Exhibit A to Appellants' December 31, 2019 letter
Center for Judicial Accountability, et al. v. Cuomo…DiFiore – Citizen-Taxpayer Action

"LEGAL AUTOPSY" [1]/ANALYSIS OF ATTORNEY GENERAL LETITIA JAMES' DECEMBER 10, 2019 "MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION TO VACATE AND FOR OTHER RELIEF",

signed by Assistant Attorney General Frederick Brodie

As with Attorney General James' three prior submissions to this Court, likewise signed by Assistant Solicitor General Brodie, this fourth submission entitled "Memorandum in Opposition to Appellants' Motion to Vacate and for Other Relief" – *unsupported by an affirmation swearing to its truth* – is filled with falsehood and material concealment, from beginning to end and in virtually every line. Illustrative of this is that it does not cite appellants' moving affidavit to support any of its claims. Rather, its sole citations to appellants' November 25, 2019 motion are to the notice of motion and to the four exhibits that are the Court's four prior Orders.

For the convenience of the Court, a Table of Contents follows:

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[1] 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)).

* * *

Mr. Brodie's "Preliminary Statement" (at p. 1) is fraudulent – proven by the record before this Court.

The so-called "final judgment for defendants on the merits in 2017", rendered by Albany County Supreme Court [R-31-41], is a criminal fraud. Proving this is appellants' 22-page "legal autopsy"/analysis of the November 28, 2017 decision and judgment [R-9-30], which they furnished to the Appellate Division, Third Department with their January 10, 2018 notice of appeal and pre-calendar statement [R-1-8] – and materially replicated by their 70-page July 4, 2018 appeal brief. The record establishes that the Attorney General never denied or disputed the accuracy of this "legal autopsy"/analysis, in any respect, or of the appeal brief – and neither did the Appellate Division, Third Department.

As for the Appellate Division's "unanimous affirm[ance] in 2018" of the Supreme Court judgment, it, too, is a criminal fraud, as, likewise, the Appellate Division's four orders on "appellants' four separate motions". Proving this is appellants' 33-page "legal autopsy"/analysis of both the Appellate Division's December 27, 2018 "Memorandum and Order" and its four underlying orders which had denied appellants' requested relief, *without reasons* – which appellants furnished to this Court with their March 26, 2019 letter in support of their appeal of right. Here, too, the record establishes that the Attorney General never denied or disputed the accuracy of this further "legal autopsy"/analysis, in any respect – and neither did this Court.

As for this Court's dismissal of appellants' direct appeal, the fraud and unconstitutionality of its May 2, 2019 Order is proven by appellants' 40-page moving affidavit in support of their May 31, 2019 motion for reargument/vacatur and other relief. Notwithstanding the Attorney General did not deny or dispute its accuracy, in any respect, the Court denied the May 31, 2019 motion, *without reasons*,

by an October 24, 2019 Order – and by another October 24, 2019 Order denied, *without reasons*, appellants' June 6, 2019 motion for leave to appeal, although here, too, the Attorney General had not denied or disputed the accuracy of appellants' 21-page moving affidavit in support. By a third October 24, 2019 Order, the Court also denied, *without reasons*, appellants' August 8, 2019 motion to strike the Attorney General's June 27, 2019 memorandum in opposition to their May 31, 2019 and June 6, 2019 motions as "fraud on the court", to disqualify the Attorney General, and for other relief, notwithstanding, here too, the Attorney General had not denied or disputed the accuracy of appellants' 9-page moving affidavit in support. Notably, the Attorney General's "Preliminary Statement" conceals appellants' August 8, 2019 motion – and the Court's October 24, 2019 Order denying it.

The fraudulence and unconstitutionality of all three of the Court's October 24, 2019 Orders is the subject of appellants' November 25, 2019 motion to vacate them – centering, in the first instance, on the associate judges' lack of jurisdiction to render the Orders. Appellants' 22-page moving affidavit sets forth the particulars – and the Attorney General has not denied or disputed their accuracy in any respect – indeed, does not even cite to the affidavit.

As for appellants' motion practice being "vexatious", this is false. As examination of each motion readily reveals, each is an appropriate response to the double-whammy of fraud perpetrated by judges in collusion with the Attorney General, ALL having HUGE financial and other interests in torpedoing the case, which they have done by obliterating ALL ethical, adjudicative, and evidentiary standards to deprive appellants of the summary judgment on their ten causes of action to which they are entitled, *as a matter of law*.

As for Mr. Brodie's urging the Court to deny appellants' "latest motion" and to "rule that no further motions may be filed in this case", such has no basis in fact or law – and will assure that "This litigation [will NOT be] over". Rather, it will spawn further litigation, forcing appellants to turn to the federal courts, where the first order of business will be to VOID all the judicial orders herein as the jurisdictional and constitutional nullities the record establishes them to be – there being absolutely no "adequate and independent state grounds" to sustain them.

Mr. Brodie's "Argument: Appellants' Motion Should Be Denied"

Mr. Brodie's Section A entitled "The motion must be dismissed as to CJA" (at pp. 1-2) is non-responsive to the motion, ignoring ¶¶6 and 7 of appellants' moving affidavit. There identified is that the Court's four Orders dismissing CJA's motions on the identical ground that appellant Sassower is not its "authorized legal representative" have:

> "fraudulently concealed that both CJA and [Sassower] [are] before the Court as 'unrepresented appellants' raising the threshold issue of [their] entitlement to be represented by the Attorney General or to state-paid independent counsel, by reason of the Attorney General's conflicts of interest." (at ¶6, underlining in the original).

Mr. Brodie does not deny or dispute this – and such is conceded, *as a matter of law*.

Mr. Brodie's Section B entitled "Appellants' jurisdictional argument is incorrect and self-defeating" (at p. 3) is his opposition to the first branch of appellants' notice of motion, to which it is non-responsive.

"Appellants' jurisdictional argument", reflected by ¶1 of the notice of motion, to which Mr. Brodie cites, and then particularized by ¶5 of appellants' moving affidavit, to which he does not cite, is that if the associate judges disagree that their financial and other interests in the appeal divested them of jurisdiction pursuant to the "unequivocal language of Judiciary Law §14 and the Court's own interpretive decisions in *Oakley v. Aspinwall*, 3 NY 547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914)", they must render a "responsive, reasoned decision" – comparable to the Court's decision in *New York State Criminal Defense Lawyers v. Kaye*, 95 NY2 556 (2000).

Mr. Brodie conceals both the backwards and *without reasons* fashion by which the Court's October 24, 2019 Order on Mo. No. 2019-645 disposed of the threshold jurisdictional and disqualification issues, particularized by ¶6 of appellants' moving affidavit, and that appellants' first branch seeks "a responsive, reasoned decision" in its place.

Instead, he regurgitates the fraud of his June 27, 2019 opposing memorandum, notwithstanding it was rebutted by appellants' August 8, 2019 motion to strike it on grounds of fraud. He purports that *Oakley* is inapplicable because *Oakley* involved "a statutory prohibition on having judges preside over their relatives' cases… No such statutory prohibition exists here", citing to page 15 of his June 27, 2019 opposing memorandum. No mention of appellants' rebuttal – whose accuracy he had not contested – which had stated:

> "This is fraudulent. The statute at issue in *Oakley* is what is today Judiciary Law §14, entitled 'Disqualification of judge by reason of interest or consanguinity' – and it pertains now, as then, not just to consanguinity, but to interest. And making this plain is the decision in *Oakley* itself…" (pages 27-28 of appellants' "legal autopsy"/analysis, annexed to their August 8, 2019 motion, underlining in the original).

Mr. Brodie then continues his deceit by his immediately following sentence (at p. 3):

> "Moreover, in this precise context – judicial salaries – this Court has held that the Rule of Necessity overrides a judge's economic conflict *Matter of Maron v. Silver*, 14 N.Y.3d 230, 248-49 (2010)."

Thus transmogrifying financial interest, proscribed by Judiciary Law §14, to be "economic conflict", Mr. Brodie conceals that, at bar, the associate judges have not invoked "Rule of Necessity", nor made any mention of Judiciary Law §14 – in contrast to *Maron*, where the Court, without revealing Judiciary Law §14, invoked "Rule of Necessity". These contrasts had been pointed out (at pp. 22-25) by appellants' "legal autopsy"/analysis of Mr. Brodie's June 27, 2019 opposing memorandum – and that:

> "inferable from the Court's failure, in *Maron*, to refer to Judiciary Law §14 is that it could not do so and invoke 'Rule of Necessity' as the two are incompatible because – as is clear from *United States v. Will*, 449 U.S. 200 (1980) – judges must have jurisdiction, in the first instance, in order to invoke 'Rule of Necessity'..."

As Mr. Brodie did not then, and does not now, dispute this, such reinforces the Court's duty to explicate the situation by "a responsive, reasoned decision" – and not only with respect to the jurisdictional issue arising from Judiciary Law §14, but the constitutional issue arising from the associate judges' failure to invoke "Rule of Necessity" by their Orders herein. As asserted by ¶5 of appellants' moving affidavit – without contest by Mr. Brodie – "Rule of Necessity" 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)[fn], 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)."

Consequently, by not invoking "Rule of Necessity", the Court's Orders are – as reflected by ¶¶5-9 of appellants' moving affidavit:

> "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." (at ¶5, underlining in the original).

As for Mr. Brodie's assertion that "Ultimately, appellants' jurisdictional argument is self-defeating", there is nothing "self-defeating" about the associate judges establishing their jurisdiction by "a responsive, reasoned decision" – especially when their failure to do so will result in their being named defendants in federal litigation, suing them and the state for damages, to which – by reason of their lack of jurisdiction – they will have no immunity defense, a fact highlighted by appellants' November 25, 2019 moving affidavit (at fn. 4).

Nor is it correct that

> "if this Court lacks jurisdiction to consider appellants' putative appeal (as they urge), then the appeal must be dismissed for lack of jurisdiction. That is exactly what the Court did on May 2, 2019."

This is false. The lack of jurisdiction is not as to the Court, arising from any deficiency in appellants' appeal of right. Rather, it is as to each associate judge personally and financially. As a consequence, the only order the Court could properly have issued on May 2, 2019 – and on October

24, 2019 – were orders acknowledging that the associate judges are all financially interested in the appeal, barring them from "sitting" and "taking any part", pursuant to Judiciary Law §14, and that, because the judge-made "Rule of Necessity" cannot confer jurisdiction removed by statute, appellants' appeal of right – and their subsequent motions – were being forwarded to a tribunal jurisdictionally able to determine it.

Finally, although Mr. Brodie's Section B (at p. 3) purports to address the first branch of appellants' notice of motion, it does not reference its request for securing a jurisdictionally-competent "federal forum" to vacate the Court's Orders – relief also requested by appellants' third and fourth branches of their notice of motion. Mr. Brodie instead puts this requested relief at the back of his opposing memorandum, in his **Section J entitled "This proceeding cannot be transferred to federal court"** (at pp. 8-9). The single paragraph of that Section J begins, as follows:

> "Appellants ask for an order 'securing a federal forum' for their claims (11/25/19 Notice of Motion ¶¶1, 3, 4.) Federal courts are courts of limited jurisdiction that possess only those powers authorized by Constitution and statute. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). We know of no Constitutional or statutory authority basis for transferring this case to federal court."

This is a deceit. Mr. Brodie does not state – as his citation to *Kokkonen v. Guardian Life Ins.* would imply – that the "Constitution and statute" do not confer upon the federal courts jurisdiction in a case such as this. What he states is: "We know of no Constitutional or statutory authority basis for transferring this case to federal court."

This is a LIE – and so-reflected by his opposing memorandum, whose concealment and falsification of the case and its record are precisely because the true facts establish federal jurisdiction. Indeed, the scant three-sentence balance of Mr. Brodie's Section J reinforces the availability of federal jurisdiction. The first sentence is:

> "Moreover, Supreme Court's judgment on the merits, affirmed by the Third Department, is res judicata and would preclude the federal courts from acting.

This is fraudulent. As Mr. Brodie well knows – including because appellants previously recited it, including at page 11 of their April 11, 2019 letter to this Court – *res judicata* requires "a judgement rendered jurisdictionally and unimpeached for fraud", *Ryan v NY Tel. Co.*, 62 NY2d 494 (1984).

As for his concluding two sentences:

> "Finally, as we noted previously (6/27/19 Mem. in Opp. at 17), appellants chose to bring this case and the predecessor lawsuit in the State courts. They should not be permitted to engage in after-the-fact forum shopping.",

suffice to quote from pages 33-34 of appellants' "legal autopsy"/analysis thereof, annexed to their August 8, 2019 motion to strike:

"As for appellants having "chos[en] to bring both this case and the predecessor lawsuit in the State courts", the record shows that appellants, 'acting on their own behalf and on behalf of the People of the State of New York & the Public Interest', vigorously sought the representation of the Attorney General pursuant to Executive Law §63.1 and State Finance Law, Article 7-A. Upon the Court's determination of their entitlement thereto, including *via* independent counsel, appellants would have no objection to the Attorney General or such independent counsel taking steps to transfer the case to the federal courts, including by a petition for a writ of certiorari to the U.S. Supreme Court."

Mr. Brodie's Section C entitled "Section 100.3(F) of the Judicial Conduct Rules does not apply" (at p. 4) is his opposition to the second branch of appellants' notice of motion. It is multitudinously false.

First, Mr. Brodie conceals the "disclosure" sought by appellants' second branch, which is of the associate judges' "financial and other interests in the appeal". Mr. Brodie does not deny or dispute that the associate judges have "financial and other interests in the appeal" – or cite to any paragraphs of appellants' affidavit with respect thereto, as, for instance, ¶¶2, 5-8, 13, 15 (at pp. 21-22). Instead, he asserts that "appellants said the same thing previously", citing ¶2(b) of their May 31, 2019 notice of reargument motion. This citation is incorrect, ¶2(b) having sought an order:

"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*:

...

(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?".

Second, Mr. Brodie's statement:

"As we explained then (6/27/19 Mem. in Opp. at 17), section 100.3(F) applies only after a judge has been disqualified under 22 N.Y.C.R.R. §100.3(E), which did not happen here. Further, disclosure under 22 N.Y.C.R.R. §100.3(F) is voluntary: a judge 'may disclose' the basis for disqualification."

is false. There is NO "expla[nation] furnished by his "6/27/19 Mem. in Opp. at 17". Rather, it consists of two bare-bones sentences, as follows:

"...the disclosure and consent procedure in 22 N.Y.C.R.R. §100.3(F)...applies only when a judge has been disqualified under §100.3(E). There has been no disqualification here."

Third, these paltry two sentences were rebutted, resoundingly, by pages 34-35 of appellants' "legal autopsy"/analysis of his June 27, 2019 opposing memorandum, annexed as Exhibit B to their August 8, 2019 motion to strike. Its rebuttal was as follows:

"This is fraudulent – and regurgitates the Attorney General's interpretive perversion of 22 NYCRR §100.3(F) offered up before the Appellate Division in OPPOSING, as here, the disclosure and 'Remittal of Disqualification' procedure it specifies – objected to and exposed by appellants, repeatedly,[fn13] without adjudication by the Appellate Division, in its underlying decisions and orders on motion or by its December 27, 2018 Memorandum and Order.

§100.3F rests on §100.3E, entitled 'Disqualification' – and states, in mandatory terms, 'A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to....' 22 NYCRR §100.3F states:

> 'A judge disqualified by the terms of subdivision (E)..., of this section, may 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 by 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."

In other words, absent dispute by each judge, as relates to him/her, of the reasonable questions raised by the specifics of appellants' motion, he/she is disqualified, pursuant to §100.3E – and cannot sit, except by making disclosure with respect thereto and asserting his/her belief that he/she can be impartial and is willing to participate, with the parties then agreeing, outside the presence of the judge, and then incorporating the agreement in the record.

Tellingly, no legal authority is furnished to support the Attorney General's interpretation of §100.3F – reflective that there is NONE. Certainly, the Attorney General could have easily availed herself of the interpretation of the Commission on Judicial Conduct in its 2019 annual report, posted on its website:

"[fn13] See, *inter alia*, appellants' October 4, 2018 reply brief (at pp. 5-7); appellants' August 1, 2018 reply affidavit, at Exhibit Z (at pp. 25-28)."

http://www.scjc.state.ny.us/Publications/AnnualReports/nyscjc.2019Annualreport.pdf, containing the following, readily-found from its table of contents:

> '**Conflicts of Interest.** 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; two judges were cautioned for failing to so disqualify and/or disclose. …' (at p. 17, bold in the original [Annual Report], underlining added)."

That this was – and is – dispositive may be seen from the Court's failure to confront it, by its October 24, 2019 Orders – each concealing that disclosure was among the relief appellants had requested.

Mr. Brodie's Section D entitled "The Court's rulings against appellants do not show 'actual bias'" (at pp. 4-5) is his opposition to the third branch of appellants' November 25, 2019 notice of motion. Here, too, Mr. Brodie does not cite to any of the paragraphs of appellants' moving affidavit particularizing the relevant facts – none of which he identifies or denies or disputes. Rather, he argues that because "Appellants sought disqualification based on 'actual bias' previously" – citing to ¶3 of appellants' May 31, 2019 notice of motion, addressed to the Court's May 2, 2019 Order – the Court has already ruled on the issue. In his words, the Court "necessarily" rejected [appellants'] argument" that the associate judges were "actually biased" in "denying and dismissing" their May 31, 2019 motion.

This is utterly fraudulent, concealing – *in toto* – the indefensible, fraudulent fashion in which the Court's October 24, 2019 Order on Mo. No. 2019-645 denied appellants' May 31, 2019 motion for statutory disqualification and non-statutory recusal. This was particularized by ¶6 of their moving affidavit, including, as follows:

> "…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 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." (underlining in the original).

It is without denying or disputing this that Mr. Brodie then commits further fraud by his next sentence: "Denial of a motion for disqualification does not create a new ground for disqualification" – which he explicates, as follows:

> "As we explained previously, bias will not be inferred from adverse rulings. *See Knight v. N.Y. State & Local Re. Sys.*, 266 A.D.2d 774, 776 (3d Dep't 1999); *accord*

> *Matter of Cori XX.*, 155 A.D.3d 113, 117 (3d Dep't 2017); *S.L. Green Props., Inc. v. Shaoul*, 155 A.D.2d 331, 332 (1st Dep't 1989). (See 6/27/19 Mem. in Opp. at 13.) Were the law otherwise, every decision would result in a disqualification motion."

Again, fraud. At issue are not "adverse rulings" or anything needing to be "inferred" therefrom, but the Court's three October 24, 2019 Orders which cannot be defended for the reasons particularized by ¶¶2, 4-15 of appellants' November 25, 2019 moving affidavit, to which Mr. Brodie does not cite and whose accuracy he does not contest. As for his cited page 13 of his June 27, 2019 opposing memorandum, its comparable fraud with respect to the Court's May 2, 2019 Order is exposed by appellants' "legal autopsy"/analysis (at p. 26), annexed as Exhibit B to their August 8, 2019 motion to strike it for fraud – the accuracy of which he did not contest then or now.

Mr. Brodie's Section E entitled "The Attorney General has not committed fraud, misrepresentation, or other misconduct" (at pp. 5-6) is his opposition to the fourth branch of appellants' November 25, 2019 notice of motion. Once again, Mr. Brodie does not cite to any paragraphs of appellants' moving affidavit or identify their content, as, for instance ¶11, identifying that "dispositive" of "the Attorney General's fraud, misrepresentation, and other misconduct before this Court on every aspect of the appeal" is appellants' August 8, 2019 motion to strike the Attorney General's submissions as 'fraud upon the Court', denied, *without reasons*, by the Court's October 24, 2019 Order on Mo. No. 2019-799.

Instead, Mr. Brodie rests on his June 27, 2019 opposing memorandum, describing its pages 18-19 as having "previously explained why appellants' repeated allegations of 'litigation fraud' are legally baseless" – thereupon using the Court's denial/dismissal of relief as an imprimatur, stating:

> "By denying and dismissing appellants' motion, the Court necessarily rejected appellants' contrary argument. Appellants have no ground for resurrecting these meritless claims."

This is fraud, concealing ALL relevant facts, including the date and relief sought by "appellants' motion" – this being their August 8, 2019 motion to strike his June 27, 2019 opposing memorandum – and the manner in which the Court had denied the motion, namely, *without reasons* by its October 24, 2019 Order on Mo. No. 2019-799.

Likewise fraud is Mr. Brodie's citing to ¶¶5-18 of his August 19, 2019 affirmation in opposition to appellants' August 8, 2019 motion to strike as having "explained previously [that] the Attorney General's papers were submitted in subjective good faith" and factually and legally supported, when their fraud was demonstrated by appellants' August 28, 2019 letter (at pp. 4, 13, 15) in further support of the August 8, 2019 motion, the accuracy of which he did not then contest or now.

As for Mr. Brodie's final sentence of this section "The Office of the Attorney General stands by its submissions", such is utterly insupportable – as Mr. Brodie well knows, having not contested the accuracy of any of appellants' particularized demonstrations of his fraud before this Court or before the Appellate Division, Third Department.

Mr. Brodie's Section F entitled "The Court did not overlook appellants' arguments" (at p. 6) is his opposition to the fifth branch of appellants' November 25, 2019 notice of motion. Such is fraudulent, being based, exclusively, on the Court's Orders, whose indefensibility, as particularized by ¶¶2, 4-14 of appellants' moving affidavit, he conceals and does not contest, and on his June 27, 2019 and August 19, 2019 opposing memoranda, whose fraudulence, as demonstrated by appellants' August 8, 2019 motion to strike and August 28, 2019 letter in further support of the motion he also conceals and does not contest.

Mr. Brodie's Section G entitled "The Court's orders were lawfully signed" (at pp. 6-7) opposes the first subsection of the sixth branch of appellants' November 25, 2019 notice of motion by fraud, falsifying the material fact upon which ¶6a of the notice of motion rests. Thus, Mr. Brodie asserts:

> "Mr. Asiello, the principle, was permitted to recuse himself and need not provide appellants with any reason for doing so."

This, in face of ¶6a of the notice of motion – to which Mr. Brodie cites – that stated:

> "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". (capitalization added, underlining in the original).

In other words, it was an open question as to whether Clerk Asiello had disqualified himself – and this was particularized and substantiated by ¶15 appellants' moving affidavit (at pp. 12-13) and its Exhibits C and D. Indeed, appellants' moving affidavit expressly stated that upon receiving an answer to that question, the Court would be so-advised.

Mr. Brodie's Section H entitled "The Court's order in *Delgado* does not show bias" (at p. 7) opposes the second subsection of the sixth branch of appellants' November 25, 2019 motion by fraud, concealing ALL the facts pertaining to bias identified by ¶6b of appellants' notice of motion and by ¶15 of their moving affidavit (at pp. 13-19).

Thus, Mr. Brodie conceals – and does not contest – that the associate judges have "financial and other interests" in the *Delgado* appeal, which they have not disclosed and which are proscribed by Judiciary Law §14, divesting them of jurisdiction to 'sit' and 'take any part'" – and that that financial interest springs from the fact that *Delgado* challenges the constitutionality of a "force of law" compensation committee statute materially identical to the "force of law" compensation commission statute here challenged, such that a declaration by this Court that the scheme in *Delgado* is unconstitutional would require a similar declaration at bar – and all the more so as Supreme Court Justice Ryba's June 7, 2019 decision in *Delgado* upholding constitutionality rests on the Appellate Division, Third Department's December 27, 2018 decision herein. This would cause the yearly

salaries of the Court's associate judges to plummet by more than $80,000 – and subject them to claw-backs as high as $400,000.

Also concealed and not contested are ALL the particulars furnished by appellants' moving affidavit, as to why the Court's November 21, 2019 Order transferring the *Delgado* appeal to the Appellate Division, Third Department is procedurally and substantively insupportable.

Instead, Mr. Brodie's scant three-sentence opposition:

> (1) baldly purports, by its first sentence, that "Appellants' argument that the Court's order in *Delgado*...somehow shows bias...is meritless";
>
> (2) implies, by its second sentence, that the Court's transfer of the *Delgado* direct appeal to the Appellate Division, Third Department is proper based "on the facts of that case" – which "facts" Mr. Brodie does not specify; and
>
> (3) ends with a third sentence falsely making it appear that appellants are raising an issue of direct appeal as pertains to this case.

Such is altogether fraudulent – and so-revealed by pages 13-19 of appellants' moving affidavit, whose accuracy is uncontested.

Mr. Brodie's Section I entitled "Chief Administrative Judge Marks is not a party" (at p. 8) opposes the third subsection of the sixth branch of appellants' November 25, 2019 motion by fraud. Here, too, he conceals – and does nor deny or dispute – the allegations of appellants' moving affidavit (at pp. 19-22). Rather, he confines himself to ¶6c of the notice of motion, which he truncates – and opposes with two claims, the first irrelevant, the second false.

His first basis of opposition is – as his Section I title states –that "Chief Administrative Judge Marks is not a party". This is irrelevant, as the issue presented by appellants' pages 19-22 of their affidavit is whether the associate judges dismissed and denied appellants' appeals of right and by leave to protect not only their past commission-based salary increases, but to obtain future commission-based salary increases. As stated:

> "By the Court's October 24, 2019 Orders...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."

This is not contested by Mr. Brodie – nor that Chief Administrative Judge Marks engaged in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, identical to that challenged herein, for purposes of securing further judicial salary increases – nor that his presentation before the Commission was reasonably with the knowledge and approval of this Court's associate judges.

As for his second basis of opposition, it is, as follows:

> "And appellants' lawsuit challenged actions of the prior commission, not the current one. (The current commission was not created until 2018 after Supreme Court entered judgment below.)"

This is utterly false. Appellants' sixth cause of action [R.109-112 (R.187-201)] challenges the constitutionality of Chapter 60, Part E of the Laws of 2015 [R.1080-1082] – the statute that establishes the current Commission on Legislative, Judicial and Executive Compensation, just as it established the prior 2015 Commission – as to which the record before the Court shows appellants' entitlement to summary judgment on at least four of its five sub-causes. And it is false that the current Commission was "not created until 2018". The current Commission was established in 2019, as required by the statute, albeit months after the statutorily-specified June 1st date [R.1080, §2(1)] – just as the prior 2015 Commission had been established months after the statutory June 1st date.

Mr. Brodie's Section K entitled "Appellants should be precluded from filing any further motions in this case" (at pp. 9-10) is fraudulent, factually and legally.

Factually, appellants' four motions "filed in this Court, *after* having their appeal dismissed" – are each factually and legally supported – and their accuracy is uncontested by Mr. Brodie's instant or prior opposing submissions, whose fraud appellants have meticulously documented, without responsive adjudication by the Court's Orders to date.

Legally, Mr. Brodie conceals that he has no legal authority for the preclusive orders he seeks. 22 NYCRR §§130-1.1 (c)(1) and (2) – to which he cites – is not such authority. Part 130-1.1 is entitled "Awards of Costs and Imposition of Financial Sanctions for Frivolous Conduct in Civil Litigation" and, as its title makes explicit, is limited to costs and sanctions.

Mr. Brodie's "Conclusion" (at p. 10) reads, in full:

> "Appellants' motion should be denied in all respects, and the Court should enter an order precluding appellants from filing any further motions in this action."

Suffice to say that the first part of this "Conclusion" replicates the "Conclusion" of Mr. Brodie's June 27, 2019 opposing memorandum, as to which appellants' response, by their August 8, 2019 "legal autopsy"/analysis (at p. 37), annexed to their August 8, 2019 motion to strike, is no less applicable here:

> "The Attorney General's single-sentence 'Plaintiffs' motions should be denied in all respects' is fraudulent – as demonstrated hereinabove, by the memorandum's deceit, throughout.
>
> Indeed, were the Court to deny the motions 'in all respects', its associate judges would be committing an act so treasonous to the oaths of office to which they swore, pursuant to Article XIII, §1 of the New York State Constitution, as to mandate not only their removal from office pursuant to the constitutional remedies of Article VI, §22, § 23, and §24 – but their criminal prosecution for the same penal law violations for which the Attorney General must also be prosecuted, 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'.
>
> And, of course, the judges would have no immunity defense for money damages in a federal lawsuit against them – their actions being 'in the clear absence of all jurisdiction' by virtue of Judiciary Law §14 and the Court's own interpretive caselaw, beginning with *Oakley v. Aspinwall*, 3 NY 547 (1850) and reiterated in such cases as *Wilcox v. Royal Arcanum*, 210 N.Y. 370 (1914). Indeed, in *Stump v.*

Sparkman, 435 U.S. 349, 358 (1978), the U.S. Supreme Court's grant of judicial immunity was because 'neither by statute nor by case law has the broad jurisdiction granted…been circumscribed…' – emphatically NOT the situation presented by the unequivocal language of Judiciary Law §14 and *Oakley v. Aspinwall*." (underlining and capitalization in the original).

The only addition to be made to that "Conclusion" is to quote from ¶9 of appellants' November 25, 2019 moving affidavit:

"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)." (underlining and italics in the original).