

THE JUDICIARY'S PROPOSED BUDGET FOR FISCAL YEAR 2014-2015

"...there can be no doubt that the New York State Judiciary has shown itself to be a faithful steward of the public fisc...and a good partner with its co-equal branches of government..."

– Judiciary's Executive Summary to its Proposed Budget, at p. iii

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Examination of the Judiciary's proposed budget for fiscal year 2014-2015 must begin with its total cost, especially as the Judiciary does not provide it – and the Governor's Commentary, his Division of the Budget website, and the Legislature's "White", "Blue", "Yellow" and "Green" Books diverge as to what that total is.

Certainly, too, ascertaining the total cost of the Judiciary's proposed budget and its percentage of increase over last year are additionally essential as the Governor's Commentary "urge[s] the Legislature and Judiciary to reduce it so that it is in line with the rest of State spending" – this being a spending increase of no more than 2%

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QUESTIONS FOR CHIEF ADMINISTRATIVE JUDGE PRUDENTI

- (1) By two memoranda dated November 29, 2013, you transmitted to the Governor and Legislature the Judiciary's two-part proposed budget. One part pertained to the Judiciary's operating expenses and the other part pertained to "General State Charges" – these being "the fringe benefits of judges, justices and nonjudicial employees". Neither memorandum identified the cumulative dollar amount of each part or of the two-part budget presentation taken together, is that correct? Why was that?
- (2) A single Executive Summary accompanied your transmitted two-part proposed budget, contained in the proposed budget presentation of operating expenses. It consisted of a four-page narrative followed by five pages of statistical tables. Neither the Executive Summary nor the statistical tables furnished a cumulative dollar amount of the Judiciary's proposed budget, is that correct? Why is that?
- (3) Each of the two parts of the proposed budget contain a "Chief Judge's Certification" and "Court of Appeals Approval". The certification and approval for the part pertaining to operating expenses each state that they are certifying and approving that "the attached schedules" are "the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2014". Which are "the attached schedules" being referred-to?

- (4) The Judiciary also furnished “a single budget bill”, so-described by the memorandum transmitting the “General State Charges”. When was the “single budget bill” transmitted?
- (5) This “single budget bill” also did not identify the cumulative dollar total of the Judiciary’s proposed budget, is that correct? Why is that?
- (6) What is the cumulative dollar total of the “single budget bill”? Which are the specific figures in the bill that you added to arrive at that figure?¹ Is this the same cumulative dollar total as would be produced by adding the various figures in the Judiciary’s two-part budget presentation?
- (7) Do you agree that there is a disparity between the cumulative tally of figures in the Judiciary’s two-part budget presentation and the cumulative tally of figures in the “single budget bill”? Is the reason the Judiciary does not furnish cumulative budget tallies in these documents to conceal the disparity?
- (8) Where in the Judiciary’s two-part budget presentation are the \$41,525,000 reappropriations whose tally appears on the first page of the “single budget bill” and whose breakdown appears at its pages 14-16?
- (9) The Judiciary’s budget presentation for operating expenses identifies only a single reappropriation – the \$51 million “Capital Project” for the Court Officer Academy in Kings County (at p. 152), is that correct?
- (10) Why is the \$51 million “Capital Project” reappropriation not included in the \$41,525,000 tally of reappropriations appearing on the first page of the Judiciary’s “single budget bill”?
- (11) Are the \$41,525,000 in reappropriations properly designated as such – and is there any certification thereof?
- (12) According to the “Citizen’s Guide” on the Division of the Budget’s website,

“A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.”
http://www.budget.ny.gov/citizen/financial/glossary_all.html#r

¹ Is it the tally of “Appropriations” plus “Reappropriations” at page 1, plus “General State Charges” at page 12? What about the “New Appropriations (Supplemental)” at pages 10-11 and “Capital Projects-Reappropriations” at p. 17?

Can you identify what the various reappropriations, specified at pages 14-16 of the Judiciary's "single budget bill", were for when originally appropriated? Why was this money not used? And what is it now purported to be reappropriated for?

(13) Is the reason the Judiciary's two-part budget presentation does not identify the \$41,525,000 in unused appropriations because they are not properly reappropriations and should be returned to the public treasury?

(14) Would you agree that except for the last two reappropriations of \$10 million each (at p. 16), all the listed reappropriations in the "single budget bill" (at pp. 14-15) are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2013, 2012, 2011, 2010, 2009 and also chapter 51, section 3 of those laws – which are the enacted budget bills pertaining to the Judiciary for those years, its appropriations and reappropriations, respectively. They furnish no specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1..."; or "services and expenses as provided by section 94-b of the state finance law– Contractual Services"; or "Contractual Services".

A. Can you explain how these reappropriations are consistent with State Finance Law §25:

"Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation. If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change."

B. Are these reappropriations consistent with Article VII, §7 of the New York Constitution?

"No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation action; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum."

C. Are they consistent with Article III, §16 of the New York State Constitution:

“No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.”

D. How about the two reappropriations at page 16? Are they consistent with State Finance Law §25, with Article VII, §7, and with Article III, §16 of the New York Constitution?

(15) According to your transmitting memorandum for the Judiciary’s operating budget, the Judiciary’s “General Fund State Operations budget request” is \$1.81 billion representing “a cash increase of \$44.2 million, or 2.5 percent, over available current year funds.” This is repeated in the Executive Summary (p. iii), annotated by a footnote:

“The appropriation request associated with the requested increase in cash is \$1.82 billion, which represents at \$63 million, or 3.6 percent increase. The increase in the appropriation request is slightly higher than the increase in the cash request because of technical reasons that relate to the use of reappropriations to pay for the first two years of the judicial salary increase. The cash increase, rather than the appropriation request, is the true measure of the year-to-year increase sought by the Judiciary.” (fn. 2, underlining added).

Can you explain what this means?

(16) Looking at the Judiciary’s “single budget bill” from two years ago, for fiscal year 2012-2013, it contains a reappropriation reading:

“By chapter 51, section 2, of the laws of 2008, as reappropriated and amended by chapter 51, section 3 of the laws of 2009, and as reappropriated by chapter 51, section 3 of the laws of 2011: For expenses necessary to fund adjustments in the compensation of state-paid judges and justices of the unified court system and housing judges of the New York City civil court, and for such other services and expenses specified in section two of this act.”
– Personal service - regular ... 51,006,759 (re. \$31,000,000)”

The Executive Summary to the Judiciary’s two-budget presentation for fiscal year 2012-2013 identified the cost of the first phase of the judicial salary increase as \$27.7 million. Was that, in fact, how much was expended from the \$31 million reappropriation? And did that \$27.7 million include increases to “General State Charges” resulting from the judicial salary increase? Is it correct that there is no certification in the Judiciary’s proposed budget for fiscal year 2012-2013 as to the dollar cost of its “financial need” to fund the first phase of the

judicial salary increase?

- (17) Last year, for fiscal year 2013-2014, the Judiciary's Executive Summary, though identifying the second phase of the judicial salary increase, did not identify its dollar cost. Is that correct? Likewise, the balance of last year's Judiciary budget documents, though identifying the second phase, did not identify its dollar cost. Is that correct? There is thus no certification as to the dollar cost of the Judiciary's "financial need" to fund the second phase. What was the dollar cost of the second phase of the judicial salary increase?
- (18) Why did last year's "single budget bill" not specify the reappropriation from which the second phase of the judicial salary increase was to be funded?
- (19) Each phase of the judicial salary increase has to be funded not just for one year, but forever because of the non-diminution clause of the New York Constitution (Article VI, §25a), is that correct?
- (20) How was the second year of the first phase of the judicial salary increase funded in the Judiciary's "single budget bill" for fiscal year 2013-2014?
- (21) The Judiciary's proposed budget for fiscal year 2014-2015 requires funding for the third year of the first phase of the judicial salary increase and for the second year of the second phase of that judicial salary increase, is that correct? Where are the appropriations for those two phases in the Judiciary's "single budget bill"?
- (22) Now, a third phase of the judicial salary increase is scheduled to take effect on April 1, 2014, is that correct? Where in the Judiciary's two-part budget presentation for fiscal year 2014-2015 is there any reference to this third phase? There is none, right? Yet, the Judiciary is seeking funding for it, correct? How much will this third phase cost in fiscal year 2014-2015 – and where is it in the Judiciary's "single budget bill"? Why is this information nowhere to be found – and is it correct that there is no certification of the dollar cost of this third phase in the Judiciary's proposed budget for fiscal year 2014-2015?
- (23) You are familiar with Chapter 567 of the Laws of 2010, are you not? It created the 2011 Special Commission on Judicial Compensation, whose August 29, 2011 Final Report recommended the three-phase judicial salary increase. Would you agree that Chapter 567 of the Laws of 2010 included a safeguarding provision that the Commission's recommendations would not become law if modified or eliminated prior to April 1st of the year to which each recommendation applied? (§1h).
- (24) Isn't the reason the Judiciary failed to put any line-item in its "single budget bill", this year and last, for the second and third phases of the judicial salary increase to conceal the Legislature's power, as likewise the Governor's, to strike each phase of increase, pursuant to Chapter 567 of the Laws of 2010? Isn't this also the reason the Judiciary used an inappropriate reappropriation description/designation for the first phase?

- (25) Would you agree that if the Commission on Judicial Compensation did not comply with the statutory prerequisites for making judicial salary recommendations, set forth in Chapter 567 of the Laws of 2010, it would be the Legislature's duty and that of the Governor, to set its recommendations aside?
- (26) You are familiar with the October 27, 2011 Opposition Report of the Center for Judicial Accountability, are you not? Do you deny the accuracy of its showing that the Commission's recommendations for judicial salary increases flagrantly violated Chapter 567 of the Laws of 2010, including in the following respects:
- (a) *In violation of the statute*, the Commission's judicial salary increase recommendations were unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges were inadequate (at pp. 1, 16, 31);
 - (b) *In violation of the statute*, the Commission examined only judicial salary, not "compensation and non-salary benefits" (at pp. 18-21, 25-31);
 - (c) *In violation of the statute*, the Commission did not consider "all appropriate factors" – a violation it attempted to conceal by transmogrifying the statutory language "all appropriate factors" to "a variety of factors" (at pp. 4-5, 21);
 - (d) *In violation of the statute*, the Commission made no findings as to five of the six statutorily-listed "appropriate factors" it was required to consider (at pp. 21, 23-24);
 - (e) *In violation of the statute*, the Commission did not consider and made no findings as to the "appropriate factors" which the Center for Judicial Accountability presented as disintitling the judiciary to any judicial pay raise. Among these,
 - (i) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay (at pp. 10-13); and
 - (ii) the fraudulence of claims put forward to support judicial pay raises by judicial pay advocates (at pp. 13-15), including their concealment of pertinent facts, *inter alia*:
 - (a) that New York's state-paid judges are not civil-service government employees, but "constitutional officers" of New York's judicial branch;

- (b) that the salaries of all New York's "constitutional officers" have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the "constitutional officers" of our executive branch – and the 6[3] Senators and 150 Assembly members who are the "constitutional officers" of our legislative branch;
- (c) that the compensation of New York's judicial "constitutional officers" is comparable, if not superior, to the compensation of New York's executive and legislative "constitutional officers", with the judges enjoying incomparably superior job security;
- (d) that New York's executive and legislative "constitutional officers" have also suffered the ravages of inflation, could also be earning exponentially more in the private sector; and also are earning less than some of their government-paid staff and the government employees reporting to them;
- (e) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
- (f) that outside the metropolitan New York City area, salaries drop, often markedly – as reflected by the county-by-county statistics of what New York lawyers earn – and there is no basis for judges in most of New York's 62 counties to be complaining as if they have suffered metropolitan New York City cost-of-living increases, when they have not, or to receive higher salaries, as if they have;
- (g) that New York judges enjoy significant "non-salary benefits";
- (h) that throughout the 12 years of "stagnant" pay, New York judges overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there was no shortage of qualified lawyers eager to fill

vacancies;

- (i) that the median household income of New York's 19+ million people hovers at about \$45,000 – less than one-third the salary of New York Supreme Court justices during the supposed “judicial pay raise crisis”.

Where are the Judiciary's findings of fact and conclusions of law with respect to this October 27, 2011 Opposition Report? As such are relevant to the lawfulness and constitutionality of the third phase of the judicial salary increase for which the Judiciary's proposed budget for fiscal year 2014-2015 seeks funding, will the Judiciary furnish these to us?

- (27) Based on this Opposition Report, the Judiciary is among the defendants in a declaratory judgment action, *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* Upon being served with the verified complaint in April 2012, did the Judiciary make any findings of fact and conclusions of law with respect to its four causes of action? Again, as such are relevant to the lawfulness and constitutionality of the third phase of the judicial salary increase for which the Judiciary's proposed budget for fiscal year 2014-2015 seeks funding, will the Judiciary furnish these to us?
- (28) Are you aware that *Center for Judicial Accountability, et al. v. Cuomo, et al.* has been stalled in Supreme Court/New York County since September 2012 because the original verified complaint and all the exhibits thereto – most importantly, the Opposition Report – went missing, upon being transferred from Supreme Court/Bronx County? Are you aware that the Judiciary's Inspector General has failed and refused to investigate the record tampering that occurred and the misfeasance and nonfeasance of the New York County Clerk and his staff in connection therewith – the subject of repeated complaints?
- (29) By the way, the Judiciary's proposed budget for fiscal year 2014-2015 (at p. 64) seeks \$1,286,199 for the Office of Inspector General, is that correct? Is the Inspector General's handling of the complaints filed with it pertaining to *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* illustrative of how it handles complaints, generally? Will the Judiciary produce the records of the Inspector General's disposition of that and other complaints for the Legislature's oversight inspection?
- (30) Will you, personally, as Chief Administrative Judge, report to us, within two weeks' time, as to the whereabouts of the original verified complaint and all exhibits in *Center v. Judicial Accountability, Inc., et al. v. Cuomo, et al.*?
- (31) Finally, the whole basis for funding the Judiciary is so that it can “fulfill its constitutional duty to the people of New York” “to provide timely and fair justice to every person who comes to our courthouses”, which is its “core mission”² – a claim paralleling why its

² Your memorandum transmitting the Judiciary's operating budget; Executive Summary, p. iii.

purportedly excellent judges deserved and required pay raises. What investigation has the Judiciary done to verify systemic corruption within its ranks, involving supervisory and appellate levels and the Commission on Judicial Conduct, such as attested to:

- (a) by witnesses testifying on June 8, 2009 and September 24, 2009 before the Senate Judiciary Committee, at public hearings conducted by its then Chairman John Sampson, which were aborted without investigation, findings, or committee report;
 - (b) by witnesses testifying on July 20, 2011 before the Special Commission on Judicial Compensation at its only public hearing – testimony to which the Commission made no reference in its August 29, 2011 Final Report extolling New York’s judiciary and recommending judicial salary increases;
 - (c) by witnesses testifying on September 17, 2013 before the Commission to Investigate Public Corruption, at its only public hearing at which members of the public were permitted to testify about the breadth of public corruption within their knowledge and experience – testimony to which the Commission made no reference in its December 2, 2013 interim report.
- (32) What steps will the Judiciary take to investigate this testimony – or to secure investigation by the appropriate public officers and agencies?