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-2024-000150 – *Center for Judicial Accountability, et al. v. JCOPE, et al.*
Appeal of Right: NYS Constitution Article VI, §3(b)(1); CPLR §5601(b)(1)

Dear Clerk Davis:

This is to request that you withdraw your November 6, 2024 letter pertaining to the above appeal of right and restore it to its "normal course' – and, absent same, that you disclose facts bearing on your fairness and impartiality.

According to the Court's "Civil Jurisdiction and Practice Outline" (at p. 8) and 2023 Annual Report (at p. 4), it is you who, "Under the authority of Rule 500.10" and "Pursuant to Rule 500.10", "examines all filed preliminary appeal statements for issues related to subject matter jurisdiction".

Rule 500.10, "Examination of Subject Matter Jurisdiction", reads, by its ¶a:

> "On its own motion, the Court may examine its subject matter jurisdiction over an appeal based on the papers submitted in accordance with section 500.9 of this Part. The Clerk of the Court shall notify all parties by letter (Jurisdictional Inquiry) when an appeal has been selected for examination pursuant to this section, stating the jurisdictional concerns identified in reviewing the preliminary appeal statement and setting a due date for filing and service of comments in letter form (Jurisdictional Response) from all parties. Such examination shall result in dismissal or transfer of the appeal by the Court or in notification to the parties that the appeal shall proceed either under the review process described in section 500.11 of this Part or in the normal course, with or without oral argument. This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns at any time. (underlining added).

The referred-to "normal course" of the appeal, interrupted by Rule 500.10, is set forth by Rule 500.12 "Filing of Record Material and Briefs in Normal Course Appeals", Rule 500.13 "Content and Form of Briefs in Normal Course Appeals", and Rule 500.14 "Records, Appendices and Exhibits in Normal Course Appeals".

In pertinent part, Rule 500.12(a) reads:

> " Scheduling letter. Generally, in an appeal tracked for normal course treatment, the Clerk of the Court issues a scheduling letter after the filing of the preliminary appeal statement…. The scheduling letter sets the filing dates for record material and briefs." (underlining added).

Your November 6, 2024 letter, which you signed as Deputy Clerk, does not reveal that it is you who removed appellants' appeal from its "normal course" – and gives the impression that the preliminary appeal statement was yet to be examined. Thus, your first paragraph states:

> "The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether (1) the order appealed from finally determines the proceeding within the meaning of the Constitution and (2) whether a substantial constitutional question is directly involved to support an appeal as of right. This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns in the future."

Certainly, your letter does NOT say – as Rule 500.10 requires – that upon "reviewing the preliminary appeal statement" you "identified" the two jurisdictional questions that you purport exist. This is not surprising, as there is NO basis for either jurisdictional question – and examination of appellants' October 21, 2024 preliminary appeal statement reveals this readily:

- As to #1: "whether [] the order appealed from finally determines the proceeding within the meaning of the Constitution", how is this an issue? The Appellate Division, Third Department decided appellants' appeals by a June 20, 2024 Memorandum and Order and then, by an October 10, 2024 Decision and Order on Motion, denied appellants' post-appeal motion for relief including leave to appeal to this Court – and this is identified and substantiated by appellants' preliminary appeal statement;

- As to #2: "whether a substantial constitutional question is directly involved to support an appeal of right", how is this an issue? Appellants' preliminary appeal statement identifies and substantiates a succession of "substantial constitutional question(s)…directly involved" ALL arising from a threshold constitutionally-packed first, under a POINT I heading, as follows:

  > "The appealed-from September 10, 2024 Decision and Order on Motion and June 20, 2024 Memorandum and Order are 'so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and, comparably, under Article I, §6 of the New York State Constitution, 'No person shall be deprived of life, liberty or property without due process of

> law',[fn1] manifesting the pervasive actual bias of the judges below who concealed their financial and other interests and that they were divested of jurisdiction by reason thereof pursuant to Judiciary Law §14, precluding invocation of the judge-made 'rule of necessity', which, moreover, was inapplicable because of the existence of a federal forum pursuant to Article IV, §4 of the United States Constitution 'The United States shall guarantee to every State in this Union a Republican Form of Government'.
>
> A. The appealed-from September 10, 2024 Decision and Order on Motion (NYSCEF #62), denying petitioners' July 4, 2024 motion for reargument, leave to appeal, vacatur for lack of jurisdiction and 'fraud, misrepresentation, or other misconduct of an adverse party', and transfer to federal court or certification of the question (NYSCEF #52), is without decision, without facts, and without law – because no decision, facts and law can justify it;
>
> B. The appealed-from June 20, 2024 Memorandum and Order (NYSCEF #51) 'falsify[ies] the record, *in toto*, and upend[s] ALL ethical, adjudicative, and evidentiary standards' – and was so-demonstrated by appellants' July 4, 2024 motion whose Exhibit A (NYSCEF #54) was their 'legal autopsy'/analysis of it."

The annotating footnote 1 reads:

> "Such entitles appellants to an appeal of right, *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1923): 'Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right.' (at p. 132)."

This is followed by POINT II:

> "Appellants' have a *prima facie* entitlement to summary judgment on each of their ten causes of action of their June 6, 2022 verified petition/complaint (S.Ct/NYSCEF #1) and September 1, 2022 verified amendment (S.Ct/NYSCEF #84) – five of which, *on their face*, identify the unconstitutionality for which they sought declarations – which is why the appealed-from June 20, 2024 Memorandum and Order makes no declarations and conceals that appellants sought summary judgment in Supreme Court and on appeal. These five causes of action are:

THE SIXTH CAUSE OF ACTION (¶¶78-85)

'Declaring Unconstitutional, Unlawful, and Void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022' – Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw';

THE SEVENTH CAUSE OF ACTION (¶¶86-90)

'Declaring Unconstitutional, Unlawful, and Void the FY2022-23 State Budget, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw';

THE EIGHTH CAUSE OF ACTION (¶¶91-96)

'Declaring Unconstitutional, Unlawful, Larcenous, and Void Legislative/Judiciary Budget Bill S.8001-A/A.9001-A, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, and Legislative Rules, and Caselaw';

THE NINTH CAUSE OF ACTION (¶¶97-105)

'Declaring Unconstitutional, Larcenous, and Void the FY2022-23 Appropriations for the New York State Commission on Judicial Conduct, the New York State Inspector General, the Appellate Division Attorney Grievance Committees, and the Unified Court System's Inspector General – Based on the Evidence of their Flagrant Corruption in Handling Complaints, Furnished by Petitioners at the Legislature's January 25, 2022 'Public Protection' Budget Hearing and Again by their March 25, 2022 E-Mail';

TENTH CAUSE OF ACTION (¶¶106-114)

'Declaring Unconstitutional, *as Written* and *as Applied*, Public Officers Law §108.2(b), Flagrantly Violating Article III, §10 of the New York State Constitution and Legislative Rules Consistent Therewith by Exempting the Legislature from the Open Meetings Law to Enable it to Discuss 'Public Business' in Closed-Door Party Conferences – Rather than Openly in Committees and on the Senate and Assembly Floor'".

And here is POINT III:

> "Appellants' entitlement to summary judgment on their sixth cause of action for a declaration that 'the ethics commission reform act of 2022' is unconstitutional, *by its enactment*, moots the constitutional challenge to the statute, *as written* – the sole issue before the Court in *Cuomo v. COELIG* (APL-2024-00076) – absent invocation of exceptions to mootness – which is why the Appellate Division denied, without decision, facts, or law, appellants' unopposed January 12, 2024 motions in *CJA v. JCOPE, et al.* (NYSCEF #26) and in *Cuomo v. COELIG* (CV-23-1778/NYSCEF #31) for the appeals to be heard together and to prevent fraud – and then denied, without decision, facts, or law, appellants' July 4, 2024 motion for leave to appeal whose three specifically requested certified questions were (NYSCEF #52):
>
> - 'Whether, *as a matter of law*, appellants were entitled to summary judgment on their verified petition's sixth cause of action to void the 'ethics commission reform act of 2022' as 'enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw'?';
>
> - 'Whether, *as a matter of law*, this sixth cause of action moots *Cuomo v. COELIG*, absent invocation of exceptions to mootness?'; and
>
> - 'Whether, *as a matter of law*, the Court 'err[ed]' by its two February 1, 2024 orders herein and in *Cuomo v. COELIG*, denying, without decision, without facts, and without law, appellants' unopposed January 12, 2024 motions to have the appeals heard together and to prevent fraud?'"

Faced with these POINTS I, II, and III, and with appellants' corroborating "legal autopsy"/analysis of the Appellate Division's June 20, 2024 Memorandum and Order and prior orders (NYSCEF #54), and the full record of the case, accessible to you *via* the NYSCEF docket for CV-23-0115 and *via* live hyperlinks, no fair and impartial Clerk could do other than issue a "scheduling letter" "set[ting] the filing dates for record material and briefs" pursuant to Rule 500.12(a), so that the appeal could proceed "in the normal course".

Do you disagree? And, if so, is it your contention that POINTS I, II, and III do NOT present "substantial constitutional question(s)…directly involved" – as they so clearly do.

This, quite apart from the fact that Article VI, §3(b)(1) of the New York State Constitution, mirrored by CPLR §5601(b)(1), does NOT require "a substantial constitutional question…directly involved", but, rather, confer an appeal of right in civil cases and proceedings:

> "from a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States…"

Article VI, §3(b)(1) and CPLR §5601(b)(1) were both identified by appellants' October 21, 2024 notice of appeal and preliminary appeal statement as the basis for their appeal of right. Is there some reason your November 6, 2024 letter refers to neither provision?

As you know, we have "been around this block before" – six years ago, in *CJA v. Cuomo…DiFiore*, to which this case is "the continuation", so-stated by me in testifying on October 13, 2023 before the Commission on Legislative, Judicial and Executive Compensation (VIDEO, at 2hrs/31mins) – and repeated (at p. 2) by appellants' January 18, 2024 Opposition Report to the Commission's December 4, 2023 Report and again by appellants' March 18, 2024 verified petition (at ¶7) in *CJA v. Commission on Legislative, Judicial and Executive Compensation…Wilson, Zayas..et al.*, a case which is a further "continuation" of *CJA v. Cuomo…DiFiore*, simultaneously before the Court, on an appeal of right.

In *CJA v. Cuomo…DiFiore*, in your capacity as Deputy Clerk, you sent me a comparable March 4, 2019 letter, notwithstanding appellants' comparably overwhelming February 26, 2019 preliminary appeal statement in support of a January 26, 2019 appeal of right pursuant to Article VI, §3(b)(1) and CPLR §5601(b)(1), substantiated by an already-transmitted hard copy of the Appellate Division, Third Department record.

I responded by a March 26, 2019 letter to then Clerk Asiello, with an accompanying "legal autopsy"/analysis of the Appellate Division, Third Department's appealed-from December 27, 2018 Memorandum and Order, each substantiated by further exhibits.

After discussing, under a first section heading, appellants' constitutional due process ground for their appeal of right and the Court's 1923 decision in *Valz v. Sheepshead Bay*, my March 26, 2019 letter continued, under a second section heading discussing the constitutional right of appeal conferred by Article VI, §3(b)(1) and CPLR §5601(b)(1), ending as follows:

> "By reason thereof, appellants have an appeal of right, which they here seek to enforce. And relevant thereto is the dissent of former Court of Appeals Associate Judge Robert Smith in *Kachalsky v. Cacace*, 14 N.Y.3d 743 (2010), candidly confessing that the Court's addition of the word 'substantial', such as appears in Deputy Clerk Davis' March 4, 2019 letter, is without constitutional or statutory warrant and that its effect is to *sub silentio* convert the Court's mandatory jurisdiction to one that is discretionary. Consequently, if the largely boilerplate March 4, 2019 letter is a prelude to the Court's completely boilerplate second letter 'Appeal dismissed, without costs, by the Court of Appeals, sua sponte, upon the ground that no substantial constitutional question is directly involved', that is itself a further "substantial constitutional question…directly involved" – and appellants are

> here asserting it.[fn3]" (at p. 9, hyperlinking added, italics and underlining in the original).

There was no responsive adjudication from the Court. Rather, by a May 2, 2019 order, not signed by any judge, but by you, you stated that the Court had dismissed the appeal from the Appellate Division's December 27, 2018 decision "sua sponte…upon the ground that no substantial constitutional question is directly involved".

The fraud and unconstitutionality of this May 2, 2019 order was the subject of an overwhelming May 31, 2019 motion, demonstrating that if rendered by the Court's judges, it was inexplicable except as a manifestation of their actual bias arising from HUGE financial and other interests divesting them of jurisdiction pursuant to Judiciary Law §14 and the Court's own interpretive caselaw – and seeking threshold determinations of questions including:

> "Is this Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and 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 a *sua sponte* ground to dismiss because 'no substantial constitutional question is directly involved' unconstitutional, *as written, as unwritten, and as applied*?" (italics and underlining in the original).

The following week, appellants' made a comparably overwhelming June 6, 2019 motion for leave to appeal pursuant to Article VI, §3(b)(6) of the New York State Constitution and, two months later, made a further overwhelming August 8, 2019 motion to strike A.G James' opposition as a "fraud on the court", to disqualify her, and for other relief.

All three motions, fully documented by law and evidentiarily-proven fact, were denied on the same day and in the same fashion: three October 24, 2019 orders, not signed by any judge, but by you, each non-responsive, conclusory, without reasons boilerplate, here, here, and here.

This culminated in a final fourth motion to the Court – a November 25, 2019 motion, whose notice of motion encompassed the three prior motions and the four orders you had signed. Its fifth and sixth branch were as follows:

> "5. pursuant to CPLR §2221(d) and this Court's Rule 500.24, granting reargument to address what the Court 'overlooked' by its three October 24, 2019 Orders – *to wit*, ALL the facts, law, and legal argument presented by appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions, including as to the *unconstitutionality, as written, as unwritten, and as applied*, of the Court's

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"[fn3] See, *inter alia*, '*An Illusionary Right of Appeal: Substantial Constitutional Questions at the New York Court of Appeals*', 31 Pace Law Review 583 (2011) (Meredith R. Miller); '*What Does It Mean If Your Appeal of Right Lacks A 'Substantial' Constitutional Question in the New York Court of Appeals?*', 75 Albany Law Review 899 (2012) (Alan J. Pierce)."

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 a *sua sponte* ground to dismiss because 'no substantial constitutional question is directly involved', which it has not even embodied in a court rule.

6. pursuant to CPLR §2221(e), granting renewal to address new facts that could not be presented previously, further warranting vacatur of the October 24, 2019 Orders, *to wit*:

> (a) 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;
>
> (b) the Court's November 21, 2019 Order in *Delgado v. New York State*, if rendered by its six associate judges, manifests their actual bias born of undisclosed financial and other interests, proscribed by Judiciary Law §14, divesting them of jurisdiction to 'sit' and 'take any part';
>
> (c) Chief Administrative Judge Lawrence Marks and other judges of the Unified Court System are colluding in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, which is itself repeating ALL the statutory and constitutional violations of the 2015 Commission on Legislative, Judicial and Executive Compensation that this citizen-taxpayer action establishes." (underlining and italics in the original).

In support of Part A of the sixth branch, my November 25, 2019 moving affidavit stated (at pp. 12-13):

> "All four of the Court's Orders herein are not signed by any judge or by Court Clerk Asiello, but by Deputy Clerk Heather Davis. Clerk Asiello also functions as the Court's legal counsel and I have sent him two FOIL/records request letters inquiring on the subject. The first, dated November 1, 2019 (Exhibit C-1) was disingenuously responded-to by Deputy Clerk Davis (Exhibit C-2). The second, dated November 13, 2019 (Exhibit D), was my reply thereto and asked for expedition by reason of this motion.
>
> On Friday, November 22, 2019, Motion Clerk Rachel MacVean informed me that no response to my November 13, 2019 letter had yet gone out, further stating that she could not orally tell me whether Clerk Asiello had disqualified himself, as she is not privy to the letter that will be sent.

> Upon receipt of such letter, I will advise the Court as to this issue, potentially constituting another respect in which the October 24, 2019 and May 2, 2019 Orders are unlawful and cannot be defended." (hyperlinking added).

I did so-advise, by a January 9, 2020 letter to Clerk Asiello, stating (at pp. 1-3):

> "This letter,[fn] pursuant to this Court's Rule 500.6 and Rule 500.7, is to furnish the Court with facts, as currently known, pertaining to the sixth branch of appellants' November 25, 2019 motion for renewal – facts my November 25, 2019 moving affidavit stated (at ¶15) were not then fully known.
>
> Although the facts are still not fully known, they nonetheless reinforce the duty of the associate judges to vacate their four Orders herein, if not themselves, then by referral to judges not afflicted by the HUGE financial and other interests in this case that divest them of jurisdiction pursuant to Judiciary Law §14 and the Court's own interpretive decisions in *Oakley v. Aspinwall*, 3 NY547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914).
>
> …
>
> It is still not known whether the Court's three October 24, 2019 Orders and May 2, 2019 Order herein were lawfully signed by Deputy Clerk Heather Davis, as you have inexplicably NOT responded to my November 1, 2019 and November 13, 2019 letters on the subject.[fn] Instead, Ms. Davis has responded to both letters, failing to even identify the questions she is not answering, *to wit*, whether you had disqualified yourself, the reason for your doing so, any records pertinent thereto, and 'a copy of the Court's rules, regulations, and procedures governing disqualification of its staff for financial and other interests, relationships, and other bias'. Ms. Davis' response to my November 13, 2019 letter, which was dated November 20, 2019, but mailed in an envelope with a November 25, 2019 postmark, is annexed hereto (Exhibit A).
>
> As the answer to whether you disqualified yourself is known to you and Ms. Davis – and there is nothing confidential about such information – your failure and hers to state that you disqualified yourself means there is NO evidence that she could lawfully sign the October 24, 2019 and May 2, 2019 Orders. The *prima facie* evidence establishes that you were not absent or physically disabled on those dates, having signed all the Court's other October 24, 2019 and May 2, 2019 orders in other cases. Nor was there any "necessity" for Ms. Davis to have signed the Orders as, pursuant to CPLR §2219(b),[fn3] the duty to sign belongs, in the first instance, to the

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"[fn3] CPLR §2219(b), entitled "Signature on appellate court order", reads, in full:

> 'An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk.'"

> appellate judges. In other words, six associate judges could have signed each of the Court's four Orders they are purported to have rendered unanimously.
>
> Consequently, if, in fact, the six associate judges did render the four Orders herein – and there is NO proof that they did – then one of the six associate judges must sign them pursuant to CPLR §2219(b), unless they are to be vacated. As Senior Associate Judge Rivera's name is at the top of all four Orders, it would be logical for her to sign them, except that her proscribed financial interests are the largest, having a claw-back liability of about $400,000, in addition to the $82,2000 annual salary interest she shares with her fellow associate judges. (hyperlink added, capitalization and underlining in the original).

Motion Clerk MacVean acknowledged the January 9, 2020 letter, stating that it would be "submitted to the Court for whatever consideration it determines to be appropriate". Other than that, the only response was another non-responsive, conclusory order, denying the motion, without reasons, not signed by any judge, or by Clerk Asiello, but only by you, dated February 18, 2020.

That ended *CJA v. Cuomo…DiFiore* – but its "continuation" is in this case, *CJA v. JCOPE, et al.* – as I stated by my October 13, 2023 testimony before the Commission on Legislative, Judicial and Executive Compensation (VIDEO, at 2 hrs/31mins), identifying *CJA v. Cuomo…DiFiore* as Exhibit A as to the corruption infesting the judiciary, "throwing" cases by fraudulent judicial decisions, with Exhibit B its "continuation", *CJA v. JCOPE, et al.*, then at the Appellate Division, Third Department.

Indeed, I also stated, at the October 13, 2023 hearing, that within JCOPE's jurisdiction was the Commission on Judicial Conduct and that embodied in the *CJA v. JCOPE, et al.* lawsuit was the complaint I had filed with it against the Court's judges for their corruption in *CJA v. Cuomo…DiFiore*, specifying two by name: former Associate Judge Fahey, before whom, as chair of the Commission on Legislative, Judicial and Executive Compensation, I was testifying, and former Associate Judge Wilson, now the Court's Chief Judge.

That complaint, dated February 7, 2021, which additionally is against the Appellate Division, Third Department's justices for their corruption culminating in their December 27, 2018 decision, is Exhibit D-3 to the June 6, 2022 verified petition herein (Albany-NYSCEF #12). Its 34 single-spaced pages comprehensively summarize the record of *CJA v. Cuomo…DiFiore* before the Court underlying the five fraudulent orders you signed, excepting that it does not identify that you also signed the fifth order.

The Appellate Division's December 27, 2018 decision in *CJA v. Cuomo…DiFiore*, which the Court refused to address five years ago, is now again before the Court, in *CJA v. JCOPE, et al*. on this appeal of right – and also in *CJA v. Commission on Legislative, Judicial and Executive Compensation…Wilson, Zayas, et al.*, on a direct appeal of right.

In both cases, the verified pleadings asserted the fraudulence of the *CJA v. Cuomo…DiFiore* appellate decision – and evidentiarily-established same by their annexed and linked exhibits, thereafter reinforced and supplemented again and again in the record. Nevertheless, in both cases, the appealed-from decisions materially rest on the *CJA v. Cuomo…DiFiore* appellate decision.

Thus, in this case, notwithstanding ¶87(8) of the verified petition (Albany-NYSCEF #1) asserting the December 27, 2018 decision to be fraudulent, with substantiating particulars by the petition's Exhibit D-2, February 7, 2021 complaint to the Commission on Judicial Conduct (Albany-NYSCEF #12), and, additionally, its Exhibit D-3, February 11, 2021 complaint to the Attorney Grievance Committees against AG James (Albany-NYSCEF #11), Justice Gandin's November 23, 2022 decision, which the Appellate Division's June 20, 2024 decision affirmed, each rely on it.

- Thus, Judge Gandin's November 23, 2022 decision (Albany-NYSCEF #111, at pp. 2-3, 4-5) utilizes the *CJA v. Cuomo…DiFiore* appellate decision as authority for why, notwithstanding Judiciary Law §14, he could hear this case by "rule of necessity" and, for dismissing the verified petition's sixth cause of action and, inferentially, the seventh, eighth and ninth causes of action.

- Similarly, the Appellate Division's June 20, 2024 decision (AD3-NYSCEF #51, at pp. 2-3) utilizes the *CJA v. Cuomo…DiFiore* appellate decision as authority for why, notwithstanding Judiciary Law §14, Justice Gandin could hear the case by "rule of necessity".

Both Judge Gandin and the Appellate Division did this at the behest of Respondent AG James – and appellants objected repeatedly to her foisting it upon the court, as if legitimate. This is evidenced throughout the record and reflected by appellants' "legal autopsy"/analysis of the November 23, 2022 decision (Albany-NYSCEF #121, at pp. 15-17, 27-29) and "legal autopsy"/analysis of the June 20, 2024 decision (AD3-NYSCEF #54, at pp. 8-10, 17-19).

Indeed, the record of this case, at the Appellate Division, ends with AG James' July 22, 2024 opposing affirmation of her "of counsel" Assistant Solicitor General Beezly Kiernan (AD3-NYSCEF #57), stating (at ¶6) in opposition to the leave to appeal sought by appellants' July 4, 2024 motion, that the Appellate Division's June 20, 2024 decision:

> "on petitioners' claims of bias and fraud is consistent with its decision in an earlier case brought by petitioners, in which the Court of Appeals denied leave to appeal. *Center for Jud. Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408 (3d Dep't 2018), *lv. denied*, 34 N.Y.3d 961 (2019)." (underlining added).

Appellants' rebuttal, by their July 28, 2024 reply affirmation (AD3-NYSCEF #58), protested this "further flagrant fraud by him", stating:

> "14. As for ASG Kiernan's last sentence of his ¶6 pertaining to [the Appellate Division's] December 27, 2018 decision in *CJA v. Cuomo…DiFiore* and

the Court of Appeals' denial of leave to appeal thereof, this is a further flagrant fraud by him. What the Appellate Division] and the Court of Appeals did in *CJA v. Cuomo…DiFiore* is comprehensively chronicled by appellants' 36-page, single-spaced February 7, 2021 complaint to the Commission on Judicial Conduct that is Exhibit D-3 to the verified petition (NYSCEF #6, R.251-286), the accuracy of which neither he nor [the Appellate Division] has denied or disputed, including as therein stated [R.258] that the complaint's 'best starting point' is appellants' 'legal autopsy'/analysis of the December 27, 2018 decision.

15. As I identified at the April 22, 2024 oral argument (NYSCEF #43, VIDEO), appellants' 'legal autopsy'/analysis of the December 27, 2018 decision accompanied their letter to the Court of Appeals in support of their appeal of right – and that 'legal autopsy'/analysis was physically part of the record before this Court since their reply affidavit in further support of their November 25, 2024 motion to strike AG James' Respondents' Brief as a 'fraud on the court'. For completeness, I now also make the March 26, 2019 letter to the Court of Appeals physically part of the record[fn2] (NYSCEF #59) (Exhibit A) – and attest that neither Attorney General James nor the Court of Appeals ever contested its accuracy.

16. The March 26, 2019 letter to the Court of Appeals is noteworthy for a further reason – it prefigures appellants' March 18, 2020 letter to then Governor Cuomo – Exhibit A-5 to the verified petition (NYSCEF #6, R.132-154) – on which the sixth cause of action is based. This, by the final section of the March 26, 2019 letter entitled 'In Conclusion: New York's Constitution Has Been Undone by Collusion of Powers', stating, in full – and with its annotating footnotes 11 and 12:

> 'No fair and impartial tribunal, constitutionally charged, as this Court is, with reviewing appeals wherein is 'directly involved the construction of the constitution of the state', could fail to discharge that duty here.
>
> What is before the Court, on this appeal of right, is catastrophic. Gone is the constitutional design of separation of executive and legislative powers – replaced by collusion of powers that has undone our State Constitution. And more than the budget is at issue. It is the very governance of this State, as the budget has become a pass-

"fn2 *Via* hyperlinks, this Court has had before it the full record of *CJA v. Cuomo…DiFiore* at the Court of Appeals – including hyperlinks directly to the March 26, 2019 letter. *See, inter alia*, NYSCEF #6: R.83, ¶84 (appellants' June 6, 2024 verified petition, sixth cause of action); R.86, ¶87 (seventh cause of action); NYSCEF #19, ¶10, fns. 2, 3 (appellants' Dec. 13, 2023 reply affidavit in further support of appellants' November 25, 2023 motion to strike Respondents' Brief); NYSCEF #25, pp. 1, 4, fn. 2 (appellants' January 8, 2024 Reply Brief)."

through for policy having nothing to do with the budget – the 'proposed legislation, if any' of Article VII, §3 having become separated from its meaning in Article VII, §2: 'proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]',[fn11] further foisted by constitutionally unauthorized 'non-appropriation' Article VII budget bills.[fn12] (at pp. 21-22, underlining in the original).

"fn11

'In 1927, after the dangers of legislative budgeting had been identified and debated, the Governor was for the first time given the power to propose legislation directly—but only in appropriation bills. To be sure, the Governor could *recommend* other legislation in his executive budget, but the power to actually introduce bills obliging action into both houses of the Legislature —a power he has in no other context than the budget—was limited to appropriation bills. Only in 1938 was the predecessor to section 3 amended to give the Governor the additional authority to introduce other 'proposed legislation' recommended in his executive budget. This amendment was adopted primarily to make the Governor responsible for submitting tax legislation, rather than merely recommending it. 'Believing that the revenue side of the budget is of equal importance with the expenditure side, the committee feels that any bills to carry into effect legislation affecting the revenues of the State which the Governor may propose should have the same dignity and importance as his appropriation bills, and all should be submitted directly by the Governor and treated as budget bills' (Report of Comm on State Finances and Revenues of New York State Constitutional Convention, State of New York Constitutional Convention 1938 Doc No. 3, at 3 [July 8, 1938])." (*Pataki v. Silver*, 4 N.Y.75, 117-118, dissent of then Chief Judge Judith Kaye, to which Associate Justice Carmen Ciparick concurred)."

"fn12 As this Court had recognized in 2001, but did not repeat in 2004, 'The term 'non-appropriation' bill is not found in the Constitution.", *Silver v. Pataki*, 96 NY2d 532, 535 (fn 1). This repeated the underlying 1999 NY Co/Supreme Court decision which had stated, '…'non-appropriation bills', a term which both parties agree is not in the Constitution.', *Silver v. Pataki*, 179 Misc. 2d 315, 316, but not the more stunning, constitution-violating admission in the Appellate Division, First Department's 2000 decision:

'According to the Speaker, the present dispute arises from the Legislature's response to New York *State Bankers Assn. v. Wetzler* ([81 N.Y.2d 98 (1993)]), whereby, to preserve the legislators' desire to enact amendments to the Governor's budget bill, an 'appropriations' budget bill and a complementary 'programmatic' budget bill have been enacted in recent years as part of the annual budget process. Although there is no apparent legal warrant for such budget bifurcation, the Speaker asserts that the Governor can only veto the entire 'programmatic' budget bill and, thus, has

17. That far-reaching issue, the insertion into the budget of policy legislation having nothing to do with taxes and revenues and the unconstitutionality and fraud of 'non-appropriation' budget bills that are its vehicle – which was not its own cause of action in *CJA v. Cuomo…DiFiore* – became the sixth cause of action herein (NYSCEF #6, R.81-84) pertaining to 'non-appropriation' Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C with its Part QQ that is the 'ethics commission reform act of 2022'.

18. As stated by the sixth cause of action (at ¶82), '[T]he starting point for the declaration that Part QQ was unconstitutionally enacted' is the March 18, 2020 letter. As comparison of it and the concluding section of the March 26, 2019 letter shows that it expands on the earlier letter by a devastating analysis of the Court of Appeals' 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75, reinforced by a demonstration of the fraud by which 'non-appropriation' draft bills for FY2020-21 had morphed into so-called 'Article VII' bills.

19. Appellants' entitlement to summary judgment on their sixth cause of action herein is established by this March 18, 2020 letter, whose accuracy is undenied and undisputed – and by their June 28, 2022 CPLR §2214(c) request (NYSCEF #7, R.518-527) for records pertaining to it and pertaining to the FY2022-23 budget bills and, specifically, Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C and its Part QQ, none of which were ever produced. For that reason, both were featured by, and made free-standing exhibits to, appellants' January 22, 2024 reply affirmation in further support of their motions to have this appeal and *Cuomo v. COELIG* heard together (NYSCEF #35, at ¶¶8, 13) (NYSCEF #37, #38). To aid accessibility, I now also make the sixth cause of action its own free-standing exhibit (NYSCEF #60) (Exhibit B hereto).

20. Appellants' sixth cause of action is one of the reasons why I stated at the April 22, 2024 oral argument (NYSCEF #43, VIDEO) that *CJA v. JCOPE, et al.* is 'perhaps even more consequential' than the profoundly consequential *CJA v. Cuomo…DiFiore*. Another reason is the tenth cause of action (NYSCEF #6, R.94-97), which also had not been its own cause of action in *CJA v. Cuomo…DiFiore*.

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no line-item veto power with respect to that bill.', *Silver v. Pataki*, 274 A.D.2d 57, 59 (1st Dept 2000) (underlining added)."

21. This tenth cause of action, which I summarized at the oral argument as:

> 'for a declaration that Public Officers Law §108.2b, by allowing the Legislature to engage in closed-door party conferences to discuss routine public business, is unconstitutional, as written and as applied, violating the unequivocal declaration of Article III, §10 of the New York State Constitution – 'the doors of each house shall be kept open' – and legislative rules consistent therewith',

is concealed entirely by the June 20, 2024 Memorandum and Order. In view of its importance and to aid accessibility, I now also make the tenth cause of action a free-standing exhibit, together with the elaborating correspondence of analysis and legislative history on which it rests, whose accuracy is also undenied and undisputed (NYSCEF #61) (Exhibit C hereto)." (NYSCEF #58, underlining and hyperlinks in the original, with the exception of the inadvertently-omitted hyperlink for NYSCEF #60).

My July 28, 2024 reply affirmation (NYSCEF #58) – the last submission before the Appellate Division on appellants' July 4, 2024 motion (NYSCEF #52) – summarizes the state of the record on that dispositive motion, denied by the Appellate Division without decision, facts, or law (NYSCEF #62), the subject of this appeal of right.

In further support of this appeal of right, I request that the original papers before the Court in *CJA v. Cuomo…DiFiore*, which are in the possession of the Clerk's Office, having been retained beyond the five-year retention date, at my request, so as to be available for the Court in connection with the then-anticipated appeal of right herein, be made part of the record herein and, additionally, part of the record in appellants' direct appeal of right in *CJA v. Commission on Legislative, Judicial and Executive Compensation…Wilson, Zayas, et al.*, which, by a November 6, 2024 letter (APL-2024-00149), you also removed from "normal course treatment".

My today's letter in response to that November 6, 2024 letter is incorporated herein by reference.

Finally, appellants request, pursuant to Part 124 of the Chief Administrator's Rules or any other authority, what they requested five years ago – and which they will now additionally seek from the OCA:

(1) records reflecting whether then Clerk Asiello recused himself from *CJA v. Cuomo…DiFiore* and the reason; and

(2) a copy of the Court's rules, regulations, and procedures governing disqualification of its staff for financial and other interests, relationships, and other bias.

The foregoing is without prejudice to appellants' threshold objection to the Court doing anything other than transferring this appeal of right and the related direct appeal of right in *CJA v. Commission on Legislative, Judicial and Executive Compensation...Wilson, Zayas, 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.

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