62, #63, and #64, are identically titled "Notice". This, they certainly are not. They are my proposed verified complaint: pages 1-15, 16-37, 38-46, and the Table of Exhibits, respectively – and each is so-identified by my e-mails and pdfs, whose easy, comprehensible names he does not use (Enclosures #2, 5). As for his further description: "Motion Papers from Motion Previously Filed" (#61) and "Motion Papers Continued" (#62, #63, #64), these are hardly descriptive of what they are.

As for Mr. Hodge's documents #65 to #119, he has unhelpfully tagged each of them: "Other Court Filed Document". With the exception of the final two, #118 and #119, all are identically described as "Exhibits" – without specifying which exhibit each is, notwithstanding I had furnished the alphabetic/numeric names so that each could be so-identified (Enclosure #4), much as documents #16 - #49, posted by Marc Kasowitz, Esq., on February 21, 2014, are progressively marked Exhibits 1 to 34.

On June 17th, when I was at the courthouse filing my reargument/renewal/vacatur motion – and then, again, by telephone on June 19th – I was unable to make any progress in securing rectification of Mr. Hodge's deficient e-docketing of my order to show cause, or in finding out what had become of my hard-filed order to show cause. That is why, on June 18th and 19th, I called your chambers. At Ms. Canton's suggestion, I have written this letter.

Since drafting the letter, over the weekend, I have some good news to report. Yesterday morning, I was finally able to speak directly with Mr. Carucci. He promised to bring this matter to the attention of New York County Clerk Norman Goodman and Chief Clerk John Werner, who he stated had supervisory responsibilities for the record under the Judiciary Law. I told Mr. Carucci that I would facilitate his presentation to them by furnishing him with a copy of this letter, by e-mail sent to Ms. Schmachtenberg. This, I now do.

Your endorsement of an investigation into the whereabouts of my original hard-filed April 23, 2014 order to show cause and for rectification of the deficient e-docketing of the pdfs of my order to show cause that I had furnished will go far to achieving results. Certainly, if you will now, as I request, authorize my e-filing, you can spare Clerk Office staff the burden of having to post record documents that, demonstrably, I can better post myself.

Thank you.



Elena Ruth Sassower, *Pro Se*

Proposed Intervening Plaintiff,

Acting on her own behalf & on behalf
of the People of the State of New York
& the Public Interest

Enclosures: (1) E-docket print-out, June 18, 2014
(2) List of what posted documents #58 - #119 actually are
(3) April 23, 2014 order to show cause with "Affidavit in Support of E-Filing"
(4) Photo of notice to Court from *Ex Parte* Office
(5) May 21, 2014 e-mails transmitting pdfs of order to show cause

cc: Jeffrey Carucci, Statewide Coordinator for Electronic Filing/Unified Court System
c/o Ronnie Schmachtenberg
Assistant Solicitor General Judith Vale
Michael Garcia, Esq. (Kirland & Ellis, LLP)
Marc Kasowitz, Esq. (Kasowitz, Benson, Torres, & Friedman, LLP)
Jay Musoff, Esq. (Loeb & Loeb, LLP)