Judith Herskowitz
P.O. Box 403543
Miami Beach, Fl. 33140
Tel: (305) 534-7600

March 5, 2006

Statement of Judith Herskowitz for Presentation at the Public Hearing of the Senate Standing Committee Considering the Nomination of Honorable Judith S. Kaye as Chief Judge of the Court of Appeals on Tuesday March 6, 2007 in Albany New York

I have traveled a long distance from my home in Florida to this Public Hearing, because of my deep concern over the confirmation of Chief Judge Judith Kaye. My presentation to this Committee is based on research, on first hand knowledge of the issues and I also have a law degree.

Pursuant to the New York Constitution Article VI, Section 28, the Chief Judge of the Court of Appeals is not only the Chief Judge of New York's highest state court, but is also the chief judicial officer of the unified court system and sits in administrative supervision of the New York court system. The judiciary has been plagued for years with scandals that was widely covered by the media. Chief Judge Kaye portrays herself to the public as a reformer who fills a leadership role in ensuring judicial integrity and who sets up various committees, offices and entities within the Office of Court Administration to maintain public trust and confidence in the legal system. In 1993 Judge Kaye created the Committee on the Profession and the Court, in November 1998, Judge Kaye set up the Committee to Promote Public Trust and Confidence in the Legal System, in January 2000, following extensive media coverage of allegations of political influence in fiduciary appointments, Chief Judge Kaye announced in her State of the Judiciary Address, the creation of a Commission on Fiduciary Appointments and the office of Special Inspector General for Fiduciary Appointments.

Chief Judge Kaye now seeks reappointment to give her an opportunity to spend her last two years on the bench fighting to improve the public's confidence in the judiciary, by changing the system of elections, by creating a new family law center in New York City to make divorce faster and cheaper. At times these Committees hold public hearings around New York State. They allow people frustrated with the judicial system to let off steam only to come to the rude awakening that nothing has changed. It is business as usual. In fact these Committees, stacked with lawyers and judges, to protect their own self interest, and a coverup for inertia.

In 1998 Chief Judge Kaye decided to deliver in person her State of the Judiciary Address instead of submitting a mere written report, which was the prior practice, to make sure that it would be heard and announced that:

> My intention today is to highlight four themes that reflect the goals of the New York State Unified Court System: first, fair and effective case resolution, always our topmost priority; second, modern efficiency in every area of operations; third, collaboration and innovation to promote those objectives; and finally, assuring always that we maintain public trust and confidence, which are essential to everything we do". (page 1) (Emphasis added)

Ex G-11

This rhetoric of public trust and confidence is a major theme of Chief Judge Kaye. In response to public criticism of fiduciary appointments Chief Judge Kaye again asserted in her Judiciary Message of 2000 that

> "public confidence in the courts is put at risk when judicial appointments are based on considerations other than merit. Simply put, the public must have faith that the courts operate free of favoritism and partiality".

Thereupon Chief Judge Kaye directed the establishment, of

> "an office of the Special Inspector General for Fiduciary Appointments in the Unified Court System to monitor and enforce existing court rules governing judicial appointments. These rules cover appointments of guardians, guardians ad litem, receivers, referees and others that assist in resolving cases before the court.... The new Inspector General will, on an ongoing Statewide basis, examine whether the existing rules are being followed, and will work closely with the Commission on Judicial Conduct, the attorney disciplinary committees of the Appellate Divisions and other appropriate authorities as necessary, to ensure compliance"

> "An independent Judiciary depends on public trust in the integrity of the judicial process. Partiality and favoritism destroy that trust. As Chief Judge, I will not allow that to happen."

In her subsequent State of the Judiciary address of 2001 (page 15) Chief Judge Kaye took note of the public's mistrust of the courts, but brushed it aside by concluding that it is "in part rooted in a lack of accurate knowledge about the real-life role and function of the justice system in this great democracy" and laid the fault on the judiciary "for having remained inattentive to the need to educate the public about what we do". But then Chief Judge Kaye had to admit that "public cynicism about us doesn't rest solely on a lack of knowledge about us. It also rests in part on some things the public does know about us that generate concern regarding integrity and impartiality".

In her State of the Judiciary address of 2002, Chief Judge Kaye conceded (on page 20) that fiduciary "abuses hurt people and they damage public confidence in the courts". In her 2004 State of Judiciary address Chief Judge Kaye concluded (page 21) that the reforms on the "stringent new rules" are succeeding. However, there is no report published by the Office of Special Inspector General for Fiduciary Appointments on the disposition of complaints on fiduciaries. In March 2002 the Unified Court System's three investigative offices, The Office of Inspector General, the Office of Special Inspector General for Fiduciary Appointments and the Office of the Special Inspector General for Bias Matters - were consolidated into one office under the Office of Inspector General. The disposition of complaints is reported only as workload analysis for budget requests, without distinguishing the complaints as to the individual investigative office, and there is no reference to any complaints against fiduciaries. Even this could be obtained only upon request under FOIL (Freedom of Information Law).

My experience was likewise that the Inspector General does not pursue the complaints against fiduciaries, and I was told the same by many other complaining individuals. This is harmful to the public. So, where is the reform?

I made an extensive complaint to the Office of the Special Inspector General for Fiduciary Appointments by letter dated August 26, 2003, which I followed with three further letters. It was almost two years later in April 2005 that I received a response, a mere form letter, stating that upon review of my complaint "this office has determined that no administrative action is warranted in this matter". I was further advised that the Office of Inspector General does not resolve legal disputes between the parties, and it cannot advise on the merits of an appeal, when I made no such requests.

I submitted three additional letters to the Inspector General with further evidence to which I have received no response. I then turned to Chief Judge Kaye in her administrative capacity in letters dated January 17, and January 22, 2007 informing her of this, and requested that the manner in which the complaint was handled by the Office of Inspector General be investigated. I received a letter dated February 2, 2007 in response, which simply repeated the disposition by the Inspector General without any statement that it was correct. My request was rejected on the totally unrelated basis that I was seeking remedy from Chief Judge Kaye in her appellate capacity, when I was seeking oversight from Chief Judge Kaye in her administrative capacity. I was also advised that "the remedy for a litigant who believes that a judge's decision is in error is an appropriate motion" to the judge in the case, which I did make with a request for the required evidentiary hearing under B.C.L. 1216(c) (that has never been set) and that motion is languishing in court.

I have also filed numerous complaints for years, with the Commission on Judicial Conduct more recently from February 14, 2005 to September 20, 2006 all of which were summarily dismissed with the usual form letter, and is another hoax.

So, that the public of which I am a member is given an education, that all this promotion of Public Trust and Confidence in the Legal System by Chief Judge Kaye is misleading rhetoric, to cover up that the legal system operates above and beyond the law. What has been demonstrated is that a receivership is big business a form of a fund raiser, a legalized means of confiscation of property and assets and it is hands off.

I have been a bona fide resident of the State of Florida since 1975 and no long arm jurisdiction was ever established over me by the New York court, to pursue any lawsuit against me. The case was based on falsified facts to appropriate a 54 unit apartment building on 92nd Street and Riverside Drive in New York City, while my late father who purchased that property, was still alive, who gave me a remainder interest in corporate shares. The property owned by North Jersey Trading Corporation, a New Jersey Corporation was driven into foreclosure and then into bankruptcy, by that litigation. In the year of 2000 the approximate sum of $700,000.00 was transferred from the New Jersey Bankruptcy Court to a New York attorney Paul Windels III, on pretext that it would be distributed to the shareholders of North Jersey, of which I am a majority shareholder. This was the surplus from the bankruptcy sale of the real property that remained after payment of all claims and

administrative expenses and was *free* and *clear* of all claims of creditors. Instead of distributing those funds to the shareholders, Mr. Windels entered into a private out-of-court deal with plaintiff and five of her lawyers, to divide the entire surplus among themselves, defrauding me of those funds. When I objected to the payments made by Mr. Windels with an ex parte court approval, a coverup was fabricated with a receivership under Article 12 N.Y. Business Corporation Law.

Upon the refusal of the Inspector General to act on my complaints, Mr. Windels proceeded even more brazenly in disregard of the law. In his alleged final accounting filed in September 2005 the recipients of that surplus were referred to for the first time as "creditors", *after* they were paid. This was also without presenting their claim to a receiver in the New York case, as required by law to qualify as "creditors". Also payments were made to three attorneys out of state, for which the New York court had absolutely no extraterritorial jurisdiction. No forms had been filed by Mr. Windels as required under §36.3(a) of the Rules of the Chief Judge. There is no notice of appointment filed by Mr. Windels pursuant to §36.4, as shown by the attached printout from the Office of Court Administration. This failure to file the required forms is in flagrant violation of these rules which the Office of Inspector was duty bound to investigate and to act upon. There is also no compliance with §36.3(b) 'the substantive issues pertaining to each category of appointment-including applicable law, procedures and ethics". Mr. Windels made his assertion that he *is* the corporate receiver for the first time in 2003. This is a factual and a legal impossibility. The sole corporate asset, a 54 unit apartment building was under control of a foreclosure receiver since 1991, after that it came under control of the New Jersey Bankruptcy trustee who sold the real property in 1994, and retained control and possession of the proceeds of the sale. Article 12 B.C.L. makes no provision for a receiver of the corporation, but makes clear under §1202 that it an appointment of a receiver of the property, which must be within the state and is strictly in rem. Mr. Windels engaged in retroactive publications of his "appointment" and notice to creditors, with false claims that he *is* "receiver of North Jersey". It is undisputed that Mr. Windels had never taken an oath and never posted a bond under Article 12 B.C.L. to serve as receiver of the property of North Jersey. Even assuming that false receivership, no proofs of creditors and no objections were heard by the court as required by setting an evidentiary hearing under B.C.L. 1216(c).

The foregoing represents a matter of great public importance for one cannot conduct business, have an interest in property or own any assets in the State of New York, where it can be confiscated and misappropriated by the stroke of the pen, without a day in court, with no evidence allowed to prove the false claims, in total disregard of the law, and where the Office of Inspector General and the Commission on Judicial Conduct rejects complaints founded upon well supported competent admissible evidence, all of which had been called to the attention of Chief Judge Kaye. In conclusion, public trust is something that has to be earned, and cannot be thrust on the public by setting up committees, commissions and reforms founded on mere rhetoric. Further information can be found at www.judicialaccountability.org and with documents scanned in at http://www.judicialaccountability.org/judgesherrykleinheitler.htm

INDEX TO EXHIBITS

Number