Appellate Division Docket #CV-23-0115

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

To be Argued by:
Elena Ruth Sassower
(15 Minutes Requested)

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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,

Albany Co. Index #: 904235-22
AD Docket #: CV-23-0115

Appellants,

-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS,
LEGISLATIVE ETHICS COMMISSION,
NEW YORK STATE INSPECTOR GENERAL,

KATHY HOCHUL, in her official capacity as
GOVERNOR OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity as
TEMPORARY SENATE PRESIDENT, & the NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, & the NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents.

APPELLANTS' BRIEF

ELENA RUTH SASSOWER, unrepresented 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

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1. Was the lower court duty-bound to have obviated these appeals by transferring/removing this case to federal court, or certifying the question, as sought by Appellants' December 16, 2022 motion – and was it jurisdictionally empowered to grant the motion's other requested relief: vacating its November 23, 2022 "Decision, Order and Judgment" for lack of its own jurisdiction and based on the Respondent Attorney General's fraud?

   Yes, the lower court was duty-bound to have transferred/removed the case to federal court or to have certified the question – and dispositive of this is the motion's Exhibit 1 consisting of Appellants' "legal autopsy"/analysis of the November 23, 2022 "Decision, Order and Judgment" – which the lower court concealed in its conclusory February 15, 2023 Decision and Order denying the motion.

   As to whether the lower court had jurisdiction to vacate its November 23, 2022 "Decision, Order and Judgment" – and whether this Court has jurisdiction to do so – the answer, based on Judiciary Law §14, caselaw, and treatise authorities, is No.

2. Are the lower court's November 23, 2022 "Decision, Order and Judgment", to which it adhered by its February 15, 2023 Decision and Order, "so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause" of the United States Constitution and New York State Constitution – and do they establish that the lower court was duty-bound to have recused itself for pervasive actual bias?

   Yes – and dispositive of this are Appellants' "legal autopsy"/analyses of each decision, annexed to their two notices of appeal.

3. Does Appellants' September 15, 2022 motion, which the lower court's November 23, 2022 "Decision, Order and Judgment" denied, without findings of fact and conclusions of law, establish their entitlement to all its requested relief against Respondent Attorney General and for summary judgment on their ten causes of action?

   Yes – and this is chronicled by Appellants' Exhibit 1 "legal autopsy"/analysis substantiating their December 16, 2022 motion.

4. Does the record constitute *prima face* proof of the lower court's corruption and fraud, in tandem with Respondent Attorney General, compelling this Court's discharge of its mandatory supervisory, administrative, and disciplinary responsibilities, including pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, by such "appropriate action" as referring them to disciplinary and criminal authorities?

   Yes – and dispositive of this are Appellants' two record-based "legal autopsy"/analyses of the lower court's decisions.

STATEMENT OF THE CASE
CPLR §5528(a)(3) and 22 NYCRR §1250.8(b)(4)

This is a consolidation of two interrelated appeals:

- from a November 23, 2022 "Decision, Order and Judgment" of Ulster County Supreme Court Justice David Gandin [#111, R.3][1], granting an August 18, 2022 "motion" of Respondent Attorney General Letitia James to dismiss Appellants' Verified Petition/Complaint[2] and denying Appellants' September 15, 2022 "cross-motion" for sanctions and other relief against Attorney General James and for summary judgment – as to which Appellants filed a December 16, 2022 notice of appeal [#122, R.1] simultaneous with their making a December 16, 2022 motion to Justice Gandin for reargument/vacatur/transfer/ removal/certification [#119, R.849];

- from Justice Gandin's February 15, 2023 Decision and Order [#130, R.46], denying Appellants' December 16, 2022 motion, as to which Appellants filed a February 23, 2023 notice of appeal [#131, R.44].

Annexed to each notice of appeal is a "legal autopsy"[3]/analysis of the appealed-from decision [#122, R.9-39] [#131, R.48-49], particularizing that there is

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[1] The hyperlinked numbers are to the correspondingly-numbered documents on the Albany County Supreme Court NYSCEF docket for #904235-22. The R. references are to Appellants' reproduced record, made from the NYSCEF docket.

[2] For simplicity, hereinafter referred to as Petition. Likewise, the two appealed-from decisions and orders are referred to as decisions.

[3] 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)).

no "Judgment"[4] and that the decisions are conclusory frauds – the product of an actually-biased judge, having no jurisdiction to sit by virtue of his interest, proscribed by Judiciary Law §14 and caselaw and treatise authority pertinent thereto.

Separately and together these two "legal autopsy"/analyses [#122, R.9-39] [#131, R.48-49] satisfy the requirements of CPLR §5528(a)(3) and 22 NYCRR §1250.8(b)(4) as "a concise statement of the nature of the case and of the facts which should be known to determine the questions involved" – including by their

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[4] There are also no declarations, which presumably would have been in the "Judgment" portion of the decision, preceded by the words "ORDERED, ADJUDGED, and DECLARED", as was done in the November 28, 2017 "Decision and Judgment" of Acting Albany County Supreme Court Justice Denise Hartman (at p. 10) in the citizen-taxpayer action *CJA v. Cuomo…DiFiore*.

Appellants alerted Justice Gandin that declarations were required for their causes of action brought pursuant to the declaratory judgment and citizen-taxpayer action statutes, quoting New York Practice, §440 (6th ed. 2018), in their "legal autopsy"/analysis of Respondent AG James' August 18, 2022 dismissal cross-motion [#88, p. 9, R.679] – Exhibit A to their September 15, 2022 affidavit in opposition to the cross-motion and in support of their September 15, 2022 motion for sanction and summary judgment [#87, R.664].

The six causes of action of Appellants' Petition requiring declarations are the fifth, sixth, seventh, eighth, ninth, and tenth [#1, pp. 25-47, R.74-96], each identifying the declarations. The Petition's prayer for relief/"WHEREFORE clause" also identifies these declarations [#1, pp. 49-50, R.98-99].

Among this Court's caselaw reflecting the requirement of declarations, its March 18, 2021 "Opinion and Order" in *Delgado v. New York State* (at pp. 9-10), stating:

> "As a final matter, as this is a declaratory judgment action, Supreme Court should have made a declaration in defendants' favor on plaintiffs' first cause of action, rather than dismissing it (see *Inter-Power of N.Y. v Niagara Mohawk Power Corp.*, 208 AD2d 1073, 1075 [1994]; *Einbinder v Ancowitz*, 38 AD2d 721, 721 [1972], lv denied 30 NY2d 485 [1972]). We modify the judgment accordingly.
> …
> ORDERED that the judgment is modified, on the law, without costs, by declaring that the Laws of 2018, chapter 59, § 1, part HHH has not been shown to be unconstitutional, and, as so modified, affirmed." (hyperlinking added).

"appropriate citations" to the record, hyperlinked to the NYSCEF filings to speed verification.

Appellants' "legal autopsy"/analysis of Justice Gandin's November 23, 2022 decision [#122, R.9-39] is 31 fact-specific, law-supported, record-referenced single-spaced pages in substantiation of its first page assertion:

> "As hereinafter shown, Justice Gandin knew himself to be without jurisdiction pursuant to Judiciary Law §14 by reason of his financial and other interests, but, rather than acknowledging and confronting that issue – and his bias resulting from same – he flagrantly corrupted the judicial process, in tandem with the State Attorney General, a respondent, representing herself and her fellow respondents.[fn] The result is a decision that cannot be justified, is 'so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause'[fn3] of the United States Constitution and New York State Constitution, and is a criminal act, violating a succession of provisions of New York's Penal Law…" [R.9, underlining in the original].

This "legal autopsy"/analysis is also significant because Appellants placed it before Justice Gandin as Exhibit 1 [#121, R.856-886] to their affidavit supporting their December 16, 2022 motion [#120, R.852], identifying it (at ¶5) as "dispositive" of their entitlement to the motion's requested relief, *to wit*,

> "1. pursuant to CPLR §2221(d), granting reargument of the Court's November 23, 2022 'DECISION, ORDER and JUDGMENT' and, upon the granting of same, vacating it; and/or

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"[fn3] *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960)."

2. pursuant to CPLR §5015(a)(4), vacating the November 23, 2022 'DECISION, ORDER and JUDGMENT' for 'lack of jurisdiction' by reason of the Court's interest, as to which Judiciary Law §14 divests it of jurisdiction; and/or,

3. pursuant to CPLR §5015(a)(3), vacating the November 23, 2022 'DECISION, ORDER and JUDGMENT' for 'fraud, misrepresentation, or other misconduct of an adverse party' – this being, in the first instance, respondent Attorney General Letitia James, representing herself and her fellow respondents; and

4. upon vacating the 'DECISION, ORDER and JUDGMENT', granting the relevant 'other and further relief' specified by petitioners' September 15, 2022 notice of motion (#93), previously embodied in the order to show cause that this Court signed on July 7, 2022 (#75) and, prior thereto, by the June 23, 2022 notice of petition (#46), for an order:

> 'transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals';

5. granting such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202". (underlining, capitalization, and hyperlinking in the original [#119, R.850, underlining, capitalization in the original].

Justice Gandin did not contest that Appellants' Exhibit 1 "legal autopsy"/analysis [#121, R.856] was "dispositive". Instead, his February 15, 2023 decision [#130, R.46] concealed its existence in denying the December 16, 2022 motion – a fact set forth by Appellants' "legal autopsy"/analysis of the February 15, 2023 decision, which stated, in full [#131, R.48-49]:

> "Very little need be said about Justice Gandin's February 15, 2023 Decision and Order (NYSCEF #130) – his last judicial act in *CJA v. JCOPE, et al.* — other than that it is *prima facie* proof of his corruption, in office, on par with his prior decisions.
>
> The indefensibility of those prior decisions, culminating in his November 23, 2022 'Decision, Order and Judgment' (NYSCEF #111-#116) – the subject of petitioners' December 16, 2022 motion for reargument, vacatur, transfer/removal/certification that his February 15, 2023 decision denies – is summarized and particularized by petitioners' 31-page, single-spaced 'legal autopsy'/analysis that is Exhibit 1 (NYSCEF #121) to the motion (NYSCEF #119).
>
> Justice Gandin's February 15, 2023 decision makes no mention of the 'legal autopsy'/analysis – nor that its accuracy was undenied and undisputed by respondents, nor that this was highlighted by petitioners' January 19, 2023 reply affidavit (NYSCEF #128), reciting the state of the record before him on the motion.
>
> Indeed, notwithstanding the decision lists the motion, opposition, and reply as the 'papers' that were 'read and considered', it conceals the ENTIRETY of their content. The extent of what it reveals – and this with respect to the December 16, 2022 motion – is that it was '*inter alia*, for reargument… or alternatively to vacate the [November 23, 2022] decision on grounds of lack of jurisdiction and fraud'. It furnishes NONE of the facts, law, or legal argument upon which petitioners' motion was based, NOTHING about what respondents had to say in opposition, and NOTHING about what petitioners had to say in reply.

Instead, after a completely generic, boiler-plate, three-sentence paragraph of legal propositions: the first two sentences pertaining to reargument, each citing a single case, followed by a third sentence pertaining to vacatur – but not on grounds of lack of jurisdiction or fraud, but, rather, as its cited case reveals, relating to default – the decision baldly purports and decrees:

> 'In moving to reargue petitioners merely recite claims previously raised in their petition and opposition to respondents' motion to dismiss. Their papers contain the same arguments previously heard and rejected by the Court. As such, petitioners have not demonstrated grounds for reargument. Similarly, petitioners fail to articulate grounds for vacatur based on lack of jurisdiction or fraud. The Court has considered petitioners' remaining contentions and finds them to be without merit. Wherefore it is
>
> ORDERED that petitioners' motion is denied.'

This is utter fraud by Justice Gandin – and petitioners' Exhibit 1 'legal autopsy'/analysis and January 19, 2023 reply affidavit establish this resoundingly, open-and-shut.

Suffice to add that the ONLY retreat from the fraud of Justice Gandin's two prior written decisions is that finally, with this third and last decision, he has used the proper case caption, though perhaps not because of petitioners' objection to his prior expurgated captions, set forth by the 'legal autopsy'/analysis (at p. 9), but because of the additional length that the full caption gives to his short, short decision.[fn1]" (hyperlinking, capitalization in the original).

" [fn1] Included on page 1 of his barely two-page decision are two deceits that the 'legal autopsy'/analysis detailed, at length: (1) that petitioners' lawsuit is a 'CPLR Article 78 special proceeding', concealing that it is also a citizen-taxpayer action and declaratory judgment action; and (2) that respondents made a 'motion to dismiss the petition', when it was a cross-motion."

THE ARGUMENT
CPLR §5528(a)(4) & 22 NYCRR §1250.8(b)(5)

All four of Appellants' "Questions Presented" are answered by the first question pertaining to the record of their December 16, 2022 vacatur/transfer motion [#119, R.849], itself resting on the record of their September 15, 2022 sanctions/summary judgment motion [#93, R.741][5] – as to which the following legal propositions and treatise authority have reinforcing applicability:[6]

> "failing to respond to a fact attested to in the moving papers…will be deemed to admit it", Siegel, New York Practice, §281 (4th ed. 2005, p. 464), citing *Kuehne v. Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 (1975);
>
> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> "It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the

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[5] For simplicity, Appellants' December 16, 2022 motion will be referred to as for "vacatur/transfer" and their September 15, 2022 motion will be referred to as for "sanctions/summary judgment".

[6] Appellants furnished Justice Gandin and Respondent AG James with the second two of these legal authorities, twice, in support of their September 15, 2022 sanctions/summary judgment motion: by their Exhibit A "legal autopsy"/analysis of Respondent AG James' August 18, 2022 dismissal cross-motion, [#88, p. 2, R.672] and by their September 15, 2022 memorandum of law [#94, p. 13, R.759].

whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence §278 at 133 (1979).

POINT I

Justice Gandin was Duty-Bound to have Obviated These Appeals by Granting the Transfer/Removal/Certification Relief Sought by Appellants' December 16, 2022 Motion so as to Enable a Jurisdictionally-Empowered Judge to Grant its Other Relief: Vacatur of his November 23, 2022 "Decision, Order and Judgment" for Lack of Jurisdiction and Fraud

Justice Gandin's duty to have obviated these appeals is proven by the slim record of Appellants' December 16, 2022 motion before him, consisting of:

- Appellants' notice of motion [#119, R.849]; their moving affidavit [#120, R.852]; and its Exhibit 1 "legal autopsy"/analysis [#121, R.856];

- Respondent AG James' opposing affirmation [#126, R.888] and opposing memorandum of law [#127, R.891];

- Appellants' reply affidavit [#128, R.901] and its Exhibit 2 [#129, R.908].

Such is highlighted by Appellants' above-quoted "legal autopsy"/analysis of Justice Gandin's February 15, 2023 decision denying the motion.

Justice Gandin made no findings of fact and conclusions of law with respect to this record, because, as obvious from Appellants' reply [#128, R.901], ALL five branches of the motion were mandated, *as a matter of law*, based on Appellants' Exhibit 1 "legal autopsy"/analysis [#121, R.856], whose accuracy was uncontested by Respondent AG James [#126, R.888] [#127, R.891]. Indeed, her fraudulent response to the motion, in addition to reinforcing Justice Gandin's duty with respect to its five branches, should have impelled him, as part of its fifth branch of "other

and further relief…just and proper", to give notice pursuant to 22 NYCRR §130-1.1 *et seq.* that she and her fellow respondents would be liable for costs and sanctions for their frivolous opposition. Such is now expressly sought by Appellants on these appeals, starting with the fixed maximum for sanctions: $10,000 for the signed opposing affirmation [#127, R-899] and $10,000 for the signed memorandum of law [#126, R.888].

There are, however, two threshold questions pertaining to jurisdiction.

The first is explicit from the motion's fourth branch by its request for certification to this Court or to the Court of Appeals of any question as to:

> 'transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof" [#119, R.850].

This Court now has that question, if such there be, for its own determination or for certification to the Court of Appeals.

Most relevant to the transfer/removal/certification issue are pages 15-21 of Appellants' "legal autopsy"/analysis of Justice Gandin's November 23, 2022 decision [R.22-29, R.870-876], as these rebut its single paragraph [R.4-5] which concealed and transmogrified the seventh branch of their September 15, 2022 sanctions/summary judgment motion [#93, R.743], which had been for:

> "a. disclosure by the Court, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner's July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;
>
> b. transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals"

Justice Gandin disposed of this two-fold relief by omitting the request for disclosure, of which he made none, and omitting the request for transfer/removal/certification, stating:

> "Petitioners seek recusal claiming that the Court demonstrated 'actual bias' based on its denial of their July 7, 2022 application for a temporary restraining order. '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…' Judiciary Law §14. 'Absent a legal disqualification under Judiciary Law §14…a trial judge is the sole arbiter of recusal and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion.' *Kampfer v. Rase*, 56 AD3d 926 (3d Dept 2008) (internal quotation marks omitted). An allegation that a judge has previously ruled adverse to a party does not establish a statutory basis for recusal. See *Patrick UU. v. Frances VV.*, 200 AD3d 1156 (3d Dept 2021). The Court rejects petitioners' claim that it has a pecuniary interest in the outcome of this proceeding because the state budget has provisions governing judicial compensation. The same contention could be raised

> before any Justice of the Supreme Court presiding over this proceeding. Thus, this Court bears no unique self-interest in the outcome of this proceeding and can fairly and impartially adjudicate it on its merits. See *Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1408 (3d Dept 2018)." (hyperlinks added by "legal autopsy"/analysis).

Findings of fact and conclusions of law with respect to Appellants' seven-page rebuttal [R.870-876] – not made by Justice Gandin's February 15, 2023 decision [R.46] – will establish his duty to have transferred/removed the case to federal court or to have certified the question, as sought by their December 16, 2022 vacatur/transfer motion, their September 15, 2022 sanctions/summary judgment motion, indeed, from the outset of the case before him, by their June 23, 2023 Notice of Petition [#46, R.482] and their July 6, 2022 order to show cause [#66, R.548].

The specific findings of fact and conclusions of law would include:

- that Appellants' complaints to JCOPE and the Inspector General that are the Petition's Exhibits A, B, C, D, E, F, G, H, I – and the subject of their first and fifth causes of action [#1, R.65, R.74] – all involve the commission-based 'force of law' judicial pay raises that have boosted judicial salaries by approximately $80,000 per year, the Judiciary's own budget, and the Commission on Judicial Conduct;

- that Justice Gandin – and all Supreme Court justices and acting Supreme Court justices – have HUGE financial and other interests in the Petition by reason thereof and based on facts reasonably disclosed by them, such as relating to the underlying citizen-taxpayer action *CJA v. Cuomo…DiFiore*, whose record before this Court and at the Court of Appeals is part of the record herein by Appellants' March 5, 2021 complaint to JCOPE against, *inter alia*, Respondent AG James – Exhibit D-1 to the Petition [R.207] – and its enclosed February 11, 2021 complaint to the Attorney Grievance Committees [Exhibit D-2, R.241] and enclosed February 7, 2021

complaint to the Commission on Judicial Conduct [Exhibit D-3, R.251] – and by Appellants' November 24, 2021 complaint to JCOPE against the Commission on Judicial Conduct – Exhibit C to the Petition [R.185];

- that Judiciary §14 unequivocally states:

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

- that decisional law and treatise authority is just as unequivocal as to the jurisdictional bar that Judiciary Law §14 creates – *Oakley v. Aspinwall*, 3 NY 547, 548, 551 (1850), 28 New York Jurisprudence 2nd §403 "Disqualification as causing a loss of jurisdiction" (2018), the First Department's decision in *Matter of Johnson v. Hornblass*, 93 A.D.2d 732, 733 (1983):

> "Section 14 of the Judiciary Law… is the sole statutory authority in New York for disqualification of a Judge. If disqualification under the statute were found, prohibition would lie, since there would be a lack of jurisdiction. There is an express statutory disqualification. *(See Matter of Merola v. Walsh*, 75 A.D.2d 163; *Matter of Katz v. Denzer*, 70 A.D.2d 548; *People ex rel., Devery v. Jerome*, 36 Misc 2d 256)" (underlining in Appellants' prior quoting of this)

and this Court's own decision in *People v. Alteri*, 47 A.D.3d 1070 (2008):

> "A statutory disqualification under Judiciary Law §14 will deprive a judge of jurisdiction (*see Wilcox v. Supreme Council of Royal Arcanum*, 210 N.Y. 370, 377…[1914]; *see also Matter of Harkness Apt. Owners Corp. v. Abdus–Salaam*, 232 A.D.2d 309, 310… [1996]) and void any prior action taken by such judge in that case before the recusal (*see People v. Golston*, 13 A.D.3d 887, 889… [2004], lv. denied 5 N.Y.3d 789… [2005]; *Matter of Harkness Apt. Owners Corp. v. Abdus–Salaam*, 232

> A.D.2d at 310…). In fact, ‘‘a judge disqualified under a statute cannot act even with the consent of the parties interested, because the law was not designed merely for the protection of the parties to the suit, but for the general interests of justice’ (*Matter of Beer Garden v. New York State Liq. Auth.*, 79 N.Y.2d 266, 278–279…[1992], quoting *Matter of City of Rochester*, 208 N.Y. 188, 192…[1913])” (underlining in Appellants’ prior quoting of this).

- that “rule of necessity” is unavailable because such can only be invoked by judges having jurisdiction, which Judiciary Law §14 removes from interested judges – as evidenced by:

  (1) 32 New York Jurisprudence §45 (1963), stating:

  > ‘…since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,[fn] a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.[fn]’

  (2) *United States v. Will*, 449 U.S. 200, 210-211 (1980), wherein the U.S. Supreme Court, invoking “rule of necessity” to decide a case involving its salaries and that of lower federal judges, expressly recited, under the title heading ‘Jurisdiction’, its jurisdiction and theirs to decide the case – there being no federal statute, analogous to Judiciary Law §14, removing from them jurisdiction in cases in which they are interested;

  (3) the sleight of hand of New York courts, which, impliedly recognizing that they have no jurisdiction under Judiciary Law §14 to invoke “rule of necessity” in cases involving judicial self-interest, cite NOT to it, but to *United States v. Will*, either directly or through other cases, so as to bootstrap the jurisdictional issue. As illustrative, the Court of Appeals decisions in *Maresca v Cuomo*, 64 N.Y.2d 242, 247, n.1 (1984), *Matter of Morgenthau v Cooke*, 56 N.Y.2d 24, 29 n.3 (1982), and in *Maron v. Silver*, 14 N.Y.3d 230, 249 (2010), this being its consolidated decision of appeals in

> three lawsuits by New York judges suing for pay raises. Similarly, this Court's *Maron v Silver decision*, 58 A.D.3d 102, 106-107 (2008).

Notably, Justice Gandin's above-quoted single paragraph from his November 23, 2022 decision does not explicitly invoke "rule of necessity" – and conceals the two-fold predicate for its invocation, here absent:

> (1) that there are NO other judges who do not suffer from the subject judge's disqualification – which is plainly NOT the situation when federal judges are available to whom the case can be transferred/removed, including pursuant to Article IV, §4 of the U.S. Constitution – and Justice Gandin does NOT purport that the case cannot be transferred/removed;
>
> (2) that the subject judge has jurisdiction – which Justice Gandin plainly does NOT have pursuant to Judiciary Law §14 and which a judge-created "rule of necessity" cannot confer – and Justice Gandin does NOT purport to have jurisdiction.

As to the second threshold jurisdictional question, it is whether, by reason of the jurisdictional bar of Judiciary Law §14, Justice Gandin could even vacate his November 23, 2022 decision – or grant ANY relief, excepting the ministerial transfer/removal of the case to the federal courts or certification of the question to this Court or the Court of Appeals. This because 28 New York Jurisprudence 2nd §403 (2018) entitled "Disqualification as causing a loss of jurisdiction" states:

> "A judge disqualified for any of the statutory grounds, or a court of which such a judge is a member, is without jurisdiction, and all proceedings had before such a judge or court are void.[fn] … A

> disqualified judge is even incompetent to make an order in the case setting aside his or her own void proceedings.[fn]"[7]

This jurisdictional question is threshold – and not only as to the parameters of Justice Gandin's duty with regard to the December 16, 2022 motion, but as to the parameters of this Court's power, on these appeals. As stated by the U.S. Supreme Court:

> "…the rule…is inflexible and without exception…the first and fundamental question is that of jurisdiction, first, of [the appellate] court, and then of the court from which the record comes. This question the court is bound to answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.", *Mansfield v. Swan*, 111 U.S. 379, 382 (1884);
>
> "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the

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[7] Although CPLR §5015(a) empowers "The court which rendered a judgment or order [to] relieve a party from it…on motion of any interested party", with its subparagraph (4) being "lack of jurisdiction to render the judgment or order", presumably, this is where the "lack of jurisdiction" is not based on Judiciary Law §14. New York Practice (6th ed.) does not address the divesting of jurisdiction by Judiciary Law §14. Its §8 discussion of "Kinds of Jurisdiction" pertains to subject matter and personal jurisdiction, as does its §430 discussion of "Lack of Jurisdiction" under CPLR 5015(a)(4), which reads:

> "If the court lacked jurisdiction to render the judgment or order, the motion to vacate should be based on paragraph 4 of CPLR 5015(a). The motion can rest on a lack of subject matter jurisdiction, but more frequently it's based on a lack of personal jurisdiction. Whichever it is, CPLR 5015(a) applies but the court will perhaps not cite to it. The reason is that lack of jurisdiction is so deep a defect, and so obviously a basis for vacatur, that a statute authorizing the vacatur on this ground is like the proverbial fifth wheel. For the same reason, the jurisdictional defect permits the vacatur motion without a time limit: the judgment in this instance is theoretically void and the order sought under CPLR 5015(a)(4) is not what makes it so; the order merely declares it to be so, cancelling of record a judgment that has had the presumption to stand on the books without a jurisdictional invitation.[fn.1]"

The annotating [fn1] is: "See Fed. R. Civ. P. 60(b)(4), for the counterpart provision in the federal rules, whose ground is simply that 'the judgment is void.'"

> only function remaining to the court is that of announcing the fact…", *Ex parte McCardle*, 74 U.S. 506, 514 (1869).

Notwithstanding differences between the federal and state systems, the threshold question of jurisdiction – and the inability of a court to proceed without it – identically applies to all courts. As stated by the Court of Appeals in *Fry v. Village of Tarrytown*, 89 N.Y.2d 714 (N.Y. 1997):

> "The question of subject matter jurisdiction is a question of judicial power: whether the court has the power, conferred by the Constitution or statute, to entertain the case before it (*see*, *Hunt v. Hunt*, 72 N.Y.217, 230 [jurisdiction of the subject-matter is the power lawfully conferred to deal with the general subject involved in the action']). In our State court system, 'Supreme Court is a court of original, unlimited and unqualified jurisdiction' (*Kagan v. Kagan*, 21 N.Y.2d 532, 537; see, NY Const. art VI, §7) and 'is competent to entertain all causes of actions unless its jurisdiction has been specifically proscribed' (*Thrasher v. United States Liab. Ins. Co.*, 19 N.Y.2d 159, 166)." (underlining added).

Judiciary Law §14 "specifically proscribed" Justice Gandin's jurisdiction.

POINT II

Justice Gandin's November 23, 2022 "Decision, Order and Judgment", to which He Adhered by his February 15, 2023 Decision and Order, Establish his Duty to have Recused Himself for Pervasive Actual Bias

As reflected by ALL caselaw, including the three decisions of this Court cited by Justice Gandin's November 23, 2022 decision denying recusal, *Kampfer v. Rase*, 56 AD3d 926 (3d Dept 2008), *Patrick UU. v. Frances VV.*, 200 AD3d 1156 (3d Dept 2021), and *Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1408 (3d Dept 2018), recusal, as distinguished from statutory disqualification, is required where "bias or prejudice or unworthy motive" is "shown to affect the result" – and required "as a matter of due process…where there exists a direct, personal, substantial, or pecuniary interest in reaching a particular conclusion".

Both situations are here established – and resoundingly – by Appellants' "legal autopsy"/analyses of Justice Gandin's November 23, 2022 and February 15, 2023 decisions, showing each to be indefensible, factually and legally – the product of a judge disqualified for financial and other interests he refused to disclose and whose $80,000 yearly salary interest he did not deny.

Upon the making of findings of fact and conclusions of law with respect to these "legal autopsy"/analyses, Appellants are entitled to declarations that Justice Gandin was actually and pervasively biased, that his decisions were "so totally devoid of evidentiary support" as to be unconstitutional, violating the due process

clauses of both the New York and U.S. Constitutions, that he abused his "discretion" in failing to recuse himself, indeed, committed fraud in purporting by his November 23, 2022 decision that he could "fairly and impartially adjudicate [the proceeding] on its merits" [#111, p. 3, R.5] – and to vacatur of his decisions by a jurisdictionally-empowered tribunal.

POINT III

Appellants' September 15, 2022 Motion Entitled Them to Sanctions, Costs, and Other Relief Against Respondent Attorney General James & to Summary Judgment on their Ten Causes of Action

As detailed by Appellants' September 15, 2022 memorandum of law supporting their sanctions/summary judgment motion [#94, R.745], the law provides ample means for a court to protect the integrity of proceedings from parties and their attorneys who substitute falsehoods and deceit for truthful presentations of fact and law: 22 NYCRR §130-1.1 *et seq*. "Costs and Sanctions"; Judiciary Law §487 "Misconduct by attorneys"; and 22 NYCRR §1200 *et seq.* "Rules of Professional Conduct for Attorneys".

Justice Gandin refused to enforce any of these as to Respondent AG James and her co-respondents. To the contrary, from the outset – and at every turn – he aided and abetted her litigation fraud, eviscerating ALL standards and violating her duties under Executive Law §63.1 and the citizen-taxpayer statute, State Finance Law Article 7-A. This is chronicled, comprehensively, by Appellants' "legal autopsy"/analysis of the November 23, 2022 decision [#121, R.856] – whose first seven pages gave an overview of the situation, as follows:

> "As hereinafter shown, Justice Gandin…flagrantly corrupted the judicial process, in tandem with the State Attorney General, a respondent, representing herself and her fellow respondents.[fn] The result is a decision that cannot be justified, is 'so totally devoid of evidentiary support as to render [it] unconstitutional under the Due

Process Clause'[fn3] of the United States Constitution and New York State Constitution, and is a criminal act, violating a succession of provisions of New York's Penal Law, including:

Penal Law §195 ('official misconduct');
Penal Law §496 ('corrupting the government') –
part of the 'Public Trust Act';
Penal Law §195.20 ('defrauding the government');
Penal Law §175.35 ('offering a false instrument for filing
in the first degree');
Penal Law §155.42 ('grand larceny in the first degree');
Penal Law §190.65 ('scheme to defraud in the first degree');
Penal Law §20.00 ('criminal liability for conduct of another').

The most cursory examination of the case record, posted on NYSCEF, establishes this resoundingly – and the best starting place for that examination is petitioners' 29-page, single-spaced 'legal autopsy'/analysis of the Attorney General's cross-motion to dismiss the petition (#88). The only reference to it, by Justice Gandin's [November 23, 2022] decision, is by his page 1 recital of 'papers…read and considered' which lists '9. Affidavit in Opposition to the Cross Motion and in Support with Exhibits A-D'. Exhibit A is the 'legal autopsy'/analysis of the cross-motion.

Suffice to here quote the introductory preface of the Exhibit A 'legal autopsy'/analysis, where, beneath the quote:

> ''[A] plaintiff's cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.', *Link v. Wabash Railroad Co*, 370 U.S. 626, 646 (1962), U.S. Supreme Court Justice Hugo Black writing in dissent, with Chief Justice Earl Warren concurring',

petitioners stated:

"[fn3] *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960)."

'In this major lawsuit, with ten causes of action exposing the corruption of New York's public protection/ethics entities, enabling and abetting the corruption of New York state governance involving an 'off the constitutional rails' state budget and massive larceny of taxpayer monies, including by pay raises to New York's state judicial, executive, and legislative constitutional officers based on 'false instrument' reports, Respondent Attorney General Letitia James, a pay raise beneficiary, is representing herself and her nine co-respondents. Appearing for her, 'of Counsel', is Assistant Attorney General Gregory Rodriguez, whose August 18, 2022 cross-motion (##79-82) to dismiss the June 6, 2022 verified petition is not just frivolous, but a 'fraud on the court',[fn] fashioned, from beginning to end, on knowingly false and misleading factual assertions, material omissions,[fn] and on law that is inapplicable, misstated, or both.

Such litigation fraud repeats AAG Rodriguez' comparable litigation fraud by his June 27, 2022 motion to dismiss the petition (##50-58), already demonstrated by petitioners' June 28, 2022 opposing affidavit (##61-64). It additionally follows upon the fraudulent advocacy of his colleague, Assistant Attorney General Stacey Hamilton, at the July 7, 2022 oral argument on petitioners' order to show cause for a TRO/preliminary injunction (##66-72), of which AAG Rodriguez was furnished notice and the transcript proof.[fn] That the Court permitted this prior litigation fraud, indeed rewarded it, has plainly emboldened Attorney General James and her subordinates to do the same a third time, secure in the belief that the Court, being a pay raise beneficiary itself, will allow them to get away with everything."

Based on this Exhibit A 'legal autopsy'/analysis (#88), petitioners simultaneously filed a September 15, 2022 motion for the relief to which it entitled them (#93):

> '1. pursuant to 22 NYCRR §130-1.1 *et seq.*, imposing costs and maximum sanctions upon Respondent Attorney General Letitia James, her culpable attorney staff, and culpable respondents for their August 18, 2022 dismissal cross-motion and June 27, 2022 dismissal motion, signed by 'of Counsel' Assistant Attorney General Gregory Rodriguez, Esq.– both not merely frivolous, but frauds on the Court;
>
> 2. pursuant to Judiciary Law §487(1), making such determination as would afford petitioners treble damages in a civil action against Respondent Attorney General James, her culpable attorney staff, and culpable respondents based on their August 18, 2022 dismissal cross-motion, June 27, 2022 dismissal motion, and, additionally, the fraud committed, on their behalf, by Assistant Attorney General Stacey Hamilton by her July 7, 2022 oral argument in opposition to petitioners' order to show cause for a TRO/preliminary injunction;
>
> 3. pursuant to 22 NYCRR §100.3D(2), referring Respondent Attorney General James, her culpable attorney staff, and culpable respondents to:
>
> (a) appropriate disciplinary authorities for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions'; Rule 3.3 'Conduct Before A Tribunal'; Rule 8.4 'Misconduct'; Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'; and Rule 5.2 'Responsibilities of a Subordinate Lawyer';

(b) appropriate criminal authorities for their Judiciary Law §487 'misdemeanor', and for their knowing and deliberate violations of penal laws, including, Penal Law §496 'corrupting the government'; Penal Law §195 'official misconduct'; Penal Law §175.35 'offering a false instrument for filing in the first degree'; 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';

4. pursuant to Executive Law §63.1 and Rule 1.7 of the New York Rules of Professional Conduct proscribing conflicts of interest, disqualifying Respondent Attorney General James from representing her co-respondents and requiring appointment of independent, outside counsel to determine the interest of the state' pursuant to Executive Law §63.1 – and petitioners' entitlement to representation;

5. pursuant to CPLR §3211(c), granting summary judgment to petitioners on the ten causes of action of their June 6, 2022 verified petition/complaint and September 1, 2022 verified amendment thereto – starting with the sixth cause of action for a declaration that the 'ethics commission reform act of 2022' is unconstitutional, unlawful and void, as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw;

6. pursuant to CPLR §2214(c), directing respondents to furnish the Court with the papers specified by petitioners' June 28, 2022 notice and September 3, 2022 notice – or, alternatively, pursuant to CPLR §3124, compelling respondents' compliance to those same two notices, as embodied by petitioners' September 15, 2022 notice for production and inspection pursuant to CPLR §3120;

7. for such other and further relief as may be just and proper and, particularly, if the foregoing is denied:

(a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner's July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;

(b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals.'

This September 15, 2022 notice of motion (#93) is listed by the decision's first page recital of 'papers…read and considered' as '7. Notice of Motion'. Petitioners' accompanying memorandum of law supporting each of the motion's seven branches is '8. Memorandum of Law' (#94).

The entirety of what Justice Gandin discloses about the content of petitioners' above-quoted motion is in his decision's first paragraph following the listing of 'papers…read and considered' (at pp. 1-2), where he states:

> '…Respondents then cross-moved to dismiss. In response, petitioners moved for sanctions, disqualification of counsel, recusal of the Court, summary judgment and other relief.' (underlining added).

Concealing that the referred-to 'counsel' is Attorney General James and that the requested 'sanctions' are against her, her culpable staff, and her fellow respondents, the decision also conceals all the facts and law giving rise to the motion. This includes pertaining to the seventh branch of 'other and further relief as may be just and proper', which the decision transmogrifies as 'recusal of the Court'.

As to the record with respect to petitioners' September 15, 2022 motion, the decision makes ZERO findings of fact and conclusions of law. This, notwithstanding Justice Gandin's duty was to do so – and petitioners had done ALL the 'heavy lifting' for him by their October 4, 2022 reply affidavit (#104) and reply memorandum of law (#110) – the last two 'papers' listed by his decision as having been 'read and considered'.

Here's the 'Introduction' to petitioners' reply memorandum of law and its first section pertaining to their Exhibit A 'legal autopsy'/analysis, providing Justice Gandin with the shocking state of the record in clear, easy-to-verify fashion:

> 'This memorandum of law is submitted in reply to respondent Attorney General James' September 29, 2022 opposition to petitioners' September 15, 2022 motion for sanctions, summary judgment, and other relief. Consisting of an opposing affirmation (#98) and opposing memorandum of law (#99) by Assistant Attorney General Gregory Rodriguez, appearing 'of Counsel', both his affirmation and memorandum rest on brazen fraud and deceits – essentially the same as fill his September 29, 2022 reply affirmation (#101) and reply memorandum of law (#102) to petitioners' September 15, 2022 opposition to his August 18, 2022 cross-motion to dismiss the verified petition.
>
> The overarching fraud is that petitioners' September 15, 2022 motion is conclusory and unsupported – and that

respondents' August 18, 2022 cross-motion is unrebutted. This, AAG Rodriguez accomplishes by concealing, *in toto*, the content of petitioners' analysis of the August 18, 2022 cross-motion. The analysis is Exhibit A (#88) to petitioners' September 15, 2022 affidavit (#87) in opposition to the cross-motion (#79) and in support their motion (#93).

Because essentially ALL seven branches of petitioners' September 15, 2022 motion rest on the analysis, it is specified by their notice of motion from among the exhibits to their September 15, 2022 affidavit.

The state of the record with respect to the analysis – and with respect to the September 15, 2022 affidavit of which it is part and petitioners' September 15, 2022 memorandum of law based thereon (#94) – mandates the granting of all the relief the notice of motion seeks.

No fair and impartial tribunal could hold otherwise, let alone in a case of such magnitude and significance to 'the People of the State of New York & the Public Interest', on whose behalf petitioners expressly act.

THE RECORD WITH RESPECT TO PETITIONERS' ANALYSIS OF RESPONDENT ATTORNEY GENERAL JAMES' AUGUST 18, 2022 DISMISSAL MOTION

AAG Rodriguez' opposing affirmation (#98) makes no mention, at all, of petitioners' analysis of the cross-motion (#88) and asserts, at ¶3, that 'Petitioners failed to submit either facts or law to rebut' the cross-motion. As for his opposing memorandum of law (#99), it relegates the analysis to its last Point (at pp. 7-8), its Point VI, which reads, in its entirety:

'Point VI
PETITIONERS' SUBMISSION ENTITLED 'ANALYSIS OF THE AUGUST 18, 2022 CROSS-MOTION OF RESPONDENT ATTORNEY GENERAL LEITITA JAMES' SHOULD BE STRICKEN

> ‘On September 15, 2022, Petitioners filed several documents purportedly in opposition to Respondents’ Cross-Motion to Dismiss and in support of Petitioners’ Notice of Motion for Sanctions and other relief. NYCEF Nos. 87, 88, 93, 94. Included in Petitioners’ submission is a document entitled ‘Analysis of the August 18, 2022 Cross-Motion of Respondent Attorney General Letitia James.’ NYCEF No. 88. This document is single-spaced and consists of 29 pages and contains approximately 13,000 words. *Id.* First, this document was not brought pursuant to any rule of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court. Second, 22 NYCRR §202.8-b of the Uniform Civil Rules for the Supreme Court & County Court, entitled ‘Length of Papers’ states that: ‘Unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memorandum of law in chief shall be limited to 7,000 words each.’ Therefore, since Petitioners’ submission is almost double that allowed under the uniform rules, it should be stricken.’

In other words, AAG Rodriguez does not deny or dispute – let alone reveal – any of the content of the analysis and purports it should be stricken by concealing that it is an exhibit to petitioners’ September 15, 2022 affidavit. Certainly exhibits are permissible under the CPLR and no word limit is imposed upon them by 22 NYCRR §208.8-b.

Notably, in his reply memorandum of law (#102, at pp. 2-3), AAG Rodriguez replicates this Point VI virtually *verbatim*, except that he adds two final sentences reading:

> ‘In any event, Respondents fully stand by their submission in support of their cross-motion to dismiss and the arguments contained therein. Therefore, Respondents’ cross-motion to dismiss should be granted.’ (at p. 3).

His reply affirmation (#101, ¶5) replicates this Point VI also, adding at ¶6:

> 'Respondents fully stand by their submission in support of their cross-motion to dismiss and the showing contained therein, and, notwithstanding Petitioners' continued insults and offensive claims made against defense counsel, Petitioners have failed to rebut this showing. Therefore, Respondents' cross-motion should be granted.' (underlining added).

This is flagrant LIE. The analysis (#88) completely rebuts respondents' August 18, 2022 cross-motion, demonstrating it to be founded, throughout, on fraud, perjury, and total annihilation of litigation standards. For AAG Rodriguez to pretend the contrary and 'fully stand by' the August 18, 2022 cross-motion – which he presumably does with the knowledge and approval of his superiors in the AG's office, including respondent AG James and her co-respondents – not only reinforces petitioners' entitlement to the granting of all branches of their September 15, 2022 motion, but, as to the first branch, mandates imposition of an additional $40,000 in maximum sanctions pursuant to 22 NYCRR §130.1-1 *et seq.* – $10,000 for each of the four 'frivolous' September 29, 2022 filings signed by AAG Rodriguez (#98, #99, #101, #102).'

Without contesting the accuracy of the above summarizing recitation in this final 'paper' before him Justice Gandin's decision dismisses the petition by replicating the frauds of AAG Rodriguez' dismissal cross-motion – thereupon making a further mockery of the record by his ordering paragraphs (at p. 5), flipping who made the cross-motion and who made the motion:

> 'ORDERED that respondents' motion is granted and that the petition is dismissed.
> It is further

> ORDERED that petitioners' cross-motion is denied.'" [#121, pp. 1-7, R.856-862] (Appellants' "legal autopsy"/analysis of the November 23, 2022 decision, hyperlinking, underlining, capitalization in the original).

The subsequent 23 pages of Appellants' "legal autopsy"/analysis [#121, R.862-886] then furnished the specifics of the frauds by which Justice Gandin's November 23, 2022 decision regurgitated the frauds of Respondent AG James' August 18, 2022 cross-motion to dismiss their ten causes of action.

Justice Gandin having willfully violated his duty to make findings of fact and conclusions of law with respect to the record of Appellants' September 15, 2022 sanctions/summary judgment motion [#93, R.741] – and its Exhibit A "legal autopsy"/analysis of Respondent AG James' August 18, 2022 dismissal cross-motion [#88, R.671] – knowing that this would have mandated the granting of Appellants' first four branches against her and fifth and sixth branches for document production and summary judgment – such is now the duty of a jurisdictionally-empowered court to make.

POINT IV

The Record Below Mandates Discharge of the Court's Supervisory, Administrative, and Disciplinary Responsibilities, including Pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct

This appeal is not about good faith "error" in a case between private parties, without consequence beyond the litigants. To the contrary, it is about the willful and deliberate destruction of any cognizable judicial process by a state Supreme Court justice, in concert with New York's highest legal officer, the state Attorney General, a respondent representing herself and her co-respondents, all public officers and entities, sued for constitutional, statutory, and rule violations, corrupting state governance and stealing massive sums of taxpayer monies, including to perpetuate "false-instrument" pay raises for the legislative and executive officers and for this state's judges.

Article VI, §28 of the New York State Constitution entitled "Administrative supervision of court system" gives constitutional force to the standards and administrative policies which New York's Judiciary is charged with adopting – and which it has adopted, *inter alia*, by its Rules of the Chief Administrative Judge. Its Part 100 entitled "Judicial Conduct" is filled with mandatory "shall" language, including its §100.3(D), where, under the title heading "Disciplinary Responsibilities", it states:

> "(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.
>
> (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action." (underlining added).

The record of Appellants' September 15, 2022 sanctions/summary judgment motion [#93, R.741] and December 16, 2022 vacatur/transfer motion [#119, R.849] – showcased by their "legal autopsy"/analyses of Justice Gandin's two appealed-from decisions [#122, R.9] [#131, R.48] – furnishes this Court with more than "information indicating a substantial likelihood…[of] a substantial violation" of the Rules of Judicial Conduct by Justice Gandin and of the Rules of Professional Conduct for Attorney by Respondent AG James and her attorney subordinates. It is *prima facie*, open-and-shut proof of their collusive violations, obliterating all semblance of "the rule of law" to cover up and perpetuate the corruption of state governance, involving New York's "public protection" entities – the subject of Appellants' ten causes of action and the basis of their Petition's eleventh "other and further relief…just and proper" [#1, p. 50, R.99]:

> "referring respondents to the Public Integrity Section of the U.S. Department of Justice's Criminal Division for investigation and prosecution of their public corruption, obliterating constitutional, lawful governance and stealing taxpayer monies, documentarily-established by petitioners' interrelated complaints to the New York State Joint Commission on Public Ethics, to the Legislative Ethics Commission, to the New York State Inspector General, to the New

> York State Commission on Judicial Conduct, to the Appellate Division attorney grievance committees, and to the Unified Court System's Inspector General, among other ethics oversight and enforcement entities".

As such, the "appropriate action" mandated by §100.3D is to refer the lawsuit record to disciplinary and criminal authorities for the investigation and prosecution it warrants – and overwhelmingly so.

As to this, Judiciary Law §14 erects no bar, as §100.3D does not predicate that such "information" as a judge "receives" arise from a case over which he/she has jurisdiction, or, for that matter, that it arise from a case.

CONCLUSION

The record herein is unequivocal in establishing that Appellants are entitled to all the relief sought by their September 15, 2022 motion against Respondent AG James, her attorney staff, and Respondents, and to summary judgment on each of their ten causes of action, starting with their sixth cause of action, as to which they were entitled to a TRO/preliminary injunction to prevent the "ethics commission reform act of 2022" from taking effect on July 8, 2022. The only reason Justice Gandin did not grant the motion was because he was pervasively and actually biased, arising from financial and other interests, divesting him of jurisdiction under Judiciary Law §14, as to which his duty was to transfer/remove the case to federal court or certify the question, inasmuch as all other state Supreme Court justices and acting justices are also interested.

ELENA RUTH SASSOWER, unrepresented 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

August 15, 2023
White Plains, New York

STATEMENT PURSUANT TO 22 NYCRR §1250.8(b)(6)

This brief was prepared on a computer or by some other specified means. The typeface is Times New Roman, the point size is 14, the line spacing is double, and the word count, as indicated by the computer used to prepare the brief, is 9,024.

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ELENA RUTH SASSOWER

August 15, 2023