CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

BY EXPRESS MAIL

December 3, 2024

Clerk Heather Davis
New York Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

RE: APL-2024-000150 – *Center for Judicial Accountability, et al. v. JCOPE, et al.*
Appeal of Right: NYS Constitution Article VI, §3(b)(1); CPLR §5601(b)(1)

Dear Clerk Davis:

This is to request that you withdraw your November 6, 2024 letter and restore the above appeal of right to its "normal course' – and, absent same, that you disclose facts bearing on your fairness and impartiality.

According to the Court's "Civil Jurisdiction and Practice Outline" (at p. 8) and 2023 Annual Report, it is you who, "Under the authority of Rule 500.10" and "Pursuant to Rule 500.10", "examines all filed preliminary appeal statements for issues related to subject matter jurisdiction".

Rule 500.10, "Examination of Subject Matter Jurisdiction", reads, by its ¶a:

> "On its own motion, the Court may examine its subject matter jurisdiction over an appeal based on the papers submitted in accordance with section 500.9 of this Part. The Clerk of the Court shall notify all parties by letter (Jurisdictional Inquiry) when an appeal has been selected for examination pursuant to this section, stating the jurisdictional concerns identified in reviewing the preliminary appeal statement and setting a due date for filing and service of comments in letter form (Jurisdictional Response) from all parties. Such examination shall result in dismissal or transfer of the appeal by the Court or in notification to the parties that the appeal shall proceed either under the review process described in section 500.11 of this Part or in the normal course, with or without oral argument. This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns at any time. (underlining added).

The referred-to "normal course" of the appeal, interrupted by Rule 500.10, is set forth by Rule 500.12 "Filing of Record Material and Briefs in Normal Course Appeals". In pertinent part, its ¶a reads:

> " Scheduling letter. Generally, in an appeal tracked for normal course treatment, the Clerk of the Court issues a scheduling letter after the filing of the preliminary appeal statement…. The scheduling letter sets the filing dates for record material and briefs." (underlining added).

Your November 6, 2024 letter, which you signed as Deputy Clerk, does not reveal that it is you who removed appellants' appeal from its "normal course" – and gives the impression that the preliminary appeal statement was yet to be examined. Thus, your first paragraph states:

> "The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether (1) the order appealed from finally determines the proceeding within the meaning of the Constitution and (2) whether a substantial constitutional question is directly involved to support an appeal as of right. This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns in the future."

Certainly, your letter does NOT say – as Rule 500.10 requires – that upon "reviewing the preliminary appeal statement" you "identified" the two jurisdictional questions that you purport exist. This is not surprising, as there is NO basis for either jurisdictional question – and examination of appellants' preliminary appeal statement reveals this readily:

- As to #1: "whether [] the order appealed from finally determines the proceeding within the meaning of the Constitution", how is this an issue? The Appellate Division, Third Department decided appellants' appeals by a June 20, 2024 Memorandum and Order and then, by an October 10, 2024 Decision and Order on Motion, denied a post-appeal motion for relief including leave to appeal to this Court – and this is identified and substantiated by appellants' Preliminary Appeal Statement;

- As to #2: "whether a substantial constitutional question is directly involved to support an appeal of right", how is this an issue? Appellants' Preliminary Appeal Statement identifies and substantiates a succession of "substantial constitutional question(s)…directly involved" ALL arising from a threshold constitutionally-packed first, under a "POINT I" heading, as follows:

> > "The appealed-from September 10, 2024 Decision and Order on Motion and June 20, 2024 Memorandum and Order are 'so totally devoid of evidentiary support as to render [them] 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',[fn1] manifesting the pervasive actual bias of the judges below who concealed their financial and other interests and that they were divested of jurisdiction by reason thereof pursuant to Judiciary Law §14, precluding invocation of the judge-made 'rule of necessity', which, moreover, was inapplicable because of the existence of a federal forum pursuant to Article IV, §4 of the United States Constitution 'The United States shall guarantee to every State in the Union a Republican Form of Government'.
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> A. The appealed-from September 10, 2024 Decision and Order on Motion (NYSCEF #62), denying petitioners' July 4, 2024 motion for reargument, leave to appeal, vacatur for lack of jurisdiction and 'fraud, misrepresentation, or other misconduct of an adverse party', and transfer to federal court or certification of the question (NYSCEF #52), is without decision, without facts, and without law – because no decision, facts and law can justify it;
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> B. The appealed-from June 20, 2024 Memorandum and Order (NYSCEF #51) 'falsify[ies] the record, *in toto*, and upend[s] ALL ethical, adjudicative, and evidentiary standards' – and was so-demonstrated by appellants' July 4, 2024 motion whose Exhibit A (NYSCEF #54) was their 'legal autopsy'/analysis of it."

The annotating footnote 1 reads:

> "Such entitles appellants to an appeal of right, *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1923): 'Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right.' (at p. 132)."

This is followed by POINT II:

> "Appellants' have a *prima facie* entitlement to summary judgment on each of their ten causes of action of their June 6, 2022 verified petition/complaint (S.Ct/NYSCEF #1) and September 1, 2022 verified amendment (S.Ct/NYSCEF #84) – five of which, *on their face*, identify the unconstitutionality for which they sought declarations – which is why the appealed-from June 20, 2024 Memorandum and Order makes no declarations and conceals that appellants sought summary judgment in Supreme Court and on appeal. These five causes of action are:

THE SIXTH CAUSE OF ACTION (¶¶78-85)

'Declaring Unconstitutional, Unlawful, and Void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022' – Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw';

THE SEVENTH CAUSE OF ACTION (¶¶86-90)

'Declaring Unconstitutional, Unlawful, and Void the FY2022-23 State Budget, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw';

THE EIGHTH CAUSE OF ACTION (¶¶91-96)

'Declaring Unconstitutional, Unlawful, Larcenous, and Void Legislative/Judiciary Budget Bill S.8001-A/A.9001-A, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, and Legislative Rules, and Caselaw';

THE NINTH CAUSE OF ACTION (¶¶97-105)

'Declaring Unconstitutional, Larcenous, and Void the FY2022-23 Appropriations for the New York State Commission on Judicial Conduct, the New York State Inspector General, the Appellate Division Attorney Grievance Committees, and the Unified Court System's Inspector General – Based on the Evidence of their Flagrant Corruption in Handling Complaints, Furnished by Petitioners at the Legislature's January 25, 2022 'Public Protection' Budget Hearing and Again by their March 25, 2022 E-Mail';

TENTH CAUSE OF ACTION (¶¶106-114)

'Declaring Unconstitutional, *as Written* and *as Applied*, Public Officers Law §108.2(b), Flagrantly Violating Article III, §10 of the New York State Constitution and Legislative Rules Consistent Therewith by Exempting the Legislature from the Open Meetings Law to Enable it to Discuss 'Public Business' in Closed-Door Party Conferences – Rather than Openly in Committees and on the Senate and Assembly Floor'".

And here is POINT III:

> "Appellants' entitlement to summary judgment on their sixth cause of action for a declaration that 'the ethics commission reform act of 2022' is unconstitutional, *by its enactment*, moots the constitutional challenge to the statute, *as written* – the sole issue before the Court in *Cuomo v. COELIG* (APL-2024-00076) – absent invocation of exceptions to mootness – which is why the Appellate Division denied, without decision, facts, or law, appellants' unopposed January 12, 2024 motions in *CJA v. JCOPE, et al.* (NYSCEF #26) and in *Cuomo v. COELIG* (CV-23-1778/NYSCEF #31) for the appeals to be heard together and to prevent fraud – and then denied, without decision, facts, or law, appellants' July 4, 2024 motion for leave to appeal whose three specifically requested certified questions were (NYSCEF #52):
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> - 'Whether, *as a matter of law*, appellants were entitled to summary judgment on their verified petition's sixth cause of action to void the 'ethics commission reform act of 2022' as 'enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw'?';
>
> - 'Whether, *as a matter of law*, this sixth cause of action moots *Cuomo v. COELIG*, absent invocation of exceptions to mootness?'; and
>
> - 'Whether, *as a matter of law*, the Court 'err[ed]' by its two February 1, 2024 orders herein and in *Cuomo v. COELIG*, denying, without decision, without facts, and without law, appellants' unopposed January 12, 2024 motions to have the appeals heard together and to prevent fraud?'"

Faced with these POINTS I, II, and III and appellants' accompanying "legal autopsy"/analysis of the Appellate Division, Third Department's decisions – and the full record of the case, accessible to you via NYSCEF and via live hyperlinks – no fair and impartial Clerk could do other than issue a "scheduling letter" "set[ting] the filing dates for record material and briefs" pursuant to Rule 500.12, so that the appeal could proceed "in the normal course".

Do you disagree? And, if so, is it your contention that POINTS I, II, and III do NOT present "substantial constitutional question(s)…directly involved" – as they obviously do.

Moreover, Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1), do NOT require "a substantial constitutional question…directly involved". Rather, they confer an appeal of right in civil cases and proceedings:

> "from a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States…"

Both appellants' notice of appeal and preliminary appeal statement cited, in support of the appeal of right, Article VI, §3(b)(1) and CPLR §5601(b)(1). Is there some reason your November 6, 2024 letter refers to neither of them?

As you know, we have "been around this block before" – six years ago, in *CJA v. Cuomo…DiFiore*, the citizen-taxpayer action to which this is a "continuation". There, in face of a comparably overwhelming February 26, 2019 preliminary appeal statement in support of an appeal of right pursuant to Article VI, §3(b)(1) and CPLR §5601(b)(1), substantiated by an already-transmitted hard copy of the Appellate Division, Third Department record, you sent me a comparable March 4, 2019 letter.

I responded by a March 26, 2019 letter (AD3-NYSCEF #59), with an accompanying analysis of the Appellate Division, Third Department's appealed-from December 27, 2018 Memorandum and Order (AD3-NYSCEF #20), each annexing further evidentiary substantiation, including my fourth and final motion before the Appellate Division, Third Department: an OSC signed on December 3, 2018 by Associate Justice Christine Clark, a member of the appellate panel (AD3-NYSCEF #21).

To this overwhelming showing that *CJA v. Cuomo…DiFiore* had an absolute entitlement to an appeal of right, there was no responsive order from the Court. Rather, there was a May 2, 2019 order, not signed by any judge, but by you, simply regurgitating, as grounds for dismissing the appeal of right, the scant boilerplate of your March 4, 2019 letter, as if it had not already been rebutted.

The fraud and unconstitutionality of this May 2, 2019 order – which, if rendered by the Court's judges – was inexplicable except as a manifestation of their actual bias arising from HUGE financial and other interests that divested them of jurisdiction pursuant to Judiciary Law 14 and the Court's own interpretive caselaw – was the subject of an overwhelming May 31, 2019 motion. This was followed by an equally overwhelming June 6, 2019 motion for leave to appeal and equally overwhelming August 8, 2019 motion for sanctions and disqualification of the attorney general.

All three motions, fully documented by law and evidentiarily-proven fact – were denied on the same day and in the same fashion: three October 24, 2019 orders, not signed by any judge, but by you, each completely non-responsive and boilerplate.

This culminated in a final fourth motion to the Court – a November 25, 2019 motion, whose notice of motion encompassed the other three and the four orders signed by you, as follows:

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.

In support of the sixth branch of relief, and under the title heading:

"A. Unless Court Clerk John Asiello was disabled by disqualification, the Court's October 24, 2019 Orders and May 2, 2019 Order are not lawfully signed, pursuant to CPLR §2219(b) and defendant-respondent Chief Judge DiFiore's own January 26, 2016 authorization."

my November 25, 2019 moving affidavit stated (at pp. 12-13),

"All four of the Court's Orders herein are not signed by any judge or by Court Clerk Asiello, but by Deputy Clerk Heather Davis. Clerk Asiello also functions as the Court's legal counsel and I have sent him two FOIL/records request letters inquiring on the subject. The first, dated November 1, 2019 (Exhibit C-1) was disingenuously responded-to by Deputy Clerk Davis (Exhibit C-2). The second, dated November 13, 2019 (Exhibit D), was my reply thereto and asked for expedition by reason of this motion.

On Friday, November 22, 2019, Motion Clerk Rachel MacVean informed me that no response to my November 13, 2019 letter had yet gone out, further stating that she could not orally tell me whether Clerk Asiello had disqualified himself, as she is not privy to the letter that will be sent.

Upon receipt of such letter, I will advise the Court as to this issue, potentially constituting another respect in which the October 24, 2019 and May 2, 2019 Orders

are unlawful and cannot be defended." (hyperlinking added).

I did so-advise, by a January 9, 2020 letter, my last submission in support of the motion – and before the Court in *CJA v. Cuomo…DiFiore*. I stated (at pp. 2-3):

> "It is still not known whether the Court's three October 24, 2019 Orders and May 2, 2019 Order herein were lawfully signed by Deputy Clerk Heather Davis, as you have inexplicably NOT responded to my November 1, 2019 and November 13, 2019 letters on the subject.[1] Instead, Ms. Davis has responded to both letters, failing to even identify the questions she is not answering, *to wit*, whether you had disqualified yourself, the reason for your doing so, any records pertinent thereto, and "a copy of the Court's rules, regulations, and procedures governing disqualification of its staff for financial and other interests, relationships, and other bias". Ms. Davis' response to my November 13, 2019 letter, which was dated November 20, 2019, but mailed in an envelope with a November 25, 2019 postmark, is annexed hereto (Exhibit A).
>
> As the answer to whether you disqualified yourself is known to you and Ms. Davis – and there is nothing confidential about such information – your failure and hers to state that you disqualified yourself means there is NO evidence that she could lawfully sign the October 24, 2019 and May 2, 2019 Orders. The *prima facie* evidence establishes that you were not absent or physically disabled on those dates, having signed all the Court's other October 24, 2019 and May 2, 2019 orders in other cases. Nor was there any "necessity" for Ms. Davis to have signed the Orders as, pursuant to CPLR §2219(b),[2] the duty to sign belongs, in the first instance, to the appellate judges. In other words, six associate judges could have signed each of the Court's four Orders they are purported to have rendered unanimously.
>
> Consequently, if, in fact, the six associate judges did render the four Orders herein – and there is NO proof that they did – then one of the six associate judges must sign them pursuant to CPLR §2219(b), unless they are to be vacated. As Senior Associate Judge Rivera's name is at the top of all four Orders, it would be logical for her to sign them, except that her proscribed financial interests are the largest, having a

[1] The four Orders are annexed as Exhibits A-1, A-2, A-3, and B-1 to my November 25, 2019 moving affidavit. My November 1, 2019 and November 13, 2019 letters are Exhibits C-1 and D.

[2] CPLR §2219(b), entitled "Signature on appellate court order", reads, in full:

> "An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk."

> claw-back liability of about $400,000, in addition to the $82,2000 annual salary interest she shares with her fellow associate judges. (hyperlinking added).

Affidavit of service

Thank you.

Elena Ruth Sassower, unrepresented plaintiff-appellant, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York
& the Public Interest

Enclosures

cc: Solicitor General Barbara Underwood
ATT: Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie