

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

March 9, 2024

TO: Appellate Division, Second Department Attorney Grievance Committee  
for the Second, Eleventh, and Thirteenth Judicial Districts (AD2-AGC2)  
Chair Andrea E. Bonina, Esq.

FROM: Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)

RE: (1) Full Committee Reconsideration – AD2-AGC2 File No. K-134-24 – CJA’s January 29, 2024 conflict-of-interest/corruption complaint against the Commission on Legislative, Judicial and Executive Compensation attorney-member within the Committee’s jurisdiction;  
(2) Complaint against AD2-AGC2 Staff Counsel David Chandler, Chief Counsel Diana Maxfield Kears, and other attorney staff collusive in their fraud and conflicts of interest;  
(3) Oversight & Corrective Action by AD2-AGC2 Members, including pursuant to Rule 8.3(a) of New York’s Rules of Professional Conduct.

Pursuant to §1240.7(e)(3) of the [Rules for Attorney Disciplinary Matters](#), I file this written request for full Committee reconsideration of my January 29, 2024 complaint against the attorney member of the Commission on Legislative, Judicial and Executive Compensation, to which File No. K-134-24 was assigned by Committee staff.

## BACKGROUND

File No. K-134-24 is one of three complaints against the three attorney-members of the New York State Commission on Legislative, Judicial and Executive Compensation, each admitted in the Second Judicial Department, that I e-mailed simultaneously to the three Appellate Division, Second Department attorney grievance committees. The e-mails attached separate complaint forms for each of the attorneys: [Helene Blank, Esq.](#), [R. Nadine Fontaine, Esq.](#), and [Jeremy Weinstein, Esq.](#), plus [CJA’s January 18, 2024 Opposition Report](#) to the Commission on Legislative, Judicial and Executive Compensation’s December 4, 2023 misnomered “Final Report on Judicial Compensation”.

By a [January 30, 2024 letter](#) the chief counsel for AGC9 stated, with respect to a complaint identified only as File No. I-83-24, and without disclosing the reason, that it was being transferred to the Appellate Division, Third Department Attorney Grievance Committee (AD3-AGC).

By a [February 8, 2024 letter](#), this Committee’s staff counsel David Chandler stated, with respect to a complaint identified only as File No. K-134-24:

“This letter acknowledges receipt of your complaint dated January 29, 2024, regarding a Kings County attorney.

After a review, it has been determined that your claims do not state a complaint of professional misconduct warranting an investigation by the Committee.”

Although your efforts are appreciated, the Committee is unable to assist you.”

To this I responded by a [March 1, 2024 e-mail](#) stating:

“With regard to your mailed [February 8, 2024 letter](#) whose ‘Re’ clause reads ‘File No.: K-134-24’, please advise as to the identify of the ‘Kings County attorney’ against whom you are acknowledging my January 29, 2024 complaint and baldly purporting:

‘After a review, it has been determined that your claims do not state a complaint of professional misconduct warranting an investigation by the Committee.’

As reflected by the below January 29-30, 2024 e-mails, with the above-attached, I sent three complaints against three attorneys within the Appellate Division, Second Department’s disciplinary jurisdiction.

Also, is it inadvertent that your February 8, 2024 letter is not signed by Chief Counsel Diana Maxfield Kearse and does not inform me that §1240.7(e)(3) of the [Appellate Division Statewide Rules for Attorney Disciplinary Matters](#) gives me the right to make a ‘written request for reconsideration to the chair of the Committee’ within 30 days ‘of a Chief Attorney’s decision declining to investigate a complaint...’ Aren’t both required?

Please promptly advise, by e-mail.”

Staff Counsel Chandler’s response, by a [March 4, 2024 e-mailed letter](#), was to neither identify nor answer my questions and to advise, for the first time:

“you have the right to request reconsideration of our decision declining to investigate your complaint against the Kings County attorney within 30 days of our February 8, 2024 letter notifying you of that decision.”

As for Mr. Chandler’s failure to identify the name of the complained-against attorney who was File No. K-134-24, such was in face of two further March 1, 2024 e-mails from me: [the first](#), inquiring as to which was the complaint that AGC9 had transferred to AD3-AGC, and, the second, addressed to the attention of Chief Counsel Kearse and the other two AD2-AGC chief counsels, inquiring as to the unaccounted-for third complaint I had filed with them, and asking: “Which is it, who has it, and what is its status?”.

I received no response from Chief Counsel Kearse or the two other chief counsels – nor from AD3-AGC, a cc on the first of these two additional March 1, 2024 e-mails. .

\* \* \*

Staff Counsel Chandler’s February 8, 2024 letter does not identify Chief Counsel Kearse as having been the one to review and determine File No. K-134-24 – and pursuant to [§1240.7\(d\)\(1\)](#) only she had authority to decline to investigate it. Entitled “Disposition by the Chief Attorney”, it reads:

“(i) The Chief Attorney may, after initial screening, decline to investigate a complaint for reasons including but not limited to the following: (A) the matter involves a person or conduct not covered by these Rules; (B) the allegations, if true, would not constitute professional misconduct; (C) the complaint seeks a legal remedy more appropriately obtained in another forum; or (D) the allegations are intertwined with another pending legal action or proceeding. The complainant shall be provided with a brief description of the basis of any disposition of a complaint by the Chief Attorney.”

The “brief description” in the February 8, 2024 letter, that “[my] claims do not state a complaint of professional misconduct warranting an investigation” corresponds to §1240.7(d)(1)(i)(B): “the allegations, if true, would not constitute professional misconduct” – in other words, facial insufficiency of the complaint. This is a flagrant LIE – and, presumably, is the reason why Chief Counsel Kearse did not sign the letter – and why the letter leaves off the obligatory notification about reconsideration.

Indeed, the “Allegations” section of my completed complaint form – identical for Attorneys Blank, Fontaine, and Weinstein – reads:

“This is a conflict-of-interest/corruption complaint against attorney..., as one of seven members of the New York State Commission on Legislative, Judicial and Executive Compensation, for his knowing and deliberate violations of, *inter alia*:

- [Public Officers Law §74](#) ‘Code of Ethics’;
- [Penal Law §175.35](#): ‘Offering a false instrument for filing in the first degree’;
- [Penal Law §195](#): ‘Official misconduct’;
- [Penal Law §105.15](#): ‘Conspiracy in the second degree’;
- [Penal Law §20.00](#): ‘Criminal liability for conduct of another’;
- [Penal Law Article 496: ‘PUBLIC TRUST ACT’](#) –
  - [§496.06](#): ‘Public corruption’;
  - [§496.05](#): ‘Corrupting the government in the first degree’.

These constitute violations of [New York’s Rules of Professional Conduct](#) and, specifically, Rule 8.4 ‘Misconduct’ and Rule 8.3 ‘Reporting Professional Misconduct’ – over which the Appellate Division attorney grievance committees have jurisdiction.

The facts and evidence substantiating this complaint are set forth by CJA's accompanying January 18, 2024 Opposition Report to the Commission on Legislative, Judicial and Executive Compensation's misnomered December 4, 2023 'Final Report on Judicial Compensation'. The Opposition Report is filled with live hyperlinks to facilitate verification and, therefore, is best reviewed by pdf."

The cited-to [Rule 8.4\(b\) "Misconduct"](#) proscribes a lawyer from "engag[ing] in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer". The above penal law violations cited by the complaint and, more extensively, by the [Opposition Report \(at p. 38\)](#) constitute proscribed "illegal conduct". Indeed, they are almost exclusively felonies which, upon conviction, after a trial or by a plea, result in automatic disbarment, pursuant to [Judiciary Law §90\(4\)](#), whose pertinent provisions include:

- "a. Any person being an attorney and counsellor-at-law who shall be convicted of a felony as defined in paragraph e of this subdivision, shall upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.
- ...
- e. For purposes of this subdivision, the term felony shall mean any criminal offense classified as a felony under the laws of this state or any criminal offense committed in any other state, district, or territory of the United States and classified as a felony therein which if committed within this state, would constitute a felony in this state."

As is IMMEDIATELY evident from the most cursory review of the [Opposition Report](#), it establishes the penal law violations by evidence *so prima facie* and open-and-shut that there is NO defense to them. This is the real reason why the February 8, 2024 letter purports that the complaint does not "warrant investigation", as the first investigative step, pursuant to §1240.7(b)(2),<sup>1</sup> would be to "direct [the complained-against attorney] to provide a written response to the complaint". This would leave the attorney who is File No. K-134-24 with only one viable option: concede the truth of the Opposition Report and accept disbarment.

Penal Law §175.35: "Offering a false instrument for filing in the first degree" is a long-recognized ground for disbarment, utilized by this Committee to procure automatic disbarment for analogous federal charges. And the cases from which this is evident include the Appellate Division, Second Department's 2017 decision in [Matter of Gnoleba Seri](#), involving an application for automatic disbarment made by Chief Counsel Kearse, with Mr. Chandler "of counsel", with citations to the Court of Appeals 1977 decision in [Matter of Chu, 42 NY2d 490](#) and to its own decisions involving this Committee in [Matter of Tsirlina, 127 AD3d 1](#) (2015), [Matter of Gupta, 123 AD3d 164](#); (2014), and [Matter of Mengfei Yu, 117 AD3d 143](#) (2014).

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<sup>1</sup> §1247.b(2) authorizes the Chief Attorney to "direct the respondent to provide a written response to the complaint, and to appear and produce records before the Chief Attorney or a staff attorney for a formal interview or examination under oath".

Naturally, I would have no objection to your referring CJA's fully-documented and dispositive January 18, 2024 Opposition Report to State Attorney General Letitia James or to Albany County District Attorney P. David Soares, or to the district attorneys of Kings, Queens, or Richmond counties for purposes of securing the criminal convictions or guilty pleas for the automatic disbarment the Opposition Report mandates. Presumably, your procedure is to make such criminal referrals AFTER your receipt of the "written response" of the complained-against attorney. As manifest from the [Opposition Report](#), there will be little, if anything, that he/she will be able to contest.

As §1240.7(e)(3) authorizes you to refer a reconsideration request "to the full Committee", that is what is here required by the gravity of the attorney misconduct in File No. K-134-24, whose direct beneficiaries, financially and otherwise, are the Appellate Division, Second Department justices who appoint the chief counsel, staff, and members of its three attorney grievance committees (§1240.4, §1240.5). The multitudinous conflicts of interest presented by the January 29, 2024 complaint – bringing to the fore CJA's related predecessor attorney misconduct complaints, dumped by AD2's three attorney grievance committees – requires the collective participation of all this Committee's members to confront. Likewise, collective member participation is necessary for the "appropriate action" that must be taken with respect to the misconduct of Staff Counsel Chandler and Chief Counsel Kears, as hereinabove recited and reflected – and of colluding attorney staff.

As ALL AD2-AGC2 members are responsible for the frauds perpetrated in the Committee's name, please promptly forward this letter to all members so that they can IMMEDIATELY discharge the duties as committee members, including pursuant to [Rule 8.3\(a\) of New York's Rules of Professional Conduct](#), which you and they are charged with enforcing.

I am available to answer questions, including under oath. Meantime, I ask that the foregoing be deemed as sworn by me as true under the penalties of perjury.

By copy of this letter to [OCA Inspector General Kay-Ann Porter Campbell](#), whose office has jurisdiction over the Appellate Division attorney grievance committees, I call on her, likewise, to take belated investigative and corrective action, as is her duty.

For the convenience of all, CJA's website, [www.judgewatch.org](http://www.judgewatch.org), posts this letter and the correspondence above-recited and linked, on CJA's webpage for the three January 29, 2024 complaints to the three AD2-AGCs, [here](#).<sup>2</sup>

Thank you.

s/Elena Ruth Sassower

cc: OCA Inspector General Kaye-Ann Porter Campbell

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<sup>2</sup> Accessible *via* the left side panel link "Searching for Champions-NYS", by its menu option "Court-Controlled Attorney Grievance Committees".