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TO: Erin Sullivan - Metroland

RE: "CAW DAY" - May 1st

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: Thanks for leading the way
with courage of this important
public interest lawsuit
you can make the difference!

As discussed -

- ① pages 1 + 5 of Jurisdictional Statement
- ② affidavit in support of motion to
disqualify (pages 1-9)

CENTER for JUDICIAL ACCOUNTABILITY, INC. is a national, non-partisan, non-profit citizens' organization documenting how judges break the law and get away with it.

COURT OF APPEALS
STATE OF NEW YORK

DRAFT: 4/23/02

----- X
ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner-Appellant,

JURISDICTIONAL STATEMENT
PURSUANT TO 22 NYCRR §500.2

-against-

S.Ct/NY Co. 108551/99

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.
----- X

TABLE OF CONTENTS

22 NYCRR §500.2(a)	2
22 NYCRR §500.2(b)	3
22 NYCRR §500.2(c)	5

This Court's Jurisdiction under Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1) Rests on the Court's own Decision in Valz v. Sheepshead Bay, 249 N.Y. 122, 131-2 (1928),



"Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right."

→ see also p. 5

The Decisive and Threshold Issue on this Appeal is the Appellate Division, First Department's Wilful Violation of Petitioner-Appellant's Right to a Fair and Impartial Tribunal and the Manifestation of its Disqualifying Interest and Bias by its Obliteration of all Adjudicative Standards, Including a Decision that is "Totally Devoid" of Evidentiary and Legal Support 6

portion of Petitioner-Appellant's November 19, 2001 interim relief application that sought an audio/video/stenographic record of the oral argument, is annexed as Exhibit "D-2".

4. The January 31, 2000 decision, order & judgment of Acting Supreme Court Justice William Wetzel, "affirmed" by the Appellate Division, First Department's December 18, 2001 decision & order, is annexed as Exhibit "E".

22 NYCRR §500.2(c)

 This Court's jurisdiction to entertain the appeal, pursuant to Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), rests on the Court's *own* decision in *Valz v. Sheepshead Bay*, 249 NY 122, 131-2 (1928), holding "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right"⁴.

In *Holt v. Virginia*, 381 U.S. 131, 136 (1965), the U.S. Supreme Court held:

"...since 'A fair trial in a fair tribunal is a basic requirement of due process', *In re Murchison*, 349 U.S. 133, 136, it necessarily follows that motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential..."

⁴ See 11 Carmody-Wait 2d, §71.37 (1996); 4 NY Jur. 2d §63, each citing *Valz v. Sheepshead Bay* for the identical proposition, "...where the decisive question is whether a judgment is the result of due process, an appeal lies to the Court of Appeals as a matter of right even though in determining that question the court must give consideration to the proper construction and effect of a statute." Also, annotations in McKinney's to §5601 (p. 514)

COURT OF APPEALS
STATE OF NEW YORK

----- x
ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner-Appellant,

-against-

AFFIDAVIT

S.Ct/NY Co. 108551/99

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

----- x
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings in this important public interest Article 78 proceeding against Respondent-Respondent New York State Commission on Judicial Conduct [hereinafter "Commission"].

2. This motion is for the threshold relief of disqualifying this Court's judges from adjudicating my simultaneously-filed Notice of Appeal by reason of their interest, proscribed by Judiciary Law §14, and their bias, proscribed by §100.3E of the Chief Administrator's Rules Governing Judicial Conduct. Pursuant to Article VI, 2a of the New York State Constitution¹, I seek to replace this Court's judges as

¹ In pertinent part, Article VI, 2a states:

"...Five members of the court shall constitute a quorum, and the concurrence of four shall be necessary to a decision; but no more than

adjudicators of my Notice of Appeal² and of the subsequent appeal with specially-designated Supreme Court justices, who will make pertinent disclosure of any disqualifying facts pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

3. To avoid needless repetition of the basic facts of this extraordinary appeal, as to which, additionally, there can be no doubt as to "public importance" and decisional conflict (22 NYCRR §500.11(d)(1)(v)), I refer the Court to my simultaneously-filed Jurisdictional Statement and the record on which it rests, most particularly, my motions in the Appellate Division, First Department for reargument and for leave to appeal.

4. Because virtually every judge in this State is under the Commission's disciplinary jurisdiction and because the criminal ramifications of this lawsuit reach this State's most powerful leaders upon whom judges are directly and immediately dependent and with whom they have personal and professional relationships, I raised legitimate issues of judicial disqualification and disclosure in the courts below,

seven judges shall sit in any case. *In the case of the temporary absence of inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act...* The powers and jurisdiction of the court shall not be suspended for want of appointment when the number of judges is sufficient to constitute a quorum." (emphasis added).

² If notwithstanding this Court's holding in *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1928), the Court dismisses my appeal of right, I request, in the interest of judicial economy and justice, that it, *sua sponte*, grant leave to appeal for all the reasons set forth in my February 20, 2002 motion to the Appellate Division, First Department for leave. Otherwise, I will make a formal motion for leave to appeal, reiterating and expanding upon the grounds set forth in my February 20, 2002 motion.

always suggesting alternative tribunals. Before the Appellate Division, First Department, I made a threshold August 17, 2001 motion for its disqualification, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, and for disclosure by its judges, pursuant to §100.3F of the Chief Administrator's Rules. Before Justice Wetzel, I presented a threshold December 2, 1999 letter-application for his disqualification and for disclosure based upon these same statutory and rule provisions [A-250-290].

5. By its December 18, 2001 decision & order³, the Appellate Division, First Department denied my August 17, 2001 motion -- *without findings, without reasons*, and by *falsifying* the relief the motion sought. By his January 31, 2000 decision, order & judgment [A-9-14], Justice Wetzel denied my December 2, 1999 letter-application -- *without findings, without identifying any of the grounds therein set forth as warranting his disqualification*, and by concealing and ignoring its requested disclosure.

6. Just as Justice Wetzel's wrongful denial of my December 2, 1999 letter-application was the threshold and overarching issue on my appeal to the Appellate Division, First Department of his January 31, 2001 decision, order & judgment (*see* my Appellant's Brief, at pp. 1, 36-52), so the Appellate Division, First Department's wrongful denial of my August 17, 2001 motion in the last sentence of its December

³ The Appellate Division, First Department's December 18, 2001 decision & order is Exhibit "B" to my Jurisdictional Statement.

18, 2001 decision & order is the overarching and threshold issue on my appeal to this Court (*see* my Jurisdictional Statement, at pp.).

7. Consequently, on this motion the Court will be grappling with the very statutory and rule provisions of judicial disqualification and disclosure that are the substantive content of the appeal. Here – as there – the decisive question is the sufficiency of the subject motion/application in establishing legal disqualification for interest, as well as my entitlement to “discretionary” recusal for bias, both actual and apparent, and for disclosure. Thus, while the substance of this appeal calls upon the Court to enunciate the fundamental adjudicative standards that must govern a judge when confronted with an application for judicial disqualification/disclosure – as to which it appears this Court has *never* spoken -- this motion requires the Court to teach by its own example. There is no better way for this Court to instruct our State’s judiciary.

8. It is my contention – so stated before the Appellate Division, First Department (my Appellant’s Brief: pp. 38-9; my reargument motion: Exhibits “B-1”, p. 6) -- that:

“Adjudication of a recusal application should be guided by the same legal and evidentiary standards as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those specific facts. To leave unanswered the ‘reasonable questions’ raised by such application would undermine its very purpose of ensuring the appearance, as well as the actuality, of the judge’s impartiality.

The law is clear...that ‘failing to respond to a fact attested in the moving papers...will be deemed to admit it’, Siegel, New York Practice, §281 (1999 ed., p. 442) -- citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing *Laye v. Shepard*, 265 N.Y.S.2d 142 (1965), *aff’d* 267 N.Y.S.2d 477 (1st Dept. 1966) and

Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. 'If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it' *id.* Undenied allegations will be deemed to be admitted. *Whitmore v. J. Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911)".

Further, based on treatise authority, which I placed before the Appellate Division, First Department (my Appellant's Brief, p. 38; reargument motion: Exhibit "C", p. 5) and, prior thereto, before Justice Wetzel [A-252; A-237]:

"The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion', Flamm, Richard E., Judicial Disqualification, p. 578, Little, Brown & Co., 1996."

9. Consistent with §100.3E of the Chief Administrator's Rules Governing Judicial Conduct that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"⁴, all seven of this Court's judges must recuse themselves so as to avoid the appearance of their bias. Six judges, however, are legally disqualified for interest, pursuant to Judiciary Law §14:

"A judge shall not sit as such in, or take any part in, the decision of, an action, claim, matter, motion or proceeding to which... he is interested."

⁴ In reviewing the Commission's determinations of public discipline against judges, this Court routinely repeats, as the standard, the avoidance of the "appearance of impropriety", *Matter of Sardino*, 58 NY2d 286, 290-291 (1983); *Matter of Sims*, 61 NY2d 349, 358 (1984), citing cases, *Matter of Duckman*, 92 NY2d 141 (1998). Likewise, in public statements, Chief Judge Kaye identifies that "judges must disqualify themselves when their impartiality might reasonably be questioned.", citing the Chief Administrator's Rules and the Mode Code of Judicial Conduct, "Safeguarding a Crown Jewel: Judicial Independence and Lawyer Criticism", 25 Hofstra Law Review 703, 713 (Spring 1997).

10. These six judges, in the order in which their legal disqualification is discussed, are: Associate Judge Albert Rosenblatt, Chief Judge Judith S. Kaye, Associate Judge George Bundy Smith, Associate Judge Victoria Graffeo, Associate Judge Carmen Ciparick, and Associate Judge Howard Levine. As herein demonstrated, their disqualifying interest is based on *their participation in the events giving rise to this lawsuit or in the systemic governmental corruption it exposes – as to which they bear disciplinary and criminal liability.*

11. Consequently, the interests of these six judges is personal and pecuniary. This contrasts sharply with the *ex officio* interests of this Court's judges in *Morgenthau v. Cooke*, 56 N.Y.2d 24 (1982), and the shared generic judicial interests in *Maresca v. Cuomo*, 64 N.Y.2d 242 (1984) -- two appeals where no motions were even made for the Court's disqualification. It also sharply contrasts with *New York State Association of Criminal Defense Lawyers, et al. v. Kaye, et al.*, 95 N.Y.2d 556 (2000), where the Court, in denying a formal motion to disqualify those of its judges who had participated in administrative rule-making, expressly stated:

“The respondent Judges have no pecuniary or personal interest in this matter and petitioners allege none. Nor do petitioners allege personal bias or prejudice.” (at 561).

12. Moreover, the “rule of necessity”, invoked by the Court in each of these three cases, is not applicable to the instant motion, based, as it is, on the individual disciplinary and criminal liabilities of its judges. Replacement Supreme Court justices would not be so encumbered. Nor would they be material witnesses to an official investigation born of this lawsuit -- a further ground for judicial

disqualification (Cf. §100.3E(1)(d)(iv) of the Chief Administrator's Rules Governing Judicial Conduct).

13. Finally, to the extent that this Court in *New York State Association of Criminal Defense Lawyers, et al.* takes exception to the

“substitution of the entire constitutionally appointed court, leaving ‘the most fundamental questions about the Court and its powers to persons whose selection and retention are not tested by constitutional processes’ (*In re Vermont Supreme Ct. Admin. Directive No. 17 v. Vermont Supreme Court*, 154 Vt. 217, 226, 576 A.2d 127, 132)”, at 560,

the systemic governmental corruption exposed by this lawsuit embraces the corruption of “merit selection” to this Court. Indeed, at the time the Court issued its December 21, 2000 decision in *New York Association of Criminal Defense Lawyers*, adopting the notion that its judges are “tested by constitutional processes”, Chief Judge Kaye was not only in possession of the documentary proof *from this lawsuit* chronicling how sham and repugnant these “constitutional processes” had become, but had received, *in hand*, a December 9, 2000 letter from me urging that she secure an official investigation thereof⁵.

14. Such long overdue official investigation would necessarily emerge from adjudication of this appeal by a fair and impartial tribunal – to which I and the People of this State are constitutionally entitled.

15. For the convenience of the Court, a Table of Contents follows:

⁵ According to the December 21, 2000 decision in *New York Association of Criminal Defense Lawyers* (at 558, fn. 1), Chief Judge Kaye recused herself as “It is not an uncommon practice for the Chief Judge alone to be recused in similar appeals involving judicial administration” – citing *Maresca v. Cuomo*.

TABLE OF CONTENTS

The Disqualification for Interest of Associate Judge Albert Rosenblatt and the Bias of His Colleagues on this Court Resulting from the Severe Disciplinary and Criminal Liability he Faces.....	9
The Disqualification for Interest of Chief Judge Judith Kaye and Associate Judge George Bundy Smith Resulting from their Disciplinary and Criminal Liability Arising from the <i>Mangano</i> Article 78 Proceeding	16
The Disqualification for Interest of Chief Judge Kaye and Associate Judge George Bundy Smith Resulting from their Disciplinary and Criminal Liability Arising from Related Prior and Subsequent Appeals	26
This Court's Records Destruction Policy Conceals Its Pattern and Practice of "Covering Up" Corruption in the Lower State Courts – Wilfully Failing to Discharge Its Adjudicative, Disciplinary, and Administrative Obligations to the People of this State	33
The Disqualifying Interest of Chief Judge Kaye Resulting from Her Violation of §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct in Connection with the Evidence from this Lawsuit – the Subject of a <i>Facially-Meritorious</i> August 3, 2000 Judicial Misconduct Complaint Against Her	38
The Disqualifying Interest of Chief Judge Kaye Resulting from her Complicity in the Corruption of "Merit Selection" to this Court – Exposed by this Lawsuit	50
The Disqualifying Interest and Bias of Associate Judge Victoria Graffeo, Arising from her Complicity in the Corruption of "Merit Selection" to this Court and Participation in the <i>Mangano</i> Article 78 proceeding – Exposed by this Lawsuit	55
The Disqualification of Associate Judges Howard Levine and Carmen Ciparick, for Bias, as well as for Interest Arising from the Disciplinary and Criminal Consequences of their Participation in Events Giving Rise to this Lawsuit	58
The Duty of this Court's Judges to Make Disclosure of Pertinent Facts Bearing Upon their Interest and Bias	61

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**The Disqualification for Interest of Associate Judge Albert Rosenblatt
and the Bias of His Colleagues on this Court
Resulting From the Severe Disciplinary and Criminal Liability He Faces**

16. Associate Judge Albert Rosenblatt is legally disqualified for interest. He is the first and only individually-named subject of my *facially-meritorious* October 6, 1998 judicial misconduct complaint [A-57-83] whose unlawful dismissal by the Commission, *without* investigation and *without* reasons [A-93], generated this lawsuit. He, therefore, has a direct personal interest in maintaining intact, with no review, Justice Wetzel's January 31, 2000 decision, order & judgment [A-9-14] and the Appellate Division, First Department's December 18, 2001 "affirmance". Indeed, because this Court's review would necessarily expose the fraudulence of the two decisions upon which Justice Wetzel exclusively predicated dismissal of my Verified Petition [A-12-13] -- the first of which is Justice Herman Cahn's decision in *Doris L. Sassower v. Commission*, an Article 78 proceeding brought by my mother -- Judge Rosenblatt has a further direct interest. This, because *Doris L. Sassower v. Commission* was triggered by the Commission's dismissals, *without* investigation and *without* reasons, of three *facially-meritorious* judicial misconduct complaints against Appellate Division, Second Department panels of which Judge Rosenblatt was a member.