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BY E-MAIL

June 16, 2017

TO: New York State Commission on Judicial Conduct

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

RE: Conflict-of-interest/corruption complaint against Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman for willfully violating judicial disclosure/disqualification rules in order to "throw" a citizen-taxpayer action in which she is financially interested & has personal and professional relationships with defendants – *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #5122-2016)

This follows up my conversation with Administrator Robert Tembeckjian, in Albany, on January 31, 2017, immediately following his testimony before the Legislature at its budget hearing on "public protection". As he has for many years, Administrator Tembeckjian made an impassioned plea for more money for the Commission. I told him that notwithstanding the evidence establishing that the Commission is a corrupt façade, tossing out the most serious and fully-documented of facially-meritorious complaints that are the Commission's duty to investigate, I nonetheless supported his request, as without requisite funding the Commission could not be anything but a façade.

I also told him that I would be testifying at that day's hearing[1] – and that I had already testified at the

[1] My intended testimony included a recommendation for increased Commission funding – and I may have mentioned this to Administrator Tembeckjian. However, the chairs of the Senate and Assembly fiscal committees cut off my testimony after the allotted ten minutes, not permitting me to "read[] very quickly" six recommendations pertaining to the budget that I begged to be permitted to recite. Increased funding for the Commission – and for the court-controlled attorney disciplinary system – were two of the six recommendations – consistent with recommendations I had made nearly a year earlier in a February 18, 2016 letter to the chairs and ranking members of the fiscal committees The letter identified Administrator Tembeckjian's plea "for a mere $186,000" at the Legislature's February 4, 2016 budget hearing on "public protection" and stated, in pertinent part:

> "Notwithstanding, the Commission on Judicial Conduct is a corrupt façade, focusing on low level judges, while protecting higher and politically-powerful judges – as the Senate Judiciary Committee knew more than six years ago when it aborted its 2009 joint hearings on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, without investigation of the testimony and documentary proof presented and proffered,

budget hearing the day before, including about the Legislature's failure to oversee the Commission – and about CJA's unfolding citizen-taxpayer action pertaining to the budget and the unconstitutional, statutorily-violative, and fraudulent judicial salary increases embedded in the budget since 2012. Such judicial salary increases have cost taxpayers approximately $200 million dollars over the past five years and have raised the salary of each state judge by approximately $60,000 a year. I told Administrator Tembeckjian that I "owed the Commission" several judicial misconduct complaints pertaining to the judicial pay raises – including a complaint against Chief Judge Janet DiFiore, a named defendant in the unfolding citizen-taxpayer action.

With regard to that citizen-taxpayer action, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #5122-2016), I told Administrator Tembeckjian that when it was commenced, on September 2, 2016, it had been assigned to Acting Supreme Court Justice Denise Hartman – and that she had made no disclosure, not only as to her own $60,000 a-year judicial salary interest in the lawsuit, or her non-salary other compensation interest – or the $100,000 she would owe in the event of a claw-back – but of her personal and professional relationships with at least two defendants, arising from the 30 years she had worked in the Attorney General's office: under defendant Attorney General Schneiderman and, before him, under the then Attorney General, now Governor, defendant Cuomo, who had appointed her to the bench in 2015.

As a result of this non-disclosure, defendant Attorney General Schneiderman, representing both himself and his fellow defendants, felt confident that Judge Hartman would let his office get away with filing a legally insufficient, factually perjurious September 15, 2016 cross-motion to dismiss plaintiffs' September 2, 2016 verified complaint and to deny their accompanying order to show cause for a preliminary injunction. I so-stated this in plaintiffs' September 30, 2016 reply memorandum of law which sought threshold relief to preserve the integrity of the proceedings – the first of which was disclosure by Judge Hartman of the facts pertaining to her financial interests and relationships with the defendants, followed by threshold relief pertaining to the Attorney General's office, including sanctions against it for litigation fraud (at pp. 1-6, 42-53).

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without findings, and without a committee report – the Commission on Judicial Conduct certainly cannot do the minimal job it does without proper funding." (February 18, 2016 letter, fn.7 (at p. 11), underlining in the original)

The February 18, 2016 letter is posted on CJA's webpage for this letter, accessible from CJA's homepage, www.judgewatch.org, *via* the prominent link "CJA's Two Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance". It leads to a link for the second citizen taxpayer action, whose menu item #9 entitled: "Securing Enforcement of the Citizen-Taxpayer Statute & Threshold Integrity Issues" contains a link for the webpage of this letter. The direct link to that webpage is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/6-16-17-complaint-cjc.htm -- and it also posts the videos of the Legislature's January 30, 2017 budget hearing, at which I was the last witness testifying, and January 31, 2017 budget hearing at which I was also the last witness, preceded by Mr. Tembeckjian a short time earlier.

Judge Hartman's response, by a December 21, 2016 decision, was to ignore the entirety of plaintiffs' reply papers: their September 30, 2016 reply memorandum of law and my accompanying September 30, 2016 reply affidavit. Indeed, by omitting, from her decision, any CPLR §2219(a) listing of "papers considered", she was able to conceal their very existence – and ALL the facts, law, and legal argument they presented, establishing plaintiffs' entitlement not only to the threshold integrity issues pertaining to herself and defendant Attorney General Schneiderman, but to summary judgment on all ten causes of action of their September 2, 2016 verified complaint, requested pursuant to CPLR §3211(c), as likewise to a preliminary injunction. In such fashion – and by purposefully violating the most fundamental black-letter law and adjudicative standards, Judge Hartman dumped nine of plaintiffs' causes of action, inexplicably preserving one: the sixth, pertaining to the budget statute that gave rise to the challenged judicial salary increases, as to which she concealed plaintiffs' summary judgment entitlement.

Based thereon, I told Administrator Tembeckjian that I anticipated filing a judicial misconduct complaint against Judge Hartman. This is what I am now doing, reinforced by all that has happened since:

(1) plaintiffs' February 15, 2017 order to show cause for Judge Hartman's disqualification for demonstrated actual bias and interest and vacatur of her December 21, 2016 decision, and, if denied, disclosure – annexing, as its Exhibit U, an analysis of the December 21, 2016 decision, demonstrating it to be a "criminal fraud":

> "falsify[ing] the record in all material respects to grant defendants relief to which they [were] not entitled, *as a matter of law*, and to deny plaintiffs relief to which they [were] entitled, *as a matter of law*" (analysis, at p. 1, underlining in the original);

(2) Judge Hartman's May 5, 2017 decision thereon denying the February 15, 2017 order to show cause "in its entirety" and her simultaneous May 5, 2017 amended decision correcting her December 21, 2016 decision to include a CPLR §2219(a) listing;

(3) plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur of Judge Hartman's May 5, 2017 decisions "and, in conjunction therewith, as well as if denied, disclosure" – demonstrating her May 5, 2017 decisions to be just as fraudulent as her December 21, 2016 decision and encompassing the supervening new facts relating to plaintiffs' March 29, 2017 order to show cause for summary judgment on their sixth cause of action, leave to supplement, and injunctive relief.

That this is a facially meritorious misconduct complaint – mandating the Commission's investigation pursuant to Judiciary Law §44.1(a) for what caselaw holds must be a Commission determination to remove Judge Hartman from the bench – is established by plaintiffs' September 30, 2016 memorandum of law itself. There, under the heading: "PLAINTIFFS' REQUESTED AFFIRMATIVE RELIEF TO SAFEGUARD THE INTEGRITY OF THESE JUDICIAL PROCEEDINGS" (at p. 42) is a first section entitled "The Court's First Threshold Duty: To Disclose Facts Bearing Upon its Fairness & Impartiality". In pertinent part, it reads (at pp. 43-44):

> "A judge who fails to disqualify himself upon a showing that his 'unworthy motive' has 'affect[ed] the result' and, based thereon, does not vacate such 'result' is subject not only to reversal on appeal, but to removal proceedings:
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> > '*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal…*', italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1st Dept. 1940), quoting from *Matter of Droege*, 129 AD 866 (1st Dept. 1909).
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> In *Matter of Bolte*, 97 AD 551 (1st Dept. 1904), cited in the August 20, 1998 New York Law Journal column, '*Judicial Independence is Alive and Well*', by the then administrator and counsel of the New York State Commission on Judicial Conduct, Gerald Stern, the Appellate Division, First Department held:
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> > 'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another…' (at 568, emphasis in the original).
> >
> > '…Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.' (at 574).
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> §100.3F of the Chief Administrator's Rules Governing Judicial Conduct provides that where a judge's 'impartiality might reasonably be questioned' or he has an interest, he may:
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> > 'disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without

> participation of the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.'
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> The Commission on Judicial Conduct's annual reports explicitly instruct:
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> '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.'

According to the Commission in its brief before the New York Court of Appeals in *Matter of Edward J. Kiley*, (July 10, 1989, at p. 20),

> 'It is cause for discipline for a judge to fail to disclose on the record or offer to disqualify under circumstances where his impartiality might reasonable (sic) be questioned.'"

Indeed, as of this date, nearly nine months since plaintiffs' September 30, 2016 memorandum of law first requested (at pp. 5-6, 42-44) that Judge Hartman disclose her financial interests and relationships, she has not only made no disclosure – nor even claimed to believe herself "impartial" – but upon plaintiffs bringing their February 15, 2017 order to show cause, whose first branch sought an order:

> "disqualifying Acting Supreme Court Justice Denise Hartman for demonstrated actual bias and interest, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, and vacating her December 21, 2016 decision & order by reason thereof for fraud and lack of jurisdiction; and, if denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality" (underlining in the original),

her denial of this first branch, by her May 5, 2017 decision, concealed its request for disclosure – of which she made none.

Plaintiffs' June 12, 2017 order to show cause to reargue, renew, and vacate the May 5, 2017 decision points this out and its first branch also specifies disclosure in seeking an order:

> "granting reargument and renewal, pursuant to CPLR §2221, of Judge Hartman's May 5, 2017 decision and order and of her May 5, 2017 amended decision and order and, upon the granting of same, vacating them by reason of her demonstrated actual

> bias – and, in conjunction therewith, as well as if denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality, specifically as to her financial interest and personal and professional relationships with defendants and their counsel, including in the supervisory ranks of the Attorney General's office" (underlining in the original).

My June 12, 2017 moving affidavit (at ¶¶8-10) more extensively describes the disclosure incumbent upon Judge Hartman in light of her May 5, 2017 decision – and quotes from the Commission's most recent annual report – issued March 2017 – where, under the heading "Conflict of Interests", the Commission repeats (at p. 14) what its prior annual reports state:

> "All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned."

In the same paragraph, the Commission gives the following examples of the discipline it imposed in the past year for failure to disclose/recuse:

> "Four judges were cautioned for various isolated or promptly redressed conflicts of interest. One judge failed to disclose that a petitioner's law firm employed the judge's former campaign treasurer. A part-time judge presided over a matter in which the plaintiff was a recent client of the judge's law firm. A third judge made a condolence visit to someone who was engaged in pending litigation before the judge. A fourth failed to disclose on the record in criminal cases that the judge's spouse was employed by the District Attorney's office." (2017 annual report, at p. 14, underlining added).

Compared to these "isolated or promptly redressed conflicts of interest" that the Commission nonetheless saw fit to make the subject of discipline, *via* letters of caution, this conflict of interest/corruption complaint against Judge Hartman is *a fortiori*. Her conflicts of interest are NOT "isolated or promptly redressed". To the contrary, by her May 5, 2017 decision, Judge Hartman continued to conceal plaintiffs' requests that she disclose her financial interests and relationships with defendants – and, on top of that, brazenly lied in denying plaintiffs' disqualification requests, stating:

> "...plaintiff has not alleged a proper ground for disqualification. The undersigned Judge has no interest in this litigation or blood relation or affinity to any party hereto (*see People v. Call*, 287 AD2d 877, 878-879 [3d Dept 2001]; *People v Call*, 287 AD2d 877 [3d Dept 2001]; *Trimarco v. Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014], citing *Paddock v. Wells*, 2 Barb. Ch. 331, 333 [Chancellor's Ct 1847]). Plaintiffs' conclusory allegations of bias and fraud are meritless." (at p. 2, underlining added).

As pointed out by my June 12, 2017 moving affidavit (¶8), this conclusory two-sentence paragraph in her May 5, 2017 decision is an utter lie that no fair and impartial tribunal would make – and the proof is plaintiffs' Exhibit U analysis of her December 21, 2016 decision, annexed to their February 15, 2017 order to show cause – the accuracy of which Judge Hartman does not contest, nor defense counsel, defendant Attorney General Schneiderman.

As for Judge Hartman's cited decision of *Trimarco v. Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014], it is a role model example of what she knowingly and deliberately did not do: make disclosure and confront, with specifics, the issue of her disqualification, even in the absence of a formal motion.

To give Judge Hartman a "head start" in furnishing the Commission with a "written reply to the complaint",[2] a copy will be annexed to my anticipated reply affidavit in further support of plaintiffs' June 12, 2017 order to show cause – assuming that Judge Hartman signs the order to show cause, which she has not yet done. Meantime, she is already on notice of my intended contact with the Commission: ¶3 of my June 12, 2017 moving affidavit stated that I would simultaneously be filing the order to show cause with it:

> "to further accelerate enforcement of the fundamental precepts pertaining to judicial conduct, disqualification, and disclosure that plaintiffs' September 30, 2016 memorandum of law placed before [her] – and which [she] has knowingly, deliberately, and now repeatedly, violated."

Judge Hartman's corrupt conduct, hereinabove summarized, if committed in an ordinary case having no large issues and only private litigants, would – consistent with caselaw[3] – justify her removal from the bench. That it is committed here, to thwart a monumental citizen-taxpayer action against public officers who have utterly disabled our state government by their willful and deliberate violations of the New York State Constitution, statutory law, legislative rules, and caselaw, and who

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[2] Commission Policy Manual, Rule 2.6: "Scope of Investigation ... D. When investigation of a complaint has been authorized, the Administrator, or staff acting on the Administrator's behalf, may request a judge's written reply to the complaint or matters related thereto, unless the Commission has directed otherwise. (1) As a general practice, when staff requests such a written reply from the judge, the judge should be provided with a copy of the complaint. ...(4) The Administrator, or staff acting on the Administrator's behalf, should accommodate reasonable requests by the judge for additional time to prepare his or her written reply."

[3] In addition to the caselaw hereinabove cited and quoted: *Matter of Capshaw*, 258 AD 470, 485 (1940); *Matter of Droege*, 129 AD 866, 881 (1909); *Matter of Bolte*, 97 AD 551, 568 (1st Dept. 1904); see, *inter alia*, *Matter of Barlow*, 141 AD 640, 642 (1910); *Voorhees v. Kopler*, 239 AD 83, 84 (1933). And, of course, the 1987 law review article of former Commission Administrator Gerald Stern, "*Is Judicial Discipline in New York State a Threat to Judicial Independence?*", Pace Law Review, Volume 7, No. 2, (winter 1987), citing and discussing these and other cases, including with respect to failure to disqualify and make disclosure, under the title heading "*Disciplining Judges for On-Bench Conduct: Can 'Legal Error' Constitute Misconduct?*" (at pp. 303-322).

have colluded in larcenous and opaque, slush-fund budgets – all here challenged – mandates not only her removal, but her referral to criminal authorities for indictment and felony prosecution with them.[4]

The full record of this citizen-taxpayer action, from which Judge Hartman's conflict-driven, fraudulent decisions and purposeful violations of mandatory standards and controlling law are readily-verifiable, is posted on CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link: "CJA's Two Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance". For the Commission's convenience, a direct link to the lawsuit record will be posted on CJA's webpage of this letter (see fn. 1).

I am available to assist the Commission, to the max, be interviewed, preferably under oath, and to provide the originals of the posted documents.

Needless to say, if the Commission's judicial members, each having the same financial interest as Judge Hartman – a $60,000 yearly salary interest, a substantial further interest in non-salary benefits, and a $100,000 liability in the event of a claw back – cannot be fair and impartial by reason thereof, or if Commissioners cannot be fair and impartial by reason of their relationships with the public officers who appointed them, all actually or effectively named defendants herein, or because of their relationships with any other defendant, or for any other reasons, their duty is to recuse themselves.[5]

Recusal when all judges have same conflict

And, of course, the duty of disclosure and recusal falls not only on Commission members, but on Commission staff, most importantly, its long-time Administrator, Robert Tembeckjian, and long-tenured Clerk, Jean Savanyu.

Thank you.

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[4] Commission Policy Manual, Rule 2.10: "Referrals to District Attorneys — The Commission may refer a matter to a District Attorney or other prosecuting agency when it determines that there is evidence that a crime may have been committed…."

[5] Commission Policy Manual, Rule 5.3: "Disqualification of Commission Members -- …(B) Any member of the Commission should disqualify himself/herself from a matter if his/her impartiality might reasonably be questioned. In determining whether to disqualify from a matter, a Commission member should be guided by the disqualification standards set forth for judges in Section 100.3(E) of the Rules Governing Judicial Conduct. A Commission member need not reveal the reason for his/her disqualification…";

Code of Ethics for Members of the New York State Commission on Judicial Conduct, Rule 2: "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… h. A member of the Commission should endeavor to pursue a course of conduct which will not raise suspicion among the public that s/he is likely to be engaged in acts that are in violation of his/her trust."