

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Brodie, Frederick <Frederick.Brodie@ag.ny.gov>  
**Sent:** Friday, October 12, 2018 12:31 PM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Cc:** 'Jane Landes'; ecarey@nycourts.gov; Paladino, Victor; Underwood, Barbara  
**Subject:** RE: CJA v. Cuomo Citizen-Taxpayer Action Appeal: #527081 -- ON-HOLD: Appellants' Fully-Submitted OSC to Disqualify the Court for Demonstrated Actual Bias, Etc.

Dear Ms. Sassower,

I write in response to your email to Attorney General Underwood. Because this matter has been assigned to me, correspondence regarding the case is properly directed to me—not to the Attorney General or to other officials in this office.

Your most recent Order to Show Cause has been fully briefed and submitted. Unless the Court requests a surreply, respondents are not entitled to submit one. I note, however, that pages 2-3 of respondents' September 24, 2018 opposition memorandum dispose of the questions presented in your email.

Very truly yours,

Frederick A. Brodie  
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New York State Office of the Attorney General  
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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>  
**Sent:** Friday, October 12, 2018 12:14 PM  
**To:** Underwood, Barbara <Barbara.Underwood@ag.ny.gov>  
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**Subject:** CJA v. Cuomo Citizen-Taxpayer Action Appeal: #527081 -- ON-HOLD: Appellants' Fully-Submitted OSC to Disqualify the Court for Demonstrated Actual Bias, Etc.

**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 9<sup>th</sup> 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 9<sup>th</sup> and October 10<sup>th</sup>, culminating in a lengthy phone conversation yesterday afternoon with Court Attorney Landes.

Footnote 5 annotates my ¶11 pertaining to the fact that your September 24<sup>th</sup> “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,<sup>fn</sup> 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.<sup>fn</sup> In that situation, jurisdiction cannot be conferred by consent.<sup>fn</sup> Such a judge is even incompetent to make an order in the case setting aside his own void proceedings.<sup>fn</sup> It is not necessary, however, that a judgment rendered under such circumstances be set aside by an appellate court;<sup>fn</sup> 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.<sup>fn</sup> ...’ (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.<sup>fn</sup> ... A disqualified judge is even incompetent to make an order in the case setting aside his or her own void proceedings.<sup>fn</sup> However, it is not necessary that a judgment rendered under such circumstances be set aside by an appellate court.<sup>fn</sup> 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 9<sup>th</sup> reply affidavit, the four justices who rendered the August 7<sup>th</sup> 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 9<sup>th</sup> 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

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