

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

April 10, 2024

TO: Appellate Division, Fourth Department Attorney Grievance Committee
Eighth Judicial District (AD4-AGC8) Chair Pamela Thibodeau, Esq.

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

RE: (1) Full Committee Reconsideration – CJA’s January 29, 2024 complaint against Commission on Legislative, Judicial and Executive Compensation Chair Eugene Fahey, Esq.;

(2) Complaint against Chief Counsel Cydney Kelly, Investigator Carolyn Stachura, and other AD4-AGC8 staff collusive in their fraud and conflicts of interest;

(3) Oversight & Corrective Action by AD4-AGC8 Members, including pursuant to Rule 8.3(a) of New York’s Rules of Professional Conduct.

Pursuant to §1240.7(e)(3) of the [Rules for Attorney Disciplinary Matters](#), I file this written request for full Committee reconsideration of my [January 29, 2024 complaint against Commission on Legislative, Judicial and Executive Compensation Chair Eugene Fahey, Esq.](#),¹ dismissed by a [March 27, 2024 letter](#) signed by AD4-AGC8 Investigator Carolyn Stachura, with a typed “S/” for AD4-AGC8 Chief Counsel Cydney Kelly.

Investigator Stachura’s letter states:

“The focus of your complaint concerns a myriad of allegations against Mr. Fahey, in his capacity as chair of the New York State Commission on Legislative, Judicial and Executive Compensation for what you believe to be his ‘knowing and deliberate violations of, *inter alia*’, various penal laws and a public officers law as cited in your submission. In this regard, you contend that by violating these aforementioned laws, Mr. Fahey has subsequently violated Rule 8.3 and 8.4 of the New York Rules of Professional Conduct.

Based upon our review of the information you have provided, we have determined that there is no evidence which would support a contention that Mr. Fahey has committed an ethical breach as outlined in the New York Rules of Professional

¹ CJA’s website, www.judgewatch.org, contains a webpage for my January 29, 2024 complaint against Attorney Fahey, from which all the correspondence herein hyperlinked or referred-to is accessible: <https://www.judgewatch.org/web-pages/searching-nys/attorney-discipline/jan-29-2024-complaint-fahey-etc/menu-ad-4.htm>. It can also be reached *via* the left-side link “Searching for Champions-NYS”, by its menu option “Court-Controlled Attorney Grievance Committees”.

Conduct. Please understand that absent actual evidence of unethical conduct, this Grievance Committee cannot justify further review of this matter, much less the taking of disciplinary action.” (underlining added).

The assertions that my complaint is based on what I “believe” and that, in fact, I provided “no evidence” are utter LIES – and, tellingly, the letter omits any mention of the hard copy EVIDENCE I enclosed with my complaint, with its further substantiating links accessible from pdfs. Thus, Investigator Stachura’s letter, after summarizing the first two paragraphs of the “Allegations” section of my January 29, 2024 complaint form, conceals its second two paragraphs. Here’s the full quoting of all four paragraphs:

“This is a conflict-of-interest/corruption complaint against attorney Eugene Fahey (#1974534/Fourth Dept. 1985), as chair of the seven-member New York State Commission on Legislative, Judicial and Executive Compensation, for his knowing and deliberate violations of, *inter alia*:

- [Public Officers Law §74](#) ‘Code of Ethics’;
- [Penal Law §175.35](#): ‘Offering a false instrument for filing in the first degree’;
- [Penal Law §195](#): ‘Official misconduct’;
- [Penal Law §105.15](#): ‘Conspiracy in the second degree’;
- [Penal Law §20.00](#): ‘Criminal liability for conduct of another’;
- [Penal Law Article 496: ‘PUBLIC TRUST ACT’](#) –
 - [§496.06](#): ‘Public corruption’;
 - [§496.05](#): ‘Corrupting the government in the first degree’.

These constitute violations of [New York’s Rules of Professional Conduct](#) and, specifically, Rule 8.4 ‘Misconduct’ and Rule 8.3 ‘Reporting Professional Misconduct’, over which the Appellate Division Attorney Grievance Committees have jurisdiction.

The facts and evidence substantiating this complaint are set forth by CJA’s January 18, 2024 Opposition Report to the Commission on Legislative, Judicial and Executive Compensation’s misnomered December 4, 2023 ‘Final Report on Judicial Compensation’. The Opposition Report is filled with live hyperlinks to facilitate verification and, therefore, is best reviewed by pdf. Here’s the unredacted pdf, <https://www.judgewatch.org/CJA-members/monroe/unredacted/not-for-posting-1-18-24-opposition-report.pdf>, with its footnote 5 pertaining to the Independent Expert Report about the sealed Monroe County Family Court case about which I testified at the Commission’s October 13, 2023 public hearing – thereafter furnishing the Commission with an October 25, 2023 complaint based thereon by October 25-26, 2023 e-mails.

[In compliance with your complaint form requirements](#), a hard copy of the Opposition Report is enclosed with this complaint.”

To be clear, the [January 18, 2024 Opposition Report](#) identifies, at pages 2-3, the [Independent Expert Report](#) about which I testified at the Commission's October 13, 2023 hearing and the [October 25, 2023 complaint](#) based on the Independent Report Expert that I furnished the Commission "post-hearing" by an [October 25, 2023 e-mail](#) and [October 26, 2023 e-mail](#). ALL are part of the Opposition Report and were enclosed with my [January 29, 2024 complaint form](#) that I affirmed as true "under penalties of perjury, pursuant to CPLR §2106".

Concealing ALL this, Investigator Stachura's March 27, 2024 letter baldly purports I have submitted "no evidence which would support a contention that Mr. Fahey has committed an ethical breach as outlined in the New York Rules of Professional Conduct" – further stating:

Under the authority of the Chief Counsel for the Attorney Grievance Committee, Cydney A. Kelly (*See 22 NYCRR §1020.5 and §1240.7[(b)][4]*), this matter has been reviewed with staff counsel and, after a careful examination of the matter, it has been determined that this inquiry be dismissed." (underlining added).

No one of any competence – let alone "staff counsel...after careful examination of the matter" – could dismiss my complaint on grounds of "no evidence", which, moreover, can only be a ground for dismissal AFTER investigation, a word the March 27, 2024 letter does not use and does not purport to have been done, except, impliedly, by its cited-to "(*See 22 NYCRR §1020.5 and §1240.7[(b)][4]*)" – and by the signing of the letter by Investigator Stachura.

["22 NYCRR §1020.5"](#) states, in pertinent part:

"Investigation of all complaints shall be initiated and conducted by the chief attorney, with such assistance from the staff attorneys as deemed necessary by the chief attorney. Such investigations shall be conducted in accordance with the provisions of section 1240.7 of part 1240, and subject to the following provisions:

(a) in the event the chief attorney directs a respondent to submit to a committee a written response to a complaint, pursuant to section 1240.7(b)(2) of part 1240, the chief attorney shall afford the respondent at least 14 days written notice to do so;

(b) the chief attorney has discretion at any time during an investigation or proceeding to provide to the complainant a copy of the respondent's written response to the complaint;

(c) in the event the chief attorney directs a respondent to appear before the chief attorney or a staff attorney for a formal interview or examination under oath, or to produce records, pursuant to section 1240.7(b)(2) of part 1240, the chief attorney shall afford the respondent at least 14 days written notice to do so;

(d) in the event the chief attorney applies to the Clerk of the Court for a judicial subpoena to compel the attendance of a person as a witness or the production of relevant books and papers, pursuant to section 1240.7(b)(3) of part 1240, the

application shall be supported by sufficient facts to demonstrate that the testimony or books and papers specified in the proposed subpoena are relevant to matters under investigation and are necessary for the proper disposition of a complaint. The application shall also establish that a judicial subpoena is necessary to obtain such testimony or books and papers and that other potential sources of the information, or the means to obtain the information, are either impractical or unavailable”.

[“§1240.7\[\(b\)\]4”](#) authorizes the chief attorney to “take any other action deemed necessary for the proper disposition of a complaint” – with the prior three options that are part of §1240.7(b) authorizing the chief attorney to:

“(1) interview witnesses and obtain any records and other materials and information necessary to determine the validity of a complaint;

(2) direct the respondent to provide a written response to the complaint, and to appear and produce records before the Chief Attorney or a staff attorney for a formal interview or examination under oath;

(3) apply to the Clerk of the Court for a subpoena to compel the attendance of a person as a respondent or witness, or the production of relevant books and papers, when it appears that the examination of such person or the production of such books and papers is necessary for a proper determination of the validity of a complaint. Subpoenas shall be issued by the Clerk in the name of the Presiding Justice and may be made returnable at a time and place specified therein”.

Investigator Stachura’s March 27, 2024 letter was the first and only communication I received from AD4-AGC8 concerning my January 29, 2024 complaint against Attorney Fahey. Prior thereto, no one called to “interview [me] and obtain [from me] records and other materials and information” or to ask me to reply to any “written response” AD4-AGC8 may have received from Attorney Fahey, upon its furnishing the complaint to him for “written response”, if, in fact, it “direct[ed]...a written response” from him, as §1020.5(a) and §1240.7(b)(2) authorize.

Did Investigator Stachura, upon authorization of Chief Counsel Kelly, send my complaint to Attorney Fahey for response? Her March 27, 2024 letter conspicuously does not say while nonetheless cc’ing Attorney Fahey on the letter “(w/enclosure)”, although there is no “enclosure” to her letter.

As is immediately obvious from the most cursory review of the [January 18, 2024 Opposition Report](#) upon which my complaint against Attorney Fahey rests, he would have been unable to provide any “written response”, other than a concession of its truth – mandating his disbarment, absent his voluntary resignation from the bar. This, because the penal law violations cited by my January 29, 2024 complaint form and more extensively by the [Opposition Report \(at p. 38\)](#) constitute “illegal conduct”, proscribed by [Rule 8.4\(b\) of New York’s Rules of Professional Conduct](#) and are almost exclusively felonies which, upon conviction, after trial or by plea, result in automatic disbarment, pursuant to [Judiciary Law §90\(4\)](#), which states, in pertinent part:

- “a. Any person being an attorney and counsellor-at-law who shall be convicted of a felony as defined in paragraph e of this subdivision, shall upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.
- ...
- e. For purposes of this subdivision, the term felony shall mean any criminal offense classified as a felony under the laws of this state or any criminal offense committed in any other state, district, or territory of the United States and classified as a felony therein which if committed within this state, would constitute a felony in this state.”

Penal Law §175.35, “Offering a false instrument for filing in the first degree”, is a long-recognized ground for disbarment, [Matter of Chu](#), 42 NY2d 490, utilized by the grievance committees to procure automatic disbarment for analogous federal charges. Among the Appellate Division, Fourth Department decisions disbarring attorneys based on “false instrument” convictions are [Matter of Knoll](#), 181 A.D.2d 136 (1992), [Matter of Tracy](#), 218 A.D.2d 48 (1995), and [Matter of Trammel](#), 240 A.D.2d 90 (1998). Attorney Fahey, as a former Appellate Division, Fourth Department justice, participated in disbarments based on felony convictions, [Matter of Widenor](#) (May 27, 2014); [Matter of Powers](#), (December 11, 2013); [Matter of Rothschild](#), November 22, 2013 [*cf.* [Matter of Grillo](#) (March 15, 2013)].

If Chief Counsel Kelly, either herself or *via* Investigator Stachura, “direct[ed]” Attorney Fahey’s “written response” to my complaint, pursuant to §1020.5(a) and §1240.7(b)(2), proper procedure would have been to have furnished it to me pursuant to §1020.5(b) to the extent he had disputed anything, so that I might reply. As no “written response” from Attorney Fahey was sent me, he presumably did not dispute anything – or never submitted a “written response” because he had not been “direct[ed]” to do so.

If there was a “written response” from Attorney Fahey to my complaint, I ask that a copy be provided to me, pursuant to §1020.5(b) and consistent with your “usual procedure” identified by [the Appellate Division, Fourth Department’s website for its three attorney grievance committees](#):

“If the review of your complaint indicates that unethical conduct may be involved, the usual procedure is for our office to send a copy of your complaint to the lawyer for his or her response. You will receive a copy of the lawyer’s response to your complaint. If the lawyer’s response does not resolve the matter, further investigation will be undertaken.” (section entitled “Disposition of a Complaint”, underlining added).

Obviously, if there was no “written response” from Attorney Fahey because none was “direct[ed]” pursuant to §1020.5(a) and §1240.7(b)(2), such must now be “direct[ed]”.

Investigator Stachura ends her indefensible, fraudulent letter not by apprising me that pursuant to §1240.7(e)(3), I have 30 days within which to seek reconsideration – which would have been the ethical, appropriate thing to do – but by a warning: “Please be advised of the confidentiality

provisions of 90(10) of the Judiciary Law.” Such warning is improper and meant to intimidate. The confidentiality provisions of Judiciary Law §90(10) do NOT apply to complainants, who are free to publicize their own complaints – and Chief Counsel Kelly is presumed to be aware of the reinforcing June 13, 2022 decision in [Civ. Rights Corps. v. Pestana](#) (USDC/SDNY).

As [§1240.7\(e\)\(3\)](#) authorizes you to refer a reconsideration request “to the full Committee”, that is what must here be done by reason of the seriousness of my January 29, 2024 complaint and the fraud committed by Investigator Stachura, obviously at the behest of Chief Counsel Kelly, whose signature on the March 27, 2024 letter should have been by more than a typed “S/”. Assuredly, the three “principal counsel” featured on the AD4-AGC8 letterhead and its other “investigator” were not unaware of my complaint against Attorney Fahey and how it was being handled – or of the related ten January 29, 2024 complaint forms against ten attorneys enclosed in the same envelope with it, complaint forms that were for the [October 25, 2023 complaint](#) that is part of the [January 18, 2024 Opposition Report](#) (pp. 2-3) – and as to which the “Allegations” section of those ten complaint forms identically read:

“The starting point for the October 25, 2023 complaint is my accompanying February 22, 2022 Independent Expert Report, about which I testified at the October 13, 2023 hearing of the Commission on Legislative, Judicial and Executive Compensation – and which, at the conclusion of the hearing, I gave, *in hand*, to its chair, Eugene Fahey, Esq.

In compliance with your rules, hard copies of both the October 25, 2023 complaint, February 22, 2022 Independent Expert Report, and October 25-26, 2023 e-mails are enclosed. The pdf of each contains live links to facilitate verification. They are posted on a publicly-inaccessible webpage of CJA’s website, www.judgewatch.org, here: <https://www.judgewatch.org/web-pages/searching-nys/cjc/complaint-oct-25-23.htm>.”

Investigator Stachura handled the October 25, 2023 complaint.² By nine separate February 28, 2024 letters addressed to AD4-AGC7 Principal Counsel Mark Bennett, to which I was cc’d, Investigator Stachura stated that my complaint against each of the nine was being “forwarded” to him because the complained-against attorney practices “within the jurisdiction of the Seventh Judicial District” and would, therefore, be “reviewed” by AD4-AGC7. Simultaneously, she sent me, in the same envelope, a [February 28, 2024 letter addressed to me](#), signed by her, with a typed “S/” for Chief Counsel Kelly, informing me that AD4-AGC8 had dismissed my complaint against the tenth attorney, Louis Dingeldey, Esq., for “insufficient evidence which would substantiate [my] contention that a conflict of interest exists”.

² CJA’s webpage for the October 25, 2023 complaint to AD4-AGC, with its ten January 29, 2024 complaint forms for ten attorneys and the correspondence thereon, herein recited, is at <https://www.judgewatch.org/web-pages/searching-nys/attorney-discipline/oct-25-2023-complaint-to-AD4.htm>.

The style and content of this [February 28, 2024 letter](#) dismissing my complaint against Attorney Dingeldey would be materially replicated by her [March 27, 2024 letter](#), dismissing my complaint against Attorney Fahey, signed by her with a typed “S/” for Chief Counsel Kelly – except that the March 27, 2024 letter, cc’ing Attorney Fahey, omits the more expansive first paragraph of the February 28, 2024 letter, cc’ing Attorney Dingeldey, as to what it was providing him.

You already have my [March 29, 2024 letter requesting reconsideration](#), by the full Committee, of the February 28, 2024 letter dismissing my complaint against Attorney Dingeldey, which also includes a complaint against Investigator Stachura and Chief Counsel Kelly. It recites the three calls I made to AD4-AGC8 on three consecutive days, Wednesday, March 27th, Thursday, March 28th, and Friday, March 29th, during normal business hours. Each time, the call was answered by a voice mail on which I left a message requesting that someone call me back to confirm that my reconsideration request merely had to be postmarked by the 30th day – March 29th – as opposed to being received by AD4-AGC8. The only difference in the voice messages was that the second message, on March 28th, also inquired as to the status of my complaint against Attorney Fahey.

Rather than any call-back, I received, thereafter, two mailed letters, sent to CJA’s post box, both dated March 27, 2024, though indicating on their envelopes a Buffalo postal stamp of March 28th. [The first](#) acknowledged receipt of my voice message regarding reconsideration, but was not responsive to my question. [The second](#) was the letter informing me of the dismissal of my complaint against Attorney Fahey.

I ask that this reconsideration request also be deemed a complaint against Investigator Stachura, Chief Counsel Kelly, and complicit staff.

As ALL AD4-AGC8 members are responsible for the frauds perpetrated in the Committee’s name, please promptly forward this letter to all members so that they can discharge their duties, including pursuant to [Rule 8.3\(a\) of New York’s Rules of Professional Conduct](#),³ which you and they are charged with enforcing.

I am available to answer questions, including under oath. Meantime, I ask that the foregoing be deemed as sworn by me as true under the penalties of perjury.

By copy of this letter to [UCS Inspector General Kay-Ann Porter Campbell](#), whose office has jurisdiction over the Appellate Division attorney grievance committees, I call on her to take belated investigative and corrective action, as is her duty.

³ Rule 8.3, entitled “Reporting Professional Misconduct”, reads, in its paragraph (a):

“A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.”

Thank you.

s/Elena Ruth Sassower

cc: UCS Inspector General Kay-Ann Porter Campbell