

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

February 23, 2022

TO: Fourth Judicial Department Attorney Grievance Committee Chairs (AGC-4):
7th Judicial District AGC Chair Steven V. Modica, Esq.
5th Judicial District AGC Chair Anthony S. Bottar, Esq.
8th Judicial District AGC Chair Lauren E. Breen, Esq.

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

RE: (1) Reconsideration of Chief Counsel Gregory Huether's January 11, 2022 disposition of "Complaints...Dated Nov 9, 2021, and April 3, 2021", transferred to "Attorney Grievance Committee of the Appellate Division, Fourth Department" by a December 16, 2021 decision and order of the Appellate Division, Second Department;
(2) Complaint against Chief Counsel Huether for conflict of interest and fraud.

Pursuant to 22 NYCRR §1240.7(e)(3) of the Rules for Attorney Disciplinary Matters [22 NYCRR §1240.7(e)(3)], I file this written request for reconsideration of Chief Counsel Gregory Heuther's closure, "pursuant to 22 NYCRR 1240.7(d)(1)", of what the "Re:" clause of his [January 11, 2022 letter](#) to me identifies as "Complaints of Elena Ruth Sassower, Dated Nov. 9, 2021 and April 3, 2021".¹

According to Chief Counsel Huether's letter, these two complaints – to which he has apparently assigned no AGC-4 docket numbers – were transferred to AGC-4 by a December 16, 2021 decision and order of the Appellate Division, Second Department.

¹ To assist you, this letter is hyperlinked to the substantiating EVIDENCE, including as posted on CJA's webpage for the February 11, 2021 attorney misconduct complaint, which is the originating complaint. The menu webpage for the February 11, 2021 complaint is here: <http://www.judgewatch.org/web-pages/searching-nys/attorney-discipline/menu-feb-11-21-complaint-vs-james-etc.htm> – and it furnishes links to webpages chronicling the course of the complaint in the attorney grievance committees of all four judicial departments. The direct link to the webpage for AGC-4, posting this letter, is here: <https://www.judgewatch.org/web-pages/searching-nys/attorney-discipline/feb-11-21-complaint-4th-dept.htm>.

I had no knowledge of this December 16, 2021 decision and order until I received Chief Counsel Huether's letter. Presumably, the decision and order resulted from an *ex parte* application of the Attorney Grievance Committee for the Tenth Judicial District (AGC-10JD), to whose vice-chair, James Pascarella, Esq., and members I had addressed a [November 9, 2021 letter](#), with a "RE" clause reading:

- “(1) Conflict-of-interest/misconduct complaints against Chief Counsel Catherine Sheridan and Chair Dorian Glover pertaining to File No. N-1034-21;
- (2) Recall of Chair Glover's October 18, 2021 letter, *inter alia*, because it is unauthorized by §1240.7(e)(3) of Appellate Division Rules for Attorney Disciplinary Matters;
- (3) FULL Committee reconsideration pursuant §1240.7(e)(3) of Staff Counsel Rachel Merker's September 15, 2021 letter;
- (4) Investigation of the February 11, 2021 complaint against Assistant Attorney General Helena Lynch that is the subject of File No. N-1034-21, starting with requiring her 'written response' to its April 3, 2021 specifications and April 27, 2021 supplement, consistent with §1240.7(b)(2)”.

Chief Counsel Huether did not furnish me with a copy of the December 16, 2021 decision and order, nor the *ex parte* application upon which I presume it was made. My attempts to obtain same have thus far been unsuccessful. [My January 31, 2021 letter to Chief Counsel Huether](#) requesting these, [my January 31, 2021 e-mail to the Appellate Division, Second Department and AGC-10JD](#), and [Chief Counsel Huether's February 10, 2021 response](#) are incorporated by reference.

Consequently, I am handicapped in making this reconsideration request, as I do not know:

- whether the AGC-10JD application was made by the complained-against Chief Counsel Sheridan and Chair Glover, or by Vice-Chair Pascarella and the Committee members on my November 9, 2021 letter;
- whether the AGC-10JD application requested transfer – and, if so, whether it specified the attorney grievance committee to which it was recommending transfer and the reasons therefor;
- whether the AGC-10JD application explained why it was *ex parte*, depriving me of an opportunity to be heard, including as to venue for transfer, such as: (1) to AGC-3, where I had originally filed the February 11, 2021 complaint against Assistant Attorney General Lynch and which was handling the same February 11, 2021 complaint against Senior Assistant Solicitor General Paladino, Assistant Solicitor General Brodie, and Assistant Attorney General Liberati-Conant; (2) to AGC-1, which was handling the same February 11, 2021 complaint against Attorney General James and Solicitor General Underwood; or (3) to either of the two other AGC-2 committees, most reasonably, the Attorney Grievance Committee for the Second,

Eleventh, and Thirteenth Judicial Districts, to which I had originally filed the February 11, 2021 complaint against Attorney General James;

- who the Appellate Division, Second Department justices were who decided the *ex parte* application and what their December 16, 2021 decision and order said, including as to how, upon transfer, my November 9, 2021 letter was to be determined.

With respect to Chief Counsel Heuther's January 11, 2021 letter, it is fraudulent throughout, starting with its "Re:" clause. What he identifies as my November 9, 2021 "complaint" should have been identified as my November 9, 2021 letter. As for my so-called April 3, 2021 "complaint", it is the "[April 3, 2021 specifications](#)" to my February 11, 2021 complaint against Assistant Attorney General Lynch – and so-identified by the fourth branch of my November 9, 2021 letter and encompassed therein.

Suffice to say, that had Chief Counsel Heuther's "Re:" clause identified that [my November 9, 2021 letter was addressed to AGC-10JD's vice-chair and members](#), it would have been OBVIOUS that, upon transfer, it should have gone to the comparable persons at AGC-4, *to wit*, its three chairs, if not all members of at least one, if not all three, of its attorney grievance committees, for discussion of how it should be handled. Certainly, Chief Counsel Heuther knew that he could not ethically handle the November 9, 2021 letter himself, as he suffered from substantial conflicts of interest, impacting his impartiality, including:

- his professional ties and presumed friendship with his chief counsel counterpart at AGC-10JD, Catherine Sheridan;
- his financial interest – identical to Chief Counsel Sheridan's – in the underlying February 11, 2021 complaint inasmuch as both are at-will appointees of Appellate Division justices having HUGE financial and other interests in it;
- his involvement in [my prior October 14, 2016 complaint filed with AGC-4](#), featured as "BACKGROUND" in the February 11, 2021 complaint (at pp. 4-6), whose investigation, as part of the February 11, 2021 complaint, would expose his official misconduct and that of AGC-4's then chairs in connection therewith.

As evident from my November 9, 2021 letter, it is an easy-to-understand, organized recitation of facts – with hyperlinks to the referred-to EVIDENCE substantiating each of the four branches of its requested relief. This is why, by contrast, Chief Counsel Heuther's January 11, 2022 letter is a dizzying a-chronological, mish-mash that garbles, distorts, and conceals the ENTIRETY of my letter's particularized showing.

Thus, although the first paragraph of Chief Counsel Heuther's page 2 identifies that my November 9, 2021 letter is a complaint against AGC-10JD Chief Counsel Sheridan and Chair Glover for "conflict of interest", he conceals that it is also explicitly a complaint against them for "fraud and deceit",

which page 1 of my November 9, 2021 letter not only so-identifies, but asserts to be “established by their October 18, 2021 letters to me” – with the balance of my November 9, 2021 letter, from the first sentence at the top of its page 2 up to and including its conclusion, at pages 7-8, being an analysis of those [two October 18, 2021 letters](#).

My analysis of the October 18, 2021 letters – essentially the entirety of my 8-page November 9, 2021 letter – is neither identified nor confronted by Chief Counsel Heuther. Instead, he substitutes a torrent of false assertions, false inferences, material concealment, and just plain gobbledygook into the 3-1/2 pages of his letter to support his “determination to close” my “Complaints...Dated Nov 9, 2021 and April 3, 2021”. Illustrative are the following:

- his page 1 last paragraph that my “above complaints arise from a larger, ongoing series of complaints and challenges...over approval of pay-raises for various members of State government” – *concealing* that the relevant “members of State government” are New York’s judges, including AGC-10JD Chair Glover’s wife, as well as the Appellate Division justices who appoint all members and attorney staff of the attorney grievance committees;
- his page 2 second paragraph *falsely implying* that [Staff Counsel Merker’s September 15, 2021 letter](#) had stated it was “on behalf of Ms. Sheridan”; also reflected by his page 3 second paragraph; and his page 2 fourth paragraph *falsely implying* that her letter was stated to be “pursuant to the authority of 22 NYCRR 1240.7(d)(1)”;
- his page 2 second paragraph *falsely purporting* that I had “indicated that [I] had sought ‘reconsideration’ of the Third Department’s letter transferring [my] complaint to the proper Department”; also reflected by his page 3 fourth paragraph that I had sought “reconsideration of the Third Department’s decision”;
- his page 2 third paragraph *falsely purporting* that Chief Counsel Sheridan’s October 18, 2021 letter to me “answered [my] request for an explanation”; and his page 2 last paragraph that her October 18, 2021 letter had “answered” my “concerns”; also implied by his page 3 second paragraph;
- his page 2 fourth, fifth, and sixth paragraphs *falsely* making it appear that Staff Counsel Merker’s September 15, 2021 dismissal letter and Chair Glover’s October 18, 2021 letter adhering thereto were correct as to the supposed April 8, 2021 date of my complaint – and that my attempt to clarify the date as February 11, 2021 was disingenuous; and his page 3, last paragraph gobbledygook that I could not seek reconsideration of the dismissal of a complaint whose date I was contesting and that my “attempt to characterize the April 2021 submission as a complaint and seek reconsideration by the Vice-Chair and full committee, after strenuously

objecting to that same characterization previously, is disingenuous and untenable.”;

- his page 3 second and fourth paragraphs *falsely asserting and implying* that the 30 days a complainant has to request reconsideration of a complaint dismissed pursuant to §1240.7(e)(3) begins to run even when a staff counsel’s letter of dismissal is not purported to be on behalf of the chief counsel, does not purport to be pursuant to §1240.7(d)(1), misidentifies the date of the complaint, and does not inform the complainant of either a right to request reconsideration, or of the Rules for Attorney Disciplinary Matters providing therefor;
- his page 3 fifth and sixth paragraphs *concealing* that my November 9, 2021 letter demonstrated – without contradiction – that Chair Glover was disqualified by financial interest from signing the October 18, 2021, letter presumably written by Chief Counsel Sheridan, and that it was, throughout, permeated by fraud and deceit – and purporting, instead, that “the Chairperson already acted by his letter of October 18, 2021” – and that I am “effectively seeking to disregard an adverse decision, trying to create a remedy not allowed or referred to by the rule itself, and ignoring the clearly expired time limits”.

Having so totally perverted and falsified the content of my November 9, 2021 letter, with its accurate analysis of the October 18, 2021 letters of Chief Counsel Sheridan and Chair Glover, the final fourth page of Chief Counsel Heuther’s letter advises me that I have no redress, “*administrative*” or “*judicial*”:

“It appears that you have exhausted all remedies available through litigation, appeals, and through the grievance process. It is well settled that **the *administrative* review of a decision to dismiss a complaint is authorized by 22 NYCRR 1240.7(d)(3).**^{fn-sic} **That occurred here.** The rules do not authorize any *judicial* review however.

^{fn-sic} 22 NYCRR §1240.7(d)(3) states:

“As may be permitted by law, the complainant shall be provided with a brief description of the basis of any disposition of a complaint by the Committee.” (underlining added).

This provision has NO applicability, as the disposition of my February 11, 2021 complaint against Assistant Attorney General Lynch was by Staff Counsel Merker’s September 15, 2021 letter, not by the Committee. Presumably, Chief Counsel Huether was intending to cite 22 NYCRR §1240.7(e)(3) – the provision I am here invoking in requesting review of his disposition of my November 9, 2021 complaints against Chief Counsel Sheridan and Chair Glover. It reads:

For example, an Article 78 proceeding does not lie to challenge a decision to decline to investigate a complaint against an attorney. See *Matter of Taylor*, 73 AD3d, 937, 938 (2d Department, 2010). Only the Appellate Division of Supreme Court has jurisdiction over attorney disciplinary matters (see Judiciary Law Section 90.)²

Further, complainants lack standing to compel authorities to investigate misconduct to bring charges against other individuals. See *Matter of Izzo v. Department of Health*, 134 AD3d 1514, (4th Dept. 2015); *Matter of Davis v. New York State Dept. Of Educ.*, 96 AD3d 1261, 1262 (3d Dept. 2012); *Sassower v. Commission on Judicial Conduct of the State of New York*, 289 AD2d 110 (1st Dept. 2001.)³

“Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney’s decision declining to investigate a complaint, or of a Committee’s dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof for whatever action it deems appropriate.”

² The false inference that Chief Counsel Huether seeks to create by his assertion “The rules do not authorize any *judicial* review” is that “*judicial* review” is not available, which is untrue. Certainly, “an Article 78 proceeding” – the subject of his “For example” – is NOT the only route to “*judicial* review”.

³ Chief Counsel Heuther’s outrageous pretense that “complainants lack standing” with respect to their OWN complaints”, for which he relies on three cited Appellate Division decisions, is fraudulent – as I know from DIRECT knowledge of the third cited appellate decision – [Sassower v. Commission on Judicial Conduct of the State of New York, 289 AD2d 110 \(1st Dept. 2001\)](#), as I am the unidentified “Sassower”. Analysis of that fraudulent Appellate Division, First Department December 18, 2001 decision – [Exhibit L-1 to my October 24, 2001 motion to the Court of Appeals for leave to appeal therefrom](#) – is physically part of the record of the *CJA v. Cuomo...Schneiderman...DiFiore* citizen-taxpayer action that is the subject of my February 11, 2021 complaint. This, because when [I testified before the Commission on Judicial Compensation, at its July 20, 2011 hearing](#), I handed up a copy of that October 24, 2002 motion, thereafter making it a [free-standing exhibit to CJA’s October 27, 2011 opposition report to the Commission on Judicial Compensation’s August 29, 2011 report](#), and, thereafter, furnishing a full copy of the October 27, 2011 opposition report in support ALL the lawsuits and complaints I filed and in testimony. Such includes [my November 30, 2015 testimony before the Commission on Legislative, Judicial and Executive Compensation](#), where I handed up a full copy of the October 27, 2011 opposition report. A month later, I would hand-deliver a further full copy for then Court of Appeals Chief Judge Nominee/Westchester District Attorney Janet DiFiore under a [December 31, 2015 letter](#) whose “RE:” clause read:

“So, You Want to Be New York’s Chief Judge? – Here’s Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?”

- (1) The Commission on Judicial Compensation’s August 29, 2011 Report;
- (2) The Commission on Legislative, Judicial and Executive Compensation’s December 24, 2015 Report;
- (3) The Judiciary budgets – including for fiscal year 2016-2017.”

This December 31, 2015 letter would become [Exhibit 37](#) to the [March 23, 2016 verified second supplemental](#)

The remedy is limited to that prescribed by the rule at 22 NYCRR 1240.7(e)(3). **Given the positions you asserted regarding the complaints you have submitted, the decisions of the Second Department’s Chief Counsel and Chairperson as to your submissions of April and November 2021 is hereby affirmed.** This matter is closed pursuant to 22 NYCRR 1240.7(d)(1) for the reasons set forth herein.” (italics in the original, bold added, underlining added, footnote added).

In other words, by his sentence “That occurred here”, Chief Counsel Heuther is purporting that by Chair Glover’s October 18, 2021 letter to me adhering to Staff Counsel Merker’s dismissal of my complaint against Assistant Attorney General Lynch – which Staff Counsel Merker and Chair Glover purported to be dated April 8, 2021 and which Chief Counsel Heuther purports to be dated April 3, 2021 – I have already had “*administrative review of a decision to dismiss a complaint*”. This,

- without having identified Chair Glover’s direct pecuniary interest in the February 11, 2021 complaint, precluding him, *as a matter of law*, from having signed the October 18, 2021 letter – presumably written by Chief Counsel Sheridan;
- without having confronted my analysis of the fraud and deceit of Chair Glover’s October 18, 2021 letter;
- without having identified Chief Counsel Sheridan’s self interest in the February 11, 2021 complaint;
- without having identified my analysis of the fraud and deceit of Chief Counsel Sheridan’s own October 18, 2021 letter.

As for my November 9, 2021 complaint against Chief Counsel Sheridan and Chair Glover, Mr. Heuther’s final paragraphs seek to conceal that I am entitled to “*administrative review*” of it

complaint in CJA’s then pending first citizen-taxpayer action, whose ¶¶274-276 identified the December 31, 2015 letter, including its enclosed full copy of the October 27, 2011 opposition report. The March 23, 2016 verified second supplemental complaint would be Exhibit A to the September 2, 2016 verified complaint in the second citizen-taxpayer action, *CJA v. Cuomo...Schneiderman...DiFiore*, which incorporated and rested on it and the record of the first citizen-taxpayer action.

Suffice to add that Mr. Heuther’s cited 2012 Appellate Division, Third Department decision Matter of Davis v. New York State Dept. Of Educ. twice cites to the Appellate Division, First Department’s December 18, 2001 decision in *Sassower v. Commission* on the issue of standing – and his cited 2015 Appellate Division, Fourth Department decision Matter of Izzo v. Department of Health has only a single citation on the issue of standing, to *Davis*.

As for the fraudulence of the Appellate Division, First Department’s one sentence pertaining to standing in its Sassower v. Commission decision, it is particularized at pages 15-16 of my Exhibit L-1 analysis to my October 24, 2002 motion for leave to appeal, whose pages 14-15 contain further discussion and culminate, at pages 19-20, with a summarizing description of it as fraud “to further insulate the Commission from legal challenge by complainants”.

pursuant to §1240.7(e)(3). Certainly he does not alert me to it, even while stating, in his last sentence: “This matter is closed pursuant to 22 NYCRR 1240.7(d)(1) for the reasons set forth herein.”

Pursuant to §1240.7(e)(3), you have discretion as the Committee’s chairs, to refer this written request for reconsideration “to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate.” In view of the magnitude and explosive electoral significance of what is here at issue – evident from the most cursory examination of the February 11, 2021 complaint – and the HUGE financial and other interests of the justices of the Appellate Division, Fourth Department, who appoint Chief Counsel Heuther, AGC-4 staff⁴, ALL members of AGC-4 and yourselves as chairs⁵, I respectfully submit that this reconsideration request and the complaint I am here initiating against Chief Counsel Heuther for conflict of interest and fraud must be referred to the FULL membership of the three AGC-4 committees⁶ – and on an **EMERGENCY, TIME-IS-OF-THE-ESSENCE BASIS**.

⁴ §1240.5 entitled “Committee Counsel and Staff” states: “Each Department of the Appellate Division shall appoint to a Committee or Committees such chief attorneys and other staff as it deems appropriate.”

⁵ §1240.4 entitled “Appointment of Committees” states, in pertinent part:

“Each Department of the Appellate Division shall appoint such Attorney Grievance Committee or Committees (hereinafter referred to as ‘Committee’) within its jurisdiction as it may deem appropriate. Each Committee shall be comprised of at least 21 members, of which no fewer than 3 members shall be non-lawyers. A lawyer member of a Committee shall be appointed to serve as Chairperson. All members of the Committee shall reside or maintain an office within the geographic jurisdiction of the Committee...”

22 NYCRR §1020.2 entitled “Fourth Judicial Department grievance plan” states, in pertinent part:

(b) The Appellate Division shall appoint the members of the committees, after consultation with the presidents of the county bar associations. A chairperson of each committee shall be appointed by the Presiding Justice. ...”

⁶ This was comparably stated by my November 9, 2021 letter to AGC-10JD’s Vice-Chair Pascarella and members, as follows (at p. 8):

“The far-reaching political and governmental ramifications of my February 11, 2021 complaint – extending far beyond Assistant Attorney General Lynch – require that ALL members of the Committee participate in the determination deemed to be of ‘the Committee’. Certainly, too, ‘full Committee’ participation will better ensure that undisclosed conflicts of interests of individual members are not sabotaging the Committee’s duty and function, which is to investigate facially-valid complaints – for which the Committee’s easiest, most efficient tool, set forth in §1240.7(b)(2), is requiring a ‘written response’ from the complained-against attorney.

Needless to say, if individual members of the Committee, all appointed by the Appellate Division, Second Department (§1240.4) and all lawyers, excepting three, are unable to rise

Of course, AGC-4 is authorized to undertake investigations “sua sponte” pursuant to §1240.7(a)(1) – and this, after all, is consistent with Rule 8.3(a) of the Rules of Professional Conduct, applicable to each lawyer Committee member:

“A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.”

All AGC-4 members, lawyer and lay, are responsible for Chief Counsel Heuther’s flagrant corrupting of his office in their name – and I respectfully request your prompt confirmation that you will be furnishing this reconsideration/complaint letter to all AGC-4 members for their appropriate action, consistent with your duties and theirs.

TIME IS OF THE ESSENCE.

I am available to answer questions, including under oath, and ask that you deem the foregoing as sworn by me as true under the penalties of perjury.

Thank you.

s/ELENA RUTH SASSOWER

cc: Tenth Judicial District Attorney Grievance Committee
Appellate Division, Second Department/Attorney Matters
Unified Court System Inspector General Sherrill Spatz, Esq.

above their conflicts of interest to discharge their investigative and enforcement duties with respect to the February 11, 2021 complaint – starting with requiring Assistant Attorney General Lynch’s ‘written response’ to the particulars of her misconduct, set forth by the April 3, 2021 specifications and April 27, 2021 supplement, they must recuse themselves so that ‘the Committee’ can discharge those duties, unimpeded.”