

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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Elena Ruth Sassower, Director
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June 23, 2011

TO: Governor Cuomo's Appointees to New York's Judicial Compensation Commission
William C. Thompson, Jr., Chairman
Richard Cotton, Member
William Mulrow, Member

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

RE: (1) Bringing Public Accessibility, Input, and Accountability to the Judicial Compensation Commission – Facilitated by the Open Meetings Law & Executive Order #3; and
(2) Chairman Thompson's Disqualifying Conflict of Interest, Requiring his Resignation

On June 10, 2011, Governor Cuomo released an announcement that you were his three appointees to the seven-member Judicial Compensation Commission and that he had designated "Bill Thompson" as its Chair.

In accepting such appointments, were you aware that two a half weeks earlier, on May 23, 2011, our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), had written Governor Cuomo about his failure to make his appointments to the Commission? We described the Commission as "inoperative and inaccessible to the public" – a characterization continuing to this date: Day 84 of the Commission's statutorily-limited 150-day existence on which it still has no telephone number, no fax number, no e-mail address, and, apparently, no office or staff.

Enclosed is our May 23rd letter to the Governor, additionally addressed to the three leaders of New York's other two government branches who had each previously made their Commission appointments: Temporary President of the Senate Skelos, Assembly Speaker Silver, and Chief Judge Lippman – with copies to their four Commission appointees, Robert Fiske, Jr., Kathryn S.

* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

Ex B-1

Wylde, James Tallon, Jr., and Mark Mulholland. We received no response from any of them.

We also received no response from any of New York's other public officers who were indicated recipients of our May 23rd letter: Senate Minority Leader Sampson, Senate Judiciary Committee Chairman Bonacic, Senate Judiciary Committee Ranking Member Hassell-Thompson, and the Senate Judiciary Committee's 21 other members – notwithstanding the letter's content largely concerned their nonfeasance, including by its "RE" clause:

“(2) Evidence Disentitling NYS's Judiciary to Increased Compensation, Presented and Proffered by the Public at the NYS Senate Judiciary Committee's June 8, 2009 and September 24, 2009 Public Hearings – as to which There Has Been No Investigation, No Findings, and No Committee Report.” (CJA's May 23rd letter, at p. 1, underlining in the original).

Meantime, on June 16th, Reuters reported, in an article by Jennifer Golson entitled “*New York judges ask for 41-percent raise, retroactive pay*”:

“Commission chairman Bill Thompson said the commission is still in the early stages of its work. ‘We have not established an agenda or a timetable yet,’ he said, but added that the members will meet within the next two weeks to start planning a schedule and determine what information they will need.”

We request that our May 23rd letter be on the table for discussion by the Commissioners at the Commission's upcoming meeting – as its content is THRESHOLD. Indeed, unless the Commission disagrees with the proposition that corruption and lawlessness by New York's state judiciary, infesting its supervisory and appellate levels, would – *without more* – disentitle it to ANY boost in judicial compensation, the Commission's “FIRST order of business” must be – as the May 23rd letter stated (at p. 4) – a request to Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman for their “assistance in securing factual findings as to [the] testimony and documentation” the public presented and proffered to the Senate Judiciary Committee in connection with its 2009 hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system – as to which, as stated in our May 23rd letter, “There Has Been No Investigation, No Findings, and No Committee Report.”

On this THRESHOLD corruption issue, Chairman Thompson suffers from disqualifying conflict of interest, requiring his resignation from the Commission. His father, former Appellate Division, Second Department Justice William C. Thompson, was a key participant in the corruption of our judiciary – including of the Commission on Judicial Conduct, of which he was its highest-ranking judicial member for many years, and of the attorney disciplinary system, which he and his fellow Appellate Division justices utilized for ulterior, retaliatory purposes as an ongoing pattern and practice. The evidence of this, embodied in four lawsuits we brought, two against the Appellate Division, Second Department justices, including Justice

Thompson, personally, and two against the Commission on Judicial Conduct, was to have been submitted by CJA at the Senate Judiciary Committee's aborted December 16, 2009 public hearing. This can be *readily-verified* from the written statement CJA drafted for that hearing and subsequently provided to Senate Judiciary Committee Member Adams to reinforce his suggestion, made at the September 24, 2009 hearing, that a task force be formed to examine the scathing testimony and evidence the Committee was receiving.¹

Our December 16, 2009 statement describes the record of our four lawsuits as:

“perfect ‘paper trails’ establishing, *prima facie*, how New York state judges and the federal courts, aided and abetted by New York’s Attorney General, obliterated ALL cognizable legal standards in fraudulent judicial decisions that falsified and omitted the material facts and controlling law to protect and perpetuate New York’s verifiably-corrupt attorney disciplinary system and Commission on Judicial Conduct.” (CJA’s December 16, 2009 statement, at p. 3, underlining, italics, and capitalization in the original).²

A link to this December 16, 2009 statement appears on our website, www.judgewatch.org, on the webpage indicated by our May 23rd letter (at p. 3) as devoted to the Senate Judiciary Committee’s 2009 hearings. It opens to a further webpage which not only posts the statement, but the primary-source record documents that were to be submitted to the Senate Judiciary Committee in substantiation.

That link will now be included with this letter on CJA’s newly-created webpage “Bringing Transparency, Evidence, & Public Accountability to the One-Sided, Media-Created View (Swallowed Whole from the Legal-Judicial Establishment) that NY Judges are Underpaid & Entitled to a Raise”, accessible *via* the top panel “Latest News”. To further assist Chairman Thompson – and the other Commissioners – in recognizing that he must resign from the Judicial Compensation Commission, the succession of judicial misconduct complaints we filed with the Commission on Judicial Conduct against and involving his father – and which were exhibits to our two lawsuits against it – will now be highlighted in bold on the webpage and identify Justice Thompson’s name in parentheses.

¹ See page 3 of CJA’s May 23, 2011 letter – and its annotating footnote 2.

² Highlighting the critical importance of the record in evaluating judicial decisions – and that judges slant, misstate, and make up facts to fit the outcomes they desire in the cases before them – is the 2009 law review article “*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*”, 73 Albany Law Review 1), by Gerald Caplan: “assessment is not possible without access to the record” (at p. 3); “Performance assessment cannot occur without close examination of the trial briefs, oral argument and the like...” (at p. 53).

As CJA's May 23rd letter further identified (at p. 3) that the Commission on Judicial Compensation is empowered to "hold public hearings" and that we would be requesting that it do so:

"to ensure that its work is informed by evidence-based facts as to the supposed quality of our state judges entitling them to increased compensation, including the quality of those judges who have complained that they are underpaid",

this letter constitutes that formal request.

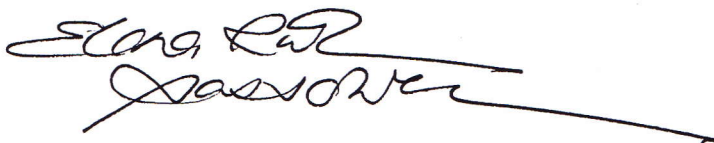
Finally, we have verified with New York's Committee on Open Government (518-474-2518) that the Judicial Compensation Commission is subject to the Open Meetings Law. This means that ALL Commission meetings – including its upcoming meeting to set an agenda, timetable, and what information it will need – must be open to the public, with advance notice to the public and news media of the time and place, and, further, that minutes must be taken and made publicly available. Indeed, under former Governor Spitzer's Executive Order #3 "Promotion of Public Access to Government Decisionmaking" —which the Committee on Open Government informed us also applies – the Commission's meetings are required to be videoed and broadcast on the internet.

To facilitate public access to the Commission's meeting notices, meeting minutes, and videocasts, CJA requests that the Commission establish a website – and that it post relevant background materials, such as the FULL record of the judiciary's lawsuits underlying the Court of Appeals' self-serving, constitution-repudiating February 23, 2010 decision on judicial compensation³, as well as ALL submissions the Commission receives on the judicial compensation issue. This would include the 247-page report by the Coalition of New York State Judicial Associations, requesting a 41% pay increase and retroactive pay, reported by the June 16th Reuters article.

Despite phone messages for the report on June 20th, left on the voice mail of Coalition organizer Brooklyn Family Court Judge Daniel Turbow (347- 401-9870) and with the law clerk of the report's author, Albany Family Court Judge W. Dennis Duggan (518-285- 8681), they have not furnished us with a copy. Fortunately, the report has since been posted on the internet by Reuters. Hopefully, it will also be posting this letter and our May 23rd letter, after writing a story about their content – and about CJA's People's Coalition of Taxpayers Opposed to Pay Raises for New York's Judges.

³ The Court of Appeals' flagrant self-interest and disregard for the New York State Constitution was shockingly evident at the January 12, 2010 oral argument of these lawsuits in its exchange with Richard H. Dolan, Esq., counsel for the Governor and Legislature. The video is posted on CJA's website on our above-indicated newly-created webpage.

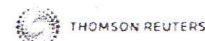
Thank you.

A handwritten signature in black ink, appearing to read "Jennifer Golson". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Enclosures: CJA's May 23, 2011 letter
"New York judges ask for 41-percent raise, retroactive pay", Reuters,
June 16, 2011, by Jennifer Golson

cc: Other Appointed Members of the Judicial Compensation Commission:
Robert Fiske, Jr.; Kathryn S. Wylde; James Tallon, Jr.; Mark Mulholland
Governor Andrew M. Cuomo
Temporary Senate President Dean G. Skelos
Assembly Speaker Sheldon Silver
Chief Judge Jonathan Lippman
Senate Minority Leader John L. Sampson
Senate Judiciary Committee
Chairman John J. Bonacic
Ranking Member Ruth Hassell-Thompson
The Committee's 21 Other Members – including Senator Eric Adams
Witnesses at the 2009 Senate Judiciary Committee Hearings
New York Committee on Open Government
Richard H. Dolan, Esq.
Jennifer Golson, Reuters
Other Press

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New York judges ask for 41-percent raise, retroactive pay

6/16/2011

COMMENTS (0)

NEW YORK, June 16 (Reuters) - A coalition of more than 1,100 New York judges has asked the state's newly-created Judicial Compensation Commission for a 41-percent pay hike, after more than a dozen years without a raise.

The request would increase the salary for state trial-court judges to \$192,500 from \$136,700, where it has held steady since 1999.

The figure is the centerpiece of a 247-page report compiled by the Coalition of New York State Judicial Associations, which includes groups representing nearly 90% of the state judiciary, from Supreme Court justices to Family, Criminal, and Housing Court judges.

The report, which was delivered to the compensation commission this week, lands amidst a \$170-million cut to the state court system's budget, which has led to the layoffs of 411 non-judicial court employees and the demotion or transfer of 241 others.

"While it is very unfortunate that there is a need to lay off some workers, judges are the only State employees who have not received any raises over the last 12 years, although their case loads have increased dramatically during that time," Brooklyn Family Court Judge Daniel Turbow, who organized the coalition, wrote in an email.

"It is grossly unfair to suggest that the judges, who did not obtain any raises during times of plenty, should continue to be singled out as the lone group not entitled to a salary increase," Turbow added.

The report estimates that the requested raises will cost \$78 million, but points out that even so, the judges' salaries "will approach, but still significantly lag behind" the salaries of judges in the nation's five other largest metropolitan areas, when adjusted for cost of living.

COMMISSION IN PLACE

The commission, a seven-member panel established in 2010 by former Gov. David Paterson, was slated to begin work on April 1, but was not filled out until last Friday, when Gov. Andrew Cuomo made the final three appointments. The members have until the end of August to make salary recommendations, which would take effect on April 1, 2012, and last for four years, unless modified or repealed by statute.

Commission chairman Bill Thompson said the commission is still in the early stages of its work. "We have not established an agenda or a timetable yet," he said, but added that the members will meet within the next two weeks to start planning a schedule and determine what information they will need.

The report may provide the commission with a substantial chunk of that information.

Authored by Albany Family Court Judge W. Dennis Duggan, the report was partly the result of dissatisfaction with several elements of the legislation that created the commission, said Turbow.

In particular, the judges were upset that the raises would not take effect until 2012, that the legislature would have the ability to block a judicial raise, and that there was no provision for a retroactive salary increase.

"The judges believed it was necessary to present a position on their own behalf, independent of that presented by the Office of Court Administration," Turbow said in an interview.

LUMP-SUM PAYMENT

In addition to the requested 2012 raise, the report calls for a lump-sum payment equal to the cost-of-living-adjusted, or COLA, salary levels for each year since 2005.

The report also noted that since the last judicial raise in 1999, the Consumer Price Index has increased 41 percent. During that time, it said, 220,000 non-judicial state employees have received raises totaling 44 percent.

While the report focuses on the state's approximately 380 Supreme Court justices, who earn \$136,700, the coalition requests that all trial judges at the county level and above should receive the same salary, and asks that the chief judge's salary be "markedly increased" to \$290,000.

"Not only is the chief judge the leader of the Court of Appeals, our highest court, but also the leader of one of the largest, most complex court systems in America," it said.

Duggan acknowledged that the average person who doesn't make \$136,700 might find a 41-percent raise "astounding."

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"But the average person didn't have to have 20 years of education and 10 years of experience and then get elected to get their jobs," he said.

If judges had received normal cost-of-living adjustments, he added, "nobody would be objecting to our pay."

The report notes that previous state budgets have included allocations for judicial raises. For example, in 2006 the legislature and Governor George Pataki approved a budget that contained a \$69.5 million appropriation for judicial salary increases.

"The taxpayers paid for a judicial pay raise that the judges never got," the report said.

The report also suggests revenue sources the state could tap to fund judicial raises, such as passing a sugared-drink tax, increasing the bottle tax, or not letting the "millionaire's tax" expire.

(Reporting by Jennifer Golson)

(Corrects paragraph 16, which erroneously stated that there are 800 Supreme Court justices in New York. There are approximately 380 Supreme Court justices.)

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