"LEGAL AUTOPSY"/ANALYSIS OF THE THREE AUGUST 14, 2024 DECISIONS OF RENSSELAER COUNTY COURT JUDGE JENNIFER SOBER

Center for Judicial Accountability, et al. v. Commission on Legislative, Judicial and Executive Compensation, et al.
Albany Co. #902654-24

"[A] plaintiff's cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.",
Link v. Wabash Railroad Co, 370 U.S. 626, 646 (1962),
U.S. Supreme Court Justice Hugo Black writing in dissent,
with Chief Justice Earl Warren concurring.

This analysis constitutes a "legal autopsy"[1] of the three August 14, 2024 decisions of Rensselaer County Court Judge Jennifer Sober (NYSCEF #79), (NYSCEF #80), (NYSCEF #81), each entitled "DECISION, ORDER, and JUDGMENT", purporting to determine "(Motion Sequence 1&2)", "(Motion Sequence 3)", and "(Motion Sequence 4)", respectively – and purporting to do so as an "Acting Supreme Court Justice".

As a matter of law – and threshold – these three decisions are nullities, irrespective of whether or not Judge Sober is an "Acting Supreme Court Justice",[2] as she was without jurisdiction to render them, pursuant to Judiciary Law §14, because she has direct financial and other interests in this lawsuit involving her judicial salary and the corruption infesting New York's judiciary, encompassing its "throwing" cases by fraudulent judicial decisions. She conceals this by her three fraudulent decisions "throwing" this case.

All three decisions upend ALL adjudicative standards and are "so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause" of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and, comparably, under Article I, §6 of the New York State Constitution, "No person shall be deprived of life, liberty or property without due process of law". So, too, are they criminal acts, violating a succession of New York's penal laws, including:

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[1] The term "legal autopsy" is taken from the law review article "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ('…Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like…' (p. 53)).

[2] To ascertain the facts, petitioners have made a FOIL request to the Unified County System (NYSCEF #86) and, additionally, a motion for renewal seeking the Court's own clarification as to same (NYSCEF #83).

Penal Law §195 ("official misconduct");
Penal Law §496 ("corrupting the government") – part of the "Public Trust Act";
Penal Law §195.20 ("defrauding the government");
Penal Law §175.35 ("offering a false instrument for filing in the first degree");
Penal Law §155.42 ("grand larceny in the first degree");
Penal Law §190.65 ("scheme to defraud in the first degree");
Penal Law §20.00 ("criminal liability for conduct of another").

Judge Sober's partner in crime, also having financial and other interests in this lawsuit, is Attorney General Letitia James, a respondent representing herself and her fellow respondents.[3] The first respondent is the New York State Commission on Legislative, Judicial and Executive Compensation, whose statutorily-violative, fraudulent, and unconstitutional "force of law" December 4, 2024 Report on Judicial Compensation underlies this lawsuit. The others respondents are the public officers to whom petitioners furnished a January 18, 2024 Opposition Report (NYSCEF #6) to assist them in discharging their "Discharge of Constitutional & Oversight Responsibilities": the Governor, Lieutenant Governor, Chief Judge, Chief Administrative Judge, Temporary Senate President, the Senate, Assembly Speaker, the Assembly, Attorney General, and Comptroller.

Having NO defense to the Opposition Report and this lawsuit based thereon, Respondent AG James corrupted the judicial process with litigation fraud, for which Judge Sober's fraudulent judicial decisions rewarded her and her co-respondents.

OVERVIEW – & EVIDENCE

Petitioners' written submissions for "Motion Sequences" 1-4, all accessible from the NYSCEF docket, are a "paper trail" establishing Respondent AG James' litigation fraud by her "of counsel" Assistant Attorney General Noah Engelhart and his supervisor Assistant Attorney General John Moore. Simultaneous with abetting the Commission in ducking service, their every filing was a "fraud on the court", This conduct, in "Motion Sequence 1&2", was the basis for "Motion Sequence 3", petitioners' April 3, 2024 motion for monetary sanctions and disciplinary and criminal referrals of Respondent AG James, her culpable staff and co-respondents, and to disqualify her from representing her co-respondents. To eliminate it, Judge Sober split it off into her "Motion Sequence 3" decision, denying it as "rendered moot" by her "Motion Sequence 1&2" decision which, without identifying a single allegation of petitioners' March 18, 2024 verified petition, granted Respondent AG James' March 26, 2024 "cross-motion" to dismiss it on grounds not specified, after impliedly denying petitioners' March 19, 2024 order to show cause for threshold relief. She then disposed of "Motion Sequence 4", Respondent AG James' unauthorized May 3, 2024 motion on behalf of the Commission, also to dismiss the verified petition, by concealing the ducking of service issue and granting the motion based on her decision in "Motion Sequence 1&2".

[3] For simplicity, respondents/defendants are referred to as respondents, the petitioners/plaintiffs are referred to as petitioners, and their verified petition/complaint is most frequently referred to as the verified petition.

Common to all three of these flimsy decisions is that they omit the most basic procedural history and identification of moving, opposition, and reply papers and their content. This, in addition to not identifying any of the content of the verified petition and any law pertaining to dismissal of a pleading. As for the requirement of CPLR §2219: "An order determining a motion made upon supporting papers shall…recite the papers used on the motion…", the three decisions reduce it to the same four words: "Papers Considered: *via NYCEF*", not even listing the NYSCEF numbers of the "papers used" within the motion sequences.

To falsely make it appear that the lawsuit is an Article 78 proceeding – and only an Article 78 proceeding – each decision utilizes Respondent AG James' falsified case caption and further falsifies it. Thus, whereas Respondent AG James had inserted into the caption the words "In the Matter of the Application of…For a Judgment Pursuant to CPLR Article 78 of the New York Civil Practice Law and Rules", leaving intact the party designations of "Petitioners/Plaintiffs" and "Respondents/Defendants", Judge Sober changes the party designations to "Petitioners" and "Respondents", which is what they would be if the lawsuit were not also a declaratory judgment action and citizen-taxpayer action, both of which it also is.

Other than the altered caption, the decisions do not identify that the lawsuit is an Article 78 proceeding or why, do not identify that it is a declaratory judgment action or why, do not identify that it is a citizen-taxpayer action or why, and do not identify that it is brought by petitioners, "on behalf of the People of the State of New York & the Public Interest". Indeed, **the decision in "Motion Sequence 1&2" seems to imply that the lawsuit is not a citizen-taxpayer action and would have no basis for being one – presumably because the citizen-taxpayer statute, by its terms, removes technical bars of prematurity and lack of standing, the implicit grounds for the decision's dismissing the verified petition.**

"Motion Sequence 1" is petitioners' "Order to Show Cause to Determine Threshold Issues, Including Preliminary Injunction with TRO" (NYSCEF #13) which Albany Supreme Court Justice Christina Ryba signed on March 19, 2024 (NYSCEF #17), removing from its title the words "to Determine Threshold Issues, Including Preliminary Injunction with TRO", striking the TRO, and making the order to show cause returnable a full ten days later, on March 29, 2024, before a to-be-assigned judge, which was Judge Sober. A full 3-1/2 months later, and after ignoring petitioners' June 17, 2024 and July 30, 2024 letters (NYSCEF #77, NYSCEF #78), inquiring as to whether there was any explanation for her inaction with respect to the March 19, 2024 order to show cause other than her "direct financial interest in this lawsuit", Judge Sober impliedly denied the order to show cause by the first of her August 14, 2024 decisions, simultaneous with granting Respondent AG James' March 26, 2024 "cross-motion" to dismiss the verified petition, which is "Motion Sequence 2".

The three threshold issues that petitioners' order to show cause had succinctly phrased – and which the first decision conceals and falsifies – are:

> "(a) transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law §14 divests every New

> York State justice and acting justice of jurisdiction because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof;
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> (b) determining that the unrepresented petitioners/plaintiffs are entitled to representation/intervention by the Office of the Attorney General, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A, *via* appointment of independent counsel;
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> (c) granting petitioners/plaintiffs a preliminary injunction to stay the 'force of law' judicial salary increase recommendations of the December 4, 2023 Report of Respondent Commission on Legislative, Judicial and Executive Compensation from taking effect on April 1, 2024 and enjoining disbursement of the $34,600,000 appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) based thereon".

As this first decision also conceals ALL the facts, law, and legal argument presented by petitioners' March 18, 2024 moving affidavit (NYSCEF # 14) and these suffice to establish what the subsequent record reinforces, namely, petitioners' entitlement to the granting of the three branches of their order to show cause and to summary judgment on the two causes of action of their verified petition and the granting of its specified "other and further relief mandated by the record herein" (NYSCEF #1) – its ten paragraphs are here reprinted, essentially in full:

> "1. …This affidavit is submitted in support of the accompanying order to show cause pertaining to threshold issues (NYSCEF #13).
>
> 2. The most threshold issue is the jurisdictional bar to this Court's hearing and determining this lawsuit wherein petitioners seek to prevent the Court – and every other state-paid justice and judge of the New York courts – from receiving salary increases, effective April 1, 2024, which they will, by 'force of law', as a result of the December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation (NYSCEF #4).
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> 3. Judiciary §14 is unequivocal:
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> > 'A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding…in which he is interested…'
>
> This more than disqualifies, it divests of jurisdiction. As stated by the Appellate Division, Third Department in *People v. Alteri*, 47 A.D.3d 1070 (2008):
>
> > 'A statutory disqualification under Judiciary Law §14 will deprive a judge of jurisdiction (*see Wilcox v. Supreme Council of Royal Arcanum*, 210 N.Y. 370, 377…[1914]; *see also Matter of Harkness*

> *Apt. Owners Corp. v. Abdus–Salaam*, 232 A.D.2d 309, 310… [1996])… In fact, ‘‘a judge disqualified under a statute cannot act even with the consent of the parties interested, because the law was not designed merely for the protection of the parties to the suit, but for the general interests of justice’ (*Matter of Beer Garden v. New York State Liq. Auth.*, 79 N.Y.2d 266, 278–279…[1992], quoting *Matter of City of Rochester*, 208 N.Y. 188, 192… [1913])’.

4. Nor is the jurisdictional bar overcome by ‘rule of necessity’ – as only judges having jurisdiction can invoke such judge-made doctrine – a fact *United States v. Will*, 449 U.S. 200, 210-211 (1980), makes evident[fn2] and 32 New York Jurisprudence §45 (1963) also reflects:

> ‘…since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,[fn] a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.[fn]’

5. Consequently, the only solution would be for the lawsuit to be transferred to federal court, as its judges are not beneficiaries of the judicial salary increases at issue.

6. Upon information and belief, there is no legal obstacle to the Court transferring the case in the circumstances at bar – or to respondents applying for its removal. Certainly, the Court should be able to rely on the Attorney General for a full briefing on transfer/removal to federal court, including pursuant to Article IV, §4 of the United States Constitution: ‘The United States shall guarantee every State in this Union a Republican Form of Government’.

7. Secondly, and just as threshold, is that petitioners are unrepresented by counsel and are entitled to the Attorney General’s representation/intervention pursuant to Executive Law §63.1 and State Finance Law Article 7-A (§123-A, §123-

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“fn2 The federal courts have NO analogue to Judiciary Law §14, which is why in *US v. Will*, involving federal judicial salaries, the U.S. Supreme Court could invoke “rule of necessity”, which it did after first reciting, under the title heading ‘Jurisdiction’, its jurisdiction and that of the lower courts to decide the case.

New York courts apparently recognize this, as in cases involving judicial self-interest, they cite NOT to the jurisdiction-stripping Judiciary Law §14, but to *US v. Will*, either directly or through other cases, so as to bootstrap the jurisdictional issue. Thus, the Court of Appeals decisions in *Maresca v Cuomo*, 64 N.Y.2d 242, 247, n.1 (1984), *Matter of Morgenthau v Cooke*, 56 N.Y.2d 24, 29 n.3 (1982), and *Maron v. Silver*, 14 N.Y.3d 230, 249 (2010). Similarly, the Appellate Division, Third Department’s *Maron v Silver*, 58 A.D.3d 102, 106-107 (2008).”

C, §123-D, §123-E). This is obvious from the most cursory examination of petitioners' January 18, 2024 Opposition Report on which this lawsuit rests (NYSCEF #6) – as there is NO DEFENSE to its demonstration of statutory violations and fraud by the Commission. Based thereon, petitioners have an open-and-shut, summary judgment entitlement to the relief their verified petition seeks, including its further relief:

> 'referral of all respondents to criminal authorities for the corruption and collusion established by petitioners' January 18, 2024 Opposition Report and by their correspondence, complaints, and testimony' (at p. 15).

8. Attorney General James is a respondent herein because of her violation of duties with respect to the Opposition Report, the accuracy and truth of which she has had two months to fully and completely verify – most importantly, the records of *CJA v. Cuomo…DiFiore, et al.* and *CJA v. JCOPE, et al.* – featured by [petitioners'] testimony at the Commission's October 13, 2023 hearing (NYSCEF #3) and by the Opposition Report. Those records are *prima facie* as to EXACTLY what occurred in each case, *to wit*, the Attorney General, a defendant representing her fellow defendants, had no legitimate defense, corrupted the judicial process with litigation fraud, and was rewarded by fraudulent judicial decisions.

9. Respondent Attorney General James must be required to disgorge her findings of fact and conclusions of law with respect to the Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel.

10. Finally, there is the threshold issue of petitioners' entitlement to a preliminary injunction to stay the judicial salary increases of the Commission's December 4, 2023 Report from acquiring 'the force of law' on April 1, 2024 and to enjoin disbursement of the $34,600,000 appropriation in Legislative/Judiciary Budget Bill S.8301/A.8801 based thereon (NYSCEF #5). As this lawsuit has a 100% likelihood of success on the merits based on petitioners' January 18, 2024 Opposition Report, and the equities are entirely in their favor inasmuch as the December 4, 2023 Report was procured by fraudulent advocacy of New York's judges before the Commission, injunctive relief is warranted to avoid the slightest possibility of any unrecoverable financial loss to the state resulting from disbursement." (hyperlinking, capitalization, and italics in the original).

On April 1, 2024, with Respondent AG James' "fraud on the court" litigation tactics already demonstrated by petitioners' March 29, 2024 reply affidavit in further support of their order to show cause (NYSCEF #33), Judge Sober reaped the financial benefit of her interest-driven nonfeasance. Her Rensselaer County Court judge salary jumped from $200,400 to $221,100 based on the "force of

law" December 4, 2023 Report (NYSCEF #47) – $101,300 of which was the product of the statutory violations, fraud, and unconstitutionality of that Report and the two predecessor commission reports on which it rests. These two predecessor reports, each survivors of prior lawsuits "thrown" by fraudulent judicial decisions rewarding Respondent AG's litigation fraud – so-identified and demonstrated in the record before her – meant that Judge Sober had an actual salary interest of more than half million dollars – this being her "claw-back" liability from the January 1, 2018 date she first started drawing a judicial salary to the March 29, 2024 return date of the order to show cause. (NYSCEF #84, ¶¶6-9).

Below is an analysis of Judge Sober's three August 14, 2024 decisions, preceded by a Table of Contents.

Table of Contents

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"DECISION, ORDER, and JUDGMENT (Motion Sequence 1&2)"
(NYSCEF #79)

This decision consists of five paragraphs, followed by two decretal paragraphs.

The first paragraph (p. 2) is three sentences, ostensibly setting forth what the decision will be determining.

The **first sentence** reads:

> "Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc. seek a preliminary injunction and an order for the following: (1) transferring these proceedings to federal court; (2) appointing independent counsel to Petitioners through the Office of the Attorney General; and (3) a stay in adopting the December 4, 2023 Report by the Commission on Legislative, Judicial and Executive Compensation by the New York State Legislature and enjoining the disbursement of certain appropriations as contemplated by bills in both the Senate and Assembly.

Not identified is that this is "Motion Sequence 1", petitioners' order to show cause signed by Justice Ryba on March 19, 2024 (NYSCEF #17). The summarization of its three branches is seemingly lifted from Respondent AG James' March 26, 2024 opposition to the order to show cause (NYSCEF #30, at p. 1) and replicates its deceits.

Thus, the description of the first branch of the order to show cause is correct, but only because it removes the jurisdictional issue that is the basis for the transfer, identified by the first branch. The description of the second branch is materially misleading as it did not request "appointing independent counsel to Petitioners through the Office of the Attorney General", but determination of the issue. As for the description of the third branch, it is materially false, as it did NOT seek to "stay" the Legislature's "adopting" of the Commission's December 4, 2023 Report because it was already adopted by "force of law", so-identified by the third branch.

The **second sentence** reads:

> "Respondents opposed and cross-moved to dismiss."

Not identified is that respondents' opposition and cross-motion were combined (NYSCEF #30), or that Respondent AG James' March 26, 2024 notice of cross-motion (NYSCEF #28), though indicating a March 29, 2024 return date, was, in fact, returnable on April 12, 2024, or that this is "Motion Sequence 2" for:

> "an order pursuant to CPLR 3211(a)(2), CPLR 3211(a)(7), CPLR 7804(f) and CPLR 3001 granting Respondents' motion to dismiss the Verified Petition/Complaint in its entirety, together with such other and further relief as may be just and proper".

The **third sentence** reads:

> "Thereafter, Petitioners cross-moved for summary judgment."

This is fraud, concealing, *in toto*:

- that on the March 29, 2024 return date of the order to show cause, petitioners filed a reply affidavit in further support (NYSCEF #33), asserting that Respondent AG James' opposition, as contained in her dismissal cross-motion, was a "fraud upon the court" – and demonstrating this by 17 pages of fact and law under the title heading "Respondents' Opposition to the Three-Fold Threshold Relief Sought by Petitioners' Order to Show Cause is Fraudulent". Its prefatory paragraph stated:

  > "8. Respondents' opposition to petitioners' order to show cause is NO opposition, *as a matter of law*, as it conceals the facts and law upon which petitioners' three branches of requested threshold relief rests – the accuracy of which it does NOT deny or dispute, substituting, instead, knowing and deliberate falsehoods." (capitalization and italics in the original);

- that on April 3, 2024, petitioners filed opposition papers to Respondent AG James' cross-motion to dismiss their verified petition, consisting of an opposition affidavit

(NYSCEF #38) and opposition memorandum of law (NYSCEF #48), demonstrating that the cross-motion was also a "fraud upon the court" and seeking summary judgment pursuant to CPLR §3211(c).

Under the title heading "Attorney General James' Cross-Motion to Dismiss the Verified Petition Must be Denied, *as a Matter of Law*" (pp. 2-8), petitioners' opposition memorandum of law presented 6 pages of law and legal argument, including this summarizing paragraph:

> "As Attorney General James rests her dismissal cross-motion, *in toto*, on her fraudulent opposition to the preliminary injunction, it is fraudulent for all the reasons already detailed by petitioners' March 29, 2024 reply affidavit, plus the reasons arising from her complete failure to furnish any briefing of the four statutory provisions on which she bases her dismissal cross-motion." (at p.3, underlining in the original).

Under the title heading "Petitioners Have a *Matter of Law* Entitlement to Summary Judgment Pursuant to CPLR §3211(c)", the memorandum of law presented 4 pages of law and legal argument (pp. 9-13), including:

> "Petitioners asserted, in their March 18, 2024 moving affidavit in support of their order to show cause (NYSCEF #14, at ¶¶7, 10), that 'obvious from the most cursory examination of [their] January 18, 2024 Opposition Report on which this lawsuit rests (NYSCEF #6) [is that] there is NO DEFENSE to its demonstration of statutory violations and fraud by the Commission' and that, based thereon, they 'have an open-and-shut, summary judgment entitlement to the relief their verified petition seeks' – 'a 100% likelihood of success on the merits'. They repeated this, at the March 21, 2024 oral argument on the TRO (NYSCEF #34, pp. 8-9, 20-24), with reinforcing caselaw from *CJA v. Cuomo…DiFiore* and *Delgado v. State of New York*, specifying, as to the latter, the Court of Appeals decision and, in particular, the concurring opinion of Respondent Wilson, then a Court of Appeals associate judge…
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> …
>
> The referred-to Court of Appeals decision in *Delgado*, rendered November 17, 2022, consisting of a three-judge plurality opinion and Respondent Wilson's concurring opinion that made it a majority, plus a two-judge dissenting opinion, is here.
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> There is NO difference between the plurality opinion, the concurring opinion, and dissenting opinion that statutory compliance is the *sine qua non* for any legislative delegation of power to a commission, agency, or other entity – of constitutional dimension even where the statutory legislative delegation does not bestow 'force

of law' power. As to 'force of law' statutory delegations of legislative power, deemed unconstitutional by the dissenters, the majority's holding of constitutionality is predicated on strict compliance to the statute by the entity to which the legislative delegation has been made, as the statute replaces the checks-and-balance safeguards of the constitutionally-ordained legislative process, dispensed with by the statute.

Respondent Wilson's dissent was for purposes of underscoring his constitutional concerns, which he stated to be overcome by the judiciary's strict scrutiny of compliance with the statute.

…

Undeterred Attorney General James here regurgitated her contrived, fraudulent no-citizen taxpayer-standing argument, without identifying its rejection in *Delgado* – and without identifying the Court of Appeals opinions therein as to the constitutional imperative of heightened judicial scrutiny of reports rendered pursuant to 'force of law' statutes, making further obvious that petitioners have a cause of action and grounds for declarations in their favor.

Under applicable legal principles, the deceit and fraud perpetrated by AAG Engelhart, in his 'of counsel' capacity to Respondent Attorney General James, reinforce petitioners' entitlement to summary judgment based on their January 18, 2024 Opposition Report (NYSCEF #6):

> 'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> 'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979)."

Petitioners never "cross-moved for summary judgment" – and the decision's assertion that they did is simply another import from Respondent AG James, this from page 1 of her April 11, 2024 reply

memorandum of law in further support of her dismissal cross-motion (NYSCEF #52) – the fraudulence of which petitioners established, line-by-line, by their "legal autopsy"/analysis of it (NYSCEF #62, pp. 3, 5) that was Exhibit A to their April 25, 2024 reply affidavit in further support of their April 3, 2024 motion for sanctions and other relief against Respondent AG James (NYSCEF #61, ¶¶10-11) – "Motion Sequence 3".

Obviously, had petitioners "cross-moved for summary judgment", it would have had a "Motion Sequence" number – and the decision would have added it to its "Motion Sequence 1&2" designation. This it does not do because the cross-motion does not exit.

The second paragraph (at p. 2) is a single sentence, pertaining to petitioner Center for Judicial Accountability, Inc., reading:

> "Preliminarily, all causes of action asserted on behalf of Petitioner Center for Judicial Accountability, Inc. are hereby dismissed as it is unrepresented by counsel as required by CPLR §321(a), and the Court will only address the claims of Petitioner Elena Ruth Sassower."

This is fraud – exported from Respondent AG James' opposition/cross-motion (NYSCEF #30, at p. 10), which urged dismissal of petitioner CJA's claims because it had no attorney representing it. Petitioners' March 29, 2024 reply affidavit (at ¶34) rebutted this, stating,

> "the corporate petitioner is entitled to the intervention/representation of the Attorney General, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A, based on petitioners' dispositive January 18, 2024 Opposition Report". (underlining in the original).

The truth of this is proven by the decision's concealment of the language of Executive Law §63.1 and omission of any mention of State Finance Law Article 7-A and its language, and of any mention of petitioners' January 19, 2024 Opposition Report and its content.

As for the assertion that the "Court will only address" petitioner Sassower's claims, this is also fraud, as the dismissal of petitioner CJA's claims is "of no consequence", as they are identical to petitioner Sassower's claims – and petitioners' March 29, 2024 reply affidavit (¶34) pointed this out.

The third paragraph (at p. 2) is four sentences, impliedly disposing of the first and second branches of petitioners' order to show cause.

The **first, second, and third sentences** pertain to the first branch of the order to show cause and read:

> "Petitioner claims that due to the inherent conflict on the part of this Court, this matter is required to be removed to federal court. The Court finds Petitioner's claim unavailing particularly given Petitioner's previous attempts to disqualify the

> Court. Pursuant to the Rule of Necessity, this Court is authorized to preside over this matter (*See*, *Center for Jud. Accountability, Inc. v. Cuomo, 167 A.D.3d 1406, 1408 [3rd Dept., 2018]; appeal dismissed, 33 N.Y.3d 993 [2019]; lv. dismissed & denied; 34 N.Y.3d 961 [2019]; Center for Jud. Accountability, Inc. v. NYS Joint Commission on Public Ethics et al., 228 AD.3d 1148 [2024])*."

These three sentences are frauds – and replicate, even more extremely, Respondent AG James' frauds with respect to the first branch (NSYCEF #30, at p. 4), exposed by petitioners' March 29, 2024 reply affidavit (NYSCEF #33, at pp. 3-5), as to which the decision makes no findings, in favor of this single sentence that:

- falsely purports an "inherent conflict on the part of this Court", which is unspecified because there is nothing "inherent" about financial and other interests in the subject matter of the lawsuit, concealed by these sentences;

- conceals Judiciary Law §14 and the jurisdictional issue pertaining to it and "Rule of Necessity";

- rests on the Appellate Division, Third Department's decisions in *CJA v. Cuomo…DiFiore* and *CJA v. JCOPE, et al.*, when neither decision identifies any jurisdictional issue pertaining to "Rule of Necessity";

- conceals that the Appellate Division's decision in *CJA v. Cuomo…DiFiore* is a judicial fraud, so-pleaded by petitioners' verified petition herein (NYSCEF #1, at ¶¶7, 23, 29), substantiated by links to the full record and by petitioners' "legal autopsy"/analysis of it (NYSCEF #35) and letter transmitting it to the Court of Appeals in support of their appeal of right (NYSCEF #36), both exhibits to their March 29, 2024 reply affidavit in further support of their order to show cause (NYSCEF #33);

- concealing that the Appellate Division's decision in *CJA v. JCOPE, et al*. is a judicial fraud, as to which petitioners' July 30, 2024 letter to Judge Sober (NYSCEF #78) gave implied notice by its links to the NYSCEF docket therein and petitioners' *sub judice* July 4, 2024 motion.

The **fourth sentence** pertains to the second branch of petitioners' order to show cause and reads:

> "Further, as previously held, Petitioner is not entitled to representation by independent counsel through via (sic) the Attorney General's Office under Executive Law §63(1) *(See, Center for Jud. Accountability, Inc. v. Cuomo at 1409)*."

This sentence is also fraud – and replicates Respondent AG James' fraud with respect to the second branch (NYSCEF #30, at pp. 4-6), exposed by petitioners' March 29, 2024 reply affidavit in further support of their order to show cause (NYSCEF #33, at ¶¶13-21). Here, too, the decision makes no

findings, in favor of this single sentence that does not identify State Finance Law, Article 7-A, nor the language of Executive Law §63.1, comparably not identified by the Appellate Division's decision in *CJA v. Cuomo…DiFiore*, and does not identify petitioners' January 18, 2024 Opposition Report, decisive of petitioners' entitlement to intervention/representation pursuant to the State Finance Law, Article 7-A and Executive Law §63.1 statutory provisions.

The fourth paragraph (at pp. 2-3) is four sentences and pertains to the third branch of petitioners' order to show cause, for a preliminary injunction.

The **first sentence** reads:

> "With respect to Petitioner's remaining requested relief, '[t]o obtain a preliminary injunction, a party 'must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor'' (*See*, *23 A Properties, Inc. v. New Mayfair Development Corp., 212 A.D.3d 900, 901 [3rd Dept., 2023] quoting Nobu Next Door, LLC v. Fine Arts Housing, Inc., 4 N.Y.3d 839, 840 [2005]).*" (hyperlinks added).

This is the standard boilerplate of the three-prong legal standard for a preliminary injunction that ¶10 of petitioners' March 18, 2024 moving affidavit reflected as having been met, and which they further established as met by all their subsequent submissions, beginning with their March 29, 2024 reply affidavit (NYSCEF #33), whose ¶7 also reiterated:

> "petitioners' request, appearing in their March 18th proposed order to show cause (NYSCEF #13), which [Justice Ryba] deleted, without a trace:
>
> > 'UPON ORAL ARGUMENT, the parties shall be ready to proceed to any EVIDENTIARY HEARING, with testimony taken, from the witness stand, under oath.'"

The **second sentence** reads:

> "At the outset, the Court finds Petitioner's challenge to the appropriations were (sic) not ripe for judicial review at the time of Petitioner's filing as neither bill had even left committee, much less been voted on by either the Senate or Assembly or been signed by the Governor into law."

This is fraud. Apart from the fact that the verified petition itself identified (NYSCEF #1, ¶¶27-29) that the Senate and Assembly bills had "left committee", unamended, and how the FY2024-2025 state budget was unfolding – which is precisely how it did unfold -- this second sentence replicates the "not ripe for judicial review" fraud of Respondent AG James' opposition/cross-motion (NYSCEF #30, pp. 6-7). Petitioners rebutted it, resoundingly, by their March 29, 2024 reply affidavit (NYSCEF #33, ¶¶24-28), April 3, 2024 opposing affidavit (NYSCEF #38, ¶¶14-15), and April 3, 2024 opposing memorandum of law (NYSCEF #48, at pp. 6-8) – with their memorandum of

law quoting the citizen-taxpayer statute for the proposition that it "encompasses prospective, anticipated, and impending misappropriation", *to wit*,

> "…its 'Legislative purpose', §123, which states:
>
> > 'It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer of employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided herein.' (underlining added).
>
> §123-b(1), which states:
>
> > 'Notwithstanding any inconsistent provision of law, any person, who is a citizen taxpayer, whether or not such person is or may be affected or specially aggrieved by the activity herein referred to, may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication or any illegal or unconstitutional disbursement of state funds or state property…' (underlining added).
>
> and §123-c(1), which states:
>
> > 'An action pursuant to this article shall be brought in the supreme court in any county wherein the disbursement has occurred, is likely to occur, or is occurring…' (underlining added)",

It ALSO highlighted the same with respect to the declaratory judgment action statute, stating:

> "So, too, are prospective, anticipated, and impending actions cognizable under the declaratory judgment action statute, CPLR §3001. Attorney General James misrepresents this in her 'set forth more fully above' 'Petitioners' claims are not ripe' section (at pp. 6-7), by her misleading, inapplicable quotation from *New York Public Interest Group v. Carey*, 42 NY2d 527, 531 (1977). Not quoted is the actual law, relevant at bar:
>
> > '…when a party contemplates taking certain action a genuine dispute may arise before any breach or violation has occurred and before there is any need or right to resort to coercive measures. In such a case all that may be required to insure compliance with the law is for the courts to declare the rights and obligations of the parties so that

> they may act accordingly. That is the theory of the declaratory judgment action authorized by CPLR 3001 *(James v Alderton Dock Yards,* 256 N.Y. 298; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3001, pp 355-357; 3 Weinstein-Korn-Miller, N Y Civ Prac, par 3001.02; Borchard, Declaratory Judgments, 9 Brooklyn L Rev, pp 1-3).
>
> Whether a judicial determination of this nature will have this effect is generally for the court to decide in the exercise of sound discretion (CPLR 3001). There are however certain basic principles. The fact that the court may be required to determine the rights of the parties upon the happening of a future event does not mean that the declaratory judgment will be merely advisory. In the typical case where the future event is an act contemplated by one of the parties, it is assumed that the parties will act in accordance with the law and thus the court's determination will have the immediate and practical effect of influencing their conduct (Borchard, Declaratory Judgments, pp 25-28, 75-76)."

As to all of this, the decision makes no findings, in favor of its single sentence, unsupported by ANY law and concealing that this lawsuit is both a citizen-taxpayer action and declaratory judgment action.

The **third sentence** reads:

> "Moreover, despite Petitioner's challenge to potential ***future*** legislation, the Court finds Petitioner lacks standing as she fails to allege a 'wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property' within the scope of State Finance Law §123-b(1) or how Petitioner has been directly affected by such legislation." (italics and bold in the original)

This is fraud, replicating the "lacks standing" fraud of Respondent AG James' dismissal/cross-motion (NYSCEF #30, pp. 7-10), rebutted, resoundingly, by petitioners' March 29, 2024 reply affidavit (NYSCEF #33, ¶¶29-31) and their April 3, 2024 opposing memorandum of law (NYSCEF #48, pp. 6-8).

Once again, Judge Sober makes no findings, in favor of this single sentence, falsely purporting that petitioners' have not "allege[d]" what they have, and falsely implying, without citation to ANY law, that petitioners were required to show how they had been "directly affected".

As to the not-cited-to LAW pertaining to being "directly affected", here's what petitioners' March 29, 2024 reply affidavit had to say in response to Respondent AG James' fraud on the subject pertaining to "Article 78 standing":

"29. …The applicable law is best seen from *Cox v. JCOPE*, a 2018 Albany Supreme Court decision in an Article 78 proceeding, citing Appellate Division, Third Department cases, wherein the Court stated:

> ''[s]tanding has been granted absent personal aggrievement where the matter is one of general public interest.' Police Conference of N.Y. v. Municipal Police Training Council, 62 AD2d 416, 417 (3d Dept. 1978). In such case, a 'citizen may maintain a mandamus proceeding to compel a public officer to do his [or her] duty.' Matter of Hebel v. West, 25AD3d 172, 176 (3d Dept. 2005)…see Matter of Schenectady County Benevolent Assn. v. McEvoy, 124 AD2d 911,912 (3rd Dept. 1986)…. the Court finds that the matter here is one of general public interest, and petitioners have standing to bring this proceeding.' (p. 5, hyperlinking added).

Indeed, in 1976, the Appellate Division, Fourth Department summed up the situation in *Albert Ella Bldg. Co. v. New York State Urban Dev. Corp.*, 54 A.D.2d 337, 342, stating:

> 'As a general rule, where a citizen, in common with all other citizens, is interested in having some act of a general public nature done, devolving as a duty upon a public body or officer refusing to perform it, the performance of such act may be compelled by a proceeding brought by such citizen against a body or officer. This is especially so where the matter involved is one of great public interest, and granting the relief requested would benefit the general public (24 Carmody-Wait 2d, N Y Civ Prac, §145.255). The office which the citizen performs is merely one of instituting a proceeding for the general benefit, the only interest necessary is that of the people at large *(People ex rel. Stephens v Halsey*, 37 N.Y. 344; 24 Carmody-Wait 2d, N Y Civ Prac, §145.255). Any citizen may maintain a mandamus proceeding to compel a public officer to do his duty *(Matter of Cash v Bates*, 301 N.Y. 258; *Matter of Andresen v Rice*, 277 N.Y. 271; *Matter of McCabe v Voorhis*, 243 N.Y. 401; *Matter of Yerry v Goodsell*, 4 A.D.2d 395, 403 affd 4 N.Y.2d 999). … Standing has been granted absent personal aggrievement where the matter is one of general public interest (8 Weinstein-Korn-Miller, N Y Civ Prac, par 7802.01, n 2).'" (hyperlinking in the original).

As to Judge Sober "find[ing]" that petitioners "fail[ed] to allege a 'wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property", this is fraud. The second cause of action makes the allegations that are purported

as not alleged, twice, including in its title, reading, in full:

> **"The $34,600,000 Line-Item Appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 for Judicial Salary Increases Based on the December 4, 2023 Report Must Be Stricken as a Wrongful Expenditure, Misappropriation, Illegal, and Unconstitutional**

37. Petitioners repeat, reiterate, and reallege ¶¶1-36, with the same force and effect as if more fully set forth herein.

38. The $34,600,000 line-item appropriation at pages 18-19 of Governor HOCHUL's Legislative/Judiciary Budget Bill #S.8301/A8801 (Exhibit D) reads:

> 'For expenses necessary to implement the recommendations of the commission on legislative, judicial and executive compensation pursuant to chapter 60 of the Laws of 2015, as amended by Part WW of chapter 55 of the Laws of 2020, for adjustment of the salaries of judges and justices of the unified court system effective April 1, 2024'.

39. As such 'recommendations' are the product of fraud and flagrant violations of Chapter 60, Part E, of the Laws of 2015 that are conditions precedent for salary increase recommendations, so-proven by petitioners' January 18, 2024 Opposition Report (Exhibit E), the $34,600,000 line-item is a wrongful expenditure, misappropriation, illegal, and unconstitutional – and must be stricken, as State Finance Law Article 7-A provides. (bold in the original, underlining added).

Correspondingly, petitioners' "Prayer for Relief"/WHEREFORE clause seeks:

> "As to the second cause of action: for a declaration, pursuant to State Finance Law Article 7-A, that the $34,600,000 line-item appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) for judicial salary increases is a wrongful expenditure, misappropriation, illegal, and unconstitutional, so-proven by petitioners' January 18, 2024 Opposition Report – and striking it" (NYSCEF #1, p. 15) first underling in the original, second underling added).

The foregoing, from the verified petition, was materially quoted by petitioners' April 3, 2024 opposing memorandum of law (NYSCEF #48, pp. 6-7), in its exposition of the fraud of Respondent AG James' cross-motion.

The **fourth sentence** reads:

> "Accordingly, Petitioner fails to demonstrate any likelihood of success on the merits and danger of irreparable injury to obtain a preliminary injunction.

This is fraud. Petitioners' March 18, 2024 moving affidavit stated (at ¶10) "this lawsuit has a 100% likelihood of success on the merits based on petitioners' January 18, 2024 Opposition Report" – and the decision itself proves it by:

(1) concealing ALL the allegations of the verified petition, including of the Opposition Report, whose very existence is nowhere mentioned;

(2) concealing ALL the facts, law, and legal argument that petitioners' March 18, 2024 moving affidavit particularizes and making NO findings of fact and conclusions of law with respect to the record thereon in "Motion Sequence 1";

(3) making NO findings of fact and conclusions of law with respect to petitioners' request for summary judgment, by their April 3, 2024 opposition to Respondent AG James' dismissal cross-motion in "Motion Sequence 2";

As for "danger of irreparable injury", petitioners' March 18 2024 moving affidavit (at ¶10) also identified the possibility of "unrecoverable financial loss to the state resulting from disbursement". The record is devoid of even a claim by respondents that disbursement would be recoverable, fully or otherwise – and such constitutes irreparable injury. *Mar v. Liquid Mgt. Partners, LLC*, 880 NYS2d 647, 648 (AD2d 2009): "Where the plaintiffs can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief (*see Dana Distribs., Inc. v. Crown Imports, LLC*, 48 AD3d 613, 613-614…; *Price Paper Twine Co. v. Miller*, 182 AD2d 488, 750)."

Notably, the decision here conceals the third prong for a preliminary injunction – balancing of the equities – although petitioners' March 18, 2024 moving affidavit (at ¶10) addressed it, stating, "the equities are entirely in petitioners' favor inasmuch as the December 4, 2023 Report was procured by fraudulent advocacy of New York's judges before the Commission." The record is devoid of any contradiction to this – and it is evidentiarily established by petitioners' Opposition Report (NYSCEF #6, p. 5), to which the decision makes no reference.

The fifth paragraph (at p. 3), a single sentence, reads:

> "The Court has reviewed Petitioner's remaining contentions and finds them to be without merit."

This is fraud. ALL petitioners' "contentions" are concealed and NOT determined by the decision – and petitioners' so-called "remaining contentions" are not only meritorious, but DISPOSITIVE, which is why the decision does not specify a single one.

High on the list of petitioners' "contentions" is certainly Respondent AG James' litigation fraud by her opposition to petitioners' order to show cause in "Motion Sequence 1" and by her March 26, 2024 dismissal cross-motion that is "Motion Sequence 2", involving, as well, her collusion with the Commission in its dodging of service, identified throughout "Motion Sequence 1&2", beginning with petitioners' March 29, 2024 reply affidavit (NYSCEF #33, at ¶40).

The concluding two decretal paragraphs (at p. 3):

> "Therefore, it is hereby
>
> **ADJUDGED** that Respondents' 'Notice of Cross-Motion' to dismiss is hereby granted; and it is further
>
> **ADJUDGED** that Petitioners' 'Verified Petition/Complaint' is dismissed and the relief requested therein is in all respects denied." (underlining added)

This is fraud – and it starts with the prefatory "Therefore, it is hereby", as petitioners' "Motion Sequence 1" order to show cause, to which essentially ALL the decision is devoted, is NOT denied by either of the two decretal paragraphs. Rather, both decretal paragraphs pertain to Respondent AG James' "Motion Sequence 2" dismissal cross-motion, whose only prior reference in the decision is in the first paragraph sentence "Respondents oppose and cross-move to dismiss". Altogether missing from the decision are any specifics about the dismissal cross-motion, any mention of opposition to it, nothing about the grounds upon which the cross-motion would here be granted, nor even prior mention of the "Verified Petition/Complaint", all of whose allegations are concealed, including that it presents two causes of action. Impliedly, the grounds upon which the cross-motion is here granted and the "Verified Petition/Complaint" dismissed are prematurity and lack of standing – the same as the fourth paragraph fraudulently purports to be why petitioners are not entitled to a preliminary injunction.

As for the unexplained quotes around "Notice of Cross-Motion" in the first decretal paragraph, it is presumably because respondents' cross-motion was NOT returnable on the same March 29, 2024 date as petitioners' order to show cause, and, therefore, NOT properly a cross-motion to it – an issue flagged at the outset of petitioners' March 29, 2024 reply affidavit and April 3, 2024 opposing affidavit and memorandum of law, and which, by the decision's use of quotes, it here seemingly concedes.

As for the unexplained quotes around petitioners' "Verified Petition/Complaint" in the second decretal paragraph, the ONLY explanation is to conform to the decision's fraud that the lawsuit is an Article 78 proceeding – nothing more – accomplished by its false caption for the lawsuit.

Finally, because petitioners' lawsuit is a declaratory judgment and citizen-taxpayer action, it could not be simply "dismissed", as Respondent AG James had urged and as the decision here does. It required declarations – and petitioners pointed this out by their March 29, 2024 reply affidavit.

(NYSCEF #33, ¶41).

"**DECISION, ORDER, and JUDGMENT (Motion Sequence 3)**"
(NYSCEF #80)

This decision, of three paragraphs, pertains to "Motion Sequence 3", which is petitioners' April 3, 2024 "Notice of Motion for Relief against Attorney General James including Disqualification, Upon Transfer to Federal Court" (NYSCEF #49).

The first paragraph is two sentences, ostensibly setting forth what the decision will be determining:

The first sentence reads:

> "Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc., subsequent to their request for a preliminary injunction, seek a (sic) order for the following: (1) costs and sanctions against the Office of the Attorney General; (2) to disqualify the Office of the Attorney General; and (3) to transfer the proceeding to federal court." (underlining added).

This is fraud, making it falsely appear that petitioners' so-called "subsequent" motion was unrelated to their "request for a preliminary injunction", *to wit*, their March 19, 2024 order to show cause, when the opposite is the case. Thus, the April 3, 2024 notice of motion sought an order:

1. pursuant to 22 NYCRR §130-1.1 *et seq.*, imposing costs and maximum sanctions upon Respondent Attorney General Letitia James, her "of counsel" Assistant Attorney General Noah Engelhart, other culpable AG staff, and co-respondents for their opposition to petitioners' March 19, 2024 order to show cause, combined with their March 26, 2024 cross-motion to dismiss petitioners' March 18, 2024 verified petition – such being not merely 'frivolous', but 'fraud on the court';

2. pursuant to Judiciary Law §487(1), making such determination as would afford petitioners treble damages in a civil action against Respondent Attorney General James, *et al.* based on their March 26, 2024 opposition/dismissal cross-motion, and, additionally, for Assistant Attorney General Engelhart's fraud at the March 21, 2024 oral argument in opposition to petitioners' order to show cause for a TRO;

3. pursuant to 22 NYCRR §100.3D(2), referring Respondent Attorney General James, *et al.* to:

(a) appropriate disciplinary authorities for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions'; Rule 3.3 'Conduct Before A Tribunal'; Rule 8.4 'Misconduct'; Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'; and Rule 5.2 'Responsibilities of a Subordinate Lawyer';

(b) appropriate criminal authorities for their Judiciary Law §487 'misdemeanor', and for their knowing and deliberate violations of penal laws, including Penal Law §496 'corrupting the government'; Penal Law §195 'official misconduct'; Penal Law §175.35 'offering a false instrument for filing in the first degree'; Penal Law §195.20 'defrauding the government'; Penal Law §190.65: 'scheme to defraud in the first degree'; Penal Law §155.42 'grand larceny in the first degree'; Penal Law §105.15 'conspiracy in the second degree'; Penal Law §20 'criminal liability for conduct of another';

4. pursuant to Executive Law §63.1, State Finance Law Article 7-A, and Rule 1.7 of New York's Rules of Professional Conduct, disqualifying Respondent Attorney General James from representing her co-respondents and directing her representation/intervention on behalf of petitioners pursuant to Executive Law §63.1 and State Finance Law Article 7-A, or, at very least, and as requested by ¶9 of petitioners' March 18, 2024 affidavit in support of their order to show cause, that Attorney General James be directed:

> 'to disgorge her findings of fact and conclusions of law with respect to the [petitioners' January 18, 2024] Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel.'

5. for such other and further relief as is just and proper and, specifically, pursuant to CPLR §3211(c), summary judgment to petitioners on the two causes of action of their March 18, 2024 verified petition, as requested by their April 3, 2024 opposition to Attorney General James' March 26, 2024 cross-motion to dismiss.

As the record before this Court on petitioners' March 19, 2024 order to show cause to determine threshold issues establishes the Court has no jurisdiction to do anything but transfer this case to federal court, inasmuch as Judiciary Law

> **§14 divests it of jurisdiction because of its direct financial and other interests – shared by every other New York State Supreme Court justice and acting justice – and 'rule of necessity' cannot be invoked by reason thereof – petitioners request this motion be part of that transfer.**" (underlining, bold, and italics in the original).

Accompanying the April 3, 2024 notice of motion, whose return date was April 19, 2024, was petitioners' April 3, 2024 moving affidavit (NYSCEF #50), stating in pertinent part:

> "3. In the interest of economy, petitioners rest on the record of their March 19, 2024 order to show cause – and the record of their opposition to Attorney General James' March 26, 2024 cross-motion to dismiss the verified petition, filed today: [petitioners'] April 3, 2024 opposing affidavit (NYSCEF #38) and April 3, 2024 opposing memorandum of law (NYSCEF #48).
>
> 4. Suffice to add that [petitioners'] April 3, 2024 opposing affidavit includes an Exhibit C (NYSCEF #47) reflecting this Court's direct, immediate, and actualized financial interest and that of every other New York Supreme Court justice and acting justice, for which transfer to federal court is necessitated by Judiciary Law §14 – and as to which a law-abiding, unconflicted Attorney General would seek removal." (hyperlinks in the original).

The motion was further substantiated by an additional April 3, 2024 memorandum of law (NYSCEF #51), whose "Introduction" read, in full:

> "This memorandum of law is submitted in support of petitioners' accompanying April 3, 2022 notice of motion (NYSCEF #49), seeking relief against Respondent Attorney General Letitia James for her litigation fraud in defending herself and nine of her co-respondents against petitioners' March 18, 2024 verified petition (NYSCEF #1) and order to show cause to determine threshold issues, NYSCEF #13, #14) – and for aiding and abetting Respondent Commission on Legislative, Judicial and Executive Compensation in dodging service.
>
> Appearing 'of counsel' for Respondent Attorney General James is Assistant Attorney General Noah Engelhart, whose opposition to petitioners' order to show cause, signed by Justice Christina Ryba on March 19, 2024 and made returnable on March 29, 2024 (NYSCEF #17), was by a March 26, 2024 cross-motion to dismiss the verified petition (NYSCEF #28, #29, #30, #31, #32).
>
> As demonstrated by petitioners' March 29, 2024 reply affidavit in further support of their order to show cause (NYSCEF #33) and by their April 3, 2024 opposition to the dismissal cross-motion consisting of an opposing affidavit (NYSCEF #38) and opposing memorandum of law (NYSCEF #48), Attorney General James' opposition/cross-motion is not just frivolous, but a 'fraud on the

court',[fn1] fashioned throughout on knowingly false and misleading factual assertions, material omissions,[fn2] and on law that is inapplicable, misstated, or both."

Annotating footnote 1 read:

"'Fraud on the court' is defined by Black's Law Dictionary (7th ed. 1999) as:

'A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding.'

See, also CDR Creances S.A.S. v Cohen, et al., 23 N.Y.3d 307 (2014):

'Fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process 'so serious that it undermines . . . the integrity of the proceeding' (*Baba-Ali v State*, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting 'a wrong against the institutions set up to protect and safeguard the public' (*Hazel-Atlas Glass Co. v. Hartford-Empire,* 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675 [1944]; *see also Koschak v Gates Const. Corp*., 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1st Dept 1996]['The paramount concern of this Court is the preservation of the integrity of the judicial process'".

Annotating footnote 2 read:

"60A New York Jurisprudence 2d (2001), §91 – Concealment: Generally:

'Fraud may be committed by suppression of the truth, that is, by concealment, as well as by positive falsehood or misrepresentation.[fn] Where a failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous; both are fraudulent.[fn.] Thus, the suppression of material facts which a person is, in good faith, bound to disclose is evidence of and equivalent to a false representation.[fn]'"

The **second sentence** reads:

"Respondents opposed the requested relief."

This is fraud, as it does not identify any reply, thereby making it falsely appear that petitioners had

filed none. In fact, petitioners' April 25, 2024 reply affidavit (NYSCEF #61) not only blew to smithereens AAG Moore's April 19, 2024 opposition memorandum to petitioners' April 3, 2024 motion (NYSCEF #60), demonstrating that it warranted imposition of further maximum $10,000 sanctions, pursuant to 22 NYCRR §130.1.1, but, because AAG Moore's April 19, 2024 opposition rested on AAG Engelhart's April 11, 2024 reply in "Motion Sequence 2" to petitioners' April 3, 2024 opposition to the March 26, 2024 dismissal cross-motion (NYSCEF #52), annexed a "legal autopsy"/analysis of the April 11, 2024 reply as Exhibit A (NYSCEF #62) demonstrating its fraudulence, virtually line-by-line.

The second and third paragraphs, each a single sentence, read:

> "Based on the Court's August 14, 2024 'Decision, Order, and Judgment (Motion Sequence 1&2' wherein Respondents' cross-motion to dismiss was granted, Petitioners' motion has been rendered moot.
>
> **ADJUDGED** that the April 3, 2024 'Notice of Motion for Relief against Attorney General James including Disqualification, Upon Transfer to Federal Court' is hereby denied."

This is fraud upon fraud. "Motion Sequence 3" is integrally part of "Motion Sequence 1&2", whose paltry decision is a complete fraud, as hereinabove demonstrated, covering up, *in toto*, petitioners' entitlement to all the relief sought by their "Motion Sequence 1" order to show cause, to summary judgment on Respondent AG James' "Motion Sequence 2" dismissal cross-motion – and to the relief against Respondent AG James, her culpable attorney staff, and her fellow respondents that is "Motion Sequence 3".

"DECISION, ORDER, and JUDGMENT (Motion Sequence 4)"
(NYSCEF #81)

This third August 14, 2024 decision consists of three paragraphs and two concluding decretal paragraphs.

The first two paragraphs read:

> "Respondent New York State Commission on Legislative, Judicial and Executive Compensation (hereinafter also referred to as 'Respondent Commission') seeks to dismiss Petitioners' 'Order to Show Cause' signed March 19, 2024 (Ryba, J.) seeking a preliminary injunction. Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc. oppose.
>
> Respondent Commission contends Petitioners failed to properly effectuate service on Respondent Commission, mistakenly serving the Office of the Attorney General who was not authorized to accept service on their behalf at the time, and

> thereafter, attempting service beyond the timetable set by the Court. Petitioners do not dispute the failure to serve the Respondent Commission, but instead blame Respondent Commission for its lack of reasonable assistance in effectuating service upon them, including no discernable telephone number, failure to respond to emails, and lack of physical address or designated agent of service. Accordingly, the Court finds Petitioners failed to obtain timely jurisdiction over the Respondent Commission, and Petitioners' claims are hereby dismissed."

This is fraud and pertains to Respondent AG James' May 3, 2024 motion on behalf of the Commission (NYSCEF #65), "Motion Sequence 4", which she made, notwithstanding Judge Sober had not responded to her April 16, 2024 letter for permission to make such motion (NYSCEF #54). Respondent AG James' fraud by that letter, including by her representation of the Commission, was the subject of petitioners' responding April 17, 2024 affidavit (NYSCEF #55), which concluded by stating:

> "18. Before granting AAG Engelhart's unwarranted, dilatory, and frivolous request, petitioners counter-request that the Court order Respondent AG James to do what she has not done, voluntarily, during the past month in which she has never purported that her representation of the other respondents is in 'the interest of the state', as Executive Law §63.1 mandates, namely:
>
> > ''to disgorge her findings of fact and conclusions of law with respect to the [petitioners' January 18, 2024] Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel.''
>
> 19. In any event, based on the record of petitioners' fully-submitted March 19, 2024 OSC for threshold relief – and AAG Engelhart's letter does *not* request to supplement same, on behalf of the Commission – the first threshold relief must be granted, without further delay:
>
> > 'transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law §14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof.'" (underlining and italics in the original).

Petitioners followed this up with a May 6, 2024 letter to Judge Sober (NYSCEF #75), alerting her that on May 3, 2024, Respondent AG James had made a motion, on behalf of the Commission, to dismiss the verified petition, additionally opposing the preliminary injunction sought by petitioners' March 19, 2024 order to show cause – and in so doing had concealed her April 16, 2024 letter-

request and petitioners' April 17, 2024 affidavit, to which Judge Sober had not responded to either. Petitioners asked:

> **"Isn't Respondent AG James' May 3rd motion, made without the Court's authorization and concealing that it does not have such authorization, a flagrant contempt of the Court? Under such circumstances, isn't it a nullity, requiring no answering papers from petitioners by its designated May 17th date for answering papers?"** (bold and underlining in the original).

The next 2-1/2 pages detailed the fraudulence of Respondent AG James' May 3, 2024 motion, resting, exclusively on her March 26, 2024 opposition/cross-motion – now adding CPLR §3211(a)(8), for dismissal for improper and untimely service, for which she offered NO applicable law, furnished no probative sworn statement from the Commission, and none from herself as to the relevant facts, and made no claim that "Respondent Commission did not endeavor to evade service and intentionally default in appearing for the March 21st oral argument (before Justice Ryba) on the TRO to further accomplish same, and that the other respondents did not abet Respondent Commission in so doing."

The May 6, 2024 letter concluded stating:

> "Should the Court not deem Respondent AG James' unauthorized and contemptuous May 3rd motion a nullity, please advise when the Court will be ruling on petitioners' plainly threshold April 17th affidavit."

Judge Sober did not respond. Nor did she respond to petitioners' follow-up June 17, 2024 letter (NYSCEF #77), and July 30, 2024 letter (NYSCEF #78).

Suffice to say, it is fraud for the decision to purport that "Petitioners failed to obtain timely jurisdiction over Respondent Commission" – as the question is whether the failure was excusable. At bar, it absolutely was – and petitioners were entitled to a hearing, if the issue was not determined in their favor, based on their submissions, establishing – without dispute – that Respondent Commission was "ducking service", aided and abetted by Respondent AG James and the other respondents and by Justice Ryba, including by the service provision she unilaterally made to petitioners' order to show cause (NYSCEF #13, NYSCEF #17), which at the March 21, 2024 oral argument on the TRO, was her duty to have modified (NYSCEF #34). That is why the decision conceals any issue of evasion of service, furnishes no treatise authority or applicable caselaw, and makes no mention of Justice Ryba's role.

The third paragraph reads:

> "Further, were the Court to address the merits of Petitioners' contentions, which it does not, the Court still would have denied same as Petitioners' fail to demonstrate any likelihood of success on the merits and danger of irreparable injury to obtain a preliminary injunction as set forth in the Court's August 14, 2024

'Decision, Order, and Judgment (Motion Sequence 1&2)."

This is more fraud. As stated at ¶10 of petitioners' March 18, 2024 moving affidavit in support of their order to show cause for a preliminary injunction (NYSCEF #14), their likelihood of success on the merit was 100% based on their January 18, 2024 Opposition Report (NYSCEF #6). The decision's reliance on the "Motion Sequence 1&2" decision to purport the contrary is but a further fraud, as hereinabove shown.

The two final decretal paragraphs read:

> "Therefore, it is hereby
>
> **ADJUDGED** that Respondents' 'Notice of Motion' to dismiss pursuant to CPLR §3211(a)(8) is hereby granted; and it is further
>
> **ADJUDGED** that Petitioners' 'Verified Petition/Complaint' is dismissed and the relief requested therein is in all respects denied."

Here, again, fraud – and it is based upon concealing the record, *in toto*, including the law before the Court requiring, in actions for declaratory relief, as at bar, declarations, not here made. Once again, there is no explanation for the quotes around petitioners' "Verified Petition/Complaint". Their pleading was rightfully that because it was a combined Article 78 proceeding/declaratory judgment action/citizen-taxpayer action. As for the quotes around respondents' "Notice of Motion", the only explanation is that it *sub silentio* signifies that Respondent AG James had not obtained the Court's authorization for making the motion.