CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

BY EXPRESS MAIL

August 28, 2019

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: NOW A THIRD TIME – Aiding the Court in Protecting Itself & Appellants…from the Litigation Fraud of the New York State Attorney General, NOW by its August 19, 2019 opposition to Appellants' August 8, 2019 Motion to Strike, to Disqualify the Attorney General, & for Other Relief (Mo. #2019-799)
Center for Judicial Accountability v. Cuomo, ... DiFiore – Citizen-Taxpayer Action

Dear Chief Clerk/Counsel Asiello:

This letter, pursuant to this Court's Rule 500.7, follows my phone conversation, on August 20, 2019, with Motion Clerk Rachel MacVean, Esq., stating that I had received, by e-mail, the Attorney General's August 19, 2019 opposition to appellants' August 8, 2019 motion (Mo. #2019-799) – and that it was yet a further fraud on the court.

I told Ms. MacVean that although this is so obvious that surely the Court does not need me to point it out, I nonetheless would do so – including so that I might expressly request further imposition of costs and sanctions pursuant to 22 NYCRR §130-1.1 *et seq.*, which is capped at $10,000 in sanctions for "any single occurrence of frivolous conduct". This is now the third "occurrence of frivolous conduct" – and there are NO extenuating circumstances for the Court's exercising discretion and imposing less than a full $30,000 in sanctions:

- $10,000 for the Attorney General's frivolous March 26, 2019 letter opposing appellants' appeal of right and urging the Court to dismiss it, *sua sponte*, 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;

Exc-4

> constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979)." [R.477, R.558-9, R.928, R.1127, R.1298].

Finally, mention must be made of Mr. Brodie's footnote 2 to his August 19, 2019 memorandum (at p. 7). This is where he tucks his fraudulent response to my August 9, 2019 letter (Exhibit B, at pp. 2-4) giving NOTICE to Attorney General James of her duty to furnish the Court with an "appropriate status report" on the six current lawsuits challenging the delegation of legislative powers to committees/commissions: four challenging Chapter 59, Part HHH, of the Laws of 2018, establishing the Committee on Legislative and Executive Compensation, and two challenging Chapter 59, Part ZZZ, of the Laws 2019, establishing a Public Campaign Financing and Election Commission. He states:

> "Because this case is limited to the 2016-2017 budget year, the Attorney General is not obligated to send the Court a 'status report' on litigation involving subsequent recommendations by other commissions as plaintiffs demand (8/9/19 ltr. from Elena R. Sassower to John P. Asiello, Esq. at 2-3)."

This is fraud. This case is NOT "limited to the 2016-2017 budget year" – and Mr. Brodie's fraud that it is undergirds his fraud that "The Attorney General has no financial interest in this case" (memo, at p. 7), which, as hereinabove shown (at pp. 6-7, *supra*), he accomplishes by concealing its challenge to the constitutionality of Chapter 60, Part E of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation.

My August 9, 2019 letter identifies this constitutional challenge and its significance to the six other lawsuits (Exhibit B, at pp. 2-4), but Mr. Brodie conceals this and the basis for my "demand" that the Attorney General furnish "a status report' on litigation involving…other commissions", *to wit*, that all six lawsuits challenging similar statutory delegations of legislative powers to committees/commissions will terminate upon the declarations of unconstitutionality here sought. This is uncontested by Mr. Brodie – and, following receipt of his August 19, 2019 affirmation and memorandum, I stated this publicly in a letter to the New York Law Journal entitled "*A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA*", published on its website on August 20, 2019 and in its print edition on August 21, 2019, in response to a perspective column entitled "*It's Legally Perilous to Have a Commission Responsible for Election Laws*" (Exhibits C-1, C-2).

Suffice to say that Mr. Brodie, having attached the 19-page June 7, 2019 decision/judgment of Albany Supreme Court Justice Christina Ryba in *Delgado v. State of New York* to his June 27, 2019 memorandum – stating (at pp. 6-7) that it was part of "a uniform line of judicial decisions" that "permitted" "the Legislature's limited delegation of authority" and inferring that it was an independent endorsement of the Appellate Division's December 27, 2018 memorandum herein – is now loathe to even identify the *Delgado* decision, by name. His August 19, 2019 affirmation refers to it (at ¶6) only as:

> "a recent decision by Supreme Court, Albany County, which followed the Third Department's ruling in this case, and which I appended to the June 27 memorandum."

Presumably this is because there has been significant appellate activity in the *Delgado* case – most importantly, on August 9, 2019, the plaintiffs therein filed a notice of appeal directly to this Court, pursuant to Article VI, §3(b)(2) of the New York State Constitution and CPLR §5601(b)(2), solely on the issue of the constitutionality of Chapter 59, Part HHH, of the Laws of 2018. Indeed, promptly upon their e-filing their notice of appeal to this Court at 4:54 p.m., they e-filed a notice of cross-appeal to the Appellate Division, Third Department at 5:26 p.m. This was just about the time as I was at the post office mailing my August 9, 2019 letter to you. More than three weeks earlier, at 4:09 p.m. on July 15, 2019, the Attorney General had filed her own appeal to the Appellate Division, Third Department from that portion of Justice Ryba's June 7, 2019 decision as struck down the Committee's restrictions on legislators' outside income.

As the Court would be well-served by an appropriate status report from Attorney General James on the *Delgado* and other lawsuits – including as to what steps, if any, she has taken to apprise the plaintiffs therein 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 – I request that such status report be ordered by this Court as part of the "other and further relief as may be just and proper", requested by appellants' August 8, 2019 notice of motion (at ¶7).

As required by Rule 500.7, attached is an affidavit of service attesting that I have furnished this letter to the Attorney General. For the convenience of all, this letter – and referred to evidentiary proof – is posted on CJA's website, here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/8-28-19-ltr.htm.

Thank you.

Respectfully submitted,

Elena Ruth Sassower, unrepresented plaintiff-appellant, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York
& the Public Interest

Enclosures: Exhibits A-C

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

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Wednesday, August 21, 2019
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Letters to the Editor

A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA

New York—the "Excelsior State"—has 13 law schools, a 70,000-plus-member state bar association, countless county, city and specialized bar associations, a vast array of universities, colleges and other schools with scholars of constitutional law and political science, as well as think tanks and research institutes. Yet, it was solo practitioner Roger Bennet Adler who sounded the alarm by his recent perspective column entitled "It's Legally Perilous to Have a Commission Responsible for Election Laws" whose internet subtitle (8/9/19) and stand-out text in its print edition (8/13/19) was even more stark, reading: "Simply put, there are no available legislative shortcuts around the State Constitution. The recent attempts to ignore it to raise legislative and executive salaries via an appointed commission is in clear violation."

Where are the voices of the scholars of the New York state constitution and other experts of law and political science about the "clear violation" that has been going on in statutorily delegating legislative powers to commissions? The most cursory investigation would reveal it to be even more flagrantly unconstitutional than what Mr. Adler so admirably describes.

I should know. For more than seven years, I have been single-handedly litigating its unconstitutionality and unlawfulness, as written, as applied and by its enactment in three major lawsuits, brought expressly "on behalf of the People of the State of New York & the Public Interest," The third of these lawsuits, encompassing the prior two, is now before the New York Court of Appeals, appealing by right and by leave the Appellate Division,Third Department's December 27, 2018 decision in *Center for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406.

This is the decision Mr. Adler identifies and describes as being one of three decisions cited by Albany Supreme Court Justice Ryba in her June 7, 2019 decision upholding the constitutionality of the statutory delegation of legislative power challenged in *Delgado v. State of New York*. In fact, *CJA v. Cuomo* is the first decision to which Justice Ryba cites–and eight times in total–because it is the decision on which she relies, involving, as it does, a materially identical statute. As for Mr. Adler's description that the *CJA v. Cuomo* decision "upheld the delegation to the commission to increasing judicial salaries"--implying that it did not uphold delegation of legislative and executive salaries, this is incorrect. It upheld these, as well.

The shocking record of *CJA v. Cuomo*–including before the Court of Appeals– is accessible from the Center for Judicial Accountability's website and powerfully refutes Mr. Adler's assertion that "legislating by proxy commissioners, is doomed to failure when judicially challenged."

Likewise, his further comment that a newly-commenced lawsuit challenging the constitutionality of the Public Campaign Finance and Election Commission "is an initial salvo in a legal struggle to vindicate the plain words of the State Constitution, and hold the Legislature constitutionally accountable."

I invite Mr. Adler to join with me in rallying scholars, experts and just plain civic-minded attorneys to examine and report on the record and to file amicus curiae briefs with the Court of Appeals. Especially is this important because *CJA v. Cuomo* is dispositive of *Delgado* and of the five current other lawsuits challenging delegations of legislative power to commissions/committees–a fact I stated to the Court of Appeals, most recently by an August 9, 2019 letter–without contest from the Attorney General.

Elena Sassower
is the director of the Center for Judicial Accountability.

COMMENTARY

Law Firm Margins Tighten