CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 3002 *Tel. (631) 377-3583* *E-Mail: cja@judgewatch.org*
Southampton, New York 11969 *Fax (631) 377-3582* *Website: www.judgewatch.org*

Elena Ruth Sassower, Director

BY CERTIFIED MAIL/RRR: 7010-2780-0000-0813-2962

March 16, 2011

Appellate Division, Second Department Justices
Peter B. Skelos, J.P.
Randall T. Eng
L. Priscilla Hall
Plummer E. Lott
45 Monroe Place
Brooklyn, New York 11201

RE: Verifying your knowledge of, & assent to, the November 26, 2010 Decision & Order bearing your names, but not your signatures, for the October 4, 2010 motion in *McFadden v. Sassower*, #2010-09890

Dear Justices:

This letter follows my March 1st telephone conversation with Appellate Division, Second Department Deputy Clerk Mel Harris, who stated it would be delivered to you for such response as you see fit. As discussed with him, the reason I am proceeding by letter, with copies to all concerned parties, is because I believe a reargument motion[1] would end up before the same staff attorney whose denial of my "legally-compelled" October 4, 2010 motion,[2] without reasons, is cloaked by your names on a "Decision & Order on Motion", unsigned by you. The possibility that staff attorneys – not judges – may be rendering decisions and orders is an issue I raised at the Appellate Term, with supporting evidence.[3] It is a possibility that exists here, as well.

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[1] A reargument motion would be timely, as I have not been served with the Order with notice of entry.

[2] That each of the motion's four branches of relief is "legally-compelled" was so-stated by the motion's final paragraph, ¶49 – based on the demonstration in its 48 preceding paragraphs.

[3] See my April 25, 2010 motion to disqualify Justice Iannacci: ¶¶7, 11, 19 (at p. 17), 38; and my January 2, 2010 motion to disqualify Justice Molia: ¶¶2-9, 11-12, 44-46.

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* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

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As I stated to Mr. Harris, this letter is a courtesy to you, to give you an opportunity to recall the subject November 26, 2010 Decision & Order, in the event you did not yourselves actually render it based on examination of the motion. If not recalled, I will have no choice but to furnish the Decision and underlying record to authorities charged with protecting the public from corruption in the courts. Among these: the Commission on Judicial Conduct, the Governor, the Legislature, judicial screening/qualifications committees, the Judicial Compensation Commission, opening its doors on April 1, 2011, and other bodies evaluating judicial workproduct and what New Yorkers get for their taxpayer dollars.

The issue presented by my motion was corruption in the Appellate Term and White Plains City Court, accomplished by their subversion of judicial disqualification/disclosure provisions – §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14 – resulting in decisions obliterating anything resembling the rule of law and "'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)".

No fair and impartial judge respecting his office and responsibilities to the administration of justice – let alone four such judges, sitting on an Appellate Division – could deny the motion. This is why my motion's fourth branch stated that if the Court were to deny the first three branches that it make:

> "disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon the fairness and impartiality of [its] justices".

Such was specified by ¶49 of my moving affidavit to include:

> "the manner in which they themselves have denied motions for their own disqualification/disclosure and addressed, as appellate judges, appeals presenting issues of actual bias and the sufficiency of disqualification motions."

Not only does the Decision make no disclosure, but it conceals that disclosure was even requested – replicating the precise conduct of the Appellate Term and City Court for which review was sought.

Likewise replicating those two courts, the Decision conceals ALL the facts, law, and legal arguments I presented – most importantly, my motion's non-discretionary relief. Thus, the Decision describes my motion as:

> "motion by Elena Sassower, inter alia, for leave to appeal to this Court from an order of the Appellate Term, Ninth and Tenth Judicial Districts, dated July 8, 2010, which denied her motions, inter alia, to disqualify Justice Iannacci from taking part in the determination of certain appeals".

This is materially false, concealing, by its first "inter alia", the appeal of right presented by my motion's first branch, as to which my motion's ¶5 stated:

> "Unless there is a law 'limit[ing] or condition[ing] the right to appeal to the Appellate Division 'from a judgment or order which does not finally determine an action', the Appellate Term's decision & order would appear to be reviewable, of right, pursuant to Article VI, §4k of the New York State Constitution".

The Decision does not identify any "limit[ing] or condition[ing]" law to my appeal of right pursuant to Article VI, §4k of the State Constitution. Nor does it identify any of my other arguments in support of my appeal of right, set forth by my ¶¶6-17. Yet, this was my motion's threshold issue – a fact expressly identified by my Request for Appellate Division Intervention. Indeed, its summarized description also reflected that leave to appeal, whether to this Court or, alternatively, to the New to York Court of Appeals, encompassed by my first branch and particularized at ¶¶18-34, 46 of my motion, was itself not discretionary, but "this Court's duty":

> "The threshold issue is whether an appeal lies of right to this Court to review the legal sufficiency of the April 25, 2010 motion to disqualify Justice Iannacci, as likewise the legal sufficiency of a January 2, 2010 motion to disqualify Justice Molia, embodied therein – both motions having been denied by the subject justices themselves without reasons and without the disclosure, alternatively requested.
>
> Secondarily, this Court's duty – appellate and supervisory – to grant leave to appeal to the Court or alternatively to the Court of Appeals so as to afford appellate review not only of the legal sufficiency of the two motions to disqualify Justices Molia and Iannacci, but the legal sufficiency of the two motions to disqualify City Court Judges Brian Hansbury and JoAnn Friia, dated Nov. 8/9, 2007 & July 18/21, 2008, whose legal sufficiency was the threshold issue on the 4 appeals taken to the Appellate Term, but not adjudicated by Justices Molia & Iannacci, as likewise all other appellate issues raised by appellant except one."

The Decision's first "inter alia" also conceals my motion's second and third branches, each resting on the Chief Administrator's Rules Governing Judicial Conduct – and particularized at ¶¶47-48 of my motion as also mandatory:

- My second branch, requesting that the Court refer my motion and the underlying case records "to authorities within the New York State judiciary charged with

denied by the Appellate Term's July 8, 2010 order – Exhibit A-1 to my motion – was based on Justice Iannacci's having already "determin[ed]" my appeals with Justice Molia. By contrast, I did make a motion to disqualify Justice Molia "from taking part in the determination" of my appeals. It was my January 2, 2010 motion – which Justice Molia denied, without reasons and with no disclosure, by an order that is Exhibit A-3 to my motion herein. Conspicuously – and reflecting the possibility of an undisclosed relationship impacting on fair judgment – the Decision makes no mention of Justice Molia, who, as noted by my motion (fn. 13), is up for re-election next year. Surely, four judges reviewing my motion could not have made such "error" – unless they did not, in fact, read the motion or if, in fact, it was not "error".

One further "error" is worthy of note. This case involves record-tampering by White Plains City Court Judge Friia, who, to achieve my eviction from my home of 20 years and deprive me of $1,000,0000 in counterclaims in *McFadden v. Elena Sassower*, #SP-1502/07, which she could not do on the record therein, *sua sponte*, and without notice or explanation, directed the White Plains City Court Clerk to open a closed proceeding, *McFadden v. Doris L. Sassower and Elena Sassower*, SP-#659/89, assigning it a new index number #SP-1474/08. My notice of motion correctly reflects all three White Plains City Court numbers. These three White Plains City Court numbers are additionally reflected by the appealed-from White Plains City Court decision/orders, annexed to my motion as Exhibits B-1, B-2, C-1, and C-5. Nevertheless, this Court's Decision bears only two White Plains City Court numbers – omitting the incriminating #SP-1474/08.[4]

Finally, and reinforcing my belief that the four-judge panel – and certainly not Justice Peter Skelos, its presiding justice – read my motion is the fact that the motion was buttressed by the magnificent decision of Justice Skelos' own former law partner, Thomas F. Liotti, as Westbury Village Justice in *People v. Ventura*, 17 Misc. 3d 1132A (2007), a copy of which my motion not only annexed as its Exhibit G, but quoted, as follows:

> "The system of recusal is deliberately flawed because applications for recusal must go before the Judge presiding over the case. This procedure remains in effect because our judiciary wishes to discourage recusal motions by a process of systemic intimidation wherein it considers such motions to be a monkey wrench thrown into the works of its turnstile. When a judge's fairness might reasonably be questioned or when a Judge is being asked to overrule himself, to change the law of the case or to alter an interlocutory ruling, then recusal should be a forethought instead of an afterthought.
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> ...

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[4] The Appellate Term similarly omitted #SP-1474/08 from its order pertaining to my appeal where that was at issue. Such was identified by my April 25, 2010 motion to disqualify Justice Iannacci: at fn. 22 – referencing the Appellate Term's February 23, 2010 order on appeal #2009-148-WC, annexed thereto as Exhibit M-2.

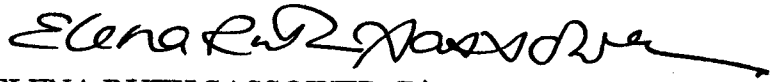
> The law in New York and federally still requires that parties or attorneys seeking recusal must do so before the very judge before whom recusal is sought. This absurd requirement causes attorneys to have to second guess themselves and decide whether they wish to make an application thereby incurring the judge's wrath and possibly tainting the remainder of the proceedings with a judge who harbors animosity because an attorney or litigant dared to suggest even the potential of unfairness on the part of the judge.
>
> ...
>
> An attorney or party making the recusal application or creating the legal issue which forces the court to consider same should not be viewed as the enemy." (quoted at ¶45 of my motion).

The subject Decision is *prima facie* evidence of a further reason why "[t]he system of recusal is deliberately flawed". It is because appellate judges, in violation of their mandatory appellate, supervisory, and disciplinary duties, deliberately refuse to ensure the integrity of the existing system, either by appellate review or referral to appropriate authorities. Such is misconduct, warranting removal from the bench.

Should you wish me to annex this letter to a reargument motion, I will do so. In any event, please advise by April 1, 2011, so that I may be guided accordingly.

Thank you.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

cc: Mel Harris, Deputy Clerk
Doris L. Sassower
Leonard A. Sclafani, Esq.
New York State Attorney General Eric T. Schneiderman
ATT: Deputy Solicitor General Benjamin N. Gutman