



BY USPS AND ELECTRONIC MAIL

July 25, 2017

Commission on Judicial Conduct
Attention: Joseph W. Belluck, Chair
61 Broadway, Suite 1200
New York, NY 10006
Email: jbelluck@belluckfox.com & cjc@cjc.ny.gov

Re: Formal Complaint and FOIL/Records Request: Commission on Judicial Conduct

Dear Mr. Belluck and the CJC:

This letter serves as an official complaint – and a mandatory call for investigation – about the conduct of three officials who have served on the Commission for Judicial Conduct (CJC): **Robert Tembeckjian**, the CJC’s “Administrator and Counsel”; **Angela M. Mazzarelli**, who serves on both the 1st Department Appellate Division and the CJC; and **Rolando T. Acosta**, who also serves on the 1st Department Appellate Division and, until June 30, 2017, was an officer of the CJC.

To avoid any conflict of interests, or even the basic perception of a conflict of interests, these individuals should not take part in the investigations into their own conduct that your office is legally required and duty-bound to investigate. Nor should they be provided with a copy of this complaint.

This letter also serves as a demand, pursuant to §124 of the Chief Administrator’s Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], that you provide us with information and complete documentation related to the CJC.

First, please provide us with:

1. The initial written contract or charter between the NY State Legislature and the CJC and all subsequent contracts, charters, mandates and/or amendments.
2. All financial records, statements, and other documents that CJC has submitted to the State Legislature and IRS since January 1, 2011, including but not limited to:
 - a) CJC's funding applications to the State Legislature and correspondence with respect thereto; as well as actual funding allocated, including for the 2017/2018 year and any other future years;
 - b) CJC budgets for 2012-2019;
 - c) CJC's full IRS returns, especially those for 2015 and 2016;
 - d) CLC's listings of staff salaries, bonuses, health-care benefits, pensions, and other benefits, including but not limited to all remunerations and benefits provided to Administrator Robert Tembeckjian, Judge Rolando Acosta, and Judge Angela Mazzarelli;



- e) A statement of expenses filed by CJC officers from January 1, 2012 until the present day;
 - f) CJC's itemization of billings and/or costs for each investigation undertaken;
 - g) A list of all other sources of income received by CJC, and its employees, apart from that received from NY State Legislature;
3. A copy of any whistleblower policy applicable to the CJC -- and any reports made about CJC under this policy over the last ten years;
 4. Records of lawsuits or misconduct complaints against the CJC, whether or not additionally naming the State of New York.
 5. An independently audited record of all complaints received to the CJC between 2007 to the present day, including but not limited to complaints received against New York Supreme Court Judge Matthew Cooper, and 1st Department Appellate Judges Rolando Acosta and Angela Mazzarrelì.

Please also provide us with accurate and truthful answers to the following questions:

1. Is it true that CJC Administrator and counsel Robert Tembeckjian is married to Barbara Ross, a former prominent New York court reporter for *The Daily News*?¹

2. Are you aware that Mr. Tembeckjian's wife, Barbara Ross, is the subject of a number of lawsuits, related to abuse of judicial power? Are you aware that Mr. Tembeckjian has attempted to intervene to obstruct justice, hamper and frustrate these lawsuits involving his wife? Are you further aware that one of these cases being considered by U.S. Southern District Judge Katharine Failla [Zappin v Cooper, No. 16 Civ. 5985 (KPF)] and specifically relates to judges under the CJC's watch (*e.g.*, Justice Matthew Cooper) improperly using Ms Ross and other reporters to deliberately leak sealed information to the media to broadcast stories dear to those judges hearts? The relationship that Mr Tembeckjian has with Ms Ross forms the basis for one of our complaints against Mr Tembeckjian. Given the need for the CJC to both be independent and to appear to be independent, why does Mr Tembeckjian continue to act as 'Administrator' and a leading investigator of the CJC while being implicated and implicitly condoning judicial misconduct?

3. Is it the policy of the CJC for its investigators to provide *ex parte* information to, and to communicate privately with the judges about whom it receives complaints? If so, at what stage of your inquiries, or investigations, do these conversations take place?

4. Did your Administrator Robert Tembeckjian send an *ex parte* letter, dated January 4, 2017, to Supreme Court Justice Matthew Cooper, imparting confidential information about an

¹ State court records confirm that they are indeed husband and wife. In 2007, Mr. Tembeckjian and Ms. Ross jointly sued an Uno's Pizza for loss of consortium after Ms. Ross claimed she fell on trash outside the restaurant. See Barbara Ross and Robert Tembeckjian v. Betty G. Reader Revocable Trust et al., Index No. 17038/2017 (Sup. Ct. Bronx Cnty.).



investigation into Justice Cooper, prompted by a complaint to the CJC by Anthony Zappin Esq?

5. Is the letter, dated January 4, 2017, and attached herein on page 10 as Exhibit A, a true and accurate copy of correspondence sent by your office?

6. If this letter is a true and accurate copy of this correspondence, then it comprises one item of evidence behind our official complaint about Mr Tembeckjian's conduct. Does the CJC condone his sending this letter? If the CJC does not condone this action, what action will you now take against Mr Tembeckjian?

7. What other communications has Mr Tembeckjian had with Justice Cooper or Assistant Attorney General Mr Berg over the last 12 months? And what other communications has Mr Tembeckjian had with other judges, or their counsel, related to complaints against them? Please provide copies of all email correspondence, and records of phone conversations, in any and all formats.

8. Are you aware that Justice Cooper sought to use the January 4, 2017 letter from Mr Tembeckjian as evidence in his favor in litigation before Federal Court Justice Failla? If not, you might want to read the papers submitted on January 19, 2017 to Justice Failla by Justice Cooper's counsel, Assistant Attorney General Michael A. Berg (attached here as Exhibit B, pp. 6-7). Given that Mr Tembeckjian has made himself a party to this matter, with clear bias in favor of Justice Cooper, we affirm – and complain – that he is acting with a clear, personal vested interest . Does this not make his position at the CJC untenable?

9. Why did you, as the Chair of the CJC, decide that it was right and proper for Mr Tembeckjian to handle the complaint made by Mr Zappin against Justice Cooper, when Mr Tembeckjian's wife is cited in that case involving Justice Cooper's misconduct of leaking sealed information and soliciting media attention to his cases through Ms. Ross that Mr Tembeckjian's household was directly profiting off of?

10. Is your office aware of Attorney Rule of Professional Responsibility 1.7, which states: *"A lawyer shall not represent a client if a reasonable lawyer would conclude ...that there is a significant risk that the lawyer's professional judgment on behalf of the client will be adversely affected by the lawyer's own financial, business, property or other interests."* <http://www.nycourts.gov/rules/jointappellate/ny-rules-prof-conduct-1200.pdf> If your office is aware of this rule, do you expect your officers to comply with this rule as they carry out their duties for the CJC?

11. Does the CJC consider that Mr Tembeckjian complied with this rule both when he decided to take on the Zappin complaint, and when he sent the January 4th letter to Judge Cooper?

12. Is the CJC aware of judicial canon, Section 100.2 (A): *"A judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."* Does the CJC also seek to follow this canon?

13. According an internal source at the CJC: *"It's the pattern and practice within the CJC*



that our investigators first ask those judges by quiet telephone calls: ‘How would you like me to get rid of these complaints’. They then seek the judge’s permission and approval for ‘getting rid’ of those complaints.’” Is this how things work at the CJC, under Mr Tembeckjian’s ‘administration’?

14. Let us now move on to our complaint and inquiries into Justice Acosta. In the court papers filed by Mr Zappin to US District Judge Failla on June 14, 2017, he affirms:

Justice Rolando Acosta is a member of the Judicial Commission and reviews all complaints as required by law. This means that Justice Acosta was necessarily wearing two hats with respect to Zappin v. Comfort – he was deciding my complaint against Justice Cooper filed in the Judicial Commission at the same time he was presiding on the panel in the Appellate Division ruling on the propriety of the Sanctions Decision. This, in and of itself, is a conflict of interest, as a decision in one case would no doubt affect the outcome in the other regardless of the merits. However, the conflict of interest is exacerbated by the fact that the allegations in the Judicial Commission complaint against Justice Cooper and Mr. Tembeckjian’s wife, if true, could fundamentally compromise the Judicial Commission itself. Put simply, Justice Acosta had no business sitting on any panel involving Zappin v. Comfort in the Appellate Division while simultaneously ruling on, reviewing and/or investigating my Judicial Commission complaint against Justice Cooper that implicated Mr. Tembeckjian’s wife. [Exhibit B: p.3]

Does the CJC have any comment on these factual allegations?

15. According to your own 2017 annual report, “[Rolando Acosta] presently serves as an Associate Justice of the Appellate Division, First Department, having been appointed in January 2008.” Is it true that Rolando Acosta is both a judge on the bench of the 1st Department Appellate division AND, until June 30 2017, served as an acting member of the CJC?

16. Is it also the case that Angela M. Mazzarelli, who took over Mr Acosta’s position on the CJC on July 1, 2017, is also still working as a judge on the bench of the 1st Department Appellate Division?

17. If this is the case, we officially complain about this conflict of interest. How can Justices Acosta and Mazzarelli investigate and review complaints against judicial officers while presiding on appeals that involve the very same issues, parties and questions of judicial misconduct? Is this not willfully prejudicial to the parties, unfair and a conflict of interest?

18. Given that the CJC’s constitutionally bound obligation is to act as an independent overseer of New York’s unfit judges, we consider that Mr Acosta and Ms Mazzarelli’s wearing of both hats constitutes a conflict of interest, which leads to rigged outcomes to investigations. We are now filing an official complaint about this. Will you investigate this facially meritorious complaint?

19. The CJC's annual reports explicitly instruct: “All judges are required by the Rules of Judicial Conduct to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned.” In addition, the Code of



Ethics for Members of the New York State Commission on Judicial Conduct, Rule 2 states: "*Rule with respect to conflicts of interest. No member of the Commission should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties in the public interest.*"; Rule 3: "*Standards. . . A member of the Commission should endeavor to pursue a course of conduct which will not raise suspicion among the public that s/tre is likely to be engaged in acts that are in violation of his/her trust.*" Given these very clear guidelines, why was it permissible for Mr. Acosta to investigate/review Mr. Zappin's CJC complaint against Justice Cooper while at the same time that he was sitting on a panel as presiding justices in an appeal from *Zappin v. Comfort* that involved questions of Justice Cooper's misconduct on the bench?

20. And why is Justice Mazzarelli now reviewing complaints by Mr Zappin when she sits on the Appellate Division panel reviewing his appeal in the Zappin v Comfort case?

21. Has this situation where Justices Acosta and Mazzarelli are wearing "two hats" ever happened before?

22. Was it proper for Justices Acosta and Mazzarelli to not disclose this conflict to either the CJC or the Appellate Division? Given both judges' apparent failure to disclose this conflict, will you now ask that Justice Mazzarelli resign from the CJC?

23. According to the CJC's annual reports, and [according to your recent press release](#), Justice Acosta was appointed to the CJC by former Chief Judge Jonathan Lippman in 2010? What relationship did Acosta have with Lippman at that point? And what relationship do they have now? Please include in this audit a list of all personal and familial ties between them; all business and financial ties; and shared memberships of bar associations, private member clubs and sporting associations, and any and all quid pro quo arrangements.

24. [According to your recent press release](#), Justice Mazzarelli was appointed to the CJC by Chief Judge Janet DiFiore on March 31, 2017? What relationship did Mazzarelli have with DiFiore at that point? And what relationship do they have now? Please include in this audit a list of all personal and familial ties between them; all business and financial ties; and shared memberships of bar associations, private member clubs and sporting associations, and any and all quid pro quo arrangements.

25. Your annual reports do not state who appointed Mr Tembeckjian to the CJC. Please advise who that was? Please also advise what relationship Mr Tembeckjian had to that individual, or number of individuals, both at the time of his appointment, and today? Please include in this audit a list of all personal and familial ties between them; all business and financial ties; and shared memberships of bar associations, private member clubs, sporting associations, and any and all quid pro quo arrangements.

26. Has Mr Tembeckjian, Mr Acosta, Ms Mazzarelli or any other members of the CJC received any financial payments, gifts, meals, golf-course/private member club access, or other non-



monetary benefits from New York judges about whom the CJC has received any complaint in the last ten years? If the answer is no, will you request that Mr Tembeckjian, Ms Mazzarelli and Mr Acosta provide a sworn affidavit to that effect?

27. Our research team has investigated, reviewed and analyzed your recent reports, including [this one](#). It claims that you received 1,944 complaints about the conduct of NY judges over the course of 2016, of which you made “preliminary enquiries” into 420 cases, and actually investigated only 177 cases. Is this correct? If so, you investigated only 9% of the complaints which you received, correct? Why did you investigate so few complaints? What basis do you have for dismissing facially meritorious complaints without investigation?

28. Please describe the specific steps taken for “preliminary enquiries”? Please describe specific steps taken for the investigative process? Please identify the percentage of complaints in where you actually meet with the complainant, review the evidence of the complainant and rebut the complainant’s evidence? Please provide in specific detail if you allow the complainant the right to supplement, amend, revise and rebut your investigative findings.

29. Please provide specific instances in where you investigated any judges who engaged in destruction, deleting, altering and recreating evidence and the filing of false instruments.

30. Please provide a specific detailed and comprehensive list of judges who remain under either civil or criminal investigations in either state or federal court, in the past 10 years?

31. Has the CJC ever investigated any NY State or City Judges who retaliated against any litigants and or lawyers who reported these judges to the CJC, city and state law enforcement agencies, or to the federal government and the national media news organizations? If so, how many in the last 10 years and what actions did the CJC take against them?

32. On the basis of numerous interviews conducted by our office, there is widespread public concern that the CJC only serves fellow members of the American Bar Association and/or of the New York Bar Association. Of the 177 complaints that the CJC actually investigated in 2016, how many of these complaints came from private citizens, or pro se litigants, who were non-attorneys?

33. Your report states that “*19 complaints involving 13 different judges resulted in formal charges being authorized.*” Please provide further information, including the names of these judges, the nature of the charges against them, and the current enforcement status of these charges?

34. Your report states that in 2016, your office received 192 complaints about family court judges (all of whom are also lawyers). Is this correct? Your report also states that of the 192 complaints into family court judge conduct, you only investigated nine complaints. Is this correct? If so, why did you investigate so few complaints?

35. Your annual report states that of the nine complaints investigated in family court, the only action you took was to formally caution three judges. Is this correct? If so, please give further information on these three cases, including the name of the judge, the nature of the misconduct, and the exact wording of your “caution”?



36. Based on our research, the CJC has never publicly disciplined either a Family Court or Matrimonial Judge for conduct related to a family law or matrimonial matter. Is this correct? If so, this seems to be an anomaly when compared to public discipline of judges handling other matters. How does the CJC explain this?

37. The independent watchdog, the Center for Judicial Accountability, recently stated that “the Commission is a corrupt facade, tossing out the most serious and fully-documented of facially meritorious complaints that are the Commission's duty to investigate.” Do you have a comment on this?

38. Does the CJC, or its members, benefit in any way from federal funds, including those stemming from Title IV-D programs under the Social Security Act? Please itemize such federal benefits, whether they be direct or indirect.

39. According to a leading NY attorney with thirty years experience, when interviewed about whether the CJC operated with effectiveness and integrity: “*We're dealing with a vertical integration. No Supreme or Family Court judge will ever be found engaged in misconduct by the CJC because these judges bring in all the federal money for child-centered litigation in New York. The CJC will not bite the hand that tills all that soil.*” Do you have any comment on this?

40. Justice David Saxe, a former colleague of Justice Acosta in the 1st Department Appellate Division, [recently told the NY Post](#): “*Our state court system in New York is absolutely insane. It has enabled political people to control the courts, and they don't want to give it up — so it's very hard to get legitimate change that would be beneficial to the public.*” Is this not a damning indictment of the CJC's record in overseeing a just, impartial and independent court system, free from political interference? What is your view on Justice Saxe's assessment?

41. Of all the investigators on the CJC, are any of them non-lawyers? If so, how many, and what is their professional background?

42. Given the immense power of the American Bar Association, and of the New York Bar Association, how can the CJC be considered to be “independent” or offer real oversight if none, or very few, of its investigators are drawn from outside the ABA or NY Bar Association?

43. Would you consider recommending to the Chief Judge, the Governor and the Legislature that they appoint non-lawyer investigators for the CJC, such as journalists, accountants, paralegals, or academics? If no, why not?

44. Mr Tembeckjian and other members of your office have repeatedly complained that the CJC does not receive enough money from New York's taxpayers. Do you believe that insufficient funding has impaired the CJC's ability to investigate the increasing numbers of complaints into New York's judges?

45. *Quis custodiet ipsos custodes?* To whom do you consider the CJC to be accountable, in terms of evidence of fraud, waste and abuse by its officers?



46. To whom should private citizens send evidence of kickbacks and other corruption committed by your officers? Is your own office willing and able to handle this? And what sanction could you apply if you find that one of your staff has indeed received financial or other benefits from judges s/he was assigned to investigate?

Pursuant to §124.6 of the Chief Administrator’s Rules and Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request. I would appreciate if you e-mailed it to me at sdoggart@fclu.org I would also greatly appreciate if you would furnish me the requested records electronically, as PDF documents. In the event they are not available in this fashion, I request the opportunity to inspect and copy said records.

Thank you for your anticipated co-operation, for your full consideration of all these questions, and for your constitutionally required action in providing answers to these questions and to investigating this serious and time-sensitive complaint.

Yours very truly

A handwritten signature in black ink, appearing to read 'S. Doggart', is positioned below the closing text. The signature is fluid and somewhat stylized.

Sebastian Doggart
President, New York Families Civil Liberties Union

cc: Chief Judge Janet DiFiore
cc: Governor Andrew M. Cuomo
cc. Helene Weinstein, chair, Standing Committee on Judiciary, NY State Assembly

EXHIBIT A:

