"LEGAL AUTOPSY"/ANALYSIS
OF THE COURT OF APPEALS' MAY 2, 2019 ORDER
SUA SPONTE DISMISSING APPELLANTS' APPEAL OF RIGHT

Center for Judicial Accountability, et al. v. Cuomo...DiFiore – Citizen-Taxpayer Action
(APL-2019-00029; SSD 23)

This analysis constitutes a "legal autopsy"[1] of the Court of Appeals' May 2, 2019 Order *sua sponte* dismissing appellants' appeal of right, supplementing the showing made by appellant Sassower's May 31, 2019 affidavit in support of appellants' motion for reargument/renewal and vacatur, determination/certification of threshold issues, disclosure/disqualification & other relief.

As with all the orders rendered in this citizen-taxpayer action by the Appellate Division, Third Department and by Acting Supreme Court Justice/Court of Claims Judge Denise Hartman, the Court's May 2, 2019 Order is so utterly devoid of legal and evidentiary support as to be unconstitutional. Like them, it is a judicial fraud.

This is easily verified. It requires nothing more than a reading of "the papers" filed by appellants with the Court – none more important than their March 26, 2019 letter in response to the March 4, 2019 jurisdictional inquiry letter of Deputy Clerk Heather Davis, and their April 11, 2018 letter demonstrating the fraudulence of Attorney General's own March 26, 2019 letter, accompanied by evidentiary proof, both annexed and free-standing – and including a copy of the complete record that was before the Appellate Division, Third Department.

Evident from these is that the Court's May 2, 2019 Order:

(1) abridges the case title – thereby materially concealing, *inter alia*, that appellants are expressly acting "on behalf of the People of the State of New York & the Public Interest" and that the defendants, in addition to Andrew M. Cuomo, include the Attorney General "in his official capacity", and:

> "JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System";

---

[1] The term "legal autopsy" is taken from the law review article "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ('...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...' (p. 53)).

(2) falsely purports that appellants are appealing "in the above title" – which, as abridged, they are not;

(3) falsely purports that its two ordering paragraphs are based "Upon the papers filed and due deliberation" – when "due deliberation" of "the papers filed" would not support either paragraph, other than for purposes of perpetrating fraud;

(4) falsely purports, by its first ordering paragraph, to *sua sponte* dismiss the appeal:

> **"insofar as taken on behalf of Center for Judicial Accountability, Inc. by Elena Ruth Sassower, upon the ground that Sassower is not Center for Judicial Accountability, Inc.'s authorized legal representative (see CPLR 321[a])",**

when the "papers filed" by appellants establish:

- that appellant Sassower and appellant Center for Judicial Accountability, Inc. are each "unrepresented litigants" who asserted in their February 26, 2019 Preliminary Appeal Statement, as a threshold issue, their entitlement to the Attorney General's representation pursuant to Executive Law §63.1 and State Finance Law Article 7-A based on "the interest of the state"; and

- Deputy Clerk Heather Davis' March 4, 2019 inquiry letter had not raised any jurisdictional concern with regard to the Center's representation, contrary to Court Rule of Procedure §500.10 that the inquiry letter, from the clerk, "stat[e] the jurisdictional concerns identified in reviewing the preliminary appeal statement".

(5) falsely purports, by the first half of its second ordering paragraph, to *sua sponte* dismiss the appeal:

> **"taken by Elena Ruth Sassower on her own behalf from the December 27, 2018 Appellate Division order affirming the final judgment, upon the ground that no substantial constitutional question is directly involved",**

when "the papers" filed by appellants[2] demonstrate:

- that such ground is the Court's standard conclusory boilerplate and contravenes and subverts Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1),

---

[2] *See* appellants' March 26, 2019 letter (at pp. 8-9) and April 11, 2019 letter (at p. 3).

granting appeals of right "wherein is directly involved the construction of the constitution of the state or of the United States"; and

- that the Appellate Division's December 27, 2018 order "directly involve[s] the construction of the constitution of the state", both with regard to threshold due process/integrity issues and each of appellants' ten causes of action, including, as evidenced by the very face of the order, appellants' sixth, ninth, and fifth causes of action;

(6) falsely purports, by second half of its second ordering paragraph, to *sua sponte* dismiss:

> **"the remaining Appellate Division orders, upon the ground that such orders do not finally determine the action within the meaning of the Constitution",**

when "the papers" filed by appellants[3] demonstrate:

- that finality is NOT at issue with respect to the so-called "remaining Appellate Division orders" – as these are brought up for review pursuant to CPLR §5501(a) – so-reflected by the Court's own "Civil Jurisdiction & Practice Outline", which states (at p. 24):

  > "2. CPLR 5501(a) – Review of Prior Nonfinal Orders and Determinations
  > a. CPLR 5501(a) provides that an appeal from a final judgment brings up for review, among other things:
  > i. any nonfinal judgment or order which necessarily affects the final judgment..."

- that all four of the Appellate Division's underlying orders, dated December 10, 2018, November 13, 2018, October 23, 2018, and August 7, 2018, directly and necessarily affect its December 27, 2018 final order because they involve the Appellate Division's denials of appellants' motions to disqualify its justices, to disqualify the Attorney General, and to strike the Attorney General's respondents' brief – with such being evident from the face of three of those orders.

---

[3] *See* appellants' March 26, 2019 letter (at p. 1); appellants' April 11, 2019 letter (at p. 9, fn. 10).

(7) purports that "**Chief Judge DiFiore took no part**" – concealing that she is a named party, disqualified by reason thereof – and that disqualifying interests and relationships affect all six of the Court's associate judges, who – if they actually sat and took part in the May 2, 2019 Order – not only flaunted their duty of disqualification and disclosure pursuant to §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, but violated Judiciary Law §14, divesting them of jurisdiction to "sit" and "take part" – with the consequence that their May 2, 2019 Order is a nullity;

(8) is not signed any of the six associate judges who presumably "took part" – including the "**Hon. Jenny Rivera, *Senior Associate Judge, presiding***"