



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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LITIGATION BUREAU

January 7, 2020

**BY ECF**

The Honorable P. Kevin Castel  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

**Re: *Steck v. DiNapoli, et al.*, 19-cv-05015 (PKC) (BCM)**

Dear Judge Castel:

This Office represents defendants Thomas P. DiNapoli, H. Carl McCall, Scott Stringer, William C. Thompson, Jr. and The State of New York (collectively "Defendants").

In accordance with Your Honor's September 3, 2020 Order (ECF No. 29), Defendants write to "advise the Court of the status of the appeal or appeals" in the two New York state court proceedings that issued decisions invalidating the "outside income" restrictions at issue in this case: (i) *Delgado, et al. v. State of New York, et al.*, Index No. 907537/2018 (Sup. Ct. Albany Cty.) ("*Delgado*"), and (ii) *Assemblyman William Barclay, et al. v. New York State Committee on Legislative and Executive Compensation, et al.*, Index No. 901837/2019 (Sup. Ct. Albany Cty.) ("*Barclay*").

As stated in our August 30, 2019 pre-motion letter (ECF No. 28), by Decision/Judgment dated June 7, 2019 (the "*Delgado* Judgment"), the *Delgado* court held that the "recommendations" effective January 1, 2020 and beyond that contemplate prohibited activities and limitations on outside earned income are null and void." See ECF No. 28-2. Similarly, by Decision, Order & Judgment dated August 28, 2019 (the "*Barclay* Judgment"), the *Barclay* court ordered and declared "that the provisions of the report of the New York State Committee on Legislative and Executive Compensation dated December 10, 2018 that recommend restrictions on a legislator's ability to earn outside income and maintain outside employment are not entitled to the force or effect of law." See ECF No. 28-3.

As we also previously informed the Court, on July 15, 2019, the *Delgado* defendants filed a Notice of Appeal to the Appellate Division, Third Department, from the *Delgado* Judgment. However, the *Delgado* defendants thereafter filed a letter application, dated October 2, 2019 (*see*

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Exh. A hereto), seeking to withdraw and discontinue their appeal. By letter dated December 5, 2019 (*see* Exh. B hereto), the Third Department acknowledged receipt of the October 2 letter and stated that, “in accordance with [that] letter, the appeal has been marked withdrawn.”<sup>1</sup>

With respect to the *Barclay* Judgment, no appeal was filed from that judgment, and the time to file any appeal has passed.

Accordingly, pursuant to the two state court judgments, the outside income restrictions that Plaintiffs challenge in this case have already been invalidated. Therefore, there is no case or controversy before the Court, and this case is moot and should be dismissed.

Despite the absence of any case or controversy before this Court, on December 13, 2019, Plaintiffs’ counsel, Phillip G. Steck, Esq., informed me of his position regarding the continuation of this case, as follows: “We’d like to adjourn the case for 6 months. If the Governor puts this issue in his budget, or it otherwise passes before the end of session, we will resume active litigation. If not, we will agree to dismiss without prejudice.”

There is no basis, however, for keeping this case open because of the *possibility* that the Governor or the Legislature revisits the “issue” in some way or at some time in the next six months. Because Plaintiffs’ claims in this case seek to invalidate the “outside income” restrictions that have already been declared null and void by two other courts, this case simply should be dismissed.

I thank the Court for its attention to this matter.

Respectfully yours,

*/s/ Mark E. Klein*

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cc: Plaintiffs’ counsel (by ECF)

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<sup>1</sup> A cross-appeal filed by the *Delgado* plaintiffs is still pending. In that cross-appeal, the *Delgado* plaintiffs assert that the *entirety* of the New York State Committee on Legislative and Executive Compensation’s recommendations -- and not just the “outside income” restrictions -- are unconstitutional and unlawful, because they fell outside the grant of authority the Legislature gave the Committee under Part HHH § 2.2. However, that cross-appeal, whatever its result, will have no effect on the determination that the “outside income” restrictions Plaintiffs sought to invalidate in this case have already been declared invalid by two state courts.