CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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February 7, 2021

TO: New York State Commission on Judicial Conduct

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

RE: Conflict-of-interest/misconduct complaint against the six associate judges of the New York Court of Appeals; against the presiding justice of the Appellate Division, Third Department and six of its associate justices; and against New York Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks pertaining to the citizen-taxpayer action *Center for Judicial Accountability, et al. v. Cuomo…Schneiderman…DiFiore,* challenging their commission-based pay raises, the Judiciary budget, and other corruption of state governance of which they are beneficiaries

THE COMPLAINT

Pursuant to Article VI, §22 of the New York State Constitution and Judiciary Law §44.1, I file this facially-meritorious, fully-documented conflict-of-interest/corruption complaint against the six associate judges of the New York Court Appeals – Jenny Rivera, Leslie Stein, Eugene Fahey, Michael Garcia, Rowan Wilson, and Paul Feinman – for "wilful misconduct in office"[1] in the citizen-taxpayer action *Center for Judicial Accountability, et al. v. Cuomo…Schneiderman…DiFiore* (Albany Co. #5122 -16) to benefit themselves and their fellow New York judges by judicial pay raises arising from two commission statutes that are multitudinously unconstitutional and two "force of law" commission reports that, additionally, are statutorily-violative and fraudulent, and whose appropriations are hidden in unconstitutional, slush-fund Judiciary budgets, enacted by a state budget process that is "off the constitutional rails" and rife with statutory and legislative rule violations. The six associate judges did this and protected culpable constitutional officers and others with whom they have relationships by five fraudulent and unconstitutional orders dated May 2, 2019, October 24, 2019, and February 18, 2020, dismissing and denying appeals of right and by leave from a fraudulent and unconstitutional Appellate Division, Third Department December 27, 2018 memorandum and order "affirming" a fraudulent and unconstitutional November 28, 2017 decision and judgment of Albany County Acting Supreme Court Justice/Court of Claims Judge Denise Hartman – all these orders knowingly and deliberately violating:

[1] New York State Constitution, Article I, §6.

- Judiciary Law §14, proscribing a judge from sitting or taking any part in any matter in which he is interested – and divesting him of jurisdiction to do so pursuant to the Court of Appeals' own caselaw, beginning with *Oakley v. Aspinwall*, 3 NY 547 (1850) and pertaining to the Court's own judges;

- §100.3E of the Chief Administrator's Rules Governing Judicial Conduct entitled "Disqualification";

- §100.3F of the Chief Administrator's Rules Governing Judicial Conduct entitled "Remittal of Disqualification"; and

- §100.3D of the Chief Administrator's Rules Governing Judicial Conduct entitled "Disciplinary Responsibilities".

This conflict-of-interest/misconduct complaint is also against the Appellate Division, Third Department justices who rendered the fraudulent and unconstitutional December 27, 2018 memorandum and order, as well as the four fraudulent and unconstitutional decision/orders that preceded it dated August 7, 2018, October 23, 2018, November 13, 2018, and December 19, 2018 – each also knowingly and deliberately violating Judiciary Law §14, and §§103.E, F, and D of the Chief Administrator's Rules so as to benefit themselves and those with whom they have relationships. Seven of these justices remain on the bench, subject to the Commission's disciplinary jurisdiction: Presiding Justice Elizabeth Garry and Associate Justices Stan Pritzker, John Egan, Jr., Christine Clark, Robert Mulvey, Sharon A.M. Aarons, and Michael Lynch.

Finally, this complaint is against New York Chief Judge Janet DiFiore, the last named defendant-respondent in *CJA v. Cuomo…Schneiderman…DiFiore*, sued for her direct knowledge and facilitating role in the government corruption that is the gravamen of the lawsuit's September 2, 2016 verified complaint and who, throughout her tenure, has perpetuated that corruption, including by her Judiciary budget requests for FY2017-18, FY2018-19, FY2019-20, FY2020-21, FY2021-22 – and by her attempts, in 2019 and in 2020, to secure a further round of unconstitutional, statutorily-violative, and fraudulent judicial pay raises for herself and her fellow judges. In this – and the hoax of her "Excellence Initiative" touting "operational and decisional excellence in everything that we do" – she has been aided and abetted by Chief Administrative Judge Lawrence Marks – and this conflict-of-interest/misconduct complaint is against him, as well.

BACKGROUND

The Commission is already familiar with the far-reaching, corruption-eradicating significance of the *CJA v. Cuomo…Schneiderman…DiFiore* citizen-taxpayer action – and its DISPOSITIVE record in Supreme Court and in the Appellate Division, Third Department establishing plaintiff-appellants' entitlement to summary judgment on the ten causes of action of their September 2, 2016 verified complaint and the ten causes of action of their March 29, 2017 supplemental verified complaint – as

I filed two prior facially-meritorious, fully-documented judicial misconduct complaints with the Commission based thereon – each substantiated by record proof of flagrant violations of Judiciary Law §14 and §§100.3E, F, and D of the Chief Administrator's Rules by judges whose fraudulent decisions obliterated ALL adjudicative and evidentiary standards:

- a June 16, 2017 conflict-of-interest/misconduct complaint against Justice Hartman for her three fraudulent decision/orders dated December 21, 2016 and May 5, 2017 – supplemented on September 11, 2017 to add her fraudulent June 26, 2017 decision/order and then supplemented again on December 26, 2017 to add her fraudulent November 28, 2017 decision and judgment – all five decisions concealing plaintiff-appellants' repeated requests, from the outset of the litigation, for disclosure of her financial and other interests and relationships, pursuant to §100.3F of the Chief Administrator's Rules – of which she made none[2];

- a September 20, 2018 conflict-of-interest/misconduct complaint against Appellate Division, Third Department Presiding Justice Garry and Associate Justices Egan, Devine, and Pritzker for their fraudulent August 7, 2018 decision/order, concealing plaintiff-appellants' requests for disclosure of their financial and other interests and relationships, pursuant to §100.3F of the Chief Administrator's Rules – of which they made none[3].

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[2] The June 16, 2017 complaint (at p. 2) – which plaintiff-appellants furnished to Judge Hartman as an exhibit to my August 25, 2017 reply/opposition affidavit and which, therefore, was part of the record on appeal [R.1320-1327] – identified her financial and other interests and relationships to include: "a $60,000-a-year judicial salary interest in the lawsuit [,] non-salary other compensation interest [,] $100,000 she would owe in the event of a claw-back [,] personal and professional relationships with at least two defendants, arising from the 30 years she had worked in the Attorney General's office: under Attorney General Schneiderman and, before him, under the then Attorney General, now Governor, defendant Cuomo, who had appointed her to the bench in 2015".

[3] The September 20, 2018 complaint (at pp. 3-6) – which plaintiff-appellants furnished to the Appellate Division, Third Department as an exhibit to their October 9, 2018 reply affidavit in further support of their September 10, 2018 order to show cause for its disqualification – identified the financial and other interests and relationships of its justices by quoting, extensively, from their July 25, 2018 order to show cause, whose first branch had sought disclosure, stating, as follows:

- "Each associate justice of this Court currently has a $75,200 yearly salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action, with the current yearly salary interest of the presiding justice being $77,700. The consequence of the Court's determination in appellants' favor – which is the ONLY determination the record will support – is that the yearly salary of associate justices will nosedive from $219,200 to $144,000 and the yearly salary of the presiding justice will plunge from $224,700 to $147,600 – with each justice also subject to

a 'claw-back' of the judicial salary increases he/she has collected since April 1, 2012 – those 'claw-backs', as of this date, already maxing at over $300,000[fn2], not counting 'claw-backs' of salary-based non-salary benefits.

- Each of this Court's justices has an incalculable financial interest in the slush-fund $3-billion-plus Judiciary budget, which funds the Court, including its underfunded and demonstrably sham Attorney Grievance Committee, with whose staff and members it has relationships[fn3];

- Each of this Court's justices was elevated to this Court upon appointment by Governor Cuomo, the first named defendant – and all are dependent upon him or his gubernatorial successor for their continuation in office[fn4];

- Each of this Court's justices has relationships with Chief Judge DiFiore, the last-named defendant;

- Each of this Court's justices has relationships with the panoply of specific judges, past and present, involved in perpetuating – if not also procuring – the unconstitutional, fraudulent, and statutorily-violative commission-based judicial salary increases. Among these judges whose willful and deliberate misconduct is recited and reflected by the record are:

  (1) Court of Claims Judge/Acting Albany County Supreme Court Justice Denise Hartman;

  (2) Court of Claims Judge/Acting Albany County Supreme Court Justice Roger McDonough;

  (3) Chief Administrative Judge Lawrence Marks;

  (4) Former Chief Judge Jonathan Lippman;

  (5) Third Judicial District Administrative Judge Thomas Breslin;

  (6) Deputy Chief Administrative Judge Michael Coccoma; and

  (7) the then Albany County Supreme Court Justice, and now Associate Justice of this Court, Michael Lynch."

6. Any justice of this Court <u>unable or unwilling</u> to rise above his financial interest and relationships so as to impartially discharge his judicial duties MUST disqualify himself – and the 'rule of necessity' is NOT to the contrary.

7. Associate Justice Lynch, however, MUST disqualify himself – or must be disqualified – from any handling of this case, based on his <u>demonstrated actual bias, born of interest</u>. … (underlining and capitalization in original)."

Although both complaints raised threshold conflict of interest issues pertaining to Commission members – particularly the judge-members who are themselves beneficiaries of the judicial pay raises and the Judiciary budget – and pertaining to Administrator Robert Tembeckjian and then Clerk Jean Savanyu – necessitating disqualification/disclosure – the Commission disposed of each by doing precisely what the complained-against judges had done: by concealing that any conflict-of-interest issue had been raised, making no disclosure, and then manifesting actual bias, born of interest and relationships, by dispositions indefensible in fact and law.

Thus, by letters signed by Clerk Savanyu, dated August 29, 2017 and January 4, 2019, she purported, using the Commission's standard conclusory boilerplate which, thereafter, she would not factually substantiate and could not legally justify, other than by deceit[4]:

> "Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline."

As for the two supplements to the June 16, 2017 complaint, each expressly furnishing the Commission with further "indication of judicial misconduct to justify judicial discipline", Clerk Savanyu disposed of these by a January 16, 2018 letter, whipping out another favorite Commission boilerplate:

> "[t]he issues [] raise[d] concerning the judge and her decision can only be determined by the courts."

This, too, was indefensible, in fact and law – and so noted by the September 20, 2018 complaint (at p. 2), which described it as:

> "in brazen disregard of controlling caselaw, identified by the law review article of the Commission's first administrator and counsel, and cited and quoted by the June 16, 2017 complaint itself (at pp. 2, 7) – as well as the Commission's own 2017 annual report (at p. 2), repeating what its past annual reports and subsequent 2018 annual report all identify – namely, that 'disputed judicial rulings or decisions' are within the Commission's jurisdiction where there is 'underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights'."

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[4] See Clerk Savanyu's October 4, 2017 letter responding to mine of September 11, 2017 – as to which my December 26, 2017 letter replied, pointing out, *inter alia*, that the decisions in *Mantell v. Comm on Jud Conduct*, 277 AD2d 96 (1st Dept 2000) and *Sassower v. Comm on Jud Conduct*, 289 AD2d 119 (1st Dept 2001) – which she seemingly purported to be the basis for the Commission's "discretion" to dismiss the June 16, 2017 complaint" – were, as both she and Administrator Tembeckjian knew, fraudulent. Nonetheless, in her February 14, 2019 letter responding to mine of January 22, 2019, she repeated this and other deceits in connection with the Commission's dismissal of the September 20, 2018 complaint.

As the Commission's dispositions of the June 16, 2017 and September 20, 2018 complaints, arising from *CJA v. Cuomo…Schneiderman…DiFiore*, have led directly to this complaint, arising from the subsequent progression of *CJA v. Cuomo…Schneiderman…DiFiore* at the Appellate Division, Third Department and through the Court of Appeals, I incorporate by reference the records of those two prior complaints – which, for the Commission's convenience, are accessible from CJA's webpage for this complaint: www.judgewatch.org/web-pages/searching-nys/cjc/feb-7-21-cjc-complaint.htm.

Suffice to here note that when Clerk Savanyu sent me her January 4, 2019 letter purporting that the Commission had dismissed the September 20, 2018 complaint for "insufficient indication of judicial misconduct to justify judicial discipline", the Appellate Division, Third Department had already rendered its three subsequent October 23, November 13, and December 19, 2018 decision/orders, plus its December 27, 2018 memorandum and order – each replicating the violations of Judiciary Law §14 and §§100.3 E, F, and D of the Chief Administrator's Rules as were the subject of the September 20, 2018 complaint pertaining to the August 7, 2018 decision/order. The Commission would have reason to know this – including because on November 13, 2018, immediately upon returning from that day's oral argument of the appeal at the Appellate Division, Third Department – indeed, with my coat still on – I telephoned the Commission, urgently requesting to speak with Administrator Tembeckjian about that day's shocking events pertaining to the appellate panel's wilful violation of Judiciary Law §14, §§100.3E, F, and D of the Chief Administrator's Rules, which I summarized to the Commission staffer with whom I spoke – thereafter leaving additional phone messages for Administrator Tembeckjian – to which I received no return call from him.

On January 7, 2019, I telephoned the Commission a final time – and spoke with Chief Administrative Officer Karen Kozac Reiter – memorializing same in an e-mail, as follows:

> "Following up our phone conversation a short time ago, kindly advise as to the status of the September 20, 2018 conflict-of-interest/corruption complaint against Appellate Division Presiding Justice Garry & Associate Justices Egan, Devine, & Pritzker that I filed, as I received no letter of dismissal nor follow-up inquiry.
>
> Again, please ask Mr. Tembeckjian to call me at his earliest convenience with regard to Judiciary Law 14, which is far more than a disqualification statute, but one divesting judges of jurisdiction – as to which rule of necessity is inapplicable.
>
> My briefing on the subject of Judiciary Law 14 and the rule of necessity was presented, most extensively, by the order to show cause I filed following the November 13, 2018 oral argument of the appeal of CJA's citizen-taxpayer action, which, in addition to seeking the appeal panel's disqualification for demonstrated actual bias, sought to enjoin it from rendering any decision until its justices ruled on the threshold issue of the jurisdictional bar presented by Judiciary Law 14 or certifying questions pertinent thereto to the New York Court of Appeals. On December 17, 2018, the appeal panel denied the order to show cause, without reasons – and ten days later, on December 27, 2018, 'threw' the appeal by a fraudulent

> decision, obliterating ALL adjudicative standards. In addition to concealing ALL the facts, law, and legal argument that was the basis of the appeal, it concealed that I had raised ANY threshold issues as to it and the attorney general – which I had by four separate motions, ALL denied without facts, law, and reasons.
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> The record is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-app-div.htm.
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> Thank you."

Again, Administrator Tembeckjian did not call me back – presumably because he did not want to directly hear from me about the further "indication of judicial misconduct to justify judicial discipline" – as to which, pursuant to Judiciary Law §44.2, the Commission is empowered to initiate its own complaint, which he signs – and which, as an attorney, was his duty to do pursuant to Rule 8.3 of New York's Rules of Professional Conduct, "Reporting Professional Misconduct".[5]

THE EVIDENCE

As I publicly stated on September 17, 2013, in testifying before the Commission to Investigate Public Corruption – "Cases are perfect paper trails. There's a record, so it's easy to document judicial corruption".

The EVIDENCE substantiating this complaint, consisting, in the main, of the record of the *CJA v. Cuomo…Schneiderman…DiFiore* citizen-taxpayer action, is *prima facie* and open-and-shut and not only "to justify judicial discipline" for violations of Judiciary Law §14 and §§100.3E, F, and D of the Chief Administrator's Rules Governing Judicial Conduct – including the ultimate sanction of removal from the bench – but to mandate referral of the complained-against judges to criminal authorities for their penal law violations involving huge sums of taxpayer monies and other corruptions of state governance – as, for instance:

> Penal Law §175.35: "Offering a false instrument for filing in the first degree";
> Penal Law §195.20: "Defrauding the government";
> Penal §190.65: "Scheme to defraud in the first degree";
> Penal Law §496.05 ("Public Trust Act): "Corrupting the government in the first degree";
> Penal Law §496.06 ("Public Trust Act): "Public corruption";
> Penal Law §155.42: "Grand larceny in the first degree";

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[5] "(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.

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct."

Penal Law §460.20: "Enterprise corruption";
Penal Law §110.00: "Attempt to commit a crime";
Penal Law §195: "Official misconduct";
Penal Law §105.15: "Conspiracy in the second degree";
Penal Law §20.00: "Criminal liability for conduct of another".[6]

Such was also true with respect to the June 16, 2017 and September 20, 2018 complaints

Here, as there, the violations of Judiciary Law §14 and §§100.3E, F, and D of the Chief Administrator's Rules by the complained-against judges – and the fraudulence of their decision/orders resulting therefrom, obliterating ALL adjudicative standards – are not only readily-verifiable, but especially EASY to examine, as they are laid out by plaintiff-appellants' fact-specific, law-supported "legal autopsy"[7]/analyses of the decision/orders that are part of the record and whose accuracy is UNCONTESTED. Indeed, the ONLY decision/order for which there is no "legal autopsy"/analysis in the record is the Court of Appeals' last – that of February 18, 2020 – and its fraudulence and unconstitutionality is self-evident from the November 25, 2019 motion it denies.

The best starting point for this complaint is plaintiff-appellants' 33-page, single-spaced "legal autopsy"/analysis of the Appellate Division, Third Department's December 27, 2018 memorandum and order, as it encompasses the Appellate Division's four prior decision/orders and Justice Hartman's November 28, 2017 decision and judgment. Plaintiff-appellants furnished it to the Court of Appeals with their March 26, 2019 letter in support of their appeal of right – and its "Introduction", concisely summarizing the state of the record, was as follows:

> "This analysis constitutes a 'legal autopsy'[fn1] of the December 27, 2018 'Memorandum and Order'[fn2] of a four-judge Appellate Division, Third Department panel, purporting to 'affirm' the November 28, 2017 decision and judgment of Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman, but, actually, *sub silentio*, modifying it, in material respects.

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[6] I cited to these penal provisions for the first time by my December 31, 2015 letter to then Chief Judge Nominee/Westchester County District Attorney DiFiore – and thereafter by my January 15, 2016 letter to then Senate President Flanagan and Assembly Speaker Heastie – copies of which I furnished to both Nominee/D.A. DiFiore and Chief Administrative Judge Marks. Because of the significance of these two letters, copies are annexed hereto as Exhibits A and B, replicated from those annexed to my affidavit in support of plaintiff-appellants' May 31, 2019 motion to the Court of Appeals for reargument/renewal/vacatur/disclosure/disqualification as Exhibits G and H. [see pp 19-22, *infra*].

[7] 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)).

Identical to Judge Hartman's appealed-from decision and judgment [R.31-41][fn3], the Appellate Division's Memorandum is 'so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960) – and, comparably, under Article I, §6 of the New York State Constitution, 'No person shall be deprived of life, liberty or property without due process of law'. The Memorandum wipes out any semblance of 'due process of law', falsifying the record, *in toto*, and upending ALL ethical, adjudicative, and evidentiary standards – including with regard to its *sub silentio* modifications.

This is easily verified. It requires nothing more than a reading of appellants' brief, chronicling the record before Judge Hartman, and a reading of appellants' reply brief, chronicling the record before the Appellate Division. EVERYTHING presented by those two briefs – ALL the particularized facts, law, and legal argument – are omitted from the Appellate Division's 'affirmance'. Likewise omitted are ALL the particularized facts, law, and legal argument presented by appellant Sassower directly to the four-judge appeal panel at the November 13, 2018 oral argument of the appeal – even the fact that oral argument was held on that Calendar Date.

The November 13, 2018 oral argument – of which there are VIDEOS[fn4] – suffices to establish that the December 27, 2018 Memorandum must be voided – and that the threshold reason is because the four justices of the appeal panel were without jurisdiction to render it, pursuant to Judiciary Law §14, by reason of their direct financial and other interests in the lawsuit.

Indeed, based on what transpired at the oral argument, appellants filed a November 27, 2018 order to show cause to disqualify the appeal panel for demonstrated actual bias and for certification of Questions to the Court of Appeals. This is also omitted by the Memorandum – as are appellants' three prior appellate motions, similarly designed to safeguard the integrity of the appellate proceedings. All four motions were denied by Appellate Division decisions improper *on their face* – without ANY facts, without ANY law, and without ANY reasons.

Appellants' November 27, 2018 order to show cause is annexed, without exhibits, to this 'legal autopsy'/analysis as Exhibit B and incorporated herein by reference. The Questions of constitutional magnitude it sought to have the appeal panel certify to the Court of Appeals, pursuant to Article VI, §3b(4) of the New York State Constitution – threshold to its determination of the constitutional questions that are the substantive content of the appeal – were as follows:

(a) Inasmuch as Judiciary Law §14 bars judges from adjudicating matters in which they are 'interested', are there any state judges who, pursuant to Judiciary Law §14, would not be barred by HUGE financial interest from adjudicating this citizen-taxpayer action, challenging the constitutionality and lawfulness of commission-based judicial salary increases, the judiciary budget, and the state budget 'process'?

(b) Can retired judges, not benefiting from the commission-based judicial salary increases, be vouched in? Or can the case be transferred/removed to the federal courts, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee to every State in this Union a Republican Form of Government…'?

(c) Can 'interested' judges who Judiciary Law §14 divests of jurisdiction nonetheless invoke the judge-made 'rule of necessity' to give themselves the jurisdiction the statute removes from them?

(d) What are the safeguarding prerequisites to ensure that a judge invoking the 'rule of necessity' will not use it for purposes of acting on bias born of interest? Would the 'remittal of disqualification' procedures specified by §100.3F of the Chief Administrator's Rules Governing Judicial Conduct be applicable – starting with a statement by the judge that he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E.

(e) As Executive Law §63.1 predicates the attorney general's litigation posture on 'the interest of the state', does his representation of defendants-respondents by litigation fraud, because he has no legitimate defense, establish that his representation of them is unlawful and that his duty is to be representing plaintiffs-appellants, or intervening on their behalf, in upholding public rights?

In support of these certified Questions, appellant Sassower's November 27, 2018 moving affidavit had stated:

> 'it appears that the appeal panel is intending to render a decision on the appeal, <u>without ruling on its jurisdiction to do so</u>, because – as is clear from Judiciary Law §14, caselaw, and treatise authority – it has NO jurisdiction by reason of the HUGE financial interest of each of its four justices – a state of affairs whose acknowledgment would

> prevent it from 'throwing' the appeal by a fraudulent judicial decision, which is the ONLY way it can uphold the unconstitutional, statutorily-violative, and fraudulent judicial salary increases that are the subject of appellants' sixth, seventh, and eighth causes of action, to which, as appellants' brief and reply brief establish, respondents have NO defense, as, likewise, NO defense to appellants' seven other causes of action.' (at ¶9, underlining and capitalization in the original).

> This is precisely what happened. Not only did the appeal panel not certify the Questions nor itself answer them, when, by its December 19, 2018 decision, it denied the order to show cause, without reasons, but, eight days later, its December 27, 2018 Memorandum, 'throwing' the appeal', did not identify the panel's financial and other interests in the appeal, did not invoke the 'rule of necessity' to decide it, and did not make any statement that its four justices believed themselves to be fair and impartial." (at pp. 1-3, capitalization, underlining in the original).

The Court of Appeals' response to plaintiff-appellants' constitutional entitlement to an appeal of right, demonstrated resoundingly and on multiple constitutional grounds – beginning with due process[8] – by their March 26, 2019 letter, with its incorporated "legal autopsy"/analysis of the December 27, 2018 memorandum and order, and additionally reinforced by plaintiff-appellants' April 11, 2019 letter to the Court demonstrating that the Attorney General's own March 26, 2019 letter urging the Court to *sua sponte* dismiss the appeal of right was, from beginning to end and in virtually every line, a "fraud upon the court" – was its May 2, 2019 order, purportedly by its six associate judges, *sua sponte* dismissing the appeal of right, without identifying ANY of the facts, law, or legal argument presented and resting on three assertions already shown by plaintiff-appellants to be (1) factually false; (2) unconstitutional; and (3) legally false.

[8] In addition to due process, plaintiff-appellant's March 26, 2019 letter pointed out (at pp. 8-9) that Article VI, §3(b)(1) of the New York State Constitution, reiterated by CPLR §5601(b)(1), grants an appeal of right where an Appellate Division judgment or order "finally determines an action…wherein is directly involved the construction of the constitution of the state…" – and that: (1) the face of the December 27, 2018 memorandum and judgment itself shows that three of plaintiff-appellants' ten causes of action were so-decided – their sixth, fifth, and ninth; (2) as established by their verified complaint, their "first, second, third, and fourth causes of action also 'directly involve[] the construction of the constitution of the state…', if not, additionally, the seventh, eighth, and tenth causes of action"; and (3) the Court's substitution of its own standard, "substantial constitutional question directly involved, is itself a "substantial constitutional question…directly involved" – and that plaintiff-appellants were asserting it.

Plaintiff-appellants' "legal autopsy"/analysis of the Court's May 2, 2019 order is embodied in, and is an exhibit to, their May 31, 2019 motion for an order:

1. Granting reargument/renewal pursuant to CPLR §2221 and vacating the Court's May 2, 2019 Order because it is unconstitutional, jurisdictionally-void, and fraudulent – upon first determining whether the Court's six associate judges have jurisdiction to do so and, if they have no jurisdiction by reason of Judiciary Law §14 and the Court's interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850), taking emergency steps to ensure a forum in the federal courts to vacate it and the underlying lower state court orders, likewise void, *ab initio*, by reason of Judiciary Law §14 violations, and to determine plaintiff-appellants' entitlement to summary judgment on their ten causes of action;

2. Determining the threshold issues which the May 2, 2019 Order neither identifies nor determines – or certifying same to the United States Supreme Court, *to wit*:

    a) Whether Judiciary Law §14 and *Oakley v. Aspinwall* bar New York State judges from 'sit[ting]…or tak[ing] any part in' this citizen-taxpayer action in which they have huge financial and other interests – and, if so, can it be transferred to the federal courts, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee to every State in this Union a Republican Form of Government'?;

    b) If this citizen-taxpayer action cannot be transferred to the federal courts, whether this Court's judges can invoke the 'Rule of Necessity' to give themselves the jurisdiction that Judiciary Law §14 removes from them – and, if so, are there safeguarding prerequisites to prevent their using it to act on their biases born of interest, as, for instance, the 'remittal of disqualification' procedure specified by §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, where the judge states he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E?;

    c) Is this Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), granting appeals of right 'wherein is directly involved the construction of the constitution of the state or of the United States', with a *sua sponte* ground to dismiss because 'no

substantial constitutional question is directly involved' unconstitutional, *as written, as unwritten, and as applied*?;

d) Whether the Attorney General can lawfully and constitutionally represent defendant-respondents before this Court where she has financial and other interests in the outcome of the appeal? – and manifested same by a fraudulent submission opposing plaintiff-appellants' appeal of right, because she had NO legitimate grounds for opposition;

e) Whether, pursuant to Executive Law §63.1 and State Finance Law Article 7-A, the unrepresented plaintiff-appellants are entitled to the Attorney General's representation and/or intervention before this Court – including *via* appointment of special counsel? – because it is they who are upholding the 'interest of the state' and the Attorney General has NO legitimate opposition to their appeal of right, nor defense of the course of the proceedings below, obliterating all semblance of the Rule of Law;

3. For disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct and consistent with *Oakley v. Aspinwall*, by the Court's six associate judges of their financial and other interests in the appeal and for their disqualification, pursuant to §100.3E of the Chief Administrator's Rules and Judiciary Law §14 by reason thereof and for the actual bias, born of interest and relationships, demonstrated by their May 2, 2019 Order, if in fact they rendered it;

4. For determination, pursuant to §100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, as to whether Associate Judge Michael Garcia must additionally make disclosure and disqualify himself or be disqualified by reason of his knowledge of, and participation in, the underlying governmental corruption giving rise to this citizen-taxpayer action;

5. Pursuant to Article VI, §2a of the New York State Constitution, designating justices of the Supreme Court to serve as judges of this Court in connection with this appeal, with the condition that the so-designated judges follow the 'remittal of disqualification' procedure of §100.3F of the Chief Administrator's Rules Governing Judicial Conduct;

6. Pursuant to §100.3D(2) of the Chief Administrators Rules Governing Judicial Conduct, issuing a show cause order requiring Attorney General Letitia

James, Solicitor General Barbara Underwood, Assistant Solicitor General Victor Paladino, and Assistant Solicitor General Frederick Brodie to respond to appellants' April 11, 2019 letter, as expressly sought in its concluding paragraph:

> 'if the Attorney General [did] not promptly withdraw her fraudulent March 26, 2019 letter [urging the Court's *sua sponte* dismissal of the appeal of right] and take steps to secure independent counsel 'to represent the interest of the state' pursuant to Executive Law §63.1 and to disqualify herself based on her direct financial and other interests in the appeal'. (at pp. 15-16, underlining in the original).

7. Granting such other and granting such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202." (italics, underlining in the original).

In pertinent part, my 41-page moving affidavit stated,

"5. …based on the unequivocal bar of Judiciary Law §14 that a judge 'shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which…he is interested' and this Court's interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850), that the statute divests an interested judge of jurisdiction – both prominently before the Court – I would have expected all six associate judges to have recognized that they had no jurisdiction to dismiss the appeal in which they themselves are directly interested, unless they could invoke 'Rule of Necessity' to give themselves the jurisdiction the statute removes from them – a question threshold on the appeal.

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

7. The May 2, 2019 Order makes no disclosure of what the associate judges know to be their pecuniary and personal interests in appellants' appeal, proscribed by Judiciary Law §14 and 'parallel provision[s]' of the Chief

Administrator's Rules Governing Judicial Conduct (§100.3E). Consequently, by this motion and in conjunction with appellants' motion for leave to appeal, I now allege and particularize those interests and relationships so that the Court may render a reasoned decision on the judicial disqualification issues comparable to its decision in *Criminal Defense Lawyers v. Kaye*[fn3] – one additionally addressed to the fact that the Court could not constitutionally dismiss appellants' appeal without invoking 'Rule of Necessity', as it is the 'narrow exception', *General Motors Corp. v. Rosa*, 82 N.Y.2d 183, 188 (1993), *Maron v. Silver*, 14 N.Y.3d 230, 249 (2010),[fn4] to the unconstitutionality that exists when judges have 'direct, personal, substantial pecuniary interest[s]', *Caperton v. Massey Coal*, 556 U.S. 868 (2009), quoting *Tumey* v. *Ohio*, 273 U.S. 510, 523 (1927) – as at bar.

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

9. The May 2, 2019 Order is additionally unconstitutional because its ground for *sua sponte* dismissal, 'no substantial constitutional question is directly involved', is an unconstitutional rewrite of Article VI, §3(b)(1) of the New York State Constitution, and CPLR §5601(b)(1) tracking it, guaranteeing an appeal of right 'wherein is directly involved the construction of the constitution of the state or of the United States'.

10. Moreover, even were the Court's *sua sponte* ground 'no substantial constitutional question…directly involved' constitutional, the May 2, 2019 Order is 'so totally devoid of evidentiary support' as to be unconstitutional, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960)." (underlining, italics in the original).

After detailing (at ¶¶12-23) that the May 2, 2019 order was "utterly devoid of legal and evidentiary support" and a "judicial fraud" – including by a 4-page, line-by-line "legal autopsy"/analysis, annexed as Exhibit D -- my moving affidavit particularized the associate judges' undisclosed financial and other interests and relationships that were the ONLY explanation for the order, in support of the motion's request that they make disclosure, if they did not disqualify themselves – and confront the jurisdictional question, arising from their Judiciary Law §14 disqualification. Excerpts follow:

"The Associate Judges' 'Direct, Personal, Substantial Pecuniary Interest[s]', from which their Bias is Presumed, *as a Matter of Law*

29. Undisclosed by the Court's May 2, 2019 Order (Exhibit A-1) – and itself demonstrative of the disqualifying facts – is that each associate judge has, at present, a $82,200 a year salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action as unconstitutional, unlawful, and fraudulent [R.109-114 (R.187-213)]. Such declarations, to which appellants have a summary judgment entitlement,[fn14] bring down the salary of each associate judge from the commission-based $233,400 it presently is to the $151,200 fixed by Judiciary Law §221.[fn15]

30. On top of this are the 'claw-backs' that each associate judge will be liable for, whose amounts vary. In the case of Senior Associate Judge Rivera, the sole associate judge whose name appears on the May 2, 2019 Order (Exhibit A-1) and who first became a judge on February 11, 2013, when she was confirmed to the Court, the 'claw-back' is well over $300,000 as of this date and will top $400,000 by the April 1, 2020 start of the next fiscal year.

31. Such 'direct, personal, substantial pecuniary interest[s]' are presumptive of partiality and bias, *as a matter of law*. The 'presumption is conclusive and disqualifies the judge', *Oakley v. Aspinwall*, at p. 550.

The Associate Judges' Actual Bias, Arising from their Reputational Interest in the Judiciary Budget

32. As recognized by this Court in *Wilcox v. Royal Arcanum*, 210 N.Y. 370 (1914), the interest proscribed by Judiciary Law §14 extends to 'the subject-matter of the controversy': reputational interest being no less direct, personal and substantial than a pecuniary one.[fn16] In any event, §100.3E(1)(c) of the Chief Administrator's Rules Governing Judicial Conduct is broader than Judiciary Law §14, in requiring judicial disqualification where 'the judge knows that he or she, individually…has an economic interest in the subject matter in controversy…or has any other interest that could be substantially affected by the proceeding' (underlining added).

33. At bar, each associate judge has, at very least, a reputational interest in the Judiciary's budget, whose certifications by the chief judge they approve as 'itemized estimates of the financial needs of the Judiciary', pursuant to Article VII, §1 of the New York State Constitution [R.763-764]. The unconstitutionality and

"fn14 See appellants' 'legal autopsy'/analysis of the Appellate Division December 27, 2018 Memorandum (at pp. 13-20, 24-27)."

fraudulence of the Judiciary's proposed budget is challenged by appellants' second cause of action [R.103-104 (R.162-167), (R.260-262), (R.294-300)] – and the record before the Court establishes their entitlement to summary judgment, with declarations that would require the associate judges to pass judgment adversely to what they have approved. The declarations specified by appellants' September 2, 2016 verified complaint [at R.124] are:

> 'that the Judiciary's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because: **(1)** the Judiciary budget is so incomprehensible that the Governor, the Senate majority and Senate minority, and Assembly majority and Assembly minority cannot agree on its cumulative cost and percentage increase; **(2)** its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; and **(3)** the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a 'slush fund' and concealing relevant costs; **(4)** it has *sub silentio* enabled the funding of judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional'.

34. Appellants' March 29, 2017 verified supplemental complaint [at R.734] seeks near identical declarations pertaining to the Judiciary's proposed budget for fiscal year 2017-2018, the first Judiciary budget that defendant DiFiore certified after becoming chief judge – repeating the same constitutional, statutory, and rule violations, to which she had been alerted 11 months earlier and which were her duty to apprise the associate judges of so that they could evaluate whether a budget so-fashioned should be approved by them.

35. These identical declarations are the same as would apply to the Judiciary's proposed budgets for fiscal years 2018-2019 and 2019-2020, each also repeating the same constitutional, statutory, and rule violations of the prior years.

36. For three of these four fiscal years, in a futile effort to secure some modicum of legislative oversight, I furnished the Legislature with 'Questions for Chief Administrative Judge Marks' about the Judiciary's proposed budgets[fn17] –

"[fn17] In 2016 and 2018, I simultaneously e-mailed the Questions to Chief Administrative Judge Marks and defendant DiFiore, in addition to the Legislature. The 2016 Questions are identified by appellants' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action [R.152-157], where they were Exhibit 44. The 2018 Questions

Questions largely identical from one year to the next. Annexed are this year's Questions (Exhibit F-1)[fn18] – from which the applicability of the above-quoted declaration to this fiscal year's Judiciary budget can be discerned, readily.

The Associate Judges' Actual Bias,
Arising from their Relationships with the Defendant-Respondents, the Closest Being Defendant-Respondent Chief Judge DiFiore

37. §100.3E(1) of the Chief Administrator's Rules Governing Judicial Conduct requires that a judge 'disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned'. This reasonably includes professional and personal relationships with parties and their attorneys, such as the associate judges have with the respondent-defendants, all of whom have constitutional checks-and-balance oversight responsibilities over the Judiciary – budgetary and otherwise – none being discharged in any genuine fashion.

38. That respondent-defendants have been collusively corrupting their separation-of-powers, checks-and-balances function and misappropriating public monies on a massive scale is established by appellants' verified pleadings [R.87-134; R.135-225; R.226-271; R273-314; R.671-742] and the record thereon. This evidence mandates referrals to prosecutorial authorities 'so that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay' – relief expressly sought by appellants' brief (at p. v, #6), reiterating requests from their September 2, 2016 verified complaint [R.131, at ¶4] and March 29, 2017 verified supplemental complaint [R.742, at ¶4].

39. Obviously, it is with defendant DiFiore that the associate judges have the closest, most sustained and intimate of professional and personal relationships. Like her fellow defendants, defendant DiFiore is being sued not simply because she occupies a relevant constitutional office, but because she has knowingly and deliberately participated with them in the public corruption and larceny at issue,

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are part of the record before this Court (contained in Free-Standing (File Folder) Exhibit I (eye) to appellants' 1st motion to the Appellate Division (July 25, 2018), where it is Exhibit A to their March 6, 2018 corruption complaint to Albany District Attorney Soares)."

"[fn18] These Questions pertaining to the Judiciary's proposed fiscal year 2019-2020 budget were furnished to the Legislature on February 19, 2019 and repeatedly, thereafter, as part of written testimony (Exhibit F-2) that additionally included "Questions for Former Temporary Senate President John Flanagan, & Assembly Speaker Carl Heastie, & for Temporary Senate President Andrea Stewart-Cousins" (Exhibit F-3). Appellants' extensive correspondence with Senate and Assembly members and leadership is accessible from CJA's webpage for this motion (fn. 1 *supra*)."

beginning with the 'force of law' commission-based judicial salary increases and the 'slush-fund' Judiciary budget – as to which I hand-delivered the *prima facie* evidence to her Westchester district attorney's office, on December 31, 2015, following her nomination by defendant Cuomo to be New York's Chief Judge.

40. That defendant DiFiore and her fellow constitutional-officer defendants must ALL be indicted because they willfully and deliberately violated a succession of penal law provisions that I apprised them of, again and again and again – and that they will be convicted on EVIDENCE that is 'open-and-shut', is established by the record, as, for instance, from the following two letters it contains:[fn19]

(a) my initial December 31, 2015 letter addressed to then Westchester District Attorney/Chief Judge Nominee DiFiore (Exhibit G), entitled:

> "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?";

(b) my January 15, 2016 letter addressed to then Temporary Senate President Flanagan and to Assembly Speaker Heastie (Exhibit H), with a copy to her, entitled:

> "IMMEDIATE OVERSIGHT REQUIRED:
> (1) The Commission on Legislative, Judicial and Executive Compensation and its statute-repudiating, fraudulent, and unconstitutional December 24, 2015 Report with 'force of law' judicial salary recommendations;
> (2) The Senate Judiciary Committee's January 20, 2016 public hearing to confirm the nomination of Westchester District Attorney Janet DiFiore as New York's Chief Judge – and the deceptive notice concealing that oral testimony is restricted to the nominee and bar associations" (Exhibit H).

41. Both letters begin with a recitation of the pertinent penal law provisions violated – as, for instance, the December 31, 2015 letter, as follows:

"[fn19] *See* appellants' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action [R.148-149 (¶¶274-276); R.155-156 (¶289(1), ¶292)], on which the September 2, 2016 verified complaint in this citizen-taxpayer action rests [R.98-99 (¶¶20-21)]."

"Our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), congratulates you on your nomination as Chief Judge of the New York Court of Appeals and of the New York court system. We consider it most fortunate that Governor Cuomo has selected a district attorney as it means our new top judge will have an expertise in New York's penal law, including such felonies as 'offering a false instrument for filing in the first degree' (§175.35), 'grand larceny in the first degree' (§155.42), 'scheme to defraud in the first degree' (§190.65), 'defrauding the government' (§195.20), and the class A misdemeanor 'official misconduct' (§195).

Then, too, there is the 'Public Trust Act', whose passage, as part of Governor Cuomo's behind-closed-doors, three-men-in-a-room budget deal in March 2014 with then Temporary Senate President Skelos and then Assembly Speaker Silver, was the pretext for his shut-down of the Commission to Investigate Public Corruption. It created the felony crime 'Corrupting the Government' – Penal Law §496 – especially relevant to the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and the further judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, and to the Judiciary budget – all subjects of this letter.

Because district attorney salaries are statutorily-linked to judicial salaries (Judiciary Law §1[83]-a), you have been a beneficiary of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report. That is why, in 2012, your $136,700 salary was increased to $160,000 and then, in 2013, increased to $167,000 and then, in 2014, increased again to $174,000. It is also why, upon becoming Chief Judge, you again will be a beneficiary of the August 29, 2011 Report: your salary as Chief Judge will be $198,600, not the $156,000 it was in 2011.

In the event you are unaware, the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and all the related costs, including the increases in district attorney salaries – are ''ill-gotten gains', stolen from the taxpayers'. And proving this, resoundingly, is CJA's October 27, 2011 Opposition Report,

> detailing the fraudulence, statutory-violations, and unconstitutionality of the August 29, 2011 Report. …" (Exhibit G, at pp. 1-2, underlining in the original).

42. A copy of the October 27, 2011 Opposition Report is already in the Court's possession, albeit without the substantiating evidence I hand-delivered for defendant DiFiore with the December 31, 2015 letter.[fn20] It was part of the first appellate motion before the Appellate Division that I duplicated for the Court in conjunction with appellants' March 26, 2019 letter.[fn21] The 38-page October 27, 2011 Opposition Report suffices to establish that both the Commission on Judicial Compensation's August 29, 2011 Report – and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation materially resting on, and replicating it – are statutorily-violative, fraudulent, and false instruments, quite apart from being unconstitutional. This is what defendant DiFiore would have speedily concluded, following her receipt of the December 31, 2015 letter (Exhibit G) – and, again, two weeks later, following her receipt of the January 15, 2016 letter (Exhibit H), with its further substantiating evidence, most importantly its 12-page 'Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Increase Recommendations, Repeal of the Commission Statute, Etc.'[fn22]

43. From these two fully-documented December 31, 2015 and January 15, 2016 letters this Court's associate judges can know, for a certainty, what defendant DiFiore herself knows, for a certainty: that appellants have summary judgment on their seventh and eighth causes of action – and that the Appellate Division's December 27, 2019 Memorandum outrightly lies in stating, *inter alia*:

> 'Dismissal of the eighth cause of action was also proper because the record shows that the Commission considered the requisite statutory

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"fn20 All the voluminous substantiating evidence which the December 31, 2015 letter itself identifies as being furnished – including the full copy of the October 27, 2011 Opposition Report – is part of this citizen-taxpayer action, in the record below [R.148, ¶276 & fns. 4, 5]."

"fn21 *See* Free-Standing (file folder) Exhibit I (eye) to appellants' 1st motion to the Appellate Division (July 25, 2018)."

"fn22 This dispositive document is annexed as Exhibit C to appellants' 'legal autopsy'/analysis of the Appellate Division's December 27, 2019 Memorandum – and was before the Appellate Division, annexed as Exhibit EE to my August 6, 2018 reply affidavit in further support of appellants' 1st motion (July 25, 2018)."

> factors in making its recommendation regarding judicial compensation.' (at p. 8).

Indeed, it is why neither defendant DiFiore nor anyone else has come forward with findings of fact and conclusions of law with respect to the October 27, 2011 Opposition Report or the other evidence furnished by the December 31, 2015 and January 15, 2016 letters (Exhibits G, H) – making them all conspirators and accomplices, under the penal law, for the ongoing 'grand larceny of the public fisc', here sought to be ended by declarations of unconstitutionality, unlawfulness, and fraud.

The Associate Judges' <u>Actual Bias</u>,
Also Arising from their Relationships with Other Judges
and Accomplices in the Corruption at Issue

44. Each associate judge has professional and personal relationships with the panoply of specific judges, past and present, directly involved in perpetuating – if not also procuring – the larcenous judicial salary increases resulting from the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial, and Executive Compensation[fn23] – and who, with the defendants, must be referred for prosecution based on evidence that will ensure convictions.

45. The associate judges also have relationships with, and dependencies on, district attorneys, U.S. Attorneys, and other public officers and commissioners who, from 2013 onward, have either been 'sitting on' the fully-documented corruption complaints I filed based on the larcenous August 29, 2011 and December [24], 2015 Commission Reports and the budget [R.231-232][fn24] – or have fraudulently dismissed the complaints, as was done by the Commission to Investigate Public Corruption [R.232], the Commission on Judicial Conduct [R.1320-1327],[fn25] and the Attorney Grievance Committees.[fn26]

"[fn23] Among these judges whose willful and deliberate misconduct is recited and reflected by the record, all beneficiaries of the commission-based judicial salary increases: (1) Chief Administrative Judge Marks; (2) Former Chief Judge Jonathan Lippman; (3) Appellate Division, Third Department Justice Elizabeth Garry and all nine associate justices; (4) Acting Albany County Supreme Court Justice/Court of Claims Judge Denise Hartman; (5) Acting Albany County Supreme Court Justice/Court of Claims Judge Roger McDonough; (6) Third Judicial District Administrative Judge Thomas Breslin; (7) Deputy Chief Administrative Judge Michael Coccoma."

The Further Disqualification of Associate Judge Garcia Arising from his Knowledge of, and Participation in, Events Involving the Commission to Investigate Public Corruption, Underlying this Citizen-Taxpayer Action

46. §100.3E(1) of the Chief Administrator's Rules Governing Judicial Conduct specifies that a judge's impartiality might reasonably be questioned where:

> '(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding'.

47. Pursuant to §100.3F, 'remittal of disqualification' is not available for §100.3E(1)(a)(i), but is available for §100.3E (1)(a)(ii). Consequently, if Associate Judge Garcia were going to participate with his fellow associate judges in the May 2, 2019 Order – if, in fact, they, rather than the Clerk's Office, rendered it – he should have discussed with them his personal knowledge of, and participation in, the underlying corruption giving rise to this citizen-taxpayer action, requiring that he disqualify himself, absent 'remittal of disqualification' pursuant to §100.3F.

48. The facts are as follows…" (bold, capitalization, underlining in the original).

On June 6, 2019, plaintiff-appellants additionally made a motion for leave to appeal, establishing their absolute constitutional entitlement to same, incorporating by reference their May 31, 2019 motion, and asserting (at fn. 1) that all its threshold issues were also threshold issues for the motion for leave:

> "beginning with whether the Court's associate judges can constitutionally 'sit' and 'take any part' in this case, absent their invocation of 'Rule of Necessity' and whether the jurisdictional bar of Judiciary Law §14 precludes them from invoking such judge-made rule to give to themselves the jurisdiction the statute removes from them."

Without denying or disputing the accuracy of ANY of the facts and law presented by plaintiff-appellants' May 31, 2019 and June 6, 2019 motions, the Attorney General opposed both by a June 27, 2019 memorandum in opposition—the fraudulence of which – and its regurgitation of the fraud of her March 26, 2019 letter opposing the appeal of right – was the subject of plaintiff-appellants August 8, 2019 motion for an order:

> "1. consistent with this Court's decision in *CDR Creances S.A.S. v. Cohen, et al*, 23 NY3d 307 (2014), striking, as 'fraud on the court', the Attorney General's June 27, 2019 'Memorandum in Opposition to Motions

for (i) Leave to Appeal; and (ii) Reargument/Renewal and Other Relief' and, additionally, the Attorney General's March 26, 2019 letter opposing appellants' appeal of right, both signed by Assistant Solicitor General Frederick Brodie on behalf of Attorney General Letitia James and bearing the names of Solicitor General Barbara Underwood and Assistant Solicitor General Victor Paladino;

2. consistent with this Court's decision in *Matter of Rowe*, 80 NY2d 336, 340 (1992), and *Greene v. Greene*, 47 NY2d 447, 451 (1979), disqualifying the Attorney General from representing her fellow respondents herein – with declarations that such representation is UNCONSTITUTIONAL, in addition to being unlawful, with a further declaration that the Attorney General's taxpayer-paid representation belongs to appellants, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;

3. pursuant to Court-promulgated 22 NYCRR §130-1.1, *et. seq*., and consistent with this Court's decision in *Matter of AG Ship Maintenance Corp v. Lezak*, 69 NY2d 1 (1986), imposing maximum costs and sanctions against Attorney General James and her culpable attorney-staff based on their June 27, 2019 Memorandum in Opposition and March 26, 2019 letter;

4. pursuant to Judiciary Law §487(1) and this Court's decision in *Amalfitano v. Rosenberg*, 12 NY3d 8, 14 (2009), making such determination as would afford appellants treble damages in a civil action against Attorney General James and her culpable attorney-staff based on their June 27, 2019 Memorandum in Opposition and March 26, 2019 letter;

5. pursuant to Court-promulgated 22 NYCRR §100.3D(2) (Rules Governing Judicial Conduct) and the law review article '*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*', St. Clara Law Review, Vol. 22 (1982), referring Attorney General James and her culpable attorney-staff for investigation and prosecution by:

(a) appropriate disciplinary authorities for their knowing and deliberate violations of Court-promulgated 22 NYCRR Part 1200 (Rules of Professional Conduct) and, specifically,

Rule 1.7 'Conflict of Interest: Current Clients';
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 knowing and deliberate violations of penal laws, including,

Penal Law §175.35 'offering a false instrument for filing in the first degree';
Penal Law §195 'official misconduct';
Penal Law §496 'corrupting the government in the first degree'/'public corruption' [PUBLIC TRUST ACT];
Penal Law §195.20 'defrauding the government';
Penal Law §190.65 'scheme to defraud in the first degree';
Penal Law §155.42 'grand larceny in the first degree'; Penal Law §105.15 'conspiracy in the second degree';
Penal Law §20 'criminal liability for conduct of another';

6. pursuant to Article XIII, §5 of the New York State Constitution, taking the steps proscribed 'by law for the removal for misconduct or malversation in office' of Attorney General James;

7. granting such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202." (underlining, capitalization in the original).

My 9-page moving affidavit, which identified (at ¶1) that the motion was:

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

annexed, in substantiation of the requested relief, a 37-page, single-spaced "legal autopsy"/analysis of the Attorney General's June 27, 2019 memorandum, demonstrating it to be "from beginning to end, and in virtually every line, a 'fraud on the court'", just as the Attorney General's March 26, 2019 letter opposing the appeal of right had been – and as plaintiff-appellants had demonstrated by their April 11, 2019 letter to the Court, itself constituting an 11-page, single-spaced "legal autopsy"/analysis thereof. My moving affidavit annexed a copy of that April 11, 2019 letter – and, additionally, a copy of plaintiff-appellants' March 26, 2019 letter in support of their appeal of right, including its "legal autopsy"/analysis of the Appellate Division's December 27, 2018 memorandum and order.

Once again, without denying or disputing the accuracy of ANY of the facts and law presented by plaintiff-appellants' August 8, 2019 motion, the Attorney General opposed plaintiff-appellants' motion, now with further litigation fraud – indeed, by regurgitating the same deceits and mischaracterizations as had been employed in the Appellate Division, Third Department, which plaintiff-appellants had there rebutted, covered up by the Appellate Division, Third Department's fraudulent December 27, 2018 memorandum and order and its four fraudulent predecessor decision/orders. Plaintiff-appellants demonstrated this by an August 28, 2019 letter to the Court, constituting a 19-page, single-spaced "legal autopsy"/analysis of the Attorney General's August 19, 2019 opposition to their August 8, 2019 motion – expressly seeking an additional imposition of costs and maximum $10,000 sanctions, pursuant to 22 NYCRR §130-1.1 *et seq*.

The Court responded to plaintiff-appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions by three orders dated October 24, 2019, purportedly by the associate judges, dismissing and denying all three motions, in their entirety – *without* identifying or addressing Judiciary Law §14, *without* invoking "Rule of Necessity", or determining whether it could be invoked, *without* making any disclosure of the financial and other interests and relationships of each associate judge – or identifying that disclosure had been sought – and without identifying ANY of the facts, law, or legal argument the motions had presented.

Plaintiff-appellants' "legal autopsy"/analyses of the three October 24, 2019 orders – as well as of the May 2, 2019 order – are embodied in, and are exhibits to, their November 25, 2019 motion for an order:

> "1. pursuant to CPLR §5015(a)(4), vacating the Court's three October 24, 2019 Orders, as well as its May 2, 2019 Order, for lack of jurisdiction – or securing a federal forum to do so – absent the Court's establishing that the unequivocal language of Judiciary Law §14 and its own interpretive decisions in *Oakley v. Aspinwall*, 3 NY 547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914), did not divest the six associate judges of jurisdiction by reason of their financial and other interests in this appeal;
>
> 2. pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct and consistent with *Oakley v. Aspinwall*, at 548-549, 551, for disclosure by the Court's six associate judges of their financial and other interests in the appeal;
>
> 3. pursuant to §100.3E of the Chief Administrator's Rules, disqualifying this Court's six associate judges for the actual bias demonstrated by their October 24, 2019 and May 2, 2019 Orders and vacating them by reason thereof – or securing a federal forum to do so;
>
> 4. pursuant to CPLR §5015(a)(3), vacating the October 24, 2019 and May 2, 2019 Orders for fraud, misrepresentation and other misconduct of defendant-respondent New York State Attorney General Letitia James – or securing a federal forum to do so;

5. pursuant to CPLR §2221(d) and this Court's Rule 500.24, granting reargument to address what the Court 'overlooked' by its three October 24, 2019 Orders – *to wit*, ALL the facts, law, and legal argument presented by appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions, including as to the *unconstitutionality, as written, as unwritten, and as applied*, of the Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right 'wherein is directly involved the construction of the constitution of the state or of the United States' – with a *sua sponte* ground to dismiss because 'no substantial constitutional question is directly involved', which it has not even embodied in a court rule.

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

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

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

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

7. pursuant to CPLR §8202, granting appellants' $100 motion costs;

8. pursuant to the Court's inherent power, granting such other and further relief as may be just and proper."

Supporting the motion was my 23-page moving affidavit, stating, in pertinent part:

> "4. The Court's three October 24, 2019 Orders are constitutionally and jurisdictionally indefensible – and, if rendered by the six associate judges, warrant proceedings to remove them from office, pursuant to Article VI, §§22-24 of the New York State Constitution, and to criminally prosecute them for corruption and larceny of public monies,[fn3] upon grand jury inquiry and indictment, pursuant to Article I, §6 of the New York State Constitution. Indeed, these three Orders are even more egregious than the May 2, 2019 Order (Exhibit B-1), which, *without* identifying or addressing the threshold issues in the record before the Court, purported to dismiss appellants' appeal of right on *sua sponte* grounds that are not only a LIE, but contravene Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1).
>
> 5. The purpose of this motion is to afford the associate judges one last clear chance to discharge their constitutional function – beginning with rendering a responsive, reasoned decision on the threshold jurisdictional and disqualification issues that appellants' May 31, 2019 motion particularized…
>
> 6. The Court responded to the May 31, 2019 motion by its October 24, 2019 Order on Mo. No. 645 (Exhibit A-1), purporting it to be 'Upon the papers filed and due deliberation'. It first dismissed the 'motion for reconsideration of this Court's May 2, 2019 dismissal order' made on CJA's behalf by regurgitating, *verbatim*, the pretext of its May 2, 2019 Order, whose falsity the motion had exposed (Exhibit B-2, at p. 2). That pretext – that I was not CJA's 'authorized legal representative' (Exhibit B-1) – fraudulently concealed that both CJA and I were before the Court as 'unrepresented appellants' raising the threshold issue of our entitlement to be represented by the Attorney General or to state-paid independent counsel, by reason of the Attorney General's conflicts of interest. Next, the Order denied, *without reasons*, the motion for 'reconsideration' made on my behalf. Only then – after these two substantive determinations – did the Order deny, *without reasons*, 'disqualification of the Associate Judges of this Court &c', with Associate Judge Garcia additionally denying, *without reasons*, his recusal 'on nonstatutory grounds'. No acknowledgment, except implicitly, that the 'disqualification of the

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"[fn3] Among the penal laws: Penal Law §175.35 'offering a false instrument for filing in the first degree'; Penal Law §195 'official misconduct'; Penal Law §496 'corrupting the government in the first degree'/'public corruption' [PUBLIC TRUST ACT]; Penal Law §195.20 'defrauding the government'; Penal Law §190.65 'scheme to defraud in the first degree'; Penal Law §155.42 'grand larceny in the first degree'; Penal Law §105.15 'conspiracy in the second degree'; Penal Law §20 'criminal liability for conduct of another'. All are cited by appellants' August 8, 2019 motion as applicable to the associate judges' acts herein (Exhibit B, at p. 37)." (underlining in the original).

Associate Judges' sought by the motion is on statutory grounds – and no acknowledgment at all that the caselaw with respect thereto, including the Court's own, is black-letter, non-discretionary – and divests the associate judges of jurisdiction.

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

> *'The Court's three October 24, 2019 Orders dispose of appellants' three motions, dated May 31, 2019, June 6, 2019, and August 8, 2019, without identifying ANY of the facts, law, or legal argument they present – or the state of the record with respect thereto. Their denials are ALL without reasons – and their dismissals are ALL verbatim repeats of reasons from the Court's May 2, 2019 Order, demonstrated as frauds by appellants' motions and prior submissions.*
>
> *Nor are the three October 24, 2019 Orders or the May 2, 2019 Order signed by any of the Court's six associate judges – or by the Court's Clerk, who, on those dates, was not absent or physically disabled. Without explanation, the four Orders are signed by the Court's Deputy Clerk.*'

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

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

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

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

11. The fourth branch of this motion, pursuant to CPLR §5015(a)(3), for vacatur of the Court's Orders, is based on the Attorney General's fraud, misrepresentation, and other misconduct before this Court on every aspect of the appeal. Dispositive is appellants' August 8, 2019 motion to strike the Attorney General's opposition to appellants' appeals by right and by leave, as 'fraud upon the court',[fn4] denied, *without reasons*, by this Court's October 24, 2019 Order on Mo. No. 2019-799 (Exhibit A-3).

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

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

13. At bar, the Court's four Orders have manifested not mere 'favoritism', but outright collusion with defendants, with whom all six associate judges have shared financial and other interests, in addition to relationships – the closest being with defendant Chief Judge DiFiore, who – as identified by appellants' May 31, 2019 motion (at ¶¶38-43) – is criminally liable for the fraud, corruption, and larceny of taxpayer monies she perpetuated and became an active accomplice in since her receipt of my December 31, 2015 letter to her,[fn5] dispositive *on its face* and by the open-and-shut, *prima facie* evidence it transmitted…

"[fn5] Annexed as Exhibit G to appellants' May 31, 2019 motion."

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

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

…

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

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

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

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

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

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

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

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

His duty was to disclose this and, additionally, his knowledge of the facts recited by that cause of action as to the frauds committed by the judicial pay raise witnesses, of which he was one…" (italics, underlining, capitalization in the original).

Without denying or disputing the accuracy of ANY of the facts and law presented by plaintiff-appellants' November 25, 2019 motion, the Attorney General opposed by a December 10, 2019

memorandum — the fraudulence of which, from beginning to end and in virtually every line, was demonstrated by plaintiff-appellants December 31, 2019 letter to the Court, annexing a 15-page, single-spaced "legal autopsy"/analysis of it, and stating:

> "This fourth instance of litigation fraud by [the Attorney General] is the direct consequence of the 'green light' the Court has given by its four Orders herein. All conceal any issue of fraud or disqualification relating to the Attorney General – including the Court's October 24, 2019 Order on 'Mo. No. 2019-799', denying, *without reasons*, appellants' August 8, 2019 motion 'to strike respondents' memorandum of law &c.'. This has emboldened [the Attorney General] to rest [her] December 10, 2019 opposition memorandum almost totally on [her] totally fraudulent June 27, 2019 memorandum in opposition to appellants' May 31, 2019 and June 6, 2019 motions and on [her] totally fraudulent August 19, 2019 memorandum and affirmation opposing appellants' August 8, 2019 motion." (at p. 2, underlining in the original)
>
> …
>
> Consequently, the Court's duty with respect to the first five branches of appellants' November 25, 2019 motion is to make such findings of facts and conclusions of law as its four prior Orders did NOT make with respect to the Attorney General's complained-about litigation fraud and disqualification. The Court can reasonably begin with its October 24, 2019 Order on 'Mo. No. 2019-799', denying, *without reasons*, appellants' August 8, 2019 motion 'to strike respondents' memorandum of law &c.', as it is dispositive of the findings of fact and conclusions of law that were incumbent upon the Court to make by its other three Orders." (at p. 5, underlining in the original).

As for the sixth branch of appellants' November 25, 2019 motion – for renewal based on new facts – plaintiff-appellants furnished the Court with a separate letter, dated January 9, 2020, stating (at p. 1):

> "Although the facts are still not fully known, they nonetheless reinforce the duty of the associate judges to vacate their four Orders herein, if not themselves, then by referral to judges not afflicted by the HUGE financial and other interests in this case that divest them of jurisdiction pursuant to Judiciary Law §14 and the Court's own interpretive decisions in *Oakley v. Aspinwall*, 3 NY547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914)." (capitalization in the original).

With respect to Part C of the sixth branch pertaining to the Commission on Legislative, Judicial and Executive Compensation, the letter stated (at pp. 12-13) that in e-mailing my November 25, 2019 letter to Chief Administrative Judge Marks challenging him to rebut its showing that his November 4, 2019 testimony before the Commission was fraudulent and inquiring whether its content had been known and/or approved, in advance, by Chief Judge DiFiore and the associate judges, I had requested that he forward it to the judges who had also testified before the Commission in support of pay raises for themselves – and to Chief Judge DiFiore's "Excellence Initiative" which he and they

had praised as increasing judicial excellence. The substantiating e-mail was annexed. Neither he nor anyone else responded. Nor to the subsequent e-mails I sent him and Chief Judge DiFiore demonstrating that his November 22, 2019 supplemental submission to the Commission was a "HUGE financial fraud":

> "enabled by the fact that the Judiciary budget is 'a larcenous SLUSH-FUND, born of constitutional violations, statutory violations and fraud', so-proven by the record before the Court, substantiating appellants' second cause of action [R.103-104 (R.162-167; R.260-262; R.294-300)] challenging the constitutionality and lawfulness of the Judiciary budget.[fn13]" (at p. 13, capitalization and underlining in the original)

and furnishing further proof of the Commission's flagrant disregard of EVIDENCE and its statutory charge. In that context, I stated:

> "Surely, the associate judges know the answer for themselves as to their prior knowledge and approval of Chief Administrative Judge Marks' frauds before the Commission. Surely, too, they are not unaware that their May 2, 2019 and October 24, 2019 Orders enabled the commissioners to be appointed and conduct themselves in the same statutorily-violative, fraudulent, unconstitutional fashion as recited by appellants' seventh and eighth causes of action [R.112-114 (R.201-212); R.114 (R.212-213)] pertaining to the 2015 Commission and enabled Chief Administrative Judge Marks and the other judges to reprise frauds comparable to those they had utilized before the 2015 Commission – this being essential to any possibility of their procuring the further salary increases to which Part E, Chapter 60 of the Law of 2015 did not remotely entitle them." (at p. 14, underlining in the original).

The 18-page, single-spaced letter[11] concluded as follows:

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[11] In a footnote to this section C, the letter identified (at p. 12) a further NEW fact germane to the judicial disclosure that had not been made – stating:

> "…I have only just discovered that among the judicial pay raise witnesses who had testified at the Commission on Judicial Compensation's July 20, 2011 hearing was the then president of the Association of Supreme Court Justices of the State of New York, Supreme Court Justice Phillip Rumsey.
>
> This is the same Justice Rumsey, who since May 2017, has sat on the Appellate Division, Third Department – and who authored its December 27, 2018 Memorandum herein, obliterating ALL cognizable adjudicative, evidentiary, and ethics standards to preserve Part E, Chapter 60 of the Laws of 2015 establishing the Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 report, and, simultaneously, Chapter 567 of the Laws of 2010 establishing the Commission on Judicial Compensation and its August 29, 2011 report. Justice Rumsey also participated with his fellow appellate panel judges in denying, *without reasons*, two of appellants' threshold integrity motions, including for disqualification and disclosure. This Court has all the horrendous particulars – laid by appellants' "legal autopsy"/analysis of the Memorandum

> "There are more facts, not previously available, which might be furnished by way of renewal. High on that list are the supervening facts pertaining to the Judiciary's 'itemized estimates' of its 'financial needs' for fiscal year 2020-2021 that Chief Administrative Judge Marks transmitted to the Governor and Legislature on November 29, 2019, with certifications of Chief Judge DiFiore and authorizations by the Court of Appeals dated November 19, 2019 – replicating most of the constitutional and statutory violations encompassed by appellants' second cause of action [R.103-104 (R.162-167; R.260-262; R.294-300)] challenging the constitutionality and lawfulness of the Judiciary budget. However, the foregoing pertaining to parts A, B, and C of the sixth branch of appellants' November 25, 2019 motion more than suffices for the renewal/vacatur relief sought.
>
> I swear the contents of this letter to be true, under penalties of perjury, and end by reiterating the quote at page 1 of my November 25, 2019 moving affidavit, as it succinctly summarizes the enormity of what is before the Court, at stake for the People of the State of New York:
>
> > ''This Court's constitutional function is to uphold and safeguard our State Constitution. Nothing more is asked, on this motion, than that the associate judges discharge that function, for which they are paid, and which, if they do, will wipe out, overnight, the 'culture of corruption' plaguing our state – as is eminently clear from the verified pleadings of this citizen-taxpayer action and the record thereon.' (appellants' June 6, 2019 motion for leave to appeal, at p. 21; repeated in their August 8, 2019 motion to strike, at ¶18, underlining in the original).'"

The Court's response, by its February 18, 2020 order, purportedly by its six associate judges, was to dismiss and deny plaintiff-appellant's November 25, 2019 motion, in its entirety – *without* identifying or addressing Judiciary Law §14, *without* invoking "Rule of Necessity", or determining whether it could be invoked, *without* making any disclosure of the financial and other interests and relationships of each associate judge – or identifying that disclosure had been sought – and without identifying ANY of the facts, law, or legal argument the motion had presented.

In other words, the February 18, 2020 order was essentially indistinguishable from the four prior orders it preserved: insupportable in fact and law, fraudulent, unconstitutional, wilfully and

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that accompanied their March 26, 2019 letter in support of their appeal of right.

The video of the Commission on Judicial Compensation's July 20, 2011 hearing, at which then Supreme Court Association President Rumsey testified and answered questions, including about the statutory factors the Commission was required to take into account, and the video of the Commission on Legislative, Judicial and Executive Compensation's November 30, 2015 hearing, at which then Supreme Court Association President Feinman testified, are accessible from CJA's webpage for this letter (fn. 1, *supra*)." (capitalization in the original).

deliberately violating Judiciary Law §14 and §§100.3E, F, and D of the Chief Administrator's Rules Governing Judicial Conduct – replicating each and every decision/order in the record below.

* * *

Please advise as to how you will be handling the threshold conflict-of-interest issues germane to this complaint – all exacerbated by your handling of the prior June 16, 2017 and September 20, 2018 complaints (pp. 2-6, *supra*).

Needless to say, I am available – and eager – to be interviewed, including under oath – and to supply you with hard copies/originals of the mountain of *prima facie*, open-and-shut EVIDENCE substantiating this complaint.

Although your rules do not require complainants to swear to the truth of their judicial misconduct complaints, I eagerly do so – using the attestation that Albany County District Attorney P. David Soares includes on the complaint form of his so-called "Public Integrity Unit":

> "I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law."

Thank you.