

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

November 24, 2021

TO: New York State Joint Commission on Public Ethics (JCOPE)

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

RE: Conflict-of-interest ethics complaint against state officers and employees of the New York State Commission on Judicial Conduct for violations of Public Officers Law §74 in dismissing CJA's February 7, 2021 judicial misconduct complaint pertaining to the citizen-taxpayer action *CJA v. Cuomo...Schneiderman...DiFiore* and with respect to CJA's April 26, 2021 "further and supplementing complaint" pertaining to the citizen-taxpayer action *Delgado v. State of New York*

Pursuant to Executive Law §94.9(g), I initiate this sworn ethics complaint against the salaried administrator/counsel and salaried clerk of the New York State Commission on Judicial Conduct over whom you have jurisdiction pursuant to Executive Law §94.1¹ and against the Commission's eleven members over whom [the Commission's website](#) implies you have jurisdiction, stating:

"In addition to the ethics mandates applicable to the Commission in the Public Officers Law, the Commission has adopted a [Code of Ethics](#) for its members. The code was adopted in 2006 and filed with the State Ethics Commission, which was succeeded by the State Commission on Public Integrity, which itself was succeeded by the [Joint Commission on Public Ethics \(JCOPE\)](#)." (hyperlinking by the website).

If you do not have jurisdiction over the Commission members because they are unsalaried, it is because, as that non-compensatory status suggests, they largely function as figure heads, rubber-stamping the recommendations of the Commission's salaried administrator/counsel over whom you do have jurisdiction.²

¹ Executive Law §94.1 gives you jurisdiction over "state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law". [Public Officers Law 73.1\(g\)](#) states: "The term 'state agency' shall mean any state...commission at least one of whose members is appointed by the governor..."; Public Officers Law §73.1(i) states "The term "state officer or employee" shall mean: ...(iii) officers and employees of state...commissions, other than officers of such commissions...who receive no compensation or are compensated on a per diem basis".

² Based on posted figures, Administrator/Counsel Robert Tembeckjian's 2020 salary was \$195,321, having risen over the preceding eight years, as follows: \$193,954 (2019); \$190,009 (2018); \$186,381 (2017); \$176,971 (2016); \$175,436 (2015); \$162,053 (2014); \$159,009 (2013); \$149,649 (2012). The posted

At issue is their wilful and deliberate violation of Public Officers Law §74.2,³ entitled “Rule with respect to conflicts of interest”, which states:

“No officer or employee of a state agency...should have any interest, financial or otherwise, direct or indirect, ...or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest.”

This is mirrored by §2 of the [Code of Ethics for Members of the New York State Commission on Judicial Conduct](#), entitled “Rule with respect to conflicts of interest”, which states:

“No member of the Commission should have any interest, financial or otherwise, direct or indirect...or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties in the public interest”

and reinforced by the Commission’s August 2020 [Policy Manual](#), whose §5.3, entitled “Disqualification of Commission Members”, states:

“(B) Any member of the Commission should disqualify himself/herself from a matter if his/her impartiality might reasonably be questioned. In determining whether to disqualify from a matter, a Commission member should be guided by the disqualification standards set forth for judges in Section 100.3(E) of the Rules Governing Judicial Conduct. A Commission member need not reveal the

figures for prior years are, as follows: \$153,175 (2011); \$153,952 (2010); \$153,962 (2009); and \$154,403 (2008).

³ See, additionally, Public Officers Law §74.3(d), stating:

“No officer or employee of a state agency...should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.”

Also, Public Officers Law §74.3(f), stating:

“An officer or employee of a state agency...should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.”

§74.3(h) states:

“An officer or employee of a state agency...should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.”

reason for his/her disqualification. A Commission member who is disqualified from a matter should not receive substantive staff reports or other substantive material on that matter.”

The same Policy Manual, by its §1.5 entitled “Staff Recusal”, states:

“(A) A staff member should not participate in any matter where his or her impartiality might reasonably be questioned. Staff members who believe they may have cause for recusal in a particular case should discuss the matter with their Deputy Administrator. The Deputy Administrator will present the facts to the Administrator, who will make the final determination whether the staff member must recuse.

(B) In determining whether a staff member should recuse from a matter, the Administrator should be guided by the disqualification standards set forth for judges in Section 100.3(E) of the Rules Governing Judicial Conduct.”

This complaint arises from:

- (1) the refusal of the Commission on Judicial Conduct to identify how, *if at all*, its members and staff addressed their threshold duty of disqualification and disclosure with respect to a “facially-meritorious, fully documented” [February 7, 2021 conflict-of-interest/misconduct complaint to the Commission](#) against “the six associate judges of the New York Court of Appeals; against the presiding justice of the Appellate Division, Third Department and six of its associate justices; and against New York Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks pertaining to the citizen-taxpayer action *Center for Judicial Accountability, et al. v. Cuomo...Schneiderman...DiFiore*, challenging their commission-based pay raises, the Judiciary budget, and other corruption of state governance of which they are beneficiaries”⁴;
- (2) the refusal of the Commission on Judicial Conduct to account for the status of an [April 26, 2021 “further and supplementing complaint”](#) against Appellate Division, Third Department justices, likewise “facially-meritorious, fully-documented”, pertaining to their corrupt, self-interested appellate decision in *Delgado v. State of New York*⁵, materially relying on

⁴ The specific Court of Appeals associate judges named by the February 7, 2021 complaint – and on its first page – were: “Jenny Rivera, Leslie Stein, Eugene Fahey, Michael Garcia, Rowan Wilson, and Paul Feinman”. The specific Appellate Division, Third Department justices named – on the complaint’s second page – were “Presiding Justice Elizabeth Garry and Associate Justices Stan Pritzker, John Egan, Jr., Christine Clark, Robert Mulvey, Sharon A.M. Aarons, and Michael Lynch”.

⁵ The specific Appellate Division, Third Department justices named by the April 26, 2021 “further and

their corrupt, self-interested appellate decision in *CJA v. Cuomo...Schneiderman...DiFiore*; and

- (3) open-and-shut, *prima facie* EVIDENCE that Commission on Judicial Conduct members and staff, rather than disqualifying themselves or making disclosure, corrupted their positions to act on their financial and other interests to benefit themselves and those with whom they have personal and professional relationships.

BACKGROUND

JCOPE is already familiar with the judicial pay raises resulting from the [August 29, 2011 report of the Commission on Judicial Compensation](#) and the [December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation](#) and CJA's lawsuit challenges to them, culminating in the [CJA v. Cuomo... Schneiderman ...DiFiore citizen-taxpayer action](#) also challenging, the Legislative budget, the Judiciary budget, and the whole of the state budget. This, from my four sworn complaints to JCOPE that, in violation of Executive Law §§94.13(a) and (b), you have still not determined:

- [my June 27, 2013 complaint](#);
- [my December 11, 2014 complaint](#);
- [my August 31, 2020 complaint](#); and
- [my March 5, 2021 complaint](#).

Indeed, my March 5, 2021 complaint identified (at p. 4) my February 7, 2021 complaint to the Commission on Judicial Conduct, which it hyperlinked, under the title heading "**THE EVIDENCE**" (at p. 3).

As to the EVIDENCE pertaining to this fifth sworn complaint to JCOPE, it is herein identified with hyperlinking and additionally accessible from CJA's EVIDENTIARY webpage for this complaint: <http://www.judgewatch.org/web-pages/searching-nys/jcope/nov-24-21-complaint-vs-cjc.htm>. To further assist you in discharging your duties pursuant to Executive Law §§94.13(a) and (b), here's a Table of Contents of the EVIDENCE presented in three parts:

supplementing complaint" included the not previously complained-against Associate Justice Molly Reynolds Fitzgerald, plus her previously complained-against colleagues: "Associate Justice Michael Lynch...Presiding Justice Elizabeth Garry and Associate Justices Stan Pritzker, Sharon Aarons".

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THE EVIDENCE: PART I –
Record of the February 7, 2021 Judicial Misconduct Complaint
& the April 26, 2021 “Further & Supplementing Complaint”

A.

Notwithstanding the serious, substantial and fully-documented nature of my February 7, 2021 complaint – involving New York’s top judges, flagrant subversion of our state Constitution, and the larceny of billions of taxpayer dollars – the Commission on Judicial Conduct did not acknowledge its receipt until [April 16, 2021](#). By then, I had sent it two emails, on [April 2, 2021](#) and [April 9, 2021](#), inquiring as to the delayed acknowledgment.

B.

On [April 26, 2021](#), I e-mailed the Commission, inquiring about the numbers assigned to the complaint indicated by its April 16, 2021 acknowledgment letter: “File No. 2021/A-0083-0085” – and simultaneously initiating against five justices of the Appellate Division, Third Department, including one not previously complained-against:

“a further and supplementing complaint addressed to their demonstrated actual bias, born of their undisclosed conflict-of-interest in the *Delgado v. New York State* citizen taxpayer action, challenging the committee-based legislative and executive salary increases...”

I asked:

“Am I also correct in assuming that I should mail a signed original to the Albany address indicated on the letterhead of your April 16, 2021 acknowledgment – and

designate it as a supplementing complaint to A-0084?”

Additionally, I stated:

“Also, inasmuch as this supplementing judicial misconduct complaint based on *Delgado* reinforces CJA’s February 11, 2021 conflict-of-interest/misconduct complaint against Attorney General James, *et al* pertaining to both *CJA v. Cuomo* and *Delgado* – which I already mailed you – I will also now mail you the further specifications relating to that complaint...”

In the absence of any response from the Commission – or call back to my phone messages on the same subject – I sent a [May 4, 2021 e-mail to the Commission](#) asking “When will you be calling me back – or responding to the below e-mail” – this being my April 26, 2021 e-mail.

C.

The sole response I received to my April 26, 2021 e-mail, my phone messages, and my May 4, 2021 e-mail was a [May 5, 2021 letter from the Commission’s Clerk Celia Zahner](#) for “File No. 2021/A-0083-0085”, stating:

“The State Commission on Judicial Conduct has reviewed your letter of complaint dated February 7, 2021 and your subsequent correspondence. The Commission has asked me to advise you that it has dismissed the complaint.

Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline.”

D.

By a [May 12, 2021 letter to the Commission](#) entitled “Request for Clarification & Substantiation of Clerk Zahner’s May 5, 2021 Letter”, I asked:

“Please advise whether the ‘subsequent correspondence’ [referred-to by Clerk Zahner’s May 5, 2021 letter] included my April 26, 2021 e-mail to the Commission initiating a further and supplementing complaint against the justices of the Appellate Division, Third Department for demonstrated actual bias, born of their undisclosed conflicts of interest in the *Delgado v. New York State* citizen-taxpayer action, challenging the committee-based pay raises for legislators and executive officers. I received no response to that April 26, 2021 e-mail, whose subject line began ‘Query’.

Likewise, I received no response to my follow-up May 4, 2021 e-mail, whose subject line began ‘AGAIN – Query’. Did the Commission also determine that no written response or phone call back was required? For your convenience, copies are enclosed.

Please further substantiate Clerk Zahner’s letter by furnishing:

- (1) the date on which the Commission purportedly ‘reviewed’ and ‘dismissed’ the February 7, 2021 complaint;
- (2) the number of Commissioners who were present and voted on the complaint – and their identities;
- (3) the meaning of the phrase ‘insufficient indication of judicial misconduct to justify judicial discipline’, including confirmation that dismissal on such ground is without the Commission’s investigating the complaint;
- (4) the legal authority that permits the Commission to dismiss, without investigation, a complaint for ‘insufficient indication of judicial misconduct to justify judicial discipline’;
- (5) the specific respects in which the Commission deemed CJA’s February 7, 2021 complaint to be ‘insufficient’ in its ‘indication of judicial misconduct’;
- (6) any and all appeal/review/reconsideration procedures.

Additionally, please identify how, *if at all*, the Commission members and staff addressed their threshold duty of disqualification and disclosure.

Kindly respond, by e-mail, to elena@judgewatch.org.” (underlining, italics, and hyperlinking in the original).

I received no response from the Commission to this May 12, 2021 e-mailed letter and so-stated this in a [June 10, 2021 e-mail](#).

E.

On June 14, 2021, the Commission sent me a [June 14, 2021 e-mail](#) whose message read: “Please see the attached correspondence” – this being [a letter from Clerk Zahner bearing a June 4, 2021 date](#) and indicating it had been e-mailed. The letter stated:

“The Commission has asked me to respond to your email correspondence dated May 12, 2021 concerning your complaint. The entire Commission considered your complaint and it was dismissed at the April 2021 meeting pursuant to the Commission’s authority under the Judiciary Law.

The New York State Constitution and the Commission’s governing statute (Judiciary Law §40 *et seq.*) do not provide for an appeal or reconsideration of a decision by the Commission dismissing a complaint. [Diaz v. New York State Commission on Judicial Conduct, 26 N.Y.3d 949 \(2015\)](#).

The Commission’s records and proceedings are confidential by statute (Judiciary Law §45), with strictly limited exceptions that do not apply to dismissed

complaints. Accordingly, I am unable to provide any additional information concerning the Commission's consideration of your complaint." (hyperlinking added).

F.

By a [June 28, 2021 e-mail](#) to the Commission, entitled "Your June 14th e-mail with its attached June 4th letter" I asked whether the June 4th letter had been, as it seemed to indicate, e-mailed to me on that date, as I had found no such e-mail in my inbox until June 14th, further stating:

"...please forward any such prior transmitting e-mail to me, if it exists – or confirm that your June 14th e-mail was the first time you sent me the purported June 4th letter – and that you sent it in response to my June 10th e-mail stating I had received no response to my May 12th letter."

I received no response – and so-notified the Commission, by [e-mail, on July 8, 2021](#), to which I also received no response.

G.

I received no acknowledgment, disposition, or any other communication from the Commission with respect to my April 26, 2021 "further and supplementing complaint".

**THE EVIDENCE: PART II –
Disqualification for Financial & Other Interests Born of Relationships**

[Four of the Commission on Judicial Conduct's eleven members are judges](#). Three are state-paid judges with direct financial interests in dismissal, without investigation, of the fully-documented February 7, 2021 complaint – as its open-and-shut, *prima facie* EVIDENCE requires the voiding of the judicial pay raises that have added \$80,000 to each of their yearly salaries and claw-backs from each of them of upwards of \$500,000 for the salary increases they have received since 2012. These three judges are:

- [Appellate Division, First Department Justice Angela M. Mazzarelli](#),
- [Appellate Division, Second Department Justice Robert J. Miller](#);
- [Court of Claims Judge/Acting Supreme Court Justice Fernando M. Camacho](#).

The fourth judge is [Brighton Town Court Justice John A. Falk](#), whose salary, though not paid by the state, is reasonably boosted based on the salaries of his state-paid judicial brethren.

Additionally, all eleven Commission members have direct and indirect interests in dismissal, without investigation, of the fully-documented February 7, 2021 complaint – because the public officers who appointed them to the Commission are all defendants in *CJA v. Cuomo...Schneiderman...DiFiore* – and, pursuant to Judiciary Law §44.10, the Commission is mandated, based on the open-and-shut, *prima facie* EVIDENCE of their public corruption and larceny of HUGE sums of taxpayer monies, to refer them and their fellow defendants to criminal prosecutors. These appointing authorities are:

- (former) Governor Andrew Cuomo, with four appointees to the Commission: Joseph W. Belluck, Esq. (its elected chair); Jodie Corngold; Appellate Division, Second Department Justice Miller, and Akosua Garcia Yeboah;
- Chief Judge Janet DiFiore, with three appointees to the Commission: Appellate Division, First Department Justice Mazzaelli, Acting Supreme Court Justice Camacho, and Brighton Town Justice Falk;
- Temporary Senate President Andrea Stewart-Cousins, with one appointee to the Commission: Taa Grays, Esq. (its elected vice-chair);
- (former) Senate Minority Leader John Flanagan, with one appointee to the Commission: Ronald J. Rosenberg, Esq.;
- Assembly Speaker Carl Heastie, with one appointee to the Commission: Marvin Ray Raskin, Esq.;
- Assembly Minority Leader William Barclay, with one appointee to the Commission: Graham B. Seiter, Esq.

As for Commission staff, the most important is its long-time administrator and counsel, Robert Tembeckjian, who appoints all staff other than the Commission's Clerk. Mr. Tembeckjian has been at the Commission for over 40 years and has a direct interest in its dismissal, without investigation, of the February 7, 2021 complaint because, as its [Exhibit A - December 31, 2015 letter to then Chief Judge Nominee DiFiore](#) reveals (at p. 5), [CJA's dispositive October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report](#), which I furnished, repeatedly to New York's top judges and other constitutional officers, includes [the final two motions, at the Court of Appeals, in my Article 78 proceeding against the Commission on Judicial Conduct](#) that I had handed up to the Commission on Judicial Compensation in testifying before it at its [July 20, 2011 hearing](#) and also furnished to the Commission on Legislative, Judicial and Executive Compensation at its November 3, 2015 first organizational meeting ([November 30, 2015 hearing testimony](#)).

Administrator/Counsel Tembeckjian is fully familiar with [Elena Ruth Sassower v. Commission](#) – doubtless the Commission's most devastating citizen-challenge, suing it for corruptly protecting judges by violating its mandatory investigative duty under Judiciary Law §44.1 and by unconstitutionally expanding the confidentiality of Judiciary Law §45 to hide its Judiciary Law §44.1 and other violations. Indeed, he knows that the Commission had NO legitimate defense to any of the [six claims for relief of the April 22, 1999 verified petition \(¶¶47-81\)](#) – and survived only because it corrupted the judicial process by litigation fraud of its attorney, the Attorney General – for which it was rewarded by fraudulent judicial decisions. Indeed, he knows that that it is how the Commission survived two other Article 78 proceedings, suing it for its Judiciary Law §44.1 violations – [Doris L. Sassower v. Commission](#) and [Michael Mantell v. Commission](#)⁶ – whose records

⁶ The final October 24, 2002 motion was for leave to appeal to the Court of Appeals and its "Question

were physically part of my Article 78 proceeding.

In other words, Administrator/Counsel Tembeckjian knows that investigation of the February 7, 2021 complaint would not only establish the double whammy of collusion between judges and the Attorney General in *CJA v. Cuomo...Schneiderman...DiFiore* that is the gravamen of the complaint, but also the IDENTICAL scenario of collusion in *E.R. Sassower v. Commission* – and that in both lawsuits, as likewise in *D.L. Sassower* and *Mantell*, the judicial decisions corruptly denied the plaintiffs/petitioners the summary judgment to which they were entitled, *as a matter of law*.

But for Administrator/Counsel Tembeckjian’s self-interest arising from his pivotal role, spanning decades, in the Commission’s corruption and his personal and professional relationships with those the law requires the Commission to prosecute or refer for prosecution, he would long ago have counseled Commission members and staff as to what the [six claims for relief of the verified petition in *E.R. Sassower v. Commission* \(§§47-81\)](#) reveal about the meaning and mandates of Article VI, §22 of the New York State Constitution and Judiciary Law, Article 2-A (§§40-48), which he plainly has not done.⁷

As for Clerk Zahner, her knowledge of the Commission’s violation of Judiciary Law §44.1 to protect judges is inferable from her minimalist, false, and deceitful June 4, 2021 letter stating that the Commission’s dismissal of the February 7, 2021 complaint was “pursuant to the Commission’s authority under the Judiciary Law”. Such evasiveness contrasts to the two letters of her predecessor, Clerk Jean Savanyu,⁸ pertaining to the Commission’s dismissals of my two prior judicial misconduct

Presented” was, as follows:

“Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it^{fn1} establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions^{fn2} without which it would not have survived three separate legal challenges – with four of these decisions, two of them appellate, contravening this Court’s own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit*:

‘...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law 44, subd. 1)...’ (emphasis added)’.

⁷ This includes with respect to the tenure of the Commission’s chair, restricted by Judiciary Law §41.2 to a member’s “term in office or for a period of two years, whichever is shorter” – the subject of the fifth claim for relief (§§ 76-80), not determined by Supreme Court/New York County, the Appellate Division, First Department, or the Court of Appeals. Chair Belluck has been chair since 2016, re-elected to successive two-year terms.

⁸ Ms. Savanyu was the Commission’s clerk from 2001 to 2019 – and, from posted figures, her salary in 2019 was \$146,078, lower than it had been in 2013, when it was \$147,728, and in 2014, when it was \$147,088. By contrast, Ms. Zahner’s starting salary, in 2020, is posted at \$160,861 – and she is beholden to

complaints based on *CJA v. Cuomo...Schneiderman...DiFiore*: [my June 16, 2017 complaint](#) and [my September 20, 2018 complaint](#).

My February 7, 2021 complaint identified these prior complaints as “BACKGROUND”, expounding upon them at length (at pp. 2-7), including by the following:

“Although both complaints raised threshold conflict of interest issues pertaining to Commission members – particularly the judge-members who are themselves beneficiaries of the judicial pay raises and the Judiciary budget – and pertaining to Administrator Robert Tembeckjian and then Clerk Jean Savanyu – necessitating disqualification/disclosure – the Commission disposed of each by doing precisely what the complained-against judges had done: by concealing that any conflict-of-interest issue had been raised, making no disclosure, and then manifesting actual bias, born of interest and relationships, by dispositions indefensible in fact and law.

Thus, by letters signed by Clerk Savanyu, dated [August 29, 2017](#) and [January 4, 2019](#), she purported, using the Commission’s standard conclusory boilerplate which, thereafter, she would not factually substantiate and could not legally justify, other than by deceit^{fn4}:

‘Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline.’” (February 7, 2021 complaint, at p. 5, hyperlinking added).

The annotating footnote 4 (at p. 5) pertained to Clerk Savanyu’s [October 4, 2017 letter](#) to me, stating with regard to my June 16, 2017 complaint:

The Commission dismissed your complaint pursuant to its authority under Judiciary Law Section 44, subd. 1, which states in pertinent part: ‘Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint: or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.’ As you are aware, the Commission’s exercise of discretion to determine whether a particular complaint lacks merit has been upheld by the courts. See [Matter of Mantell v. Comm on Jud Conduct](#), 277 AD2d 96 (1st Dept 2000); [Matter of Sassower v Comm on Jud Conduct](#), 289 AD2d 119 (1st Dept 2001).” (hyperlinking added).

Mr. Tembeckjian for that largesse. As stated at the outset of the Commission’s Policy Manual §1.1 entitled “Administrator’s Authority; Clerk of the Commission”:

“As set forth in Judiciary Law Section 41(7), the Administrator has authority over the hiring and firing of staff, assigning duties, setting salaries, etc., except that the Commission shall designate a Clerk of the Commission.”

She repeated this, virtually identically, by her [February 14, 2019 letter](#) pertaining to my September 20, 2018 complaint:

“The Commission dismissed your complaint pursuant to its authority under Judiciary Law section 44, subdivision 1, which states in pertinent part:

‘Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.’

The Commission’s exercise of discretion to determine whether to investigate or dismiss a complaint has been upheld by the courts. *See Matter of Mantell v. Comm on Jud Conduct*, 277 AD2d 96 (1st Dept 2000); *Matter of Sassower v Comm on Jud Conduct*, 289 AD2d 119 (1st Dept 2001).”

These two letters were readily-accessible to Clerk Zahner – and not only from the Commission’s own records, but from the [EVIDENTIARY webpage I had furnished for the February 7, 2021 complaint](#), enabling her to additionally see what I had stated about the *Mantell* and *Sassower* appellate decisions in [my December 26, 2017 letter to the Commission](#), referred to by my footnote 4, which was, as follows:

“Judge Mazzarelli was the SOLE member of the five-judge appellate panel in *Mantell v. Commission on Judicial Conduct* who was ALSO on the different five-judge panel in *Sassower v. Commission on Judicial Conduct*. The fraudulence of these two appellate decisions was the subject of contemporaneous NOTICES I hand-delivered to the Commission, each furnishing analyses of the decisions: [my December 1, 2000 NOTICE pertaining to the Mantell appellate decision](#) and [my January 7, 2002 NOTICE pertaining to the Sassower appellate decision](#) – the latter also, expressly, a judicial misconduct complaint against Judge Mazzarelli and her four fellow appellate panelists, which, by a [February 27, 2002 letter](#), Clerk Savanyu purported the Commission dismissed because of ‘insufficient indication of judicial misconduct to justify judicial discipline’. The record in *Sassower v. Commission on Judicial Conduct*, both before Judge Mazzarelli and before the Court of Appeals, contains the NOTICES and analyses. So, too, does the record in CJA’s citizen-taxpayer action before Judge Hartman – as it includes plaintiffs’ final motion in *Sassower v. Commission on Judicial Conduct*, this being plaintiffs’ October 24, 2002 motion to the Court of Appeals for leave to appeal, which annexed the NOTICES and analyses as Exhibits I and L-1, with Clerk Savanyu’s February 27, 2002 dismissal letter annexed as Exhibit L-2. Indeed, because the October 24, 2002 motion was a free-standing exhibit to [CJA’s October 27, 2011 opposition report to the Commission on Judicial Compensation’s August 29, 2011 report](#), it occupies a significant place in the [record of the citizen-taxpayer action before Judge Hartman](#) – as likewise in the [predecessor citizen-taxpayer action before Judge McDonough](#).” (my December 26, 2017 letter, at fn. 2, capitalization in original, hyperlinks added).

In other words, after Justice Mazzarelli protected the Commission by fraudulent appellate decisions transmogrifying Judiciary Law §44.1, the Commission then protected her from my January 7, 2002 judicial misconduct complaint based thereon – with the Court of Appeals thereafter protecting both of them.

Upon information and belief, it was as a result of the *Mantell v. Commission* and *E.R. Sassower v. Commission* cases that the Commission concocted the ground: “insufficient indication of judicial misconduct to justify judicial discipline”, which it did to better conceal the unlawfulness of what it was doing, *to wit*, violating Judiciary Law §44.1 by dismissing, *without investigation*, facially meritorious complaints – its comparable prior boilerplate having been too revealing in stating: “insufficient indication of judicial misconduct upon which to base an investigation” (underlining added).

Fifteen years later, in 2017, Chief Judge DiFiore would appoint Justice Mazzarelli to the Commission, where she would perpetuate its corrupt protectionism of judges, achieved through the violation of Judiciary Law §44.1 that her appellate decisions in *Mantell* and *E.R. Sassower* enabled.

Consequently, as Administrator/Counsel Tembeckjian certainly knew – and as Clerk Zahner reasonably knew – Justice Mazzarelli was the most disqualified of the Commission’s directly interested judicial members, based on her *Mantell* and *E.R. Sassower* appellate decisions, the subject of my January 7, 2002 NOTICE/judicial misconduct complaint, dismissed by the Commission on the bogus ground of “insufficient indication of judicial misconduct to justify judicial discipline” – which the Commission then utilized as its new boilerplate for dismissals of complaints, as, for instance, in dismissing my June 16, 2017 and September 20, 2018 complaints.

Needless to say, those Commission members responsible for dismissing my prior June 16, 2017 and September 20, 2018 complaints were additionally interested in dismissing my February 7, 2021 complaint – as its investigation would readily establish the fraudulence of those prior dismissals – there having been an OVERWHELMING sufficiency of “indications of judicial misconduct to justify judicial discipline” as to each.

The five current Commission members present at the August 3, 2017 meeting dismissing my June 16, 2017 complaint⁹, including Justice Mazzarelli, were its chair who was, then, as now, Commissioner Belluck, and Commissioners Corngold, Falk, and Yeboah.

The eight current Commission members present at the December 6, 2018 meeting dismissing my September 20, 2018 complaint¹⁰, including Justice Mazzarelli, were its chair, then, as now, Commissioner Belluck, the now vice-chair Commissioner Grays, and Commissioners Corngold, Falk, Miller, Raskin, and Yeboah.¹¹

⁹ See Clerk Savanyu’s October 4, 2017 letter, *supra*. The now vice-chair Commissioner Grays was “not present”.

¹⁰ See Clerk Savanyu’s February 14, 2019 letter, *supra*.

¹¹ The appointment of non-lawyer members Corngold and Yeboah to the Commission is intended,

Finally, as to Chair Belluck, he had yet a further – and particularly direct – interest in dismissal of the February 7, 2021 complaint as its investigation would establish ALL the corruption with respect to the pay raises and the state budget to which I alerted him, as a member of the SUNY Board of Trustees¹² in connection with its appointment of a new SUNY chancellor, whose ONLY candidate under consideration was Governor Cuomo’s protégé, James Malatras – the subject of [my August 31, 2020 conflict-of-interest ethics complaint to JCOPE against him and his fellow SUNY Board of Trustees members](#). Indeed, that complaint specified Trustee Belluck’s conflicts of interest, arising from his Commission on Judicial Conduct chairmanship, at its footnote 8, as follows:

“Trustee Belluck serves not only a member of the New York State Commission on Judicial Conduct, but its [chair](#). The Commission on Judicial Conduct is the monitor of the state judiciary – and I so-stated in testifying before Messrs. Malatras and Megna on November 4, 2019 about its corruption. CJA has long chronicled this corruption, including by two Article 78 proceedings against the Commission on Judicial Conduct, in [1995](#) and [1999](#), each defended by the attorney general, who – in the absence of any legitimate defense, engaged in litigation fraud – for which he was rewarded by fraudulent judicial decisions, including at the New York Court of Appeals. This same scenario replayed in the *CJA v. Cuomo...DiFiore* citizen-

constitutionally and statutorily, to give confidence to the public as to how a lawyer and judge dominated Commission is operating. The same is true of the appointment of non-lawyers to the attorney grievance committees. With respect to member Yeboah, her [Commission-posted bio](#) states:

“Ms. Yeboah is a former member of the Attorney Grievance Committee of the Appellate Division, Third Department. She also served as a member of the Commission on Statewide Attorney Discipline.”

Ms. Yeboah’s non-lawyer presence on each of these bodies was also to boost public confidence – and the worthlessness of this is apparent from:

(1) my testimony at the [Commission on Statewide Attorney Discipline’s August 11, 2015 public hearing](#) (at pp. 150-163), at which she was not present, just as she was not present at its two prior public hearings;

(2) her failure to review the transcripts of the hearings accompanying the [Commission on Statewide Attorney Discipline’s September 24, 2015 report](#), to which she put her name – and to have examined such EVIDENCE as had been handed up by witnesses in substantiation. Indeed, although my testimony is referred-to at page 35 of the report, its content is wholly concealed and no findings made with respect thereto. CJA’s website posts the VIDEO of my testimony and the EVIDENCE I handed-up in substantiation, here: <http://www.judgewatch.org/web-pages/searching-nys/2015-commission-on-attorney-discipline/public-testimony-hearings/ers-testimony.htm>.

(3) the record of [my October 14, 2016 complaint to the Appellate Division, Third Department attorney grievance committee](#), of which she remained a member at least until December 2016, when former Governor Cuomo appointed her to the Commission on Judicial Conduct.

¹² The [Commission’s website](#) states, as part of Chair Belluck’s bio: “He is also a member of the SUNY Board of Trustees.”

taxpayer action – fraudulent judicial decisions, including at the Court of Appeals, covering up litigation fraud of the attorney general, who had no legitimate defense – and I testified about this *modus operandi*, on November 4, 2019, before Messrs. Malatras and Megna ([VIDEO](#)). Parenthetically, CJA’s filed two facially-meritorious, fully-documented judicial misconduct complaints arising from *CJA v. Cuomo...DiFiore*, with the Commission on Judicial Conduct in [2017](#) and [2018](#) – each unlawfully dismissed by it, without investigation – precisely what the 1995 and 1999 Article 78 proceedings had challenged – and the dismissals letters each reflect Mr. Belluck’s chairmanship.” (August 31, 2020 JCOPE complaint, at p. 13, hyperlinking in the original).

Needless to say, [Executive Law §94.13\(a\)](#) required JCOPE to promptly furnish that complaint to Mr. Belluck, or a summary thereof, for his written response within 15 days, so that it could take a vote thereon within 60 days of the complaint’s receipt as to whether to commence a substantial basis investigation. 60 days would have been October 30, 2020.

THE EVIDENCE: PART III – Further Explication

1.

Clerk Zahner’s May 5, 2021 dismissal letter purporting, with respect to my February 7, 2021 complaint and “subsequent correspondence”, that there was “insufficient indication of judicial misconduct to justify judicial discipline” and that this was the Commission’s determination made “upon careful consideration” is indefensible, and so-established by the most cursory examination of the February 7, 2021 complaint and the April 26, 2021 “further and supplementing complaint”, furnishing, open-and-shut, *prima facie* EVIDENCE for removal from office of all the complained-against judges and for their criminal prosecution and conviction.

2.

Clerk Zahner’s apparently back-dated June 4, 2021 letter is false and deceitful throughout:

- A. IF “the entire Commission considered [the February 7, 2021] complaint” at the Commission’s “April 2021 meeting” that would include the Commission’s three judges having direct financial interests in it: Judges Mazzarelli, Miller, and Camacho, plus Judge Falk, having possible indirect financial interests;¹³

¹³ Reinforcing the appearance that NONE of the members disqualified themselves are the Commission’s public orders pertaining to disciplined judges. When Commission members do not participate, it is so-noted. As illustrative, its [October 28, 2021 order in Matter of Paul Sucher](#): “Judge Falk did not participate.”; its [August 5, 2021 decision and order in Matter of John Duyssen](#): “Ms. Grays and Judge Mazzarelli did not participate.”; its [September 28, 2020 determination in Matter of Ralph Eannace](#): “Judge Miller did not participate.”; its [June 17, 2020 determination in Matter of Wayne Pebler](#): “Ms. Yeboah did not participate.”; its [June 22, 2020 determination in Matter of David Corretore](#): “Judge Falk and Ms. Yeboah did not participate.”; its [March 31, 2020 determination in Matter of William Carter](#): “Ms. Yeboah did not participate”. That this is NOT because they were not present may be seen from the different wording used by the Commission in such

- B. IF the Commission’s “April 2021” meeting was on a date BEFORE April 26, 2021, its “careful consideration” plainly did not include my April 26, 2021 “further and supplementing complaint” – and Clerk Zahner’s failure to specify the day in “April 2021” is presumably to conceal that the meeting was prior to April 26, 2021;¹⁴
- C. The failure to acknowledge, account for, and give a docket number to, my April 26, 2021 “further and supplementing complaint” involving additional Appellate Division, Third Department justices and the different case of *Delgado v. New York State* violates the Commission’s Policy Manual §2.1, entitled “New Complaints”, stating, at subsection b: “Subsequent letters by the same complainant containing new allegations against the same judge, or allegations against a different judge, shall be treated as new complaints...”;
- D. Clerk Zahner’s assertion that dismissal of the complaint was “pursuant to the Commission’s authority under the Judiciary Law” is FALSE – and her knowledge of this is reflected by her failure to specify the section thereof. The ONLY section applicable is Judiciary Law §44.1 and it states:

“Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.”

Unlike Clerk Savanyu, Clerk Zahner made no claim that the Commission’s dismissal was pursuant thereto;

- E. Implied by Clerk Zahner’s assertion “The entire Commission considered [the] complaint and it was dismissed at the April 2021 meeting” is that all eleven commissioners voted on the complaint. She does not, however, state this directly –

circumstances: its [March 31, 2020 determination in Matter of Michelle Vanwoert](#): “Mr. Belluck was not present;”; its [March 18, 2020 determination in Matter of Michael McGuire](#): “Mr. Belluck was not present”; its [February 14, 2020 determination in Matter of Richard Miller](#): “Mr. Raskin was not present.”; its [January 30, 2020 determination in Matter of Michael Petucci](#): “Mr. Raskin was not present.”; its [January 30, 2020 determination in Matter of Michael Miranda](#): “Mr. Raskin was not present.” All of the above are signed by Clerk Zahner.

¹⁴ Unless the Commission had more than a single “April 2021” meeting, the date of its sole meeting was April 22, 2021, such date appearing in the one and only footnote to the Commission’s [May 10, 2021 press release](#) “Monroe County Town Justice Should Be Censured for Misspending Grant Money on Unauthorized Courthouse Items”.

By contrast to Clerk Zahner’s evasiveness, Clerk Savanyu’s October 4, 2017 letter pertaining to the dismissal of my June 16, 2017 complaint had stated: “...The Commission dismissed your complaint at a meeting on August 3, 2017. All Commission members were present except for Mr. Harding and Ms. Grays.” Her February 14, 2019 letter pertaining to dismissal of my September 20, 2018 complaint had stated: “The Commission reviewed your complaint on December 6, 2018. The entire Commission was present.”

presumably because Judiciary Law §§43.1 and 41.6 permit the Commission to utilize three-member panels with respect to Judiciary Law §44.1. As Administrator/Counsel Tembeckjian knows – and as Clerk Zahner may be presumed to know – the unconstitutionality of Judiciary Law §§43.1 and 41.6 – and the Commission’s related [rule 7000.11](#) – were the subject of the fourth claim for relief of the verified petition in *E.R. Sassower v. Commission* (¶¶71-75), without determination by Supreme Court/New York County, the Appellate Division, First Department, or the Court of Appeals;

- F. The Commission’s own Policy Manual §2.12, entitled “Reconsideration of Matters Pursuant Judiciary Law Sections 44(1), 44(2) and 44(3)”, states, in its subsection (B):

“At a subsequent Commission meeting, a motion to reconsider prior action taken pursuant to these sections shall require a majority of the members present and shall only be permitted if the matter is on the meeting agenda and/or was the subject of a written request circulated in advance of the meeting to all Commission members and the Administrator.”

Clerk Zahner omits any reference to this in asserting: “The New York State Constitution and the Commission’s governing statute (Judiciary Law §40 *et seq.*) do not provide for an appeal or reconsideration of a decision by the Commission dismissing a complaint. *Diaz v. New York State Commission on Judicial Conduct*, 26 N.Y.3d 949 (2015)” – inferentially conceding, by omission, that §2.12 of the Commission’s Policy Manual provides for reconsideration and that the appellate decisions in *E.R. Sassower* and *Mantell* have become the cited precedent for blocking judicial review;¹⁵

- G. The statutory confidentiality of Judiciary Law §45 does not preclude the Commission from furnishing basic information to a complainant – and were it deemed to do so, it would be unconstitutional, as particularized by the third claim for relief of the verified petition in *E.R. Sassower v. Commission* (¶¶49-70), without determination by Supreme Court/New York County, the Appellate Division, First Department, or the Court of Appeals.

¹⁵ See, *inter alia*, the [July 9, 2002 decision of Manhattan Supreme Court](#) dismissing the Article 78 *Capogrosso v. Commission*, stating:

“Indeed, the determination whether to dismiss a case that, in the [Commission’s] determination, lacks merit on its face is a matter vested to the [Commission’s] sole discretion and is not reviewable. *Sassower v. New York State Commis’s’n on Judicial Conduct*, 289 A.D.2d 119 (1st Dept. 2001); *Mantell v. New York State Comm'n on Judicial Conduct*, 277 A.D.2d 96 (1st Dept. 2000)”.

CONCLUSION

As hereinabove demonstrated, the unprofessional, violative conduct of the Commission on Judicial Conduct with respect to my February 7, 2021 complaint and April 26, 2021 “additional and supplementing complaint”, both “facially-meritorious, fully-documented”, is inexplicable except as a manifestation of direct and indirect conflicts of interest of Commission staff and members, proscribed by Public Officers Law §74 and other relevant statutory and rule provisions.

As the Commission’s four judge members are within its ethics jurisdiction, this complaint is simultaneously being furnished to the Commission as a judicial misconduct complaint against them and, additionally, for reconsideration of its dismissal of my February 7, 2021 complaint, as provided for by its Policy Manual §2.12, and determination of my April 26, 2021 “further and supplementing complaint”, consistent with its Policy Manual §2.1.

A copy of my transmitting letter to the Commission pertaining thereto is enclosed herewith.

In addition to JCOPE’s accompanying complaint form, wherein I have sworn to this complaint’s truth, stating further that “I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both”, I herewith repeat same.

I trust that JCOPE’s “15-day” letters to Administrator/Counsel Tembeckjian and Clerk Zahner, pursuant to Executive Law §94.13(a), will instruct them that their written responses to this complaint must also be sworn to be true under penalties including “fine or imprisonment, or both.”

Thank you.

s/ELENA RUTH SASSOWER

Enclosure: November 24, 2021 transmitting letter/complaint
to the Commission on Judicial Conduct

cc: New York State Commission on Judicial Conduct