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April 11, 2024

TO: [Appellate Division, Third Department Attorney Grievance Committee \(AD3-AGC\)](#)
[Chair Scott J. Clippinger, Esq.](#)

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

RE: (1) [Full Committee Reconsideration](#) – CJA’s January 29, 2024 complaints against Commission on Legislative, Judicial and Executive Compensation attorney-members “TE” – presumably Theresa Egan, Esq. – and “RF” – presumably R. Nadine Fontaine, Esq.;

(2) [Complaint](#) against AD3-AGC Chief Attorney Monica Duffy and other attorney staff collusive in her fraud and conflicts of interest;

(3) [Oversight & Corrective Action by AD3-AGC 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:

- (1) [my January 29, 2024 complaint against “TE”](#), presumably Theresa Egan, Esq., the attorney-member of the Commission on Legislative, Judicial and Executive Compensation, against whom I filed a complaint with AD3-AGC; and
- (2) [my January 29, 2024 complaint against “RF”](#), presumably R. Nadine Fontaine, Esq., which I had filed with the Appellate Division, Second Department’s three attorney grievance committees and which, apparently, was the complaint that AD2-AGC9 transferred to AD3-AGC – so-notifying me by a [January 30, 2024 letter](#), without specifying the attorney whose complaint was being transferred.

By two March 19, 2024 letters, for [“TE”](#) and [“RF”](#),¹ each bearing the “Re” clause: “Notice of Determination Not to Investigate a Complaint” and which were identical except for the first one-sentence paragraph that differed only as to the dates of the complaint and the initials of the

¹ CJA’s website, www.judgewatch.org, contains a webpage pertaining to the handling of my January 29, 2024 complaints by AD3-AGC, from which all the correspondence herein referred-to and hyperlinked is accessible: <https://www.judgewatch.org/web-pages/searching-nys/attorney-discipline/jan-29-2024-complaint-fahey-etc/menu-ad-3.htm>. It can also be reached *via* the left-side link “Searching for Champions-NYS”, by its menu option “Court-Controlled Attorney Grievance Committees”.

complained-against attorney, AD3-AGC Chief Attorney Monica Duffy stated, in her second paragraphs:

“Please be advised that the function of the Attorney Grievance Committee is to investigate acts of professional misconduct committee by attorneys. When a complaint is received, it is reviewed to determine if the allegations involve behavior which could constitute professional misconduct by the attorney. An attorney may be found to have engaged in professional misconduct if it can be proven that an ethical rule or law was violated. If there is a sufficient basis to conduct an investigation, the matter will be assigned for investigation. However, pursuant to the Rules of Attorney Disciplinary Matters, §1240.7(d)(1)(i), there are instances where, after initial screening, the Chief Attorney may decline to investigate a complaint due to other reasons. After reviewing your complaint, it has been determined that it does not state a complaint of professional misconduct.”

The referred-to [§1240.7\(d\)\(1\)\(i\)](#) 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.”

Chief Attorney Duffy’s “brief description” is her single sentence, in each letter, “After reviewing your complaint, it has been determined that it does not state a complaint of professional misconduct” – and corresponds to §1240.7(d)(1)(i)(B): “the allegations, if true, would not constitute professional misconduct”. This is a flagrant LIE – and, presumably, the reason her letters do not reveal that it is she, not the Committee, who has made that indefensible determination.

As stated, identically, in the “Allegations” section of my [January 29, 2024 completed complaint form for Attorney Egan](#) and my [January 29, 2024 completed complaint form for Attorney Fontaine](#):

“This is a conflict-of-interest/corruption complaint against [Attorney Egan] [Attorney Fontaine], as one of seven members of the New York State Commission on Legislative, Judicial and Executive Compensation, for 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 cited by the complaint forms 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 [January 18, 2024 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 Chief Attorney Duffy has given me “notice” that the complaints were not being investigated, as the first investigative step, pursuant to [§1240.7\(b\)\(2\)](#),² would be to direct [Attorneys Egan and Fontaine] to provide their written responses to the complaint. This would leave each of them 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

² It 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”.

federal charges. Among the Appellate Division, Third Department decisions granting this Committee's motions for disbarment based on federal convictions or pleas: [Matter of Duker](#), 242 AD2d 853 (1997), cited by the Appellate Division, First Department's 2022 decision in [Matter of Ahern](#), 205 AD3d 196. [Matter of Duker](#) in turn cites to [Matter of Zumbo](#), 191 AD2d 805 (3rd Dept. 1993), which then cites to [Matter of Sparrow](#), 161 AD2d 829 (3rd Dept. 1990), citing to the 1977 Court of Appeals decision in [Matter of Chu](#), 42 NY2d 490.

Naturally, I would have no objection to your referring CJA's dispositive January 18, 2024 Opposition Report to State Attorney General Letitia James or to Albany County District Attorney P. David Soares for purposes of securing the criminal convictions or guilty pleas for the automatic disbarment it 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 Attorneys Egan and Fontaine 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 misconduct of Attorneys Egan and Fontaine, directly benefitting, financially and otherwise, the Appellate Division, Third Department justices who appoint Chief Attorney Duffy, Committee staff, Committee members and, apparently, yourself, as chair ([§1240.4](#), [§1240.5](#)). Collective member participation is necessary for the "appropriate action" that must be taken against Chief Attorney Duffy for her self-interested and knowingly false letters declining to investigate attorney misconduct that is automatically disbarable – as hereinabove recited – and by her further misconduct, as reflected by my e-mails to AD3-AGC:

- [my March 1, 2024 e-mail to AD2-AGC9's Chief Counsel](#), to which I cc'd AD3-AGC expressly so that it could answer my question as to the status of the complaint that AD2-AGC9 had transferred to it and of the complaint against Attorney Egan that I had filed with it directly – to which AD3-AGC's only response, 2-1/2 weeks later, was Chief Attorney Duffy's two March 19, 2024 letters – the subject of this reconsideration request;
- [my March 20, 2024 e-mail addressed to Chief Attorney Duffy](#), asking if "TE" was Theresa Egan and inquiring as to the tracking number assigned to my complaint against her;
- [my March 20, 2024 e-mail addressed to Chief Attorney Duffy](#), stating that I had not filed a complaint against an attorney with those initials "RF";
- a non-responsive [March 21, 2024 e-mail from an unidentified person at AD3-AGC](#);
- [my March 26, 2024 e-mail to AD3-AGC](#) entitled "What are your answers to my two March 20th e-mails, etc.?" – asking, by way of additional information, for the tracking number assigned to my complaint against R. Nadine Fontaine – presumably the "RF" – to which I received no response;

- [my March 26, 2024 e-mail to AD3-AGC](#) entitled “Your webpage for AD3 attorney disciplinary decisions”, whose message read:

“Following up my phone conversation with Amanda, moments ago, the Appellate Division, Third Department attorney disciplinary decisions for 2022, 2023, and 2024 are NOT accessible from your webpage: Court Decisions (nycourts.gov), by contrast to those for 2021 and 2020, which are.

Please advise.”

I received NO response to this e-mail – and the [AD3 disciplinary decisions for 2022, 2023, and 2024 remain inaccessible](#).

ALL AD3-AGC members are responsible for the frauds perpetrated in the Committee’s name and for verifying Chief Attorney Duffy’s profound self-interest in dumping my January 29, 2024 complaints by her “Notice[s] of Determination Not to Investigate” – as investigating them would readily reveal the fraud she committed by her “Notice[s] of Declination to Investigate” my prior fully-documented complaints, leading directly to the situation at bar:

- [my October 14, 2016 complaint against the Third Department’s district attorneys](#) for their conflict-of-interest-driven nonfeasance pertaining to the “false instrument” December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation and the “false instrument” August 29, 2011 Report of the Commission on Judicial Compensation – of which the district attorneys are financial beneficiaries;
- [my September 16, 2017 complaint against then Attorney General Eric Schneiderman and his complicit AG attorney staff](#) for their conflict-of-interest-driven corrupting of the judicial process, in Albany Supreme Court, in the citizen-taxpayer action *CJA v. Cuomo...DiFiore* and its predecessor, challenging, *inter alia*, the “false instrument” December 24, 2015 and August 29, 2011 Commission Reports, rewarded by fraudulent decisions of judges who are financial beneficiaries of the Reports;
- [my February 11, 2021 complaint against Attorney General James, Solicitor General Barbara Underwood, and complicit AG attorney staff](#) for their conflict-of-interest-driven corrupting of the judicial process, at the Appellate Division, Third Department and the Court of Appeals, in *CJA v. Cuomo...DiFiore*, rewarded by fraudulent decisions of those judges, all financial beneficiaries of the “false instrument” December 24, 2015 and August 29, 2011 Commission Reports – and for their conflict-of-interest-driven corrupting of the judicial process in lawsuits challenging the Committee on Legislative and Executive Compensation, whose “false instrument” December 10, 2018 Report, AG James is a direct financial beneficiary.

Upon review of this letter by all Committee members and the disqualification of those directly interested or biased by professional and personal relationships, the remaining members must discharge their duties with respect to the January 29, 2024 complaints, including pursuant to [Rule 8.3\(a\) of New York's Rules of Professional Conduct](#),³ 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 [UCS Inspector General Kay-Ann Porter Campbell](#), whose office has jurisdiction over the Appellate Division attorney grievance committees, I call on her to take belated investigative and corrective action, as is her duty.

Thank you.

s/Elena Ruth Sassower

cc: UCS Inspector General Kaye-Ann Porter Campbell

³ Rule 8.3, entitled "Reporting Professional Misconduct", reads, in its paragraph (a):

"A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation."