

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

December 3, 2024

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

RE: *APL-2024-000149 – Center for Judicial Accountability, et al. v. Commission on Legislative, Judicial & Executive Compensation... Wilson, Zayas, et al.*
Direct Appeal of Right: NYS Constitution Article VI, §3(b)(2)

Dear Clerk Davis:

This responds to your [November 6, 2024 letter](#) pertaining to the direct appeal taken by appellants' [October 21, 2024 notice of appeal and preliminary appeal statement](#) in *CJA v. Commission on Legislative, Judicial and Executive Compensation... Wilson, Zayas, et al.* ([Albany Co. #902654-24](#)).

Your letter states:

“The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether (1) the appeal was timely taken; (2) an appeal to another court is simultaneously pending; (3) the orders appealed from finally determine the proceeding within the meaning of the Constitution; and (4) 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.”

This is to advise that any concern as to the first three issues, doubtless arising from #7 of appellants' preliminary appeal statement which had stated:

“On September 12, 2024 appellants timely-filed a notice of appeal to the Appellate Division, Third Department ([NYSCEF #89](#)) from Rensselaer County Court Judge Jennifer Sober's three August 14, 2024 'Decisions(s), Order(s), and Judgments' and simultaneously made a motion before her ([NYSCEF #83](#)) expressly seeking determination of the unconstitutionality of Chapter 60, Part E, of the Laws of 2015 arising from her decisions. On September 19, 2024, the Albany County Supreme Court Clerk's Office administratively reassigned the motion to Ulster County Surrogate Judge Sara McGinty ([NYSCEF #90](#)). It was returnable on October 4, 2024”,

has now been eliminated by supervening events, namely:

- on November 13, 2024, Judge McGinty rendered a “Decision/Order/Judgment” ([NYSCEF #97](#)) denying the September 12, 2024 motion by a single 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.”;

- on November 29, 2024, appellants filed a notice of direct appeal and accompanying preliminary appeal statement for the November 13, 2024 “Decision/Order/Judgment” ([NYSCEF #99](#)).

As a consequence, appellants’ first notice of direct appeal with its preliminary appeal statement is effectively superseded/mooted by the second – and, with it, your first three concerns.

That being said, the second of those concerns, “an appeal to another court is simultaneously pending”, is a deceit, since:

“Typically, when an appellant has taken simultaneous appeals and a direct appeal to this Court would be available but for the pending appeal in the Appellate Division, this Court will order that the direct appeal be dismissed unless the party promptly abandons his appeal to the Appellate Division. *See Karger, The Powers of the New York Court of Appeals*, §9:4 at 294; *Stefaniak v. NFN Zulkharain*, 30 N.Y.3d 1033 (2017).”¹

¹ See appellants’ last submission to the Court in [CJA v. Cuomo...DiFiore](#): my [January 9, 2020 letter](#) quoting (at pp. 7-8) the above from AG James’ September 9, 2019 letter opposing the direct appeal sought by the plaintiffs in *Delgado v. New York State*, and additionally quoting the Court’s 2017 *Stefaniak* order:

“Appeal dismissed without costs, by the Court sua sponte, upon the ground that simultaneous appeals do not lie to the Appellate Division and the Court of Appeals, unless within 20 days appellant, if he be so advised, serves upon all parties and files in this Court a notice that he has abandoned his appeal to the Appellate Division and stipulates for the withdrawal of that appeal (*see Parker v Rogerson*, 35 NY2d 751, 753-754, 320 NE2d 650, 361 NYS2d 916 [1974]). Judge Fahey took no part.”;

and two other Court orders in cases cited by AG James’ September 9, 2019 letter:

- *Knuden v. New Dorp Coal Corp.*, 20 NY2d 875, 877 (1967):

“Motion to dismiss appeal granted and appeal dismissed, with costs and \$10 costs of motion, unless within 10 days appellant serves upon respondents a notice that it has abandoned its appeal to the Appellate Division and thereafter stipulates for the withdrawal of that appeal,

As to your fourth concern, “whether... a direct appeal lies pursuant to CPLR 5601(b)(2)”, it is also a deceit.

The constitutional basis for a direct appeal is [Article VI, §3\(b\)\(2\) of the New York State Constitution](#), which provides, “In civil cases and proceedings”, for an appeal:

“As of right, from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.” (underlining added).

By contrast, [CPLR §5601\(b\)\(2\)](#) omits the above-underlined from its deceptively-seeming parallel appeal of right on “Constitutional grounds”:

“from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States.”

It thereby conceals that 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.

Yet your November 6, 2024 letter makes no inquiry as to waiver. Nor does it refer to Article VI, §3(b)(1), notwithstanding appellants’ direct appeal invoked it, exclusively, by their [October 21, 2024 notice of appeal, with their preliminary appeal statement](#) expressly stating in response to Question #5 as to the “Jurisdictional basis for this appeal”:

without costs.”

- *Parker v. Rogerson*, 35 NY2d 751, 753 (1974):

Appeal will be dismissed, without costs, by the Court of Appeals sua sponte unless within 20 days appellants..., if they be so advised, serve upon respondents and file in this court a notice that they have abandoned their cross appeal to the Appellate Division and stipulate for the withdrawal of that appeal, without costs (*Knudsen v. New Dorp Coal Corp.*, 20 N.Y.2d 875, supra; see 7 Weinstein-Korn-Mill, NY Civ. Prac., pars. 5601.21-5601.26; Cohen and Karger, Powers of the New York Court of Appeals, §73, especially n. 23 and cases cited at p. 315 and n. 24, at 316).”


“New York State Constitution, Article VI, §3(b)(2) comparable, but not identical, to your form option ‘CPLR 5601(b)(2): constitutional ground (judgment of court of original instance)’”

As set forth by appellants’ letter of today’s date in response to your [November 6, 2024 letter pertaining to appellants’ appeal of right in *CJA v. JCOPE, et al.*](#), incorporated herein by reference, we have “been around this block before” – six years ago, in [CJA v. Cuomo...DiFiore](#).

Indeed, the above rebuttal to your #2 and #4 jurisdictional issues is largely extracted from appellants’ final [November 25, 2019 motion](#) in *CJA v. Cuomo...DiFiore* and final [January 9, 2020 letter](#) in further support of the motion. As therein chronicled, the Court subverted the direct appeal of right of the plaintiffs in *Delgado v. New York State (Albany Co. #907537-18)*. Presumably this was because [Supreme Court Justice Ryba’s June 7, 2019 decision in that case](#) was predicated on the Appellate Division, Third Department’s [December 27, 2018 decision in *CJA v. Cuomo...DiFiore*](#), whose appeals by right and by leave the Court was simultaneously subverting, in face of the proof of its fraudulence particularized by [appellants’ “legal autopsy”/analysis, accompanying their March 26, 2019 letter in support of their appeal of right](#), and the substantiating [hard-copy of the appellate record](#) appellants had already furnished.

In closing, I draw to your attention that appellants’ January 18, 2024 Opposition Report to the Commission on Legislative, Judicial and Executive Compensation’s December 4, 2023 Report ([NYSCEF #6](#)) includes more than a dozen single-spaced pages of excerpts from [the record of *CJA v. Cuomo...DiFiore before the Court*](#), appended as its Exhibit A to demonstrate the Court’s subversion of Article VI, §3(b)(1) of the New York State Constitution for appeals of right, Article VI, §3(b)(6) of the New York State Constitution for appeals by leave, and Article VI, §3(b)(2) of the New York State Constitution for direct appeals. Perhaps you saw it after you accepted service from me on March 21, 2024 of the March 18, 2024 verified petition herein ([NYSCEF #1](#)), on behalf of Respondent Chief Judge Wilson, declining same as to Respondent Chief Administrative Judge Zayas ([NYSCEF #22](#)).

The foregoing is without prejudice to appellants’ threshold objection to the Court doing anything other than transferring this direct appeal of right 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.

A handwritten signature in black ink, appearing to read 'Elena Ruth Sassower', written over a horizontal line.

Elena Ruth Sassower, unrepresented petitioner-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: Attorney General Letitia James
Solicitor General Barbara Underwood
ATT: Assistant Solicitor General Beezly Kiernan