CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

BY HAND

June 14, 2011

Chief Administrative Judge Ann Pfau
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: Revocation of Your Appellate Term Designations of Supreme Court Justices Denise F. Molia & Angela G. Iannacci Based on their Corruption in Office

Dear Chief Administrative Judge Pfau:

On February 11, 2009, you sat in the audience at the Senate Judiciary Committee's hearing to confirm your former boss, Jonathan Lippman, as Chief Judge of the Court of Appeals – and heard me testify, as Director of the Center for Judicial Accountability, Inc. (CJA), as to the mandatory supervisory and disciplinary responsibilities that the Chief Administrator's Rules Governing Judicial Conduct imposes on judges. Other than Chief Judge Lippman, no judge has more sweeping administrative and disciplinary responsibilities under §§100.3(C) and (D) than you.

Pursuant thereto – and Article VI, §8 of the New York State Constitution, empowering you to designate, and revoke designation of, Appellate Term justices with the approval of the Presiding Justice of the pertinent Appellate Division– this is to request that you revoke your designations of Supreme Court Justices Denise F. Molia and Angela G. Iannacci as Appellate Term Justices for the Ninth and Tenth Judicial Districts, which you made by Administrative Orders dated December 7, 2007 and September 23, 2009, respectively. Copies of these Administrative Orders are annexed.[1]

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[1] These were supplied to me by Unified Court System Assistant Deputy Counsel Shawn Kerby on January 29, 2010, in response to my January 4, 2010 FOIL request. Also requested were "all publicly-available records setting forth the procedure" by which you make designations to the Appellate Term, including "rules and blank application forms and waivers, if any, required to be completed by Supreme Court justices seeking designation" and "all publicly-available records setting forth the procedure...by which...designation...may be revoked...including standards for revocation". According to Ms. Kerby, there were "no existing records responsive to [these] requests."

Enclosure #2

Such revocation is mandated as Justices Molia and Iannacci employed their judicial offices for illegitimate, ulterior purposes: willfully corrupting the appellate process in four related appeals: #2008-1433-WC and #2008-1428-WC (*John McFadden v. Elena Sassower*) and #2008-1427-WC and #2009-148-WC (*John McFadden v. Doris L. Sassower and Elena Sassower*) to cover up the corruption of White Plains City Court Judges Brian Hansbury and JoAnn Friia, and with it the litigation fraud of Mr. McFadden's attorney, Leonard Sclafani, Esq., and the Attorney General's Office, representing White Plains City Court Clerk Patricia Lupi, who, at Judge Friia's direction, tampered with and falsified court records.

To that end – and to unlawfully evict me from my home of more than 20 years and deprive me of one million dollars in counterclaims and my entitlement to tens of thousands of dollars in costs and damages under 22 NYCRR §130-1.1 and Judiciary Law §487 – Justices Molia and Iannacci, constituting the Appellate Term panel upon the *sua sponte* recusal of Presiding Justice Francis Nicolai at oral argument, colluded in two decisions of five sentences, denying, *without reasons* and *without* requested disclosure, a 26-page January 2, 2010 motion to disqualify Justice Molia for demonstrated actual bias and interest; to determine dispositive issues with findings of fact and conclusions of law; to subpoena Clerk Lupi for documents and information; and to sanction Mr. McFadden, Clerk Lupi, and their attorneys for litigation fraud and refer them for criminal and disciplinary investigation. Thereupon, they colluded in three decisions on my four appeals, concealing EVERY "Questions Presented" by my appellant's briefs and ALL the facts, law, and legal argument I had presented therein and by my reply[2]. This includes as to the pervasive actual bias of Judges Hansbury and Friia and the legal sufficiency of my motions to disqualify them for demonstrated actual bias and interest – the centerpiece of my appeals – as well as the tampering and falsification of court records by Clerk Lupi – also focally presented – as to which Justices Molia and Iannacci made NO adjudication because, as with each of my "Questions Presented", they were dispositive in my favor.

These three decisions on my four appeals, when compared to the record,[3] are – like the four

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This FOIL correspondence is posted on CJA's website at the location hereinafter described.

[2] That such non-responsive decisions, as likewise decisions *without* reasons, lack legitimacy may be seen from the masterful law review article "*Keeping Up Appearances: A Process Oriented Approach to Judicial Recusal*", 53 University of Kansas Law Review, 531 (2005), by Amanda Frost, especially by its section entitled "Procedure as a Source of Judicial Legitimacy" (at pp. 552-556), whose subsections are "A. Litigants Initiate and Frame Disputes"; "B. Adversarial Presentation of Disputes"; "C. Reasoned Decisionmaking"; "D. Reference to Governing Body of Law"; and "E. Impartial Decisionmaker".

[3] As to the importance of the record in assessing judicial decisions, see "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan; "Performance assessment cannot occur without close examination of the

appealed-from decisions – *readily-verifiable* as "judicial frauds", being "insupportable in fact and law – and knowingly so" 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)." This is established by my three analyses of the three appeals decisions, which, together with my two analyses of the two decisions denying my January 2, 2010 motion, I embodied in a 48-page April 25, 2010 motion to disqualify Justice Iannacci for demonstrated actual bias and interest; to vacate all five decisions for lack of jurisdiction and fraud; for reargument/renewal; and for leave to appeal to the Appellate Division, Second Department. As with my January 2, 2010 motion, which Justices Molia and Iannacci denied *without* reasons, *without* requested disclosure, and by concealing *ALL* the facts, law, and legal argument presented, so, too, they denied my April 25, 2010 motion, in a two-sentence decision, *without* reasons, *without* requested disclosure, and by concealing *ALL* the facts, law, and legal argument presented. This, in face of the legal authority, which I repeatedly placed before them[4], the Appellate Division, Second Department's decision in *Hartford Fire Insurance Co. v. Cheever Development Corp*, 289 A.D.2d 292 (2001), approvingly citing the First Department's decision in *Nadle v. L.O. Realty Corp*, 286 AD2d 130 (2001), for the proposition:

> "...we now take this opportunity to explain the basis for our insistence on the inclusion of the reasoning underlying a ruling. First of all, as the Third Department has had occasion to note:
>
> > Written memoranda assure the parties that the case was fully considered and resolved logically in accordance with the facts and law....
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> (*Dworesky v. Dworesky*, 152 A.D. 2d 895, 896.) In addition to the potential benefits to the litigants, the inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision making is reasoned rather than arbitrary."

Copies of my January 2, 2010 and April 25, 2010 motions, the *without-reasons* decisions of Justices Molia and Iannacci denying them, and the concealed and unadjudicated "Questions

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trial briefs, oral argument and the like..." (at p. 53).

[4] See (1) my October 15, 2008 order to show cause for reargument/renewal & other relief, *signed by Justice Molia* (at ¶48)– annexed as Exhibit G to my January 2, 2010 motion for her disqualification; (2) my January 2, 2010 motion to disqualify Justice Molia (at p. 9); (3) my April 25, 2010 motion to disqualify Justice Iannacci (at ¶16).

Presented" and "Introductions" from my three appellant's briefs for my four appeals are enclosed, as they are a roadmap of the on-the-bench corruption of Justices Molia and Iannacci, triggering your mandatory responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct to not only revoke their Appellate Term designations, but to refer them to appropriate authorities so that they are removed from their Supreme Court judgeships[5] and, additionally, that Judges Hansbury and Fria and Clerk Lupi, who they protected, are removed from White Plains City Court, with disciplinary and criminal proceedings brought against Mr. Sclafani and the culpable attorneys in the Attorney General's office, who they also protected.

Inasmuch as revocation of the Appellate Term designations of Justices Molia and Iannacci requires the approval of Appellate Division, Second Department Presiding Justice Gail Prudenti, she should assist with necessary fact-finding. She can most easily do this by discharging her supervisory responsibilities over Appellate Division, Second Department Justices Peter Skelos, Randall Eng, Priscilla Hall, and Plummer Lott. Their *without* reasons denial of my 19-page October 4, 2010 motion for an appeal by leave, if not by right, and for referrals mandated by the Chief Administrator's Rules Governing Judicial Conduct – by a two-sentence decision & order likewise concealing *ALL* the facts, law, and legal argument presented – was the subject of a March 16, 2011 letter I sent them. Such letter – a copy of which is enclosed – is incorporated in a reargument motion I am filing today with the Appellate Division, Second Department. Such will

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[5] The standard for judicial removal, in the record before Justices Molia and Iannacci, as it was before Judges Hansbury and Friia, is as follows:

> "*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...*", *Matter of Capshaw*, 258 AD 470, 485 (1st Dept. 1940), with italics added by the Appellate Division, First Department in quoting from *Matter of Droege*, 129 AD 866 (1st Dept. 1909).
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> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...", *Matter of Bolte*, 97 AD 551, 568 (1st Dept. 1904), italics in original.
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> "...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe.", *Matter of Bolte*, at 574.

See: (1) my consolidated appeal brief for my appeals #2008-1427-WC and #2009-148-WC (at p. 94); (2) my November 8, 2007 memorandum of law for Judge Hansbury's disqualification (at pp. 3-4).

afford Justices Skelos, Eng, Hall, and Plummer – and the Appellate Division, Second Department – a further opportunity to meet their mandatory appellate, supervisory, and disciplinary obligations, arising from the corruption on two court levels evidenced in the record before them. As to that record, the Appellate Division, Second Department has copies of the critical documents, because I supplied them with my October 4, 2010 motion, *to wit*:

(1) my April 25, 2010 motion to disqualify Justice Iannacci for demonstrated actual bias and interest – containing (at pp. 7-48) the five record-based analyses of the five fraudulent decisions/orders she rendered with Justice Molia;

(2) my January 2, 2010 motion to disqualify Justice Molia for demonstrated actual bias and interest – containing (at pp. 7-14) three record-based analyses of three fraudulent judicial decisions she participated in rendering on four prior motions I had made in the Appellate Term to obviate the appeals and ensure the integrity of the appellate proceedings, none identifying ANY of the facts, law, or legal argument I had presented in denying me relief, *without* reasons or by scant reasons shown to be *false*;

(3) my July 18/21, 2008 order to show cause to disqualify Judge Friia for demonstrated actual bias and interest – containing (at pp. 8-59) a record-based analysis of Judge Friia's fraudulent decision in #SP-651/89 to evict me, accomplished, *inter alia*, by Clerk Lupi's tampering and falsification of court records to assign a new docket number, #SP-2008-1474, to #SP-651/89;

(4) my November 8/9, 2007 order to show cause to disqualify Judge Hansbury for demonstrated actual bias and interest – containing (at pp. 5-35) a record-based analysis of Judge Hansbury's fraudulent decision in #SP-1502/07 – the very decision that Justices Molia and Iannacci not only "affirmed" on appeal, but made even more fraudulent by purporting that, upon "searching the record", Mr. McFadden was entitled to summary judgment on his petition therein to evict me, that my affirmative defenses and counterclaims, should be dismissed, and that Judge Hansbury "did not improvidently exercise [his] discretion" in imposing no sanctions on Mr. McFadden and Mr. Sclafani, nor disciplinary referral[6]

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[6] As to this utterly fraudulent appellate decision of Justices Molia and Iannacci, combining my two appeals from Judge Hansbury's October 11, 2007 and January 29, 2008 decisions in #SP-1502/07, see my analysis at pp. 28-48 of my April 25, 2010 motion.

Appellate Term Chief Clerk Paul Kenny has stated to me that, upon your request, he will promptly transmit to you the full Appellate Term record. I would suggest that as part thereof, you request the internal memos of the Appellate Term's court attorneys pertaining to my four appeals and six Appellate Term motions.[7] As for the White Plains City Court record, it is back in White Plains City Court, from which it can be requisitioned by you – or, should you request – by Mr. Kenny, on your behalf – likewise with the internal memos of court attorneys there.

In the meantime, you can access my copy of the record, as it is posted on CJA's website, www.judgewatch.org, most conveniently accessible *via* the left sidebar panel "Test Cases". That panel brings up a menu page listing this landlord/tenant case, from which you can access separate webpages for the proceedings in White Plains City Court, in the Appellate Term, and in the Appellate Division, Second Department. You should take the opportunity to review my dispositive October 4, 2010 motion, especially because, if reargument thereon is denied, I will be writing you and Presiding Justice Prudenti to ensure that it and the substantiating record are furnished to:

> "authorities within the New York State judiciary charged with recommending, promulgating, and amending rules, procedures, and laws governing judicial disqualification, including the Chief Judge of the Court of Appeals,...the Judicial Conference, the Administrative Board, the Judicial Institute, and the Judicial Institute on Professionalism in the Law – pursuant to §100.1 of the Administrator's Rules Governing Judicial Conduct" (October 4, 2010 notice of motion, 2nd branch of relief).

Your response and that of Presiding Justice Prudenti to this fully-documented revocation request – like the decision & order of Justices Skelos, Eng, Hall, and Lott on my reargument motion – will further test whether there are ANY safeguards within New York's judiciary that actually protect the integrity of the judicial process and ANY glimmer of the supposed "quality" of New York's judiciary for which pay raises are in order. In that connection, enclosed is my May 23, 2011 letter to Chief Judge Lippman, in addition to Governor Cuomo and Legislative Leaders, including Justice Skelos' own brother, Temporary Senate President Dean Skelos, on the subject

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[7] These six motions are:
(1) my July 30, 2008 order to show cause for a stay pending appeal;
(2) my August 13, 2008 motion for vacatur, dismissal, & other relief;
(3) my October 15, 2008 order to show cause for reargument/renewal & other relief, *signed by Justice Molia*;
(4) my May 11, 2009 motion to direct Clerk Lupi to file a proper clerk's return on appeal;
(5) my January 2, 2010 motion to disqualify Justice Molia & other relief;
(6) my April 25, 2010 motion to disqualify Justice Iannacci & other relief.

of New York's Commission on Judicial Compensation, identifying that CJA will be making:

> "a FULLY-DOCUMENTED presentation, vigorously opposing any increase in judicial compensation until mechanisms are in place and functioning to remove a multitude of miscreant judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of 'judicial perjuries', being knowingly false and fabricated. Such judges, willfully destroying the lives of countless New Yorkers, the wellbeing of our state, and our democracy as a whole, are unworthy of their current salaries and benefits – being paid by hardworking New Yorkers." (p. 2, capitalization in the original).

Yours for a quality judiciary,

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

Attachments:
(1) December 7, 2007 and September 23, 2008 Administrative Orders
(2) "Introduction" and "Questions Presented" from appellant's three appeal briefs
(3) March 16, 2011 letter to Appellate Division Justices Skelos, Eng, Hall, and Lott
(4) May 23, 2011 letter to Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, & Chief Judge Lippman

Enclosures:
(1) January 2, 2010 motion to disqualify Appellate Term Justice Molia & other relief– & the two *reason-less* February 19, 2010 decisions thereon
(2) April 25, 2010 motion to disqualify Appellate Term Justice Iannacci & other relief – & the *reason-less* July 8, 2010 decision & order thereon

cc: Appellate Division, Second Department Presiding Justice Prudenti
Appellate Division Justices Skelos, Eng, Hall, and Lott
Appellate Term Chief Clerk Kenny