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February 2, 2021

**BY NYSCEF**

Supreme Court of the State of New York  
Appellate Division, Third Department  
Robert Mayberger, Clerk of the Court  
Robert Abrams Building for Law and Justice  
State Street, Room 511  
Albany, New York 12223

**Re: Matter of Hon. Ellen Gesmer et al. v. The Administrative Board for the New York State Unified Court System et al., Suffolk County Index No. 616980/2020, Docket No. 532566**

Dear Mr. Mayberger:

This firm represents Hon. Ellen Gesmer, Hon. David Friedman, Hon. Sheri S. Roman, Hon. John M. Leventhal and Daniel J. Tambasco (“Petitioners”) in the above-referenced appeal.

Petitioners are in receipt of the letter sent by Justice John C. Egan, Jr. on February 1, 2021, by e-mail, informing all parties that, *inter alia*, (i) one of the attorneys for the Appellants-Respondents, Henry M. Greenberg, serves as counsel to the Commission on Judicial Nomination, and (ii) Justice Egan has a pending application before the commission. Petitioners are also in receipt of the response letter, sent by e-mail, from Henry M. Greenberg, noting that his clients “have no objection to your sitting on [this] appeal.”

Mr. Greenberg’s role on the Commission on Judicial Nomination presents Petitioners with grave concerns as to the appearance of conflicts in the hearing of this appeal.

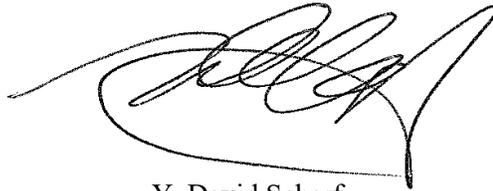
While Petitioners appreciate Justice Egan’s transparency in disclosing this obvious conflict of interest, its existence promises to undermine any decision rendered by this Court in this appeal. As an applicant for a position on the Court of Appeals, Justice Egan will be put in potential conflict with Appellant-Respondent Chief Judge DiFiore, whom he hopes will be his future colleague. This conflict is exacerbated by the fact that Appellants-Respondents’ counsel, Mr. Greenberg, is counsel to the Commission whose approval Justice Egan seeks to obtain, and that Justice Milonas, who has joined an amicus brief in favor of Appellants-Respondents, is also a member of that Commission. Accordingly, Petitioners request that Justice Egan recuse himself from this appeal.

Moreover, in view of the scrutiny of this matter and its proper forum, Petitioners would be remiss if they did not also highlight their concerns with the presence of Justice Sharon A.M. Aarons on this appeal’s panel. Specifically, Petitioners understand that Justice Aarons has applied to become the Presiding Justice of the Second Department, with the result that if her application is still pending, she may soon become a member of the Appellant-Respondent Administrative Board of the New York Unified Court System. Moreover, it is highly unlikely that the Governor would make any appointments to the Presiding Justice position without the support and assent of the Appellant-Respondent Chief Judge DiFiore. This situation presents difficult ethical issues and potential conflicts of interest. While Petitioners are not requesting that Justice Aarons recuse herself from this appeal without confirmation that her application to become the

Presiding Justice of the Second Department is still pending, this issue must be raised so that all parties are aware of and sensitive to this potential conflict.

Should you have any questions concerning the Petitioners' positions concerning the above, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Y. David Scharf', with a large, sweeping flourish at the end.

Y. David Scharf

cc: Henry M. Greenberg  
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