

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, DEAN SKELOS in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, SHELDON SILVER, 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, and THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York,

Defendants.

AFFIRMATION

Index No. 1788-14

May 16, 2014

Adrienne J. Kerwin, an attorney licensed to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Dean Skelos, Sheldon Silver, Eric T. Schneiderman and Thomas DiNapoli in the above-captioned action.

2. I submit this affirmation in further support of defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(1), (a)(2) and (a)(7), and in opposition to plaintiffs' cross-motion for various types of relief.

3. In response to plaintiffs' claim that the defendants have a duty to provide alleged documents listed in plaintiffs' "Notice to Furnish Documents to the Court," to the extent that such documents exist, they are publically available either online or through the relevant public relations offices of the Assembly or Senate. In fact, upon information and belief, the plaintiffs have received some of these documents in response to FOIL requests. Further, defendants submitted some of these public documents in connection with their motion to dismiss. Since the plaintiffs have failed to identify any documents exclusively in the possession of the defendants, or that are at all relevant to the complaint, any relief sought by the plaintiffs in connection with their "Notice to Furnish Documents to the Court" should be denied.

4. Plaintiffs seek leave to serve interrogatories upon Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver and Chief Administrative Judge Gail Prudenti pursuant to CPLR 3132 to provide "further substantiation" for plaintiffs' claims. See Plaintiffs' Memorandum of Law at p. 27. However, no information that could arguably be provided through answers to the questions that plaintiff proposes, see 3/28/14 Sassower aff. at Exhs. K-1 and M-1, – even if they were proper and not subject to many objections – would be sufficient to remedy the legal inadequacy of plaintiffs' claims, as discussed in defendants' moving papers. As a result, plaintiffs' request for pre-answer discovery should be denied.

5. Essentially the plaintiffs argue that the Attorney General has a conflict of interest, and therefore cannot defend this action, because he does not agree with plaintiffs' allegations.

See Plaintiffs' Memorandum of Law at pp. 28-29. Specifically, plaintiffs' allege that the Attorney General "is unable to represent the People and the public interest herein because doing so would require him to confront the statutorily-violative, fraudulent, and unconstitutional judicial salary increase that he was duty-bound to stop years ago, but instead corruptly enabled, including his litigation fraud. . ." See id. at p. 29. Despite this allegation, plaintiffs contend that they are entitled to the representation of the Attorney General in this case pursuant to Executive Law "63.1," or some kind of order "compelling the Attorney General to identify who is evaluating 'the interest of the state' and their entitlement his intervention/representation pursuant to Executive Law 63.1 and State Finance Law article 7-A." See id. at pp. 27-28.

6. Not surprisingly, there is no law to support plaintiffs' claims that the Attorney General has a conflict of interest or has any duty to inform the plaintiff of the Attorney General's statutorily-granted decision making relating to how to carry out his duties under the Executive Law. Accordingly, plaintiffs' motion for an order disqualifying the Attorney General and documenting how the Attorney General evaluates and represents the "interests of the state" must be denied.

7. Plaintiffs' application for sanctions is based on their apparent objection to defense counsel's writing style and method of advocacy, and a complete misunderstanding of the law, litigation and the power of the court. If anything, plaintiffs, whose papers are replete with false, libelous and scandalous allegations about defense counsel and the Office of the Attorney General, should be sanctioned.

8. The basis for plaintiffs' allegations seeking criminal, monetary and professional sanctions against defense counsel is the fact that **defense counsel filed a motion to dismiss**

plaintiff's complaint. While plaintiffs may not agree with it, or understand it, defendants' motion to dismiss is both legally-sound and undeniably an appropriate response to the complaint submitted by plaintiffs.

9. Plaintiffs' claims that defense counsel did not inform the court of all plaintiffs' unethical, inappropriate and harassing antics that occurred before and after the commencement of this action are accurate. See 5/16/14 Sassower aff. at ¶¶7-36.

10. Plaintiffs' claims that defendants failed to repeat in their motion what is stated in the complaint are also true, and such a course was chosen because defense counsel assumes the court does not need a complete recitation of those allegations. See Plaintiffs' Memorandum of Law at pp. 4, 7, 9, 10, 18, 19, 25. However, neither these allegations, nor any of the other baseless and defamatory allegations contained in plaintiffs' papers justify or support any kind of sanction against defense counsel.

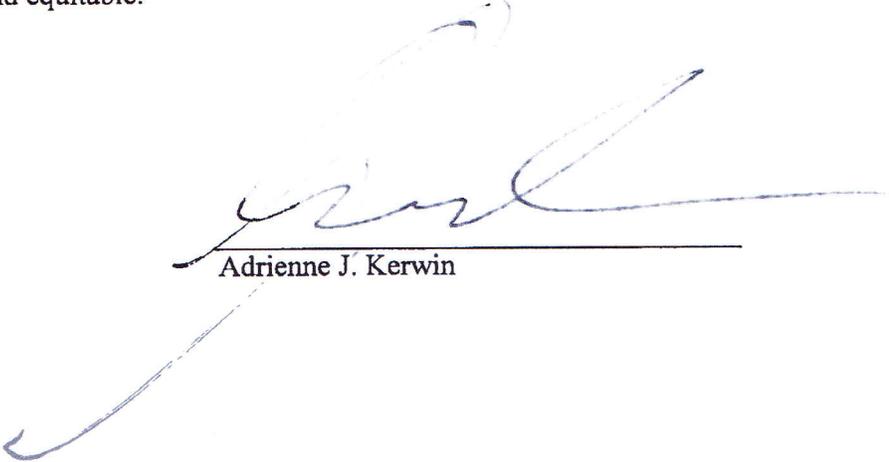
11. In addition, as plaintiffs admit in their papers, they continued to personally contact represented defendant NYS Office of the State Comptroller with full knowledge that that office was represented by the Attorney General. Such conduct also cannot be permitted to occur and sanctions are appropriate.

12. Finally, for the reasons discussed in defendants' accompanying memorandum of law, defendants' motion to dismiss should be granted, and plaintiffs' cross-motion should be denied.

WHEREFORE, the defendants respectfully request that the court issue an order (1) granting defendants' motion to dismiss in its entirety, with prejudice, (2) denying plaintiffs'

cross-motion in its entirety with prejudice and (3) granting defendants any further relief that the court deems just, proper and equitable.

Dated: Albany, New York
May 30, 2014



Adrienne J. Kerwin