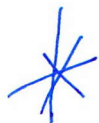


Exhibit DD to Appellant Sassower's Aug 6, 2018 reply affidavit

in §100.3F, entitled "Remittal of disqualification", to which Assistant Solicitor General Brodie does not even refer, let alone quote, to support his bald assertion "Nor are [judges] required to provide information about their fitness to judge particular matters", which in circumstances involving §100.3E is false.

Appellants' entitlement to the granting of their first branch is set forth by ¶¶4-10 and ¶52 of appellant Sassower's moving affidavit in support of the order to show cause and reinforced by pages 25-28 of the "legal autopsy"/analysis, annexed as Exhibit Z to her August 1st reply affidavit, whose accuracy is uncontested by Assistant Solicitor General Brodie.



As to Appellants' Second Branch,
Assistant Solicitor General Brodie responds (at pp. 2-4) under a title heading
"Paragraph 2, Calling for Disclosures by Attorney General Underwood,
Should Be Denied".

Both its title and its content, contained in four paragraphs spanning a page and a half, conceal the disclosures which the second branch specifies in the order to show cause:

"directing that Attorney General Barbara D. Underwood identify who has determined "the interest of the state" on this appeal – and plaintiffs-appellants' entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, §123 *et seq.*, including *via* independent counsel, and how, if at all, she has addressed her own conflicts of interest with respect thereto" --

reflective of the fact that Assistant Solicitor General Brodie has NO argument to support denial of the specified disclosure, making his opposition, frivolous. Instead, he argues:

"The Attorney General is authorized to defend State officers and entities in litigation, *see* Exec. L. §§63(1) and to litigate in support of the constitutionality of the State's statutes, *see* Exec. L. §71(1). In this case, she has done both."

This is a deceit. The authorization "to defend" in Executive Law §63.1 is contingent on "the interest of the state". Yet, Assistant Solicitor General Brodie does not assert here, did not assert at the

August 2nd oral argument, and did not assert in his July 23rd letter that the attorney general's representation of respondents before this Court is based on any such "interest of the state" determination having been made by the attorney general's office – or that the representation of defendants below, before Judge Hartman or in the prior citizen-taxpayer action, before Judge McDonough, was predicated on any such determination. Absent the attorney general's determination of the "interest of the state", he/she cannot lawfully "defend", pursuant to Executive Law §63.1.

As for Executive Law §71(1), it pertains to the attorney general's right to intervene in support of constitutionality of a statute – as provided for by CPLR §1012, giving the attorney general an intervention of right for that purpose. Such is not relevant to the issue presented by this branch, which is appellants' entitlement to his representation/intervention, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A.

Having concealed the specific disclosure sought by the second branch of appellants' order to show cause enables Assistant Solicitor General Brodie to then bulk-up this section by a paragraph rejecting disclosure not sought by appellants' second branch. Thus, his second paragraph of this section:

"Nothing in the Executive Law or the State Finance Law entitles appellant to 'findings of fact and conclusions of law' by the Attorney General on the merits of appellant's case (8/1/18 Reply Aff. ¶5). Indeed, it is impossible to answer appellant's request for findings and conclusions 'as to the respects in which the December 24, 2015 report' of the Commission on Legislative, Judicial and Executive Compensation (the Commission) 'on its face, violates Chapter 60, Part E, of the Laws of 2015' (8/1/18 Reply Aff. ¶4). The Attorney General successfully defended the legality of the Commission in Supreme Court. We do not believe that the Commission's report violated the enabling statute. Thus, no such findings and conclusions exist."

The cited ¶¶4 and 5 of appellant Sassower's August 1st reply affidavit have nothing to do with the disclosure sought by appellant's second branch of their order to show cause. Rather, they relate to

appellants' entitlement to the fifth branch of their order to show cause to enjoin the commission-based judicial salary increases and the district attorney salary increases based thereon. Yet, this non-sequitur paragraph furnishes further confirmation that the attorney general's office never determined "the interest of the state", as such would have necessitated its determining, with findings of fact and conclusions of law, whether the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation violated Chapter 60, Part E, of the Laws of 2015, including facially – and there is nothing "impossible to answer" about so-easy a determination as comparing the face of the report with the statute, and especially when the specifics are set forth by appellants' eighth cause of action – and its substantiating January 15, 2016 "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc." (Exhibit EE). Indeed, in his Point I(E)(6), *infra*, Assistant Solicitor General Brodie inconsistently does the "impossible" – and fraudulently asserts that the report does not facially violate the statute.

Assistant Solicitor General then concludes with two final paragraphs pertaining to conflicts of interest – the first, as to Attorney General Underwood's conflicts, reads as follows (at p. 3):

"Attorney General Underwood has no conflict of interest. She is defending both herself and the other State officers and entities, all of whom are defendants-respondents. Defendants-respondents are united in their interest in defeating appellant's claims."

This implicitly answers the second question for which appellants' second branch seeks disclosure – "how, if at all, [Attorney General Underwood] has addressed her own conflicts of interest with respect thereto". The implied answer is that Attorney General Underwood's own conflicts have not been addressed because, purportedly, "Attorney General Underwood has no conflict of interest". This, however, is a bald conclusion – and is NOT supported by Assistant Solicitor General Brodie's bald statement that her interests are "united" with those of her fellow respondents, as this is NOT the

conflict of interest at issue. Rather, it is whether her personal, professional relationships and interests conflict with her duty, pursuant to Executive Law §63.1, to determine “the interest of the state” – a succession of which relationships and circumstances are particularized by appellant Sassower’s May 30, 2018 letter to her – annexed as Exhibit J to her July 24, 2018 moving affidavit in support of the order to show cause – to which there was no response from Attorney General Underwood. Assistant Solicitor General Brodie’s bald denial of conflicts, not by a sworn statement in which he would have to identify his personal knowledge and/or information and belief, but by a “memorandum” is insufficient, *as a matter of law*, to refute that particularized showing.

The second conflict-of-interest pertaining paragraph in this section is even more irrelevant and misleading, as it pertains NOT to Attorney General Underwood’s conflicts of interest, but Judge Hartman’s. It reads (at pp. 3-4):

“Nor did Justice Hartman have a conflict of interest from having formerly worked in the Attorney General’s office. The situation is analogous to one where a judge, who was formerly a district attorney, hears a criminal case. This Court has allowed such judges to act in such circumstances, even when, as district attorney, the judge had prosecuted the defendant for unrelated matters. *See, e.g., People v. Casey*, 61 A.D.3d 1011, 1015 (3d Dep’t), *lv. denied*, 12 N.Y.3d 913 (2001); *People v. Mitchell*, 288 A.D.2d 622, 623 (3d Dep’t 2001), *lv. denied*, 99 N.Y.2d 536 (2002); *People v. Jones*, 143 A.D.2d 465, 466-67 (3d Dep’t 1988). Here, the case against recusal is even stronger; there is no evidence that Justice Hartman was involved with the defense of this lawsuit or the lawsuit before Justice McDonough before taking the bench.”

Appellants’ entitlement to the granting of their second branch is set forth by ¶¶11-23 of appellant Sassower’s July 24th moving affidavit in support of the order to show cause, and reinforced by pages 23-25 of the “legal autopsy”/analysis, annexed as Exhibit Z to her August 1st reply affidavit, the accuracy of which is uncontested by Assistant Solicitor General Brodie.