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BY E-MAIL & CERTIFIED MAIL

September 20, 2018

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 Appellate Division, Third Department Presiding Justice Elizabeth Garry and Associate Justices John Egan, Jr., Eugene Devine, and Stanley Pritzker for willfully violating mandatory judicial disqualification/disclosure rules to "throw" the appeal of a citizen-taxpayer action in which they are financially interested & have personal and professional relationships with, and dependencies on, defendant-respondents, among others – *Center for Judicial Accountability, et al. v. Cuomo, et al.* (App. Div. 3rd Dept. #527081)

Pursuant to Article VI, §22 of the New York State Constitution and Judiciary Law §44.1, I file this facially-meritorious, fully-documented conflict-of-interest/corruption complaint against four justices of the Appellate Division, Third Department – its presiding justice, Elizabeth Garry, and three associate justices, John Egan, Jr., Eugene Devine, and Stanley Pritzker. Acting as a panel, these four justices knowingly and deliberately violated mandatory disqualification/disclosure rules for the corrupt purpose of "throwing" a dispositive, truth-determining motion, whose record before them established, *as a matter of law*, their duty to grant its requested preliminary injunction that would cause each of their judicial salaries to plummet more than $75,000 a year – and to additionally grant, *as a matter of law*, all its other requested relief – all intended to ensure the integrity of appellate proceedings in a monumental citizen-taxpayer action whose appellate determination would require that respondent-defendants and others – including those with whom the justices have relationships and dependencies – be referred for criminal prosecution for larceny of taxpayer monies and other corruption.

The citizen-taxpayer action is *Center for Judicial Accountability, Inc. v. Cuomo, et al* (Albany Co. #5122-2016, App. Div. 3rd Dept #527081), challenging the constitutionality and lawfulness of commission-based judicial salary increases, the judiciary budget, the legislative budget, and the executive budget. This Commission is already familiar with the case because, on June 16, 2017, I filed a facially-meritorious, fully-documented conflict-of-interest/corruption complaint against the lower court judge – Court of Claims Judge/Acting Supreme Court Justice Denise Hartman – for violation of the same mandatory disqualification/disclosure rules, for the corrupt purpose of

"throwing" the case. Initially, by an August 29, 2017 letter, signed by Commission Clerk Jean Savanyu, the Commission purported:

> "Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline".

After I furnished the Commission with further "indication of judicial misconduct" by Judge Hartman subsequent to the June 16, 2017 complaint and by her final November 28, 2017 decision and judgment, Clerk Savanyu's response was that "The Commission carefully considered" same, but that "[t]he issues [I] raise[d] concerning the judge and her decision can only be determined by the courts".[1] This, in brazen disregard of controlling caselaw, identified by the law review article of the Commission's first administrator and counsel, and cited and quoted by the June 16, 2017 complaint itself (at pp. 2, 7) – as well as the Commission's own 2017 annual report (at p. 2), repeating what its past annual reports and subsequent 2018 annual report all identify – namely, that "disputed judicial rulings or decisions" are within the Commission's jurisdiction where there is "underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights".

The perfected appeal to the Appellate Division, Third Department followed – with a 70-page appeal brief chronicling all that had been presented by my June 16, 2017 complaint and subsequent correspondence to the Commission – to *wit*, Judge Hartman's willful violation of §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, manifested by all her decisions, culminating in her final November 28, 2017 decision and judgment – each "a criminal fraud" and each concealing, <u>without</u> adjudication, the threshold integrity issues before her, *to wit*:

(1) disclosure of her financial interests in the lawsuit and her relationships with defendants, particularly Attorney General Schneiderman and former Attorney General, now Governor, Cuomo – the latter having appointed her to the bench in 2015, after a 30-year career in the attorney general's office;

(2) plaintiffs' entitlement to the attorney general's representation, pursuant to Executive Law §63.1, based on "the interest of the state" – there being no state interest in litigation fraud, which was the fashion in which Attorney General Schneiderman had defended himself and his co-defendants before Judge Hartman, in the absence of ANY legitimate defense – misconduct her decisions had also concealed and <u>not</u> adjudicated.

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[1] The June 16, 2017 complaint and the subsequent correspondence culminating in Clerk Savanyu's January 16, 2018 letter are posted on CJA's website, www.judgewatch.org, accessible *via* the homepage link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance. The direct link is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/6-16-17-complaint-cjc.htm.

Appellants' perfected appeal, filed on July 25, 2018 at the Appellate Division, Third Department, was accompanied by their dispositive, truth-seeking motion – an order to show cause, with preliminary injunction and TRO to enjoin the disbursement of:

> "any further monies to pay the judicial salary increases resulting from the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation and the August 29, 2011 report of the Commission on Judicial Compensation – and from reimbursing counties for the district attorney salary increases based thereon".

This, however, was not the order to show cause's first branch of relief. Rather, the first branch was:

> "pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, disclosing, on the record, the financial interests of this Court's justices in this appeal and in the TRO and preliminary injunction herein sought, as well as their personal, professional, and political relationships impacting upon their fairness and impartiality; and, pursuant to §100.3E of the Chief Administrator's Rules, disqualifying Associate Justice Michael Lynch for demonstrated actual bias"

My July 24, 2018 moving affidavit, in support of the order to show cause, furnished the following particulars under the title heading "**Threshold Integrity Issues Pertaining to the Court: Disclosure by its Justices & the Disqualification of at least One – Associate Justice Michael Lynch**":

> 4. Inasmuch as this appeal involves judicial salaries – and expressly requests criminal referrals of defendants-respondents [hereinafter 'respondents'] and other 'culpable public officers and their agents' [R.131, R.224] on whom the Court is dependent and has personal, professional, and political relationships – the Court's duty – before it can address the first two questions on the appeal as to Judge Hartman's duty to have made disclosure, absent her disqualifying itself – is to address the disclosure that its own judges must make, absent their disqualifying themselves.
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> 5. To assist the Court in this difficult, but requisite, task, the disclosure incumbent on each of its justices includes the following:
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> - Each associate justice of this Court currently has a $75,200 yearly salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action, with the current yearly salary interest of the presiding justice being $77,700. The consequence of the Court's determination in appellants' favor – which is the ONLY determination the record will support – is that the yearly salary of associate justices will nosedive from $219,200 to $144,000 and the

yearly salary of the presiding justice will plunge from $224,700 to $147,600 – with each justice also subject to a 'claw-back' of the judicial salary increases he/she has collected since April 1, 2012 – those 'claw-backs', as of this date, already maxing at over $300,000[fn2], not counting 'claw-backs' of salary-based non-salary benefits.

- Each of this Court's justices has an incalculable financial interest in the slush-fund $3-billion-plus Judiciary budget, which funds the Court, including its underfunded and demonstrably sham Attorney Grievance Committee, with whose staff and members it has relationships[fn3];

"fn2 The climb in the yearly judicial salary for each of this Court's associate justices as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was $144,000, is, as follows: April 1, 2012: $168,600; April 1, 2013: 176,000; April 1, 2014: $183,300; April 1, 2015: $183,300. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $203,400; April 1, 2017: $205,400; April 1, 2018: $219,200.

The climb in the yearly judicial salary for this Court's presiding justice as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was $147,600 is, as follows: April 1, 2012: $172,800; April 1, 2013: 184,000; April 1, 2014: $188,000; April 1, 2015: $187,000. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $208,500; April 1, 2017: $210,500; April 1, 2018: $224,700."

"fn3 This Court's Attorney Grievance Committee is currently 'sitting on' appellants' September 16, 2017 attorney misconduct complaint against those responsible for the defense fraud of the attorney general's office in this citizen-taxpayer action and its predecessor. The four attorneys registered in the Third Department who are its subject are: Assistant Attorneys General Adrienne Kerwin and Helena Lynch and their direct supervisors, Assistant Attorney General Jeffrey Dvorin and Deputy Attorney General Meg Levine. Prior thereto, the Court's Attorney Grievance Committee 'sat on' appellants' October 14, 2016 misconduct complaint against Albany County District Attorney P. David Soares and his fellow Third Department district attorneys, all beneficiaries of the statutorily-violative, fraudulent, and unconstitutional judicial salary increases to which their district attorney salary increases are tied. The Grievance Committee's indefensible dismissal of that complaint, on July 5, 2017, was the subject of a July 28, 2017 request for reconsideration, to which it adhered by letter dated May 4, 2018. These complaints – and the record thereon – are posted on appellant Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the prominent homepage link 'CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance'. It brings up a menu page with a link entitled: 'FIGHTING BACK! — Complaints to Supervisory, Disciplinary & Criminal Authorities'. [*See*, also, Free-Standing Exhibit I (eye), containing the September 16, 2017 misconduct complaint – and, additionally, a further March 6, 2018 misconduct complaint/supplement against District Attorney Soares and his fellow district attorneys]."

- Each of this Court's justices was elevated to this Court upon appointment by Governor Cuomo, the first named defendant – and all are dependent upon him or his gubernatorial successor for their continuation in office[fn4];

- Each of this Court's justices has relationships with Chief Judge DiFiore, the last-named defendant;

- Each of this Court's justices has relationships with the panoply of specific judges, past and present, involved in perpetuating – if not also procuring – the unconstitutional, fraudulent, and statutorily-violative commission-based judicial salary increases. Among these judges whose willful and deliberate misconduct is recited and reflected by the record are:

  (1) Court of Claims Judge/Acting Albany County Supreme Court Justice Denise Hartman;

  (2) Court of Claims Judge/Acting Albany County Supreme Court Justice Roger McDonough;

  (3) Chief Administrative Judge Lawrence Marks;

  (4) Former Chief Judge Jonathan Lippman;

  (5) Third Judicial District Administrative Judge Thomas Breslin;

  (6) Deputy Chief Administrative Judge Michael Coccoma; and

  (7) the then Albany County Supreme Court Justice, and now Associate Justice of this Court, Michael Lynch.

"fn4 The permanent justices of this Court, appointed to five-year terms by the Governor, pursuant to Judiciary Law §71, are Presiding Justice Elizabeth Garry, whose term expires January 1, 2021; Justice Michael Lynch, whose term expires January 1, 2020; Justice Eugene Devine, whose term expires January 1, 2019; Justice John Egan, Jr., whose term expires January 1, 2020; and Justice William McCarthy, whose term expired July 12, 2018.

The 'temporary' justices of this Court have terms that run until January 1st of the year after they reach 70 years of age or the expiration of their 14-year term as Supreme Court justices: Justice Robert Mulvey, whose term expires January 1, 2026; Justice Phillip Rumsey, whose term expires January 1, 2020; Justice Stanley Pritzker, whose term expires January 1, 2027; Justice Sharon Aarons, whose term expires January 1, 2024; and Justice Christine Clark, whose term expires January 1, 2027."

> 6. Any justice of this Court unable or unwilling to rise above his financial interest and relationships so as to impartially discharge his judicial duties MUST disqualify himself – and the 'rule of necessity' is NOT to the contrary.
>
> 7. Associate Justice Lynch, however, MUST disqualify himself – or must be disqualified – from any handling of this case, based on his demonstrated actual bias, born of interest. …" (underlining and capitalization in original).

With similar particularity, my July 24, 2018 moving affidavit also furnished the facts entitling appellants to the granting of each of the other six branches of the order to show cause – and the next branch to be so-particularized was the second branch:

> "directing that Attorney General Barbara D. Underwood identify who has determined 'the interest of the state' on this appeal – and plaintiffs-appellants' entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, §123 *et seq*., including *via* independent counsel, and how, if at all, she has addressed her own conflicts of interest with respect thereto".

As to this second branch, my July 24, 2018 moving affidavit recited the facts under the title heading "**Threshold Integrity Issues Pertaining to the Attorney General: Plaintiffs' Entitlement to its Representation/Intervention & its Disqualification as Defense Counsel on Conflict of Interest Grounds**". It began, as follows:

> "11. Appellants are without counsel – and, pursuant to Executive Law §63.1, which predicates the attorney general's litigation posture on "the interest of the state", and State Finance Law §123, which contemplates the attorney general's affirmative role in citizen-taxpayer actions as plaintiff – we are entitled to his representation or intervention on our behalf because Judge Hartman's appealed-from November 28, 2017 decision and judgment [R.31-41] is indefensible, the product of fraud and collusion between her and the attorney general's office in which she worked for 30 years, concealing what is evident from the face of each of appellants' verified pleadings – beginning with the March 28, 2014 verified complaint that was before Justice Lynch [R.226-272] – *to wit*, that there is NO 'merits' defense to our causes of action, each *prima facie* as to a mountain of constitutional, statutory, and rule violations." (underlining, italics, and capitalization in the original)

On August 2, 2018, Associate Justice Devine signed the order to show cause at the oral argument of the TRO. I began my presentation by reiterating the threshold issues before the Court, both with respect to judicial disqualification/disclosure and the attorney general, stating:

> "There are threshold issues on this appeal and on this motion that replicate what were the threshold issues below and are threshold in the questions presented on the appeal, and that is, disclosure, judicial disqualification/disclosure, as well as the question as

to who is representing the interest of the state and the entitlement of the attorney general to be here presenting."

My concluding words also returned to these issues, in stating:

"So, that, in sum and substance, is why appellants are here before you on what is a historic case. It is a case where – the judicial pay raises which, of course, your Honor has an interest in and cares very much about, but as your Honor is aware, your duty is to rise above. The only basis – rule of necessity does not permit an actually biased judge to sit. It permits a judge who is interested, but who is able to rise above his interests, because every other judge is also interested. But that special judge who can say, yes, I have a vested interested, but, nonetheless, I do my duty because that is my job.

This case – the judicial pay raises, as important as it is for your Honor – is only a component of a monumental citizen-taxpayer action challenging the constitutionality of the whole of the budget, the judiciary budget, the legislative budget, the executive budget, three men in a room, behind closed doors budget deal-making, the behind-closed-doors party conferences that substitute for committee action in the Legislature. This is a monumental case that enables the Court to demonstrate the importance of judicial independence, that it follows the Constitution, it follows the law, and it protects the public and returns our state to constitutional governance which we don't have, have not had, and the gushing –

...

volume of money that comes out of the slush-fund budget is what propels the, quote, culture of corruption in this state.

Lastly, this Court has before it a presentation in my reply papers, because, in every respect, Mr. Brodie misrepresented, misrepresented. And the most fundamental issue here is, as I said, whether or not he is properly, the attorney general is properly, before the Court. He has not identified the legal basis upon which he appears. The only basis, Executive Law 63.1, is the interest of the state and if there is no legitimate defense – and there is no defense on this appeal to what was done below as to each of the causes of action – the attorney general's duty is not to corrupt the judicial process by litigation fraud, which is what he did below, in collusion with the judge who came out of the attorney general's office. The duty of the attorney general and of this Court is to require that the attorney general to disgorge who made the determination, if any determination was made, as to the interest of the state. Likewi –"

On August 7, 2018, the four judge-panel – whose collective yearly salaries cost taxpayers over $1,000,000 – rendered a four-sentence "decision and order on motion", unsupported by fact and law and insupportable in fact and law, concealing the threshold integrity issues relating to both the justices and the attorney general. On its face, their decision did not adjudicate the first two

branches of the order to show cause, or, in fact, any of the branches other than possibly the third. Nor did it adjudicate, or identify, the additional relief requested by my August 1, 2018 and August 6, 2018 reply affidavits, *to wit*, sanctions, costs, and other "appropriate action" against Assistant Solicitor General Brodie and supervisory and managerial attorneys in the attorney general's office, including Attorney General Underwood, based on his litigation fraud in opposing the motion, including as to the threshold first and second branches.

The particulars of the panel's August 7, 2018 decision are set forth by my September 10, 2018 moving affidavit in support of an order to show cause to disqualify the justices for demonstrated actual bias, vacatur of the decision, and transfer of the perfected appeal to another judicial department or, alternatively, to the Court of Appeals:

> "for purposes of determining the constitutional issues directly involved, beginning with the constitutionality of adjudication by an actually-biased tribunal whose judges have *sub silentio* repudiated their mandatory disqualification/disclosure obligations pursuant to §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct" –

and:

> "if the foregoing is denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of the financial and other interests of the justices, as well as of their personal and professional relationships, impacting on their fair and impartial judgment".

¶3 of my September 10, 2018 moving affidavit identified that I would be furnishing it to the Commission on Judicial Conduct as a misconduct complaint against the four justices. This is what I am now doing, enclosing a full copy of the order to show, signed by Presiding Justice Garry on September 12, 2018 and made returnable on September 27, 2018. CJA's webpage for this order to show cause – from which the ENTIRE appellate record is accessible – including the VIDEO of the August 2, 2018 oral argument on the TRO before Justice Devine – is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/9-10-18-osc.htm.

To give each of the four justices of the panel a "head start" in furnishing the Commission with a "written reply to the complaint"[2], a copy will be annexed to my reply affidavit in further support of the order to show cause.

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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."

The four panel justices may be presumed fully knowledgeable of the law relating to judicial disqualification/disclosure – which, additionally, my August 1, 2018 and August 6, 2018 reply affidavits furnished them in response to Assistant Solicitor General Brodie's litigation fraud opposing the first branch of relief pertaining to judicial disqualification/disclosure.[3]

Suffice to say, the Commission's own 2018 annual report – replicating its annual reports of past years – identifies the mandatory nature of a judge's disqualification/disclosure obligations, enforceable by the Commission, stating, under the title heading "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. Three judges were cautioned for various isolated or promptly redressed conflicts of interest. One judge failed to disclose that a complaining witness was a judge who reviews his cases. Another judge failed to recuse himself from a matter after personally witnessing the alleged violation. A third judge failed to immediately recuse himself from a case despite the fact that he had a personal relationship with the complaining witness." (at p. 16, underlining added).

As the Commission's dismissal of my June 16, 2017 conflict-of-interest/corruption complaint against Judge Hartman was without identifying or confronting the conflicts of interest of its members and staff to which the complaint and my supplementing September 11, 2017 and December 26, 2017 letters alerted the Commission and which it did not deny or dispute, I take the opportunity to reiterate the Commission's own Policy Manual, whose Rule 5.3 entitled "Disqualification of Commission Members" states:

> "…(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…".

Indeed, the same standard applies to "Staff Recusal", pursuant to the Commission's Policy Manual Rule 1.5 – likewise "guided by the disqualification standards set forth for judges in Section 100.3(E) of the Rules Governing Judicial Conduct".

Obviously, the Commission's three current judicial members – Appellate Division, First Department Justice Angela Mazzarelli, Queens Supreme Court Justice Leslie Leach, and Brighton Town Court Justice John Falk – all appointed by defendant-respondent Chief Judge Janet DiFiore – suffer from

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[3] *See* pp. 25-28 of my "legal autopsy"/analysis of Assistant Solicitor General Brodie's July 23, 2018 letter, annexed as Exhibit Z to my August 1, 2018 reply affidavit; and pp. 3-4 of my "legal autopsy"/analysis of his August 3, 2018 memorandum, annexed as Exhibit DD to my August 6, 2018 reply affidavit – annexed hereto as Exhibits A and B, respectively.

the identical conflicts of interest as my above-quoted July 24, 2018 moving affidavit recites. The disqualification of Justice Mazzarelli, however, is absolute for the reasons identified by my December 26, 2017 letter (at p. 3 & its footnote 2) and reinforced by her acceptance of Chief Judge DiFiore's reappointing her to the Commission upon the March 31, 2018 expiration of her term.[4]

As for the Commission's current five lawyer members and two lay members, all have been appointed to the Commission by other defendants-respondents, excepting Richard Stoloff, appointed to the Commission by former Temporary Senate President Skelos, a defendant-respondent in the prior – and incorporated – citizen-taxpayer action, *CJA v. Cuomo, et al.* (Albany Co. #1788-2014). Certainly, Mr. Stoloff, as well as his fellow four lawyer commissioners, all have relationships, professional and/or personal, with, and dependencies on, the financially-interested judges.

In light of the foregoing, raising reasonable questions as to the impartiality of Commission members, and the further reasonable questions as to the impartiality of Commission Clerk Savanyu and Administrator Robert Tembeckjian – each directly knowledgeable of the fraudulence of the appellate decisions of Justice Mazzarelli in "*Matter of Mantell v. Comm of Jud Conduct*, 277 AD2d 96 (1st Dept 2000); *Matter of Sassower v. Comm on Jud Conduct*, 289 AD2d 119 (1st Dept 2001)", cited by Clerk Savanyu's October 4, 2017 letter to justify dismissal of the June 16, 2017 complaint – it would appear the only way for the Commission to proceed in light of its Rules 5.3 and 1.5 is by "remittal of disqualification", pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, where Commission members and staff confront the basis of the disqualification mandated by §100.3E, but assert their belief that nonetheless "he or she will be impartial and is willing to participate".

Should the Commission dispute that this is the appropriate way to proceed under the circumstances at bar, I request that it seek an advisory opinion from the Joint Commission on Public Ethics – whose ethics jurisdiction over the Commission is reflected by the Commission's filing of its Ethics Rules with it: http://www.scjc.state.ny.us/Legal.Authorities/code_of_ethics.htm – proscribing Commission members from having "any interest, financial or otherwise, direct or indirect…in substantial conflict with the proper discharge of his/her duties in the public interest".

For the convenience of all, this facially-meritorious, full-documented conflict-of-interest/corruption complaint – with links to its substantiating proof – is posted on CJA's website, here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/complaints-notice/9-20-18-complaint-cjc-vs-app-div-panel.htm.

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[4] Judge Mazzarelli was not the only judicial member of the Commission whose term expired on March 31, 2018. So, too, Court of Claims Judge David Weinstein, who was a fourth judicial Commissioner participating in the dismissal of the June 16, 2017 complaint. Judge Weinstein was an appointee of respondent-defendant Governor Cuomo – and, according to the Commission's website, http://www.scjc.state.ny.us/General.Information/Gen.Info.Pages/members.htm, Governor Cuomo has yet to appoint anyone to fill the vacancy created by the expiration of his term, nearly six months ago.

Enclosure: Plaintiff-Appellants' order to show cause, with September 10, 2018 moving affidavit & exhibits, signed by Presiding Justice Garry on September 12, 2018

cc: Appellate Division, Third Department Presiding Justice Elizabeth Garry
& Associate Justices John Egan, Jr., Eugene Devine, and Stanley Pritzker
"Excellence Initiative" of defendant-respondent Chief Judge Janet DiFiore
Attorney General Barbara Underwood, her supervising/managerial attorneys,
& Assistant Solicitor General Frederick Brodie