

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

March 26, 2024

TO: Appellate Division, Second Department Attorney Grievance Committee
for the Ninth Judicial District (AD2-AGC9)
Chair Susan G. Yellen, Esq.

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

RE: (1) Full Committee Reconsideration – AD2-AGC9 File No. W-82-24 – 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-AGC9 Staff Counsel Glenn Simpson, Chief Counsel Courtney Osterling, and other attorney staff collusive in their fraud and conflicts of interest;
(3) Oversight & Corrective Action by AD2-AGC9 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 (3rd) Commission on Legislative, Judicial and Executive Compensation, disposed of by a [February 26, 2024 letter signed by Staff Counsel Glenn Simpson](#), which:

- does NOT alert me to my right to seek reconsideration ([§1240.7\(e\)\(3\)](#));
- conceals that the disposition made is NOT by “the Committee” and can ONLY be made by Chief Attorney Osterling ([§1240.7\(d\)\(1\)](#));
- is an outright LIE.¹

BACKGROUND

File No. W-82-24 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

¹ This repeats Staff Counsel Simpson’s misconduct in connection with my [October 14, 2016 complaint](#) involving the “false instrument” August 29, 2011 Report of the Commission on Judicial Compensation and the “false instrument” December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, chronicled, at that time, by my [December 23, 2016 reconsideration request](#).

Department attorney grievance committees. The e-mails attached separate complaint forms for each of the attorneys: [Jeremy Weinstein, Esq.](#), [R. Nadine Fontaine, Esq.](#), [Helene Blank, 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](#), Chief Counsel Osterling 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).

I responded by a [March 1 2024 e-mail](#) asking Chief Counsel Osterling to identify who was the complained-against attorney whose complaint she had transferred to AD3-AGC. I also sent her [a second March 1, 2024 e-mail](#), addressed to all three chief counsels of the three AD2 attorney grievance committees, stating that one of the three complaints I had filed with them was unaccounted-for. I asked: "Which is it, who has it, and what is its status?"

I received no answer from Chief Counsel Osterling to either March 1, 2024 e-mail. Yet, apparently, the unaccounted-for third complaint was W-82-24 – and the subject of Staff Counsel Simpson's February 26, 2024 letter, not e-mailed, but sent to me by postal mail to CJA's mailbox.

According to the letter:

"After reviewing [my complaint], it has been determined that it does not state a complaint of professional conduct."

This is a flagrant LIE – and presumably the reason why, unlike the January 30, 2024 letter transferring I-83-24 that Chief Attorney Osterling signed, she did not sign the February 28, 2024 letter disposing of W-82-24, without investigation, which, pursuant to [§1240.7\(d\)\(1\)](#), ONLY she is authorized to do. 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 Mr. Simpson's letter that my complaint "does not state a complaint of professional conduct" is §1240.7(d)(1)(i)(B): "the allegations, if true, would not constitute professional misconduct" – an utter LIE, obvious from my completed complaint form whose "Allegations" section – identical for Attorneys Weinstein, Fontaine, and Blank – 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 [her] 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 listed in the “Allegations” section of the complaint form 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 clear 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 26, 2024 letter purports that the complaint “does not state a complaint

of professional misconduct” – as the first investigative step, pursuant to §1240.7(b)(2),² 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.W-82-24 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, *In re Chu*, 42 NY2d 490 (1977), utilized by this Committee to procure automatic disbarment for analogous federal charges. As illustrative of Appellate Division, Second Department’s decisions granting this Committee’s motion to disbar on that ground:

- *In re Posner*, 60 AD2d 149 (1977);
- *In re Krup*, 136 AD2d 351 (1988);
- *In re Connery*, 157 AD2d 12 (1990);
- *Matter of Levine*, 7 AD3d 4 (2004);
- *Matter of Evans*, 58 AD3d 164 (2008);
- *Matter of Shepherd*, 66AD3d 14 (2008)
- *Matter of Griffiths*, 116 AD3d 117 (2014).

Naturally, I would have no objection to your referring CJA’s fully-documented and dispositive January 18, 2024 Opposition Report to Attorney General Letitia James, or to Albany County District Attorney P. David Soares, or to Westchester County District Attorney Miriam Rocah for purposes of securing the criminal conviction or guilty plea 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. W-82-24, 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 complaint requires the collective participation of all AD2-AGC9’s members to confront, as likewise to take the “appropriate action” to address the misconduct of Staff Counsel Simpson and Chief Counsel Osterling, as hereinabove recited and reflected – and of colluding attorney staff.

As ALL AD2-AGC9 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 their duties as members, including pursuant to [Rule 8.3\(a\) of New York’s Rules of Professional Conduct](#), which you and they are charged with enforcing.

² §1240.7(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”.

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, 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](#).³

Thank you.

s/Elena Ruth Sassower

cc: OCA Inspector General Kaye-Ann Porter Campbell

³ Accessible *via* the left side panel link "Searching for Champions-NYS", by its menu option "Court-Controlled Attorney Grievance Committees".