SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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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,

-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.

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October 9, 2018

Reply Affidavit in Further Support of Appellants' Order to Show Cause to Disqualify the Court for Demonstrated Actual Bias & Other Relief

App. Div. 3rd Dept. Docket #527081
Albany Co. Index # 5122-16

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in this citizen-taxpayer action appeal, fully familiar with all the facts, papers, and proceedings heretofore had, and submit this affidavit in reply to defendant-respondents' September 24, 2018 "Memorandum in Response to Appellant's Motion for Disqualification, Reargument, and Renewal" – and in further support of the motion.

2. Such memorandum, signed by Assistant Solicitor General Frederick Brodie, on behalf of Attorney General Barbara Underwood, as "Attorney for Respondents", on which the name of Assistant Solicitor General Victor Paladino also appears, is yet a further example of litigation fraud by Mr. Brodie, condoned, if not directed, by supervisory/managerial attorneys up to and including the Attorney General herself, who, having NO legitimate defense to the appeal, are, as below, corrupting the judicial process. This Court's August 7, 2018 decision and order on motion – the subject of the instant motion – was, as stated at ¶13 of my September 10, 2018 moving affidavit, "a 'green light' endorsement of their litigation fraud" – and its consequence is now before the Court.

3. Prior to drafting this reply affidavit, I gave NOTICE to Mr. Brodie and supervisory/managerial attorneys, including Mr. Paladino and Attorney General Underwood, that the memorandum was "fraudulent, from beginning to end". My September 26, 2018 e-mail stated:

> "I hereby give NOTICE of [your] duty to withdraw the memorandum, so as to obviate the burden of my having to reply thereto and of the Court having to adjudicate its fraud and my entitlement to relief pursuant to 22 NYCRR §130-1.1, Judiciary Law §487, and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct." (Exhibit A-1).

Mr. Brodie's response, by his own September 26, 2018 e-mail – to which he copied Mr. Paladino, Attorney General Underwood, and the other supervisory/managerial attorneys – was:

> "I stand by the arguments in respondents' memorandum in opposition to your motion for reargument, renewal, and disqualification. I also stand by the arguments in respondents' brief on the merits. Neither the reply memorandum nor the brief will be withdrawn." (Exhibit A-2).[1]

[1] On September 21, 2018, Mr. Brodie filed respondents' brief on the appeal – and, on the same day, I gave NOTICE to him and supervisory/managerial attorneys, including Attorney General Underwood, that the respondents' brief, "from beginning to end, is 'a fraud on the court'" – and that their duty was to withdraw it. Mr. Brodie's September 21, 2018 response – also cc'ing supervisory/managerial attorneys, including Attorney General Underwood – was "I stand by the arguments in respondents' brief, and do not withdraw them".

Appellants will be moving to have the respondents' brief stricken and for other relief, pursuant to 22 NYCRR §130-1.1, Judiciary Law §487, and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, by separate order to show cause.

Suffice to say, Mr. Brodie's September 24, 2018 opposition memorandum repeats, including *verbatim,* deceits of his September 21, 2018 respondents' brief.

4. Consequently, this reply affidavit, having significantly burdened me and now this Court, is also submitted in support of relief pursuant to the cited provisions: 22 NYCRR §130-1.1, Judiciary Law §487, and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. The law pertaining to these provisions is part of the record on appeal, having been presented, repeatedly, below by appellants' reply memoranda of law in this citizen-taxpayer action [R.520-525; R.982-987; R.1376-1381; R.1287-1290] and its predecessor [R.1155-1159]. In the interest of economy, I refer the Court to them, further noting that §1250.1(d) of the Practice Rules of the Appellate Division, entitled "Signing of documents", expressly states:

> "The original of every hard copy document submitted for filing in the office of the clerk of the court shall be signed in ink in accordance with the provisions of section 130-1.1-a (a) of this Title."

5. Once again, as he did in opposing appellants' initial order to show cause, Mr. Brodie has not interposed any affidavit or affirmation in opposition to my own sworn affidavit, but, rather, a memorandum. He furnishes no explanation for proceeding in this fashion, on this motion – instead offering up a disingenuous, deceitful explanation for having done so on the initial motion, stating (at pp. 6-7):

> "Appellant is mistaken in arguing that respondents were required to submit an affirmation or affidavit in opposition to her motions. (Sassower Aff. ¶¶10, 14.) The August 2 Order to Show Cause directed respondents to 'show cause before this Court… why an order should not issue." Respondents complied by referring to the record on appeal (having submitted around 50 pages of excerpts) and citing relevant statutes and case law."

6. This is a deceit. The "around 50 pages of excerpts", which numbered 43 pages[2], were all part of the record on appeal and served no purpose but to mislead. All substantiate what I had

[2] The excerpts which Mr. Brodie annexed to his August 3, 2018 "Memorandum in Opposition" were as follows: 2 pages: appellants' September 2, 2016 verified complaint [R.87, R.100]; 11 pages: Judge McDonough's August 1, 2016 decision [R.315-325]; 4 pages: appellants' March 29, 2018 order to show cause, signed by Judge Hartman [R.635-638]; 3 pages: Chapter 60, Part E, of the Laws of 2015 [R.1080-

attested-to by my moving and reply affidavits and by the pleadings, each verified and sworn-to by me. This is what the Court would have so-found had its August 7, 2018 decision and order on motion made the determination required by CPLR §6313(c) as to appellants' entitlement to a preliminary injunction based on their sixth, seventh, and eighth causes of action – which it did not do.

7. In any event, Mr. Brodie's instant memorandum is no opposition, *as a matter of law*, as its bald assertions and generic argument, fashioned on material concealment and spiked with falsehood, are *insufficient* to rebut the particulars of my moving affidavit, none of which Mr. Brodie denies or disputes and all of which he conceals.[3] To enable the Court to more easily discern this – and to recognize how resoundingly Mr. Brodie's fraud reinforces appellants' entitlement to all four branches of relief sought on this motion[4] – below is a **"**legal autopsy"/analysis of his memorandum.

8. Mr. Brodie opens with a two-sentence **"Preliminary Statement" (at p. 1)**. His first sentence contains two deceits that pervade his memorandum:

1082]; and 23 pages: Dec. 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation [R.1083-1105].

[3] The law is clear that "failing to respond to a fact attested to in the moving papers…will be deemed to admit it", Siegel, New York Practice, 281 (4th ed. 2005, p. 464), citing *Kuehne v. Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 (1975), itself citing Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. "If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it". [R.476; R.930].

[4]

> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> "It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence §278 at 133 (1979). [R.477; 928].

- It conceals that appellants' motion seeks the disqualification of Presiding Justice Garry and Justices Egan, Devine, and Pritzker for "demonstrated actual bias, as manifested by [their] August 7, 2018 decision and order on motion" (appellants' osc, ¶1, underlining in the original);

- It conceals that appellants' "prior motion" that they are seeking to "renew or reargue" sought relief additional to "injunctive relief" – which is the only relief it identifies as having been denied.

His second sentence thereupon proclaims: "Appellant's motion is meritless, and the requested relief should be denied."

9. Mr. Brodie's then proceeds to his **"Argument" (at pp. 1-8) entitled "The Relief Sought in Appellants' Order to Show Cause Should be Denied"**. The four sections beneath it do NOT correspond to the four branches of relief requested by appellants' order to show cause. Missing, entirely, is any section pertaining to appellants' third branch:

> "transferring plaintiffs-appellants' perfected appeal to another judicial department or, alternatively, to the Court of Appeals for purposes of determining the constitutional issues directly involved, beginning with the constitutionality of adjudication by an actually-biased tribunal whose judges have *sub silentio* repudiated their mandatory disqualification/disclosure obligations pursuant to §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct" (osc, ¶3, italics in the original).

10. Mr. Brodie's entire response to this third branch is a single deceitful sentence in a paragraph predicated on deceit. The paragraph is the second in the **first section of his "Argument" (at pp. 1-4) entitled: "Presiding Justice Garry and Justices Egan, Devine, and Pritzker Need Not Recuse Themselves"**. Without identifying that the motion's basis for recusal – as stated by its first branch – is explicitly and solely the Court's "demonstrated actual bias, as manifested by its August 7, 2018 decision and order on motion", Mr. Brodie begins with a first paragraph (at p. 1) pertaining to Judiciary Law §14. Acknowledging that it requires that "A judge must recuse himself or herself from a case" in given circumstances, including where "interested", his second paragraph (at p. 2) then states:

> "Appellant does not show any of those conditions here. The only one remotely applicable – that the Justices are 'interested' in a case concerning judicial salaries – is overridden by the Rule of Necessity because any judge would face the same purported conflict. *Matter of Maron v. Silver*, 14 N.Y.3d 230, 248-49 (2010). Appellant implicitly recognizes the insufficiency of this purported conflict, since she asks that since she asks that the case be transferred to another department or the Court of Appeals, either of which would be equally affected. (See Sept. 10, 2018 Affidavit of Elena Ruth Sassower [Sassower Aff.] ¶2.)"

This is false. The basis for the motion's request for the Court's recusal is NOT Judiciary Law §14, but "demonstrated actual bias" – and this is the same basis upon which the motion seeks transfer to another Appellate Division or the Court of Appeals, neither "equally affected" by "demonstrated actual bias". Thus, Mr. Brodie one-sentence argument against transfer of the appeal is sham, resting on his deceit that it is predicated on something it is NOT.

11. As for Judiciary Law §14, my moving affidavit cites to it at ¶17 in the context of the motion's second branch for vacatur, stating:

> "Finally, because disqualification for financial interest is a mandatory disqualification under Judiciary Law §14, divesting the so-interested judge of jurisdiction, such also constitutes grounds for vacatur of the Court's August 7, 2018 decision pursuant to CPLR §5015(a)(4) for 'lack of jurisdiction'." (underlining in the original).

To this, Mr. Brodie offers not even a passing sentence – with knowledge of the black-letter law relating thereto, presented by appellants' memoranda of law below, contained in the record on appeal [R.515; R.974]:

> "It is long-settled that a judge disqualified by statute is without jurisdiction to act and the proceedings before him are void, *Oakley v. Aspinwall* [3 N.Y.547, 549 (1850), *Wilcox v. Arcanum*, 210 N.Y 370, 377 (1914), *Casterella v. Casterella*, 65 AD2d 614 (2nd Dept. 2978), 1A Carmody-Wait 2d §3:94."[5]

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[5] There are a myriad of authorities on the subject, including, 32 N.Y. Jurisprudence §43 (1963): "Effect when judge disqualified under statute":

> "A judge disqualified for any of the reasons set forth in the statute,[fn], or a court of which such judge is a member, is without jurisdiction, and all proceeding had before such a judge or court are void.[fn] In that situation, jurisdiction cannot be conferred by consent.[fn] Such a judge is even incompetent to make an order in the case setting aside his own void proceedings.[fn] It is not necessary, however, that a judgment rendered under such circumstances be set aside by an

12. This may also explain why Mr. Brodie here pretends (at pp. 2-4), including by his cited cases, that there is no "ground for legal disqualification under Judiciary Law §14" (at p 2), after expressly stating (at p. 2) that Judiciary Law §14 is only "remotely applicable" to the justices' interest "in a case concerning judicial salaries", describing it as a "purported conflict" "overridden by the Rule of Necessity". This is a brazen fraud.

First, there is nothing "purported" about the justices' huge financial interest in this case – making Judiciary Law §14 directly applicable. As stated at ¶5 of my July 24, 2018 moving affidavit in support of appellants' initial order to show cause:

> "Each associate justice of this Court currently has a $75,200 yearly salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action, with the current yearly salary interest of the presiding justice being $77,700. The consequence of the Court's determination in appellants' favor – which is the ONLY determination the record will support – is that the yearly salary of associate justices will nosedive from $219,200 to $144,000 and the yearly salary of the presiding justice will plunge from $224,700 to $147,600 – with each justice also subject to a 'claw-back' of the judicial salary increases he/she has collected since April 1, 2012 – those 'claw-backs', as of this date, already maxing at over $300,000[fn2], not counting 'claw-backs' of salary-based non-salary benefits."

The annotating [fn2] was as follows:

> "The climb in the yearly judicial salary for each of this Court's associate justices as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was $144,000, is, as follows: April 1, 2012: $168,600; April 1, 2013: 176,000; April 1, 2014: $183,300; April 1, 2015: $183,300. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $203,400; April 1, 2017: $205,400; April 1, 2018: $219,200.
>
> The climb in the yearly judicial salary for this Court's presiding justice as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was $147,600

> appellate court;[fn] such a disposition properly may be made by the court originally entertaining the proceeding, provided, of course, that the disqualified judge does not sit therein.[fn] …"

The cases cited by the final footnote begin with *Oakley v. Aspinwall*, *supra*.

> is, as follows: April 1, 2012: $172,800; April 1, 2013: 184,000; April 1, 2014: $188,000; April 1, 2015: $187,000. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $208,500; April 1, 2017: $210,500; April 1, 2018: $224,700."

Second, the "Rule of Necessity" does NOT permit an actually biased judge to sit. Rather, it permits a judge who suffers from a disqualifying interest shared by other judges to sit, so long as he is able to rise above his self-interest and adjudicate with impartiality – and this is what I stated at ¶6 of my July 24, 2018 moving affidavit on appellants' initial order to show cause and repeated before Justice Devine at the August 2, 2018 oral argument on the TRO,[6] without contest from Mr. Brodie then, thereafter, or here.

Third, the Court's August 7, 2018 decision not only repudiates, *sub silentio*, §§100.3E and 100.3F pertaining to judicial disqualification and "remittal of disqualification", but, additionally, the "Rule of Necessity" which it does not invoke either based on the justices' salary interest or any of the other interests and relationships specified by ¶5 of my July 24, 2018 moving affidavit which, to a greater or lesser degree, they share with other judges.

13. As to the "demonstrated actual bias" basis of appellants' motion for the Court's disqualification, Mr. Brodie's seven-paragraph first section (at pp. 1-4) contains only two paragraphs that are germane – and it is possible to read them and his other five[7] without recognizing that

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[6] My words at the August 2, 2018 oral argument were:

> "rule of necessity does not permit an actually biased judge to sit. It permits a judge who is interested, but who is able to rise above his interests, because every other judge is also interested – but that special judge who can say, yes, I have a vested interested, but, nonetheless, I do my duty because that is my job." (transcription, at p. 7: Exhibit B hereto).

The video of the oral argument is posted here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/8-2-18-oral-argument.htm. My transcription is annexed as Exhibit B.

[7] Mr. Brodie's seventh paragraph objects (at p. 4) that my "filing a misconduct complaint against the Justices who denied [my] motion" is "a tactic" to "create a conflict of interest" and compel recusal. This is

appellants' request for the Court's disqualification rests on such ground. His pertinent two paragraphs read (at pp. 3-4):

> "Here, the Court would act properly by fulfilling its obligation to decide this case. Appellant has tendered no 'demonstrable proof of bias,' *see Modica v. Modica*, 15 A.D.3d 635, 636 (2d Dep't 2005), beyond this Court's denial of her preliminary injunction motion. Bias 'will not be inferred' from adverse rulings. *Knight v. N.Y. State & Local Ret. Sys.*, 266 A.D.2d 774, 776 (3d Dep't 1999); *accord S.L. Green Props., Inc. v. Schaoul*, 155 A.D.2d 331 (1st Dep't 1989). '[T]he fact that a judge issues a ruling that is not to a party's liking does not demonstrate bias or misconduct.' *Gonzalez v. L'Oreal USA, Inc.*, 92 A.D.3d 1158, 1160 (3d Dep't), *lv. dismissed*, 19 N.Y.3d 874 (2012).
>
> The August 7 order is five sentences long and does not pass on the merits of appellant's claims. Her argument that the order somehow shows bias is 'mere speculation.' *Matter of Aaron v. Kavanaugh*, 304 A.D.2d 890, 891 (3d Dep't), *lv. denied*, 1 N.Y.3d 502 (2003)."[8]

This is utter fraud. The standard for disqualification for actual bias is, as Mr. Brodie's cited cases reflect, "demonstrable proof of bias" – and this is precisely what ¶¶7-14 of my September 10, 2018 moving affidavit particularize as to the August 7, 2018 decision – as to which nothing need be "inferred" or "speculat[ed] because it is laid out by those paragraphs establishing that the decision is not only, *on its face*, improper and legally and factually unsupported, but, when compared to the record before the Court, insupportable and not only a "criminal fraud", but "so totally devoid of

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false. The good and sufficient reasons for my filing my September 10, 2018 moving affidavit as a complaint to the Commission on Judicial Conduct is evident from the affidavit – and from my transmitting September 20, 2018 letter to the Commission, a copy of which is annexed hereto (Exhibit C) for the reason stated at page 8 thereof, *to wit*, "To give each of the four justices of the panel a 'head start' in furnishing the Commission with a 'written reply to the complaint'[fn]".

[8] These two paragraphs replicate paragraphs in Mr. Brodie's September 21, 2018 respondents' brief in its Point III-B section entitled "Justice Hartman Properly Denied Plaintiff's Disqualification Motion". The first, largely identical, comparably stated:

> "…plaintiff has tendered no 'demonstrable proof of bias,' *see Modica v. Modica*, 15 A.D.3d 635, 636 (2d Dep't 2005), beyond Justice Hartman's rulings (*See, e.g.*, R1009.) Bias 'will not be inferred' from adverse decisions. *Knight v. N.Y. State & Local Ret. Sys.*, 266 A.D.2d 774, 776 (3d Dep't 1999); *accord S.L. Green Props., Inc. v. Schaoul*, 155 A.D.2d 331 (1st Dep't 1989). '[T]he fact that a judge issues a ruling that is not to a party's liking does not demonstrate bias or misconduct.' *Gonzalez v. L'Oreal USA, Inc.*, 92 A.D.3d 1158, 1160 (3d Dep't), *lv. dismissed*, 19 N.Y.3d 874 (2012)."

evidentiary support as to render [it] unconstitutional under the Due Process Clause" of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). This includes with respect to its *sub silentio* denial of appellants' requested preliminary injunction – the only relief Mr. Brodie identifies here and elsewhere in his memorandum as sought by their prior motion. Mr. Brodie does not contest the accuracy of my ¶¶7-14, to which he does not cite and whose content he does not disclose, instead falsely characterizing appellants as complaining of "adverse rulings" not to their "liking", which is an indefensible distortion of what is here at issue.

14. Mr. Brodie's **second section of "Argument" (at pp. 4-7) is entitled "Appellant's Motion for Reargument and Renewal Should Be Denied"** – and is divided into two subsections.

The first subsection (at pp. 4-6) is titled "Reargument Should be Denied Because Appellant Fails to Show the Court Overlooked or Misapprehended Her Arguments". Its falsehood starts with the title. Indeed, this subsection does not reveal the basis for reargument, stated by my ¶16, to which it does not even cite. Having been preceded by my "legal autopsy"/analysis of the Court's August 7, 2018 decision at ¶¶7-14, my ¶16 identified that "the Court 'overlooked' all the facts, law, and legal argument presented by appellants' 'papers filed in support of the motion'", giving as an example that "none were identified or addressed by the Court's August 7, 2018 decision". Mr. Brodie does not contest this and makes no showing, or even claim, that the Court did not "overlook" appellants' presentation of fact, law, and legal argument even as to the only aspect of the decision he identifies – its denial of the preliminary injunction. Instead, he cites to (at p. 5) his own July 23, 2018 letter and August 3, 2018 memorandum and regurgitates their deceits, without revealing what my September

10, 2018 moving affidavit highlights: that they were so-exposed by my August 1, 2018 and August 6, 2018 reply affidavits – without adjudication by the August 7, 2018 decision.

Mr. Brodie's second subsection (at pp. 6-7) is titled "Renewal Should Be Denied Because Appellant Has Not Submitted Any New Facts or Law". This, too, is false – and Mr. Brodie again does not cite to the relevant paragraph of my affidavit, again ¶16 Such reveals his deceit in claiming that appellants base renewal on the August 7, 2018 decision – concealing here, as throughout his memorandum, the actual bias issue, asserted by my ¶16 to be a "supervening occurrence" that appellants' initial motion had been designed to prevent.

15. Mr. Brodie's **third section (at pp. 7-8) is "Appellant's Motion to Vacate the Decision Based on 'Fraud, Misrepresentation, or Other Misconduct' Should be Denied"**. Although he here cites to ¶13 of my moving affidavit pertaining to the requested vacatur for "fraud, misrepresentation, or other misconduct", he so conceals its content that he does not identify CPLR §5015(a)(3) or that appellants' entitlement is based on my August 1, 2018 and August 6, 2018 reply affidavits – whose accuracy is uncontested by him, including, their "legal autopsy"/analyses of his July 23, 2018 letter and August 3, 2018 memorandum to which he again refers the Court (at p. 7). The specifics furnished by those "legal autopsy/analyses" as to Mr. Brodie's litigation fraud – none addressed or adjudicated by the Court's August 7, 2018 decision – put the lie, resoundingly, to his pretense (at p. 8) that "Both submissions fell comfortably within the broad range of permitted advocacy".

16. Mr. Brodie titles his **fourth section (at p. 8) "Appellant has No Right to Additional Disclosure of the Justice' Personal Information"** – a title implying, falsely, that there has been some previous disclosure by the justices, when there has been none, nor even disclosure of appellants' request for disclosure – the first branch of relief sought by their initial order to show

cause, denied, *sub silentio*, by the justices' August 7, 2018 decision. This is the only place in Mr. Brodie's memorandum where he identifies any paragraph of appellants' instant order to show cause, ¶4, stating it "should be denied" because:

> "The authority cited, 22 N.Y.C.R.R. §100.3(F), provides that judges who disqualify themselves 'may disclose' the basis for disqualification on the record. It does not say they must do so. The rule does not provide any disclosure unless the judge has first decided that disqualification is necessary."

This is utterly deceitful – and Mr. Brodie furnishes not the slighted legal authority in support, not caselaw, nor any decision or other explication by the Commission on Judicial Conduct. Nor does he quote the plain language of §100.3(F) – and of §100.3(E), to which it relates – and supply a text-based explication of their meaning. All of this was furnished for him by appellants' instant motion – as likewise by their initial motion. The relevant paragraph of my moving affidavit on this motion is ¶11, to which Mr. Brodie does not cite and whose accuracy he does not contest.

17. On this motion, this Court's threshold duty, as it was on the initial motion, is to confront the key record reference my ¶11 furnishes, beginning with pages 25-28 of the "legal autopsy"/analysis, annexed as Exhibit Z to my August 1, 2018 reply affidavit, interpreting §§100.3(F) and 100.3(E) of the Chief Administrator's Rules Governing Judicial Conduct[9] – whose accuracy, obvious *on its face*, remains completely uncontested by Mr. Brodie in the record before this Court. Should the Court require further interpretive assistance, it must seek an advisory opinion from the Judiciary's own ethics committee or, better still, certify the question for the Court of Appeals, as it is of constitutional magnitude.

18. Certainly, too, as to this Court's other threshold duty, to ensure that lawyers appearing before it are not polluting the judicial process with litigation fraud – including the state attorney

[9] For the Court's convenience, those pages are the first exhibit to Exhibit C herein: appellants' September 20, 2018 conflict-of-interest/corruption complaint to the Commission on Judicial Conduct (fn. 7, *supra*).

general – this Court must also seek an advisory opinion or certify the question to the Court of Appeals, as to the mandatory directive and meaning of §100.3(D)(2), if it harbors the slightest doubt.

19. Finally, **Mr. Brodie's one-sentence "Conclusion" (at p. 9)**: "The relief sought in appellant's order to show cause should be denied in all respect", is his culminating fraud. As hereinabove demonstrated, the record before this Court establishes, *prima facie*, that respondents have NO defense to any of the four branches of appellants' order to show cause and that appellants are entitled to the granting of each, *as a matter of law*.

Elena Ruth Sassower, Unrepresented Plaintiff-Appellant

Sworn to before me this
9th day of October 2018

Notary Public

Jared Mailman
Notary Public, State of New York
NO. 04MA6131176
Qualified in Westchester County
Commision Expires on August 1, 20 21

TABLE OF EXHIBITS

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

I am the unrepresented individual plaintiff-appellant herein, over 18 years of age, and reside in the State of New York.

On October 9, 2018, I served a copy of Appellant Sassower's Reply Affidavit in Further Support of Appellants' Order to Show Cause to Disqualify the Court for Demonstrated Actual Bias & Other Relief

upon: Attorney General Barbara Underwood
The Capitol
Albany, New York 12224-0341

ATT: Assistant Solicitor General Frederick Brodie
Appeals & Opinions Bureau

by mailing same, first-class mail, at a U.S. post office within the State of New York at the address furnished by Assistant Solicitor General Brodie.

Prior thereto – and also on October 9, 2018 – I e-mailed a pdf to Assistant Solicitor General Brodie, as well as to supervisory/managerial attorneys in the attorney general's office, including Attorney General Barbara Underwood. The transmitting e-mail is attached.

ELENA RUTH SASSOWER

Sworn to before me this
9th day of October 2018

Notary Public

Jared Mailman
Notary Public, State of New York
NO. 04MA6131176
Qualified in Westchester County
Commision Expires on August 1, 20 21

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, October 9, 2018 11:12 AM
To: 'Jane Landes'; 'ecarey@nycourts.gov'; 'ad3clerksoffice@nycourts.gov'
Cc: 'Brodie, Frederick'; 'Barbara.Underwood@ag.ny.gov'; 'Paladino, Victor'; 'Janet.Sabel@ag.ny.gov'; 'Kent.Stauffer@ag.ny.gov'; 'Meg.Levine@ag.ny.gov'; 'Jeffrey Dvorin'; 'Brian.Mahanna@ag.ny.gov'; 'Alvin.Bragg@ag.ny.gov'; 'marty.mack@ag.ny.gov'; 'Matthew.Colangelo@ag.ny.gov'; 'Margaret.Garnett@ag.ny.gov'; 'manisha.sheth@ag.ny.gov'; 'Adrienne Kerwin'; 'Helena.Lynch@ag.ny.gov'
Subject: CJA v. Cuomo Citizen-Taxpayer Action Appeal: #527081 -- Appellants' Reply Affidavit in Further Support of OSC to Disqualify the Court for Demonstrated Actual Bias, Etc.
Attachments: 10-9-18-affidavit-with-exhibits-back-compressed-1.pdf

TO: Appellate Division Court Attorney Jane Landes

Following up our phone conversation on Friday afternoon. Thank you for extending me the courtesy of sending my reply affidavit to the Court, by e-mail, this morning. It is attached, as well as posted on CJA's website, here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/10-9-18-reply-aff.htm.

The original notarized reply affidavit, with affidavit of service – plus an affidavit of service for the October 12, 2018 order to show cause – will be express mailed later today, for delivery to the Court tomorrow.

Later in the week, I will send a further order to show cause addressed to respondents' fraudulent September 21, 2018 opposition brief, so-demonstrated by appellants' October 4, 2018 reply brief.

Again, thank you.

Elena Sassower, unrepresented plaintiff-appellant
On her own behalf, on behalf of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York and the Public Interest
914-421-1200

Appellate Division Docket #527081

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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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,

October 9, 2018

-against-

Albany Co. Index # 5122-16

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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Reply Affidavit in Further Support of Appellants' Order to Show Cause for the Court's Disqualification for Demonstrated Actual Bias, Vacatur of its August 7, 2018 Decision and Order on Motion, & Transfer of the Appeal to Another Judicial Department or to the New York Court of Appeals & Other Relief

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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

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