

SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Albany Co. Index #1788-14

Plaintiffs-Appellants,

NOTICE OF MOTION

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity as
Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

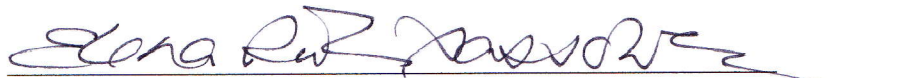
Defendants-Respondents.
-----x

PLEASE TAKE NOTICE that upon the affidavit of the *pro se* individual plaintiff-appellant ELENA RUTH SASSOWER, sworn to on August 15, 2015, plaintiffs-appellants will make a motion at a term of this Court to be held in the City of Albany, New York on the 8th day of September 2015 for an order:

- (1) Enlarging plaintiffs-appellants' time to December 28, 2015 for filing their appellate brief for their November 17, 2014 notice of appeal;
- (2) Endorsing plaintiffs-appellants' request for a settlement conference pursuant to the Civil Appeals Settlement Program;
- (3) For such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, are to be served on the *pro se* individual plaintiff ELENA SASSOWER seven days before the return date by e-mail and regular mail and that, pursuant to Appellate Division, Third Department Rule §800.2(a), this motion will be submitted on the papers, and that personal appearance of counsel or the parties is neither required nor permitted.

Dated: White Plains, New York
August 15, 2015



ELENA RUTH SASSOWER, Plaintiff-Appellant *Pro Se*,
individually & as Director of the Center for Judicial
Accountability, Inc., and on behalf of the People of the State
of New York & the Public Interest

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

TO: Attorney General Eric T. Schneiderman
The Capitol
Albany, New York 12224-0341

ATT: Assistant Solicitor General Victor Paladino
victor.paladino@ag.ny.gov
518-776-2012

Assistant Attorney General Adrienne Kerwin
adrienne.kerwin@ag.ny.gov
518-776-2608

SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Albany Co. Index #1788-14

Plaintiffs-Appellants,

-against-

Affidavit

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity as
Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants-Respondents.

-----x
STATE OF NEW YORK)
WESTCHESTER COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff-appellant, fully-familiar with all the facts, papers and proceedings heretofore had, and make this motion following consultation with staff at the Appellate Division, Third Department, most particularly, Ed Carey, Chief Motions Attorney and, prior thereto, with staff at the Civil Appeals Settlement Program (CASP).

2. By this motion, I seek an enlargement of time for the filing of plaintiffs-appellants' appeal brief, due August 17, 2015 – nine months from the November 17, 2014 date on the notice of appeal from the lower court's October 9, 2014 decision/order (Exhibit A-1).¹

3. The appealed-from October 9, 2014 decision/order (Exhibit A-2) did not dispose of the lawsuit. Rather, it left intact the fourth cause of action of plaintiffs' March 28, 2014 verified complaint, dismissing the first three.

4. In filing the November 17, 2014 notice of appeal, it was my expectation that well before the expiration of the nine months for perfecting the appeal, the lower court would render its decision on the fourth cause of action, that I would file a notice of appeal therefrom, and that I would then perfect both appeals in a single brief.

5. Not only is the fourth cause of action of plaintiffs' verified complaint still before the lower court, but the lower court now has four additional causes of action before it by virtue of its June 24, 2015 decision/order (Exhibit B) granting plaintiffs' March 31, 2015 motion to file a verified supplemental complaint.

6. Of the four causes of action of the verified supplemental complaint, three directly challenge the lower court's October 9, 2014 decision/order dismissing the first three causes of action of the verified complaint, demonstrating all three dismissals to be insupportable, legally and factually (Exhibit C). Consequently, the lower court will necessarily be revisiting its October 9, 2014 decision/order, the subject of the November 17, 2014 notice of appeal.

7. That the lower court's duty is to obviate this appeal by recalling and vacating its October 9, 2014 decision/order – which it has the power, inherent and otherwise, to do – is

¹ It appears that plaintiffs' notice of appeal may have been filed with a second page from an earlier draft and, as such, did not include the continuation of the final sentence of the first page. Exhibit A-1 inserts the correct second page, followed by the second page that may have been mistakenly filed. Additionally, the

reinforced by the July 28, 2015 dismissal/summary judgment motion that defendants have made addressed to the remaining fourth cause of action of plaintiffs' verified complaint and to the four causes of action of their verified supplemental complaint. Defendants' motion wholly conceals that the fifth, sixth, and seventh causes of action of plaintiffs' verified supplemental complaint challenge the October 9, 2014 decision/order dismissing the first three causes of action of plaintiffs' verified complaint – reflective of the fact that defendants cannot and do not deny or dispute plaintiffs' particularized showing therein that the October 9, 2014 decision/order dismissing those three causes of action cannot be justified (Exhibit C).

8. To permit the lower court to recall and vacate the October 9, 2014 decision/order in the context of its adjudication of defendants' July 28, 2015 dismissal/summary motion, returnable September 28, 2015, plaintiffs request an enlargement of time to perfect their appeal to December 28, 2015.

9. In the interim and as a further means of obviating an appeal, a settlement conference should be held – and plaintiffs request that the Court make a referral to the Civil Appeals Settlement Program. Plaintiffs previously made such request in the pre-calendar statement that accompanied their November 17, 2014 notice of appeal, stating:

“Defendants/Respondents good-faith participation at a settlement conference would well serve the People of the State of New York and Public Interest, consistent with their duty as they have NO defense, *in fact and law*, to the dispositive record herein establishing Plaintiffs'/Appellants' entitlement to declaratory judgments in their favor on their four Causes of Action – and all other requested relief.” (Exhibit A-3, at p. 3, capitalization and italics in the original).

10. There is no prejudice to defendants by either relief. By this enlargement request, plaintiffs have plainly not abandoned their appeal from the October 9, 2014 decision/order and,

notice of appeal should be corrected to reflect that the lower court's October 9, 2014 decision/order was entered in the Albany County Clerk's Office on October 14, 2014, not October 15, 2014.

therefore, would be equally entitled to challenge the October 9, 2014 decision/order on an appeal from the lower court's yet-to-be-rendered final judgment, just as if they had not filed the November 17, 2014 notice of appeal.

11. Prior to making this motion, I discussed same with appellate counsel to defendants-respondents, Assistant Solicitor General Victor Paladino, who stated he was as yet unfamiliar with the case and could take no position until he reviewed it and the motion.

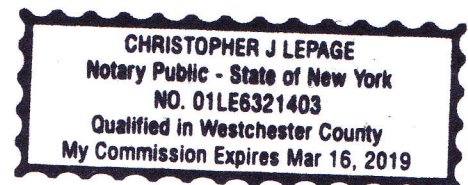
12. The merit of the appeal and importance of the case – a citizen-taxpayer action, pursuant to State Finance Law §123 *et seq.*, in which declaratory and other relief are sought by the four causes of action of the verified complaint with respect to the Legislative and Judiciary budgets for fiscal year 2014-2015 and by the four causes of action of the verified supplemental complaint with respect to the Legislative and Judiciary budgets for fiscal year 2015-2016 – may be gleaned from the pre- calendar statement that accompanied plaintiffs' notice of appeal (Exhibit A-3), as well as by the annexed fifth, sixth, and seventh causes of action of the verified supplemental complaint (Exhibit C). In the interest of judicial economy, I refer the Court to them.

13. Suffice to additionally add that I am a non-attorney, who has brought the case expressly on behalf of the People of the State of New York and the public interest because of its far-reaching good-government significance. Such entails great expense and personal sacrifice – and I neither have the time, nor money to perfect superfluous or piecemeal appeals, especially as I have, throughout more than the past nine months, been bearing the heavy responsibility of caring for two elderly, infirm parents.


ELENA RUTH SASSOWER

Sworn to before me this
15th day of August 2015


Notary Public



SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs-Appellants,

-against-

Albany Co. Index #1788-14

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity
as Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants-Respondents.
-----X

**PLAINTIFFS-APPELLANTS' MOTION
FOR ENLARGEMENT OF TIME TO FILE APPEAL BRIEF
& ENDORSEMENT OF SETTLEMENT CONFERENCE**

ELENA RUTH SASSOWER, Plaintiff-Appellant *Pro Se*, individually & as
Director of the Center for Judicial Accountability, Inc., and on behalf of the
People of the State of New York & the Public Interest

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org