

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
ELENA RUTH SASSOWER, individually, and as  
Coordinator of the Center for Judicial Accountability, Inc.,  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,  
and The Public as represented by them,

Plaintiffs,

-against-

**NOTICE OF APPEAL**

Westchester Co. #05-19841

THE NEW YORK TIMES COMPANY, The New York Times,  
ARTHUR SULZBERGER, JR., BILL KELLER,  
JILL ABRAMSON, ALLAN M. SIEGAL, GAIL COLLINS,  
individually and for THE EDITORIAL BOARD,  
DANIEL OKRENT, BYRON CALAME, MAREK FUCHS,  
and DOES 1-20,

Defendants.  
-----X

**PLEASE TAKE NOTICE** that Plaintiffs, ELENA RUTH SASSOWER, individually  
and as Coordinator of the Center for Judicial Accountability, Inc., CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC., and The Public as represented by them, hereby appeal to the  
Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201 from  
the Decision and Order of Westchester County Court Judge/Acting Supreme Court Justice  
Gerald E. Loehr, dated September 27, 2006 and entered September 27, 2006, and from each  
and every part thereof.

Dated: White Plains, New York  
December 21, 2006

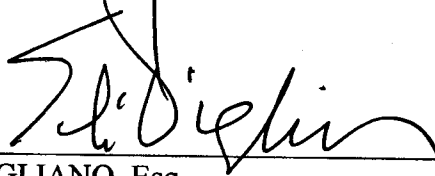
**RECEIVED**  
DEC 21 2006  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Yours, etc.,



---

ELENA RUTH SASSOWER, *Pro Se*  
Individually, and as Coordinator of the CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC., & for The Public  
16 Lake Street, Apartment 2C  
White Plains, New York 10603  
Tel: 914-421-1200



---

ELI VIGLIANO, Esq.  
Attorney for CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,  
& for Plaintiff ELENA RUTH SASSOWER as Coordinator,  
& for The Public  
4901 Henry Hudson Parkway  
Bronx, New York 10471  
Tel: 718-884-3747

TO: **George Freeman, Associate General Counsel**  
**The New York Times Company Legal Department**  
**Attorneys for Defendants-Respondents**  
**229 West 43<sup>rd</sup> Street**  
**New York, New York 10036**  
**Tel: 212-556-1558**

**Supreme Court of the State of New York  
Appellate Division - Second Judicial Department**

**Form A - Request for Appellate Division Intervention - Civil**

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

**Case Title:** Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

ELENA RUTH SASSOWER, individually and as  
Coordinator of the Center for Judicial Accountability, Inc.,  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,  
and The Public as represented by them,

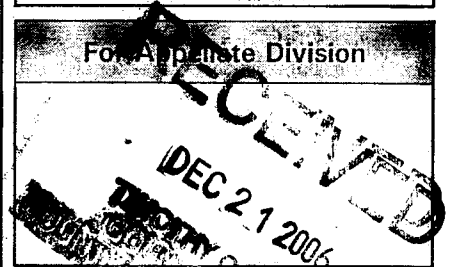
-against-

THE NEW YORK TIMES COMPANY, The New York Times,  
ARTHUR SULZBERGER, JR., BILL KELLER,  
JILL ABRAMSON, ALLAN M. SIEGAL, GAIL COLLINS,  
individually and on behalf of THE EDITORIAL BOARD,  
DANIEL OKRENT, BYRON CALAME, MAREK FUCHS,  
and DOES 1-20.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division



<b>Case Type</b>		<b>Filing Type</b>	
<input checked="" type="checkbox"/> Civil Action	<input type="checkbox"/> CPLR article 78 Proceeding	<input checked="" type="checkbox"/> Appeal	<input type="checkbox"/> Transferred Proceeding
<input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> Special Proceeding Other	<input type="checkbox"/> Original Proceeding	<input type="checkbox"/> CPLR 6704-Review
<input type="checkbox"/> Habeas Corpus Proceeding			
<b>Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.</b>			
<b>A. Administrative Review</b>	<b>D. Domestic Relations</b>	<b>F. Prisoners</b>	<b>I. Torts</b>
<input type="checkbox"/> 1 Freedom of Information Law	<input type="checkbox"/> 1 Adoption	<input type="checkbox"/> 1 Discipline	<input type="checkbox"/> 1 Assault, Battery, False Imprisonment
<input type="checkbox"/> 2 Human Rights	<input type="checkbox"/> 2 Attorney's Fees	<input type="checkbox"/> 2 Jail Time Calculation	<input type="checkbox"/> 2 Conversion
<input type="checkbox"/> 3 Licenses	<input type="checkbox"/> 3 Children - Support	<input type="checkbox"/> 3 Parole	<input checked="" type="checkbox"/> 3 Defamation
<input type="checkbox"/> 4 Public Employment	<input type="checkbox"/> 4 Children - Custody/Visitation	<input type="checkbox"/> 4 Other	<input checked="" type="checkbox"/> 4 Fraud
<input type="checkbox"/> 5 Social Services	<input type="checkbox"/> 5 Children - Terminate Parental Rights		<input type="checkbox"/> 5 Intentional Infliction of Emotional Distress
<input type="checkbox"/> 6 Other	<input type="checkbox"/> 6 Children - Abuse/Neglect	<b>G. Real Property</b>	<input type="checkbox"/> 6 Interference with Contract
<b>B. Business &amp; Other Relationships</b>	<input type="checkbox"/> 7 Children - JD/PINS	<input type="checkbox"/> 1 Condemnation	<input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process
<input type="checkbox"/> 1 Partnership/Joint Venture	<input type="checkbox"/> 8 Equitable Distribution	<input type="checkbox"/> 2 Determine Title	<input type="checkbox"/> 8 Malpractice
<input type="checkbox"/> 2 Business	<input type="checkbox"/> 9 Exclusive Occupancy of Residence	<input type="checkbox"/> 3 Easements	<input type="checkbox"/> 9 Negligence
<input type="checkbox"/> 3 Religious	<input type="checkbox"/> 10 Expert's Fees	<input type="checkbox"/> 4 Environmental	<input type="checkbox"/> 10 Nuisance
<input type="checkbox"/> 4 Not-for-Profit	<input type="checkbox"/> 11 Maintenance/Alimony	<input type="checkbox"/> 5 Liens	<input type="checkbox"/> 11 Products Liability
<input type="checkbox"/> 5 Other	<input type="checkbox"/> 12 Marital Status	<input type="checkbox"/> 6 Mortgages	<input type="checkbox"/> 12 Strict Liability
<b>C. Contracts</b>	<input type="checkbox"/> 13 Paternity	<input type="checkbox"/> 7 Partition	<input type="checkbox"/> 13 Trespass and/or Waste
<input type="checkbox"/> 1 Brokerage	<input type="checkbox"/> 14 Spousal Support	<input type="checkbox"/> 8 Rent	<input type="checkbox"/> 14 Other
<input type="checkbox"/> 2 Commercial Paper	<input type="checkbox"/> 15 Other	<input type="checkbox"/> 9 Taxation	
<input type="checkbox"/> 3 Construction		<input type="checkbox"/> 10 Zoning	
<input type="checkbox"/> 4 Employment	<b>E. Miscellaneous</b>	<input type="checkbox"/> 11 Other	
<input type="checkbox"/> 5 Insurance	<input type="checkbox"/> 1 Constructive Trust	<b>H. Statutory</b>	<b>J. Wills &amp; Estates</b>
<input type="checkbox"/> 6 Real Property	<input type="checkbox"/> 2 Debtor & Creditor	<input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129	<input type="checkbox"/> 1 Accounting
<input type="checkbox"/> 7 Sales	<input type="checkbox"/> 3 Declaratory Judgment	<input type="checkbox"/> 2 Eminent Domain Procedure Law § 207	<input type="checkbox"/> 2 Discovery
<input type="checkbox"/> 8 Secured	<input type="checkbox"/> 4 Election Law	<input type="checkbox"/> 3 General Municipal Law § 712	<input type="checkbox"/> 3 Probate/Administration
<input type="checkbox"/> 9 Other	<input type="checkbox"/> 5 Notice of Claim	<input type="checkbox"/> 4 Labor Law § 220	<input type="checkbox"/> 4 Trusts
	<input type="checkbox"/> 6 Other	<input type="checkbox"/> 5 Public Service Law §§ 128 or 170	<input type="checkbox"/> 5 Other
		<input type="checkbox"/> 6 Other	

### Appeal

Paper Appealed From (check one only):

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Amended Decree   | <input type="checkbox"/> Determination          | <input checked="" type="checkbox"/> Order   | <input type="checkbox"/> Resettled Order  |
| <input type="checkbox"/> Amended Judgment | <input type="checkbox"/> Finding                | <input type="checkbox"/> Order & Judgment   | <input type="checkbox"/> Ruling           |
| <input type="checkbox"/> Amended Order    | <input type="checkbox"/> Interlocutory Decree   | <input type="checkbox"/> Partial Decree     | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Decision         | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree   |   |
| <input type="checkbox"/> Decree           | <input type="checkbox"/> Judgment               | <input type="checkbox"/> Resettled Judgment |   |

Court: *Supreme Court*

County: *Westchester*

Dated: *September 27, 2006*

Entered: *September 27, 2006*

Judge (name in full): *Gerald E. Loehr*

Index No.: *05-19841*

Stage:  Interlocutory  Final  Post-Final

Trial:  Yes  No If Yes:  Jury  Non-Jury

#### Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case?  Yes  No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals?  Yes  No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

#### Original Proceeding

Commenced by:  Order to Show Cause  Notice of Petition  Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

#### Proceeding Transferred Pursuant to CPLR 7804(g)

Court:

County:

Judge (name in full):

Order of Transfer Date:

#### CPLR 5704 Review of Ex Parte Order

Court:

County:

Judge (name in full):

Dated:

#### Description of Appeal, Proceeding or Application and Statement of Issues

**Description:** If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

This is an appeal from a September 27, 2006 decision & order which denied plaintiffs' motion to disqualify Judge Gerald E. Loehr for "demonstrated actual bias and interest" and to vacate his July 5, 2006 decision & order for "fraud and lack of jurisdiction" by reason thereof, failed to adjudicate their alternative requests for disclosure and referral of the case assignment back to the Administrative Judge, denied reargument/renewal, and denied their request for vacatur of the August 1, 2006 judgment pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, and other misconduct of an adverse party", etc.

**Amount:** If an appeal is from a money judgment, specify the amount awarded.

**Issues:** Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

(1) Was plaintiffs-appellants' August 21, 2006 motion to disqualify Westchester County Court Judge Gerald E. Loehr for "demonstrated actual bias and interest" sufficient to entitle them to his disqualification and, if denied, for their two-fold alternative request:

(a) for disclosure, including of his relationships with, and dependencies on, the Administrative Judge who had hand-picked him for the assignment and the reason therefor;

(b) for referral of the assignment back to the Administrative Judge so that he could reconsider whether to vacate it for lack of jurisdiction based on his own disqualifying interest or because, based on the record, it was improvidently issued in that the first randomly-assigned judge had not disqualified herself?

Issues Continued:

(2) Whether the record before Judge Loehr supports any interpretation other than that his September 27, 2006 decision and order is a knowing and deliberate fraud by him<sup>fn</sup>, further reinforcing plaintiffs-appellants' entitlement to his disqualification for "demonstrated actual bias and interest"? (<sup>fn</sup> This includes with respect to the August 1, 2006 Judgment)

(3) Whether County Court Judge Loehr, who had served on the bench for less than two years, could lawfully be assigned by the Administrative Judge as an Acting Supreme Court Justice for this case, and whether Judge Loehr could lawfully assume jurisdiction, where the case would plainly take more than "twenty (20) calendar days...to complete", thereby violating both §121.2(c) of the Rules of the Chief Administrator and the December 20, 2005 Administrative Order of Chief Administrative Judge Jonathan Lippman, endorsed by Appellate Division, Second Department Presiding Justice A. Gail Prudenti "on behalf of the Appellate Division, Second Department?"

Use Form B for Additional Appeal Information

**Party Information**

**Instructions:** Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	Elena Ruth Sossower	plaintiff	appellant
2	Center for Judicial Acct. Tab. Lty, Inc.	plaintiff	appellant
3	The New York Times Company	defendant	respondent
4	The New York Times	non-appearing defendant	
5	Arthur Sulzberger, Jr.	defendant	respondent
6	Bill Keller	defendant	respondent
7	Will Abramson	defendant	respondent
8	Allan M. Siegal	defendant	respondent
9	Gail Collins	defendant	respondent
10	The Editorial Board	non-appearing defendant	
11	Daniel Okrent	non-appearing defendant	
12	Byron Calame	defendant	respondent
13	Marek Fuchs	non-appearing defendant	
14	Does 1-20	non-appearing defendant	
15			
16			
17			
18			
19			
20			

### Attorney Information

**Instructions:** Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Elena Ruth Sarrower  
 Address: 16 Lake Street Apt 2C 914  
 City: White Plains State: Ny Zip: 10603 Telephone No.: 421-1200  
 Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice  
 Party or Parties Represented (set forth party number(s) from table above or from Form C): 

1									
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Attorney/Firm Name: Eli Vigliano  
 Address: 4901 Henry Hudson Parkway 718  
 City: Bronx State: Ny Zip: 10471 Telephone No.: 884-3747  
 Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice  
 Party or Parties Represented (set forth party number(s) from table above or from Form C): 

1	2								
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Attorney/Firm Name: George Freeman - NY Times Company Legal Dept.  
 Address: 229 West 43rd Street 212  
 City: New York State: Ny Zip: 10036 Telephone No.: 556-1558  
 Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice  
 Party or Parties Represented (set forth party number(s) from table above or from Form C): 

3	5	6	7	8	9	12			
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Attorney/Firm Name:  
 Address:  
 City: State: Zip: Telephone No.:  
 Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice  
 Party or Parties Represented (set forth party number(s) from table above or from Form C): 

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Attorney/Firm Name:  
 Address:  
 City: State: Zip: Telephone No.:  
 Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice  
 Party or Parties Represented (set forth party number(s) from table above or from Form C): 

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Attorney/Firm Name:  
 Address:  
 City: State: Zip: Telephone No.:  
 Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice  
 Party or Parties Represented (set forth party number(s) from table above or from Form C): 

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**Use Form C for Additional Party and/or Attorney Information**

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

FILED  
AND ENTERED

ON 9-27-2006

WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
ELENA RUTH SASSOWER, individually, and as  
Coordinator of the Center for Judicial  
Accountability, Inc., CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC. and The Public  
as represented by them,

Plaintiffs,

**DECISION AND ORDER**

Index No.: 05-19841

-against-

THE NEW YORK TIMES COMPANY, The New  
York Times, ARTHUR SULZBERGER, JR., BILL  
KELLER, JILL ABRAMSON, ALLAN M. SIEGAL,  
GAIL COLLINS, individually and on behalf of  
THE EDITORIAL BOARD, DANIEL OKRENT,  
BYRON CALAME, MAREK FUCHS, and  
DOES 1-20,

Defendants.

-----X  
LOEHR, J.

Plaintiffs move to reargue and renew this Court's Decision and Order dated July 5, 2006 which dismissed plaintiffs' complaint. Additionally, plaintiffs move to vacate the Judgment that was entered on such Decision and Order pursuant to CPLR 5015(a)(3). Finally, plaintiffs move the Court to recuse itself from further consideration of this case and for its re-assignment to a different judge for a determination of the above motions.

By a Decision and Order dated July 5, 2006 (the "Decision"), this Court dismissed plaintiffs' complaint which asserted causes of action in defamation and for "journalistic fraud" based on a failure to state a cause of action. Plaintiffs did not seek leave to replead and none was granted. Although the Decision did not state that the dismissal was with prejudice, the dismissal was clearly on the merits. On August 1, 2006, the Clerk entered a Judgment on the Decision. The

Judgment provided that the complaint was dismissed with prejudice.

Plaintiffs first move for the Court to recuse itself from further consideration of this matter. The basis of the application is, as alleged by plaintiffs, that Judge Nicolai, the Administrative Judge of the District, has been engaged in an on-going retaliatory vendetta against the plaintiffs due to their crusade against judicial corruption; that Judge Nicolai wanted plaintiffs' complaint dismissed; and that Judge Nicolai assigned this case to this Court so as "to guarantee the outcome he desired: dismissal of the action." (Emphasis in original.)

Suffice it to say, the Court has no knowledge of Judge Nicolai's opinion with respect to this matter, assuming he has an opinion at all. Moreover, the case was not assigned to this Court to guarantee any particular result but because of the number of judges who had already recused themselves.<sup>1</sup> The motion to recuse is therefore denied.

The motion to reargue or renew is likewise denied. Renewal is denied based on plaintiffs' failure to submit any new facts or demonstrate a change in the law (CPLR 2221[a]). Reargument is denied for the reasons stated in the original Decision: the Court did not misapprehend the facts or the law.

With respect to the motion to vacate the Judgment, inasmuch as the Decision was on the merits, the dismissal was necessarily with prejudice (*McBride v Mariah Boats, Inc.*, 288 AD2d 359 [2d Dept 2001]; *Papa v Burrows*, 186 AD2d 375 [1<sup>st</sup> Dept 1992], *lv denied* 81 NY2d 707 [1993]). The Judgment entered was therefore in accordance with the Decision and not "fraudulent." Moreover, even if the "with prejudice" language was included in the Judgment in error, this Court would be without authority to remove it. Plaintiffs remedy would be an appeal

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<sup>1</sup> It appears that at least nine of the Supreme Court or Acting Supreme Court Judges in this courthouse had issued standing recusal orders recusing themselves from any action involving the plaintiffs.



*(Roth v South Nassau Communities Hosp., 239 AD2d 331, 332 [2d Dept 1997]).*

For the foregoing reasons, the motion is denied. This constitutes the decision and order of this Court.

The Court considered the following papers in connection with this application: (1) Notice of Motion dated August 21, 2006 together with Affidavit with exhibits attached; (2) Plaintiffs' Memorandum of Law; (3) Affidavit in Opposition and (4) Reply Affidavit of Elena Sassower, sworn to September 25, 2006.

Dated: White Plains, New York  
September 27, 2006



---

HON. GERALD E. LOEHR  
Acting J.S.C.

ELENA RUTH SASSOWER, Pro Se  
Individually & as Coordinator of the  
CENTER FOR JUDICIAL ACCOUNTABILITY  
16 Lake Street, Apartment 2C  
White Plains, New York 10603

ELI VIGLIANO, Esq.  
Attorney for the CENTER FOR JUDICIAL ACCOUNTABILITY  
4901 Henry Hudson Parkway  
Bronx, New York 10471

THE NEW YORK TIMES COMPANY  
Legal Department  
229 West 43<sup>rd</sup> Street  
New York, New York 10036  
By: George Freeman, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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ELENA RUTH SASSOWER, individually and as  
Coordinator of the Center for Judicial Accountability, Inc.,  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,  
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Plaintiffs,

Index #05-19841

-against-

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individually and on behalf of THE EDITORIAL BOARD,  
DANIEL OKRENT, BYRON CALAME, MAREK FUCHS,  
and DOES 1-20,

Defendants.

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**NOTICE OF APPEAL &  
REQUEST FOR APPELLATE DIVISION INTERVENTION**

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ELENA RUTH SASSOWER, *Pro Se*  
Individually & as Coordinator of the CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC., & for The Public  
16 Lake Street, Apartment 2C  
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ELI VIGLIANO, Esq.  
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& for Plaintiff ELENA RUTH SASSOWER as Coordinator,  
& for The Public  
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