

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

In the Matter of the Application of

HON. ELLEN GESMER, HON. DAVID FRIEDMAN,
HON. SHERI S. ROMAN, HON. JOHN M. LEVANTHAL,
and, DANIEL J. TAMBASCO,

Petitioners-Plaintiffs,

NOTICE OF APPEAL

Index No. 616980/2020

For a Judgment under Article 78 of the CPLR
-against-

THE ADMINISTRATIVE BOARD OF THE NEW
YORK STATE UNIFIED COURT SYSTEM,
JANET DIFIORE, AS CHIEF JUDGE OF THE NEW
YORK STATE UNIFIED COURT SYSTEM, and
LAWRENCE K. MARKS, AS CHIEF
ADMINISTRATIVE JUDGE OF THE NEW YORK
STATE UNIFIED COURT SYSTEM,.

Respondents-Defendants

PLEASE TAKE NOTICE that Respondents The Administrative Board of the New York State Unified Court System, Janet DiFiore, as Chief Judge of the New York State Unified Court System, and Lawrence K. Marks, as Chief Administrative Judge of the New York State Unified Court System (hereinafter “Respondents”), hereby appeal to the Appellate Division of the Supreme Court of the State of New York, from an Order entered in this matter on December 18, 2020 (NYSCEF No. 115). A copy of said Order,

and an Informational Statement, is annexed hereto.

PLEASE TAKE FURTHER NOTICE that Respondents hereby invoke the automatic stay provisions pursuant to CPLR 5519(a) (1).

Dated: New York, New York
December 18, 2020

EILEEN D. MILLETT
Attorney for Respondents
Office of Court Administration
25 Beaver Street, 11th floor
New York, New York 10004
(212) 428-2150

By: Elizabeth A. Forman
Elizabeth A. Forman
Deputy Counsel

At IAS Part 36 of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Courthouse, at 1 Court Street, Riverhead, New York, New York, on the 16th day of December, 2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

In the Matter of the Application of

HON. ELLEN GESMER, HON. DAVID
FRIEDMAN, HON. SHERI S. ROMAN, HON.
JOHN M. LEVENTHAL, and DANIEL J.
TAMBASCO,

Petitioners-Plaintiffs,

For a Judgment under Article 78 of the CPLR

- against -

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JANET DIFIORE, AS CHIEF JUDGE OF THE
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ADMINISTRATIVE JUDGE OF THE NEW
YORK STATE UNIFIED COURT SYSTEM

Respondents-Defendants.

Index No. 616980/2020

(Baisley, J.S.C.)

Mot. Seq. # _____

ORDER TO SHOW CAUSE FOR
TEMPORARY RESTRAINING
ORDER AND HEARING ON
PRELIMINARY INJUNCTIVE
RELIEF

[Interim Relief Requested]

UPON the annexed Emergency Affirmation of James Catterson, Esq., executed on December 16, 2020 (the "Catterson Aff."), and the exhibit annexed thereto; the annexed Affirmation of Y. David Scharf, Esq., executed on December 16, 2020 (the "Scharf Aff."), and the exhibits annexed thereto; and the accompanying memorandum of law; and upon all of the pleadings and proceedings heretofore had herein, *including oral argument on 12-18-20* and sufficient cause having been shown;

LET Respondents-Defendants, by their attorneys, show cause before this Court at IAS Part 36, of the Supreme Court of the State of New York, County of Suffolk, to be held at

Feb
JSC

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
In the Matter of the Application of HON. ELLEN GESMER, HON. DAVID FRIEDMAN, HON. SHERI S. ROMAN, HON. JOHN M. LEVENTHAL, and DANIEL J. TAMBASCO For a Judgment under Article 78 of the CPLR <p style="text-align: center;">- against -</p> THE ADMINISTRATIVE BOARD OF THE NEW YORK STATE UNIFIED COURT SYSTEM, JANET DIFIORE, AS CHIEF JUDGE OF THE NEW YORK STATE UNIFIED COURT SYSTEM, and LAWRENCE K. MARKS, AS CHIEF ADMINISTRATIVE JUDGE OF THE NEW YORK STATE UNIFIED COURT SYSTEM.		Date Notice of Appeal Filed	
Case Type		Filing Type	
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g	<input checked="" type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input checked="" type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input checked="" type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment
<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court	County: Suffolk
Dated: 12/18/2020	Entered: December 18, 2020
Judge (name in full): Hon. Paul J. Baisley Jr	Index No.: 616980/2020
Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal. Respondents have previously moved for leave to appeal order dated 12/10/20 ; motion for leave is pending (no case number) Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case: A second action was filed as a related case in Suffolk County, Supreme Court Justices v. Administrative Board No. 9618314/2020; as motion to dismiss pending, and similar TRO entered today for which review is also sought.	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Supreme Court	County: Suffolk
Judge (name in full): Paul Baisley	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. Respondents appeal and seek leave to appeal Suffolk County Supreme Court's grant of an Order to Show Cause (docket No. 71) with a TRO ordering respondents to permit Supreme Court justices to continue to serve as judges after the date of their required retirement under the NYS Constitution.	

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Supreme Court erred by entering an Order to Show Cause including a temporary restraining order without a showing of irreparable injury, violating, inter alia, CPLR 6301, and ordering mandatory relief that violates the NYS Constitution because it requires Respondents to permit judges who are retired by operation of the NYS constitution to remain on the bench. This is one in a series of orders issued by Supreme Court intended to prolong this matter and avoid decision and appellate review of the substantive issues of law raised in respondents' motion to dismiss relating to the certification of judges for post-retirement service.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	HON. ELLEN GESMER	Petitioner	Appellant-Respondent
2	HON. DAVID FRIEDMAN	Petitioner	Appellant-Respondent
3	HON. SHERI S. ROMAN	Petitioner	Appellant-Respondent
4	HON. JOHN M. LEVENTHAL	Petitioner	Appellant-Respondent
5	DANIEL J. TAMBASCO	Petitioner	Appellant-Respondent
6	THE ADMINISTRATIVE BOARD OF THE NEW YORK STATE UNIFIED COURT SYSTEM	Respondent	Appellant
7	JANET DIFIORE, ASCHIEF JUDGE OF THE NEW YORK STATE UNIFIEDCOURT SYSTEM	Respondent	Appellant
8	LAWRENCE K. MARKS, AS CHIEFADMINISTRATIVE JUDGE OF THE NEW YORK STATEUNIFIED COURT SYSTEM	Respondent	Appellant
9			
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11			
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16			
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19			
20			

Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Elizabeth A. Forman - OCA Deputy Counsel:

Address: 25 Beaver St.

City: New York State: NY Zip: 10004 Telephone No: 212-428-2150

E-mail Address: EForman@nycourts.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6, 7, 8

Attorney/Firm Name: Morrison Cohen LLP

Address: 909 Third Avenue

City: New York State: NY Zip: 10022 Telephone No: 212 735 8600

E-mail Address: scharf@morrisoncohen.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1, 2, 3, 4, 5

Attorney/Firm Name: Arnold & Porter Kaye Scholer LLP

Address: 250 W. 55th Street

City: New York State: NY Zip: 10019 Telephone No: 212 836 8000

E-mail Address: james.catterson@arnoldporter.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1, 2, 3, 4, 5

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

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