CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

January 9, 2025

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

RE: APL 2024-175 – Jurisdictional Response & Reply in Support of Direct Appeal of Right
CJA v Commission on Legislative, Judicial & Executive Compensation …Wilson, Zayas, et al.

Dear Clerk Davis:

This responds to your December 19th *sua sponte* jurisdictional inquiry letter pertaining to the direct appeal of right taken by appellants' November 29th notice of appeal with preliminary appeal statement in *CJA v. Commission on Legislative, Judicial and Executive Compensation…Wilson, Zayas, et al.* (Albany Co. #902654-24). As Respondent Attorney General James has already responded, by a January 3rd letter signed by Assistant Solicitor General Kiernan,[1] this letter is additionally a reply thereto.

Your December 19th letter states:

> "The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a direct appeal lies pursuant to CPLR 5601(b)(2). This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns in the future."

[1] Just the day earlier, on January 2nd, ASG Kiernan had requested a week's extension to January 9th – and the e-mail chain reflecting same and extending my time as well is here.

This is your standard conclusory boilerplate. It has ZERO applicability to appellants' November 29th notice of appeal and preliminary appeal statement and is all the more objectionable by your citation to CPLR §5601(b)(2), which subverts Article VI, §3(b)(2) of the New York State Constitution, which controls.

As obvious from my December 3rd letter responding to your November 6th *sua sponte* jurisdictional inquiry with respect to APL 2024-149, there are no grounds for a *sua sponte* jurisdictional inquiry with respect to APL 2024-175. In the interest of judicial economy, I incorporate that December 3rd letter by reference – along with my December 19th letter detailing the fraud of ASG Kiernan's December 4th response to your November 6th APL 2024-149 *sua sponte* inquiry.

The accuracy of these is undenied and undisputed – and ASG Kiernan and his superiors had the opportunity to contest them by appellants' December 23rd motion for sanctions and disciplinary and criminal referrals of him and them for his fraudulent December 4th response in APL 2024-149 and his comparably fraudulent response in APL 2024-150, which is appellants' appeal of right in *CJA v. JCOPE, et al*.

This should have impelled them to waive opposition to appellants' direct appeal of right in APL-2024-175. Instead, as below demonstrated, they have replicated brazen frauds already exposed and obvious.

Thus, with respect to your first query, ASG Kiernan's January 3rd letter states:

> "…the order appealed from here is not final. Supreme Court issued a judgment dismissing the complaint in an order dated August 14, 2024. Appellants appealed as of right from that order, and that appeal remains pending. The November 2024 order appellants now seek to appeal, however, merely denied renewal and reargument. Such an order does not finally determine an action. *See Jones v. Corley*, 9 N.Y.3 886 (2007). Thus, this Court lacks jurisdiction to review the order. *See* C.P.L.R 5601(b)(2)."

This is successive fraud – concealing that "the order appealed from", the so-called "November 2024 order", is entitled "Decision/Order/Judgment" (Albany-NYSCEF #97), with a decretal paragraph reading:

> "**ORDERED and ADJUDGED** that the petition is dismissed and the relief requested therein is in all respects denied. Arguments of the parties not referenced herein have been reviewed and found to be without merit or otherwise disposed of by this decision/order/judgment." (underlining added).

This is highlighted by my December 3rd letter (at pp. 1-2) precisely because it underscores that the appeal is from a FINAL disposition.

On top of this, ASG Kiernan conceals that Judge McGinty's November 13, 2024 "Decision/Order/Judgment" denied not "merely…renewal and reargument", but a motion addressed to the unconstitutionality of Judge Sober's three August 14, 2024 "Decision(s), Order(s), and Judgment(s)", themselves final dispositions, whose failure, by fraud, to accord ANY scrutiny to the "force of law" December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation renders Chapter 60, Part E, of the Laws of 2015 unconstitutional, pursuant to the concurring opinion of then Associate Judge Wilson in *Delgado v New York State*, 39 N.Y.3d 242 (2022), by which the Court's three-judge plurality became a majority.

ASG Kiernan response to your second query is of the same fraudulent ilk, stating:

> "no direct appeal lies to review the order under C.P.L.R. 5601(b)(2) because the constitutionality of a statute is not the only question involved on appeal. Supreme Court dismissed appellants' complaint on standing and ripeness grounds in its August 2024 final order, and thus did not reach any constitutional challenge raised by appellants. Nor did the court reach any constitutional issue in its November 2024 order denying renewal and reargument. Because this Court would have to address justiciability issues first before addressing the merits of any constitutional challenge, the constitutionality of a statute would not be the only question involved on appeal."

Again, he conceals the facts and law particularized by my letters. Thus, as stated by my December 3rd letter (at p. 3):

> "pursuant to Article VI, §3(b)(2), a direct appeal of right on a constitutional question is not barred by the presence of non-constitutional questions. Indeed, as reflected by *Sheehan v. County of Suffolk*, 67 N.Y.2d 52, 57 (N.Y. 1986), an appellant on a direct appeal can 'waive[] all other nonconstitutional claims (Cohen and Karger, Powers of the New York Court of Appeals §58, at 262-263 [rev ed]).' – which, if required, appellants would here agree to do." (underlining and hyperlinking in my letter).

So, too, did my December 19th letter state (at p. 5):

> "as proven by appellants' 'legal autopsy'/analysis of Judge Sober's three 'Decision(s), Order(s), and Judgment(s)' – the accuracy of which ASG Kiernan does not dispute and whose very existence he conceals – all three are judicial frauds, devoid of factual and legal support, including as to the 'standing and ripeness grounds' of the 'Decision, Order, and Judgment (Motion Sequence 1&2)' for dismissing appellants' verified petition. Moreover, even were the 'standing and ripeness grounds' not, as they are, completely bogus, they would render Chapter 60, Part E, of the Laws of 2015 unconstitutional, *as applied*. As recognized by AG James, five years ago, in a September 9, 2019 letter (at p. 3) opposing the direct appeal of right in *Delgado v. State of New York*, citing *Schulz v. New York State*, 81 N.Y.2d 336 (1993), there is no bar to review 'where the standing issue is [] so closely interrelated with the question of the constitutionality of the enabling statute that the standing issue is itself a constitutional question'. The same would be true of the purported "ripeness".

Suffice to add that ASG Kiernan has also NOT disputed the accuracy of appellants' "legal autopsy"/analysis of Judge McGinty's "Decision/Order/Judgment", annexed to their November 29th notice of appeal, establishing it to be a further judicial fraud, devoid of factual and legal support. Instead, he conceals its existence.

The absence of any rebuttal by ASG Kiernan to my December 3th and December 19th letters pertaining to APL-2024-149 makes his January 3rd letter pertaining to APL 2024-175 frivolous *per se*. This includes the absence of any response to the final two paragraphs of my December 19th letter (at pp. 5-6):

> "It is appellants' position that pursuant to Article VI, §3(b)(2) of the New York State Constitution, they have an unobstructed direct appeal of right from Judge McGinty's November 13, 2024 'Decision/Order/Judgment', that it supersedes and moots their direct appeal of right from Judge Sober's three August 14, 2024 'Decision(s), Order(s), and Judgment(s)', and that were AG James not a respondent, flagrantly disqualified for interest, as manifested by her litigation fraud below and before this Court, she would agree and take other actions consistent with her duties pursuant to Executive Law §63.1 and State Finance Law, Article 7-A (§123-a(3); §123-c-(3); §123-d; §123-e(2)).
>
> As stated by my December 3rd letter, the foregoing is without prejudice to appellants' threshold objection to the Court doing anything other than transferring the direct appeal of right herein and the related appeal of right in *CJA v. JCOPE, et al.* to federal court because its judges and all Supreme Court and acting Supreme Court justices are divested of jurisdiction by Judiciary Law §14 and 'rule of necessity' cannot be invoked by reason thereof – and because of the availability of transfer pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government' – or certifying the question to the U.S. Supreme Court." (hyperlinks in the original).

Appellants' specifically reiterate those two paragraphs, further noting that ASG Kiernan's January 3rd letter also manifests Respondent AG James' disqualifying self-interest by urging the Court to dismiss appellants' direct appeal. This would deviate from the Court's usual practice, which is to transfer direct appeals that it purports do not qualify as direct appeals, to the appropriate appellate court, here the Appellate Division, Third Department.[2] The Court's November 21, 2019 order transferring the direct appeal sought in *Delgado v. New York State* is a pertinent example.

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[2] "instead of dismissing the appeal, the Court's practice is to transfer it to the appropriate Appellate Division or other appellate court", Powers of the New York Court of Appeals (Revised 3rd Edition 2005, Arthur Karger), §7:2, at pp. 223-224, citing cases.

In any event, pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct and this Court's Rule 500.1(a), the Court must not tolerate Respondent AG James' continuing litigation fraud by ASG Kiernan, as hereinabove demonstrated, and appellants' are entitled to sanctions and disciplinary and criminal referrals of her, him, and other culpable supervisory attorneys, such as Deputy Solicitor General Oser and Solicitor General Underwood.

I herein attest to the truth of the foregoing, under penalties of perjury, as if stated in an affirmation pursuant to CPLR §2106.

Thank you.

s/

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

cc: Assistant Solicitor General Beezly Kiernan
for Attorney General Letitia James
Solicitor General Barbara Underwood
Deputy Solicitor General Andrea Oser