

COURT OF APPEALS
STATE OF NEW YORK

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs-Appellants,

August 8, 2019

**NOTICE OF MOTION
to Strike as “Fraud on the
Court”, to Disqualify the
Attorney General, & for
Other Relief**

-against-

Mo. #2019-645 / Mo. #2019-646

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
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,

Defendants-Respondents.
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PLEASE TAKE NOTICE that upon the accompanying affidavit of the
unrepresented plaintiff-appellant ELENA RUTH SASSOWER, sworn to on August 8,
2019, the exhibits annexed thereto, and all the papers and proceedings heretofore had,
the unrepresented plaintiffs-appellants will move this Court at 20 Eagle Street, Albany,

New York 12207 on Monday, August 26, 2019, or as soon thereafter as the parties or their counsel can be heard for an order:

1. 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;
2. consistent with this Court’s decision in *Matter of Rowe*, 80 NY2d 336, 340 (1992), and *Greene v. Greene*, 47 NY2d 447, 451 (1979), disqualifying the Attorney General from representing her fellow respondents herein – with declarations that such representation is UNCONSTITUTIONAL, in addition to being unlawful, with a further declaration that the Attorney General’s taxpayer-paid representation belongs to appellants, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;
3. pursuant to Court-promulgated 22 NYCRR §130-1.1, et. seq., and consistent with this Court’s decision in *Matter of AG Ship Maintenance Corp v. Lezak*, 69 NY2d 1 (1986), imposing maximum costs and sanctions against Attorney General James and her culpable attorney-staff based on their June 27, 2019 Memorandum in Opposition and March 26, 2019 letter;
4. pursuant to Judiciary Law §487(1) and this Court’s decision in *Amalfitano v. Rosenberg*, 12 NY3d 8, 14 (2009), making such determination as would afford appellants treble damages in a civil action against Attorney General James and her culpable attorney-staff based on their June 27, 2019 Memorandum in Opposition and March 26, 2019 letter;

5. pursuant to Court-promulgated 22 NYCRR §100.3D(2) (Rules Governing Judicial Conduct) and the law review article “*The Judge’s Role in the Enforcement of Ethics – Fear and Learning in the Profession*”, St. Clara Law Review, Vol. 22 (1982), referring Attorney General James and her culpable attorney-staff for investigation and prosecution by:

 - (a) appropriate disciplinary authorities for their knowing and deliberate violations of Court-promulgated 22 NYCRR Part 1200 (Rules of Professional Conduct) and, specifically, Rule 1.7 “Conflict of Interest: Current Clients”; Rule 3.1 “Non-Meritorious Claims and Contentions”; Rule 3.3 “Conduct Before A Tribunal”; Rule 8.4 “Misconduct”; Rule 5.1 “Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers”; and Rule 5.2 “Responsibilities of a Subordinate Lawyer”;
 - (b) appropriate criminal authorities for their knowing and deliberate violations of penal laws, including, Penal Law §175.35 “offering a false instrument for filing in the first degree”; Penal Law §195 “official misconduct”; Penal Law §496 “corrupting the government in the first degree”/“public corruption” [PUBLIC TRUST ACT]; Penal Law §195.20 “defrauding the government”; Penal Law §190.65 “scheme to defraud in the first degree”; Penal Law §155.42 “grand larceny in the first degree”; Penal Law §105.15 “conspiracy in the second degree”; Penal Law §20 “criminal liability for conduct of another”;

6. pursuant to Article XIII, §5 of the New York State Constitution, taking the steps proscribed “by law for the removal for misconduct or malversation in office” of Attorney General James;
7. granting such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on plaintiff-appellant ELENA SASSOWER seven days before the return date by e-mail and regular mail, *to wit*, August 19, 2019.

Dated: White Plains, New York
August 8, 2019



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

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

TO: Attorney General Letitia James
The Capitol
Albany, New York 12224-0341

ATT: Solicitor General Barbara Underwood
Assistant Solicitor General Frederick Brodie
Assistant Solicitor General Victor Paladino

COURT OF APPEALS
STATE OF NEW YORK

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs-Appellants,

August 8, 2019

Moving Affidavit

-against-

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
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,

Defendants-Respondents.

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

ELENA RUTH SASSOWER, being duly sworn, deposes and says, under penalties of perjury:

1. I am the unrepresented individual plaintiff-appellant, fully familiar with all the facts, papers, and proceedings heretofore had in this monumental citizen-taxpayer action, brought “on behalf of the People of the State of New York & the

Public Interest”, challenging the constitutionality and lawfulness of the state budget – including the Judiciary budget and the commission-based judicial salary increases it embeds. I submit this affidavit in support of the relief sought by the accompanying notice of motion – and without prejudice to appellants’ contention that the Court’s associate judges are without jurisdiction to “sit” and “take any part” in this case in which they are interested, absent their addressing the threshold jurisdictional and disclosure/disqualification issues presented by appellants’ May 31, 2019 reargument/renewal motion – and by a reasoned decision comparable to the Court’s decision in *New York State Criminal Defense Lawyers v. Kaye*, 95 NY2d 556 (2000).

2. This motion follows my phone call to the Court’s motion clerk, Rachel MacVean, Esq., on July 3, 2019, stating that the Attorney General’s June 27, 2019 “Memorandum in Opposition to Motions for (i) Leave to Appeal; and (ii) Reargument/Renewal and Other Relief”, which I had just received, was “a fraud on the court” and that unless the Attorney General withdrew it, I would make a motion to strike it.

3. Thereupon, by a July 3, 2019 e-mail to Solicitor General Barbara Underwood and Assistant Solicitors General Victor Paladino and Frederick Brodie – which I requested be immediately forwarded to Attorney General Letitia James – I so advised all of them, further stating that I would also seek maximum sanctions, costs, damages, and disciplinary and criminal referrals of them (Exhibit A-1).

4. To this, Assistant Solicitor General Brodie promptly e-mailed back – copying only Assistant Solicitor General Paladino – stating that the June 27, 2019 memorandum was not fraudulent, that it was “based on case law and facts from the record” with “appropriate citations to both”, that it would not be withdrawn, and that any motion made to strike it would be opposed (Exhibit A-2).

5. I replied to Assistant Solicitor General Brodie by e-mail – copying Solicitor General Underwood, in addition to Assistant Solicitor General Paladino – as follows:

“The responses I am interested in are from Attorney General James, Solicitor General Underwood, and Assistant Solicitor General Paladino, in that order. I await their responses, by e-mail – and their signatures in communications to me and the Court.” (Exhibit A-3, underlining in the original).

6. Again, Assistant Solicitor General Brodie responded – again, copying only Assistant Solicitor General Paladino – stating:

“As you know, this matter has been assigned to me. Therefore, you should not expect responses to your emails from others in the Attorney General’s office.” (Exhibit A-4).

7. Indeed, I received no responses from them.

8. Consequently, appellants make this motion, furnishing, in substantiation, the annexed “legal autopsy”/analysis of the Attorney General’s June 27, 2019 memorandum in opposition (Exhibit B). Such “legal autopsy”/analysis, which I wrote and incorporate herein by reference, demonstrates that the Attorney General’s

memorandum is – as I had stated it to be (Exhibit A-1) – “from beginning to end, and in virtually every line, a ‘fraud on the court’”. I swear it to be true.

9. As for the law proscribing litigation fraud and furnishing safeguarding legal remedies, it is well known to Attorney General James, to Solicitor General Underwood, and to Assistant Solicitors General Paladino and Brodie. Appellants set it forth, again, and again, in memoranda of law that are contained in the record on appeal with which they are each familiar. In the interest of economy, appellants refer the Court to the pertinent portions of their four included memoranda of law [R.517-525 (September 30, 2016 memo of law); R.989-987 (May 15, 2017 memo of law); R.1376-1381 (August 25, 2017 memo of law); R.1152-1159 (May 16, 2014 memo of law)].

10. Notably, each of the memoranda of law begins with the identical quote from this Court’s unanimous May 8, 2014 decision in *CDR Creances S.A.S. v Cohen, et al.*, 23 NY3d 307, 318, defining “fraud on the court” as follows:

“Fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process ‘so serious that it undermines . . . the integrity of the proceeding’ (*Baba-Ali v State*, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting ‘a wrong against the institutions set up to protect and safeguard the public’ (*Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm’r Pat. 675 [1944]; *see also Koschak v Gates Const. Corp.*, 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1st Dept 1996][‘The paramount concern of this Court is the preservation of the integrity of the judicial process’]).” [R.474-477; R-925-926; R.1331; R.1126-27],

11. The decision – written by Associate Judge Jenny Rivera, the Court’s now senior associate judge and the only associate judge whose name appears on the May 2, 2019 Order *sua sponte* dismissing appellants’ appeal of right – adopted the “clear and convincing” evidentiary standard used by federal courts in determining “fraud on the court”, rejecting a higher “conclusive” evidence standard as running the risk of not sufficiently protecting against such fraud.

12. BOTH evidentiary standards are met, resoundingly, by appellants’ annexed “legal autopsy”/analysis of the Attorney General’s June 27, 2019 memorandum in opposition (Exhibit B). Likewise, BOTH evidentiary standards are resoundingly met by appellants’ April 11, 2019 letter entitled “Aiding the Court in Protecting Itself & Appellants’ Appeal of Right from the Litigation Fraud of the New York State Attorney General”. I also wrote that letter, constituting a “legal autopsy”/analysis of the Attorney General’s March 26, 2019 letter opposing appellants’ appeal of right. It is also annexed hereto (Exhibit C)¹, incorporated herein by reference, and I swear to its truth.

13. The Attorney General never responded to the April 11, 2019 letter – and her June 27, 2019 memorandum in opposition, which repeats the rebutted deceptions of her March 26, 2019 letter, contains but a single reference to it, at page 9, in passing,

¹ The April 11, 2019 letter is annexed without its four attached exhibits.

not denying or disputing its accuracy in any respect. This, notwithstanding appellants' May 31, 2019 reargument/renewal motion seeks from this Court, by its sixth branch:

“Pursuant to §100.3D(2) of the Chief Administrators Rules Governing Judicial Conduct, issuing a show cause order requiring Attorney General Letitia James, Solicitor General Barbara Underwood, Assistant Solicitor General Victor Paladino, and Assistant Solicitor General Frederick Brodie to respond to appellants' April 11, 2019 letter, as expressly sought in its concluding paragraph:

‘if the Attorney General [did] not promptly withdraw her fraudulent March 26, 2019 letter [urging the Court's *sua sponte* dismissal of the appeal of right] and take steps to secure independent counsel ‘to represent the interest of the state’ pursuant to Executive Law §63.1 and to disqualify herself based on her direct financial and other interests in the appeal’. (at pp. 15-16, underlining in the original).”

14. The Attorney General's ONLY response to this sixth branch, by her June 27, 2019 memorandum, is to conceal it, entirely.

15. This Court's rules give to the Attorney General a privilege accorded no one else: the right to file an *amicus curiae* brief, without leave (Rule 500.23) – reflective of the Attorney General's constitutional role, shared with the Court, in safeguarding the New York State Constitution.

16. The Attorney General's flagrant betrayal of this constitutional role, as EVIDENCED, *prima facie*, by her fraudulent March 26, 2019 letter and fraudulent June 27, 2019 memorandum in opposition – and compounded by her refusal to withdraw each, upon NOTICE – must, in the circumstances of this monumental case,

be rectified as Article XIII, §5 of the New York State Constitution provides: by the Attorney General’s “removal for misconduct or malversation in office” – relief sought by this motion’s fifth branch.

17. To the extent Article XIII, §5² and other provisions of our New York State Constitution for removing corrupt public officers, such as Article VI, §24,³ have become “window dressing”, it is due to the Attorney General’s derelictions and

² Article XIII, §5 reads, in full:

“Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.”

³ Article VI, §24 reads:

“The assembly shall have the power of impeachment by a vote of a majority of all the members elected thereto. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, neither the lieutenant- governor nor the temporary president of the senate shall act as a member of the court. No judicial officer shall exercise his or her office after articles of impeachment against him or her shall have been preferred to the senate, until he or she shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any public office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.” (underlining added).

Additional references to impeachment and/or removal appear, *inter alia*, in Article I, §6; Article III, §6; Article IV, §5; Article XIII, §13(a)(b); and Article VI, §§22-23, the latter specifically pertaining to judges.

malfesance and that of other constitutional officers – and this case stands to change that, dramatically.

18. As stated by the concluding paragraph of appellants' June 6, 2019 motion for leave to appeal, under the title heading "In Conclusion – This Court is Paid to Do Its Job":

“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.” (at p. 21, underlining in the original).

19. The “verified pleadings of this citizen-taxpayer action and the record thereon” are all posted on appellant CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link: “CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ and Unconstitutional ‘Three-Men-in-a-Room’ Governance”. The direct link to the webpage for this motion, from which everything is accessible, including the legal authorities cited by appellants’ notice of motion, is here:

<http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/8-8-19-strike.htm>.

20. Suffice to say, the Attorney General’s response to this motion must – like this motion – be sworn as true under penalties of perjury. And it must necessarily address appellants’ March 26, 2019 letter in support of their appeal of right AND its

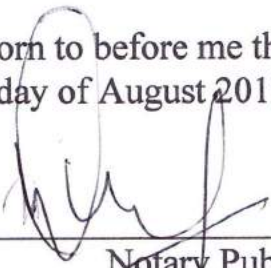
incorporated “legal autopsy”/analysis of the Appellate Division’s December 27, 2018 Memorandum and Order, as it is on them that appellants’ April 11, 2019 letter and May 31, 2019 and June 6, 2019 motions principally rest. I wrote both, swear to their truth, and now annex and incorporate them by reference (Exhibits D, E).⁴

21. The record before the Court shows that the Attorney General has not contested the accuracy of either – and her sole reference to them, in her June 27, 2019 memorandum in opposition, is at page 9, in passing, and only to appellants’ March 26, 2019 letter.



ELENA RUTH SASSOWER

Sworn to before me this
8th day of August 2019



Notary Public

ATUL N. MODI
Notary Public, State of New York
No. 01M06234649
Qualified in Westchester County
Commission Expires 1/24/20



⁴ Only two of the three attached exhibits to appellants’ March 26, 2019 letter are included: Exhibit A, the dissent of then Appellate Division, Fourth Department Associate Justice Fahey in *St. Joseph Hospital v. Novello*, 43 AD3d 139, 148 (2007); and Exhibit B, appellants’ ninth cause of action – “Three-Men-in-a-Room Budget Dealmaking is Unconstitutional, *As Unwritten and As Applied*”.

Also not included are the three attached exhibits to appellants’ “legal autopsy”/analysis of the Appellate Division’s December 27, 2018 Memorandum, most significantly, due to volume, its Exhibit B, appellants’ fourth and final motion to the Appellate Division, their November 27, 2018 order to show cause.

TABLE OF EXHIBITS

- Exhibit A-1: Appellants' July 3, 2019 e-mail (9:47 am) to Solicitor General Underwood, Asst. Solicitor General Paladino, & Asst. Solicitor General Brodie – “NOTICE: Your Fraudulent Opposition to Appellants' May 31, 2019 & June 6, 2019 Motions – CJA v. Cuomo Citizen-Taxpayer Action – Attention Required by Attorney General James, Personally”
- Exhibit A-2: Asst. Solicitor General Brodie's July 3, 2019 e-mail (11:18 am), with cc to Asst. Solicitor General Paladino – “RE: NOTICE...”
- Exhibit A-3: Appellants' July 3, 2019 e-mail (11:35 am) to Asst. Solicitor General Brodie, with cc to Solicitor General Underwood & Asst. Solicitor General Brodie – “Follow-Up: NOTICE...”
- Exhibit A-4: Asst. Solicitor General Brodie's July 3, 2019 e-mail (12:25 pm), with cc to Asst. Solicitor General Paladino – “RE: Follow-Up: NOTICE...”
- Exhibit B: Appellants' “Legal Autopsy”/Analysis of the Attorney General's June 27, 2019 “Memorandum in Opposition to Motions for (i) Leave to Appeal; and (ii) Reargument/Renewal and Other Relief”
- Exhibit C: Appellants' April 11, 2019 letter to Court Clerk Asiello – “RE: Aiding the Court in Protecting Itself & Appellants' Appeal of Right from the Litigation Fraud of the New York State Attorney General” (w/o exhibits)
- Exhibit D: Appellants' March 26, 2019 letter to Court Clerk Asiello – “RE: In Support of Appeal of Right: NYS Constitution, Article VI, §3(b)(1); CPLR §5601(b)(1)” (w/o Ex. C)
- Ex. A: dissent of then Appellate Division Justice Fahey in *St. Joseph Hospital v. Novello*, 43 AD3d 139, 148 (2007)
- Ex. B : appellants' ninth cause of action – “Three-Men-in-a-Room Budget Dealmaking is Unconstitutional, *As Unwritten and As Applied*”.
- Exhibit E: Appellants' “Legal Autopsy”/Analysis of the Appellate Division's December 27, 2018 Memorandum and Order (w/o exhibits)