

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director

November 1, 2019

New York State Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk & Legal Counsel John P. Asiello

RE: Records Request Pursuant to §124 of the Chief Administrator's Rules and F.O.I.L. (Public Officers Law, Article VI) –
(1) the Court's October 24, 2019 orders disposing of motions;
(2) your disqualification from *Center for Judicial Accountability, et al. v. Cuomo, et al.*;
(3) the Court's rules, regulations, and procedures governing disqualification of its staff

Dear Chief Clerk/Legal Counsel Asiello:

By three orders dated October 24, 2019, the Court purported to dispose of appellants' three motions in *Center for Judicial Accountability, et al. v. Cuomo, et al.*: (1) Mo. No. 2019-645; (2) Mo. No. 2019-646; (3) Mo. No. 2019-799.

These three orders were not signed by any judge or by you. Rather, they were signed by Deputy Clerk Heather Davis, who – pursuant to CPLR §2219(b) – and Chief Judge DiFiore's January 26, 2016 order of authorization consistent therewith – is empowered to sign Court of Appeals orders only in the event of your "absence or disability".

According to the Court's October 24, 2019 decision list: <https://www.nycourts.gov/ctapps/Decisions/2019/Oct19/DecisionList102419.pdf>, the Court decided 24 motions in 23 other cases on that date. Two days ago, upon my telephoning Motion Clerk Rachel MacVean, Esq. (518-455-7705) and asking whether Deputy Clerk Davis had signed any of these 24 other orders, she answered in the negative, stating that each had been signed by you.

Please confirm that this information is correct – or, pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], furnish me with a copy of any order disposing of any of these 24 other motions on the Court's October 24, 2019 decision list that you did not sign.

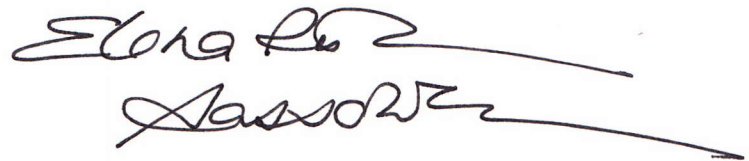
This is now the second time that you have not signed a Court order relating to *CJA v. Cuomo*. Of the nine orders on the Court's May 2, 2019 decision list dismissing appeals of right, "sua sponte, upon the ground that no substantial constitutional issue is directly involved", you signed every one, except for the Court's May 2, 2019 order *sua sponte* dismissing appellants' appeal of right in *CJA v. Cuomo* (SSD 23), which Deputy Clerk Davis signed.

As you plainly were not absent from the Court on either May 2, 2019 or October 24, 2019 – and just as plainly were not physically disabled, rendering you unable to sign – Deputy Clerk Davis could not lawfully sign the Court's May 2, 2019 and October 24, 2019 orders in *CJA v. Cuomo* unless you were disabled by disqualification. This would also explain why, notwithstanding this Court's Rule 500.10 and its "Civil Jurisdiction and Practice Outline" (at p. 8), vesting you with authority to screen appeals of right, it was Deputy Clerk Davis – not you – who signed the Court's March 4, 2019 *sua sponte* jurisdictional inquiry letter – and why she, not you, responded to my May 31, 2019 FOIL/records request, addressed to you.¹

Please, therefor, confirm that you, in fact, disqualified yourself from *CJA v. Cuomo* – and identify the reason. Alternatively, I request all records reflecting same – 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.

Pursuant to §124.6 of the Chief Administrator's Rules and Public Officers Law §89.3, your response is required "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

The image shows two handwritten signatures in black ink. The top signature is "Elena Rossi" and the bottom signature is "Asiello". Both signatures are written in a cursive, flowing style.

¹ My May 31, 2019 FOIL/records request is Exhibit A-2 to appellants' May 31, 2019 motion for reargument/renewal & vacatur, determination/certification of threshold issues, disclosure/disqualification & other relief. See ¶¶12-14.