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September 24, 2021

TO: Chief Counsel Catherine A. Sheridan
Second Judicial Department Attorney Grievance Committee/Tenth Judicial District

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: File No. N-1034-21 –
Questions concerning Staff Counsel Rachel Merker's September 15, 2021 letter

This responds to [Staff Counsel Rachel Merker's September 15, 2021 letter](#), purporting that the Committee is “unable to assist [me]” with my “complaint dated April 8, 2021, regarding a Nassau County attorney”, which I discussed with her, by phone, on Tuesday, September 21st, when I called to speak with her, immediately upon receipt of [her 9:49 a.m. e-mail](#) pertaining to the voice message I had left for her at 9:22 a.m. on Friday, September 17th, inquiring about the unspecified “Nassau County attorney and the “complaint dated April 8, 2021”.

[Ms. Merker's September 21st e-mail](#), wherein she identified herself as “Principal Court Attorney”, was, as follows:

“Receipt is acknowledged of your voicemail dated September 17, 2021, concerning a letter dated September 15, 2021, that was directed to you from our office.

Please be advised that on August 25, 2021, we received correspondence from the Attorney Grievance Committee for the Third Judicial Department (‘AGC’), whereby a complaint dated April 8, 2021, that you filed with the AGC was transferred to our office. The complaint concerned a Nassau County attorney. It is our understanding that you received notice of the transfer directly from the AGC.

Copies of the above-mentioned letters addressed to you are attached for your reference.”

In fact, [the August 25, 2021 “notice of transfer” letter that Ms. Merker's e-mail attached](#) was NOT what Chief Attorney Duffy had sent me. [Chief Attorney Duffy's “notice of transfer” letter to me](#) was one-page that did NOT append the “complaint dated April 8, 2021” that was being transferred – unlike Ms. Merker's attachment that was 21 pages.

It was because neither [Ms. Merker's September 15, 2021 letter](#) nor [Chief Attorney Duffy's single-page August 25, 2021 transfer letter](#) had identified the attorney within the jurisdiction of the Tenth Judicial District Attorney Grievance Committee that I had called Ms. Merker on September 17th,¹ leaving a voice message for that information – and inquiring about the purported “complaint dated April 8, 2021” because, in fact, it was not a “complaint”.

Indeed, that the so-called “[complaint dated April 8, 2021](#)” is NOT itself a complaint is obvious, *on its face*. Thus, the title appearing at the TOP of the first page reads:

“April 3, 2021 Complaint Form for the February 11, 2021 Complaint against ASSISTANT ATTORNEY GENERAL HELENA LYNCH revising, as required by Chief Attorney Monica Duffy’s March 9, 2021 letter, the prior submitted February 11, 2021 complaint form – plus updating”.

The top of the third page bears the title:

“Details of the February 11, 2021 Complaint against Assistant Attorney General Helena Lynch”.

Yet, notwithstanding these titles, Ms. Merker stated to me, in answer to my question during our September 21st conversation, that Chief Attorney Duffy had NOT included the [February 11, 2021 complaint](#) in her transmittal of my so-called “complaint dated April 8, 2021” to the Tenth Judicial District Attorney Grievance Committee.

Seemingly, Ms. Merker had also not read the February 11, 2021 complaint – and certainly was unaware of the proceedings thereon, starting with Chief Attorney Duffy’s March 9, 2021 letter to me, requiring that I file separate complaint forms for each of the four attorneys I believed to be registered in the Third Judicial Department, with specifics of their misconduct – which I had done by complaint forms dated April 3, 2021 that I had signed on April 8, 2021. This I showed her from [CJA’s webpage pertaining to the February 11, 2021 complaint, filed with the Third Department Attorney Grievance Committee](#).²

¹ Not until September 17th did I become aware of Chief Attorney Duffy’s August 25, 2021 transfer letter, which I discovered, along with her August 25, 2021 “Notice of Declination to Investigate Complaint” letter, upon doing a search of my inbox, finding, at the same time, Ms. Merker’s September 15, 2021 letter. I recounted this to Ms. Merker in our September 21st phone conversation, further identifying that my search of my inbox was for purposes of following up with the OCA Inspector General with respect to complaints I had filed on August 27, 2021 against [Chief Attorney Duffy](#) and [First Department Attorney Grievance Committee Chief Attorney Jorge Dopico](#).

² This webpage is identified by the last sentence of the “complaint dated April 8, 2021” (p. xx) – and Ms. Merker indicated she had viewed the webpage – at least following my September 17th voice message. During our September 21st phone conversation, I led her to the webpage *via* the prominent center link on CJA’s homepage, www.judgewatch.org, entitled “THEY STILL LIVE – CJA’s Citizen-Taxpayer Actions...”, bringing up a menu webpage which includes a link “FIGHTING BACK – CJA Complaints...”.

Ms. Merker was also unaware that, simultaneous with the August 25, 2021 transfer letter that Chief Attorney Duffy had sent me, she had sent me an [August 25, 2021 letter entitled “Notice of Declination to Investigate a Complaint”](#) purporting that the Committee was “unable to assist [me]” with respect to my “complaints dated April 3, 2021” against the three attorneys within its jurisdiction.

I showed Ms. Merker that I had just filed a [written request for reconsideration of Chief Attorney Duffy’s August 25, 2021 letter/Notice](#) – and stated that I had planned to do the same with respect to her materially parallel September 15, 2021 letter, but was going to defer same and instead write you challenging her authority to have sent the letter, not even stated to be on your behalf.

As I discussed with Ms. Merker, Chief Attorney Duffy’s August 25, 2021 “Notice of Declination” letter identified the legal authority pursuant to which it was rendered, “Part 1240. Rules for Attorney Disciplinary Matters, §1240.7(d)(1)(i)”, and, in conjunction therewith, apprised me that I could make a written request to the Committee’s chair for reconsideration, pursuant to Rule §1240.7(e)(3). By contrast, her September 15, 2021 letter had done neither, thereby concealing:

- that the determination announced by the first sentence of the third paragraph of her letter:

“A careful review of your complaint reveals that the issues you raise essentially concern the attorney’s conduct in representing clients. This issue is more appropriate for review by the Court which presided over the original lawsuit”

had NOT been made by the Committee – contrary to the inferences of her letter by its references to the “Committee” and “we”, as, for instance, by its second paragraph:

“Please be advised that the function of this Committee is to investigate and prosecute acts of professional misconduct committed by attorneys. When a complaint is received, we review it to determine if it involves behavior which would constitute professional misconduct by the attorney. An attorney may be found guilty of professional misconduct if it can be proven that an ethical rule or law was violated. If there is a sufficient basis to conduct an investigation, the Committee will do so. However, there are instances where the Committee may decline to pursue an investigation due to other contributing factors.” (underlining added).

- that ONLY you, as the Committee’s chief attorney, are authorized to “decline to pursue an investigation” of a complaint.

Consequently, this letter calls upon you to identify whether, pursuant to §1240.7(d)(1)(i), it was you who made the determination to decline to investigate the “complaint dated April 8, 2021” and, if not, the legal authority by which Ms. Merker made such determination, and whether you approve of her failure to apprise me that I might seek reconsideration – or is it your contention that such is not available pursuant to §1240.7(e)(3)³.

Suffice to add that Ms. Merker’s stated basis for the determination declining to investigate my complaint, *to wit*, “This issue is more appropriate for review by the Court which presided over the original lawsuit”, is NOT only indefensible because the open-and-shut, *prima facie* EVIDENCE I furnished of Assistant Attorney General Lynch’s unrestrained and continuing wilful and deliberate violations of New York’s Rules of Professional Conduct (22 NYCRR Part 1200) mandate her disbarment – as to which the Committee is the EXCLUSIVE forum for that to happen – but establishes that the supposed “careful review of the complaint” that her September 15, 2021 letter purports is a LIE.

Indeed, even superficial “review”, and certainly one purporting to be “careful”, would have seen particularized by the “complaint dated April 8, 2021” (at pp. iv-xiii) – with substantiating record references – that I had already sought “review by the Court which presided over the original lawsuit” – this being Acting Supreme Court Justice/Court of Claims Judge Denise Hartman, whose June 26, 2017 and November 28, 2017 decisions totally concealed Assistant Attorney General Lynch’s litigation fraud, fully documented by my May 15, 2017 memorandum of law and affidavit in the *CJA v. Cuomo...Schneiderman...DiFiore* citizen-taxpayer action before her.

As for Ms. Merker’s final two sentences of her three-sentence concluding fourth paragraph:

“at the conclusion of all legal proceedings, or if prior to the conclusion, a decision is rendered indicating a finding of misconduct on the part of the attorney, you may renew your complaint with our Committee for further consideration”,

such is also indefensible. Eminently clear from my February 11, 2021 complaint, with its annexed substantiating inventories of my applications at the Appellate Division, Third Department and the Court of Appeals in *CJA v. Cuomo...Schneiderman...DiFiore*, for adjudication of the litigation misconduct before them, “all legal proceedings” therein are concluded – and NO “decision...indicating a finding of misconduct” by Assistant Attorney General Lynch was obtainable SOLELY because the justices and judges, in furtherance of their HUGE financial and other interests in the lawsuit, obliterated ALL ethical and legal standards, including as to their jurisdiction, and

³ Rule §1240.7(e)(3) entitled “Review of Dismissal or Declination to Investigate” states, in pertinent part: “Within 30 days of the issuance of notice to a complainant of a Chief Attorney’s decision declining to investigate a complaint..., the complainant may submit a written request for reconsideration to the chair of the Committee. ...” (underlining added).

refused to do the fact-finding that the record EVIDENCE before them mandated and was their duty to do.⁴

Fortunately, the [Rules for Attorney Disciplinary Matters \(22 NYCRR Part 1240\)](#) do NOT require a judicial decision as a prerequisite for the Committee's investigation of a complaint. The starting point of investigation is establishing the complaint's "validity" (§1240.7(b)(1)), which is EASY to do, especially as §1240.7(b)(2) and §1240.7(c) require that the Chief Attorney direct a response from the complained-against attorney. As is abundantly clear from the [February 11, 2021 complaint](#), the [April 8, 2021 signed specifications](#), and the [April 27, 2021 supplement pertaining to *Delgado v. State of New York*](#), Assistant Attorney General Lynch would have to concede the truth of each. This is yet a further reason why Ms. Merker's September 15, 2021 letter does not cite to the Rules.⁵

As time is of the essence, not the least reason because the [Appellate Division, Third Department's March 18, 2021 "Opinion and Order" in *Delgado v. State of New York*](#) – principally relying on the [Appellate Division, Third Department's December 27, 2018 "Memorandum and Order" in *CJA v. Cuomo...Schneiderman...DiFiore*](#) – is presently at the Court of Appeals on an appeal of right, your expeditious attention is essential.

Needless to say, if you are unable to perform the duties of your office due to conflicts of interest arising from the fact that you are an "at will" appointee of the Appellate Division, Second Department (§1240.5), whose justices are HUGE financial beneficiaries of Assistant Attorney General Lynch's litigation fraud in the *CJA v. Cuomo...Schneiderman...DiFiore* citizen-taxpayer action, you must recuse yourself.

For the convenience of all, this letter, with links to the referred-to EVIDENCE, is posted on CJA's webpage for the February 11, 2021 complaint at the Second Department Attorney Grievance Committees, here: <http://www.judgewatch.org/web-pages/searching-nys/attorney-discipline/feb-11-21-complaint-2nd-dept.htm>.

Thank you.

s/Elena Ruth Sassower

⁴ With respect to Assistant Attorney General Lynch's litigation fraud in *Delgado v State of New York* and *Barclay v. New York State Committee on Legislative and Executive Compensation* – particularized at pages i, xviii-xix of my "complaint dated April 8, 2021" – with further particulars, as to *Delgado*, presented by my [April 27, 2021 supplement](#) (& [here](#)), which should have been additionally forwarded to you by Chief Attorney Duffy – I am not a party to either lawsuit.

⁵ Ms. Merker's failure to cite to the Rules for Attorney Disciplinary Matters by her September 15, 2021 letter replicates the concealment of the Rules by [the Appellate Division, Second Department's webpage for its three attorney grievance committees](#) – in sharp contrast to their prominence and accessibility from the [Appellate Division, Third Department's webpage for its attorney grievance committee](#).