

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

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*Elena Ruth Sassower, Director*

December 19, 2024

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

RE: APL 2024-149, superseded/mooted by APL-2024-175 –  
*Center for Judicial Accountability, et al. v Commission on Legislative,*  
*Judicial & Executive Compensation...Wilson, Zayas, et al.*  
Reply in Further Support of Direct Appeal of Right

Dear Clerk Davis:

This follows my notification to Assistant Deputy Clerk Wood, on December 4<sup>th</sup>, by a voice mail message, that Attorney General James' two letters of that date that I had just received, signed by Assistant Solicitor General Kiernan, responding to your two November 6<sup>th</sup> *sua sponte* jurisdictional inquiry letters for APL 2024-149 (direct appeal of right) and APL 2024-150 (appeal of right), were each “frauds on the court” – and that I wished the opportunity to reply.

Assistant Deputy Clerk Wood promptly called me back, early the next morning, and, at my request, gave me until December 19<sup>th</sup> to respond.

As I told Assistant Deputy Clerk Wood I would do and then subsequently told her I had done, I advised ASG Kiernan, accordingly. My e-mail to him, sent at 10:42 a.m. on December 5<sup>th</sup>, stated:

“This is to give you NOTICE of what you and your superiors already know, that [Respondent AG James' December 4<sup>th</sup> letter](#) pertaining to appellants' appeal of right in *CJA v. JCOPE, et al.* (APL #2024-00150) and [Respondent AG James' December 4<sup>th</sup> letter](#) pertaining to appellants' direct appeal of right in *CJA v. Commission on Legislative, Judicial & Executive Compensation...Wilson, Zayas, et al.* (APL #2024-00149) –

both of which you signed – are ‘frauds on the court’.

IMMEDIATELY upon opening and reading your two December 4<sup>th</sup> letters, which I did not do until sending you appellants’ two above-attached December 3<sup>rd</sup> letters, I telephoned the Court of Appeals to so-advise and to make arrangements with respect thereto.

This morning, in response to the voice mail message I had left, I got a return call and obtained two weeks, until December 19<sup>th</sup>, to reply to your letters.

Be advised that unless your letters are withdrawn – and appellants’ December 3<sup>rd</sup> letters anticipated the frauds you would and did utilize – appellants will be seeking sanctions and other relief against you and your culpable superiors.

**Please forward this e-mail to your superiors – specifically Respondent AG James and Deputy Solicitor General Andrea Oser, whose names are on the December 4<sup>th</sup> letters, as well as Solicitor General Barabara Underwood, whose name curiously is not – and confirm, by no later than a week from today, December 12<sup>th</sup>, that you are withdrawing the letters and, if not, the reasons, responsive to appellants’ December 3<sup>rd</sup> letters and the substantiating ‘legal autopsy’/analyses on which they are based, so that I may be guided accordingly.”** (capitalization, hyperlinking, underlining, and bold in the original).

I received no response to this e-mail.

Here then are the specifics of [AG James’ fraud by her December 4<sup>th</sup> letter in APL 2024-149](#) – the direct appeal of right in *CJA v. Commission on Legislative, Judicial and Executive Compensation... Wilson, Zayas, et al.*, a letter signed by ASG Kiernan and, for simplicity, hereinafter referred-to as his.

As comparison to [my December 3<sup>rd</sup> letter](#) reveals, ASG Kiernan December 4<sup>th</sup> letter does not disclose that subsequent to [your November 6<sup>th</sup> letter](#), Ulster County Surrogate Judge McGinty rendered a November 13, 2024 “Decision/Order/Judgment” ([Albany-NYSCEF #97](#)) resulting in appellants filing a November 29, 2024 notice of direct

appeal and preliminary appeal statement ([Albany-NYSCEF #99](#)). ASG Kiernan would reasonably have recognized that this would supersede or moot appellants' October 21, 2024 notice of direct appeal from and preliminary appeal statement for Rensselaer County Court Judge Sober's three August 14, 2024 "Decision(s), Order(s), and Judgment(s)" ([Albany-NYSCEF #95](#)) to which your November 6<sup>th</sup> letter related—and that his paragraphs "*First*, the appeal was not timely taken" and "*Second*, an appeal to the Appellate Division is currently pending" would not be relevant to this new notice of direct appeal and preliminary appeal statement. In any event, it was ASG Kiernan's duty to acknowledge the supervening events of which he was fully knowledgeable, and state AG James' position with respect thereto.

As to ASG Kiernan's paragraph "*Third*", it states:

*"Third*, only one of the three Supreme Court orders appealed here is final. Neither Supreme Court's order denying appellants' motion for a preliminary injunction nor Supreme Court's order denying appellants' motion for costs and sanctions, disqualification of the Office of the Attorney General, and transfer to federal court. Thus, this Court lacks jurisdiction to review those orders as of right. *See* C.P.L.R. 5601(b)(2)."

This is fraud. All three orders – each denominated by Judge Sober to be a "Decision, Order, and Judgment" – are integrally-related final orders – and Judge Sober's ulterior purpose of protecting Respondent AG James and her fellow respondents by splitting her second order from her first was identified at page 2 of appellants' "legal autopsy"/analysis of her three "Decision(s), Orders(s), and Judgment(s)" that is part of their October 21, 2024 notice of direct appeal ([NYSCEF #95](#)).

ASG Kiernan falsely identifies the first order as "Supreme Court's order denying appellant's motion for a preliminary injunction". This is Judge Sober's "Decision, Order, and Judgment (Motion Sequence 1&2)" ([Albany-NYSCEF #79](#)), whose very name reflects that it determined more than a single "motion". The motion ASG Kiernan conceals is AG James' "cross-motion" to dismiss the verified petition for all respondents other than the Commission on Legislative, Judicial and Executive Compensation, which this first "Decision, Order, and Judgment" granted. In other words, it is a final order as to those respondents.

The second order that ASG Kiernan purports is not final is Judge Sober's "Decision, Order, and Judgment (Motion Sequence 3)" ([Albany-NYSCEF #80](#)) "denying appellants' motion for costs and sanctions, disqualification of the Office of the Attorney General, and transfer to federal court". He does not reveal that its denial is predicated on the "motion ha[ving] been rendered moot" by "Decision, Order, and Judgment (Motion Sequence 1&2)". In other words, that it is integrally part of the first order and would necessarily be brought up for review by reason thereof.

As to ASG Kiernan's paragraph "Fourth", it states:

*"Fourth, no direct appeal lies to review the final judgment entered by Supreme Court entered by Supreme Court 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, and thus did not reach any constitutional challenge raised by appellants. Because this Court would have to address those justiciability issues first before addressing the merits of any such challenge, the constitutionality of a statute would not be the only question involved on appeal."*

This is fraud. As ASG Kiernan may be presumed to know, and as is reflected by appellants' October 21, 2024 preliminary appeal statement by its answer to the question as to "Jurisdictional basis for this appeal", [CPLR §5601\(b\)\(2\)](#) is NOT the same as [Article VI, §3\(b\)\(2\) of the New York State Constitution](#) – the latter making apparent what the former conceals, namely, that the existence of non-constitutional questions does not bar a direct appeal on the constitutional questions.<sup>1</sup>

Based on ASG Kiernan's pretense, from his paragraph "Third" that there is only one final order, the "final judgment entered by Supreme Court" to which his paragraph "Fourth" refers would be Judge Sober's "Decision, Order, and Judgment (Motion Sequence 4)" ([Albany-NYSCEF #81](#)), granting AG James' motion, on behalf of the Commission on Legislative, Judicial and Executive Compensation, to dismiss

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<sup>1</sup> Likewise, ASG Kiernan's paragraph "Third" cites not to Article VI, §3(b)(2), but to CPLR §5601(b)(2).

appellants' verified petition pursuant to CPLR §3211(a)(8) for failure to make timely service.

In any event, 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 "mootness".

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Assistant Deputy Clerk Wood informed me yesterday, in response to my inquiry of her the previous day, that a separate APL number has been assigned to appellants' November 29, 2024 notice of appeal and preliminary appeal statement and that it is APL 2024-175 ([Albany-NYSCEF #99](#)).

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 3<sup>rd</sup> 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.

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: Attorney General Letitia James  
Solicitor General Barbara Underwood  
Assistant Solicitor General Beezly Kiernan