

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

BY E-MAIL: hartmanchambers@nycourts.gov
BY EXPRESS MAIL

July 27, 2017

Acting Supreme Court Justice Denise A. Hartman
Albany County Courthouse
16 Eagle Street, Room 220
Albany, New York 12207

RE: Citizen-Taxpayer Action: Center for Judicial Accountability, et al. v. Cuomo, et al.
Albany Co. #5122-16

ADJOURNMENT of Plaintiffs' order to show cause, returnable July 28, 2017,
to the September 1, 2017 return date of Defendants' cross-motion
& NOTICE TO THE ATTORNEY GENERAL

Dear Judge Hartman:

This follows my phone conversation on Monday morning, July 24th, with your secretary, Joanne Locke, and on Wednesday afternoon, July 26th, with your law clerk, Christopher Liberati-Conant, concerning Assistant Attorney General Adrienne Kerwin's July 21, 2017 cross-motion to plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur of your May 5, 2017 decision/orders.

Once again, AAG Kerwin – and those charged with supervising her at the Attorney General's office – have flouted the most elementary rules of practice. It is absolutely basic that a cross-motion is returnable on the same date as the motion.¹ Thus, if AAG Kerwin desired to include a cross-motion as part of her answering papers to plaintiffs' June 12, 2017 order to show cause, she needed to notice it for the same July 28, 2017 date as you fixed for the order to show cause. Instead, she made her cross-motion returnable on September 1, 2017.²

Because AAG Kerwin has combined her opposition to plaintiffs' June 12, 2017 order to show cause with her cross-motion, her combined papers cannot go up from the Clerk's Office until the September 1, 2017 date the cross-motion is returnable, making it impossible for the Court to adjudicate the reply papers I would have filed on July 28, 2017.

¹ "A cross-motion is made returnable at the same time and place as the pending motion.", New York Practice, §249, 5th Edition (2011), David Siegel; "The cross-motion conforms essentially to an original notice of motion, except that it sets no different time of return", Carmody-Wait, Vol. 2, §8:19 (2017).

² I did not receive AAG Kerwin's cross-motion until Monday, July 24th, as the e-mail she sent me on Friday, July 21st, with five links for her papers, did not allow me to open the one link that was her notice of cross-motion. My July 21st e-mail to her, so-advising, is annexed.

EX H-1

I object to AAG Kerwin's sabotaging of the expedition to which plaintiffs' June 12, 2017 order to show cause is entitled pursuant to State Finance Law §123-c(4). Nonetheless, I am willing to waive my procedural objection to her cross-motion and consent to adjournment of the return date of plaintiffs' June 12, 2017 order to show cause from July 28, 2017 to September 1, 2017. This will allow AAG Kerwin's superiors ample time to discharge their supervisory responsibilities, inasmuch as her July 21, 2017 opposition/cross-motion is not just procedurally improper, but founded, throughout, on flagrant fraud and violation of black-letter law and standards.

By this letter – which I am also furnishing to defendant Attorney General Schneiderman and his high-level supervisory and managerial attorneys under his direction – I hereby give notice of their duty to review AAG Kerwin's July 21, 2017 opposition/cross-motion and to withdraw it and take other appropriate steps to uphold the rule of law and ethical mandates, as required by New York's Rules of Professional Conduct, applicable to them. Among its non-discretionary provisions: Rule 5.1, "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers",³ and Rule 5.2, "Responsibilities of a Subordinate Lawyer". Copies are enclosed for their convenience – and the Court's – downloaded from the website of the Appellate Division, Third Department's Attorney Grievance Committee: <http://www.nycourts.gov/ad3/AGC/Index.html>. Likewise, for the convenience of all, CJA's webpage for this letter: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/7-27-17-ltr.htm>, furnishes links to the substantiating, open-and-shut, record evidence from which AAG Kerwin's pervasive litigation fraud can be readily verified.

As AAG Kerwin's cross-motion requires plaintiffs' answering papers by August 23, 2017, I request their response by August 15, 2017 so that I might be guided accordingly.

Consistent with this Court's recorded message to telephone callers that, if no one answers the phone, they should call back or send an e-mail to hartmanchambers@nycourts.gov – a message I heard twice on Tuesday, July 25th, when I twice telephoned – I am e-mailing this letter to hartmanchambers@nycourts.gov so that the Court may have it, in advance of tomorrow's return date. I so-stated this to Mr. Liberati-Conant, yesterday, further requesting his permission to e-mail the letter, pursuant to this Court's March 31, 2017 directive. Although he did not deny permission, Mr. Liberati-Conant seemed to state that my letter would not be read until the Court received a mailed hard copy. I am, therefore, also express mailing it to the Court, *via* Albany Court Chief Clerk Charles Diamond, to whom I am simultaneously sending my original June 12, 2017 order to show cause that the Court signed on June 16, 2017 and then snail-mailed back to me, with all its supporting papers, at a cost of \$7.20 – rather than expeditiously and at no cost simply e-mailing me a pdf of the two-page order to show cause. Needless to say, attached thereto is my June 20, 2017 affidavit of service upon the Attorney General, reflecting my service upon him on that date.

³ Rule 1.0(h) expressly identifies that the term "'Firm' or 'law firm' includes...a government law office...".

Thank you.



ELENA RUTH SASSOWER, *unrepresented* plaintiff,
acting on her own behalf & on behalf of
the People of the State of New York & the Public Interest

Enclosures

cc:

Albany Court Chief Clerk Charles Diamond
Assistant Attorney General Adrienne Kerwin

Attorney General Eric 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

Center for Judicial Accountability, Inc. (CJA)

From: Adrienne Kerwin <Adrienne.Kerwin@ag.ny.gov>
Sent: Monday, July 24, 2017 10:27 AM
To: 'Center for Judicial Accountability, Inc. (CJA)'
Subject: RE: CJA v. Cuomo, 5122-16
Attachments: nom.pdf

Adrienne J. Kerwin

Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, New York 12224
Telephone: (518) 776-2608
Fax: (518) 915-7738
Email: Adrienne.Kerwin@ag.ny.gov

From: Center for Judicial Accountability, Inc. (CJA) [<mailto:elena@judgewatch.org>]
Sent: Friday, July 21, 2017 5:29 PM
To: Adrienne Kerwin <Adrienne.Kerwin@ag.ny.gov>
Subject: RE: CJA v. Cuomo, 5122-16

I am unable to access the notice of cross-motion. Please send pdf or otherwise check what is wrong with the password for it.

Thank you.

Elena Sassower

From: Adrienne Kerwin [<mailto:Adrienne.Kerwin@ag.ny.gov>]
Sent: Friday, July 21, 2017 3:21 PM
To: Center for Judicial Accountability (elena@judgewatch.org) <elena@judgewatch.org>
Subject: CJA v. Cuomo, 5122-16

<https://oagcloud.ag.ny.gov/owncloud/index.php/s/fTr9ug4jUxSK7B5>

<https://oagcloud.ag.ny.gov/owncloud/index.php/s/YgNdiXQzIWjlxhK>

<https://oagcloud.ag.ny.gov/owncloud/index.php/s/vfV2LfUStUPoCFd>

<https://oagcloud.ag.ny.gov/owncloud/index.php/s/zlUKICfQWWHJOdI>

<https://oagcloud.ag.ny.gov/owncloud/index.php/s/e1YfGqbPR87T6Jm>

The password to access these documents is "sassower".

Adrienne J. Kerwin

Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, New York 12224
Telephone: (518) 776-2608
Fax: (518) 915-7738
Email: Adrienne.Kerwin@ag.ny.gov

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*New York Rules of Professional Conduct
Effective April 1, 2009. As amended through Jan. 1, 2017
with Commentary as amended through Jan. 1, 2017*

**RULE 5.1:
RESPONSIBILITIES OF LAW FIRMS, PARTNERS, MANAGERS AND SUPERVISORY
LAWYERS**

(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b) (1) A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

(c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

(d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

Comment

[1] Paragraph (a) applies to law firms; paragraph (b) applies to lawyers with management responsibility in a law firm or a lawyer with direct supervisory authority over another lawyer.

[2] Paragraph (b) requires lawyers with management authority within a firm or those having direct supervisory authority over other lawyers to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules. Such policies and procedures include those designed (i) to detect and resolve conflicts of interest (*see* Rule 1.10(e)), (ii) to identify dates by which actions must be taken in pending matters, (iii) to account for client funds and property, and (iv) to ensure that inexperienced lawyers are appropriately supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (b) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and lawyers with management authority may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (d) expresses a general principle of personal responsibility for acts of other lawyers in the law firm. *See also* Rule 8.4(a).

[5] Paragraph (d) imposes such responsibility on a lawyer who orders, directs or ratifies wrongful conduct and on lawyers who are partners or who have comparable managerial authority in a law firm who know or reasonably should know of the conduct. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Partners and lawyers with comparable authority, as well as those who supervise other lawyers, are indirectly responsible for improper conduct of which they know or should have known in the exercise of reasonable managerial or supervisory authority. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent misconduct or to prevent or mitigate avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (a), (b) or (c) on the part of a law firm, partner or supervisory lawyer even though it does not entail a violation of paragraph (d) because there was no direction, ratification or knowledge of the violation or no violation occurred.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of another lawyer. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by these Rules. See Rule 5.2(a).

**RULE 5.2:
RESPONSIBILITIES OF A SUBORDINATE LAWYER**

(a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of these Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise, a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear, and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. To evaluate the supervisor's conclusion that the question is arguable and the supervisor's resolution of it is reasonable in light of applicable law, it is advisable that the subordinate lawyer undertake research, consult with a designated senior partner or special committee, if any (*see* Rule 5.1, Comment [3]), or use other appropriate means. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, July 27, 2017 12:22 PM
To: 'Hartman Chambers'
Cc: 'Adrienne Kerwin'; 'Eric.Schneiderman@ag.ny.gov'; 'Jason.Brown@ag.ny.gov'; 'Janet.Sabel@ag.ny.gov'; 'Kent.Stauffer@ag.ny.gov'; 'Meg Levine'; 'Jeffrey Dvorin'; 'Helena.Lynch@ag.ny.gov'
Subject: Citizen-Taxpayer Action -- CJA v. Cuomo, et al (Albany Co. #5122-16) -- ADJOURNMENT of plaintiffs' order to show cause & NOTICE TO THE ATTORNEY GENERAL
Attachments: 7-27-17-ltr-to-hartman-with-enclosures.pdf; 7-27-17-ltr-to-diamond.pdf

Attached are plaintiffs' letter of today's date to Judge Hartman entitled "ADJOURNMENT of Plaintiffs' order to show cause, returnable July 28, 2017, to the September 1, 2017 return date of Defendants' cross-motion & NOTICE TO THE ATTORNEY GENERAL", as well as plaintiffs' related letter to Albany County Chief Clerk Diamond, to which you are indicated recipients.

CJA's webpage for the July 27, 2017 letter to Judge Hartman, with its link to the substantiating record of plaintiffs' first and second citizen-taxpayer action, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/7-27-17-ltr.htm>.

Thank you.

Elena Sassower, unrepresented plaintiff
acting on her own behalf & on behalf of the People of the State of New York & the Public Interest
914-421-1200