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Elena Ruth Sassower, Director*

BY EXPRESS MAIL

January 9, 2020

New York Court of Appeals
Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk/Legal Counsel to the Court John P. Asiello, Esq.

RE: *Center for Judicial Accountability v. Cuomo,...DiFiore* – Citizen-Taxpayer Action
Sixth branch of appellants' November 25, 2019 motion: Renewal pursuant to CPLR §2221(e) based on new facts that could not be presented previously – & Questions as to the Court's subversion of Article VI, §3(b)(2) of the New York State Constitution pertaining to direct appeals, etc.

Dear Chief Clerk/Counsel Asiello:

This letter,[1] pursuant to this Court's Rule 500.6 and Rule 500.7, is to furnish the Court with facts, as currently known, pertaining to the sixth branch of appellants' November 25, 2019 motion for renewal – facts my November 25, 2019 moving affidavit stated (at ¶15) were not then fully known.

Although the facts are still not fully known, they nonetheless reinforce the duty of the associate judges to vacate their four Orders herein, if not themselves, then by referral to judges not afflicted by the HUGE financial and other interests in this case that divest them of jurisdiction pursuant to Judiciary Law §14 and the Court's own interpretive decisions in *Oakley v. Aspinwall*, 3 NY547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914).

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* ***In dedication to the sacred mission & memory of my beloved parents, George Sassower, Esq. & Doris L. Sassower, Esq., who each died while this case was before the Court.***

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[1] For the convenience of the Court, CJA's webpage for this letter posts the referred-to substantiating evidence. The prominent link from CJA's homepage, www.judgewatch.org, from which it is accessible is "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance". The direct link is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/1-9-20-ltr.htm.

The three subsections of appellants' sixth branch – A, B, and C – are summarized below, with the facts, as currently known.

Subsection A of the sixth branch is particularized at pages 12-13 of my November 25, 2019 moving affidavit under the title heading:

> **"Unless Court Clerk John Asiello was disabled by disqualification, the Court's October 24, 2019 Orders and May 2, 2019 Order are not lawfully signed, pursuant to CPLR §2219(b) and defendant-respondent Chief Judge DiFiore's own January 26, 2016 authorization."**

It is still not known whether the Court's three October 24, 2019 Orders and May 2, 2019 Order herein were lawfully signed by Deputy Clerk Heather Davis, as you have inexplicably NOT responded to my November 1, 2019 and November 13, 2019 letters on the subject.[2] Instead, Ms. Davis has responded to both letters, failing to even identify the questions she is not answering, *to wit*, whether you had disqualified yourself, the reason for your doing so, any records pertinent thereto, and "a copy of the Court's rules, regulations, and procedures governing disqualification of its staff for financial and other interests, relationships, and other bias". Ms. Davis' response to my November 13, 2019 letter, which was dated November 20, 2019, but mailed in an envelope with a November 25, 2019 postmark, is annexed hereto (Exhibit A).

As the answer to whether you disqualified yourself is known to you and Ms. Davis – and there is nothing confidential about such information – your failure and hers to state that you disqualified yourself means there is NO evidence that she could lawfully sign the October 24, 2019 and May 2, 2019 Orders. The *prima facie* evidence establishes that you were not absent or physically disabled on those dates, having signed all the Court's other October 24, 2019 and May 2, 2019 orders in other cases. Nor was there any "necessity" for Ms. Davis to have signed the Orders as, pursuant to CPLR §2219(b),[3] the duty to sign belongs, in the first instance, to the appellate judges. In other words, six associate judges could have signed each of the Court's four Orders they are purported to have rendered unanimously.

Consequently, if, in fact, the six associate judges did render the four Orders herein – and there is NO proof that they did – then one of the six associate judges must sign them pursuant to CPLR §2219(b), unless they are to be vacated. As Senior Associate Judge Rivera's name is at the top of

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2 The four Orders are annexed as Exhibits A-1, A-2, A-3, and B-1 to my November 25, 2019 moving affidavit. My November 1, 2019 and November 13, 2019 letters are Exhibits C-1 and D.

3 CPLR §2219(b), entitled "Signature on appellate court order", reads, in full:

> "An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk."

all four Orders, it would be logical for her to sign them, except that her proscribed financial interests are the largest, having a claw-back liability of about $400,000, in addition to the $82,2000 annual salary interest she shares with her fellow associate judges.

Subsection B of the sixth branch is particularized at pages 13-19 of my November 25, 2019 moving affidavit under the title heading:

> **"The Court's November 21, 2019 Order in *Delgado v. New York State*, if rendered by its six associate judges, is yet a further manifestation of their actual bias born of undisclosed financial and other interests, proscribed by Judiciary Law §14 and §§100.3E & F of the Chief Administrator's Rules Governing Judicial Conduct."**

The Court's November 21, 2019 Order in *Delgado* (Exhibit B), to which Chief Judge DiFiore "took no part", is not signed by any of the six associate judges, but by you – and if you disqualified yourself from this case, you should have reasonably disqualified yourself from the *Delgado* direct appeal from Albany Supreme Court Justice Ryba's June 7, 2019 decision. As obvious from that decision, Justice Ryba upheld the constitutionality of Part HHH, Chapter 59 of the Laws of 2018 – the subject of the *Delgado* direct appeal – by relying on the Appellate Division, Third Department's December 27, 2018 Memorandum herein upholding the constitutionality of the largely identical Part E, Chapter 60 of the Laws of 2015.

Indeed, apart from all the details about the *Delgado* case that I furnished you by: (1) my March 26, 2019 letter (Exhibit C-1, pp. 15-19); (2) my April 11, 2019 letter (Exhibit C-2 (pp. 14-15); (3) my August 9, 2019 letter (Exhibit C-3, pp. 2-4); and (4) my August 28, 2019 letter (Exhibit C-4, pp. 18-19 & NYLJ letter), both Cameron MacDonald, on behalf of the *Delgado* plaintiff-appellants, and Senior Assistant Solicitor General Victor Paladino, for defendant-respondents, responded to your August 30, 2019 *sua sponte* jurisdictional inquiry with September 9, 2019 letters highlighting the relatedness of the *Delgado* case to this (Exhibits D and E-1).

Having now more thoroughly examined the law pertaining to direct appeals and Mr. Paladino's submissions – and, for the first time, Mr. MacDonald's submissions – I can now more definitively report what you presumably know: that the November 21, 2019 Order you signed is neither procedurally nor substantively proper – and that:

> "just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave[fn8] – so, too, has it subverted Article VI, §3(b)(2) for direct appeals." (my November 25, 2019 moving affidavit, at p. 17).

"[fn8] *See* appellants' May 31, 2019 motion, at ¶¶19-23 and appellants' June 6, 2019 motion, at pages 5-10."

As for this now third subversion of Article VI, §3(b) of the New York Constitution by the Court, §3(b)(2) confers an appeal of right:

> "from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court."

In other words, the existence of other questions not pertaining to "the validity of a statutory provision of the state or of the United Sates" does not preclude a direct appeal so long as they do not prevent the Court from considering and determining the constitutional question – which is the only question that the Court can consider and determine on the direct appeal.

Yet the Court's stock boilerplate – which the November 21, 2019 Order in *Delgado* (Exhibit B) uses – is that "a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved".[4] This is misleading, at best – and NOT consistent with Article VI, §3(b)(2), to which the boilerplate *Delgado* Order cites with an inferential "see".[5] Nor is it consistent with CPLR §5601(b)(2), also cited. Indeed, the language of CPLR §5601(b)(2) is materially identical to that of Article VI, §3(b)(2), except that the statute omits the concluding clause of the constitutional provision "and on any such appeal only the constitutional question shall be considered and determined by the court."[6]

Obvious from this concluding clause of Article VI, §3(b)(2) is that the existence of non-constitutional questions does not, of itself, bar a direct appeal. Is this the reason the Court's "Civil Jurisdiction and Practice Outline" omits any reference to it and refers only to CPLR §5602(b)(2)? Or do you have another reason? Likewise, what is the reason that the Court's preliminary appeal statement form also does not cite to Article VI, §3(b)(2), but only CPLR §5602(b)(2)? How about your *sua sponte* jurisdictional inquiry letters? Do they all resemble your August 30, 2019 letter to Mr. MacDonald, which, with no mention of Article VI, §3(b)(2), states:

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[4] This boilerplate appears in all five of the Court's orders cited at page 5 of its "Civil Jurisdiction and Practice Outline": https://www.nycourts.gov/ctapps/forms/civiloutline.pdf: *Jetro Cash and Carry Enters. v. State of New York Dept. of Taxation and Finance*, 81 NY2d 776 (1992); *Town of Brookhaven v. State of New York*, 70 NY2d 999 (1998); *Matter of Morley v. Town of Oswegatchie*, 70 NY2d 925 (1987); *New York State Club Assn. v City of New York*, 67 NY2d 717 (1986); *Kerrigan v. Kenny*, 64 NY2d 1109 (1985).

[5] According to The Bluebook: A Uniform System of Citation (at p. 4)(18th ed. 2004), the word "see" is used "to introduce an authority that clearly supports, but does not directly state, the proposition".

[6] The only other difference is that CPLR §5601(b)(2) additionally omits the words "order" and "special proceeding" from which Article VI, §3(b)(2) identifies a direct appeal to also be available.

> "The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether a direct appeal lies pursuant to CPLR 5601(b)(2)."

Your November 21, 2019 *Delgado* Order (Exhibit B) reads, in full:

> "Appellants having appealed to the Court of Appeals in the above cause;
>
> Upon the papers filed and due deliberation, it is
>
> ORDERED, that the appeal is transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§3[b][2], 5[b]; CPLR 5601[b][2]). Chief Judge DiFiore took no part."

What are the supposed other "questions" precluding direct review?

Mr. MacDonald had presented none when, by his August 9, 2019 notice of direct appeal, he invoked both "Article 6, Section 3(b)(2) of the New York Constitution and CPLR §5601(b)(2)", further stating:

> "This appeal deals solely with the constitutionality of Part HHH of Chapter 59 of the Laws of 2018."

Likewise, only a single issue was presented by Mr. MacDonald's August 20, 2019 preliminary appeal statement:

> "Whether Part HHH of Chapter 59 of the Laws of 2018 is unconstitutional under the New York State Constitution".

So, too, was Mr. MacDonald's September 9, 2019 letter (Exhibit D) exclusively devoted to the unconstitutionality of Part HHH, Chapter 59 of the Laws of 2018, furnishing, as well, "the papers filed with the Supreme Court", requested by your *sua sponte* jurisdictional inquiry letter.

Did the Court not examine "the papers", as its November 21, 2019 Order purports? If so, the deceit of Mr. Paladino's own September 9, 2019 letter (Exhibit E-1) would have been obvious. Taking his cue from your *sua sponte* jurisdictional inquiry, he did not reference Article VI, §3(b)(2) and stated, beneath a title heading "No Direct Appeal Lies Under C.P.L.R. 5601(b)(2)":

> "This appeal presents issues beyond the constitutionality of the state statue creating the Committee [on Legislative and Executive Compensation]. Before reaching the constitutionality of the Committee's enabling legislation, Supreme Court addressed the threshold issue of whether plaintiffs have standing – an issue this Court may have

> to decide before determining whether the statute validly delegated legislative authority to the Committee. Unlike *Schulz v. State*, 81 N.Y.2d 336 (1993), the standing issue is not so closely interrelated with the question of the constitutionality of the enabling statute that the standing issue is itself a constitutional question. Rather, the standing issue presents the distinct question of whether plaintiffs have citizen-taxpayer standing under State Finance Law article 7-a. In addition, plaintiffs not only challenged the constitutionality of the Committee's enabling legislation, they also asserted that the Committee exceeded its authority under that statute in making certain recommendations, and further that the Committee violated SAPA and the Open Meetings Law. These are issues other than the constitutionality of a state statute." (Exhibit E-1, at p. 3).

In addition to concealing that Justice Ryba's decision (at pp. 6-7) had rejected the Attorney General's challenge to standing, Mr. Paladino's letter concealed what is obvious from the Attorney General's May 6, 2019 memorandum of law in support of its dismissal motion, by the very title of its Point III:

> "Plaintiffs Lack Standing to Challenge the Committee's Recommendations Regarding Stipends, Outside Income, and Grouping of Salaries in Executive Law §169" (Exhibit F, pp. ii, 24-27)

and just as obvious from the Point III title heading of the Attorney General's May 22, 2019 reply memorandum of law (at pp. 9-11):

> "Defendants Demonstrate that Plaintiffs Lack Standing to Challenge the Committee's Recommendations Regarding Stipends, Outside Income, and Executive Law §169".

In other words, the Attorney General did not contest that the *Delgado* plaintiffs had standing to challenge the constitutionality of Part HHH, Chapter 59 of the Laws of 2018. It was thus fraud for Mr. Paladino's September 9, 2019 letter to purport that what the Attorney General had not contested below could potentially prevent the Court from reaching the constitutional issue that was the subject of the *Delgado* direct appeal.

It was also fraud for his letter to imply that other issues were before the Court, *to wit*:

> "that the Committee exceeded its authority under that statute in making certain recommendations, and further that the Committee violated SAPA and the Open Meetings Law" (Exhibit E-1, at p. 3).

As Mr. Paladino well knew from Mr. MacDonald's notice of appeal and preliminary appeal statement, no other issues were being presented for direct appeal. Moreover, as his September 9, 2019 letter itself identified (Exhibit E-1, at p. 3), "this Court has permitted private parties to eliminate nonconstitutional issues from the case by waiving their rights in that regard".

Nor did the *Delgado* plaintiffs' filing of a notice of cross-appeal in the Appellate Division, Third Department to the Attorney General's notice of appeal of Justice Ryba's decision foreclose the direct appeal – and Mr. Paladino's September 9, 2019 letter itself conceded (at p. 5):

> "Typically, when an appellant has taken simultaneous appeals and a direct appeal to this Court would be available but for the pending appeal in the Appellate Division, this Court will order that the direct appeal be dismissed unless the party promptly abandons his appeal to the Appellate Division. *See Karger, The Powers of the New York Court of Appeals*, §9:4 at 294; *Stefaniak v. NFN Zulkharain*, 30 N.Y.3d 1033 (2017)."

Indeed, the Court's December 12, 2017 Order in *Stefaniak* shows precisely what its November 21, 2019 *Delgado* Order should have looked like – excepting that the judge taking "no part" would have been Chief Judge DiFiore:

> "Appeal dismissed without costs, by the Court sua sponte, upon the ground that simultaneous appeals do not lie to the Appellate Division and the Court of Appeals, unless within 20 days appellant, if he be so advised, serves upon all parties and files in this Court a notice that he has abandoned his appeal to the Appellate Division and stipulates for the withdrawal of that appeal (*see Parker v Rogerson*, 35 NY2d 751, 753-754, 320 NE2d 650, 361 NYS2d 916 [1974]). Judge Fahey took no part."[7]

And further compelling such order in *Delgado* was Mr. Paladino's October 2, 2019 letter (Exhibit E-2) notifying the Court that the *Delgado* defendants had withdrawn their appeal to the Appellate Division, Third Department, thereby removing what his September 9, 2019 letter had emphasized as an impediment when it argued:

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7 *Also see* Mr. Paladino's two cited cases, *Knuden v. New Dorp Coal Corp.*, 20 NY2d 875, 877 (1967):

> "Motion to dismiss appeal granted and appeal dismissed, with costs and $10 costs of motion, unless within 10 days appellant serves upon respondents a notice that it has abandoned its appeal to the Appellate Division and thereafter stipulates for the withdrawal of that appeal, without costs."

and *Parker v. Rogerson*, 35 NY2d 751, 753 (1974):

> Appeal will be dismissed, without costs, by the Court of Appeals sua sponte unless within 20 days appellants..., if they be so advised, serve upon respondents and file in this court a notice that they have abandoned their cross appeal to the Appellate Division and stipulate for the withdrawal of that appeal, without costs (*Knudsen v. New Dorp Coal Corp.*, 20 N.Y.2d 875, supra; see 7 Weinstein-Korn-Mill, NY Civ. Prac., pars. 5601.21-5601.26; Cohen and Karger, Powers of the New York Court of Appeals, §73, especially n. 23 and cases cited at p. 315 and n. 24, at 316)."

> "even if plaintiffs abandoned their appeal to the Appellate Division, *defendants'* appeal to the Appellate Division would remain pending." (Exhibit E-1, at p. 5, italics in Mr. Paladino's original).

Mr. Paladino's only other basis for arguing against the *Delgado* plaintiffs' right to a direct appeal was this Court's May 2, 2019 Order dismissing appellants' appeal of right from the Appellate Division, Third Department's December 27, 2018 Memorandum. In the words of his September 9, 2019 letter:

> "Having deemed the unlawful delegation claim in *Ctr. for Judicial Accountability* to be insubstantial, this Court should reach a similar conclusion with respect to the essentially identical unlawful delegation claim here." (Exhibit E-1, at p. 5).

Again fraud, as the Court's May 2, 2019 Order and the Appellate Division's December 27, 2018 Memorandum are indefensible – and this had long been known to Mr. Paladino, including because I had furnished him with appellants' "legal autopsy"/analysis of each.[8] Indeed, Mr. Paladino is no stranger to this case, having been involved in defending against appellants' appeals – first at the Appellate Division, Third Department and then before this Court – with his name appearing on the Attorney General's submissions.

The record before the Court on this appeal established the situation, clearly. Again and again, I had alerted Mr. Paladino to the fraudulence of the Attorney General's submissions bearing his name, to which he and his superiors had not responded, leaving appellants no choice but to seek sanctions, costs, and disciplinary and criminal referrals against him, as culpable for the litigation fraud committed by his subordinate, Assistant Solicitor General Brodie, which he countenanced, if not directed, in concert with Solicitor General Underwood and Attorney General James.[9]

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[8] *See* appellants' May 31, 2019 motion to reargue/vacate the Court's May 2, 2019 Order and their "legal autopsy"/analysis of the Appellate Division's December 27, 2018 Memorandum, accompanying my March 26, 2019 letter in support of appellants' appeal of right.

[9] In the important case of *St. Joseph Hospital v. Novello,* whose dissent, in 2007, by then Appellate Division, Fourth Department Associate Justice Fahey (43 A.D.3d 139) is focal to <u>appellants' sixth cause of action</u> challenging the constitutionality of Part E, Chapter 60 of the Laws of 2015, *as written* [R.190-192] – and so-highlighted by my March 26, 2019 letter in substantiation of appellants' appeal of right (at pp. 9-15), Mr. Paladino represented the defendants <u>both</u> before the Appellate Division, Fourth Department and this Court. Mr. Brodie's fraud, by his own March 26, 2019 letter (at pp. 5-6), with respect to *St. Joseph Hospital* and with respect to *McKinney v Commissioner of the New York State Dept. of Health*, wherein he purported that the hospital downsizing commission held to be constitutional in those cases was "similarly structured" to the Commission on Legislative, Judicial and Executive Compensation, was exposed as fraud by my April 11, 2019 letter (at p. 6). Such repeated Mr. Brodie's identical fraud, twice in the Appellate Division, Third Department, to which I had twice objected – and it is to this to which the "legal autopsy"/analysis of the Appellate Division, Third Department's December 27, 2018 Memorandum, accompanying my March 26, 2019 letter, refers (at p. 17).

Certainly, you could not have been unaware, while examining Mr. Paladino's September 9, 2019 and October 2, 2019 letters (Exhibits E-1, E-2), that simultaneously before the Court were appellants' three motions: appellants' May 31, 2019 reargument motion to vacate the Court's May 2, 2019 Order; appellants' June 6, 2019 motion for leave to appeal; and – following the Attorney General's June 27, 2019 memorandum opposing those two motions – appellants' August 8, 2019 motion against the Attorney General to strike, and for sanctions, costs, and disciplinary and criminal referrals, specifying Mr. Paladino by name in its first branch for an order:

> "consistent with this Court's decision in *CDR Creances S.A.S. v. Cohen, et al*, 23 NY3d 307 (2014), striking, as 'fraud on the court', the Attorney General's June 27, 2019 'Memorandum in Opposition to Motions for (i) Leave to Appeal; and (ii) Reargument/Renewal and Other Relief' and, additionally, the Attorney General's March 26, 2019 letter opposing appellants' appeal of right, both signed by Assistant Solicitor General Frederick Brodie on behalf of Attorney General Letitia James and bearing the names of Solicitor General Barbara Underwood and **Assistant Solicitor General Victor Paladino**". (August 8, 2019 notice of motion, underlining in the original, bold added).

Indeed, coincidentally or not, on August 30, 2019, the same date as your *sua sponte* jurisdictional inquiry in *Delgado*, the Clerk's Office received my 19-page August 28, 2019 letter, alerting you – and documenting – that the Attorney General's August 19, 2019 opposition to appellants' August 8, 2019 motion, signed by Mr. Brodie and bearing Mr. Paladino's name as Senior Assistant Solicitor General, was completely fraudulent. It also pointed out (Exhibit C-4) that Mr. Brodie had stowed in a footnote to his August 19, 2019 opposing memorandum his fraudulent response to my August 9, 2019 letter (Exhibit C-3) concerning the Attorney General's "duty to furnish the Court with an "appropriate status report" of the *Delgado* case and of the five other lawsuits then challenging the delegation of legislative powers to "force of law" committees/commissions: four, including *Delgado*, challenging Part HHH, Chapter 59 of the Laws of 2018 establishing the Committee on Legislative and Executive Compensation, and two challenging Part XXX, Chapter 59 of the Laws of 2019 establishing the Public Campaign Financing and Election Commission.

Observing that Mr. Brodie had not denied or disputed the accuracy of the reason stated by my August 9, 2019 letter for why such "status report" was essential – *to wit*, that five of the six lawsuits would terminate upon the declarations of unconstitutionality here sought (Exhibit C-3)[10] – making

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Mr. Brodie again reprised the identical fraud when he opposed appellants' May 31, 2019 and June 27, 2019 motions by his June 27, 2019 memorandum in opposition (at p. 7) – and appellants' "legal autopsy"/analysis pointed this out (at p. 16). That "legal autopsy" was furnished to this Court twice, annexed to my August 9, 2019 letter to you (Exhibit C-3) and as the centerpiece of appellants' August 8, 2019 motion, to which it was Exhibit B. As reflected by my affidavits of service and appended e-mail receipts, Mr. Paladino had been a recipient of all.

[10] The sixth case, *Schulz v. New York State*, would only partially terminate, as it has unrelated causes of action.

this case a unique efficiency – my August 28, 2019 letter (Exhibit C-4) urged that the Court order a "status report" from the Attorney General as part of the "other and further relief as may be just and proper", requested by appellants' August 8, 2019 notice of motion – highlighting that such must include:

> "what steps, if any, [the Attorney General had] taken to apprise the plaintiffs [in those six lawsuits] and the courts of the two threshold integrity issues that exist in those cases: (1) her own direct and indirect financial and other interests in the suits; and (2) the judges' own interests, especially arising from the relatedness of those lawsuits to this" (Exhibit C-4).

That this inclusion was particularly important should have been obvious to you – and the Court – in light of Mr. MacDonald's September 9, 2019 letter (Exhibit D, at pp. 4-5), as it identified four of the five cases I had cited, plus *Delgado*, yet with no seeming recognition of the Attorney General's direct and indirect financial and other interests and those of Justice Ryba and the judges handling the other three state court lawsuits.

As for Mr. Paladino's September 9, 2019 letter (Exhibit E-1), written after his receipt of my August 28, 2019 letter (Exhibit C-4), it omitted mention of any similar lawsuit to *Delgado*, other than this one,[11] and, as to *Delgado*, made no mention of the clear conflicts afflicting both the Attorney General and the judges.

Six weeks later, by the three indefensible October 24, 2019 Orders signed by Ms. Davis, the Court would deny all three of appellants' pending motions, *without reasons*, and without any disclosure of the financial and other interests of its associate judges, or of the Attorney General. The Court would do likewise in *Delgado* less than a month later by the procedurally and substantively indefensible November 21, 2019 Order that you signed (Exhibit B).

Subsection C of the sixth branch is particularized at pages 19-23 of my November 25, 2019 moving affidavit under the title heading:

> **"Chief Administrative Judge Lawrence Marks and other judges of the Unified Court System are colluding in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, which is itself repeating ALL the statutory and constitutional violations of the 2015 Commission on Legislative, Judicial and Executive Compensation that this citizen-taxpayer action establishes."**

The context of this serious charge, as pertains to the Court, was directly beneath the above-quoted

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[11] There is a great deal of commonality between those lawsuits and this – including as to the lawyers involved in defending them at the Attorney General's Office and, therefore, knowledgeable of the true facts underlying the fraudulent decisions in this case on which they would have other judges rely.

title, as follows:

> "By the Court's October 24, 2019 Orders [], the associate judges gave themselves and their fellow judges of the Unified Court System an immediate, tangible benefit beyond being able to continue to collect their current commission-based judicial salary increases: the prospect of further judicial salary increases – to be procured by the same unconstitutional, statutory-violative, and fraudulent means as detailed by appellants' sixth, seventh, and eighth causes of action [R.109-112 (R.187-201); R.112-114 (R.201-212); R.114 (R.212-213)] that the Court refused to review, either by right or by leave – on a record establishing appellants' entitlement to summary judgment as to all three."

To establish the associate judges' knowledge and approval of Chief Administrative Judge Marks' fraud and deceit before the Commission to secure prospective salary increases, my moving affidavit annexed a copy of my November 25, 2019 letter to him entitled:

> "Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony". (underlining in the original).

The letter particularized his fraud and deceit and, at page 7, asked questions about the Court's knowledge and approval thereof, stating:

> "By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) 'Judges…must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities' citing 'NY Const., Art. VI, §20(b), (c)' – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate judges – or was its content known to them and, if so, when? Did you – and they – actually believe that New York's Judiciary was not obligated to include ANY information as to CJA's succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial 'process'?[fn]" (capitalization and italics in the original).

My moving affidavit (at pp. 20-21) quoted this paragraph, thereupon adding:

"Upon receipt of Chief Administrative Judge Marks' response to this paragraph and the balance of the letter, I will furnish it to the Court as a new fact further warranting vacatur of the October 24, 2019 Orders."

By e-mail to Chief Administrative Judge Marks, sent on November 26, 2019 (Exhibit G-1), I furnished him with my November 25, 2019 letter, requesting his response "promptly" and alerting him not to overlook the paragraph at page 7, whose text I quoted in the e-mail. I also requested that he forward the e-mail to the other judges who had testified at the Commission's November 4, 2019 and November 14, 2019 public hearings[12] and, additionally, to Chief Judge DiFiore's "Excellence

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[12] This request replicated a similar request I had made to Chief Administrative Judge Marks by a December 21, 2015 letter to the prior Commission (Exhibit L-2) pertaining to its collusion in the fraud of the judicial pay raise advocates, requesting that he forward it to all the other judges and judicial pay raise advocates who, like himself, had testified at that Commission's November 30, 2015 hearing, so that they could deny or dispute the accuracy of my testimony at that hearing and my supplemental presentations. As reflected by my moving affidavit (at pp. 21-22), one of those judicial pay raise witnesses was the then president of the Association of Supreme Court Justices of the State of New York, now Associate Judge Feinman.

In 2011, I had done the same, several times, requesting that then Chief Administrative Judge Ann Pfau, as well as former Chief Judge Judith Kaye, both of whom had testified at the July 20, 2011 hearing of the Commission on Judicial Compensation, assist me in distributing to the other judges and judicial pay raise advocates who had testified at that hearing my written communications pertaining to their fraud before that Commission, in which it was colluding. My culminating communication was CJA's October 27, 2011 opposition report to the Commission's August 29, 2011 report, which I furnished to Chief Administrative Judge Pfau and former Chief Judge Kaye by an October 28, 2011 letter requesting that they additionally forward it to:

"ALL New York State's 1,200-plus judges and such former state judges who have retired and/or resigned since 1999 – so that they, like yourselves, may have the opportunity to contest CJA's October 27, 2011 Opposition Report, <u>if they can</u>." (capitalization and underlining in the original).

I have only just discovered that among the judicial pay raise witnesses who had testified at the Commission on Judicial Compensation's July 20, 2011 hearing was the then president of the Association of Supreme Court Justices of the State of New York, Supreme Court Justice Phillip Rumsey.

This is the same Justice Rumsey, who since May 2017, has sat on the Appellate Division, Third Department – and who authored its December 27, 2018 Memorandum herein, obliterating ALL cognizable adjudicative, evidentiary, and ethics standards to preserve Part E, Chapter 60 of the Laws of 2015 establishing the Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 report, and, simultaneously, Chapter 567 of the Laws of 2010 establishing the Commission on Judicial Compensation and its August 29, 2011 report. Justice Rumsey also participated with his fellow appellate panel judges in denying, *without reasons*, two of appellants' threshold integrity motions, including for disqualification and disclosure. This Court has all the horrendous particulars – laid by appellants' "legal autopsy"/analysis of the Memorandum that accompanied their March 26, 2019 letter in support of their appeal of right.

The video of the Commission on Judicial Compensation's July 20, 2011 hearing, at which then Supreme Court Association President Rumsey testified and answered questions, including about the statutory factors the Commission was required to take into account, and the video of the Commission on Legislative,

Initiative".

I received no response from him or anyone else to this November 26, 2019 transmittal – nor to my subsequent December 9, 2019 and December 11, 2019 e-mails (Exhibits H, I) addressed to the Commission, but cc-ing him and others at the Office of Court Administration. These e-mails detailed the HUGE financial fraud he was committing by his representations to the Commission as to the cost of the COLAs and as to how and in what fashion the Judiciary would self-fund them. The December 9, 2019 e-mail (Exhibit H) explained that Chief Administrative Judge Marks' self-funding claims were enabled by the fact that the Judiciary budget is "a larcenous SLUSH-FUND, born of constitutional violations, statutory violations and fraud", so-proven by the record before the Court, substantiating appellants' second cause of action [R.103-104 (R.162-167; R.260-262; R.294-300)] challenging the constitutionality and lawfulness of the Judiciary budget.[13]

Judicial and Executive Compensation's November 30, 2015 hearing, at which then Supreme Court Association President Feinman testified, are accessible from CJA's webpage for this letter (fn. 1, *supra*).

[13] As to the true cost of the COLAs, the particulars, furnished by my December 11, 2019 e-mail (Exhibit I), were as follows:

> "In his original submission (at p. 21), Chief Administrative Judge Marks' purports that the Judiciary's proposed 'series of four...cost-of-living adjustments for New York's state-paid judges over the four fiscal years beginning April 1, 2020' is 'very modest', that 'The cost of these adjustments in each fiscal year, and the aggregate cost over the full four years is almost certain to be de minimus' and in dollar terms would 'cost the State $13.9 million, or an average of $3.46 million annually'. This is false. The $3.46 million cost of each COLA increase, essentially repeated by Chief Administrative Judge Marks in testifying on November 4th (at pp. 7, 12), becomes, after the initial year, embedded as increased judicial salaries, COMPOUNDING yearly. Thus, while the first COLA, in fiscal year 2020-21, would cost $3.46 million in that first year, the second COLA, in fiscal year 2021-22, is another $3.46 million, plus the original COLA of $3.46 million, now shifted to a permanent increase in judicial salary costs – for a total of $6.92 million in the second year. The third COLA, in fiscal year 2022-23, is a further $3.46 million, plus $6.92 million from the two prior COLAs, now shifted to increased judicial salary costs – bringing the total to $10.38 million in the third year. The fourth COLA, in fiscal year 2023-24, is another $3.45 million, plus $10.38 million from the three prior COLAs, now shifted to increased judicial salary costs – thereby totaling $13.84 million in the fourth year. The dollar total for these four years of COMPOUNDING judicial salary increases originating as COLAs is the addition of $3.46 million for the first year, $6.92 million for the second year, $10.38 million for the third year, and $13.84 million for the fourth year, which is $34.56 million. And it does not end there, as this $34.56 million is then forever a recurring yearly cost upon the state for judicial salaries – on top of which the state must pay out for the increased costs of salary-based non-salary compensation benefits, such as pensions. Does Chief Administrative Judge Marks deny this? Is this why he has submitted no sworn statements of projected costs – or past costs – including from the Judiciary's own budget director?" (Exhibit I, underlining and capitalization in the original)

The concluding paragraph of the e-mail then gave perspective to the financial and economic issues that were consuming the Commission, stating:

> "Suffice to say – and as highlighted by my November 25, 2019 letter to Chief Administrative Judge Marks (at p. 4) – ALL the specified financial and economic factors that Chapter 60, Part E, of the Laws of 2015 requires the Commission to 'take into account' in examining the adequacy of judicial pay are 'IRRELEVANT', when the Judiciary is 'not 'excellent' and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct'. Such is the situation, at bar – proven, EVIDENTIARILY, by the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action: http://judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm. This is why the Commission must demand that Chief Administrative Judge Marks and other judicial pay raise advocates produce their findings of facts and conclusions of law with respect thereto, including by subpoena, if necessary." (Exhibit H, capitalization and underlining in the original).

On December 17, 2019, I sent a further e-mail (Exhibit J), now addressed to Chief Administrative Judge Marks and Chief Judge DiFiore, inquiring as to whether they had responded and requesting a response "expeditiously". I received none.

In other words, Chief Administrative Judge Marks has not only NOT contested the accuracy of my obviously true November 4, 2019 sworn testimony before the Commission – and of my supplemental presentations to the Commission furnished by my November 26, 2019 e-mail (Exhibit G-1) and then by my December 11, 2019 e-mail, incorporating my December 9, 2019 e-mail (Exhibits I, H) – but has willfully failed to answer the questions asked at page 7 of my November 25, 2019 letter and quoted by my November 26, 2019 transmitting e-mail as to this Court's knowledge and approval of his frauds to the Commission.

Surely, the associate judges know the answer for themselves as to their prior knowledge and approval of Chief Administrative Judge Marks' frauds before the Commission. Surely, too, they are not unaware that their May 2, 2019 and October 24, 2019 Orders enabled the commissioners to be appointed and conduct themselves in the same statutorily-violative, fraudulent, unconstitutional fashion as recited by appellants' seventh and eighth causes of action [R.112-114 (R.201-212); R.114 (R.212-213)] pertaining to the 2015 Commission and enabled Chief Administrative Judge Marks and the other judges to reprise frauds comparable to those they had utilized before the 2015 Commission – this being essential to any possibility of their procuring the further salary increases to which Part E, Chapter 60 of the Law of 2015 did not remotely entitle them.

That Chief Administrative Judge Marks was unable to obtain COLAs or any other salary increases is not because the current Commission was more adherent to the "appropriate factors" it was required to "take into account" than the 2015 Commission – or than the 2011 Commission on Judicial Compensation. Rather, it is because an amendment to Part E, Chapter 60 of the Laws of 2015,

nullifying Commission majority votes, was snuck into the 2019 revenue budget bill as a result of the same behind-closed-doors "three-men-in-a-room" budget deal-making as appellants' ninth cause of action [R.115 (R.214-219)] challenges as unconstitutional. Such amendment,[14] *as written and by its enactment*, is an additional respect in which Part E, Chapter 60 of the Laws of 2015 is unconstitutional, *as written and by its enactment* – challenged by appellants' sixth cause of action [R.109-112 (R.187-201)] – and unconstitutional, *as applied*, challenged by appellants' seventh cause of action [R.112-114 (R.201-212)].

My final e-mail to the Commission, on December 18, 2019 (Exhibit K), again cc'd Chief Administrative Judge Marks and other OCA recipients. Identifying itself as now a third supplemental submission in further support of my November 4, 2019 testimony, the e-mail summed up the situation, based on the evidence from the record of this citizen-taxpayer action, as follows:

> "will you, consistent with your duty, 'blow the whistle' on what has been going on – identified by my November 4th testimony as 'a grand larceny of the public fisc' involving, to date, 'on the order of half a billion dollars' paid out in 'fraudulent, statutorily-violative, and unconstitutional judicial pay raises' [Tr. 70] – the product of two commission reports that are each 'false instrument(s), violative of a succession of Penal Laws and the Public Trust Act' [R.69] – and which would have been so-declared judicially and VOIDED but for the fact that since 2012, New York judges, in collusion with New York's attorney general, have upended all adjudicative standards to 'throw' successive lawsuits for such declarations – the culminating lawsuit, *CJA v. Cuomo...DiFiore*, being now at the Court of Appeals, where the same obliteration of the rule of law has been happening.
>
> And do you agree that if you do not do your duty to 'whistle-blow' with respect to *CJA v. Cuomo...DiFiore*, 'suing all three branches for collusion against the people with respect to these force of law commissions, a scheme, a corrupt and unconstitutional scheme to give pay raises to corrupt public officers who should be removed for their corruption in office'– challenging, as well 'the Judiciary budget, which embeds, hides the pay raises, has hidden them, concealed their costs, the legislative budget, the entirety of the executive budget' whose record I identified as 'Exhibit A' as to 'how the Judiciary operates' [Tr. 65-66] – it is because of the conflicts of interest from which you suffer – and have not disclosed?"

My e-mail identified that ALL the Commissioners, possibly excepting one – Peter Madonia – suffered from conflicts of interest and furnished a link to CJA's webpage entitled "Informed Consent? – Appointment of Commissioners Disqualified for Interest and Bias", from which the

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[14] Part VVV of Revenue Budget Bill S.1509-C/A.2009-C – the same revenue budget bill as established, by its Part XXX, the Public Campaign Financing and Election Commission, also popped into the bill by the same behind-closed-doors "three-men-in-a-room" budget deal-making.

evidence of their conflicts of interest and bias was accessible.[15]

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[15] Posted on that webpage were and are the below summaries, with links to webpages for six of the seven Commissioners with further details and the substantiating evidence. Of particular relevance, because it relates to this Court, was that which I furnished to Commissioner Seymour Lachman 7-1/2 years ago, *to wit*, "[CJA's] July 9, 2012 proposal for scholarship of Court of Appeals' decisions on constitutional questions, beginning with the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits, as to which the ONLY analysis was by CJA, demonstrating its illegitimacy". It is annexed hereto as Exhibit L.

> <u>Mitra Hormozi, Esq.</u> – (Governor Cuomo's appointee) –
> "Disqualified for interest, arising from her collusion in the corruption & fraud perpetrated by the December 24, 2015 report of the prior Commission on Legislative, Judicial and Executive Compensation – of which she was a member, appointed by the Governor. The current Commission – to which the Governor also appointed her – conceals that she had been a member of the prior Commission, as it is omitted from her bio posted on its website."
>
> <u>Former NYS Budget Director Robert Megna</u> – (Governor Cuomo's appointee) –
> "Disqualified for interest, arising from his collusion, as the Governor's budget director, in the corruption & fraud perpetrated by the August 29, 2011 report of the Commission on Judicial Compensation, AND in the unconstitutionality, unlawfulness, & fraud of the NYS Budget. In 2016, he became the Governor's last-minute substitute appointee to the Commission on Legislative, Judicial & Executive Compensation. The current Commission conceals that he had been a member of the prior Commission, as it is omitted from his bio posted on its website."
>
> <u>Former Appellate Division, Second Dept. Presiding Justice Randall Eng</u>
> (October 1, 2012 – January 1, 2018) – (Chief Judge DiFiore's appointee) – "Disqualified for financial interest, as findings that the August 29, 2011 report of the Commission on Judicial Compensation and the December 24, 2015 report of the prior Commission on Legislative, Judicial and Executive Compensation are statutorily-violative, fraudulent, and unconstitutional – which are the ONLY findings possible as to each report – will make him liable for a claw-back of the more than 6-1/2 years of salary and compensation increases he received arising from those two reports – and of increases to his pension based thereon."
>
> <u>Michael Cardozo, Esq.</u> – (Chief Judge DiFiore's appointee) –
> "Disqualified for interest, arising from his collusion, as New York City's corporation counsel, in the statutorily-violative, fraudulent, and unconstitutional August 29, 2011 report of the Commission on Judicial Compensation – and, prior thereto, by his collusion in judicial corruption and the corruption of the processes of judicial selection and discipline, which he covered up and perpetuated, while in positions of leadership at the New York City Bar Association, the Fund for Modern Courts, and Citizens Union."

I received no response from the Commission. However, its answer was obvious from each of the three meetings it held following its November 4, 2019 and November 14, 2019 hearings – and by its December 26,1019 "Final Report", both its controlling and dissenting statements. Entirely ignored, as if they did not exist, my November 4, 2019 testimony, and three supplemental statements, from which are readily established, *prima facie*, the Commission's flagrant fraud and violations of Part E, Chapter 60 of the Laws of 2015, arising from their undisclosed and disqualifying interests and bias.

* * *

There are more facts, not previously available, which might be furnished by way of renewal. High on that list are the supervening facts pertaining to the Judiciary's "itemized estimates" of its "financial needs" for fiscal year 2020-2021 that Chief Administrative Judge Marks transmitted to the Governor and Legislature on November 29, 2019, with certifications of Chief Judge DiFiore and authorizations by the Court of Appeals dated November 19, 2019 – replicating most of the constitutional and statutory violations encompassed by appellants' second cause of action [R.103-104 (R.162-167; R.260-262; R.294-300)] challenging the constitutionality and lawfulness of the Judiciary budget. However, the foregoing pertaining to parts A, B, and C of the sixth branch of appellants' November 25, 2019 motion more than suffices for the renewal/vacatur relief sought.

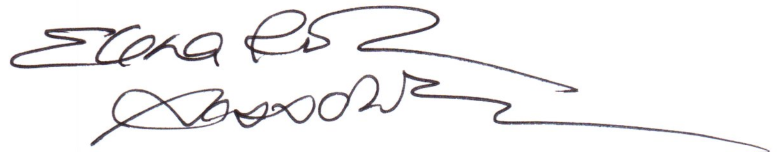
I swear the contents of this letter to be true, under penalties of perjury, and end by reiterating the quote at page 1 of my November 25, 2019 moving affidavit, as it succinctly summarizes the enormity of what is before the Court, at stake for the People of the State of New York:

Seymour Lachman – (Temporary Senate President Stewart-Cousins' appointee) –
"Disqualified for interest, arising from his nonfeasance as a scholar and head of a college institute on government reform, to take any steps to rectify the ABSENCE OF EVIDENCE-BASED SCHOLARSHIP of the New York State constitution and state governance, such as embodied by CJA's declaratory and citizen-taxpayer actions against the state, challenging the 'force of law' compensation commissions, their reports, legislative rules, the judiciary, legislative, and executive budgets, 'three-men-in-a-room'– and furnishing him, at the outset, with a July 9, 2012 proposal for scholarship of Court of Appeals' decisions on constitutional questions, beginning with the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits, as to which the ONLY analysis was by CJA, demonstrating its illegitimacy."

James Malatras – (Governor Cuomo's appointee) –
"Disqualified for interest, arising from his years as one of Governor Cuomo's top aides – in which he reasonably would have known of CJA's October 27, 2011 opposition report and correspondence with the Governor and declaratory judgment action and subsequent citizen-taxpayer actions based thereon and the unconstitutionality and unlawfulness of the state budget – and of which he certainly became aware as President of the Rockefeller Institute of Government, to which Governor Cuomo appointed in February 2017, where he participated in its long-standing corrupting of its scholarship obligations"

Peter Madonia – (Assembly Speaker Heastie's appointee)
"(12 years Chief Operating Officer of Rockefeller Foundation)".

"'This Court's constitutional function is to uphold and safeguard our State Constitution. Nothing more is asked, on this motion, than that the associate judges discharge that function, for which they are paid, and which, if they do, will wipe out, overnight, the 'culture of corruption' plaguing our state – as is eminently clear from the verified pleadings of this citizen-taxpayer action and the record thereon.' (appellants' June 6, 2019 motion for leave to appeal, at p. 21; repeated in their August 8, 2019 motion to strike, at ¶18, underlining in the original)."



Enclosures

cc: Attorney General Letitia James
Solicitor General Barbara Underwood
Senior Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

<u>**TABLE OF EXHIBITS**</u>

Exhibit A: Deputy Clerk Heather Davis' November 20, 2019 letter and envelope postmarked November 25, 2019

Exhibit B: The Court's November 21, 2019 Order in *Delgado*, signed by Clerk John Asiello

Exhibit C-1: Appellants' March 26, 2019 letter to Clerk Asiello (pp. 1, 15-19)

Exhibit C-2: Appellants' April 11, 2019 letter to Clerk Asiello (pp. 1, 13-15)

Exhibit C-3: Appellants' August 9, 2019 letter to Clerk Asiello (pp. 1-4)

Exhibit C-4: Appellants' August 28, 2019 letter to Clerk Asiello (pp. 1, 18-19, and letter to the editor "*A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA*", <u>New York Law Journal</u> (August 21, 2019))

Exhibit D: Cameron MacDonald's September 9, 2019 letter in support of *Delgado* plaintiffs' direct appeal

Exhibit E-1: Senior Assistant Solicitor General Victor Paladino's September 9, 2019 letter in opposition to *Delgado* direct appeal

Exhibit E-2: Senior Assistant Solicitor General Paladino's October 2, 2019 letter

Exhibit F: Point III of Attorney General's May 6, 2019 memorandum of law in support of defendants' motion to dismiss the *Delgado* amended complaint (pp. ii, 24-27)

Exhibit G-1: Appellants' November 26, 2019 e-mail to Chief Administrative Judge Marks

Exhibit G-2: Appellants' November 26, 2019 e-mail – "will this e-mail address reach Chief Judge DiFiore's 'Excellence Initiative'?"

Exhibit H: Appellants' December 10, 2019 e-mail, with December 9, 2019 e-mail, to Commission on Legislative, Judicial and Executive Compensation, *cc-ing* Chief Administrative Judge Marks & other OCA recipients

Exhibit I: Appellants' December 11, 2019 e-mail to Commission on Legislative, Judicial and Executive Compensation, *cc-ing* to Chief Administrative Judge Marks & other OCA recipients

Exhibit J: Appellants' December 17, 2019 e-mail to Chief Administrative Judge Marks and Chief Judge DiFiore, *cc-ing* Commission on Legislative, Judicial and Executive Compensation

Exhibit K: Appellants' December 18, 2019 e-mail to Commission on Legislative, Judicial and Executive Compensation, *cc-ing* Chief Administrative Judge Marks & other OCA recipients

Exhibit L: Appellants' July 9, 2012 proposal for scholarship of Court of Appeals' decisions on constitutional questions – and its enclosed July 19, 2011 letter to then Attorney General Eric Schneiderman furnishing a "legal autopsy"/analysis of the Court's February 23, 2010 decision in *Maron v. Silver* (14 NY3d 230) – furnished to Professor Seymour Lachman, Director/Carey Center for Government Reform/Wagner College, by e-mail, on July 9, 2012