

Members of the New York County Supreme Court Independent Judicial Screening Panel 2016

September 7, 2016

By Electronic Mail

Curtis Arluck, Chair
Judiciary Committee
New York County Democratic Committee

Re: Nomination of Justice Doris-Ling Cohan

Dear Mr. Chair:

We are members of the 2016 New York County Democratic Committee's Independent Judicial Screening Panel (the "Panel") that was convened to consider and report on applicants for five vacancies on the New York State Supreme Court, First Judicial District and also, separately, to report on four incumbent judges. We are writing to respectfully request that the Panel be reconvened and/or that the application of Justice Doris Ling-Cohan be revisited with respect to her judicial performance as an incumbent Supreme Court Justice meriting her continuation in office. We offer the following reasons for this request, including the reason that new material information has emerged since the Panel convened. We believe this information has the potential to change the outcome of the Panel's vote on Justice Ling-Cohan's legal ability, integrity, impartiality, communication skills, professionalism, temperament and administrative ability to continue as a Supreme Court Justice.

First, rules governing the process were not fully adhered to. The Rules and Regulations of the Democratic Party of New York County (the "Rules"), Art. III, § (7)(a)(ii)(2), require that an incumbent judicial candidate must be voted on separately and independently of the other candidates. In contravention of the Rules, the Panel did not vote separately on the incumbent candidates during the deliberation process. Instead, we reviewed and voted upon all candidates, incumbent and new candidates for election all together.

Second, the Handbook of the Screening Panel (the "Handbook"), requires that incumbent judges be evaluated in accordance with the guidelines established by the American Bar Association for evaluating sitting judges (the "Guidelines"). See Handbook at 13-14. These factors are very different from those used to evaluate new applicants and, as explained in the handbook, are intended to "protect judicial independence." Yet, at least one panel member stated that the person would not follow the Guidelines as required by the Handbook.

Third, we believe the process was very rushed and disorganized. Immediately after interviewing the last judge, the Panel was led into a whirlwind hand-raising voting process without any deliberation. The Handbook states that "[w]hen the panel feels deliberation is complete, it can prepare to vote." Handbook at 44. To the contrary, no deliberation of the

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merits of the candidates was allowed prior to the first round of voting. After the first round of voting, while panel members were still discussing the merits of Justice Ling-Cohan's candidacy, at times, the panel members were urged to stop talking and just vote. The confusion of the hasty voting process was especially made evident when one of the panel members clearly mistook one judge for another. In short, the Panel was still reviewing candidates in the hours leading up to the County Cocktail Reception and the Panel was under undue pressure to report out the candidates for the various open seats. This deprived us of the full opportunity to consider Justice Ling-Cohan under the appropriate criteria.

Fourth, all of the foregoing is compounded by the fact that we are very concerned that the integrity of the process that we were entrusted to uphold may well have been compromised by person or persons with an undisclosed conflict against Justice Ling-Cohan. *See e.g. Hakimian Mgt. Corp. v. Richard C. Fiore, Inc.*, 16 Misc. 3d 1108(A), 847 N.Y.S.2d 896 (N.Y. Sup. Ct. 2007). We respectfully submit that, had the apparent conflicts been disclosed, the deliberations may have reached a different substantive outcome. The Handbook provides that "[t]he [P]anel will vote out the incumbent if the judge's performance, according to objective criteria, merits continuation in office." Pg. 14. There is reason to believe that, in light of newly uncovered information, a majority of the Panel may now determine that Justice Ling-Cohan meets this standard.

Importantly, the Sub-Committee charged with conducting the investigation of Justice Ling-Cohan's application ("the Sub-Committee") reported favorably on Her Honor's record both before and after her elevation to the Appellate Term roughly two years ago.

Further, one individual Panel member, who had appeared before Justice Ling-Cohan and apparently had an unfavorable outcome, forcefully and insistently pushed an issue respecting Justice Ling-Cohan's procedures for handling an Order to Show Cause seeking a Temporary Restraining Orders ("TRO"), an issue that was not raised with other candidates. There was no time to build a full and objective record on the issue, and Panel members who were otherwise unfamiliar with the process only had time to research the requirements for obtaining a TRO after the Panel "reported out."

Therefore, we, the undersigned, strongly believe that the letter and spirit of the Rules and Handbook, as well as basic notions of due process and fairness, require an immediate reopening of the process or the empaneling of a new independent screening panel to evaluate Justice Ling-Cohan's qualifications based on a full and complete record. Additionally, the undersigned remain available to discuss in a meeting with you and/or the Democratic Committee Chair in full the many other disconcerting aspects of the screening process.

Respectfully submitted,

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Elba Galvan
National Lawyers Guild, New York City Chapter

Diana Wong
Asian Americans for Equality

Trina Moore
Association of Black Women Attorneys

Daniela Nanau
National Employment Lawyers Association/New York

Shu'ab Abdur-Raheem
Fortune Society

Niall MacGiollabhui
Brehon Law Society

Christopher Carrion
Dominican Bar Association

*** List in Formation; Please note, other panelists have submitted or have expressed an interest in submitting individual letters.

cc:

Keith Wright, Chair
New York County Democratic Committee

Cyril K. Bedford, Esq
Administrator
Judicial Screening Panel

Anthony P. Luckie, Columbian Lawyers Association
Bruce N. Lederman, Jewish Lawyers Guild
Christine Bae, Korean American Lawyers Association of Greater New York
Deborah Riegel, Esq., New York City Bar Association
Josh Silber, New York State Trial Lawyers Association
Juan Gonzalez, Hispanic National Bar Association

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Lesley Horton Campbell, Esq., NAACP, Mid Manhattan Branch
Marea L. Wachsman, Esq., Women's Trial Lawyer Caucus
Merium Malik, Esq., Muslim Bar Association of New York City
Micahel A. Mosberg, Esq., American Academy of Matrimonial Law
Dai Wai Chin Feman, Asian American Bar Association of New York
Brenda Gill, Fordham Law School
Meredith Miller, The LGBT Bar Association of Greater New York (Le-Gal)
Kenny Louis, Women's City Club