

COURT OF APPEALS
STATE OF NEW YORK

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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,

November 25, 2019

**NOTICE OF MOTION
pursuant to CPLR §5015
& §2221, this Court's Rule
500.24, §100.3 of the Chief
Administrator's Rules
Governing Judicial Conduct,
& the Court's Inherent
Power**

-against-

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.

-----X
Upon the annexed affidavit of the unrepresented individual plaintiff-appellant
Elena Ruth Sassower, sworn to on November 25, 2019, the exhibits annexed thereto,
and upon all the papers and proceedings heretofore had, the unrepresented plaintiff-
appellants will move this Court at 20 Eagle Street, Albany, New York 12207 on

Monday, January 6, 2020 or as soon thereafter as defendant-respondents can be heard

for an order:

1. pursuant to CPLR §5015(a)(4), vacating the Court's three October 24, 2019 Orders, as well as its May 2, 2019 Order, for lack of jurisdiction – or securing a federal forum to do so – absent the Court's establishing that the unequivocal language of Judiciary Law §14 and its own interpretive decisions in *Oakley v. Aspinwall*, 3 NY 547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914), did not divest the six associate judges of jurisdiction by reason of their financial and other interests in this appeal;
2. pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct and consistent with *Oakley v. Aspinwall*, at 548-549, 551, for disclosure by the Court's six associate judges of their financial and other interests in the appeal;
3. pursuant to §100.3E of the Chief Administrator's Rules, disqualifying this Court's six associate judges for the actual bias demonstrated by their October 24, 2019 and May 2, 2019 Orders and vacating them by reason thereof – or securing a federal forum to do so;
4. pursuant to CPLR §5015(a)(3), vacating the October 24, 2019 and May 2, 2019 Orders for fraud, misrepresentation and other misconduct of defendant-respondent New York State Attorney General Letitia James – or securing a federal forum to do so;
5. pursuant to CPLR §2221(d) and this Court's Rule 500.24, granting reargument to address what the Court “overlooked” by its three October 24, 2019 Orders – *to wit*, ALL the facts, law, and legal argument presented by appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions, including as to the *unconstitutionality, as written, as unwritten, and as applied*, of the Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right “wherein is directly involved the construction of the constitution of the state or of the United States” – with a *sua sponte* ground to dismiss because “no

substantial constitutional question is directly involved”, which it has not even embodied in a court rule.

6. pursuant to CPLR §2221(e), granting renewal to address new facts that could not be presented previously, further warranting vacatur of the October 24, 2019 Orders, *to wit*:

(a) unless Court Clerk John Asiello was disabled by disqualification, the Court’s October 24, 2019 Orders are not lawfully signed, pursuant to CPLR §2219(b) and defendant-respondent Chief Judge DiFiore’s own January 26, 2016 authorization;

(b) the Court’s November 21, 2019 Order in *Delgado v. New York State*, if rendered by its six associate judges, manifests their actual bias born of undisclosed financial and other interests, proscribed by Judiciary Law §14, divesting them of jurisdiction to “sit” and “take any part”;

(c) Chief Administrative Judge Lawrence Marks and other judges of the Unified Court System are colluding in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, which is itself repeating ALL the statutory and constitutional violations of the 2015 Commission on Legislative, Judicial and Executive Compensation that this citizen-taxpayer action establishes.

7. pursuant to CPLR §8202, granting appellants’ \$100 motion costs;
8. pursuant to the Court’s inherent power, granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on plaintiff-appellants seven days before the return date by e-mail and regular mail, *to wit*, December 30, 2019.

ELENA RUTH SASSOWER, unrepresented plaintiff-appellant,
individually & as Director of the Center for Judicial
Accountability, Inc., and on behalf of the People of the State of
New York & the Public Interest

Dated: White Plains, New York
November 25, 2019

TO: New York State Attorney General Letitia James
The Capitol
Albany, New York 12224-0341

ATT: Solicitor General Barbara Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

COURT OF APPEALS
STATE OF NEW YORK

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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,

November 25, 2019

Plaintiffs-Appellants,

Moving Affidavit
for Relief Pursuant to CPLR
§5015 & §2221, this Court's
Rule 500.24, §100.3 of the
Chief Administrator's Rules
Governing Judicial Conduct, &
the Court's Inherent Power

-against-

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
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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.

-----X
"This Court's constitutional function is to uphold and safeguard our State
Constitution. Nothing more is asked, on this motion, than that the associate
judges discharge that function, for which they are paid, and which, if they do,
will wipe out, overnight, the 'culture of corruption' plaguing our state – as is
eminently clear from the verified pleadings of this citizen-taxpayer action and
the record thereon." (appellants' June 6, 2019 motion for leave to appeal, at p.
21; repeated in their August 8, 2019 motion to strike, at ¶18, underlining in the
original).

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in the appeal of this citizen-taxpayer action brought pursuant to State Finance Law Article 7-A (§123 *et seq.*) “on behalf of the People of the State of New York & the Public Interest” for declarations that the state budget is unconstitutional and unlawful – including the Judiciary budget that this Court approves and the commission-based judicial salary increases it embeds that have raised the salaries of each of this Court’s associate judges by \$82,200 a year – and whose determination in plaintiff-appellants’ favor – the ONLY determination the record will support on each of their ten causes of action – will cause a \$82,200 salary drop for each associate judge, from \$233,400 to \$151,200, and require claw-backs from each associate judge – the highest nearing \$400,000 from Senior Associate Judge Jenny Rivera.

2. I am fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of appellants' accompanying notice of motion¹ pertaining to the Court's three October 24, 2019 Orders (Exhibits A-1, A-2, A-3),

¹ This motion and the prior proceedings on which it rests are accessible from CJA's website, www.judgewatch.org, via the prominent homepage link "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three-Men-in-a-Room' Governance". The direct link for CJA's webpage for this motion is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/11-25-19-motion-5015-etc.htm> – and from it all referred-to evidence, law, and prior proceedings can be easily accessed.

which, *without* identifying or addressing Judiciary Law §14, *without* making any disclosure of the financial and other interests of each associate judge in this appeal, *without* invoking “Rule of Necessity”, or determining whether it could be invoked, purport to dispose of appellants’ three motions, each raising those threshold issues:

- appellants’ May 31, 2019 motion for “Reargument/Renewal & Vacatur, Determination/Certification of Threshold Issues, Disclosure/Disqualification and Other Relief” (Mo. No. 2019-645);
- appellants’ June 6, 2019 motion for “Leave to Appeal Pursuant to Article VI, §3(b)(6) of the New York State Constitution” (Mo. No. 2019-646);
- appellants’ August 8, 2019 motion “to Strike as ‘Fraud on the Court’, to Disqualify the Attorney General, & for Other Relief” (Mo. No. 2019-799).

3. This motion is timely, there being no time restrictions on motions to vacate pursuant to CPLR §§5515(a)(3), (4) – or with respect to the Court’s inherent power. As for reargument, governed by this Court’s Rule 550.24,² the 30th day from the date of the October 24, 2019 Orders falls on Saturday, November 23, 2019, thereby extending the time to serve such motion to the next business day, Monday, November 25, 2019, pursuant to General Construction Law §25-a.

4. The Court’s three October 24, 2019 Orders are constitutionally and jurisdictionally indefensible – and, if rendered by the six associate judges, warrant proceedings to remove them from office, pursuant to Article VI, §§22-24 of the New

² This motion is also timely for purposes of renewal, governed by CPLR §2221(e) – the statutory right to which being superior to this Court’s Rule 550.24.

York State Constitution, and to criminally prosecute them for corruption and larceny of public monies,³ upon grand jury inquiry and indictment, pursuant to Article I, §6 of the New York State Constitution. Indeed, these three Orders are even more egregious than the May 2, 2019 Order (Exhibit B-1), which, *without* identifying or addressing the threshold issues in the record before the Court, purported to dismiss appellants' appeal of right on *sua sponte* grounds that are not only a LIE, but contravene Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1).

5. The purpose of this motion is to afford the associate judges one last clear chance to discharge their constitutional function – beginning with rendering a responsive, reasoned decision on the threshold jurisdictional and disqualification issues that appellants' May 31, 2019 motion particularized, prefaced as follows:

“5. ...based on the unequivocal bar of Judiciary Law §14 that 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’ and this Court’s interpretive decisions, going back to *Oakley v. Aspinwall*, 3 NY 547 (1850), that the statute divests an interested judge of jurisdiction – both prominently before the Court – I would have expected all six associate judge to have recognized that they had no jurisdiction to dismiss the appeal in which they themselves are directly interested, unless they could invoke ‘Rule of Necessity’ to give

³ Among the penal laws: Penal Law §175.35 “offering a false instrument for filing in the first degree”; Penal Law §195 “official misconduct”; Penal Law §496 “corrupting the government in the first degree”/“public corruption” [PUBLIC TRUST ACT]; Penal Law §195.20 “defrauding the government”; Penal Law §190.65 “scheme to defraud in the first degree”; Penal Law §155.42 “grand larceny in the first degree”; Penal Law §105.15 “conspiracy in the second degree”; Penal Law §20 “criminal liability for conduct of another”. All are cited by appellants’ August 8, 2019 motion as applicable to the associate judges’ acts herein (Exhibit B, at p. 37).

themselves the jurisdiction the statute removes from them – a question threshold on the appeal.

6. Indeed, rather than *sua sponte* dismissing the appeal, as the May 2, 2019 Order purports [], the duty of the six associate judges was to *sua sponte* address whether they could invoke ‘Rule of Necessity’ – and to explicate same by a reasoned decision comparable to the Court’s decision in *New York State Criminal Defense Lawyers v. Kaye*, 95 NY2d 556 (2000). There, in response to a disqualification motion accompanying a motion for leave to appeal,^{fn2} based on ‘Judiciary Law §14 and a parallel provision of the New York Code of Judicial Conduct (Canon 3[C][1][d][i])’, the Court denied the disqualification motion, stating (at p. 561) that its judges had ‘no pecuniary or personal interest’ and that ‘petitioners ha[d] alleged none’.

7. The May 2, 2019 Order makes no disclosure of what the associate judges know to be their pecuniary and personal interests in appellants’ appeal, proscribed by Judiciary Law §14 and ‘parallel provision[s]’ of the Chief Administrator’s Rules Governing Judicial Conduct (§100.3E). Consequently, by this motion and in conjunction with appellants’ motion for leave to appeal, I now allege and particularize those interests and relationships so that the Court may render a reasoned decision on the judicial disqualification issues comparable to its decision in *Criminal Defense Lawyers v. Kaye*^{fn3} – one additionally addressed to the fact that the Court could not constitutionally dismiss appellants’ appeal without invoking ‘Rule of Necessity’ as it is the ‘narrow exception’, *General Motors Corp. v. Rosa*, 82 N.Y.2d 183, 188 (1993), *Maron v. Silver*, 14 N.Y.3d 230, 249 (2010),^{fn4} to the unconstitutionality that exists when judges have ‘direct, personal, substantial pecuniary interest[s]’, *Caperton v. Massey Coal*,

^{fn2} The Court, thereafter, granted Criminal Defense Lawyers’ motion for leave to appeal and, on the appeal, affirmed against them, 96 N.Y.2d 512 (2001).”

^{fn3} As the Court there noted, citing *Schulz v New York State Legislature*, 92 NY2d 917 (1998), a ‘statutorily based’ disqualification motion raises ‘an issue of law for decision by the Court’.”

^{fn4} The Appellate Division’s December 27, 2018 Memorandum and Order (at p. 3) also refers to the ‘narrow exception’ that is ‘Rule of Necessity’, attributing it to ‘*Pines v. State of New York*, 115 AD3d 80, 90 [2014] [internal quotation marks, brackets and citations omitted], appeal dismissed 23 NY3d 982 [2014]’. The citations it has omitted from *Pines* are to *General Motors Corp. v. Rosa* and *Maron v. Silver*.”

556 U.S. 868 (2009), quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)—as at bar.

8. As the May 2, 2019 Order does not invoke ‘Rule of Necessity’, it is unconstitutional, pursuant to all U.S. Supreme Court caselaw, as may be discerned from Chief Justice Roberts’ dissent in *Caperton*^{fn5} because the six associate judges each have ‘direct, personal, substantial pecuniary interest[s]’. This, quite apart from their other interests and relationships contributing to the ‘probability’ of bias, viewed by the *Caperton* majority to also be unconstitutional.” (underlining in the original).

6. The Court responded to the May 31, 2019 motion by its October 24, 2019 Order on Mo. No. 645 (Exhibit A-1), purporting it to be “Upon the papers filed and due deliberation”. It first dismissed the “motion for reconsideration of this Court’s May 2, 2019 dismissal order” made on CJA’s behalf by regurgitating, *verbatim*, the pretext of its May 2, 2019 Order, whose falsity the motion had exposed (Exhibit B-2, at p. 2). That pretext – that I was not CJA’s “authorized legal representative” (Exhibit B-1) – fraudulently concealed that both CJA and I were before the Court as “unrepresented appellants” raising the threshold issue of our entitlement to be

^{fn5} As stated in Chief Judge Roberts’ dissent, to which Judges Scalia, Thomas, and Alito joined:

‘We have thus identified only *two* situations in which the Due Process Clause requires disqualification of a judge: when the judge has a financial interest in the outcome of the case, and when the judge is presiding over certain types of criminal contempt proceedings.

It is well established that a judge may not preside over a case in which he has a ‘direct, personal, substantial pecuniary interest.’ *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). This principle is relatively straightforward, and largely tracks the longstanding common-law rule regarding judicial recusal. See Frank, Disqualification of Judges, 56 Yale L. J. 605, 609 (1947) (‘The common law of disqualification ... was clear and simple: a judge was disqualified for direct pecuniary interest and for nothing else’). ...’ (italics in the original).”

represented by the Attorney General or to state-paid independent counsel, by reason of the Attorney General's conflicts of interest. Next, the Order denied, *without reasons*, the motion for "reconsideration" made on my behalf. Only then – after these two substantive determinations – did the Order deny, *without reasons*, "disqualification of the Associate Judges of this Court &c", with Associate Judge Garcia additionally denying, *without reasons*, his recusal "on nonstatutory grounds". No acknowledgment, except implicitly, that the "disqualification of the Associate Judges" sought by the motion is on statutory grounds – and no acknowledgment at all that the caselaw with respect thereto, including the Court's own, is black-letter, non-discretionary – and divests the associate judges of jurisdiction.

7. The Court's other two October 24, 2019 Orders (Exhibits A-2, A-3), denying and dismissing appellants' June 6, 2019 and August 8, 2019 motions, are of the same ilk, albeit without any mention of disqualification/recusal. Demonstrating this is the annexed "legal autopsy"/analysis of all three October 24, 2019 Orders (Exhibit A-4), stating, as follows, in its prefatory overview:

"The Court's three October 24, 2019 Orders dispose of appellants' three motions, dated May 31, 2019, June 6, 2019, and August 8, 2019, without identifying ANY of the facts, law, or legal argument they present – or the state of the record with respect thereto. Their denials are ALL without reasons – and their dismissals are ALL verbatim repeats of reasons from the Court's May 2, 2019 Order, demonstrated as frauds by appellants' motions and prior submissions.

Nor are the three October 24, 2019 Orders or the May 2, 2019 Order

signed by any of the Court's six associate judges – or by the Court's Clerk, who, on those dates, was not absent or physically disabled. Without explanation, the four Orders are signed by the Court's Deputy Clerk."

8. All three October 24, 2019 Orders and the May 2, 2019 Order (Exhibits A-1, A-2, A-3, B-1), when compared to the record, cannot be justified – and cannot be explained as other than as the brazen manifestation of actual bias by the six associate judges, arising from their HUGE financial and other interests and relationships, which would disqualify them, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, had they jurisdiction to "sit" and "take any part" in this appeal, which they do not have, pursuant to Judiciary Law §14, *Oakley v. Aspinwall*, *Wilcox v. Royal Arcanum*, 210 NY 370 (1914), and ALL other caselaw on the subject – and which their willful concealment of the issue in the Orders concedes, *as a matter of law*.

9. If this Court has ANY facts and law showing that its four Orders are constitutionally and jurisdictionally defensible, in other words, that there are "adequate and independent state grounds" to sustain them, this motion is the Court's opportunity to furnish the particulars. This includes confronting the unconstitutionality, *as written, as unwritten, and as applied*, of the Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right "wherein is directly involved the construction of the constitution of the state or of the United

States” – with its *sua sponte* ground to dismiss because “no substantial constitutional question is directly involved”, which the Court has not embodied in its rules and otherwise conceals. Such is detailed at ¶¶19-23 of appellants’ May 31, 2019 motion and its showing of unconstitutionality is reinforced by the Court’s *without reasons* denial of that motion by its October 24, 2019 Order on Mo. No. 2019-645 (Exhibit A-1).

10. Suffice to say, apart from appellants’ constitutional entitlement to appeals by right and by leave, pursuant to Article VI, §3(b)(1) and Article VI, §3(b)(6) of the New York State Constitution, established, resoundingly, by the record of their May 31, 2019 and June 6, 2019 motions, no litigant should have to contend with litigation fraud of an adverse party, least of all New York’s highest legal officer – which is what this Court sanctioned by all four Orders, willfully disregarding its duty to enforce safeguarding statutory and court rule safeguards. This, apart from its own inherent power and duty to safeguard the integrity of proceedings before it.

11. The fourth branch of this motion, pursuant to CPLR §5015(a)(3), for vacatur of the Court’s Orders, is based on the Attorney General’s fraud, misrepresentation, and other misconduct before this Court on every aspect of the appeal. Dispositive is appellants’ August 8, 2019 motion to strike the Attorney General’s opposition to appellants’ appeals by right and by leave, as “fraud upon the

court”,⁴ denied, *without reasons*, by this Court’s October 24, 2019 Order on Mo. No. 2019-799 (Exhibit A-3).

12. As recognized, powerfully, 115 years ago, in *Matter of Bolte*, 97 AD 551, 574 (1st Dept. 1904) – and quoted in appellants’ memoranda of law, contained within the record on appeal I furnished the Court, at the outset, in support of appellants’ appeal of right:

“...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe.” [R.516; R.975].

13. At bar, the Court’s four Orders have manifested not mere “favoritism”, but outright collusion with defendants, with whom all six associate judges have shared financial and other interests, in addition to relationships – the closest being with defendant Chief Judge DiFiore, who – as identified by appellants’ May 31, 2019 motion (at ¶¶38-43) – is criminally liable for the fraud, corruption, and larceny of

⁴ The centerpiece of the August 8, 2019 motion is its Exhibit B “legal autopsy”/analysis of the Attorney General’s June 27, 2019 memorandum in opposition to appellants’ May 31, 2019 and June 6, 2019 motions. The particulars of the Attorney General’s frauds relating to Judiciary Law §14, *Oakley v. Aspinwall*, and “Rule of Necessity” are at pages 5-7 and 21-28. The financial liability to the associate judges and the state, resulting therefrom, is identified at page 37, as follows:

“...the judges would have no immunity defense for money damages in a federal lawsuit against them – their actions being ‘in the clear absence of all jurisdiction’ by virtue of Judiciary Law §14 and the Court’s own interpretive caselaw, beginning with *Oakley v. Aspinwall*, 3 NY 547 (1850) and reiterated in such cases as *Wilcox v. Royal Arcanum*, 210 N.Y. 370 (1914). Indeed, in *Stump v. Sparkman*, 435 U.S. 349, 358 (1978), the U.S. Supreme Court’s grant of judicial immunity was because ‘neither by statute nor by case law has the broad jurisdiction granted...been circumscribed...’ – emphatically NOT the situation presented by the unequivocal language of Judiciary Law §14 and *Oakley v. Aspinwall*.” (appellants’ August 8, 2019 motion, Exhibit B, at p. 37, capitalization and underlining in the original).

taxpayer monies she perpetuated and became an active accomplice in since her receipt of my December 31, 2015 letter to her,⁵ dispositive *on its face* and by the open-and-shut, *prima facie* evidence it transmitted, *to wit*,

- a FULL copy of CJA’s October 27, 2011 opposition report to the Commission on Judicial Compensation’s August 29, 2011 report;
- a FULL copy of CJA’s November 30, 2015 written testimony before the Commission on Legislative Judicial and Executive Compensation, plus CJA’s December 2, 2015 and December 21, 2015 supplemental statements; and
- CJA’s June 27, 2013 conflict-of-interest ethics complaint to the Joint Commission on Public Ethics (JCOPE), with its attached April 15, 2013 corruption complaint to then U.S. Attorney Preet Bharara.

14. As for this motion’s fifth branch: reargument pursuant to CPLR §2221(d) and this Court’s Rule 500.24, the grounds for such relief are evident from the October 24, 2019 Orders (Exhibits A-1, A-2, A-3, B-1), which, *on their face*, omit ALL of the facts, law, and legal argument presented by appellants’ three motions – ALL of which they “overlook” because they are dispositive of appellants’ ABSOLUTE entitlement to the relief those motions deny, *without reason* – and which this motion seeks by reargument.

15. As for this motion’s sixth branch: renewal pursuant to CPLR §2221(e), it is based on new facts that any fair and impartial tribunal, having jurisdiction, would

⁵ Annexed as Exhibit G to appellants’ May 31, 2019 motion.

deem to warrant relief. The “reasonable justification” for why they were not presented by appellants’ May 31, 2019, June 6, 2019, and August 8, 2019 motions is that they had not yet occurred. Indeed, I do not yet have all the relevant new facts, some yet to unfold – for which reason I have noticed this motion with a long return date. This will accommodate my furnishing the Court with the not-yet-known or yet-to-occur new facts, pursuant to this Court’s Rule 500.6. Such will include the following:

- A. Unless Court Clerk John Asiello was disabled by disqualification, the Court’s October 24, 2019 Orders and May 2, 2019 Order are not lawfully signed, pursuant to CPLR §2219(b) and defendant-respondent Chief Judge DiFiore’s own January 26, 2016 authorization.

All four of the Court’s Orders herein are not signed by any judge or by Court Clerk Asiello, but by Deputy Clerk Heather Davis. Clerk Asiello also functions as the Court’s legal counsel and I have sent him two FOIL/records request letters inquiring on the subject. The first, dated November 1, 2019 (Exhibit C-1) was disingenuously responded-to by Deputy Clerk Davis (Exhibit C-2). The second, dated November 13, 2019 (Exhibit D), was my reply thereto and asked for expedition by reason of this motion.

On Friday, November 22, 2019, Motion Clerk Rachel MacVean informed me that no response to my November 13, 2019 letter had yet gone out, further stating that she could not orally tell me whether Clerk Asiello had disqualified himself, as she is not privy to the letter that will be sent.

Upon receipt of such letter, I will advise the Court as to this issue, potentially constituting another respect in which the October 24, 2019 and May 2, 2019 Orders are unlawful and cannot be defended.

- B. The Court's November 21, 2019 Order in *Delgado v. New York State*, if rendered by its six associate judges, is yet a further manifestation of their actual bias born of undisclosed financial and other interests, proscribed by Judiciary Law §14 and §§100.3E & F of the Chief Administrator's Rules Governing Judicial Conduct.

Part E of Chapter 60 of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation, is materially replicated in Part HHH of Chapter 59 of the Laws of 2018, establishing the Committee on Legislative and Executive Compensation. Appellants' challenge to the constitutionality of Part E, *as written*, is presented by the first two sub-causes of their sixth cause of action [R.109-111 (R.187-193)] – the content of which the Appellate Division's December 27, 2018 decision entirely conceals⁶. This Court's determination of those two sub-causes would dispose of the constitutional challenge to Part HHH, *as written*, presented by *Delgado v. State of New York*.

By an August 28, 2019 express-mail letter to Clerk Asiello, which the Clerk's Office received on August 30, 2019, appellants furnished an update as to the status of the *Delgado* case following the June 7, 2019 decision of Albany Supreme Court

⁶ See appellants' March 26, 2019 letter to Clerk Asiello in support of their appeal of right, materially quoting (at pp. 10-12) the first two sub-causes of their sixth cause of action – and furnishing, additionally, a “legal autopsy”/analysis of the Appellate Division's December 27, 2018 decision, including with respect to those two sub-causes (at pp. 13-17).

Justice Christina Ryba, which upheld the constitutionality of Part HHH based on the Appellate Division, Third Department's December 27, 2018 decision herein. The letter stated:

"...there has been significant appellate activity in the *Delgado* case – most importantly, on August 9, 2019, the plaintiffs therein filed a notice of appeal directly to this Court, pursuant to Article VI, §3(b)(2) of the New York State Constitution and CPLR §5601(b)(2), solely on the issue of the constitutionality of Chapter 59, Part HHH, of the Laws of 2018. Indeed, promptly upon their e-filing their notice of appeal to this Court at 4:54 p.m., they e-filed a notice of cross-appeal to the Appellate Division, Third Department at 5:26 p.m. ... More than three weeks earlier, at 4:09 p.m. on July 15, 2019, the Attorney General had filed her own appeal to the Appellate Division, Third Department from that portion of Justice Ryba's June 7, 2019 decision as struck down the Committee's restrictions on legislators' outside income.

As the Court would be well-served by an appropriate status report from the Attorney General on the *Delgado* and other lawsuits – including as to what steps, if any, she has taken to apprise the plaintiffs therein and the courts of the two threshold integrity issues that exist in those cases: (1) her own direct and indirect financial and other interests in the suits; and (2) the judges' own interests, especially arising from the relatedness of those lawsuits to this – I request that such status reports be ordered by this Court as part of the 'other and further relief as may be just and proper', requested by appellants' August 8, 2019 notice of motion." (at p. 19, underlining in the original).

On that same August 30, 2019 date, Clerk Asiello addressed a *sua sponte* jurisdictional inquiry letter to the *Delgado* plaintiffs' counsel, Cameron MacDonald, giving him and defendants' counsel, Attorney General Letitia James, until September 9, 2019 to be heard with respect to the Court's subject matter jurisdiction.

The Court held that jurisdictional inquiry for nearly 2-1/2 months – until November 21, 2019, when the six associate judges purported to render an order,

signed by Clerk Asiello, stating:

“Appeal transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§3[b][2], 5[b]; CPLR 5601[b][2]). Chief Judge DiFiore took no part.”
<https://www.nycourts.gov/ctapps/Decisions/2019/Nov19/DecisionList112119.pdf>.

This November 21, 2019 Order may have been propelled by my phone call to the Clerk’s Office on November 13, 2019, inquiring about the status of the *Delgado* direct appeal, which I then followed up by a November 13, 2019 FOIL/records request to Clerk Asiello (Exhibit D) for a copy of his August 30, 2019 *sua sponte* jurisdictional inquiry letter and the parties’ responses⁷ – the same November 13, 2019 FOIL/records request as requested, yet a second time, his confirmation that he had disqualified himself from *CJA v. Cuomo* and the reason (Exhibit C-1).

It should be obvious that if Clerk Asiello disqualified himself from *CJA v. Cuomo*, he should have disqualified himself from *Delgado* – whose direct appeal was based on Justice Ryba’s decision resting on the *CJA v. Cuomo* appellate decision for

⁷ Only because of this November 13, 2019 records request (Exhibit D) did I learn of the November 21, 2019 Order – late in the afternoon on Friday, November 22, 2019, upon telephoning Motion Clerk MacVean. The purpose of my call was to apprise her that if the Court had not yet copied and sent me the requested August 30, 2019 *sua sponte* jurisdictional inquiry letter and responses, there was no reason for it to do so, as I had just obtained the August 30, 2019 inquiry letter and the Attorney General’s September 9, 2019 responding letter and October 2, 2019 updating letter from Assistant Solicitor General Victor Paladino – and was hopeful that Mr. MacDonald would provide me with his September 9, 2019 letter. Ms. MacVean advised me that the requested *Delgado* records had already been copied, though not sent – and then informed me of the Court’s November 21, 2019 Order transferring the direct appeal, accessible from the Court’s website.

the constitutional issue.

As with the Court's four Orders herein that Clerk Asiello did not sign (Exhibits A-1, A-2, A-3, B-1), the Court's November 21, 2019 Order in *Delgado* that he signed is devoid of a single fact as to the record before the Court, furnishes no explication of the legal provisions to which it cites, does not cite to any of the Court's own interpretive caselaw, does not identify why "Chief Judge DiFiore took no part", or what it means, and makes no disclosure that the associate judges have interests in the *Delgado* direct appeal, inasmuch as the constitutional issue determined by Justice Ryba's June 7, 2019 decision rests on the Appellate Division's December 27, 2018 decision herein – the subject of appellants' appeals of right and by leave to this Court, as to which the associate judges have HUGE financial and other interests, divesting them of jurisdiction pursuant to Judiciary Law §14 and the Court's own caselaw – interests their four Orders have concealed and not confronted.

Indeed, the November 21, 2019 Order, if the product of the Court's six associate judges, is, like the October 24, 2019 and May 2, 2019 Orders herein, also the manifestation of their actual bias born of their undisclosed financial and other interests, as it cannot be justified procedurally – and, it would appear, substantively.

With respect to procedure, inasmuch as the *Delgado* plaintiffs had simultaneously filed notices of appeal to this Court and to the Appellate Division, Third Department, the proper disposition – IF, in fact, "a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are

involved” – was NOT transfer, but dismissal of the direct appeal – the disposition identified and urged by the Attorney General’s September 9, 2019 letter.

Of course, more crucial is whether, as the Order baldly purports, “a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved”. Based upon my preliminary review, it appears that just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave⁸ – so, too, has it subverted Article VI, §3(b)(2) for direct appeals. This includes by *sua sponte* jurisdictional inquiry letters, of the type Clerk Asiello sent out, NOT citing Article VI, §3(b)(2), but only CPLR §5601(b)(2) – plainly reflective of his knowledge that CPLR §5601(b)(2) omits the crucial clause that Article VI, §3(b)(2) contains: “and on any such appeal only the constitutional question shall be considered and determined by the court”. I will report more specifically on this upon my further examination of the law – and after the Court furnishes me with Mr. MacDonald’s September 9, 2019 letter in support of his direct appeal, which he has refused to supply.⁹

Suffice to say, threshold issues comparable to those raised herein by appellants, should have been raised by Mr. MacDonald. Certainly, none is more glaring than the

⁸ See appellants’ May 31, 2019 motion, at ¶¶19-23 and appellants’ June 6, 2019 motion, at pages 5-10.

⁹ Mr. MacDonald’s refusal, reflected by my email exchange with him – and with Assistant Solicitor General Paladino – on November 21st and 22nd is attached (Exhibits E-1 – E-11).

Attorney General’s disqualification, arising from her own direct financial interest in upholding the constitutionality of Part HHH of Chapter 59 of the Laws of 2018 and the lawfulness of the Committee on Legislative and Executive Compensation’s December 10, 2018 report. As stated at ¶55 of appellants’ May 31, 2019 motion:

“(A) ...And, already, Attorney General James is benefiting from the materially identical Part HHH, Chapter 59 of the Laws of 2018 that established the Legislative and Executive Compensation Committee, which, like Part E, Chapter 60 of the Laws of 2015, was an unconstitutional rider, inserted into the budget as a result of behind-closed-doors, three-men-in-a-room budget deal-making. By its December 10, 2019 Report – replicating ALL the violations which are the subject of appellants’ seventh and eighth causes of action [R.112-114 (R.201-213)] – she benefited from a \$38,5000 salary raise.

On December 31, 2018, the Attorney General’s salary, pursuant to Executive Law §60, was \$151,500. As a result of the ‘force of law’ recommendations of the Committees’ December 10, 2018 Report, it zoomed to \$190,000, effective January 1, 2019. On January 1, 2020, this will shoot up another \$20,000 to \$210,000, and then, on January 1, 2021, by another \$10,000 to \$220,000, through which she had obtained a \$38,500 salary boost that took effect on January 1, 2019 – with a further \$20,000 salary boost, beginning January 1, 2020 and then a \$10,000 salary boost, beginning on January 1, 2021, upheld by Justice Ryba’s June 7, 2019 decision.”

Indeed, based on appellants’ submissions herein – alerting the Court to both the Attorney General’s interests and her litigation fraud in *Delgado* in defending the constitutionality of Part HHH¹⁰ – the associate judges should reasonably have issued a

¹⁰ Appellants’ submissions detailed the Attorney General’s litigation fraud before Justice Ryba in *Delgado* – including urging that she rely on the Appellate Division’s December 27, 2018 decision herein to uphold the constitutionality of Part HHH, with knowledge of its fraudulence, and then further inducing her reliance by this Court’s May 2, 2019 Order, dismissing appellants’ appeal of right from the Appellate Division’s decision. Thereafter, having succeeded in *Delgado* by Justice Ryba’s June 7, 2019 decision upholding the constitutionality of Part HHH based on the Appellate

sua sponte inquiry to Attorney General James as to the propriety of her representing the *Delgado* defendants before this Court. Certainly, the fact that Attorney General James disqualified herself from representing the defendants in the two lawsuits challenging Part XXX of Chapter 59 of the Laws of 2019, establishing the Public Campaign Financing and Election Commission – reported in the press and presumably known to the Court – only underscores the propriety of such *sua sponte* inquiry as the associate judges might have made, but did not.

- C. Chief Administrative Judge Lawrence Marks and other judges of the Unified Court System are colluding in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, which is itself repeating ALL the statutory and constitutional violations of the 2015 Commission on Legislative, Judicial and Executive Compensation that this citizen-taxpayer action establishes.

By the Court's October 24, 2019 Orders (Exhibits A-1, A-2, A-3), the associate judges gave themselves and their fellow judges of the Unified Court System an immediate, tangible benefit beyond being able to continue to collect their current commission-based judicial salary increases: the prospect of further judicial salary increases – to be procured by the same unconstitutional, statutory-violative, and fraudulent means as detailed by appellants' sixth, seventh, and eighth causes of action [R.109-112 (R.187-201); R.112-114 (R.201-212); R.114 (R.212-213)] that the Court refused to review, either by right or by leave – on a record establishing appellants'

Division's decision herein, the Attorney General turned to this Court and offered up Justice Ryba's decision, as if it were independent corroboration of the Appellate Division's decision, annexing it to her June 26, 2019 memorandum in opposition to appellants' May 31, 2019 and June 6, 2019 motions

entitlement to summary judgment as to all three.

Until November 4, 2019, I did not know – because to even imagine it in the circumstances at bar is depraved – that the Unified Court System, under defendant Chief Judge DiFiore, would actively be engaged in misleading the instant, belatedly-appointed Commission on Legislative, Judicial, and Executive as to its statutory charge – and as to its obligation to confront probative evidence. The particulars are set forth by my letter of today’s date to Chief Administrative Judge Marks entitled:

“Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony”. (underlining in the original).

A copy is annexed (Exhibit F) and incorporated herein by reference. The following questions, at page 6, pertain to this Court:

“By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) ‘Judges...must comply with the Chief Administrative Judge’s Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges’ public and private conduct and activities’ citing ‘NY Const., Art. VI, §20(b), (c)’ – thereby implying that New York’s judges do comply and that there is enforcement when they don’t – approved by Chief Judge DiFiore and the associate judges – or was its content known to them and, if so, when? Did you – and they – actually believe that New York’s Judiciary was not obligated to include ANY information as to CJA’s succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which

– a fact pointed out by page 17 of appellants’ “legal autopsy”/analysis of the Attorney General’s June 26, 2019 memorandum in opposition, annexed as Exhibit B to their August 8, 2019 motion.

Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial 'process'?^[fn]" (capitalization and italics in the original).

Upon receipt of Chief Administrative Judge Marks' response to this paragraph and the balance of the letter, I will furnish it to the Court as a new fact further warranting vacatur of the October 24, 2019 Orders.

Finally, and further illustrative of the "willful trashing of the Chief Administrator's Rules Governing Judicial Conduct" to which my letter to Chief Administrative Judge Marks refers is the non-disclosure by any of the associate judges in their Orders herein of any facts bearing upon their disqualification – as is their obligation pursuant to §§100.3E and F of the Chief Administrator's Rules. Indeed, not until I was preparing for my testimony for the November 4, 2019 hearing of the instant Commission on Legislative, Judicial and Executive Compensation did I realize that Associate Judge Paul Feinman had testified before the prior Commission on Legislative, Judicial and Executive Compensation at its November 30, 2015 hearing to which the seventh cause of action refers [R.112-114 (R.201-212)].

His duty was to disclose this and, additionally, his knowledge of the facts recited by that cause of action as to the frauds committed by the judicial pay raise witnesses, of which he was one. This includes his knowledge of CJA's December 2, 2015 supplemental statement, furnishing particulars as to those frauds and identifying Judge Feinman as among the judicial pay raise witnesses who had not presented any

evidence that prevailing judicial “pay levels and non-salary benefits” were inadequate.

As there stated:

“The judges who testified...surely consider themselves well-qualified. Yet, not one stated that he/she would be resigning from the bench, if no salary increase was forthcoming. ... Likewise, First Department Appellate Division Justice Paul Feinman, who identified that he had come to the bench in 1997. This was before the 1999 judicial pay raises, in other words, during a prior ‘salary freeze’ period. Yet, that also did not seem to dampen his judicial aspirations – and he sought re-election, twice, in 2006 and also 2007 – which were subsequent ‘salary freeze’ years.


Any legitimate inquiry by this Commission would rapidly disclose that there is no shortage of experienced, well-qualified New York lawyers who would make superlative judges – and who would embrace the current \$174,000 Supreme Court salary level as a HUGE step up from what they are currently making. For that matter, there is also no shortage of experienced, well-qualified lawyers who would embrace the prior \$136,700 Supreme Court salary level as a HUGE step up.” (CJA’s December 2, 2019 supplemental statement, at pp. 2-3, capitalization in the original).

Four years later, as a result of the frauds put forward by Chief Administrative Judge Marks and his judicial brethren to the prior Commission on Legislative, Judicial and Executive Compensation, which it adopted – as set forth by the sixth, seventh, and eighth causes of action herein – the current Supreme Court salary is \$210,900 and that, according to them, warrants increase, based on the same frauds – and so-detailed in my letter of today’s date to Chief Administrative Judge Marks (Exhibit F).



Elena Ruth Sassower, unrepresented plaintiff-appellant

Sworn to before me this
25th day of November 2019



Notary Public

JOSEPH GONNELLA JR
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GO6357364
Qualified in Westchester County
My Commission Expires 04-17-2021

TABLE OF EXHIBITS

- Ex. A-1: Court of Appeals' October 24, 2019 Order on Mo. No. 2019-645
- Ex. A-2: Court of Appeals' October 24, 2019 Order on Mo. No. 2019-646
- Ex. A-3: Court of Appeals' October 24, 2019 Order on Mo. No. 2019-799
- Ex. A-4: Appellants' "legal autopsy"/analysis of October 24, 2019 Orders
- Ex. B-1: Court of Appeals' May 2, 2019 Order (SSD 23)
- Ex. B-2: Appellants' "legal autopsy"/analysis of May 2, 2019 Order
(Ex. D to appellants' May 31, 2019 motion for reargument, etc.)
- Ex. C-1: Appellants' November 1, 2019 FOIL/records request to Clerk Asiello
- Ex. C-2: Deputy Clerk Davis' November 7, 2019 letter
- Ex. D: Appellants' November 13, 2019 FOIL/records request to Clerk Asiello
- Ex. E-1: Appellants' November 21, 2019 e-mail to Cameron MacDonald (6:55 pm) – "...Delgado v. State of New York – direct appeal to the Court of Appeals"
- Ex. E-2: Appellants' November 22, 2019 e-mail to Attorney General Letitia James & Solicitor General Barbara Underwood (1:44 pm) – "Delgado v. State of New York – direct appeal to the Court of Appeals" (cc: Asst Solicitors General Victor Paladino, Frederick Brodie, and MacDonald)
- Ex. E-3: Senior Solicitor General Paladino's November 22, 2019 e-mail (2:08 pm)
- Ex. E-4: Appellants' November 22, 2019 e-mail to Paladino (2:39 pm) – "Thank you, Asst. Solicitor General Paladino..." (cc to MacDonald)
- Ex. E-5: MacDonald's November 22, 2019 e-mail (2:46 pm)

- Ex. E-6: Appellants' November 22, 2019 e-mail to MacDonald (3:07 pm) – “Apologies, if you’ve taken offense, Mr. MacDonald” (cc: Paladino)
- Ex. E-7: Mr. MacDonald’s November 22, 2019 e-mail (3:14 pm)
- Ex. E-8: Appellants' November 22, 2019 e-mail to MacDonald (3:22 pm) – “Answering your question, Mr. MacDonald...” (cc: Paladino)
- Ex. E-9: Mr. MacDonald’s November 22, 2019 e-mail (3:26 pm) (cc: Paladino)
- Ex. E-10: Appellants' November 22, 2019 e-mail (3:59 pm) – “Again, answering your question, Mr. MacDonald” (cc: Paladino)
- Ex. E-11: Appellants' November 22, 2019 e-mail (4:31 pm) to MacDonald – “News Flash: Yesterday the Court of Appeals decided the direct appeal in Delgado v. State of New York” (cc: Paladino)
- Ex. F: Appellants' November 25, 2019 letter to Chief Administrative Judge Marks -- “Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony”

State of New York

Court of Appeals

*Decided and Entered on the
twenty-fourth day of October, 2019*

Present, Hon. Jenny Rivera, *Senior Associate Judge, presiding.*

Mo. No. 2019-645
Center for Judicial Accountability, Inc. et al.,
Appellants,
v.
Andrew M. Cuomo &c., et al.,
Respondents.

Appellants having moved for reconsideration of this Court's May 2, 2019
dismissal order and other relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion, on behalf of Center for Judicial Accountability, Inc.
by Elena Ruth Sassower, is dismissed upon the ground that Sassower is not Center for
Judicial Accountability, Inc.'s authorized legal representative (see CPLR 321[a]);
and it is further

ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, seeking
reconsideration of this Court's May 2, 2019 dismissal order, is denied; and it is further

ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, insofar
as it seeks disqualification of Judge Garcia on nonstatutory grounds, is dismissed upon
the ground that the Court has no authority to entertain it; and it is further

EX A-1

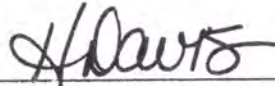
- 2 -

ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, seeking disqualification of the Associate Judges of this Court &c. is otherwise denied.

The application seeking recusal of Judge Garcia on nonstatutory grounds is referred to Judge Garcia for individual consideration and determination.

Judge Garcia denies the referred motion for recusal.

Chief Judge DiFiore took no part.



Heather Davis
Deputy Clerk of the Court

State of New York

Court of Appeals

*Decided and Entered on the
twenty-fourth day of October, 2019*

Present, Hon. Jenny Rivera, *Senior Associate Judge, presiding.*

Mo. No. 2019-646
Center for Judicial Accountability, Inc. et al.,
Appellants,
v.
Andrew M. Cuomo &c., et al.,
Respondents.

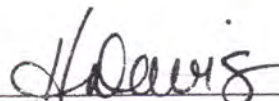
Appellants having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion, on behalf of Center for Judicial Accountability, Inc. by Elena Ruth Sassower, is dismissed upon the ground that Sassower is not Center for Judicial Accountability, Inc.'s authorized legal representative (see CPLR 321[a]); and it is further

ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, for leave to appeal from the December 27, 2018 Appellate Division order, is denied and, from the remaining Appellate Division orders, is dismissed upon the ground that such orders do not finally determine the action within the meaning of the Constitution.

Chief Judge DiFiore took no part.



Heather Davis
Deputy Clerk of the Court

EX A-2

State of New York

Court of Appeals

*Decided and Entered on the
twenty-fourth day of October, 2019*

Present, Hon. Jenny Rivera, *Senior Associate Judge, presiding.*

Mo. No. 2019-799

Center for Judicial Accountability, Inc. et al.,
Appellants,

v.

Andrew M. Cuomo &c., et al.,
Respondents.

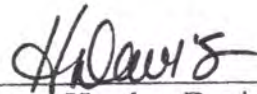
Appellants having moved to strike and for other relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion, on behalf of Center for Judicial Accountability, Inc. by Elena Ruth Sassower, is dismissed upon the ground that Sassower is not Center for Judicial Accountability, Inc.'s authorized legal representative (see CPLR 321[a]); and it is further

ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, to strike respondents' memorandum of law &c. is denied.

Chief Judge DiFiore took no part.



Heather Davis
Deputy Clerk of the Court

EXA-3

“LEGAL AUTOPSY”/ANALYSIS
OF THE COURT OF APPEALS’ THREE OCTOBER 24, 2019 ORDERS

Center for Judicial Accountability, et al. v. Cuomo...DiFiore – Citizen-Taxpayer Action

The Court’s three October 24, 2019 Orders dispose of appellants’ three motions, dated May 31, 2016, June 6, 2019, and August 8, 2019 without identifying ANY of the facts, law, or legal argument they present – or the state of the record with respect thereto. Their denials are ALL without reasons – and their dismissals are ALL verbatim repeats of reasons from the Court’s May 2, 2019 Order, demonstrated as frauds by appellants’ motions and prior submissions.

Nor are the three October 24, 2019 Orders or the May 2, 2019 Order signed by any of the Court’s six associate judges – or by the Court’s Clerk, who, on those dates, was not absent or physically disabled.
Without explanation, the four Orders are signed by the Court’s Deputy Clerk.

The Court’s October 24, 2019 Order on appellants’ May 31, 2019 motion -- “Mo. No. 2019-645” – states: “Appellants having moved for reconsideration of this Court’s May 2, 2019 dismissal order and other relief”. No mention of what this “other relief” consists of – the most important and threshold is:

“determining whether the Court’s six associate judges have jurisdiction...and, if they have no jurisdiction by reason of Judiciary Law §14 and the Court’s interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850), taking emergency steps to ensure a forum in the federal courts...”.

The Order then purports that its dispositions are “Upon the papers filed and due consideration” – following which are four ordering paragraphs:

- the first ordering paragraph dismisses appellant CJA’s motion “on the ground that Sassower is not Center for Judicial Accountability, Inc.’s authorized legal representative (see CPLR 321[a])” – regurgitating, verbatim, the deceit of its May 2, 2019 Order, demonstrated by appellants’ analysis thereof (at p. 2), appended as Exhibit D to the May 31, 2019 motion it was dismissing¹;
- the second ordering paragraph denies, without reasons, “the motion, by Elena Ruth Sassower on her own behalf, seeking reconsideration of this Court’s May 2, 2019 dismissal order”.

Only after these two substantive dispositions does the Order reveal, by two further ordering paragraphs, a portion of the motion’s “other relief” – *to wit*, the disqualification of the six associate judges, including Associate Judge Garcia, impliedly on statutory grounds, and, additionally, as to Associate Judge Garcia, his disqualification on non-statutory grounds – all of which the Order

¹ See, also, May 31, 2019 motion (at ¶16).

denies, *without reasons*, as follows:

“ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, insofar as it seeks disqualification of Judge Garcia on nonstatutory grounds, is dismissed upon the ground that the Court has no authority to entertain it; and it is further

ORDERED, that the motion, by Elena Ruth Sassower, seeking disqualification of the Associate Judges of this Court &c. is otherwise denied.

The application seeking recusal of Judge Garcia on nonstatutory grounds is referred to Judge Garcia for individual consideration and determination.

Judge Garcia denies the referred motion for recusal.”

The Order then concludes – as the May 2, 2019 Order had – with the sentence “Chief Judge DiFiore took no part”, concealing why she “took no part” – and what the meaning of that term is.

The Court’s October 24, 2019 Order on appellants’ June 6, 2019 motion -- “Mo. No. 2019-646” states: “Appellants having moved for leave to appeal to the Court of Appeals”. It does not identify that the motion (at p. 2 & fn.1) expressly incorporates appellants’ companion motion, “Mo. No. 645”, and, specifically, its threshold issue:

“whether the Court’s six associate judges have jurisdiction...and, if they have no jurisdiction by reason of Judiciary Law §14 and the Court’s interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850), taking emergency steps to ensure a forum in the federal courts...”.

The Order then purports that its disposition is “Upon the papers filed and due consideration” – followed by two ordering paragraphs:

- the first ordering paragraph dismisses appellant CJA’s motion for leave to appeal “on the ground that Sassower is not Center for Judicial Accountability, Inc.’s authorized legal representative (see CPLR 321[a])” – regurgitating, verbatim, the deceit of the Court’s May 2, 2019 Order, demonstrated by appellants’ analysis thereof (at p. 2), annexed as Exhibit D to the incorporated companion motion “Mo. No. 645”;
- The second ordering paragraph denies, *without reasons*, appellant Sassower’s motion for leave to appeal from the Appellate Division’s December 27, 2018 order. It then dismisses her appeal of “the remaining Appellate Division orders...upon the ground that such orders do not finally determine the action within the meaning of the Constitution” – regurgitating, verbatim, the deceit of the Court’s May 2, 2019 Order, demonstrated by appellants’ analysis thereof (at p. 3), annexed as Exhibit D to the incorporated May 31, 2019

companion motion “Mo. No. 645”² and additionally rebutted by pages 3-4 of the very June 6, 2019 motion it was dismissing.

The Order then concludes – as the May 2, 2019 Order had – with the sentence “Chief Judge DiFiore took no part”, giving no reason for why she “took no part” – nor explanation of what the phrase means.

The Court’s October 24, 2019 Order on appellants’ August 8, 2019 motion -- “Mo. No. 2019-799” states: “Appellants having moved to strike and for other relief”. It does not identify ANY of this “other relief” or:

“appellants’ contention that the Court’s associate judges are without jurisdiction to ‘sit’ and ‘take any part’ in this case in which they are interested, absent their addressing the threshold jurisdictional and disclosure/disqualification issues presented by appellants’ May 31, 2019 reargument/renewal motion – and by a reasoned decision comparable to the Court’s decision in *New York State Criminal Defense Lawyers v. Kaye*, 95 NY2d 556 (2000).” (moving affidavit, at ¶1).

The Order then purports that its dispositions are “Upon the papers filed and due consideration” – followed by two ordering paragraphs:

- the first ordering paragraph dismisses appellant CJA’s motion “on the ground that Sassower is not Center for Judicial Accountability, Inc.’s authorized legal representative (see CPLR 321[a])” – regurgitating, verbatim, the deceit of the Court’s May 2, 2019 Order, demonstrated by appellants’ analysis thereof (at p. 2), annexed as Exhibit D to “Mo. No. 645”.
- The second ordering paragraph denies, without reasons, “the motion, by Elena Ruth Sassower on her own behalf, to strike respondents’ memorandum of law &c.”.

The Order then concludes – as the May 2, 2019 Order had – with the sentence “Chief Judge DiFiore took no part”, giving no reason for why she “took no part” – nor explanation of what the phrase means.

² See, also, May 31, 2019 motion (at ¶14).

State of New York

Court of Appeals

*Decided and Entered on the
second day of May, 2019*

Present, Hon. Jenny Rivera, *Senior Associate Judge, presiding.*

SSD 23

Center for Judicial Accountability, Inc.

et al.,

Appellants,

v.

Andrew M. Cuomo &c., et al.,

Respondents.

Appellants having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

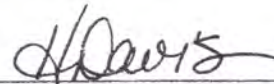
ORDERED, that the appeal is dismissed without costs, by the Court sua sponte,
insofar as taken on behalf of Center for Judicial Accountability, Inc. by Elena Ruth
Sassower, upon the ground that Sassower is not Center for Judicial Accountability, Inc.'s
authorized legal representative (see CPLR 321[a]); and it is further

ORDERED, that the appeal is dismissed without costs, by the Court sua sponte,
insofar as taken by Elena Ruth Sassower on her own behalf from the December 27, 2018
Appellate Division order affirming the final judgment, upon the ground that no

EXB-1

substantial constitutional question is directly involved and, from the remaining Appellate Division orders, upon the ground that such orders do not finally determine the action within the meaning of the Constitution.

Chief Judge DiFiore took no part.

A handwritten signature in black ink, appearing to read "H. Davis", is positioned above a horizontal line.

Heather Davis
Deputy Clerk of the Court

“LEGAL AUTOPSY”/ANALYSIS
OF THE COURT OF APPEALS’ MAY 2, 2019 ORDER
SUA SPONTE DISMISSING APPELLANTS’ APPEAL OF RIGHT

Center for Judicial Accountability, et al. v. Cuomo...DiFiore – Citizen-Taxpayer Action
(APL-2019-00029; SSD 23)

This analysis constitutes a “legal autopsy”¹ of the Court of Appeals’ May 2, 2019 Order *sua sponte* dismissing appellants’ appeal of right, supplementing the showing made by appellant Sassower’s May 31, 2019 affidavit in support of appellants’ motion for reargument/renewal and vacatur, determination/certification of threshold issues, disclosure/disqualification & other relief.

As with all the orders rendered in this citizen-taxpayer action by the Appellate Division, Third Department and by Acting Supreme Court Justice/Court of Claims Judge Denise Hartman, the Court’s May 2, 2019 Order is so utterly devoid of legal and evidentiary support as to be unconstitutional. Like them, it is a judicial fraud.

This is easily verified. It requires nothing more than a reading of “the papers” filed by appellants with the Court – none more important than their March 26, 2019 letter in response to the March 4, 2019 jurisdictional inquiry letter of Deputy Clerk Heather Davis, and their April 11, 2018 letter demonstrating the fraudulence of Attorney General’s own March 26, 2019 letter, accompanied by evidentiary proof, both annexed and free-standing – and including a copy of the complete record that was before the Appellate Division, Third Department.

Evident from these is that the Court’s May 2, 2019 Order:

(1) abridges the case title – thereby materially concealing, *inter alia*, that appellants are expressly acting “on behalf of the People of the State of New York & the Public Interest” and that the defendants, in addition to Andrew M. Cuomo, include the Attorney General “in his official capacity”, 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”;

¹ The term “legal autopsy” is taken from the law review article “*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*”, 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record (“...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...” (p. 53)).

(2) falsely purports that appellants are appealing “in the above title” – which, as abridged, they are not;

(3) falsely purports that its two ordering paragraphs are based “Upon the papers filed and due deliberation” – when “due deliberation” of “the papers filed” would not support either paragraph, other than for purposes of perpetrating fraud;

(4) falsely purports, by its first ordering paragraph, to *sua sponte* dismiss the appeal:

“insofar as taken on behalf of Center for Judicial Accountability, Inc. by Elena Ruth Sassower, upon the ground that Sassower is not Center for Judicial Accountability, Inc.’s authorized legal representative (see CPLR 321[a]),”

when the “papers filed” by appellants establish:

- that appellant Sassower and appellant Center for Judicial Accountability, Inc. are each “unrepresented litigants” who asserted in their February 26, 2019 Preliminary Appeal Statement, as a threshold issue, their entitlement to the Attorney General’s representation pursuant to Executive Law §63.1 and State Finance Law Article 7-A based on “the interest of the state”; and
- Deputy Clerk Heather Davis’ March 4, 2019 inquiry letter had not raised any jurisdictional concern with regard to the Center’s representation, contrary to Court Rule of Procedure §500.10 that the inquiry letter, from the clerk, “stat[e] the jurisdictional concerns identified in reviewing the preliminary appeal statement”.

(5) falsely purports, by the first half of its second ordering paragraph, to *sua sponte* dismiss the appeal:

“taken by Elena Ruth Sassower on her own behalf from the December 27, 2018 Appellate Division order affirming the final judgment, upon the ground that no substantial constitutional question is directly involved”,

when “the papers” filed by appellants² demonstrate:

- that such ground is the Court’s standard conclusory boilerplate and contravenes and subverts Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1),

² See appellants’ March 26, 2019 letter (at pp. 8-9) and April 11, 2019 letter (at p. 3).

granting appeals of right “wherein is directly involved the construction of the constitution of the state or of the United States”; and

- that the Appellate Division’s December 27, 2018 order “directly involve[s] the construction of the constitution of the state”, both with regard to threshold due process/integrity issues and each of appellants’ ten causes of action, including, as evidenced by the very face of the order, appellants’ sixth, ninth, and fifth causes of action;

(6) falsely purports, by second half of its second ordering paragraph, to *sua sponte* dismiss:

“the remaining Appellate Division orders, upon the ground that such orders do not finally determine the action within the meaning of the Constitution”,

when “the papers” filed by appellants³ demonstrate:

- that finality is NOT at issue with respect to the so-called “remaining Appellate Division orders” – as these are brought up for review pursuant to CPLR §5501(a) – so-reflected by the Court’s own “Civil Jurisdiction & Practice Outline”, which states (at p. 24):

“2. CPLR 5501(a) – Review of Prior Nonfinal Orders and Determinations

a. CPLR 5501(a) provides that an appeal from a final judgment brings up for review, among other things:

i. any nonfinal judgment or order which necessarily affects the final judgment...”

- that all four of the Appellate Division’s underlying orders, dated December 10, 2018, November 13, 2018, October 23, 2018, and August 7, 2018, directly and necessarily affect its December 27, 2018 final order because they involve the Appellate Division’s denials of appellants’ motions to disqualify its justices, to disqualify the Attorney General, and to strike the Attorney General’s respondents’ brief – with such being evident from the face of three of those orders.

³ See appellants’ March 26, 2019 letter (at p. 1); appellants’ April 11, 2019 letter (at p. 9, fn. 10).

(7) purports that “**Chief Judge DiFiore took no part**” – concealing that she is a named party, disqualified by reason thereof – and that disqualifying interests and relationships affect all six of the Court’s associate judges, who – if they actually sat and took part in the May 2, 2019 Order – not only flaunted their duty of disqualification and disclosure pursuant to §§100.3E and F of the Chief Administrator’s Rules Governing Judicial Conduct, but violated Judiciary Law §14, divesting them of jurisdiction to “sit” and “take part” – with the consequence that their May 2, 2019 Order is a nullity;

(8) is not signed any of the six associate judges who presumably “took part” – including the “**Hon. Jenny Rivera, Senior Associate Judge, presiding**”

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director

November 1, 2019

New York State Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk & Legal Counsel John P. Asiello

RE: Records Request Pursuant to §124 of the Chief Administrator's Rules and F.O.I.L. (Public Officers Law, Article VI) –
(1) the Court's October 24, 2019 orders disposing of motions;
(2) your disqualification from *Center for Judicial Accountability, et al. v. Cuomo, et al.*;
(3) the Court's rules, regulations, and procedures governing disqualification of its staff

Dear Chief Clerk/Legal Counsel Asiello:

By three orders dated October 24, 2019, the Court purported to dispose of appellants' three motions in *Center for Judicial Accountability, et al. v. Cuomo, et al.*: (1) Mo. No. 2019-645; (2) Mo. No. 2019-646; (3) Mo. No. 2019-799.

These three orders were not signed by any judge or by you. Rather, they were signed by Deputy Clerk Heather Davis, who – pursuant to CPLR §2219(b) – and Chief Judge DiFiore's January 26, 2016 order of authorization consistent therewith – is empowered to sign Court of Appeals orders only in the event of your "absence or disability".

According to the Court's October 24, 2019 decision list: <https://www.nycourts.gov/ctapps/Decisions/2019/Oct19/DecisionList102419.pdf>, the Court decided 24 motions in 23 other cases on that date. Two days ago, upon my telephoning Motion Clerk Rachel MacVean, Esq. (518-455-7705) and asking whether Deputy Clerk Davis had signed any of these 24 other orders, she answered in the negative, stating that each had been signed by you.

Please confirm that this information is correct – or, pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], furnish me with a copy of any order disposing of any of these 24 other motions on the Court's October 24, 2019 decision list that you did not sign.

EX C-1

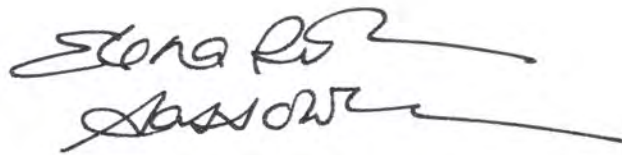
This is now the second time that you have not signed a Court order relating to *CJA v. Cuomo*. Of the nine orders on the Court's May 2, 2019 decision list dismissing appeals of right, "sua sponte, upon the ground that no substantial constitutional issue is directly involved", you signed every one, except for the Court's May 2, 2019 order *sua sponte* dismissing appellants' appeal of right in *CJA v. Cuomo* (SSD 23), which Deputy Clerk Davis signed.

As you plainly were not absent from the Court on either May 2, 2019 or October 24, 2019 – and just as plainly were not physically disabled, rendering you unable to sign – Deputy Clerk Davis could not lawfully sign the Court's May 2, 2019 and October 24, 2019 orders in *CJA v. Cuomo* unless you were disabled by disqualification. This would also explain why, notwithstanding this Court's Rule 500.10 and its "Civil Jurisdiction and Practice Outline" (at p. 8), vesting you with authority to screen appeals of right, it was Deputy Clerk Davis – not you – who signed the Court's March 4, 2019 *sua sponte* jurisdictional inquiry letter – and why she, not you, responded to my May 31, 2019 FOIL/records request, addressed to you.¹

Please, therefore, confirm that you, in fact, disqualified yourself from *CJA v. Cuomo* – and identify the reason. Alternatively, I request all records reflecting same – and a copy of the Court's rules, regulations, and procedures governing disqualification of its staff for financial and other interests, relationships, and other bias.

Pursuant to §124.6 of the Chief Administrator's Rules and Public Officers Law §89.3, your response is required "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

Handwritten signature of Elena Rossi, consisting of a stylized first name and a last name that appears to be 'ROSSI'.

¹ My May 31, 2019 FOIL/records request is Exhibit A-2 to appellants' May 31, 2019 motion for reargument/renewal & vacatur, determination/certification of threshold issues, disclosure/disqualification & other relief. See ¶¶12-14.



*State of New York
Court of Appeals*

*John P. Asiello
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

November 7, 2019

Ms. Elena Ruth Sassower
10 Stewart Place, Apt. 2D-E
White Plains, NY 10603

Re: Center for Judicial Accountability v Cuomo

Dear Ms. Sassower:

I acknowledge receipt of your letter dated November 1, 2019.

As stated in this office's June 4, 2019 letter, please note that the Freedom of Information Law (Public Officers Law art 6), which governs agency records, does not apply to the Judiciary (see Public Officers Law § 86[3]). In addition, Part 124 of the Rules of the Chief Administrator does not apply to records possessed by this Court.

As a courtesy, enclosed are copies of all motion orders issued on October 24, 2019.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Davis".

Heather Davis
Deputy Clerk

RMM:mg
encl.

EX C-2

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director

November 13, 2019

New York State Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk & Legal Counsel John P. Asiello

RE: Records Request Pursuant to §124 of the Chief Administrator's Rules
(1) where is the exemption of the Court of Appeals from §124 of the Chief Administrator's Rules?;
(2) confirmation that you disqualified yourself from *Center for Judicial Accountability, et al. v. Cuomo, et al.* – and the reason;
(3) the Court's rules, regulations, and procedures governing disqualification of its staff;
(4) your August 30, 2019 jurisdictional inquiry – and the letter-responses thereto – in *Delgado v. State of New York*

Dear Chief Clerk/Legal Counsel Asiello:

This follows my phone conversation earlier today with Motion Clerk Rachel MacVean, Esq., discussing the November 7, 2019 letter I had received from Deputy Clerk Heather Davis, Esq., responding to my November 1, 2019 records request letter to you.

Ms. Davis' letter states: "Part 124 of the Rules of the Chief Administrator does not apply to records possessed by this Court". This repeats the identical representation in her June 4, 2019 letter to me, responding to my May 31, 2019 records request letter to you – and which Ms. MacVean also repeated in our previous phone conversation on October 30, 2019.

I told Ms. MacVean that I had reviewed Part 124 of the Chief Administrator's Rules and saw nothing exempting the Court of Appeals from its purview.

I also told Ms. MacVean that Ms. Davis' November 7th letter had not responded to my request that you confirm that you had disqualified yourself from *CJA v. Cuomo, et al.* and identify the reason – or, alternatively, that you furnish:

"all records reflecting same – and a copy of the Court's rules, regulations, and procedures governing disqualification of its staff for financial and other interests, relationships, and other bias."

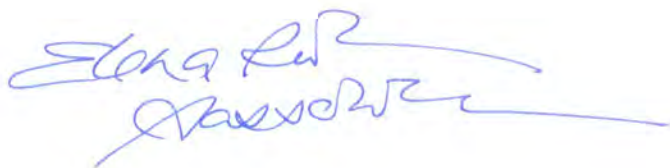
EX D

Ms. MacVean suggested that I write to you a further letter for clarification of the foregoing – which is what I hereby do.

Ms. MacVean also suggested that I put in writing my request for a copy of the August 30, 2019 jurisdictional inquiry letter you signed in *Delgado v. State of New York* concerning the direct appeal of right taken by the plaintiffs-appellants therein – and for a copy of the September 9, 2019 letters of both the plaintiffs-appellants and attorney general responding thereto, as well as the attorney general's earlier September 3, 2019 letter. This is also what I now do – adding a request that you furnish these to me, in advance of my payment of necessary charges. Upon receipt of the requested records, I will promptly remit payment to you.

Your expeditious response – by e-mail to elena@judgewatch.org – would be greatly appreciated – as the foregoing are germane to the motion I am drafting addressed to the Court's three October 24, 2019 orders, signed by Ms. Davis, which I hope to serve on November 21, 2019.

Thank you.

A handwritten signature in blue ink, appearing to read "Elena R. Asiello", with a long horizontal flourish extending to the right.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, November 21, 2019 6:55 PM
To: 'Cameron Macdonald'
Subject: Opps! -- Corrected -- Delgado v. State of New York -- at the Court of Appeals
Attachments: 8-21-19-nylj-ltr.pdf

Below is my e-mail to you, which had inadvertently omitted the words "I was informed" – now added.

Thanking you, in advance.

Elena

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, November 21, 2019 4:01 PM
To: 'Cameron Macdonald' <cam@govjustice.org>
Subject: Delgado v. State of New York -- at the Court of Appeals

Dear Mr. MacDonald –

Hope you are well.

In response to my inquiry at the Court of Appeals as to the status of your direct appeal, of right, in *Delgado v. State of New York*, I was informed that, on August 30th, a *sua sponte* jurisdictional inquiry letter was sent, signed by Clerk Asiello, to which you and the Attorney General responded on September 9th – with a prior September 3rd letter having been filed by the Attorney General advising that she had withdrawn her appeal to the Appellate Division, Third Department.

Do you have a website where these are posted? If not, would you kindly e-mail me pdfs?

Thank you.

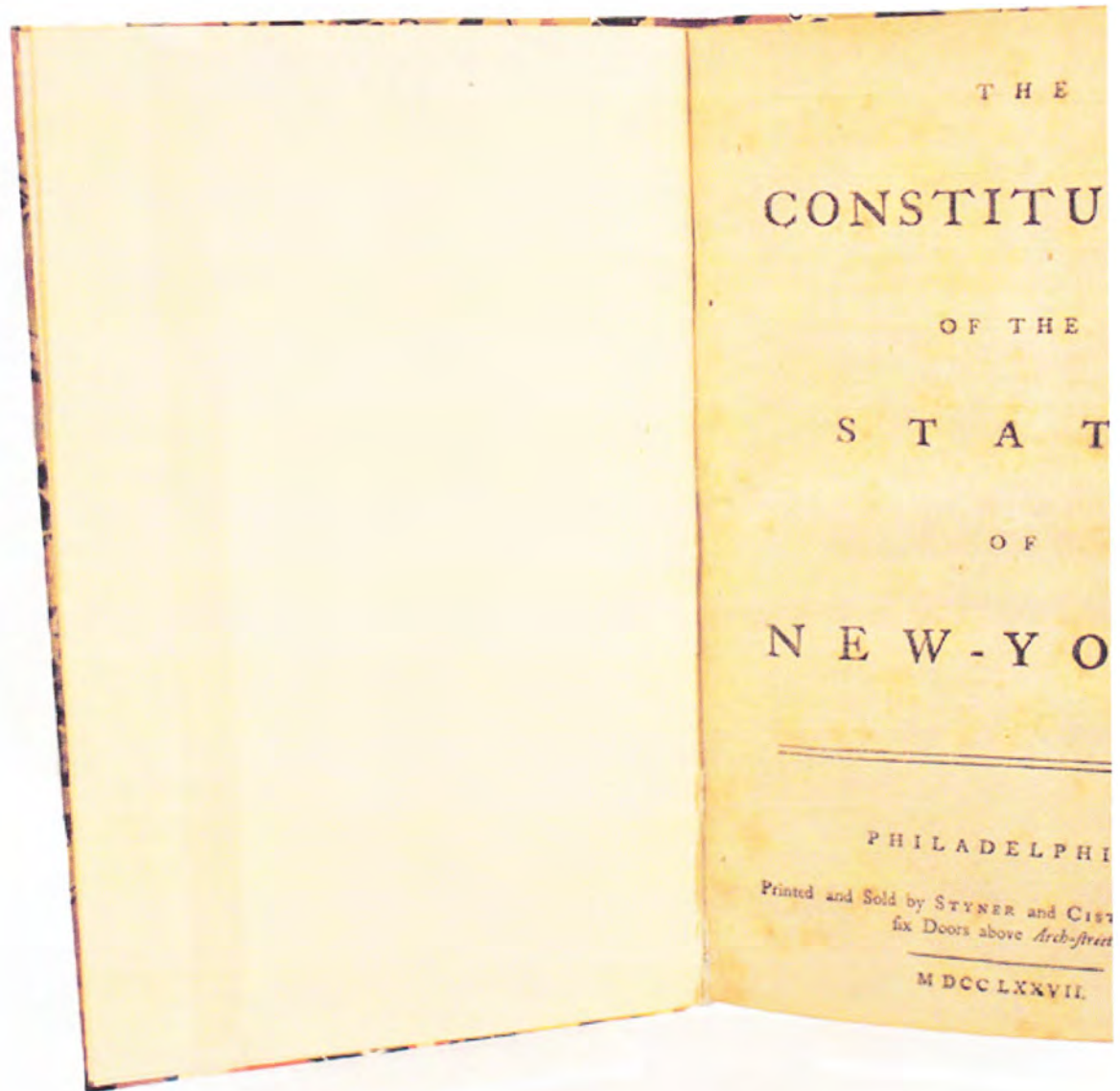
Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
elena@judgewatch.org
914-421-1200

P. S. I assume you saw my August 2019 letter to the editor in the New York Law Journal, above-attached and below.

A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA

Where are the voices of the scholars of the New York state constitution and other experts of law and political science about the “clear violation” that has been going on in statutorily delegating legislative powers to commissions?

By Elena Sassower | August 20, 2019 at 02:26 PM



The Constitution of the State New York, 1777. Photo: The Library Company of Philadelphia Constitution Center

New York—the “Excelsior State”—has 13 law schools, a 70,000-plus-member state bar association, countless county, city and specialized bar associations, a vast array of universities, colleges and other schools with scholars of constitutional law and political science, as well as think tanks and research institutes. Yet, it was solo practitioner Roger Bennet Adler who sounded the alarm by his recent perspective column entitled [“It’s Legally Perilous to Have a Commission Responsible for Election Laws”](#) whose internet subtitle (8/9/19) and stand-out text in its print edition (8/13/19) was even more stark, reading: “Simply put, there are no available legislative shortcuts around the State Constitution. The recent attempts to ignore it to raise legislative and executive salaries via an appointed commission is in clear violation.”

Where are the voices of the scholars of the New York state constitution and other experts of law and political science about the “clear violation” that has been going on in statutorily delegating legislative powers to commissions? The most

cursory investigation would reveal it to be even more flagrantly unconstitutional than what Mr. Adler so admirably describes.

I should know. For more than seven years, I have been single-handedly litigating its unconstitutionality and unlawfulness, as written, as applied and by its enactment in three major lawsuits, brought expressly “on behalf of the People of the State of New York & the Public Interest,” The third of these lawsuits, encompassing the prior two, is now before the New York Court of Appeals, appealing by right and by leave the Appellate Division, Third Department’s December 27, 2018 decision in *Center for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406.

This is the decision Mr. Adler identifies and describes as being one of three decisions cited by Albany Supreme Court Justice Ryba in her June 7, 2019 decision upholding the constitutionality of the statutory delegation of legislative power challenged in *Delgado v. State of New York*. In fact, *CJA v. Cuomo* is the first decision to which Justice Ryba cites—and eight times in total—because it is the decision on which she relies, involving, as it does, a materially identical statute. As for Mr. Adler’s description that the *CJA v. Cuomo* decision “upheld the delegation to the commission to increasing judicial salaries”—implying that it did not uphold delegation of legislative and executive salaries, this is incorrect. It upheld these, as well.

The shocking record of *CJA v. Cuomo*—including before the Court of Appeals—is accessible from the [Center for Judicial Accountability’s website](#) and powerfully refutes Mr. Adler’s assertion that “legislating by proxy commissioners, is doomed to failure when judicially challenged.”

Likewise, his further comment that a newly-commenced lawsuit challenging the constitutionality of the Public Campaign Financing and Election Commission “is an initial salvo in a legal struggle to vindicate the plain words of the State Constitution, and hold the Legislature constitutionally accountable.”

I invite Mr. Adler to join with me in rallying scholars, experts and just plain civic-minded attorneys to examine and report on the record and to file amicus curiae briefs with the Court of Appeals. Especially is this important because *CJA v. Cuomo* is dispositive of *Delgado* and of the five current other lawsuits challenging delegations of legislative power to commissions/committees—a fact I stated to the Court of Appeals, most recently by an August 9, 2019 letter—without contest from the Attorney General.

Elena Sassower is the director of the Center for Judicial Accountability.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 1:44 PM
To: 'letitia.james@ag.ny.gov'; 'Barbara.Underwood@ag.ny.gov'
Cc: 'Paladino, Victor'; 'Brodie, Frederick'; 'Cameron Macdonald'
Subject: Delgado v. State of New York -- direct appeal to the Court of Appeals

TO: Attorney General Letitia James
Solicitor General Barbara Underwood

Reference is made to the direct appeal, to the Court of Appeals, by the plaintiffs in *Delgado v. State of New York* of the June 7, 2019 decision/judgment of Supreme Court Justice Christina Ryba. I am informed by the Clerk's Office that on August 30, 2019, Clerk Asiello signed a *sua sponte* jurisdictional inquiry letter, in response to which you filed:

- (1) a September 3, 2019 letter advising that you had withdrawn your appeal to the Appellate Division, Third Department of Justice Ryba's decision/judgment; and
- (2) a September 9, 2019 letter.

I assume you have pdfs of these. I would greatly appreciate if you would e-mail them to me and – if possible – Clerk Asiello's August 30, 2019 *sua sponte* jurisdictional inquiry letter – and the responding September 9, 2019 letter of the *Delgado* plaintiffs.

By copy of this letter to plaintiffs' counsel, Cameron MacDonald, I reiterate the e-mail request I made to him yesterday for the same, as yet unresponded-to.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

Center for Judicial Accountability, Inc. (CJA)

From: Paladino, Victor <Victor.Paladino@ag.ny.gov>
Sent: Friday, November 22, 2019 2:08 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: Delgado v. State of New York -- direct appeal to the Court of Appeals
Attachments: State's response to CTA SSD letter.pdf; CTA update letter (withdrawal of defendants' AD appeal).pdf; CTA SSD letter.pdf

The requested material are attached.

Victor Paladino

Senior Assistant Solicitor General
New York State Office of the Attorney General
Division of Appeals & Opinions
The Capitol
Albany, New York 12224-0341
(518) 776-2012
(518) 915-7723 (fax)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 1:44 PM
To: James, Letitia <Letitia.James@ag.ny.gov>; Underwood, Barbara <Barbara.Underwood@ag.ny.gov>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>; Brodie, Frederick <Frederick.Brodie@ag.ny.gov>; 'Cameron Macdonald' <cam@govjustice.org>
Subject: Delgado v. State of New York -- direct appeal to the Court of Appeals

[EXTERNAL]

TO: Attorney General Letitia James
Solicitor General Barbara Underwood

Reference is made to the direct appeal, to the Court of Appeals, by the plaintiffs in *Delgado v. State of New York* of the June 7, 2019 decision/judgment of Supreme Court Justice Christina Ryba. I am informed by the Clerk's Office that on August 30, 2019, Clerk Asiello signed a *sua sponte* jurisdictional inquiry letter, in response to which you filed:

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I assume you have pdfs of these. I would greatly appreciate if you would e-mail them to me and – if possible – Clerk Asiello's August 30, 2019 *sua sponte* jurisdictional inquiry letter – and the responding September 9, 2019 letter of the *Delgado* plaintiffs.

By copy of this letter to plaintiffs' counsel, Cameron MacDonald, I reiterate the e-mail request I made to him yesterday for the same, as yet unresponded-to.

Thank you.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 2:39 PM
To: 'Paladino, Victor'
Cc: 'Cameron Macdonald'
Subject: Thank you, Asst. Solicitor General Paladino -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Assistant Solicitor General Paladino,

Thank you for your prompt response, furnishing pdfs of (1) Clerk Asiello's August 30, 2019 *sua sponte* jurisdictional inquiry letter; (2) your September 9, 2019 responding letter; and (3) your further October 2, 2019 letter.

By copy of this e-mail to Mr. MacDonald, I reiterate my request for his own September 9, 2019 responding letter to the jurisdictional inquiry.

Again, thank you.

Elena Sassower

From: Paladino, Victor <Victor.Paladino@ag.ny.gov>
Sent: Friday, November 22, 2019 2:08 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Subject: RE: Delgado v. State of New York -- direct appeal to the Court of Appeals

The requested material are attached.

Victor Paladino
Senior Assistant Solicitor General
New York State Office of the Attorney General
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The Capitol
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(518) 776-2012
(518) 915-7723 (fax)

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Sent: Friday, November 22, 2019 1:44 PM
To: James, Letitia <Letitia.James@ag.ny.gov>; Underwood, Barbara <Barbara.Underwood@ag.ny.gov>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>; Brodie, Frederick <Frederick.Brodie@ag.ny.gov>; 'Cameron Macdonald' <cam@govjustice.org>
Subject: Delgado v. State of New York -- direct appeal to the Court of Appeals

[EXTERNAL]

TO: Attorney General Letitia James
Solicitor General Barbara Underwood

Center for Judicial Accountability, Inc. (CJA)

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 2:46 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: Thank you, Asst. Solicitor General Paladino -- Delgado v. State of New York -- direct appeal to the Court of Appeals

I was working on a filing yesterday and getting caught up today. I don't know why you think you should get a response within less than 24 hours. And why do you want what was submitted to the court?

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

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On Fri, Nov 22, 2019 at 2:39 PM Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:

Dear Assistant Solicitor General Paladino,

Thank you for your prompt response, furnishing pdfs of (1) Clerk Asiello's August 30, 2019 *sua sponte* jurisdictional inquiry letter; (2) your September 9, 2019 responding letter; and (3) your further October 2, 2019 letter.

By copy of this e-mail to Mr. MacDonald, I reiterate my request for his own September 9, 2019 responding letter to the jurisdictional inquiry.

Again, thank you.

Elena Sassower

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 3:07 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: Apologies, if you've taken offense, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

Apologies if you've taken offense.

Inasmuch as Justice Ryba's decision upholds the constitutionality of the legislative delegation of power you challenge by resting on the Appellate Division, Third Dept's decision in *CJA v. Cuomo*, aren't you eager to share with me what you had to say to the Court of Appeals on that subject.

Kindly e-mail me your September 9, 2019 response to the *sua sponte* jurisdictional inquiry, which Assistant Solicitor General Paladino was good enough to provide.

I thank you, in advance.

Elena Sassower

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 2:46 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Subject: Re: Thank you, Asst. Solicitor General Paladino -- Delgado v. State of New York -- direct appeal to the Court of Appeals

I was working on a filing yesterday and getting caught up today. I don't know why you think you should get a response within less than 24 hours. And why do you want what was submitted to the court?

Cameron Macdonald
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On Fri, Nov 22, 2019 at 2:39 PM Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:

Dear Assistant Solicitor General Paladino,

Center for Judicial Accountability, Inc. (CJA)

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 3:14 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: Apologies, if you've taken offense, Mr. MacDonald -- Delgado v. State of New York
-- direct appeal to the Court of Appeals

You haven't answered my question. What do you intend to do with it?

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

NOTICE: This e-mail, including attachments, is intended for the exclusive use of the person to whom it is addressed and may contain confidential information. Such information also may be legally privileged. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you received this e-mail in error, please advise the sender by reply e-mail and then delete this e-mail immediately.

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Kindly e-mail me your September 9, 2019 response to the *sua sponte* jurisdictional inquiry, which Assistant Solicitor General Paladino was good enough to provide.

I thank you, in advance.

Elena Sassower

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 3:22 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: Answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

It should be obvious that I intend to read it. Do you need more information than that?

Just as Assist. Solicitor General Paladino sent me his letters, promptly and without inquiry as to why I wanted them, please send me yours – of September 9th – and any further letters you submitted to the Court.

Thank you.

Elena Sassower

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 3:14 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Subject: Re: Apologies, if you've taken offense, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

You haven't answered my question. What do you intend to do with it?

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

NOTICE: This e-mail, including attachments, is intended for the exclusive use of the person to whom it is addressed and may contain confidential information. Such information also may be legally privileged. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you received this e-mail in error, please advise the sender by reply e-mail and then delete this e-mail immediately.

On Fri, Nov 22, 2019 at 3:07 PM Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:

Dear Mr. MacDonald –

Apologies if you've taken offense.

Center for Judicial Accountability, Inc. (CJA)

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 3:26 PM
To: Center for Judicial Accountability, Inc. (CJA)
Cc: Paladino, Victor
Subject: Re: Answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

I do need more information than that. I have my clients' interests in their litigation to protect.

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

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Just as Assist. Solicitor General Paladino sent me his letters, promptly and without inquiry as to why I wanted them, please send me yours – of September 9th – and any further letters you submitted to the Court.

Thank you.

Elena Sassower

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 3:14 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 3:59 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: Again, answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

If you were actually interested in protecting your clients' interests – and winning on the important constitutional issues – you would have embraced my outreach to you in mid-December of last year, upon your filing of your summons and complaint in Supreme Court/Albany County – which you spurned, then and thereafter.

CJA v. Cuomo is – as you know – at the Court of Appeals and I will be filing a motion on Monday, which should be of great interest to you. If you will not furnish me with your September 9, 2019 letter, I will so advise the Court that you were unwilling to provide it to me.

Please advise how you wish me to proceed.

Thank you.

Elena Sassower

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 3:26 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>
Subject: Re: Answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

I do need more information than that. I have my clients' interests in their litigation to protect.

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

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On Fri, Nov 22, 2019 at 3:22 PM Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:

Dear Mr. MacDonald –

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 4:31 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: News Flash: Yesterday the Court of Appeals decided the direct appeal in Delgado v. State of New York

Dear Mr. MacDonald,

After sending you the below e-mail, I called the Clerk's Office at the Court of Appeals and was informed that the Court yesterday decided your direct appeal to the Court of Appeals by transferring it to the Appellate Division, Third Department: <https://www.nycourts.gov/ctapps/Decisions/2019/Nov19/DecisionList112119.pdf>.

Please furnish me with your September 9th letter, as I have requested.

Thank you.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 3:59 PM
To: 'Cameron Macdonald' <cam@govjustice.org>
Cc: 'Paladino, Victor' <Victor.Paladino@ag.ny.gov>
Subject: Again, answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

If you were actually interested in protecting your clients' interests – and winning on the important constitutional issues – you would have embraced my outreach to you in mid-December of last year, upon your filing of your summons and complaint in Supreme Court/Albany County – which you spurned, then and thereafter.

CJA v. Cuomo is – as you know – at the Court of Appeals and I will be filing a motion on Monday, which should be of great interest to you. If you will not furnish me with your September 9, 2019 letter, I will so advise the Court that you were unwilling to provide it to me.

Please advise how you wish me to proceed.

Thank you.

Elena Sassower

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 3:26 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

November 25, 2019

TO: Chief Administrative Judge Lawrence Marks
Office of Court Administration/Unified Court System

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony.

On November 4, 2019, I gave sworn testimony to the Commission on Legislative, Judicial and Executive Compensation, at which I identified that the 2011 report of the Commission on Judicial Compensation and the 2015 report of the prior Commission on Legislative, Judicial and Executive Compensation that had raised judicial salaries “are fraudulent, are false instruments, are violative on their face...of the statute[s] pursuant to which they purport to be rendered.” (Tr. 67)¹ – further stating (Tr. 68-69) that I had set this forth, by a December 31, 2015 letter to Chief Judge DiFiore, then the Westchester County District Attorney, identifying that the two commission reports were “violative of a succession of penal laws and the Public Trust Act” and furnishing her with evidentiary proof, in substantiation.²

You are familiar with that December 31, 2015 letter, calling upon then Chief Judge Nominee DiFiore to demonstrate her fitness to be New York’s highest judge by taking actions to safeguard the People of the State of New York and the public fisc from the commission reports and, likewise, from the Judiciary budget, also rife with fraud, statutory violations – and unconstitutionality. Indeed, on both subjects, you were an indicated recipient of my January 26 – February 2, 2016 correspondence to Chief Judge DiFiore and the Legislature, which I e-mailed you.

Neither you nor Chief Judge DiFiore responded or denied or disputed the accuracy of my December 31, 2015 letter and subsequent correspondence. Despite my demands, neither of you came forward

¹ The transcript of the November 4, 2019 hearing of the Commission on Legislative, Judicial and Executive Compensation and all the referred-to evidence to which this letter refers are posted on CJA’s webpage for this letter, here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

² CJA’s webpage for the hand-delivered December 31, 2015 letter, posting the evidentiary proof that accompanied it, is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>.

with any findings of fact and conclusions of law about the commission reports, about the Judiciary budget, or about the corruption of any cognizable judicial process in CJA's three litigations challenging the reports and the Judiciary budget – the same three litigations as my December 31, 2015 letter specified (at pp. 2-3).

Instead, what you and Chief Judge DiFiore did was to collusively cover-up and perpetuate the corruption and larceny of taxpayer monies that my December 31, 2015 letter and subsequent correspondence documented. On March 23, 2016, I set this forth, furnishing my December 31, 2015 letter and related correspondence as exhibits to a verified second supplemental complaint in CJA's then-live citizen-taxpayer action³ – the only one of CJA's aforesaid three litigations then live.

Four months later, that citizen-taxpayer action was also dead, killed off by a fraudulent judicial decision that simultaneously denied leave to supplement by the March 23, 2016 verified second supplemental complaint. As a result, CJA was burdened with presenting the facts and causes of action of the March 23, 2016 verified second supplemental complaint in a new citizen-taxpayer action. It was commenced, on September 2, 2016, by a summons and verified complaint naming Chief Judge DiFiore as its last defendant “in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System” – annexing as its Exhibit A and expressly incorporating the March 23, 2016 verified second supplemental complaint.⁴ This is the citizen-taxpayer action, now at the Court of Appeals, about which I testified at the November 4, 2019 hearing.⁵

In the unlikely event you forgot about *CJA v. Cuomo...DiFiore* and about the corrupting of any cognizable judicial process in the case, about which I alerted you, by e-mails, in April 2017 and January 2018⁶ – and about which you presumably were kept apprised from other sources – the New York Law Journal published my letter to the editor about the lawsuit, “*A Call for Scholarship, Civic Engagement, and Amicus Curiae Before the NYCOA*”, on August 21, 2019. Assuredly, you and the

³ The direct link to CJA's webpage for the March 23, 2016 verified second supplemental complaint with its accompanying compendia of exhibits is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>. My December 31, 2015 letter to Chief Judge Nominee/Westchester D.A. DiFiore and my subsequent correspondence, sent to her and you, are Exhibits 37-41.

⁴ The direct link to CJA's webpage for the September 2, 2016 summons and verified complaint, with its exhibits, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/supreme-ct/9-2-16-osc-verified-complaint.htm>.

⁵ As you know, CJA's website, www.judgewatch.org, posts the entire record of this second citizen-taxpayer action and of the first, accessible from the prominent center link on CJA's homepage entitled “CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance”.

⁶ My e-mails to you in April 2017 transmitted to you copies of my April 10, 2017 letter for “immediate supervisory oversight” [R.1039-1047] and my April 21, 2017 letter for “immediate supervisory action” [R.1052-1059]. My e-mail to you in January 2018 transmitted to you the written statement I would be submitting to the Legislature for its January 30, 2018 budget hearing, at which you would be testifying.

lawyers and judges of the Office of Court Administration are Law Journal readers.

Before beginning my testimony, at the November 4, 2019 hearing (Tr. 61), I handed up to the four commissioners physically present – Lachman, Hormozi, Cardozo, and Eng – four copies of my August 21, 2019 New York Law Journal letter and four copies of my December 31, 2015 letter to Chief Judge DiFiore – thereupon describing – by reading from the opening of my testimony at the November 30, 2015 hearing of the prior Commission on Legislative, Judicial, and Executive Compensation – how New York’s systemically-corrupt Judiciary operates, *to wit*, “throwing” cases by fraudulent judicial decisions – and with the connivance of New York’s attorney general, in cases involving governmental defendants (Tr. 62). I stated that the *CJA v. Cuomo...DiFiore* citizen-taxpayer action is Exhibit A (Tr. 65) – and that the Commission’s duty was to verify this, which it could easily do, as the lawsuit record was a “paper trail”, readily available from CJA’s website, www.judgewatch.org – and, of course, from the Judiciary (Tr. 62, 69-70).

I also pointed out that pursuant to the budget statute establishing the Commission, it had “the resources of every department, every agency” and also had subpoena power – and that it should charge the judges and lawyers who had testified before it with furnishing it with findings of fact and conclusions of law “because what you have here is a grand larceny of the public fisc”, currently “on the order of half a billion dollars”, “paid out in fraudulent, statutorily violative, unconstitutional pay raises” (Tr. 69-70).

I believe you were present when, as the Commission’s last witness, I began my sworn testimony, but that you fled from the room as some point before the end, along with most of the judges and lawyers whose unsworn testimony, like your own, had preceded mine. All of you had urged the Commission to rely on the 2011 and 2015 commission reports, further justifying COLA salary increases as warranted by the quality of New York’s judiciary, enhanced by Chief Judge DiFiore’s “Excellence Initiative”.

Doubtless, you have since viewed the VIDEO of my testimony, posted on the Commission’s website: <http://www.nyscommissiononcompensation.org/index.shtml> – and/or read the posted transcript – and know that I accused you and them of inundating the Commission with fraud (Tr. 61, 64, 67-68).

By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.

To facilitate this, CJA’s webpage for this letter furnishes the link to the webpage posting the evidence to which I referred in testifying⁷. This includes the evidence I delivered to Chief Judge DiFiore with my December 31, 2015 letter to her – a copy of which I physically held up, above my head (Tr. 69), in testifying at the November 4, 2019 hearing:

⁷ The direct link to CJA’s webpage for my November 4, 2019 testimony is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/cja-nov4-2019-testimony.htm>.

- (1) a full copy of CJA's October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report;
- (2) a copy of CJA's November 30, 2015 written testimony (with attachments) that I had orally read at the November 30, 2015 public hearing of the prior Commission on Legislative, Judicial and Executive Compensation – as well as CJA's December 2, 2015 and December 21, 2015 supplemental submissions, the former detailing the frauds that you and other judicial pay raise advocates committed by your testimonies at the November 30, 2015 hearing and the latter indicating you as a recipient and which I had e-mailed to you;
- (3) CJA's June 27, 2013 conflict-of-interest/corruption complaint to the Joint Commission on Public Ethics (JCOPE), with its annexed April 15, 2013 corruption complaint to then U.S. Attorney Preet Bharara.

Suffice to say that among the express statutory violations which my December 31, 2015 letter to Chief Judge DiFiore highlighted (at p. 4) were:

- that the two commission reports had examined only “salary” – not “compensation and non-salary benefits”, required by the statutes;
- that the two commission reports had made no findings that current “pay levels and non-salary benefits” of New York’s judges were inadequate, required by the statutes.

These are the same statutory violations I identified by my November 4, 2019 testimony – and which, by your unsworn testimony (Tr. 2-17) and written submission, you would have the instant Commission repeat. So, too, the other judicial pay raise advocates who followed you, at the November 4, 2019 and November 14, 2019 hearings, also with unsworn testimony and submissions. Like you, none mentioned non-salary benefits, nor compensation other than salary. And, like you too, none furnished evidence that current judicial salary levels are inadequate – or even actually claimed that they are.

Then, too, neither you nor they alerted the Commission to the statutory requirement that it to “take into account” other “appropriate factors”, not enumerated. This, with knowledge, that no factor is more “appropriate” – and of greater constitutional magnitude – than evidence that New York’s judiciary is not “excellent” and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct. Indeed, such unenumerated “appropriate factor”, when established, renders IRRELEVANT the enumerated six factors, all financial and economic.

As for the Exhibit A evidence I identified as establishing the systemic corruption of New York’s judiciary: the record of the CJA v. Cuomo...DiFiore citizen-taxpayer action⁸ – its September 2,

⁸

The direct link to CJA’s webpage for the record of its second citizen-taxpayer action, *CJA v.*

2016 verified complaint include four causes of action whose handling by three levels of New York's judiciary demands finding of facts and conclusions of law on a priority basis. It is for this reason that, at the conclusion of the November 4, 2019 hearing, I handed copies of the below to Commissioners Eng, Lachman, and Hormozi.⁹ These four causes of action are, in the order of highest priority:

- The eighth cause of action of the September 2, 2016 verified complaint (§§77-80) pertaining to the violations of EXPRESS statutory requirements by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, voiding it as a matter of law – embodying the fifteenth cause of action of the March 23, 2016 verified second supplemental complaint (§§453-457) [R.114, R.212-213];
- The seventh cause of action of the September 2, 2016 verified complaint (§§69-76) based, in the main, on the unconstitutional conduct of the prior Commission on Legislative, Judicial and Executive Compensation, including as relates to the unenumerated “appropriate factors”, also voiding its December 24, 2015 report, as a matter of law – embodying the fourteenth cause of action of the March 23, 2016 verified second supplemental complaint (§§424-452) [R.112-114, R.201-212];
- the sixth cause of action of the September 2, 2016 verified complaint (§§59-68) as to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, as written and by its enactment – embodying the thirteenth cause of action of the March 23, 2016 verified second supplemental complaint (§§385-423) [R.109-112, R.187-201];
- the second cause of action of the September 2, 2016 verified complaint (§§34-39) pertaining to the constitutional and statutory violations of the slush-fund Judiciary budget – embodying the tenth cause of action of the March 23, 2016 verified second supplemental complaint (§§327-331) [R.103-104, R.162-167].

The frauds committed by Albany Supreme Court with respect to the eighth, seventh, sixth, and second causes of action are summarized, with record references for further particulars, by CJA's July 4, 2018 appellants' brief to the Appellate Division, Third Department. So, too, with respect to the frauds it committed as to the verified complaint's other six causes of action – and as to the threshold integrity issues before it.

Cuomo...DiFiore, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>.

⁹ Additionally, and because Commissioner Lachman wrote the book Three Men in a Room: The Inside Story of Power and Betrayal in an American Statehouse, I also handed up to him and to Commissioners Eng and Hormozi, the ninth cause of action of the September 2, 2016 verified complaint (§§81-84) [R.115], as to the unconstitutionality of “three-men-in-a-room” budget deal-making, as unwritten and as applied – embodying the sixteenth cause of action of the March 23, 2016 verified second supplemental complaint (§§458-470) [R.214-219].

The frauds committed by the Appellate Division, Third Department with respect to the eighth, seventh, sixth, and second causes of action, the other six causes of action, and the threshold integrity issues before it, are particularized by CJA's "legal autopsy"/analysis of the December 27, 2018 decision of its four-judge appellate panel, furnished to the Court of Appeals on March 26, 2019, in substantiation of CJA's appeal of right.

As for the Court of Appeals' frauds – starting with its concealment of the threshold integrity issues before its associate judges – they are conveniently particularized by CJA's May 31, 2019 motion, pertaining to the May 2, 2019 order of its associate judges, dismissing appellants' appeal of right. Their frauds with respect to that motion, and appellants' June 6, 2019 motion for leave to appeal and August 8, 2019 motion to strike the attorney general's opposition as "fraud on the court", manifested by their three October 24, 2019 orders disposing of the motions, are particularized by CJA's motion of today's date – posted on the webpage for this letter. I expressly incorporate the motion herein by reference, just as the motion expressly incorporates this letter, annexed thereto as Exhibit F.

By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) "Judges...must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities" citing "NY Const., Art. VI, §20(b), (c)" – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate judges– or was its content known to them and, if so, when? Did you – and they – actually believe that New York's Judiciary was not obligated to include ANY information as to CJA's succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial "process"?¹⁰

Finally, so that you may respond, additionally, to the further evidence I handed up to the Commission, at the conclusion of the November 4, 2019 hearing, in substantiation of my testimony, it was, as follows:

- my February 19, 2019 written statement to the Legislature for its February 11, 2019 budget hearing, with its accompanying 10 pages of Questions for the Legislature to ask you pertaining to the fiscal year 2019-2020 Judiciary budget and the commission-based judicial salary increases it embeds¹¹ – which my May 31, 2019

¹⁰ Notably, when you testified, you stated – without specificity:

"...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue." (Tr. 3).

¹¹ The direct link to CJA's webpage for the February 19, 2019 written statement, with its appended Questions for you to answer, furnishing links to referred-to substantiating evidence, is here:

motion to the Court of Appeal in *CJA v. Cuomo...DiFiore* annexed as its Exhibits F-2 and F-1— copies of which I furnished, in hand, to Commissioners Lachman and Eng;

- my June 10, 2019 and September 6, 2019 FOIL requests to the Commission's appointing authorities – the Governor, Temporary Senate President, Assembly Speaker, Chief Judge – pertaining to the Commission's functioning and their responses thereto – one copy of which I furnished, in hand, to Commissioner Lachman;
- my June 20, 2019 and July 2, 2019 FOIL records requests pertaining to the whereabouts of records and website issues pertaining to the prior Compensation Commissions/Committees and their responses thereto – one copy of which I furnished, in hand, to Commissioner Lachman.

There's more evidence that I will be furnishing you, your fellow judicial pay raise advocates, and the Commission, but the above more than suffices, for now.

Thank you.

A handwritten signature in blue ink, appearing to read "Elena R. Lachman", with a stylized flourish underneath.

cc: Commission on Legislative, Judicial and Executive Compensation
The other judicial pay raise witnesses testifying before the Commission
at its November 4, 2019 and November 14, 2019 hearings
Chief Judge DiFiore's "Excellence Initiative"

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

I am the unrepresented individual plaintiff-appellant herein, over 18 years of age, and reside in the State of New York.

On November 25, 2019, I served 2 copies of the within:

Motion pursuant to CPLR §5015 & §2221, this Court's Rule 500.24,
§100.3 of the Chief Administrator's Rules Governing Judicial Conduct,
& the Court's Inherent Power

by first-class mail upon counsel for defendant-respondents:

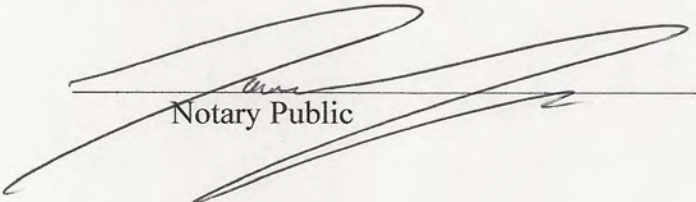
New York State Attorney General Letitia James
The Capitol
Albany, New York 12224-0341

ATT: Solicitor General Barbara D. Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick A. Brodie



ELENA RUTH SASSOWER

Sworn to before me this
25th day of November 2019



Notary Public

JOSEPH GONNELLA JR
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GO6357364
Qualified in Westchester County
My Commission Expires 04-17-2021

COURT OF APPEALS
STATE OF NEW YORK

----- X
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,

November 25, 2019

Plaintiffs-Appellants,

-against-

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.

**Plaintiff-Appellants' Motion pursuant to CPLR §5015 & §2221,
this Court's Rule 500.24, §100.3 of the Chief Administrator's Rules
Governing Judicial Conduct, & the Court's Inherent Power**

ELENA RUTH SASSOWER, unrepresented plaintiff-appellant,
individually & as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org