

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Director*

BY E-MAIL: [dcaj-alb@nycourts.gov](mailto:dcaj-alb@nycourts.gov)  
& BY MAIL

April 21, 2017

TO: Deputy Chief Administrative Judge Michael V. Coccoma

FROM: Elena Sassower, unrepresented individual plaintiff – citizen-taxpayer action:  
*Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.*,  
Albany Co. #5122-16

RE: IMMEDIATE SUPERVISORY ACTION REQUIRED – Misconduct Complaint  
against Third Judicial District Administrative Judge Thomas A. Breslin & his  
highest-ranking administrative staff, District Executive Beth A. Diebel and Deputy  
District Executive Christy Q. Bass, for aiding and abetting the willful, deliberate, and  
purposeful violation of State Finance Law §123-c(4) by Acting Supreme Court  
Justice/Court of Claims Judge Denise A. Hartman – & by Senior Court Reporter  
Cindy Affinati

This follows up my phone conversation two days ago with Assistant Court Analyst Anne Wasielewski of your office, advising that I would be filing a request for your supervisory oversight of Third Judicial District Administrative Judge Thomas A. Breslin – whose April 12, 2017 letter to me indicates you as a recipient, as likewise your chief of staff, Scott Murphy.

I do not know whether Administrative Judge Breslin himself wrote the April 12<sup>th</sup> letter he signed – or whether it was ghosted by the highest ranks of his Third Judicial District administrative staff with whom he shares his letterhead: District Executive Beth A. Diebel or, as I believe, Deputy District Executive Christy Q. Bass. However, all three must be disciplined and removed based thereon. Certainly, a court system having respect for its own integrity – acting consistent with the “Excellence Initiative” of its Chief Judge – cannot do other than eject them for their fraud. Indeed, this is even more compelled as their fraud was intended to sabotage and thwart the citizen-taxpayer action *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* (Albany Co. #5122-16), wherein Chief Judge Janet DiFiore is a named defendant by reason of her collusion with the other defendants in a slush-fund Judiciary budget, embedding judicial salary increases that are unconstitutional, statutorily-violative, and fraudulent.

The fraud committed by these three can be readily-verified by comparing the April 12<sup>th</sup> letter with the underlying documents before them:

(1) my April 10<sup>th</sup> letter to Administrative Judge Breslin, requesting his immediate supervisory oversight of Acting Supreme Court Justice/Court of Claims Judge Denise Hartman for her “willful, deliberate, and purposeful violation of State Finance Law 123-c(4)”; and

(2) my April 7<sup>th</sup> e-mail to Deputy District Executive Bass, with a copy to District Executive Diebel, requesting that she furnish a “fact-specific, responsive disposition of my April 5<sup>th</sup> complaint” against Senior Court Reporter Cindy Affinati.

By copy of this letter to them, I request that they promptly furnish you with the mailed original of my April 10<sup>th</sup> letter, with its exhibits – and that they confirm that, apart from Administrative Judge Breslin’s April 12<sup>th</sup> letter, neither District Executive Diebel nor Deputy District Executive Bass responded to my April 7<sup>th</sup> e-mail pertaining to Senior Court Reporter Affinati – a copy of which is annexed as Exhibit J.<sup>1</sup>

For your further convenience, everything is posted on the Center for Judicial Accountability’s website, [www.judgewatch.org](http://www.judgewatch.org), accessible *via* the prominent homepage link: “CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ and Unconstitutional ‘Three Men in a Room’ Governance”. As part of the menu for the unfolding second citizen-taxpayer action (Albany County #5122-16) – the one that is before Judge Hartman – I have created a category of webpages entitled “Securing Enforcement of the Citizen-Taxpayer Action Statute & Threshold Integrity Issues”. That is where the webpages for my April 10<sup>th</sup> letter to Administrative Judge Breslin and this letter to you can be found. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/9-2-16-osc-complaint/enforcement.htm>.

For your further convenience, here are my specifications of the frauds contained in each of the three paragraphs of Administrative Judge Breslin’s paltry April 12<sup>th</sup> letter:

As to paragraph #1: It disposes of my April 10<sup>th</sup> request for immediate supervisory oversight of Judge Hartman by purporting that Administrative Judge Breslin does not have “authority” for the “action” I have requested. This is false – and notably, the April 12<sup>th</sup> letter does not specify the “action” my April 10<sup>th</sup> letter seeks – other than by its false inference that I am seeking “review of Judge Hartman’s judicial decisions, her determination whether to recuse herself from this matter, or her refusal to issue a temporary restraining order”, which I am not. Indeed, nothing could be clearer from my April 10<sup>th</sup> letter, beginning with its “RE” clause, than that the requested “action” is enforcement of the time parameters of State Finance Law §123-c(4) – as to which Administrative Judge Breslin has supervisory jurisdiction. As stated:

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<sup>1</sup> This continues the sequence of exhibits, begun by my April 10<sup>th</sup> letter, which annexed Exhibits A-I.

“State Finance Law §123-c(4) – part of Article 7-A entitled ‘Citizen-Taxpayer Actions’ – reads:

‘An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts.’ (underlining added).

As Administrative Judge, you have supervisory authority over judges with respect to mandated time parameters for the disposition of motions – notably CPLR §2219(a). By the same token, you have supervisory authority over judges who violate the expedition commanded by State Finance Law §123-c(4) – an expedition that recognizes the imperative of safeguarding public monies from unconstitutional, unlawful disbursement and dissipation.” (at p. 2, underlining in the original);

“Absent your supervisory intercession to secure Judge Hartman’s compliance with the unequivocal directives of State Finance Law §123-c(4) and/or her immediate determinations, upon receipt of this supervisory request, plaintiffs will bring an Article 78 proceeding against her to compel same.” (at p. 6);

Needless to say, should you be unable to impartially discharge your administrative responsibilities in enforcing the expedition that State Finance Law §123-c(4) commands, including because your brother, Senator Neil Breslin, is a member of defendant Senate with relevant committee memberships including: the Senate Finance Committee, Senate Rules Committee, and Senate Judiciary Committee...” (at p. 8);

“Consistent with State Finance Law §123-c(4), I request your response – and that of Judge Hartman – by no later than Friday, April 14<sup>th</sup> – so that I might know whether it will be necessary for me to commence an Article 78 proceeding to secure the relief the record mandates.” (at p. 9, underlining in the original).

Suffice to say – and as a further ground for your disciplinary action against Deputy District Executive Bass — on April 19<sup>th</sup>, in a phone conversation with me,<sup>2</sup> she not only REFUSED my request for a copy of any documents setting forth the jurisdiction of administrative judges – which I told her surely included jurisdiction over the timely disposition of motions by the judges they are charged with supervising – but actually stated to me that there are NO written documents as to the jurisdiction and

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<sup>2</sup> The context of this phone conversation with Deputy District Executive Bass was my phone call to inquire as to when I could expect Administrative Judge Breslin’s response to my April 10<sup>th</sup> letter, since I had not received anything. This was because, as became apparent in my conversation with her, Administrative Judge Breslin’s April 12<sup>th</sup> letter had not been e-mailed to me *via* the e-mail address I had used for all my written communications to the Third Judicial District administrative office, but *via* CJA’s generic address.

charge of administrative judges.

Additionally – and as I also told Deputy Executive Bass in our April 19<sup>th</sup> phone conversation – even were Administrative Judge Breslin actually without “authority” to direct Judge Hartman’s compliance with State Finance Law §123-c(4) – which certainly is at odds with descriptions of how administrative judges are working to facilitate timeliness and reduce delays as part of Chief Judge DiFiore’s “Excellence Initiative”<sup>3</sup> – his duty is to give accurate information as to what my remedies are for securing her compliance therewith. Contrary to his April 12<sup>th</sup> letter, it is NOT “appellate review”, as I have no order from which to appeal. Rather, I have a judicial remedy by way of an Article 78 proceeding against Judge Hartman, with a disciplinary remedy against her for her willful, deliberate, and purposeful violation of State Finance Law §123-c(4) *via* a complaint to the Commission on Judicial Conduct. This, at very least, is what his April 12<sup>th</sup> letter should have advised.

As to paragraph #2: It falsely implies that Judge Hartman had properly exercised her “prerogative to require communication to her Chambers be done in writing and served as she directed” – concealing that this was her SOLE response to my telephonic and e-mail requests that, pursuant to State Finance Law §123-c(4), she expeditiously determine plaintiffs’ February 15<sup>th</sup> order to show cause for her disqualification and their March 30<sup>th</sup> request for her reconsideration of her March 29<sup>th</sup> denial of a TRO and/or immediate evidentiary hearing on plaintiffs’ entitlement to a preliminary injunction – the TRO and prompt evidentiary hearing having each been denied by her, without reasons. Such

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<sup>3</sup> Chief Judge DiFiore’s February 2017 report “The State of Our Judiciary” is subtitled “Excellence Initiative: Year One” and states as follows in its first section “Excellence Initiative: Year One”:

“In February 2016, immediately after taking office, Chief Judge Janet DiFiore announced the Excellence Initiative, a top-to-bottom examination of court operations focused on improving the courts’ ability to ensure the just and timely resolution of all matters that come before them – our core obligation as the judicial branch of government....

...

The Excellence Initiative began with a comprehensive evaluation of court operations around the state. Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks held collective and individual meetings with Administrative Judges to review performance data and trends in their courts and districts. These meetings identified those procedures and programs that were working well and those in need of improvement. Every Administrative Judge has implemented measures to improve promptness and productivity, eliminate case backlogs and delays and provide better justice services to the public in his or her jurisdiction. Regular follow-up meetings were held to assess progress and consider further modifications.

...

We are pleased that after a year of focused attention on operational issues, the New York State courts are performing better as a whole – managing cases more efficiently and reducing case delays and backlogs. A prevailing theme of the Excellence Initiative is that ‘justice delayed is justice denied.’ Citizens deserve, fundamentally, to have their cases heard and resolved in a fair, timely, efficient and cost-effective manner. ...” (at p. i, underlining added).

“prerogative” as Judge Hartman exercised served no purpose but to further impede the prompt, prioritized determinations commanded by State Finance Law §123-c(4) – and to make the litigation as costly and time-consuming as possible for plaintiffs. As stated by my April 10<sup>th</sup> letter:

“the only party prejudiced by [Judge Hartman’s direction] is myself, not the Attorney General, whose offices are a five-minute walk from the courthouse and whose mailed correspondence do not require express-mailing to reach it the next day.” (at p. 7).

Nor is there the slightest basis for the sentence “Nothing in the Court Rules or CPLR allows a litigant to demand that emails be received” – implying, falsely, that I ever so-demanded, which I never did. As for the final sentence, “Moreover, nothing you have submitted indicates that you chose to file this action electronically”, no one ever informed me that this action could be e-filed. Certainly, if such would have expedited this action to safeguard the dissipation of public monies, it was for Judge Hartman to so-advise, consistent with State Finance Law §123-c(4) – including at a preliminary conference, which she failed to hold at the outset of the action – concealing my request for same, at ¶3 of my September 30, 2016 affidavit,<sup>4</sup> when, by her December 21, 2016 decision, she concealed the very existence of the affidavit and plaintiffs’ September 30, 2016 memorandum of law which accompanied it, because – as set forth by plaintiffs’ February 15, 2017 order to show cause for her disqualification, they were, and are, dispositive of plaintiffs’ rights.

As to paragraph #3: It falsely implies that I have “noted [my] displeasure with the actions of a Court Reporter”, when what I have done is to file a complaint. That it then purports “Upon review of your complaint, I am not able to substantiate your claims” is utterly fraudulent – as my April 5<sup>th</sup> complaint furnished the e-mail chain of my communications with Senior Court Reporter Affinati from which my “claims” of her unprofessional, prejudicial conduct are readily-verifiable. That is why my April 7<sup>th</sup> e-mail to Deputy District Executive Bass – entitled “I look forward to receiving your fact-specific, responsive disposition of my April 5<sup>th</sup> complaint...” – stated:

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<sup>4</sup> ¶3 of my September 30, 2016 affidavit read:

“Additionally, and consistent with State Finance Law §123-c(4), which requires that citizen-taxpayer actions be ‘promptly determined’ and ‘have preference over all other causes’, this affidavit is submitted in support of a hearing, as immediately as possible, on plaintiffs’ September 2, 2016 order to show cause for a preliminary injunction, with TRO, and, additionally, for a preliminary conference pursuant to §202.12 of the Uniform Civil Rules for the Supreme Court and County Court on which this Court relies.<sup>fn1</sup>” (underlining in the original).

The indicated footnote 1 thereto furnished Judge Hartman with links to such authorities, as follows:

“See, this Court’s Rules -- <http://www.nycourts.gov/courts/3jd/JudgesRules/3JD-Judges%20Rules.shtml#preliminary> and the Uniform Civil Rules for the Supreme Court and County Court: <http://www.nycourts.gov/rules/trialcourts/202.shtml#12>.”

“As discussed, if you actually believe that court reporter Affinati conducted herself professionally, please demonstrate it by addressing each of my messages in the below e-mail chain that Ms. Affinati ignored, either wholly, or in part:

Further, since you represented to me that your view is shared by District Executive Diebel – to whom my April 5<sup>th</sup> complaint was addressed – I request that she furnish a signed letter to that effect.”

I received no response from Deputy District Executive Bass, or from District Executive Diebel to whom I also sent the April 7<sup>th</sup> e-mail – and Administrative Judge Breslin’s assertion in his April 12<sup>th</sup> letter: “As noted to you by my staff, a Court Report is not obliged to release a transcript until payment has been made” – which is the least of my complaints against Court Reporter Affinati – represents an utter refusal to discharge oversight duties even as to a lowly court reporter, whose unprofessional, prejudicial, indecent conduct is chronicled, *prima facie*, by the e-mail chain I furnished. Suffice to say, Senior Court Reporter Affinati’s behavior would be indefensible in ANY context, let alone here: a short oral argument of an order to show cause for a preliminary injunction, with TRO in a citizen-taxpayer action against New York State’s highest public officers, involving the constitutionality and lawfulness of the 150-plus billion-dollar New York State budget.

As evidenced by the e-mail chain, Senior Court Reporter Affinati’s misconduct includes:

- (1) her first e-mail to me, furnishing no information as to transcription options, but stating that she could not furnish me with the transcript in under 60 days;
- (2) her failure and refusal to respond to my e-mails requesting that she call me so that I could immediately order and secure the transcript;
- (3) her e-mailed requirement that I provide her with “some authority” for preparing the transcript “ahead of ones already backlogged” – and then, upon my furnishing her with State Finance Law §123-c(4), not promptly calling or e-mailing me to confirm my order and her payment requirements;
- (4) her belated announcing to me of an expedited cost for the transcript, without any information as to the pages or the rate she was charging – accompanied by her equally-belated requirement that she would not e-mail me the transcript without first receiving payment; thereafter modified that she would not transcribe until the day after she received payment;
- (5) her failure to furnish information as to the varying rates for transcriptions, including upon my request for same;
- (6) her failure to respond to my inquiry as to the amount of time it would take for her to do the transcription;

(7) her failure to furnish the names of her supervisors and their phone numbers and e-mail addresses so that they could address the manner in which she was discharging her responsibilities.

Investigation would disclose to what extent Senior Court Reporter Affinati's misconduct was influenced by Judge Hartman, either directly or by her example of judicial misconduct.

Under the Chief Administrator's Rules Governing Judicial Conduct, judges are required to be fair and impartial and to disqualify themselves if they are not. Comparison of Administrative Judge Breslin's April 12<sup>th</sup> letter with my April 10<sup>th</sup> letter and April 7<sup>th</sup> e-mail establishes, *prima facie*, his actual bias and willful disregard of his duty, suggested by my April 10<sup>th</sup> letter:

“[to] recuse [himself] and refer this matter to the Office of Court Administration for appropriate assignment, consistent with defendant Chief Judge Janet DiFiore's ‘Excellence Initiative’<sup>fn2</sup> – described by Chief Administrative Judge Lawrence Marks, at page 1 of his written ‘Remarks’ for the Legislature's January 31, 2017 ‘public protection’ budget hearing as ‘a comprehensive and statewide effort to achieve operational and decisional excellence in everything we do in the Judiciary’.” (at pp. 8-9).

Recusal and referral is the path you, too, must take if you, likewise, are unable or unwilling to rise above your financial and other interests, relationships, and associations to discharge your administrative and supervisory responsibilities fairly and impartially.

A copy of this letter is being furnished to Chief Administrative Judge Marks – an indicated recipient of both my April 10<sup>th</sup> letter and of Administrative Judge Breslin's April 12<sup>th</sup> letter – so that no time is wasted, should that be necessary.

As the inadequately-funded Commission on Judicial Conduct is, essentially, the only means for removing corrupt state judges from the bench – and what is here at issue is Administrative Judge Breslin's corrupting of his administrative office to cover-up for two corrupt Acting Supreme Court justices over whom he has supervisory authority: Judge Hartman and Judge Roger McDonough, as well as for two corrupt lawyers occupying the top administrative positions in the Third Judicial District, District Executive Diebel and Deputy District Executive Bass, in violation of his mandatory reporting duties under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct<sup>5</sup> – I

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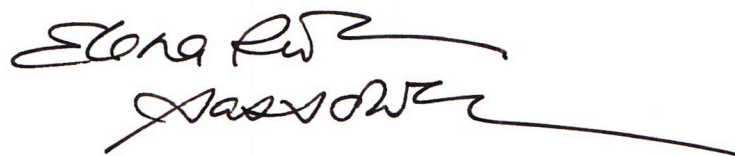
<sup>5</sup> §100.3(D) of the Chief Administrator's Rules Governing Judicial Conduct could not be more explicit. Entitled “Disciplinary Responsibilities”, it states, in pertinent part:

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

will be filing this letter and its underlying record with the Commission on Judicial Conduct so as to initiate a judicial misconduct complaint with it against the three judicial corruptors, Breslin, Hartman, and McDonough, for purposes of securing their removal from the bench.

Consistent with State Finance Law §123-c(4), I respectfully request your response to this supervisory request and misconduct complaint, as promptly as possible and, in any event, by no later than Tuesday, April 25<sup>th</sup> – so that I might know whether it will be necessary for me to commence an Article 78 proceeding to secure, most immediately, the relief the record mandates.

Thank you.

Two handwritten signatures are present. The first signature is in black ink and appears to read 'Elena Russo'. The second signature is in black ink and appears to read 'Jason Brown'. Both signatures are written in a cursive, flowing style.

Enclosure

cc: Third Judicial District Administrative Judge Thomas A. Breslin  
Third Judicial District Executive Beth A. Diebel  
Third Judicial District Deputy Executive Christy Q. Bass  
Chief Judge Janet DiFiore's "Excellence Initiative" –  
c/o Chief Administrative Judge Lawrence Marks  
Acting Supreme Court Justice Denise A. Hartman  
Acting Supreme Court Justice Roger McDonough  
Senior Court Reporter Cindy Affinati  
Attorney General Eric T. Schneiderman  
Chief Deputy Attorney General Jason Brown  
Chief Deputy Attorney General Janet Sabel  
Executive Deputy Attorney General for State Counsel Kent Stauffer  
Deputy Attorney General Meg Levine  
Litigation Bureau Chief Jeffrey Dvorin  
Assistant Attorney General Helena Lynch  
Assistant Attorney General Adrienne Kerwin

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(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action."