

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, October 12, 2018 12:14 PM
To: 'Barbara.Underwood@ag.ny.gov'
Cc: 'Jane Landes'; 'ecarey@nycourts.gov'; 'ad3clerksoffice@nycourts.gov'; 'Brodie, Frederick'; '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 -- ON-HOLD: Appellants' Fully-Submitted OSC to Disqualify the Court for Demonstrated Actual Bias, Etc.
Attachments: 10-9-18-reply-affidavit-17pp.pdf

TO: Attorney General Barbara Underwood

This is to advise that appellants' fully-submitted order to show cause to disqualify the Court for demonstrated actual bias and other relief is on-hold. The reason is to allow the parties to be heard with respect to the jurisdictional issue reflected by footnote 5 of my October 9th reply affidavit, to which I alerted Appellate Division, Third Department Court Attorney Jane Landes and Chief Motion Attorney Ed Carey in phone messages on October 9th and October 10th, culminating in a lengthy phone conversation yesterday afternoon with Court Attorney Landes.

Footnote 5 annotates my ¶11 pertaining to the fact that your September 24th "Memorandum in Response", submitted on your behalf by Assistant Solicitor General Frederick Brodie and his direct supervisor, Assistant Solicitor General Victor Paladino, does not even offer up a passing sentence concerning the requested vacatur of the Court's August 7, 2018 decision and order on motion pursuant to CPLR §5015(a)(4) for "lack of jurisdiction", arising from the justices' Judiciary Law §14 violation.

Footnote 5 reads:

"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[s] 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 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} ...' (underlining added).

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

The corresponding current treatise, 28 New York Jurisprudence 2nd §403 (2018) "Disqualification as causing a loss of jurisdiction", comparably reads:

“A judge disqualified for any of the statutory grounds, or a court of which such a judge is a member, is without jurisdiction, and all proceedings had before such a judge or court are void.^{fn} ... A disqualified judge is even incompetent to make an order in the case setting aside his or her own void proceedings.^{fn} However, it is not necessary that a judgment rendered under such circumstances be set aside by an appellate court.^{fn} Such disposition may properly be made by the court originally entertaining the proceeding, provided, of course, that the disqualified judge does not sit therein.” (underlining added).

Here, too, the final footnote leads off with *Oakley v. Aspinwall*, 3 N.Y.547 (1850) – and such footnote and the prior footnotes include citations to Appellate Division, Third Department decisions consistent therewith.

As highlighted by ¶12 of my October 9th reply affidavit, the four justices who rendered the August 7th decision and order on motion – Appellate Division, Third Department Presiding Justice Elizabeth Garry and Associate Justices John Egan, Jr., Eugene Devine, and Stanley Pritzker -- are not only absolutely disqualified pursuant to Judiciary Law §14, based on the particulars of their HUGE financial interest quoted therein from ¶15 of my July 24, 2018 moving affidavit in support of appellants’ original order to show cause, but, contrary to your “Memorandum in Response” (at p. 2), their Judiciary Law §14 violation – which you do not acknowledge as such-- is not “overridden by the Rule of Necessity”, which their decision did NOT even invoke.

What is your “legal opinion”? Do you agree that the four-judge panel is without jurisdiction to void its own void order – and that appellants’ fully-submitted order to show cause must be determined by other judges? Please advise both me and the Court by Monday, but which time I will be able to respond based on my further law library research.

For your convenience, my October 9th reply affidavit is attached. CJA’s webpage for the reply affidavit, with its exhibits, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/10-9-18-reply-aff.htm>. CJA’s webpage posting links to the full record before the Appellate Division – including your submissions -- is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-app-div.htm>.

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