

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914) 421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

December 26, 2017

TO: New York State Commission on Judicial Conduct

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

RE: File #2017/A-0167: June 16, 2017 conflict-of-interest/corruption complaint against Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman for willfully violating judicial disclosure/disqualification rules in order to “throw” a citizen-taxpayer action in which she is financially interested & has personal and professional relationships with defendants – Center for Judicial Accountability, et al. v. Cuomo, et al. (Albany Co. #5122-2016)

1. Responding to Clerk Savanyu’s October 4, 2017 letter concealing the issues of the Commission’s own conflict-of-interest/disqualification/disclosure obligations & the September 11, 2017 supplement to the June 16, 2017 complaint;
2. Initiating a second supplement to the June 16, 2017 complaint.

By letter dated August 29, 2017 letter, Clerk Savanyu purported that the Commission had requested her to advise me that it had dismissed my June 16, 2017 complaint against Judge Hartman. In so doing, she made no reference as to how, if at all, the Commissioners and staff had confronted the conflict-of-interest/disqualification-disclosure issues relating to them that the complaint had identified and alluded to, at page 8, as follows:

“Needless to say, if the Commission’s judicial members, each having the same financial interest as Judge Hartman – a \$60,000 yearly salary interest, a substantial further interest in non-salary benefits, and a \$100,000 liability in the event of a claw back – cannot be fair and impartial by reason thereof, or if Commissioners cannot be fair and impartial by reason of their relationships with the public officers who appointed them, all actually or effectively named defendants herein, or because of their relationships with any other defendant, or for any other reasons, their duty is to recuse themselves.^{fn4}

^{fn4} Commission Policy Manual, Rule 5.3: ‘Disqualification of Commission Members -- ... (B) Any member of the Commission should disqualify himself/herself from a matter if his/her impartiality might reasonably be questioned. In determining whether to disqualify from a matter, a Commission member should be guided by the disqualification standards set forth for judges in Section 100.3(E) of the Rules Governing Judicial Conduct. A Commission

And, of course, the duty of disclosure and recusal falls not only on Commission members, but on Commission staff, most importantly, its long-time Administrator, Robert Tembeckjian, and long-tenured Clerk, Jean Savanyu.”

I quoted this in my September 11, 2017 letter responding to Clerk Savanyu’s August 29, 2017 letter, which, after seeking pertinent information about the complaint’s dismissal, stated:

“demand is here made that you identify how, *if at all*, the Commission members and staff addressed their threshold duty of disqualification and disclosure, set forth, with legal authority at page 8 of the June 16, 2017 complaint...” (at p. 2, italics and underlining in the original).

Simultaneously, my September 11, 2017 letter supplemented the June 16, 2017 complaint, stating:

“Finally, by way of supplement to the June 16, 2017 complaint – and furnishing further ‘indication of judicial misconduct to justify judicial discipline’ – please be advised that notwithstanding I alerted Judge Hartman that I would be filing a judicial misconduct complaint against her for flagrant violation of ‘fundamental precepts pertaining to judicial conduct, disqualification and disclosure’ in the *CJA v. Cuomo, et al.* citizen-taxpayer action, she continued her misconduct unabated. This is particularized by ¶¶5-6, 8-12 of my August 25, 2017 reply affidavit in further support of plaintiffs’ June 12, 2017 order to show cause for reargument/renewal/vacatur of Judge Hartman’s fraudulent May 5, 2017 decision and order denying plaintiffs’ February 15, 2017 order to show cause for her disqualification and, if denied, disclosure.

As you know, CJA’s website, www.judgewatch.org, posts the full record of the *CJA v. Cuomo, et al.* citizen-taxpayer action from which Judge Hartman’s financially-interested, corrupt conduct is readily-verifiable. This includes my August 25, 2017 reply affidavit detailing her misconduct subsequent to what the June 16, 2017 complaint embodies.

Should the Commission wish hard copies of any of the posted documents constituting the record in the *CJA v. Cuomo, et al.* citizen-taxpayer action – none more decisive of

member need not reveal the reason for his/her disqualification...’;

Code of Ethics for Members of the New York State Commission on Judicial Conduct, Rule 2: ‘Rule with respect to conflicts of interest. No member of the Commission should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties in the public interest.’; Rule 3: ‘Standards... h. A member of the Commission should endeavor to pursue a course of conduct which will not raise suspicion among the public that s/he is likely to be engaged in acts that are in violation of his/her trust.’”

Judge Hartman's demonstrated actual bias, rising to a level of criminal fraud, than:

- (1) plaintiffs' analysis of Judge Hartman's fraudulent December 21, 2016 decision, annexed as Exhibit U to my moving affidavit in support of plaintiffs' February 15, 2017 order to show cause for her disqualification/disclosure;
- (2) plaintiffs' analysis of Judge Hartman's fraudulent May 5, 2017 decision and amended decision, presented by ¶¶6, 8, 10, 11 of my moving affidavit in support of plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur;
- (3) Plaintiffs' analysis of Judge Hartman's fraudulent June 26, 2017 decision, annexed as Exhibit I to my August 25, 2017 reply affidavit in further support of the June 12, 2017 order to show cause for reargument/renewal/vacatur,

each analysis furnishing OVERWHELMING 'indication of judicial misconduct to justify judicial discipline' – they will be furnished upon request." (at p. 3, underlining and capitalization in the original).

Clerk Savanyu's response, by an October 4, 2017 letter, purportedly at the request of the Commission, made no reference as to the how the Commission and staff had addressed the conflict-of-interest issues pertaining to themselves – other than to manifest the further conflict-of-interest that directly involves Commissioner Mazzarelli, as well as Administrator Tembjeckian and Clerk Savanyu. This, by its falsehood – seemingly the basis for the Commission's dismissal of my June 16, 2017 complaint:

"As you are aware, the Commission's exercise of discretion to determine whether a particular complaint lacks merit has been upheld by the courts. *See Matter of Mantell v. Comm on Jud Conduct*, 277 AD2d 96 (1st Dept 2000); *Matter of Sassower v Comm on Jud Conduct*, 289 AD2d 119 (1st Dept 2001)."²

² Judge Mazzarelli was the SOLE member of the five-judge appellate panel in *Mantell v. Commission on Judicial Conduct* who was ALSO on the different five-judge panel in *Sassower v. Commission on Judicial Conduct*. The fraudulence of these two appellate decisions was the subject of contemporaneous NOTICES I hand-delivered to the Commission, each furnishing analyses of the decisions: my December 1, 2000 NOTICE pertaining to the *Mantell* appellate decision and my January 7, 2002 NOTICE pertaining to the *Sassower* appellate decision – the latter also, expressly, a judicial misconduct complaint against Judge Mazzarelli and her four fellow appellate panelists, which, by a February 27, 2002 letter, Clerk Savanyu purported the Commission dismissed because of "insufficient indication of judicial misconduct to justify judicial discipline". The record in *Sassower v. Commission on Judicial Conduct*, both before Judge Mazzarelli and before the Court of Appeals, contains the NOTICES and analyses. So, too, does the record in CJA's citizen-taxpayer action before Judge Hartman – as it includes plaintiffs' final motion in *Sassower v. Commission on Judicial*

Nor did Clerk Savanyu's October 4, 2017 letter refer to, let alone acknowledge, the September 11, 2017 supplement – as to which I have received no “indication” from the Commission since.

Consequently, please advise as to both these issues – and deem this letter, additionally, a second supplement to the June 16, 2017 complaint – or, if the September 11, 2017 letter is being treated as a new complaint – with a new file number presumably assigned – then as a first supplement to it.

The instant supplement furnishes still more DISPOSITIVE “indication of judicial misconduct to justify judicial discipline” – this being Judge Hartman's final decision in the citizen-taxpayer action, now concluded before her. The facts are as follows: on November 28, 2017, Judge Hartman rendered a decision and judgment which, like her prior decisions, flagrantly violates black-letter conflict-of-interest/disqualification/disclosure mandates and obliterates ALL adjudicative standards to advantage herself financially and protect from liability defendants with whom she enjoys professional and personal relationships. Once again, she concealed plaintiffs' requests for disclosure – requests spanning from the very outset of the litigation, before she had rendered a single decision – and made no disclosure.

To assist the Commission in verifying that Judge Hartman's final decision, like all her prior decisions, is a criminal act for which the Commission is not only duty-bound to take steps to secure her removal from the bench, but to secure her indictment for corruption, specifically including grand-larceny of taxpayer monies of which she is a direct beneficiary – as are the Commission's four judicial members: Judges Mazzairelli, Falk, Leach, and Weinstein – enclosed is a virtual line-by-line analysis of Judge Hartman's November 28, 2017 decision and judgment, comparable to the analyses of her prior decisions furnished by the June 16, 2017 complaint and September 11, 2017 supplement.

For the Commission's further convenience, I have created a webpage on CJA's website for the June 16, 2017 complaint and two supplements. On it, Judge Hartman's decisions and the analyses thereof are all posted – as are the analyses particularizing the fraudulence of the Appellate Division, First Department's decisions in *Mantell v. Commission* and *Sassower v. Commission* – on which the Commission apparently relies in dismissing my June 16, 2017 complaint. The webpage is accessible *via* our prominent homepage link “CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance”, which brings up a menu page with an item entitled “FIGHTING BACK! – Complaints to Supervisory, Disciplinary, & Criminal Authorities”. The direct link is here: <http://judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/6-16-17-complaint-cjc.htm>.

Conduct, this being plaintiffs' October 24, 2002 motion to the Court of Appeals for leave to appeal, which annexed the NOTICES and analyses as Exhibits I and L-1, with Clerk Savanyu's February 27, 2002 dismissal letter annexed as Exhibit L-2. Indeed, because the October 24, 2002 motion was a free-standing exhibit to CJA's October 27, 2011 opposition report of the Commission on Judicial Compensation's August 29, 2011 report, it occupies a significant place in the record of the citizen-taxpayer action before Judge Hartman – as likewise in the predecessor citizen-taxpayer action before Judge McDonough.

Suffice to note the summarizing overview of the November 28, 2017 decision and judgment, which the enclosed analysis furnishes in its “Introduction” (at pp. 3-4):

“...Judge Hartman’s November 28, 2017 decision conceals plaintiffs’ request for disclosure – of which it makes none – and, resting on all her prior decisions,

- denies plaintiffs’ June 12, 2017 order to show cause by two sentences which, in completely conclusory fashion and by concealing plaintiffs’ ‘legal autopsy’/analyses of her prior decisions and their entire content, LIES that plaintiffs ‘failed to establish matters of fact or law that the Court overlooked or misrepresented that would warrant reargument, or new facts that would warrant renewal... Nor...grounds for disqualification and vacatur...’ (see pp. 10-11, *infra*)
- grants AAG Kerwin’s July 21, 2017 cross-motion for summary judgment on plaintiffs’ sixth cause of action:

(1) by adhering to the LIE in her June 26, 2017 decision that plaintiffs’ sub-cause E had been dismissed by her December 21, 2016 decision – such LIE having originated in AAG Helena Lynch’s April 21, 2017 opposition to plaintiffs’ March 29, 2017 order to show cause for summary judgment on sub-cause E, thereafter re-asserted by AAG Kerwin’s July 21, 2017 cross-motion for summary judgment to defendants on sub-cause E (see pp. 12-13, *infra*);

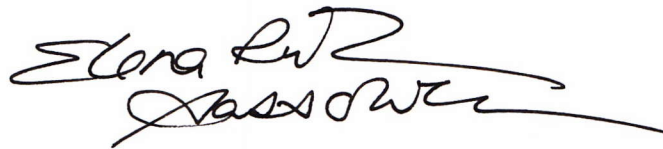
(2) by manufacturing *sua sponte*, fraudulent argument for granting defendants summary judgment on plaintiffs’ sub-cause D to replace her *sua sponte*, fraudulent argument in her June 26, 2017 decision for denying plaintiffs summary judgment on their sub-cause D (see pp. 15-22, *infra*);

(3) by adhering to her *sua sponte*, fraudulent argument for denying plaintiffs summary judgment on their sub-causes A and B, manufactured by her June 26, 2017 decision – on which AAG Kerwin’s July 21, 2017 cross-motion relied for summary judgment to defendants on sub-causes A and B (see pp. 14-15, *infra*);

(4) by adhering to her *sua sponte* argument for denying plaintiffs summary judgment on their sub-cause C, manufactured by her June 26, 2017 decision – on which AAG Kerwin’s July 21, 2017 cross-motion relied for summary judgment to defendants on sub-cause C (see p. 15, *infra*).”

Finally, inasmuch as Judge Hartman's violation of fundamental conflict-of-interest rules and adjudicative standards was in tandem and collusive with Attorney General Schneiderman's violation of fundamental conflict-of-interest rules and litigation standards, enclosed is my letter of today's date to the Attorney Grievance Committees of the First and Third Judicial Departments pertaining to the September 16, 2017 conflict-of-interest/misconduct complaint that I filed with them against Attorney General Schneiderman and his culpable staff attorneys. The Commission is an indicated recipient of that September 16, 2017 complaint – and I now furnish it to the Commission, as well.

Thank you.

A handwritten signature in black ink, appearing to read "Elena R. J. Passow". The signature is written in a cursive, flowing style with a long horizontal flourish extending to the right.

cc: First and Third Judicial Department Attorney Disciplinary Committees

Enclosures:

- (1) Judge Hartman's November 28, 2017 decision & judgment –
& CJA's "legal autopsy"/analysis thereof;
- (2) September 16, 2017 conflict-of-interest/misconduct complaint
vs Attorney General Schneiderman and his complicit attorney staff;
- (3) December 26, 2017 letter to 1st & 3rd Dept. Attorney Disciplinary Committees.