

EX PARTE MOTION OFFICE

APPROVED  
FOR THE PAYMENT  
OF MOTION FEE  
ONLY

At an IAS Part of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, located at 60 Centre Street, New York, New York on the 23<sup>rd</sup> day of April, 2014.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY,  
DEAN G. SKELOS and JEFFREY D. KLEIN, as members and as  
Temporary Presidents of the New York State Senate, and  
SHELDON SILVER, as member and as Speaker of the  
New York State Assembly,

Index #160941/2013

Plaintiffs,

ORDER TO SHOW CAUSE  
TO INTERVENE & FOR  
TRO

-v-

KATHLEEN RICE, WILLIAM J. FITZPATRICK, and  
MILTON L. WILLIAMS, Jr. in their official capacities as  
Co-Chairs of the Moreland Commission on Public Corruption  
and THE MORELAND COMMISSION TO INVESTIGATE  
PUBLIC CORRUPTION,

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Defendants.  
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Upon reading and filing the annexed affidavit of the proposed intervening plaintiff ELENA RUTH SASSOWER, sworn to on April 23, 2014, and upon the proposed verified complaint, both with exhibits annexed thereto, seeking intervention pursuant to CPLR §1012(a)(2) and/or CPLR §1013,

LET plaintiffs and defendants show cause before this Court at 60 Centre Street, New York, New York on the \_\_\_\_\_ day of \_\_\_\_\_ 2014 at 9:30 a.m. or as soon thereafter

EX I

as the parties or their counsel can be heard, for an order:

- (1) permitting Elena Ruth Sassower, individually and as Director of the Center for Judicial Accountability, Inc., to intervene as a plaintiff individually, on her own behalf and on behalf of the People of the State of New York and the public interest in this declaratory judgment action, with the caption amended to so reflect;
- (2) for such other and further relief as may be just and proper, including a direction that plaintiffs and defendants respectively identify the amount of taxpayer monies expended in bringing and defending this declaratory judgment action and the related proceedings.

PENDING the hearing of this motion and determination thereof, sufficient cause appearing therefor, let plaintiffs and defendants be stayed from filing a stipulation of discontinuance or agreed dismissal of plaintiffs' declaratory judgment action on the ground of mootness and from seeking a court order thereon.

LET SERVICE of this Order to Show Cause, together with the papers on which it is based, be e-filed by the proposed intervening plaintiff, whose registration as an e-filer in this action is hereby authorized by the Court. Such e-filing shall be effected on or before the \_\_\_\_\_ day of \_\_\_\_\_ 2014, with answering papers from plaintiffs and defendants, if any, seven days before the return date.

DATED: New York, New York  
April 23, 2014

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY,  
DEAN G. SKELOS and JEFFREY D. KLEIN, as members and as  
Temporary Presidents of the New York State Senate, and  
SHELDON SILVER, as member and as Speaker of the  
New York State Assembly,

Plaintiffs,

Affidavit in Support of Order  
to Show Cause for  
Intervention, TRO, & Other  
Relief

-against-

Index #160941/2013

KATHLEEN RICE, WILLIAM J. FITZPATRICK, and  
MILTON L. WILLIAMS, Jr. in their official capacities as  
Co-Chairs of the Moreland Commission on Public Corruption  
and THE MORELAND COMMISSION TO INVESTIGATE  
PUBLIC CORRUPTION,

Defendants.

-----X  
STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the Director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, based in White Plains, New York, "that documents corruption in the judiciary involving judicial selection, judicial discipline, the judicial process itself"<sup>1</sup>. I submit this affidavit in support of my accompanying order to show cause to intervene as a plaintiff in this declaratory action: (a) to oppose its dismissal for "mootness"<sup>2</sup>; and

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<sup>1</sup> Quote from my oral testimony before the Commission to Investigate Public Corruption at its September 17, 2013 public hearing. The video is posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), accessible via the prominent homepage link: "CJA's People's Campaign to Hold the Commission to Investigate Public Corruption True to its Name and Announced Purpose". The stenographic transcript of that oral testimony is part of Exhibit M.

<sup>2</sup> The parties' so-ordered stipulation of adjournment, filed on April 4, 2014, opens as follows:

(b) to secure a summary judgment declaration as to the unconstitutionality of Governor Andrew Cuomo's still-live Executive Order #106, whose establishment of the Commission to Investigate Public Corruption violated separation of powers, *as written and as applied*, including by the December 2, 2013 Preliminary Report it left behind, on which the public has been detrimentally led to rely.

2. Like CJA's many New York members and supporters, I am among the public whose trust in government defendant Commission to Investigate Public Corruption was established to restore and whose hundreds of thousands of tax dollars have been used by both plaintiffs and defendants in bringing and defending this declaratory action, as well as the related proceedings to quash the Commission's subpoenas, for protective orders, and intervention motions. As hereinafter demonstrated, neither plaintiffs nor defendants are protecting the public or the interest of the state by their submissions to this Court, filled with material deceptions, prejudicial to proper determination of the important separation of powers constitutional issues.

3. Indeed, by reason of the true facts misrepresented and concealed by the parties, there is a question as to whether the individual plaintiffs, Temporary Senate Presidents Skelos and Klein and Assembly Speaker Silver, have standing to raise the separation of powers issue which belongs to the institutional plaintiffs, the New York State Senate and the New York State Assembly – and whether their divergent interests, including as to mootness, make it improper for Michael J. Garcia, Esq., of Kirkland & Ellis, LLP, to be representing both plaintiffs Senate and

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“In light of statements by Governor Andrew Cuomo that he will end the investigation of the Commission to Investigate Public Corruption after enactment of the New York State budget, and in light of the budget having been enacted, and in anticipation of the proceedings, motions, and underlying subpoenas in the above-captioned cases therefore becoming moot...”

Skelos, and Marc E. Kasowitz, Esq., of Kasowitz, Benson, Torres & Friedman, LLP, to be representing both plaintiffs Assembly and Silver.

4. Certainly, it deserves note, as a threshold matter, that Mr. Garcia and Mr. Kasowitz have not established that they are entitled to represent the Senate and Assembly, let alone “those bodies’ individual members”<sup>3</sup>. They have not alleged or furnished a resolution of either chamber<sup>4</sup> – notwithstanding *Silver v. Pataki*, 96 N.Y.2d 532, 539 (2001). Tellingly, they have furnished no statement, sworn or otherwise, for their failure to do so. That Mr. Garcia relies, exclusively, on Senate Rule III, §5 authorizing the Temporary Senate President to engage legal representation on behalf of the Senate to enforce and defend the rights, privileges, and prerogatives of the Senate only reinforces that where the interests of the Temporary Senate Presidents diverge from those of the Senate – as at bar – the client is the Senate<sup>5</sup>.

5. Despite my phone messages for Mr. Garcia on December 12 and 16, 2013, offering “valuable information”, and my phone messages for Mr. Kasowitz on December 16, and 17, 2013, neither they nor anyone on their behalf returned my calls.

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<sup>3</sup> In their related proceeding to quash the Commission’s subpoenas and for a protective order (#160935/2013), counsel purports in a footnote to their November 22, 2013 memorandum of law (#57) that the institutional plaintiffs include “those bodies’ individual members”. However, such does not appear in their Complaint herein, whose ¶9 seems to slip and reveal that the actual plaintiffs are “the leadership of the legislative branch of government”.

<sup>4</sup> See, my FOIL/ records request herein (Exhibits 1-7).

<sup>5</sup> The Attorney General’s challenge to plaintiffs’ standing is at pp. 52-55 of its January 10, 2014 memorandum of law in support of the Commission’s dismissal motion. See, also, plaintiffs’ February 21, 2014 reply memorandum (pp. 25-29).

6. In the interest of judicial economy, I rest on all the law presented by plaintiffs and defendants as to the standards governing intervention pursuant to CPLR §§1012 and 1013<sup>6</sup> – as it all supports the intervention herein sought. Pursuant to CPLR §1014, the “proposed pleading setting forth the claim...for which intervention is sought” accompanies this motion.

7. This intervention motion is timely, being made prior to the return date of all motions in this and the related proceedings. Pursuant to the April 4, 2014 so-ordered stipulation, the motions are all returnable on April 28, 2014.

8. I proceed by order to show cause, with a TRO, to stay the parties from filing a stipulation of discontinuance before that date or otherwise seeking dismissal based on mootness before this motion is heard. There is no prejudice to the parties by the granting of the TRO and no prior application for the same or similar relief has been made to this or any other Court.

9. For the convenience of the Court, a Table of Contents follows:

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<sup>6</sup> See plaintiffs’ November 27, 2013 memorandum of law in support of their intervention motions (p. 16-23); the Attorney General’s January 10, 2014 memorandum of law in support of the Commission’s dismissal motion (pp. 55-60).

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**The Proposed Intervener Has Direct, First-Hand Knowledge,  
Enabling Her to Expose the Parties’ Material Falsehoods and Conflicts of Interest**

10. Since shortly after Governor Cuomo issued his July 2, 2013 Executive Order #106 establishing the Commission (Exhibit A-1)<sup>7</sup>, with an assist by Attorney General Schneiderman at a press conference filled with rhetoric about the public for whose benefit it was created (Exhibit A-2), I have had direct, first-hand, and sustained interaction with defendants, both the full Commission and its three Co-Chairs.

11. Such enables me to attest to the material falsity of the Commission’s submissions to this Court, including its December 2, 2013 Preliminary Report<sup>8</sup>, designed to conceal the flagrantly invidious and selective reality of its nine-month operation in which it protected from investigation and prosecution a documentably corrupt Governor and Attorney General, as well as the plaintiffs herein and a “who’s who” of other top public officers and agencies, including those vested with investigative, supervisory, and prosecutorial powers – the predictable result of a Commission disrespecting the most basic conflict of interest rules it was seeking to enforce as to others.

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<sup>7</sup> As the same exhibits as support this affidavit support my proposed pleading, the exhibits are annexed to my accompanying proposed verified complaint.

<sup>8</sup> The Preliminary Report is Exhibit H to the January 10, 2014 affirmation of the Commission’s then Chief of Investigations, E. Danya Perry.

12. I also have had direct, first-hand, and sustained interaction with the Senate and Assembly, purported plaintiffs herein, and, in recent years, with plaintiffs Skelos, Klein, and Silver. As a consequence, I am also able to attest to the material falsity of their court submissions, designed to conceal the Legislature's actual corruption, emanating from its leadership, which the Commission was mandated to investigate, but did not because, *inter alia*, the Governor and Attorney General are active participants therein. This includes ¶8 of plaintiffs' complaint:

“The Legislature and its members are fully committed to ensuring that the state's laws are adequately preventing corruption and other improprieties...”

13. The particulars of my interactions with both plaintiffs and defendants are set forth by my accompanying proposed verified complaint, which, in the interest of judicial economy, I incorporate herein by reference.

**No Relevant Sworn Statements Support the Parties' Submissions,  
Except for the Affirmation of the Commission's Chief of Investigations  
Reflecting the Commission's Violation of Executive Order #106  
in the Authorization of Investigations**

14. By contrast to this sworn affidavit and my proposed verified complaint with its substantiating exhibits – all of which I incorporate by reference and whose recitations, where written by me, I swear to as true – the parties have essentially submitted no sworn statements attesting to the truth of the factual recitations their counsel have placed before the Court. Presumably, this is to avoid the penalties of perjury for factual assertions they know to be false.

15. Plaintiffs' November 22, 2013 complaint initiating this declaratory judgment action, signed by its three counsel, is not verified. No affidavits or affirmations have been filed by plaintiffs or their counsel attesting to the truth of the complaint's factual assertions or of the



factual assertions in counsel's February 21, 2014 memorandum of law in opposition to defendant Commission's dismissal motion.

16. As for defendant Commission, which, by virtue of Executive Law §63.8 is, in effect, an extension of the Attorney General's office, it is represented by Attorney General Schneiderman. It has furnished no sworn statement from any of its three defendant Co-Chairs attesting to the truth of the factual allegations in its January 10, 2014 memorandum of law in support of its dismissal motion, nor attesting to compliance with Executive Order #106, nor attesting to the fairness and impartiality of the Commission's operations, uninfluenced by the Governor and Attorney General, to whom, pursuant to Executive Law §63.8, "each" Commission member and deputy was required to furnish "a weekly report in detail".

17. The sole attestations of compliance are limited to the issuance of Commission subpoenas in the January 10, 2014 affirmation of E. Danya Perry, the Commission's then Chief of Investigations and a Deputy Attorney General (¶18).<sup>9</sup>

18. Perhaps the greatest value of Ms. Perry's affirmation is what it reveals about the Commission's violation of Executive Order #106 relating to investigations. Thus, Ms. Perry's ¶4 states: "...I pursue investigations approved by the Co-Chairpersons of the Commission" and her ¶5 states: "...Each of these investigations has been discussed by the full Commission, and approved unanimously by the Co-Chairpersons." (underlining added). Both seemingly indicate that the Commission's investigations were not launched by votes of the Commission's 25 members, but by only three: its Co-Chairs. Yet, Executive Order #106 does not confer the

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<sup>9</sup> Six weeks after the affirmation, Ms. Perry stepped down from her important position amidst rumors that she was "'frustrated' over interference from the governor's office and commission infighting" "*Chief Prober For Gov. Cuomo's Anti-corruption Commission Stepping Down*", February 28, 2014, *Daily News*, Ken Lovett. On the web, here: <http://www.nydailynews.com/blogs/dailypolitics/2014/02/chief-prober-for-gov-cuomos-anti-corruption-commission-stepping-down>.