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October 12, 2023

TO: Commission on Legislative, Judicial and Executive Compensation

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

RE: “History”, Your Website – & Prepping for Tomorrow’s Hearing

At your [October 2nd organizational meeting](#), former Court of Appeals Associate Judge/Chair Fahey spoke about the prior commissions and the importance of this “history” – with the “longer history” being the 2011 commission. [[VIDEO, 19mins](#)] [[Tr. 16-17](#)].

To Commissioner Kovner’s comment, “And it is my understanding that the reports of the prior commissions are available online”, Chair Fahey responded: “They are all available online. Yes, the website has them all, the reports. It also has video of the hearings and transcripts of all the hearings that were held and all the meetings that were held. So it’s as accessible, I think, as it can be, the prior history.” [[VIDEO, at 24mins](#)] [[Tr. 19](#)].

In fact, [the Commission’s website](#) does not post all the prior commission reports, all their hearings, and all their meetings. Most importantly,

- (1) [there is no 2011 side panel](#). Consequently, no “history” of the 2011 Commission on Judicial Compensation is “accessible”: not its August 29, 2011 report, not its single hearing, not its meetings, and not submissions made to it;
- (2) [the 2018 side panel](#) brings up ONLY a pdf of the December 10, 2018 report of the Committee on Legislative and Executive Compensation. Consequently, no “history” is “accessible” concerning that report, as none of the hearings, meetings, and submissions to the committee are posted;
- (3) [the 2019/20 side panel](#) does NOT include the [December 26, 2019 report](#) of the Commission on Legislative, Judicial and Executive Compensation and [posts](#) a non-descript, duplicative, and incomplete mishmash of my submissions, which it misleading makes appear as if all were furnished on “Nov. 4” so as to CONCEAL that its other postings of “Nov 4” submissions by then [Chief Administrative Judge Marks](#) and other judges and by pay-raise advocates and their subsequent submissions culminating in a “Nov 21” submission by the “OCA” and “Nov 26” “[Supplemental Submission of Hon. Larry Marks](#)”¹ were rebutted by:

¹ This supplemental submission is dated November 22, 2019.

- my November 26, 2019 “**First Supplemental Submission in Further Support of Testimony**” (so-called “[Addendum 13](#)”);
- my December 11, 2019 “**Second Supplemental Submission in Further Support of Testimony**” (so-called “[Addendum 4](#)”);
- and my December 18, 2019 “**Third Supplemental Submission in Further Support of Testimony**” (so-called [Addendum 5](#)”).

Please confirm that you will be retrieving the missing webpages of the 2011 commission and 2018 committee, whose websites were, respectively, www.judicialcompensation.ny.gov and nyscompensation.ny.gov – and putting them on your website.²

Also, please confirm that you will be retrieving and bringing to tomorrow’s hearing, at which I will be testifying, the EVIDENCE I handed up to the 2011 and 2015 commissions and 2018 committee when I testified before each – and which, when I testified before the 2019 commission on November 4, 2019 [[VIDEO, at 1hr/35mins](#)], I requested it find in substantiation of my testimony [[Tr. 69](#)]. Here’s the [e-mail I sent to the 2019 commission, the next day, November 5, 2019](#), furnishing an inventory of that EVIDENCE – and which it then posted as a so-called “[Addendum](#)” to “Nov. 4” . Three weeks later, I e-mailed a [November 27, 2019 FOIL request](#) for records of its efforts, *if any*, to recover the inventoried EVIDENCE and, if no efforts were made, “records bearing on the reason.” Other than a [December 5, 2019 acknowledgment from the 2019 commission](#), followed by a [December 12, 2019 acknowledgment from the OCA](#), I received no response.

As for [the 2019 commission’s misleading, a-chronological, and mishmash posting of my submissions](#),³ compare it to [the clear and correct fashion in which the 2015 commission posted my submissions](#). This it did in face of my [November 6, 2019 e-mail](#), not only meticulously identifying what I had physically furnished at the November 4, 2019 hearing, but stating I would e-mail pdfs so that it could post them in the same exemplary fashion as the 2015 commission had posted my submissions, which I then did. However, the 2019 commission took these separate pdfs, which were nine in number, and merged and mixed them up, eliminating [the first pdf: my letter to the editor in the August 21, 2019 New York Law Journal](#) about the “force of law” commission/committee statutes and the citizen-taxpayer action challenging their constitutionality, *CJA v. Cuomo...DiFiore*,

² The 2015 commission website had a link for the website of the 2011 commission. However, the 2019 commission website removed it – and I so noted this when I testified before the 2019 commission on November 4, 2019. Following my testimony, the 2019 commission website populated its link for the 2015 commission, which before then had nothing. As for the 2018 committee website, it had been linked by the 2019 commission’s website, albeit without its November 28, 2018 Albany hearing, which had ceased to be operative at some point after January 1, 2019.

³ To facilitate your review of this, I have annotated the [2019 commission’s posting of my submissions](#). The annotation is the last document in the accompanying appendix.

[then at the Court of Appeals](#). No matter I protested the non-posting in a [December 4, 2019 e-mail](#) entitled “Why has the Commission NOT posted my Aug. 21, 2019 New York Law Journal letter to the editor – four copies of which I handed up at the November 4, 2019 hearing?”. I received no response. Likewise, I received no response, two weeks later, when I sent my [December 18, 2019 e-mail](#) – this being my third supplemental submission – specifically asking why the [NYLJ](#) letter to the editor had still not been posted – and pointing out that my first and second supplemental submissions had not been posted (or at least not with those designations), and additionally asking:

“How about posting my three FOIL requests, one submitted on November 27th and two on December 9th – each further substantiating my November 4th testimony.”

None of the three FOIL requests were posted – and I received no response to any of them.⁴

As the six commissioners present at your October 2nd meeting – Commissioner Megna being absent – acted as if they had NO knowledge of the corruption and unconstitutionality that is the “history” of the 2011, 2015, and 2019 commissions and the 2018 committee and, indeed, materially replicated their frauds – I refer you to this “history”, accessible from CJA’s website, www.judgewatch.org, via its prominent center link “[NY's ‘Force of Law’ Commissions -- Unconstitutionality & Fraud IN PLAIN SIGHT](#)” – the same link as I identified during my November 4, 2019 testimony and as I had handwritten on my [NYLJ](#) letter to the editor that I had handed-up and, thereafter, pdf’d for posting – which was never posted.

The most efficient way to tackle this history-rich link is by [CJA’s webpage for the 2019 commission](#), as it embraces all the “history” that came before. And the 2019 commission is itself part of the record of [CJA v. Cuomo...DiFiore at the Court of Appeals](#) by [CJA’s final November 25, 2019 motion](#)⁵ and [final January 9, 2020 letter](#) that was part thereof,⁶ detailing the fraud and deceit

⁴ CJA’s November 27, 2019 FOIL request to the 2019 commission was entitled “Records establishing the Commission’s efforts, if any, to recover EVIDENCE furnished to the prior ‘force of law’ Compensation Commissions/Committee in support of testimony” – and it is above-linked, with its two acknowledgments – the first from the 2019 commission and the second from the OCA. The two December 9, 2019 FOIL requests also to the 2019 commission, but acknowledged not by it, but by the OCA, were:

- [CJA FOIL request \(#2\)](#) entitled “Records establishing the Commission’s notice to the public and dissemination of its Oct. 18 and Oct. 28, 2019 ‘Media Advisor[ies]’, its Oct. 22, 2019 ‘Invitation’, Etc.”, [acknowledged by the OCA on December 10, 2019](#);
- [CJA’s FOIL request \(#3\)](#) entitled “Execution & Filing of Oaths of Office by the Commissioners”, [acknowledged by the OCA on December 10, 2019](#).

⁵ See [November 25, 2019 notice of motion](#) & [moving affidavit, pp. 19-22](#) & its [Exhibit F](#): my November 25, 2019 letter to Chief Administrative Judge Marks – to which the 2019 commission, its hearing witnesses, and Chief Judge DiFiore’s “Excellence Initiative” were cc’s – entitled:

“Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy

committed and being committed by then Chief Administrative Judge Marks and other judges and pay-raise advocates before the 2019 commission and by the 2019 commission itself, “repeating ALL the statutory and constitutional violations” of the 2015 commission – and the 2011 commission – that *CJA v. Cuomo...DiFiore* established.

In preparation for tomorrow’s hearing, I ask that you review my testimony at the November 4, 2019 hearing, if not, additionally, my three supplemental submissions in further support, as the frauds they particularize are now being replicated. To facilitate your doing so, the transcript of my testimony is here annexed, along with the two documents I handed up before beginning my testimony and which I then discussed: my August 21, 2019 NYLJ letter to the editor and my December 31, 2015 letter to then Chief Judge Nominee DiFiore – plus the three supplemental submissions.

Thank you.

s/ ELENA RUTH SASSOWER

of my Sworn Testimony”.

⁶ See [January 9, 2020 letter to the Court, pp. 10-17](#), whose concluding sentence, pertaining to the 2019 commission’s December 26, 2019 report, read:

“Entirely ignored, as if they did not exist, my November 4, 2019 testimony, and three supplemental statements, from which are readily established, *prima facie*, the Commission’s flagrant fraud and violations of Part E, Chapter 60 of the Laws of 2015, arising from [the commissioners’] undisclosed and disqualifying interests and bias.”

[Exhibit G-1](#), [Exhibit G-2](#), [Exhibit H](#), [Exhibit I](#), [Exhibit J](#), [Exhibit K](#), annexed to the letter, were my submissions to the 2019 commission.

APPENDIX

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STATE OF NEW YORK

-----X

PUBLIC HEARING

Commission on Legislative, Judicial
and Executive Compensation

-----X

November 4, 2019

NEW YORK LAW SCHOOL
185 West Broadway
New York, New York

B E F O R E:

MICHAEL CARDOZO
SEYMOUR LACHMAN
MITRA HORMOZI
HON. RANDALL ENG (RET.)
ROBERT MEGNA
JIM MALATRAS

Stefanie Johnson
Carolyn Barna
Senior Court Reporters

1 do the work. Well, with the Chief Judge's initiative, the
2 Excellence Initiative, we're going to help with reducing the
3 backlog, reducing the costs, and that's where the court
4 system is going to get its 1.2 percent to pay because the
5 judges work hard, and we will continue to work hard, and we
6 will work even harder.

7 So we are asking for no raise, no cost of living,
8 no nothing. And the difference is are you going to go back
9 to the bad times or will you continue the work of the last
10 Commissions?

11 Thank you very much.

12 THE CHAIRPERSON: Thank you very much.

13 Any questions? Anybody in Albany?

14 (No responses)

15 THE CHAIRPERSON: Thank you very much.

16 I believe we have, as our last speaker, Ms.

17 Sassower.

18 MS. SASSOWER: May I hand this up?

19 THE CHAIRPERSON: Yes.

20 MS. SASSOWER: (Handing documents)

21 THE CHAIRPERSON: Ms. Sassower.

22 MS. SASSOWER: I do solemnly swear to tell the
23 truth, the whole truth, and nothing but the truth, so help
24 me God.

25 This forum has been permeated with fraud. My name

1 is Elena Ruth Sassower and I am director and cofounder of
 2 The Center for Judicial Accountability, Inc., a
 3 non-partisan, non-profit citizen organization that for more
 4 than a quarter of a century-- no, for 30 years, has
 5 documented that New York's Judiciary is not discharging its
 6 constitutional function to render fair and impartial justice
 7 according to law.

8 Rather, it is pervasively corrupt from trial levels
 9 up through appellate and supervisory levels, throwing cases
 10 by fraudulent judicial decisions that falsify and omit the
 11 controlling facts and obliterate the most basic adjudicative
 12 and due process standards.

13 And making this even more catastrophic and
 14 unconstitutional is that all safeguards within the Judiciary
 15 and within the legislative and executive branches are
 16 dysfunctional and corrupted. Not the least reason being
 17 because when citizens bring ^{suit}~~steps~~ to enforce black letter,
 18 unambiguous law and principles of constitutional governance
 19 judges throw the cases, usually with ^{the}~~a~~ connivance of our
 20 state's highest law enforcement officer, the New York State
 21 Attorney General who, when she has no legitimate defense,
 22 defends anyway with litigation fraud for which she is
 23 rewarded by fraudulent judicial decisions in favor of her
 24 governmental clients.

25 As I stated when I testified before the Commission

1 to investigate public corruption at its September 17, 2013
2 public hearing, cases are perfect paper trails. There is a
3 record, so it is easy to document judicial corruption.

4 Now, these sentences that I read were from the
5 opening presentation, the written presentation which I
6 delivered orally almost four years ago when I testified on
7 November 30, 2015 at the public hearing of The Commission on
8 Legislative, Judicial and Executive Compensation, at which
9 Commissioner Hormozi was a member of the panel.

10 And I handed up in substantiation case file
11 evidence.

12 By the way, both the written statement and the
13 video is not apparently accessible from your web site. For
14 some reason, that public hearing is not operative and my
15 written statement is not there and accessible.

16 I also testified to the same effect with evidence
17 four years earlier on June 20th -- I'm sorry, ~~It was~~
18 July 20, 2011 before The Commission on Judicial
19 Compensation. Also handing up evidence, case file evidence,
20 of the corruption that infests the Judiciary, that includes
21 the Commission on Judicial Conduct, the monitor, the
22 foremost monitor of the Judiciary.

23 Your web site which, by the way, is inexplicably
24 not a governmental web site. It is an org web site. Why is
25 that? Why do you have an e-mail that is a GMail, okay?

1 There is rigging going on now, just as there was rigging four
 2 years ago, with The Commission on Legislative, Judicial and
 3 Executive Compensation, and four years earlier, with The
 4 Commission on Judicial Compensation.

5 And so I would like to devote my presentation to
 6 housekeeping matters. Because, with all ~~due~~ respect, you
 7 are opening with this hearing, at which you see I'm actually
 8 the only citizen testifying. I'm the only one who clearly
 9 is presenting opposition. Why is that? Because you are
 10 operating under the radar.

11 *ya, well,* It would appear, notwithstanding the transcription
 12 of your meeting some weeks ago, that perhaps there was not
 13 the ~~outrage~~ *outreach* that there needed to be. I don't believe that
 14 there was any newspaper announcement of this hearing today
 15 and you may be sure that if it were announced, and if it
 16 were announced that the issue is to raise judicial pay
 17 beyond where it already is, and virtually there is no
 18 mention of that level. It actually only came out in some of
 19 the interjection of Commissioner Eng what the levels are.

20 You are talking about judicial salaries that are
 21 vastly above what is the average household, median household
 22 income, and you are not concerning yourself in the least --
 23 you are accepting the deceit and the fraud that we have a
 24 high quality, functioning, excellent Judiciary.

25 Now, The Commissioner ~~on~~ Judicial Compensation did

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1 not examine the evidence that I handed up.

2 And, by the way, your web site no longer has a link
3 for the 2011 Commission. It's gone. I had already
4 complained that at some point the web site of The Commission
5 on Judicial Compensation from 2011 went inoperative, but it
6 had, at one point, been accessible from the 2015 Commission.

7 Now, with your Commission, you have wiped out the
8 2011 commission. Nothing is there. Not the video of my
9 presentation, not the evidence that I handed up in
10 substantiation and, as I said, with respect to the 2015
11 Commission, ^{my, my testimony —} the video of the November 30th hearing, the sole
12 hearing you held on Judicial Compensation, is gone and my
13 presentation.

14 ^{OK.} Now, Exhibit A, I have handed up a letter to the
15 editor, a letter to the editor, ^{called 'A Call'} that was published
16 August 21st in The New York law Journal. ^{And} I dare say that
17 probably most everyone here are readers of The Law Journal,
18 and I would find it hard to believe that they did not read
19 this article and it wasn't circulated and they didn't take a
20 look at the record evidence.

21 And the record evidence concerns what is Exhibit A
22 about how the Judiciary operates. It's ~~is~~ the citizen
23 taxpayer action suing all three branches for collusion
24 against the people with respect to these force of law
25 commissions, a scheme, a corrupt ~~and~~ unconstitutional scheme

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1 to give pay raises to corrupt public officers who should be
2 removed for their corruption in office.

3 The lawsuit is not just a challenge; although it is
4 a challenge frontally, to Part E, Chapter 60 of the Laws of
5 2015 which established this Commission, but it is a
6 challenge to the entirety of the budget and this statute
7 under which you are operating is an unconstitutional rider
8 inserted into the budget of 2015. Unconstitutionally.
9 Relates to no appropriations.

*(holding up Commission
Cachman's book "three men
in a room")*

10 It was the product of behind closed doors, three
11 men in a room dealmaking. Three men in a room dealmaking.
12 Budget dealmaking. If you've ever read the New York State
13 Constitution and the Article 7, the finance article, you
14 know that the budget is off the constitutional rails and
15 three men in a room behind closed doors dealmaking has no
16 part in anything constitutional.

17 The lawsuit, the citizen taxpayer action
18 challenging this Commission scheme, you, and the budget, the
19 Judiciary budget, which embeds, hides the pay raises, has
20 hidden them, concealed their costs. The legislative budget,
21 the entirety of the executive budget, is challenged in the
22 lawsuit which is now at The Court of Appeals which, at every
23 level, this is the people's lawsuit, ~~is~~ brought in the
24 public interest on behalf of The People of the State of New
25 York. It challenges ^{by} ~~about~~ ten causes of action what has

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1 been going on and your reliance on the reports, the 2011
2 report of The Commission on Judicial Compensation and the
3 2015 report of The Commission on Legislative Judicial and
4 Executive Compensation —

5 Well, these reports are fraudulent, are false
6 instruments, are violative on their face. On their face
7 they are violative of the statute pursuant to which they
8 purport to be rendered.

9 ~~You're~~ ^{your} charged, and you have not, ^{because} you have not held
10 ^a ~~the~~ proper organizational meetings at which you studied the
11 statute and discussed what it means.

12 You have not considered your duty to examine the
13 specified factors and ^{the} the enumerated factors and ^{the} other
14 appropriate factors. The factors enumerated are six. And
15 three of them, I believe, relate to not just salary, but
16 non-salary benefits.

17 This is a Compensation Commission. The prior two
18 Commissions which Commissioner Hormozi was a member of,
19 failed. Failed. That report is a false instrument and
20 fraudulent because it did not examine anything but salary
21 and in a most superficial way, just like The Commission on
22 Judicial Compensation in 2011 only addressed salary, not
23 compensation, on its face.

24 All these lawyers and judges, ^{have} ~~had~~ they not read the
25 statute? Did they not see by reading the report and reading

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1 the statute that on its face -- and neither of those reports
 2 make any finding that -- which is the only predicate for
 3 raising salary, that levels were inadequate. It's not a
 4 matter of what they think judges ^{should,} would like because it's
 5 consistent with their sense of dignity and honor. It's
 6 adequacy^{yes.} Your charge is adequacy.

7 There ^{can} ~~could~~ be no argument made reasonably that the
 8 astronomically high salaries that are unlawfully,
 9 unconstitutionally^{the} enjoyed by judges are inadequate and so you
 10 have to add COLAs --

11 *MS SASSOWER,* *please*
 THE CHAIRPERSON: Can you please finish up, Ms.

12 Sassower?

13 *Sum up.*
 MS. SASSOWER: [^] Yes.

14 So, okay, this is what I am leaving you with. What
 15 I handed up, and everything will be posted on our web site,
 16 www.judgewatch.org. The center link reads New York ^{prominent} 's Force of
 17 Law Commissions Unconstitutionality and Fraud in Plain
 18 Sight.

19 And you can see what I'm handing up, in addition to --
 20 ~~what~~ I will say that you have in addition to the letter to
 21 the editor that was published in The Law Journal, my letter
 22 to Chief Judge DiFiore, December 31st, 2015, in which I hand-
 23 delivered to her office, ^{she was} to the Westchester County District
 24 Attorney, this evidentiary substantiation (indicating) of
 25 the presentation made in the letter that both Commission

cb

(folders of documents held up)

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1 reports, both The Commission on Judicial Compensation¹ in the
 2 2011 report and the 2015 report of The Commission on
 3 Legislative and Judicial Executive Compensation raising
 4 salaries, raising judicial salaries, was a false instrument,
 5 violative of ^{a succession} sections of the Penal Laws and the Public Trust
 6 Act. *(folders of documents held up)*

7 And, indeed, it is, and your duty now, this is what
 8 was handed up (indicating). You have all of this. You have
 9 a full copy of the record of the -- ^{oh,} one last thing. Because ^{Mr.}
 10 *Hi.* ^{Alan} Mr. Klinger, who acted as counsel to the sham, corrupt, *(turning around)*
 11 Committee on Legislative and Executive Compensation, the
 12 video of my testimony shows what I handed up which was the
 13 Appellate record of the citizen taxpayer action now at The
 14 Court of Appeals, Center for Judicial Accountability
 15 against Cuomo, et al, and the last defendant is Chief Judge
 16 DiFiore.

17 I, under your statute, you have the resources of
 18 every department, every agency. You are not limited, you
 19 should, and you have ^{subpoena} special power. You have the power of
 20 legislative committees, it says, right in your statute. Your
 21 duty is to find the evidence that I handed up in 2011, in
 22 2015, in 2018.

23 And, if you want more of it, more of the record,
 24 the complete record, to ask the Judiciary, ^{it's, it's} it's now at The
 25 Court of Appeals, you can access the complete record. It's

1 also on the web site, ^{you can} But your duty is to make findings of
2 fact, ~~and~~ conclusions of law.

3 And if these judges and lawyers are so fit, and so
4 excellent, and so wonderful, let them, charge them with
5 making the findings of fact and conclusions of law because
6 what you have here is a grand larceny, ^{of the public fisc involving} and you should know
7 that, as of this date, already paid out in fraudulent,
8 statutory violative, unconstitutional judicial pay raises is
9 --

10 THE CHAIRPERSON: Ms. Sassower, you have one minute
11 to finish --

12 MS. SASSOWER: -- probably on the order of half a
13 billion dollars.

14 Plus, ^{oh} you must remember, too, that there is a ^{statutory} link
15 between ^{judicially appropriate} -- another ^{factor} for you to consider --

16 THE CHAIRPERSON: Ms. Sassower, would you please
17 finish up.

18 MS. SASSOWER: -- the statutory link between
19 judicial salaries and D.A. salaries. ^{So} When you raise
20 judicial salaries, they go up. ^{ok?} There's been a mass, a mass
21 deluge of public money, taxpayer money spent and that needs
22 to be recovered.

23 Last thing, with all respect to Judge Eng, Judge
24 Eng, ^{and, and} and most of you are afflicted by conflict ^{of} interest.
25 I must say to you, Judge Eng, with all respect --

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1 THE CHAIRPERSON: Thank you.

2 MS. SASSOWER: With all respect, you have already

3 --

4 THE CHAIRPERSON: Ms. Sassower, would you please
5 finish up: *Ms Sassower* *Ms Sassower*
Would you please sit down

6 MS. SASSOWER: You have already, by virtue of --

7 THE CHAIRPERSON: Ms. Sassower --

8 MS. SASSOWER: -- *your judicial* the office been the beneficiary
9 of these pay raises.

10 THE CHAIRPERSON: Ms. Sassower --

11 MS. SASSOWER: What we're talking about here is
12 *criminal* criminal fraud by the judges. *ok?*

13 THE CHAIRPERSON: *Alright* Ms. Sassower, thank you.

14 MS. SASSOWER: There has to be adjudication of what
15 has gone on and you and other judges will all be *11956 for* -- *clawbacks*

16 THE CHAIRPERSON: *Do you want* Would you like me to call the
17 security officer or will you stop?

18 Thank you *so* very much.

19 MS. SASSOWER: Of course I will stop.

20 Thank you so much.

21 THE CHAIRPERSON: Any questions from the
22 commissioners? *Let me just*

23 MS. SASSOWER: I look forward to your findings of
24 fact and conclusions of law.

25 THE CHAIRPERSON: I assume there's no one else here

1 who wants to testify?

2 MS. SASSOWER: No, because no public announcement
3 was disseminated.

4 THE CHAIRPERSON: *just, let me* Let me announce that ~~it is~~ ^{is} posted
5 ^{been} and distributed ⁱⁿ ~~on~~ our media releases.

6 We will have a public hearing in Albany on
7 November 14th and then our next meeting after that is
8 scheduled at the City Bar Association on November 21~~st~~.

9 Let me remind the New York-based commissioners that
10 if they are not going to be able to travel to Albany, that
11 the meeting will be held at the City Bar Association
12 available in New York. I personally will be in Albany to
13 join our two colleagues and I hope others of you will as
14 well.

15 Any questions or comments that any of my colleagues
16 want to make?

17 MR. MALATRAS: *Mr. Chairman* I would just like to say, so it's
18 clear on the record, that ~~Mr.~~ ^{Commissioner} Eng and ~~Ms.~~ ^{Commissioner} Hormozi's
19 reputations are impeccable and they serve with integrity and
20 I just want the record to reflect that for the public
21 record.

22 THE CHAIRPERSON: Thank you very much.

23 MS. SASSOWER: *Uh-* The *evidence speaks for itself and*
is being

24 THE CHAIRPERSON: The meeting is adjourned.

25 (Whereupon, the meeting is concluded.)

New York Law Journal
Wednesday, August 21, 2019
page 6 top left
opposite masthead

Letters to the Editor

A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA

New York—the “Excelsior State”—has 13 law schools, a 70,000-plus-member state bar association, countless county, city and specialized bar associations, a vast array of universities, colleges and other schools with scholars of constitutional law and political science, as well as think tanks and research institutes. Yet, it was solo practitioner Roger Bennet Adler who sounded the alarm by his recent perspective column entitled “It’s Legally Perilous to Have a Commission Responsible for Election Laws” whose internet subtitle (8/9/19) and stand-out text in its print edition (8/13/19) was even more stark, reading: “Simply put, there are no available legislative shortcuts around the State Constitution. The recent attempts to ignore it to raise legislative and executive salaries via an appointed commission is in clear violation.”

Where are the voices of the scholars of the New York state constitution and other experts of law and political science about the “clear violation” that has been going on in statutorily delegating legislative powers to commissions? The most cursory

investigation would reveal it to be even more flagrantly unconstitutional than what Mr. Adler so admirably describes.

I should know. For more than seven years, I have been single-handedly litigating its unconstitutionality and unlawfulness, as written, as applied and by its enactment in three major lawsuits, brought expressly “on behalf of the People of the State of New York & the Public Interest.” The third of these lawsuits, encompassing the prior two, is now before the New York Court of Appeals, appealing by right and by leave the Appellate Division, Third Department’s December 27, 2018 decision in *Center for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406.

This is the decision Mr. Adler identifies and describes as being one of three decisions cited by Albany Supreme Court Justice Ryba in her June 7, 2019 decision upholding the constitutionality of the statutory delegation of legislative power challenged in *Delgado v. State of New York*. In fact, *CJA v. Cuomo* is the first decision to which Justice Ryba cites—and eight times in total—because it is the decision on which she relies, involving, as it does, a materially identical statute. As for Mr. Adler’s description that the *CJA v. Cuomo* decision “upheld the delegation to the commission to increasing judicial salaries”—implying that it did not uphold delegation of legislative and

executive salaries, this is incorrect. It upheld these, as well.

The shocking record of *CJA v. Cuomo*—including before the Court of Appeals—is accessible from the Center for Judicial Accountability’s website and powerfully refutes Mr. Adler’s assertion that “legislating by proxy commissioners, is doomed to failure when judicially challenged.”

Likewise, his further comment that a newly-commenced lawsuit challenging the constitutionality of the Public Campaign Finance and Election Commission “is an initial salvo in a legal struggle to vindicate the plain words of the State Constitution, and hold the Legislature constitutionally accountable.”

I invite Mr. Adler to join with me in rallying scholars, experts and just plain civic-minded attorneys to examine and report on the record and to file amicus curiae briefs with the Court of Appeals. Especially is this important because *CJA v. Cuomo* is dispositive of *Delgado* and of the five current other lawsuits challenging delegations of legislative power to commissions/committees—a fact I stated to the Court of Appeals, most recently by an August 9, 2019 letter—without contest from the Attorney General.

Elena Sassower
is the director of the Center
for Judicial Accountability.

MENT
tive Officer
fficer
resident/Events
aid Content
rking Solutions
al Counsel
an Resources
ice Operations

ES
urchase
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nylj.com.

see CJA's website: www.judgewatch.org
center link: "NY's 'Force of Law' Commissions—
Unconstitutional + Fraud IN PLAIN
SIGHT"

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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BY HAND

December 31, 2015

TO: NY Court of Appeals Chief Judge Nominee/
Westchester County District Attorney Janet DiFiore

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

RE: So, You Want to Be New York's Chief Judge? – Here's Your Test:
Will You Safeguard the People of the State of New York – & the Public Fisc?
(1) The Commission on Judicial Compensation's August 29, 2011 Report;
(2) The Commission on Legislative, Judicial and Executive Compensation's
December 24, 2015 Report;
(3) The Judiciary budgets – including for fiscal year 2016-2017

Our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), congratulates you on your nomination as Chief Judge of the New York Court of Appeals and of the New York court system. We consider it most fortunate that Governor Cuomo has selected a district attorney as it means our new top judge will have an expertise in New York's penal law, including such felonies as "offering a false instrument for filing in the first degree" (§175.35), "grand larceny in the first degree" (§155.42), "scheme to defraud in the first degree" (§190.65), "defrauding the government" (§195.20), and the class A misdemeanor "official misconduct" (§195).

Then, too, there is the "Public Trust Act", whose passage, as part of Governor Cuomo's behind-closed-doors, three-men-in-a-room budget deal in March 2014 with then Temporary Senate President Skelos and then Assembly Speaker Silver, was the pretext for his shut-down of the Commission to Investigate Public Corruption. It created the felony crime "Corrupting the Government" – Penal Law §496 – especially relevant to the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and the further judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, and to the Judiciary budget – all subjects of this letter.



* 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.

37 to March 23, 2016 verified second supplemental complaint in 1st citizen taxpayer action R.135-225

Because district attorney salaries are statutorily-linked to judicial salaries (Judiciary Law §1[83]-a), you have been a beneficiary of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report. That is why, in 2012, your \$136,700 salary was increased to \$160,000 and then, in 2013, increased to \$167,000 and then, in 2014, increased again to \$174,000. It is also why, upon becoming Chief Judge, you again will be a beneficiary of the August 29, 2011 Report: your salary as Chief Judge will be \$198,600, not the \$156,000 it was in 2011.

In the event you are unaware, the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and all the related costs, including the increases in district attorney salaries – are “ill-gotten gains’, stolen from the taxpayers”. And proving this, resoundingly, is CJA's October 27, 2011 Opposition Report, detailing the fraudulence, statutory-violations, and unconstitutionality of the August 29, 2011 Report. Addressed to the Commission's four appointing authorities – Governor Cuomo, then Temporary Senate President Skelos, then Assembly Speaker Silver, and Chief Judge Lippman – the Opposition Report expressly called upon them to take the following four steps to protect the public:

- (1) legislation voiding the Commission's judicial pay raise recommendations;
- (2) repeal of the statute creating the Commission;
- (3) referral of the Commissioners to criminal authorities for prosecution;
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Yet they took no steps. Indeed, they did not even respond – and their inaction and the collusion therein of Attorney General Schneiderman and Comptroller DiNapoli, “motivated by a scheme to also raise legislative and executive salaries”¹, gave rise to a declaratory judgment action against all of them, *CJA v. Cuomo, et al.*, which we commenced in March 2012, on behalf of the People of the State of New York and the public interest.

What became of that lawsuit? For the past three years it has been in limbo, sitting on a shelf in the Clerk's Office in Supreme Court/New York County after the original verified complaint and all exhibits – including the October 27, 2011 Opposition Report – went missing upon being fraudulently transferred from Supreme Court/Bronx County (#302951-12). The particulars are recited by the March 2014 verified complaint² in a citizen-taxpayer action, also *CJA v. Cuomo, et al.*, which we commenced in Supreme Court/Albany County (#1788-2014), also on behalf of the

¹ ¶1 of the March 2012 verified complaint. See also ¶¶122, 138.

² ¶5(c), (d), (e) of the March 2014 verified complaint.

People of the State of New York and the public interest. It challenges the slush-fund Judiciary budget for fiscal year 2014-2015 in which the judicial salary increases are embedded and, by a March 2015 supplemental complaint, additionally challenges the slush-fund Judiciary budget for fiscal year 2015-2016 and its embedded judicial salary increases. This citizen-taxpayer action is live and unfolding on a record entitling us to summary judgment, *as a matter of law* – and not only with respect to the judicial salary increases recommended by the Commission on Judicial Compensation’s August 29, 2011 Report, but as to the Judiciary budgets for fiscal years 2014-2015 and 2015-2016, whose constitutional and statutory infirmities, enabling fraud, are replicated in the Judiciary’s budget for fiscal year 2016-2017.

On November 30, 2015 – the day before the Governor announced your nomination – I testified before the Commission on Legislative, Judicial and Executive Compensation at its public hearing in Manhattan. That commission emerged from the March 2015 behind-closed-doors, three-men-in-a-room budget deal-making by Governor Cuomo, then Temporary Senate President Skelos, and Assembly Speaker Heastie, wherein – following rubber-stamping by the Legislature – the statute that created the Commission on Judicial Compensation was repealed and, in its place, a materially-identical statute creating the Commission on Legislative, Judicial and Executive Compensation was substituted. In advance of my testimony, I created a webpage for the Commission on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS: The Money Belongs to Their Victims!” It is there that I posted the evidence supporting my testimony, beyond what I handed up at the hearing.

The focus of my testimony was CJA’s October 27, 2011 Opposition Report, the declaratory judgment action and citizen taxpayer action based thereon – as well as a third litigation, in April 2014, in which we sought to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption (*NYS Senate, NYS Assembly v. Rice, et al.*, NY Co. #160941/2013), also on behalf of the People of the State of New York and the public interest. I stated that “But for the evisceration of any cognizable judicial process in ALL three of these litigations – resulting from the double-whammy of Attorney General Schneiderman’s litigation fraud, rewarded by fraudulent judicial decisions – judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating [the Commission on Legislative, Judicial and Executive Compensation], would have been declared unconstitutional, long, long ago.” (at p. 2, capitalization in original).

Indeed, I stated that the ONLY recommendation the Commission could properly make, based on CJA’s October 27, 2011 Report, was “for the nullification/voiding of the [Commission on Judicial Compensation’s August 29, 2011 Report AND a ‘claw-back’ of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto” – and that the “only way” the Commission could “get away with doing anything else” in its own report, statutorily-required by December 31, 2015, would be by “obliterating the existence of our Opposition Report, the record of our three litigations based thereon – and all findings of fact and conclusions of law that [were its] duty to make with respect thereto.”

This, of course, is exactly what the Commission did by its December 24, 2015 “Final Report”. It materially replicated the fraud, statutory violations, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 Report – which also had been denominated a “Final Report”. Thus, identical to the August 29, 2011 Report, the December 24, 2015 Report:

- willfully concealed, as if it did not exist, the threshold issue of the Commissioners’ disqualifying interest and actual bias that had been raised, most formidably by CJA – because it was dispositive; and
- willfully concealed, as if it did not exist, the opposition to judicial salary increases that had been raised, most formidably by CJA – because it was dispositive.

This enabled it to then flagrantly and identically violate the Commission statute:

- by making no finding that current “pay levels and non-salary benefits” of New York State judges are inadequate, required by the statute;
- by examining only judicial salary, not “compensation and non-salary benefits”, required by the statute ;
- by not considering “all appropriate factors”, required by the statute – and making no claim that it had;
- by making no findings as to “appropriate factors” that CJA had identified as disempowering New York’s judges to any pay raises. Among these:
 - (a) 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; and
 - (b) the fraudulent claims of judicial pay raise advocates in support of judicial pay raises.

All the foregoing is readily-verifiable from the Commission on Legislative, Judicial and Executive Compensation’s website and from CJA’s own webpage for the Commission. Links for both are posted on the webpage I’ve created for this letter on CJA’s website, www.judgewatch.org. You can reach it easily *via* the top panel “Latest News”, which will bring you to a link bearing the title of this letter: “So, You Want to be New York’s Chief Judge? – Here’s Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?”³

³ The letter is also accessible *via* the left sidebar panel “Judicial Selection-State-NY”, which leads to a menu page containing a link for “Merit Selection” to the New York Court of Appeals.

The Judiciary has, at least, three copies of CJA's October 27, 2011 Opposition Report: the one I originally delivered for Chief Judge Lippman on October 27, 2011 at the Office of Court Administration in Manhattan, and the two full copies that accompanied the two copies of the verified complaint in the *CJA v. Cuomo, et al.* declaratory judgment action that I delivered in Albany on April 5, 2012 to the Clerk of the Court of Appeals, who accepted service for Chief Judge Lippman and the Unified Court System, each named defendants therein. Nevertheless, because the October 27, 2011 Opposition Report is so dispositive, I am herewith furnishing you with your own full copy – by which I mean the included October 15, 2002 and October 24, 2002 two final motions that were before the Court of Appeals in CJA's monumental 3-in-1 lawsuit against the Commission on Judicial Conduct, about which I testified on July 20, 2011 before the Commission on Judicial Compensation, handing up a copy of each motion to substantiate my words, publicly-stated:

“...you can verify that the Commission was the beneficiary of a succession of fraudulent judicial decisions without which it would not have survived, including four of the Court of Appeals....the Commission has been the beneficiary of fraudulent judicial decisions. The *modus operandi* in this state, fraudulent judicial decisions. The judiciary of this state is corrupt, pervasively, systemically corrupt.”⁴

I am also furnishing you with my written submissions to the Commission on Legislative, Judicial and Executive Compensation:

- my November 30, 2015 written testimony, with its attached exhibits;
- my December 2, 2015 supplemental statement; and
- my December 21, 2015 further statement.

From these, you can speedily verify the fraudulence, statutory violations, and unconstitutionality of BOTH the Commission on Judicial Compensation's August 29, 2011 Report and the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report – each the product of tribunals disqualified for interest and actual bias – and that your duty is to take steps to protect the People of the State of New York, be it as the district attorney you currently are or the chief judge you aspire to be.

⁴ See transcription of my July 20, 2011 testimony, annexed as part of Exhibit I to CJA's October 27, 2011 Opposition Report – and, additionally, the further substantiating documents I handed up to the Commission on Judicial Compensation on July 20, 2011: Exhibit F-1 (hand-out: “No Pay Raises for NYS Judges who Corrupt Justice: The Money Belongs to the Victims”); Exhibit F-2 (CJA's draft statement for the Senate Judiciary Committee's aborted December 16, 2009 hearing on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system); Exhibits F-3 and F-4 (written statements for the Senate Judiciary Committee's March 6, 2007 hearing in opposition to confirmation of Chief Judge Kaye to the Court of Appeals).

Indeed, your disregard of that duty would make you an accessory and criminally liable⁵ for the felony crimes here at issue: “offering a false instrument for filing in the first degree” (Penal Law §175.35), “grand larceny in the first degree” (Penal Law §155.42), “scheme to defraud in the first degree” (Penal Law §190.65), “defrauding the government” (Penal Law §195.20), “corrupting the government in the first degree” (Penal Law §496.05), “public corruption” (Penal Law §496.06), and, of course, the misdemeanor of “official misconduct” (Penal Law §195)?

The People of New York cannot suffer yet another constitutional officer compromised by pecuniary and other interests and relationships, who corrupts his public office as a result. Will you do what is right and what the law and ethics require, notwithstanding you are a beneficiary of the judicial salary increases and have personal, professional, and political relationships with those involved in the felonies now before you and who are responsible for your Court of Appeals nomination and control your confirmation?

On the subject of conflicts of interest – and because, in December 2011, Governor Cuomo appointed you to chair the then-newly created Joint Commission on Public Ethics,⁶ whose jurisdiction includes conflict of interest complaints against him and other constitutional officers of the executive and legislative branches – I am enclosing the June 27, 2013 conflict-of-interest ethics complaint that we filed with JCOPE, two months after you resigned as chair – and which JCOPE has been sitting on ever since. It is against Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, legislators and their culpable staff and is based on their conflicts of interest that are the ONLY explanation for their knowing and deliberate failure to protect the public from the Commission on Judicial Compensation’s fraudulent, statutorily-violative and unconstitutional August 29, 2011 Report.⁷

⁵ As illustrative, Penal Law §105.15 “conspiracy in the second degree”.

⁶ In the words of the Governor’s December 12, 2012 press release: “‘The Joint Commission on Public Ethics is an independent monitor that will aggressively investigate corruption and help maintain integrity in state government,’ Governor Cuomo said. ‘I am confident that under the leadership of Chair DiFiore and the other board members, the Commission will be the toughest ethics enforcer in our state’s history.’” <http://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-appoint-members-joint-commission-public-ethics>.

⁷ At the November 30, 2015 hearing, I furnished this June 27, 2013 conflict-of-interest ethics complaint – and CJA’s related December 11, 2014 conflict-of-interest ethics complaint that JCOPE has also been sitting, also against the Governor, *et al.* – to Commissioner Mitra Hormozi, one of the Governor’s three appointees to the Commission on Legislative, Judicial and Executive Compensation and his appointed chair of the Commission on Public Integrity, when JCOPE replaced it, under your chairmanship. CJA’s webpage for my November 30, 2015 testimony posts this additional December 11, 2014 complaint. The direct link is: <http://www.judgewatch.org/web-pages/judicial-compensation/2015/testimony.htm>. CJA’s subsequent correspondence pertaining to the JCOPE/LEC Review Commission – and my October 14, 2015 testimony before the JCOPE/LEC Review Commission about the conflicts of interest of executive and legislative constitutional officers with respect to the judicial pay raises and the Commission on Judicial Compensation’s August 29, 2011 Report is posted here: <http://www.judgewatch.org/web-pages/searching-nys/commission-to->

As I greatly prefer to testify in support of your nomination at the Senate Judiciary Committee's upcoming hearing on your confirmation, rather than in opposition, please confirm, as soon as possible, that based on your findings of fact and conclusions of law with respect to the foregoing, you will be taking steps, as Chief Judge, to:

- (1) void the judicial pay raise recommendations;
- (2) repeal the commission statute;
- (3) refer the commissioners to criminal authorities for prosecution; and
- (4) investigate the systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Legislative, Judicial and Executive Compensation – like the Commission on Judicial Compensation before it – unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Further, please advise, with respect to the Judiciary's budget for fiscal year 2016-2017, transmitted to Governor Cuomo and legislative leadership, including Senate Judiciary Committee Chairman Bonacic, on the day you were nominated, December 1, 2015:

- (1) whether the Judiciary's "single budget bill" is encompassed within the certification of the Chief Judge and the approval of the Court of Appeals;
- (2) the cumulative dollar total of the Judiciary's budget request in its two-part budget presentation;
- (3) the cumulative dollar total of the appropriations and reappropriations in the Judiciary's "single budget bill";
- (4) whether the reappropriations in the "single budget bill" are consistent with Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25.

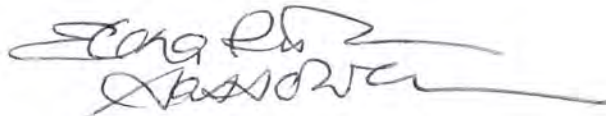
Insofar as the Executive Summary to the Judiciary's budget for fiscal year 2016-2017 states (at fn. 4) that the Judiciary's budget does not include the Commission on Legislative, Judicial and Executive Compensation salary recommendations – as they were not then made – but that "If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment", do you not agree that any such supplemental budget request would be – like the Commission's December 24, 2015 Report – fraudulent, statutorily-violative, and unconstitutional.

I would welcome your invitation to meet together in advance of your Senate Judiciary Committee confirmation hearing so that we may discuss these and other issues germane to the top leadership position to which you have been nominated. This would include CJA's constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits and from Article VI of the New York State Constitution – highlighted by my November 30, 2015 testimony before the Commission on Legislative, Judicial and Executive Compensation (at p. 2) and annexed as its Exhibit 3 – that:

“The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.^{fn4}” (CJA’s October 27, 2011 Opposition Report, prefatory quote & page 12, underlining in the original).

May I hear from you soon – and may the New Year be the beginning of respect for law, evidence, and honesty, under your leadership.

Thank you.

A handwritten signature in black ink, appearing to read "Craig R. DiFiore". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Enclosures

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, November 26, 2019 5:11 PM
To: 'nyscompensation@gmail.com'
Subject: Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD
Attachments: 11-25-19-ltr-to-marks.pdf

TO: Commission on Legislative, Judicial & Executive Compensation

Below is my just-sent e-mail to Chief Administrative Judge Marks, with the above attachment. Please forward to each of the Commission's seven members.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, November 26, 2019 4:58 PM
To: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>
Cc: 'rmaldonado@nycbar.org' <rmaldonado@nycbar.org>; 'rmaldonado@sgrlaw.com' <rmaldonado@sgrlaw.com>; 'hgreenberg@nysba.org' <hgreenberg@nysba.org>; 'greenbergh@gtlaw.com' <greenbergh@gtlaw.com>
Subject: Protecting the Commission on Legislative, Judicial & Executive Compensation from your FRAUD

TO: Chief Administrative Judge Lawrence Marks

Attached is my self-explanatory letter to you of yesterday's date, entitled:

"Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony".

CJA's webpage for the letter on which is posted the referred-to substantiating evidence is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

Please be sure to respond promptly – and especially do not overlook the paragraph at page 7 that I quoted in my yesterday's motion to the Court of Appeals in CJA's citizen-taxpayer action, *CJA v. Cuomo...DiFiore*. That paragraph reads:

"By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) 'Judges...must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities' citing 'NY Const., Art. VI, §20(b), (c)' – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate

judges— or was its content known to them and, if so, when? Did you – and they – actually believe that New York’s Judiciary was not obligated to include ANY information as to CJA’s succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator’s Rules Governing Judicial Conduct and any cognizable judicial ‘process’^{fn10} (underlining in the original).

The annotating footnote 10 reads:

“Notably, when you testified, you stated – without specificity:

‘...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue.’ (Tr. 3).”

The direct link to CJA’s webpage for my yesterday’s motion, to which my letter to you is Exhibit F and quoted at pages 20-21, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/11-25-19-motion-5015-etc.htm>.

As for the indicated recipients of my yesterday’s letter to you, I am sure you have more direct e-mail addresses than I have and I ask that you assist in distribution. Indeed, I have no e-mail addresses for the judges who testified at the November 4, 2019 and November 14, 2019 hearings – and for the judicial associations on whose behalf they spoke. I, therefore, expressly request that you forward this e-mail to them, so that they can each respond to my letter’s demand at page 3:

“By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.” (underlining in the original).

Also, please forward this e-mail to Chief Judge DiFiore’s “Excellence Initiative”, to which you and the other judges who testified praised as increasing judicial excellence.

Finally, in view of your reliance on the Chief Administrator’s Rules Governing Judicial Conduct (22 NYCRR Part 100) for the judicial salary increases you seek, I would remind you and your fellow judges of its §100.3D, “Disciplinary Responsibilities”, reading, in pertinent part:

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.”

Presented by my attached letter – and by my November 4, 2019 testimony on which it is based – is not “information indicating a substantial likelihood”, but EVIDENCE PROVING IT. And an excellent starting point for your demonstrating your adherence to §100.3D of the Chief Administrator’s Rules is my December 31, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore, about which I testified at the November 4, 2019 hearing and also highlighted at ¶13 of my yesterday’s motion.

The direct link to CJA’s webpage for that December 31, 2015 letter and its accompanying EVIDENCE is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny->

[difiore.htm](#). Surely, though, such link is superfluous. I cannot imagine Chief Judge DiFiore would have discarded the originals I hand-delivered to her Westchester District Attorney's Office on December 31, 2015, as they EVIDENTIARILY PROVED that the December 24, 2015 Report of the Commission on Legislative, Judicial, and Executive Compensation – and the August 29, 2011 Report of the Commission on Judicial Compensation on which it relied – were each “false instruments”, violative of a succession of penal laws. Or do you disagree?

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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914-421-1200

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

November 25, 2019

TO: Chief Administrative Judge Lawrence Marks
Office of Court Administration/Unified Court System

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

RE: Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony.

On November 4, 2019, I gave sworn testimony to the Commission on Legislative, Judicial and Executive Compensation, at which I identified that the 2011 report of the Commission on Judicial Compensation and the 2015 report of the prior Commission on Legislative, Judicial and Executive Compensation that had raised judicial salaries “are fraudulent, are false instruments, are violative on their face...of the statute[s] pursuant to which they purport to be rendered.” (Tr. 67)¹ – further stating (Tr. 68-69) that I had set this forth, by a December 31, 2015 letter to Chief Judge DiFiore, then the Westchester County District Attorney, identifying that the two commission reports were “violative of a succession of penal laws and the Public Trust Act” and furnishing her with evidentiary proof, in substantiation.²

You are familiar with that December 31, 2015 letter, calling upon then Chief Judge Nominee DiFiore to demonstrate her fitness to be New York’s highest judge by taking actions to safeguard the People of the State of New York and the public fisc from the commission reports and, likewise, from the Judiciary budget, also rife with fraud, statutory violations – and unconstitutionality. Indeed, on both subjects, you were an indicated recipient of my January 26 – February 2, 2016 correspondence to Chief Judge DiFiore and the Legislature, which I e-mailed you.

Neither you nor Chief Judge DiFiore responded or denied or disputed the accuracy of my December 31, 2015 letter and subsequent correspondence. Despite my demands, neither of you came forward

¹ The transcript of the November 4, 2019 hearing of the Commission on Legislative, Judicial and Executive Compensation and all the referred-to evidence to which this letter refers are posted on CJA’s webpage for this letter, here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

² CJA’s webpage for the hand-delivered December 31, 2015 letter, posting the evidentiary proof that accompanied it, is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>.

with any findings of fact and conclusions of law about the commission reports, about the Judiciary budget, or about the corruption of any cognizable judicial process in CJA's three litigations challenging the reports and the Judiciary budget – the same three litigations as my December 31, 2015 letter specified (at pp. 2-3).

Instead, what you and Chief Judge DiFiore did was to collusively cover-up and perpetuate the corruption and larceny of taxpayer monies that my December 31, 2015 letter and subsequent correspondence documented. On March 23, 2016, I set this forth, furnishing my December 31, 2015 letter and related correspondence as exhibits to a verified second supplemental complaint in CJA's then-live citizen-taxpayer action³ – the only one of CJA's aforesaid three litigations then live.

Four months later, that citizen-taxpayer action was also dead, killed off by a fraudulent judicial decision that simultaneously denied leave to supplement by the March 23, 2016 verified second supplemental complaint. As a result, CJA was burdened with presenting the facts and causes of action of the March 23, 2016 verified second supplemental complaint in a new citizen-taxpayer action. It was commenced, on September 2, 2016, by a summons and verified complaint naming Chief Judge DiFiore as its last defendant “in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System” – annexing as its Exhibit A and expressly incorporating the March 23, 2016 verified second supplemental complaint.⁴ This is the citizen-taxpayer action, now at the Court of Appeals, about which I testified at the November 4, 2019 hearing.⁵

In the unlikely event you forgot about *CJA v. Cuomo...DiFiore* and about the corrupting of any cognizable judicial process in the case, about which I alerted you, by e-mails, in April 2017 and January 2018⁶ – and about which you presumably were kept apprised from other sources – the New York Law Journal published my letter to the editor about the lawsuit, “*A Call for Scholarship, Civic Engagement, and Amicus Curiae Before the NYCOA*”, on August 21, 2019. Assuredly, you and the

³ The direct link to CJA's webpage for the March 23, 2016 verified second supplemental complaint with its accompanying compendia of exhibits is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>. My December 31, 2015 letter to Chief Judge Nominee/Westchester D.A. DiFiore and my subsequent correspondence, sent to her and you, are Exhibits 37-41.

⁴ The direct link to CJA's webpage for the September 2, 2016 summons and verified complaint, with its exhibits, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/supreme-ct/9-2-16-osc-verified-complaint.htm>.

⁵ As you know, CJA's website, www.judgewatch.org, posts the entire record of this second citizen-taxpayer action and of the first, accessible from the prominent center link on CJA's homepage entitled “CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance”.

⁶ My e-mails to you in April 2017 transmitted to you copies of my April 10, 2017 letter for “immediate supervisory oversight” [R.1039-1047] and my April 21, 2017 letter for “immediate supervisory action” [R.1052-1059]. My e-mail to you in January 2018 transmitted to you the written statement I would be submitting to the Legislature for its January 30, 2018 budget hearing, at which you would be testifying.

lawyers and judges of the Office of Court Administration are Law Journal readers.

Before beginning my testimony, at the November 4, 2019 hearing (Tr. 61), I handed up to the four commissioners physically present – Lachman, Hormozi, Cardozo, and Eng – four copies of my August 21, 2019 New York Law Journal letter and four copies of my December 31, 2015 letter to Chief Judge DiFiore – thereupon describing – by reading from the opening of my testimony at the November 30, 2015 hearing of the prior Commission on Legislative, Judicial, and Executive Compensation – how New York’s systemically-corrupt Judiciary operates, *to wit*, “throwing” cases by fraudulent judicial decisions – and with the connivance of New York’s attorney general, in cases involving governmental defendants (Tr. 62). I stated that the *CJA v. Cuomo...DiFiore* citizen-taxpayer action is Exhibit A (Tr. 65) – and that the Commission’s duty was to verify this, which it could easily do, as the lawsuit record was a “paper trail”, readily available from CJA’s website, www.judgewatch.org – and, of course, from the Judiciary (Tr. 62, 69-70).

I also pointed out that pursuant to the budget statute establishing the Commission, it had “the resources of every department, every agency” and also had subpoena power – and that it should charge the judges and lawyers who had testified before it with furnishing it with findings of fact and conclusions of law “because what you have here is a grand larceny of the public fisc”, currently “on the order of half a billion dollars”, “paid out in fraudulent, statutorily violative, unconstitutional pay raises” (Tr. 69-70).

I believe you were present when, as the Commission’s last witness, I began my sworn testimony, but that you fled from the room as some point before the end, along with most of the judges and lawyers whose unsworn testimony, like your own, had preceded mine. All of you had urged the Commission to rely on the 2011 and 2015 commission reports, further justifying COLA salary increases as warranted by the quality of New York’s judiciary, enhanced by Chief Judge DiFiore’s “Excellence Initiative”.

Doubtless, you have since viewed the VIDEO of my testimony, posted on the Commission’s website: <http://www.nyscommissiononcompensation.org/index.shtml> – and/or read the posted transcript – and know that I accused you and them of inundating the Commission with fraud (Tr. 61, 64, 67-68).

By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.

To facilitate this, CJA’s webpage for this letter furnishes the link to the webpage posting the evidence to which I referred in testifying⁷. This includes the evidence I delivered to Chief Judge DiFiore with my December 31, 2015 letter to her – a copy of which I physically held up, above my head (Tr. 69), in testifying at the November 4, 2019 hearing:

⁷ The direct link to CJA’s webpage for my November 4, 2019 testimony is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/cja-nov4-2019-testimony.htm>.

- (1) a full copy of CJA's October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report;
- (2) a copy of CJA's November 30, 2015 written testimony (with attachments) that I had orally read at the November 30, 2015 public hearing of the prior Commission on Legislative, Judicial and Executive Compensation – as well as CJA's December 2, 2015 and December 21, 2015 supplemental submissions, the former detailing the frauds that you and other judicial pay raise advocates committed by your testimonies at the November 30, 2015 hearing and the latter indicating you as a recipient and which I had e-mailed to you;
- (3) CJA's June 27, 2013 conflict-of-interest/corruption complaint to the Joint Commission on Public Ethics (JCOPE), with its annexed April 15, 2013 corruption complaint to then U.S. Attorney Preet Bharara.

Suffice to say that among the express statutory violations which my December 31, 2015 letter to Chief Judge DiFiore highlighted (at p. 4) were:

- that the two commission reports had examined only “salary” – not “compensation and non-salary benefits”, required by the statutes;
- that the two commission reports had made no findings that current “pay levels and non-salary benefits” of New York’s judges were inadequate, required by the statutes.

These are the same statutory violations I identified by my November 4, 2019 testimony – and which, by your unsworn testimony (Tr. 2-17) and written submission, you would have the instant Commission repeat. So, too, the other judicial pay raise advocates who followed you, at the November 4, 2019 and November 14, 2019 hearings, also with unsworn testimony and submissions. Like you, none mentioned non-salary benefits, nor compensation other than salary. And, like you too, none furnished evidence that current judicial salary levels are inadequate – or even actually claimed that they are.

Then, too, neither you nor they alerted the Commission to the statutory requirement that it “take into account” other “appropriate factors”, not enumerated. This, with knowledge, that no factor is more “appropriate” – and of greater constitutional magnitude – than evidence that New York’s judiciary is not “excellent” and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct. Indeed, such unenumerated “appropriate factor”, when established, renders IRRELEVANT the enumerated six factors, all financial and economic.

As for the Exhibit A evidence I identified as establishing the systemic corruption of New York’s judiciary: the record of the *CJA v. Cuomo ... DiFiore* citizen-taxpayer action⁸ – its September 2,

⁸ The direct link to CJA’s webpage for the record of its second citizen-taxpayer action, *CJA v.*

2016 verified complaint include four causes of action whose handling by three levels of New York's judiciary demands finding of facts and conclusions of law on a priority basis. It is for this reason that, at the conclusion of the November 4, 2019 hearing, I handed copies of the below to Commissioners Eng, Lachman, and Hormozi.⁹ These four causes of action are, in the order of highest priority:

- The eighth cause of action of the September 2, 2016 verified complaint (¶¶77-80) pertaining to the violations of EXPRESS statutory requirements by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, voiding it as a matter of law – embodying the fifteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶453-457) [R.114, R.212-213];
- The seventh cause of action of the September 2, 2016 verified complaint (¶¶69-76) based, in the main, on the unconstitutional conduct of the prior Commission on Legislative, Judicial and Executive Compensation, including as relates to the unenumerated “appropriate factors”, also voiding its December 24, 2015 report, as a matter of law – embodying the fourteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶424-452) [R.112-114, R.201-212];
- the sixth cause of action of the September 2, 2016 verified complaint (¶¶59-68) as to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, as written and by its enactment – embodying the thirteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶385-423) [R.109-112, R.187-201];
- the second cause of action of the September 2, 2016 verified complaint (¶¶34-39) pertaining to the constitutional and statutory violations of the slush-fund Judiciary budget – embodying the tenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶327-331) [R.103-104, R.162-167].

The frauds committed by Albany Supreme Court with respect to the eighth, seventh, sixth, and second causes of action are summarized, with record references for further particulars, by CJA's July 4, 2018 appellants' brief to the Appellate Division, Third Department. So, too, with respect to the frauds it committed as to the verified complaint's other six causes of action – and as to the threshold integrity issues before it.

Cuomo...DiFiore, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>.

⁹ Additionally, and because Commissioner Lachman wrote the book Three Men in a Room: The Inside Story of Power and Betrayal in an American Statehouse, I also handed up to him and to Commissioners Eng and Hormozi, the ninth cause of action of the September 2, 2016 verified complaint (¶¶81-84) [R.115], as to the unconstitutionality of “three-men-in-a-room” budget deal-making, as unwritten and as applied – embodying the sixteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶458-470) [R.214-219].

The frauds committed by the Appellate Division, Third Department with respect to the eighth, seventh, sixth, and second causes of action, the other six causes of action, and the threshold integrity issues before it, are particularized by CJA's "legal autopsy"/analysis of the December 27, 2018 decision of its four-judge appellate panel, furnished to the Court of Appeals on March 26, 2019, in substantiation of CJA's appeal of right.

As for the Court of Appeals' frauds – starting with its concealment of the threshold integrity issues before its associate judges – they are conveniently particularized by CJA's May 31, 2019 motion, pertaining to the May 2, 2019 order of its associate judges, dismissing appellants' appeal of right. Their frauds with respect to that motion, and appellants' June 6, 2019 motion for leave to appeal and August 8, 2019 motion to strike the attorney general's opposition as "fraud on the court", manifested by their three October 24, 2019 orders disposing of the motions, are particularized by CJA's motion of today's date – posted on the webpage for this letter. I expressly incorporate the motion herein by reference, just as the motion expressly incorporates this letter, annexed thereto as Exhibit F.

By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) "Judges...must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities" citing "NY Const., Art. VI, §20(b), (c)" – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate judges– or was its content known to them and, if so, when? Did you – and they – actually believe that New York's Judiciary was not obligated to include ANY information as to CJA's succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial "process"?¹⁰

Finally, so that you may respond, additionally, to the further evidence I handed up to the Commission, at the conclusion of the November 4, 2019 hearing, in substantiation of my testimony, it was, as follows:

- my February 19, 2019 written statement to the Legislature for its February 11, 2019 budget hearing, with its accompanying 10 pages of Questions for the Legislature to ask you pertaining to the fiscal year 2019-2020 Judiciary budget and the commission-based judicial salary increases it embeds¹¹ – which my May 31, 2019

¹⁰ Notably, when you testified, you stated – without specificity:

“...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue.” (Tr. 3).

¹¹ The direct link to CJA's webpage for the February 19, 2019 written statement, with its appended Questions for you to answer, furnishing links to referred-to substantiating evidence, is here:

motion to the Court of Appeal in *CJA v. Cuomo...DiFiore* annexed as its Exhibits F-2 and F-1— copies of which I furnished, in hand, to Commissioners Lachman and Eng;

- my June 10, 2019 and September 6, 2019 FOIL requests to the Commission's appointing authorities – the Governor, Temporary Senate President, Assembly Speaker, Chief Judge – pertaining to the Commission's functioning and their responses thereto – one copy of which I furnished, in hand, to Commissioner Lachman;
- my June 20, 2019 and July 2, 2019 FOIL records requests pertaining to the whereabouts of records and website issues pertaining to the prior Compensation Commissions/Committees and their responses thereto – one copy of which I furnished, in hand, to Commissioner Lachman.

There's more evidence that I will be furnishing you, your fellow judicial pay raise advocates, and the Commission, but the above more than suffices, for now.

Thank you.

A handwritten signature in blue ink, appearing to read "Steven R. Lachman", with a long horizontal flourish extending to the right.

cc: Commission on Legislative, Judicial and Executive Compensation
The other judicial pay raise witnesses testifying before the Commission
at its November 4, 2019 and November 14, 2019 hearings
Chief Judge DiFiore's "Excellence Initiative"

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, December 11, 2019 9:23 AM
To: 'nyscompensation@gmail.com'
Cc: 'lmarks@nycourts.gov'; 'jshukin@nycourts.gov'; 'skerby@nycourts.gov'
Subject: Protecting the Commission from FRAUD -- CJA's Second Supplemental Submission in Specific Rebuttal to Chief Administrative Judge Marks' Nov. 22, 2019 Supplemental Submission
Attachments: record-2-20-13-foil-compressed.pdf; record-12-9-15-foil-compressed.pdf; record-12-9-16-foil-compressed.pdf; record-10-7-19-foil-compressed.pdf; 2nd-cause-of-action-compressed.pdf; 2-19-19-questions-for-marks-10pp-compressed.pdf

TO: Commission on Legislative, Judicial & Executive Compensation

Following up my below December 9, 2019 e-mail to you, identifying that “the reason Chief Administrative Judge Marks is able to propose that the Judiciary will self-fund COLAs from its own budget is because the Judiciary budget is a larcenous SLUSH-FUND, born of constitutional violations, statutory-violations, and fraud”, please deem that December 9th e-mail and this to be my second supplemental submission, in specific response to Chief Administrative Judge Marks’ November 22, 2019 supplemental submission. There, he makes the extraordinary statement:

“...since inception of the Salary Commission system in 2011, the Judiciary has consistently absorbed the costs of *all* judicial pay adjustments recommended by a Commission without asking for any additional funding to pay those costs. We did this even during the years for which prior Commissions were making salary recommendations when, because those recommendations were geared to help State judges catch up after a 13-year pay freeze, the cost of the increase, and therefore the impact of the Judiciary budget, was far greater. Those adjustments were much larger than even the largest salary adjustment that we might today imagine the Federal Judiciary will receive over the next several years. For example, during the 2012-2015 salary cycle, State Supreme Court Justices received a 17% pay increase for the 2012-13 fiscal year (with other State Judges receiving proportionate increases); a 4.3% increase for the 2013-14 fiscal year; and a 4.2% increase for the 2014-15 fiscal year. During the first fiscal year of the 2016-2019 salary cycle, the Justices received an 11% increase; and in 2018-19, another 6.7%.

We promised the prior commissions the Judiciary budget would absorb the costs of all of these increases without asking for additional funding and then proceeded to live up to that commitment, notwithstanding their size and the fiscal burden they presented...” (italics in the original).

As Chief Administrative Judge Marks’ scant 1-1/2 page supplemental submission identifies not a single dollar amount, the Commission must demand that he specify the dollar amounts he is claiming the Judiciary self-funded from its budget, arising from the August 29, 2011 report of the Commission on Judicial Compensation and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation. Upon information and belief, the Judiciary only absorbed the first year of each COLA or judicial pay raise increase – and did this to avoid having to identify their dollar amounts, or even their existence, in its proposed “single-budget” bills – and the Legislature’s right to modify or strike them out.

In his original submission (at p. 21), Chief Administrative Judge Marks’ purports that the Judiciary’s proposed “series of four...cost-of-living adjustments for New York’s state-paid judges over the four fiscal years beginning April 1, 2020” is “very modest”, that “The cost of these adjustments in each fiscal year, and the aggregate cost over the full four years is almost certain to be de minimus” and in dollar terms would “cost the State \$13.9 million, or an average of \$3.46 million annually” . This is false. The \$3.46 million cost of each COLA increase, essentially repeated by Chief Administrative

Judge Marks in testifying on November 4th (at pp. 7, 12), becomes, after the initial year, embedded as increased judicial salaries, COMPOUNDING yearly. Thus, while the first COLA, in fiscal year 2020-21, would cost \$3.46 million in that first year, the second COLA, in fiscal year 2021-22, is another \$3.46 million, plus the original COLA of \$3.46 million, now shifted to a permanent increase in judicial salary costs – for a total of \$6.92 million in the second year. The third COLA, in fiscal year 2022-23, is a further \$3.46 million, plus \$6.92 million from the two prior COLAs, now shifted to increased judicial salary costs – bringing the total to \$10.38 million in the third year. The fourth COLA, in fiscal year 2023-24, is another \$3.45 million, plus \$10.38 million from the three prior COLAs, now shifted to increased judicial salary costs – thereby totaling \$13.84 million in the fourth year. The dollar total for these four years of COMPOUNDING judicial salary increases originating as COLAs is the addition of \$3.46 million for the first year, \$6.92 million for the second year, \$10.38 million for the third year, and \$13.84 million for the fourth year, which is \$34.56 million. And it does not end there, as this \$34.56 million is then forever a recurring yearly cost upon the state for judicial salaries – on top of which the state must pay out for the increased costs of salary-based non-salary compensation benefits, such as pensions. Does Chief Administrative Judge Marks deny this? Is this why he has submitted no sworn statements of projected costs – or past costs – including from the Judiciary’s own budget director?

As I stated in testifying on November 4th, I believe that what the state has already paid out in commission-based judicial salary increases is now “on the order of half a billion dollars” (Tr. 70). Getting more precise figures must be a Commission priority, especially as the Judiciary has withheld relevant costs in its SLUSH FUND budgets and in responding to FOIL/records requests. My attached February 20, 2013, December 9, 2015, and December 9, 2016 FOIL/records requests – and the Judiciary’s responses thereto – are illustrative.

Finally, over and beyond my sworn testimony and the EVIDENCE from the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action that I handed up to the Commissioners pertaining to the Judiciary budget is the further EVIDENCE I had brought with me to the November 4th hearing, but inadvertently forgot to hand up, *to wit*, my October 7, 2019 FOIL/records request to the Judiciary for its “independent audits” pursuant to Judiciary Law §249-c” – encompassing my comparable November 28, 2016 FOIL/records request, to which the Judiciary had made no responsive production. It is attached, as are my follow-up November 29, 2019 and December 5, 2019 e-mails, reflecting the Judiciary’s failure, yet again, to even respond. There are only three possibilities: either the Judiciary cannot make production because it has NOT complied with its “independent audit” obligations; or because production would reveal that its “independent audits” are sham; or because its “independent audits” have yielded results not favorable to the Judiciary. Each of these possibilities should be concerning to the Commission – and the Commission’s duty, based on Chief Administrative Judge Marks’ claims about the Judiciary’s budget, is to verify the situation by obtaining from him the records those October 7, 2019 and November 28, 2016 FOIL/records request seek – and by subpoena, if necessary.

Needless to say, costs to the state of prospective COLA increases are ALL irrelevant because – as demonstrated by the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action – the Judiciary is systemically corrupt on adjudicative, administrative, and financial levels, making any judicial salary increases, by COLA or otherwise, unconstitutional. Indeed, the record of the lawsuit reveals NO adjudication of the constitutional issue presented by both the sixth cause of action (¶64) and seventh cause of action (¶74) of CJA’s September 2, 2016 verified complaint that corruption is an “appropriate factor” that the Commission must “take into account” for Chapter 60, Part E, of the Laws of 2015 to be constitutional.

Later in the day, I will furnish you a pdf of this e-mail, combined with its attachments, to facilitate your posting this second supplemental submission on your webpage for submission:

<http://www.nyscommissiononcompensation.org/Submissions-judicial.shtml>. Meantime, I am furnishing it to Chief Administrative Judge Marks, Chief Judge DiFiore, and the Judiciary’s records access officer for response.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, December 10, 2019 8:04 AM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Cc: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>; 'jshukin@nycourts.gov' <jshukin@nycourts.gov>;
'skerby@nycourts.gov' <skerby@nycourts.gov>
Subject: (Corrected) Status & Posting -- CJA's Nov. 26, 2019 e-mail to the Commissioners, with attached Nov. 25, 2019 letter to Chief Administrative Judge Marks

TO: Commission on Legislative, Judicial & Executive Compensation

My yesterday's e-mail, which is below, contained two errors, now corrected:

- (1) Its title misdated the year of my letter to Chief Administrative Judge Marks. The date of the letter is November 25, **2019**, not 2015;
- (2) Its message identified only Commissioners Eng and Lachman as having been given, *in hand*, the particularized EVIDENCE that the Judiciary budget is a "SLUSH FUND" – omitting Commissioner Hormozi, to whom I also gave a copy of that same EVIDENCE, *in hand*.

Please furnish this corrected e-mail to all seven Commission members – and post my November 25, 2019 letter to Chief Administrative Judge Marks, transmitted to the Commission by my November 26, 2019 e-mail to it, as my "First Supplemental Submission in Further Support of Testimony". To assist you in posting it as such, the above-attached first pdf contains both the 3-page November 26, 2019 e-mail and the 7-page letter.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, December 9, 2019 3:56 PM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Cc: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>; 'jshukin@nycourts.gov' <jshukin@nycourts.gov>;
'skerby@nycourts.gov' <skerby@nycourts.gov>
Subject: Status & Posting -- CJA's Nov. 26, 2019 e-mail to the Commissioners, with attached Nov. 25, 2019 letter to Chief Administrative Judge Marks

TO: Commission on Legislative, Judicial & Executive Compensation

Please confirm that my below November 26, 2019 e-mail entitled "Protecting the Commission on Legislative, Judicial and Executive Compensation from FRAUD", with its now signed above-attached November 25, 2019 letter to Chief Administrative Judge Marks, was forwarded to "each of the Commission's seven members", as requested – AND that it will be posted on the Commission's webpage of submissions:

<http://www.nyscommissiononcompensation.org/Submissions-judicial.shtml>.

To date, I have received no response to the letter from Chief Administrative Judge Marks – nor from any of the other witnesses who testified at the Commission’s November 4th and 14th hearings. Has the Commission received any response? If not, has the Commission requested responses from Chief Administrative Judge Marks and the other witnesses – as any fair and impartial tribunal would have done. Please advise.

By the way, the reason Chief Administrative Judge Marks is able to propose that the Judiciary will self-fund COLAs from its own budget is because the Judiciary budget is a larcenous SLUSH-FUND, born of constitutional violations, statutory-violations, and fraud. Indeed, the Commission has the particularized EVIDENCE of this, as I gave it, *in hand*, to Commissioners Eng, Lachman, and Hormozi, on November 4th at the conclusion of my testimony – and the Commission has posted it on its webpage of submissions. For your convenience, that EVIDENCE is attached, *to wit*:

(1) the second cause of action of the September 2, 2016 verified complaint in the *CJA v. Cuomo...DiFiore* taxpayer action pertaining to the Judiciary budget (§139), with its incorporated tenth cause of action from the March 23, 2016 verified second supplemental complaint in the first *CJA v. Cuomo* citizen-taxpayer action (§§329-331); and

(2) CJA’s “Questions for Chief Administrative Judge Lawrence Marks” pertaining to the fiscal year 2019-2020 Judiciary budget (##1-36), which I furnished to the Legislature on February 19, 2019 and annexed as Exhibit F-1 to CJA’s May 31, 2019 motion to the Court of Appeals.

To enable Chief Administrative Judge Marks to respond – including as to the capacity of the Judiciary budget to absorb COLA and other commission-based judicial pay raises, whose cumulative and compounding dollar amounts he concealed on November 4th and by his November 22nd supplemental submission – a copy of this e-mail is being sent to him, so that he can not only address same, but do so in the context of the Judiciary’s proposed two-part budget for fiscal year 2020-2021, which he furnished the Governor and Legislature on November 29, 2019, with certifications by Chief Judge DiFiore and approvals by the Court of Appeals dated November 19, 2019:

<http://ww2.nycourts.gov/admin/financialops/Budgets.shtml>.

Suffice to say – and as highlighted by my November 25, 2019 letter to Chief Administrative Judge Marks (at p. 4) – ALL the specified financial and economic factors that Chapter 60, Part E, of the Laws of 2015 requires the Commission to “take into account” in examining the adequacy of judicial pay are “IRRELEVANT”, when the Judiciary is “not ‘excellent’ and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct”. Such is the situation, at bar – proven, EVIDENTIARILY, by the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action: <http://judgewidth.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>. This is why the Commission must demand that Chief Administrative Judge Marks and other judicial pay raise advocates produce their findings of facts and conclusions of law with respect thereto, including by subpoena, if necessary.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewidth.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Tuesday, November 26, 2019 5:11 PM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Subject: Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD

TO: Commission on Legislative, Judicial & Executive Compensation

Below is my just-sent e-mail to Chief Administrative Judge Marks, with the above attachment. Please forward to each of the Commission's seven members.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, November 26, 2019 4:58 PM
To: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>
Cc: 'rmaldonado@nycbar.org' <rmaldonado@nycbar.org>; 'rmaldonado@sgrlaw.com' <rmaldonado@sgrlaw.com>; 'hgreenberg@nysba.org' <hgreenberg@nysba.org>; 'greenbergh@gtlaw.com' <greenbergh@gtlaw.com>
Subject: **Protecting the Commission on Legislative, Judicial & Executive Compensation from your FRAUD**

TO: Chief Administrative Judge Lawrence Marks

Attached is my self-explanatory letter to you of yesterday's date, entitled:

"Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony".

CJA's webpage for the letter on which is posted the referred-to substantiating evidence is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

Please be sure to respond promptly – and especially do not overlook the paragraph at page 7 that I quoted in my yesterday's motion to the Court of Appeals in CJA's citizen-taxpayer action, *CJA v. Cuomo...DiFiore*. That paragraph reads:

"By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) 'Judges...must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities' citing 'NY Const., Art. VI, §20(b), (c)' – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate judges– or was its content known to them and, if so, when? Did you – and they – actually believe that New York's Judiciary was not obligated to include ANY information as to CJA's succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial 'process'^{fn10}" (underlining in the original).

The annotating footnote 10 reads:

“Notably, when you testified, you stated – without specificity:

‘...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue.’ (Tr. 3).”

The direct link to CJA’s webpage for my yesterday’s motion, to which my letter to you is Exhibit F and quoted at pages 20-21, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/11-25-19-motion-5015-etc.htm>.

As for the indicated recipients of my yesterday’s letter to you, I am sure you have more direct e-mail addresses than I have and I ask that you assist in distribution. Indeed, I have no e-mail addresses for the judges who testified at the November 4, 2019 and November 14, 2019 hearings – and for the judicial associations on whose behalf they spoke. I, therefore, expressly request that you forward this e-mail to them, so that they can each respond to my letter’s demand at page 3:

“By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.” (underlining in the original).

Also, please forward this e-mail to Chief Judge DiFiore’s “Excellence Initiative”, to which you and the other judges who testified praised as increasing judicial excellence.

Finally, in view of your reliance on the Chief Administrator’s Rules Governing Judicial Conduct (22 NYCRR Part 100) for the judicial salary increases you seek, I would remind you and your fellow judges of its §100.3D, “Disciplinary Responsibilities”, reading, in pertinent part:

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.”

Presented by my attached letter – and by my November 4, 2019 testimony on which it is based – is not “information indicating a substantial likelihood”, but EVIDENCE PROVING IT. And an excellent starting point for your demonstrating your adherence to §100.3D of the Chief Administrator’s Rules is my December 31, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore, about which I testified at the November 4, 2019 hearing and also highlighted at ¶13 of my yesterday’s motion.

The direct link to CJA’s webpage for that December 31, 2015 letter and its accompanying EVIDENCE is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>. Surely, though, such link is superfluous. I cannot imagine Chief Judge DiFiore would have discarded the originals I hand-delivered to her Westchester District Attorney’s Office on December 31, 2015, as they EVIDENTIARILY PROVED that the December 24, 2015 Report of the Commission on Legislative, Judicial, and Executive Compensation – and the August 29, 2011 Report of the Commission on Judicial Compensation on which it relied – were each “false instruments”, violative of a succession of penal laws. Or do you disagree?

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY FAX: 212-428-2155 (1 page)

February 20, 2013

TO: Office of Court Administration
ATT: Shawn Kerby, Assistant Deputy Counsel/Records Access Officer

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

RE: Request for records pertaining to the Judiciary's budgets for fiscal years 2013-2014 & 2012-2013 pursuant to F.O.I.L. and §124 of the Chief Administrator's Rules

Pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)] and §124 of the Chief Administrator's Rules, this is to request any and all records reflecting:

(1) the dollar amounts for judicial salaries requested by the Judiciary's budgets for fiscal years 2013-2014 and 2012-2013;

(2) the dollar amounts for judicial salary increases requested by the Judiciary's budgets for fiscal years 2013-2014 and 2012-2013;

(3) the dollar amounts for "compensation and non-salary benefits for judges and justices of the unified court system" requested by the Judiciary's budgets for fiscal years 2013-2014 and 2012-2013;

(4) the dollar amounts for "compensation and non-salary benefits for judges and justices of the unified court system", exclusive of salary, requested by the Judiciary's budgets for fiscal years 2013-2014 & 2012-2013, including as broken down into categories of "pension contribution"; "Social Security"; "Medicare"; "health, dental, vision and life insurance" and other "fringe benefits".

Pursuant to Public Officers Law §89.3 and §124.6 of the Chief Administrator's Rules, your response is required "within five business days" of your receipt of this request.¹ As time is of the essence, please respond by e-mail to elena@judgewatch.org.

Thank you.



¹ CJA's letterhead herein reflects our mailing address and telephone number, which changed last year. Please adjust your records accordingly.



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

February 20, 2013

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

Dear Ms. Sassower:

In response to your recent Freedom of Information Law ("FOIL") request, please be advised that the Judiciary budgets reflecting the information you are seeking are available at the following links:

<http://www.nycourts.gov/admin/financialops/BGT12-13/Final2012-13Budget.pdf>

http://www.nycourts.gov/admin/financialops/BGT12-13/Final-GSC-Budget_2012-13.pdf

<http://www.nycourts.gov/admin/financialops/BGT13-14/Final-13-14Budget.pdf>

<http://www.nycourts.gov/admin/financialops/BGT13-14/Final-13-14Bud-GSC.pdf>

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn Kerby".

Shawn Kerby
Assistant Deputy Counsel

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, February 22, 2013 10:01 AM
To: 'FOIL@courts.state.ny.us'
Subject: Furnishing Responsive Documents -- RE: foil request

Dear Ms. Kerby,

Following up my phone call to you yesterday, advising that the website links you furnished by your February 20, 2013 letter do NOT provide the information sought by CJA's February 20, 2013 FOIL request, kindly respond, as soon as possible, with such responsive documents as exist. To expedite my receipt, kindly use this e-mail: elena@judgewatch.org.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-455-4373

From: FOIL@courts.state.ny.us [<mailto:FOIL@courts.state.ny.us>]
Sent: Thursday, February 21, 2013 9:46 AM
To: elena@judgewatch.org
Subject: foil request

Dear Ms. Sassower:

Attached please find our response to your recent FOIL request.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

 Please consider the environment before printing this email

Center for Judicial Accountability, Inc. (CJA)

From: FOIL@courts.state.ny.us
Sent: Friday, February 22, 2013 10:19 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Furnishing Responsive Documents -- RE: foil request

Dear Ms. Sassower:

I am processing your request and will attempt to respond as soon as I receive the information. I have asked for the budget office to provide any responsive existing figures.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

 ..Please consider the environment before printing this email

>>> "Center for Judicial Accountability, Inc. (CJA)" <elena@judgewatch.org> 2/22/2013 10:00 AM >>>

Dear Ms. Kerby,

Following up my phone call to you yesterday, advising that the website links you furnished by your February 20, 2013 letter do NOT provide the information sought by CJA's February 20, 2013 FOIL request, kindly respond, as soon as possible, with such responsive documents as exist. To expedite my receipt, kindly use this e-mail: elena@judgewatch.org.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-455-4373

From: FOIL@courts.state.ny.us [<mailto:FOIL@courts.state.ny.us>]
Sent: Thursday, February 21, 2013 9:46 AM
To: elena@judgewatch.org
Subject: foil request

Dear Ms. Sassower:

Attached please find our response to your recent FOIL request.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

 ..Please consider the environment before printing this email

Center for Judicial Accountability, Inc. (CJA)

From: FOIL@courts.state.ny.us
Sent: Friday, February 22, 2013 10:59 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Furnishing Responsive Documents -- RE: foil request

Dear Ms. Sassower:

The budget office provided the following breakdown of figures that you requested:

fiscal year 2012/13 :

Judicial Base Salaries - \$162,300,000
Judicial Raise - \$27,713,000
Judicial Social Security - \$8,580,000
Judicial Medicare - \$2,755,000

fiscal year 2013/14 :

Judicial Base Salaries - \$190,000,000
Judicial Raise - \$8,235,000
Judicial Social Security - \$8,861,000
Judicial Medicare - \$2,875,000

With regard to your remaining request for further breakdown of pension, insurance, and other fringe benefits, please be advised that the Office of the State Comptroller calculates the amounts in a lump sum without distinctions between judicial and non-judicial personnel. You may wish to contact the Comptroller's Office for information about that agency's breakdown for those categories just for judges.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

 ..Please consider the environment before printing this email.

>>> "Center for Judicial Accountability, Inc. (CJA)" <elena@judgewatch.org> 2/22/2013 10:00 AM >>>

Dear Ms. Kerby,

Following up my phone call to you yesterday, advising that the website links you furnished by your February 20, 2013 letter do NOT provide the information sought by CJA's February 20, 2013 FOIL request, kindly respond, as soon as possible, with such responsive documents as exist. To expedite my receipt, kindly use this e-mail: elena@judgewatch.org.

Thank you.

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL: skerby@nycourts.gov

December 9, 2015

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and "General State Charges" Resulting Therefrom

The first page of the Executive Summary of the Judiciary's "operating budget" for fiscal year 2016-2017 states that in the past six years, the Judiciary has "absorbed hundreds of millions of dollars in higher costs."¹¹ The annotating footnote 1 identifies these to include "judicial salary adjustments implemented pursuant to the recommendations of the 2011 Special Commission on Judicial Compensation."

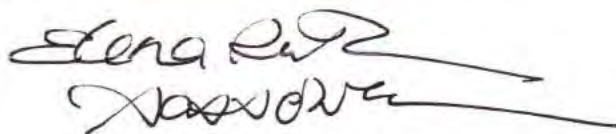
By the euphemism "judicial salary adjustments", the Judiciary means judicial salary increases – and their costs were borne by the taxpayers – just as the costs of additional "General State Charges" resulting therefrom.

The Judiciary's "operating budget" for fiscal year 2016-2017 does not furnish the dollar amounts of the judicial salary increases the Judiciary "absorbed" for fiscal years 2012-2013; 2013-2014; 2014-2015; 2015-2016, either as to those years individually or those years cumulatively. Nor does its separately-presented "General State Charges" identify dollar changes resulting from the judicial salary increases.

Pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], this is to request all publicly-available records identifying these dollar amounts in each of the four past fiscal years.

Public Officers Law §89.3 requires your response "within five business days" of receipt of this request – and I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.



March 23, 2016
verified second
supplemental complaint
(1st citizen taxpayer admin) EX-49-a

Center for Judicial Accountability

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Wednesday, December 09, 2015 10:24 AM
To: Center for Judicial Accountability
Subject: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Wednesday, December 09, 2015 9:07 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

Attached is CJA's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Friday, January 22, 2016 10:26 AM
To: skerby@nycourts.gov
Subject: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

I have not received any further response from you to my December 9th records access/FOIL request, beyond your acknowledgment to me on that date.

The exchange of e-mails is below.

Please advise.

Thank you.

Elena Sassower
Center for Judicial Accountability, Inc. (CJA)
914-421-1200

From: Shawn Kerby [<mailto:skerby@nycourts.gov>]
Sent: Wednesday, December 09, 2015 10:24 AM
To: Center for Judicial Accountability
Subject: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Wednesday, December 09, 2015 9:07 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

Attached is CJA's above-entitled FOIL/records request of today's date.

Thank you.

Center for Judicial Accountability

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Friday, January 22, 2016 4:16 PM
To: Center for Judicial Accountability
Subject: RE: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

I am still processing your FOIL request to attempt to determine if responsive records exist that might relate to your broad request for "all" records concerning the budget footnote that you reference. I hope to be able to respond to you shortly.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Friday, January 22, 2016 10:26 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

I have not received any further response from you to my December 9th records access/FOIL request, beyond your acknowledgment to me on that date.

The exchange of e-mails is below.

Please advise.

Thank you.

Elena Sassower
Center for Judicial Accountability, Inc. (CJA)
914-421-1200

From: Shawn Kerby [<mailto:skerby@nycourts.gov>]
Sent: Wednesday, December 09, 2015 10:24 AM
To: Center for Judicial Accountability
Subject: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Wednesday, February 24, 2016 9:40 AM
To: skerby@nycourts.gov
Subject: AGAIN WHAT IS THE STATUS: Dec. 9, 2015 FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom
Attachments: 12-9-15-foil-oca-judicial-compensation.pdf

Dear Ms. Kerby,

It has been over a month since I last heard from you with respect to my December 9, 2015 FOIL/records request for "all publicly-available records" pertaining to the dollar amounts of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and "General State Charges" resulting therefrom.

Your January 22, 2016 response to my status inquiry of that date is below.

Kindly furnish me with such responsive records as you have thus far obtained. You can supply the balance at a later date.

Thank you.

Elena Sassower

From: Shawn Kerby [<mailto:skerby@nycourts.gov>]
Sent: Friday, January 22, 2016 4:16 PM
To: Center for Judicial Accountability

Subject: RE: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

I am still processing your FOIL request to attempt to determine if responsive records exist that might relate to your broad request for "all" records concerning the budget footnote that you reference. I hope to be able to respond to you shortly.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Friday, January 22, 2016 10:26 AM
To: Shawn Kerby <skerby@nycourts.gov>

Subject: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

1
EX 49-e

Center for Judicial Accountability

From: FOIL <FOIL@nycourts.gov>
Sent: Wednesday, February 24, 2016 10:40 AM
To: Center for Judicial Accountability
Subject: RE: AGAIN WHAT IS THE STATUS: Dec. 9, 2015 FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

This is in response to the below email and the prior email today inquiring about outstanding FOIL requests, dated January 4, 2016.

Given your numerous FOIL requests, we have been continuing to process them. Given litigation obligations as well, I will continue to process your request and hope to respond to all outstanding FOIL requests by next week.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Wednesday, February 24, 2016 9:40 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: AGAIN WHAT IS THE STATUS: Dec. 9, 2015 FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

It has been over a month since I last heard from you with respect to my December 9, 2015 FOIL/records request for "all publicly-available records" pertaining to the dollar amounts of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and "General State Charges" resulting therefrom.

Your January 22, 2016 response to my status inquiry of that date is below.

Kindly furnish me with such responsive records as you have thus far obtained. You can supply the balance at a later date.

Thank you.

Elena Sassower

From: Shawn Kerby [<mailto:skerby@nycourts.gov>]
Sent: Friday, January 22, 2016 4:16 PM
To: Center for Judicial Accountability

Subject: RE: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

March 4, 2016

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

Via email to: elena@judgewatch.org

Dear Ms. Sassower:

This is in response to your Freedom of Information Law ("FOIL") request dated December 9, 2015, concerning the judicial salary increases recommended by the Commission on Judicial Compensation ("Commission") in its August 29, 2011 report.

Your request for "all publicly-available records identifying" budget amounts, "General State Charges," "costs," and "increases" for judicial salaries for four fiscal years is overly broad, does not reasonably identify specific records to permit a search, and would require interpretation, research, compilation of information, and creation of records. See Public Officers Law § 89(3).

To the extent you can compile related information, please refer to the following link regarding Judiciary budgets and General State Charges:
<http://www.nycourts.gov/admin/financialops/budgets.shtml>

You may wish to contact the Comptroller's Office in the event that agency maintains any responsive related records subject to public disclosure.

Very truly yours,

Shawn Kerby
Assistant Deputy Counsel

EX 49-9

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL: skerby@nycourts.gov

December 9, 2016

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases, and interchanges in fiscal year 2016-2017, as authorized by §2 of Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a

Dear Records Access Officer Kerby,

The Judiciary's "single budget bill" for fiscal year 2016-2017 – embodied, without revision, in the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 and retained in the amended/enacted bill, #S.6401-a/A.9001-a – consisted of two sections: §2 containing a schedule of appropriations and §3 containing a schedule of reappropriations.

The text in §2, directly beneath the word "Schedule", was as follows:

"Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts."

Missing from the Judiciary's December 1, 2016 budget request for fiscal year 2017-2018 is any disclosure of what increases, decreases, and interchanges were made for fiscal year 2016-2017 pursuant to this §2. Consequently, pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], I request to inspect and copy records of all Chief Administrative Judge Lawrence Marks' approvals of same.

Needless to say, the interchanges of greatest interest to me are those that enabled the Judiciary to fund the "force of law" judicial salary increases for 2016-2017 recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and, additionally, to fund the increases in general state charges resulting therefrom.

§124.6 of the Chief Administrator's Rules and Public Officers Law §89.3 require your response "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at elena@judgwatch.org.

Thank you.

Center for Judicial Accountability, Inc. (CJA)

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Friday, December 9, 2016 3:18 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Friday, December 09, 2016 2:43 PM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, February 22, 2017 4:25 AM
To: 'skerby@nycourts.gov'
Subject: STATUS: Dec. 9, 2016 FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a
Attachments: 12-9-16-oca-foil-transfers2016-2017.pdf

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled December 9, 2016 FOIL/records request – other than your below December 9, 2016 e-mail acknowledgment that you “expect[ed] to respond within 20 business days”.

Please advise.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

From: Shawn Kerby [mailto:skerby@nycourts.gov]
Sent: Friday, December 9, 2016 3:18 PM
To: Center for Judicial Accountability, Inc. (CJA) elena@judgewatch.org

Subject: RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Friday, December 09, 2016 2:43 PM
To: Shawn Kerby <skerby@nycourts.gov>

Subject: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

Center for Judicial Accountability, Inc. (CJA)

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Wednesday, February 22, 2017 10:53 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: STATUS: Dec. 9, 2016 FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We are still processing the request and expect to respond shortly. I apologize for the delay.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Wednesday, February 22, 2017 4:25 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: STATUS: Dec. 9, 2016 FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled December 9, 2016 FOIL/records request – other than your below December 9, 2016 e-mail acknowledgment that you “expect[ed] to respond within 20 business days”.

Please advise.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

From: Shawn Kerby [mailto:skerby@nycourts.gov]
Sent: Friday, December 9, 2016 3:18 PM
To: Center for Judicial Accountability, Inc. (CJA) elena@judgewatch.org
Subject: RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

October 7, 2019

TO: Shawn Kerby, Records Access Officer
Office of Court Administration

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

RE: FOIL/RECORDS REQUEST: The Judiciary's "Independent audits" pursuant to
Judiciary Law §249-c

Judiciary Law Article 7-D (§249) is entitled "Internal Control Responsibilities of the Judiciary". Its section c, entitled "Independent audits", states as follows:

"1. At least once every three years, the independent certified public accountant selected pursuant to this section shall conduct audits of the internal controls of the judiciary. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the judiciary's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section two hundred forty-nine of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the judiciary, the independent auditor shall so state. The chief judge shall make available to the public the results of such audits, including any related management letters. The chief judge and any officer or employee of the judiciary shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The chief judge shall request proposals from independent certified public accountants for audits of the internal controls of the judiciary. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The chief judge shall select such independent auditor in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals."

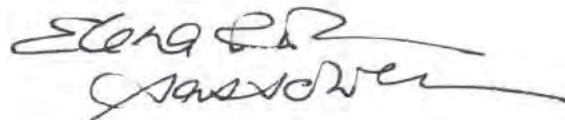
Pursuant to Public Officers Law Article VI (Freedom of Information Law [FOIL]) and §124 of the Rules of the Chief Administrator, this is to request a copy of:

- (1) publicly-available records pertaining to the “competitive procedure” utilized by the chief judge to select the independent certified accountants for the most recent “independent audit” of the “internal controls of the judiciary”, including:
 - (a) the chief judge’s written request(s) to independent certified public accountants for proposals for the “independent audit”;
 - (b) the winning proposal, selected for the “independent audit”; and
 - (c) the proposals not selected – or records reflecting the number and names of the certified public accountants who submitted proposals.
- (2) “the results” of this most recent “independent audit” – “including any related management letters”.
- (3) your response, if any, to CJA’s comparable November 28, 2016 FOIL/records request, subsequent to your February 22, 2017 e-mail stating: “We are still processing the request and expect to respond shortly. I apologize for the delay”.¹

Pursuant to §124.6 of the Chief Administrator’s Rules and Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request.

To expedite my receipt, kindly e-mail me at elena@judgewatch.org.

Thank you.



¹ A copy of the November 28, 2016 FOIL/records request and exchange is attached.

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-12003

E-Mail: mail@judgewatch.org

Website: www.judgewatch.org

November 28, 2016

TO: Shawn Kerby, Records Access Officer
Office of Court Administration

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

RE: FOIL/RECORDS REQUEST: The Judiciary's "Independent audits" pursuant to
Judiciary Law §249-c

Judiciary Law Article 7-D (§249) is entitled "Internal Control Responsibilities of the Judiciary". Its section c, entitled "Independent audits", states as follows:

"1. At least once every three years, the independent certified public accountant selected pursuant to this section shall conduct audits of the internal controls of the judiciary. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the judiciary's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section two hundred forty-nine of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the judiciary, the independent auditor shall so state. The chief judge shall make available to the public the results of such audits, including any related management letters. The chief judge and any officer or employee of the judiciary shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The chief judge shall request proposals from independent certified public accountants for audits of the internal controls of the judiciary. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The chief judge shall select such independent auditor in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals."

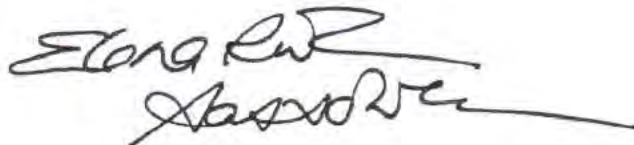
Pursuant to Public Officers Law Article VI (Freedom of Information Law [FOIL]) and §124 of the Rules of the Chief Administrator, this is to request a copy of:

- (1) publicly-available records pertaining to the “competitive procedure” utilized by the chief judge to select the independent certified accountants for the most recent “independent audit” of the “internal controls of the judiciary”, including:
 - (a) the chief judge’s written request(s) to independent certified public accountants for proposals for the “independent audit”;
 - (b) the winning proposal, selected for the “independent audit”; and
 - (c) the proposals not selected – or records reflecting the number and names of the certified public accountants who submitted proposals.
- (2) “the results” of this most recent “independent audit” – and of the previous two “independent audits” – “including any related management letters”.

Pursuant to §124.6 of the Chief Administrator’s Rules and Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request.

To expedite my receipt, kindly e-mail me at elena@judgewatch.org.

Thank you.

Handwritten signature of Elena R. Kerby in black ink.

Center for Judicial Accountability, Inc. (CJA)

From: FOIL <FOIL@nycourts.gov>
Sent: Monday, November 28, 2016 3:54 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Monday, November 28, 2016 3:43 PM
To: FOIL <FOIL@nycourts.gov>
Subject: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, February 22, 2017 4:29 AM
To: 'skerby@nycourts.gov'
Subject: STATUS: Nov. 28, 2016 FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c
Attachments: 11-28-16-foil-judiciary-independent-audit.pdf

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled November 28, 2016 FOIL/records request – other than your below November 28, 2016 e-mail acknowledgment that you "expect[ed] to respond within 20 business days".

Please advise.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

From: FOIL [mailto:FOIL@nycourts.gov]
Sent: Monday, November 28, 2016 3:54 PM
To: Center for Judicial Accountability, Inc. (CJA) elena@judgewatch.org

Subject: RE: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Monday, November 28, 2016 3:43 PM
To: FOIL <FOIL@nycourts.gov>
Subject: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200

Center for Judicial Accountability, Inc. (CJA)

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Wednesday, February 22, 2017 10:53 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: STATUS: Nov. 28, 2016 FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We are still processing the request and expect to respond shortly. I apologize for the delay.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Wednesday, February 22, 2017 4:29 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: STATUS: Nov. 28, 2016 FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled November 28, 2016 FOIL/records request – other than your below November 28, 2016 e-mail acknowledgment that you “expect[ed] to respond within 20 business days”.

Please advise.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

From: FOIL [mailto:FOIL@nycourts.gov]
Sent: Monday, November 28, 2016 3:54 PM
To: Center for Judicial Accountability, Inc. (CJA) elena@judgewatch.org

Subject: RE: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

Center for Judicial Accountability, Inc. (CJA)

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Monday, October 7, 2019 9:48 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: FW: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c
Attachments: 10-7-19-foil-judiciary-audit-249-c-with-enclosures.pdf

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, October 7, 2019 9:15 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

Please be CAREFUL when clicking links or opening attachments from external senders.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Friday, November 29, 2019 4:19 PM
To: 'skerby@nycourts.gov'
Subject: STATUS -- Oct 7, 2019 FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c
Attachments: 10-7-19-foil-judiciary-audit-249-c-with-enclosures.pdf

Dear Ms. Kerby,

On October 7, 2019, you sent me the below e-mail advising that you "expect[ed] to respond within 20 business days" to CJA's attached October 7, 2019 FOIL/records request for "The Judiciary's 'Independent audits' pursuant to Judiciary Law §249-c". I have received nothing from you – or anyone else from the Office of Court Administration – since.

Please confirm that there has been no response – and advise when one will be forthcoming.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewidth.org
914-421-1200

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Monday, October 7, 2019 9:48 AM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Subject: FW: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Monday, October 7, 2019 9:15 AM
To: Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

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

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Thursday, December 5, 2019 9:15 AM
To: 'skerby@nycourts.gov'
Subject: AGAIN, STATUS -- Oct 7, 2019 FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c
Attachments: 10-7-19-foil-judiciary-audit-249-c-with-enclosures.pdf

Dear Ms. Kerby,

As I have received no acknowledgment or response to my below November 29, 2019 e-mail pertaining to CJA's above-attached October 7, 2019 FOIL/records request for the Judiciary's "independent audits" pursuant to Judiciary Law §249-c, I am re-sending it to you. Please advise.

Thank you.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Friday, November 29, 2019 4:19 PM
To: 'skerby@nycourts.gov' <skerby@nycourts.gov>
Subject: STATUS -- Oct 7, 2019 FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Dear Ms. Kerby,

On October 7, 2019, you sent me the below e-mail advising that you "expect[ed] to respond within 20 business days" to CJA's attached October 7, 2019 FOIL/records request for "The Judiciary's 'Independent audits' pursuant to Judiciary Law §249-c". I have received nothing from you – or anyone else from the Office of Court Administration – since.

Please confirm that there has been no response – and advise when one will be forthcoming.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewidth.org
914-421-1200

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Monday, October 7, 2019 9:48 AM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Subject: FW: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Dear Ms. Sassower:

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

September 2, 2016
verified complaint
(2nd citizen-taxpayer act)

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

VERIFIED COMPLAINT
Index #5122-16

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants.

----- x

“It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein.”

State Finance Law Article 7-A, §123: “Legislative purpose”

Plaintiffs, as and for their verified complaint, respectfully set forth and allege:

1. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs seek declaratory judgments as to the unconstitutionality and unlawfulness of the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001, both the original bill and the enacted amended bill #S.6401-a/A.9001-a. The expenditures of the enacted budget bill – embodying the

Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and tens of millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

2. Plaintiffs also seek declarations voiding the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with further declarations striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent – and injunctions to prevent further disbursement of state money pursuant thereto.

3. Additionally, plaintiffs seek declarations that the “process” by which the State budget for fiscal year 2016-2017 was enacted is unconstitutional, specifically including:

- the failure of Senate and Assembly committees and the full chambers of each house to amend and pass the Governor's appropriation bills and to reconcile them so that they might “become law immediately without further action by the governor”, as mandated by Article VII, §4 of the New York State Constitution;
- the so-called “one-house budget proposals”, emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly joint budget conference committee and its subcommittees, conducted by staff, behind-closed-doors, based on the “one-house budget proposals”; and
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

4. Finally, plaintiffs seek declarations as to the unconstitutionality and unlawfulness of the appropriation item entitled “For grants to counties for district attorney salaries” in the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget

Bill #S.6403-d/A.9003-d and of items of reappropriation therein pertaining to previous “grants to counties for district attorney salaries” and “recruitment and retention” incentives – and enjoining disbursement of state monies pursuant thereto.

5. For the convenience of the Court, a Table of Contents follows:

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AS AND FOR A SECOND CAUSE OF ACTION

**The Judiciary's Proposed Budget for 2016-2017,
Embodied in the Governor's Budget Bill #S.6401/A.9001,
is Unconstitutional & Unlawful**

34. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-33 herein with the same force and effect as if more fully set forth.

35. Plaintiffs' second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331). Such is not barred by Justice McDonough's August 1, 2016 decision (Exhibit D) – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

36. Establishing that the August 1, 2016 decision is a judicial fraud -- and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

37. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' second and sixth causes of action (Exhibit B: ¶¶99-108; Exhibit C: ¶¶179-193) – which correspond to their tenth cause of action (Exhibit A: ¶¶317-331) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on “documentary evidence” that he did not identify – and which does not exist.

38. Plaintiffs analysis is accurate, true, and correct in all material respects.

39. In addition to the facts set forth by the tenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint (Exhibit A: ¶¶317-331) is the further fact, anticipated by its ¶331, namely, that the Judiciary is funding the 2016 phase of the judicial salary increase recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation from its §3 reappropriations, *via* its §2 interchange provision. Such reinforces the unconstitutionality of the interchange provision and the reappropriations, detailed at ¶¶320-331—key features of the Judiciary's slush-fund budget.

AS AND FOR AN THIRD CAUSE OF ACTION

**The Governor's Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
"Without Revision"**

40. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-39 herein with the same force and effect as if more fully set forth.

41. Plaintiffs' third cause of action herein is the eleventh cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶332-335). Such is not barred by Justice McDonough's August 1, 2016 decision—nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

42. Establishing that the August 1, 2016 decision is a judicial fraud—and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation—is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

Exhibit A to Plaintiffs' September 2, 2016 Verified Complaint [R.135-225]

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

*March 23, 2016
verified second
supplemental
complaint
(1st citizen-taxpayer
action)*

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

**VERIFIED SECOND
SUPPLEMENTAL COMPLAINT**

Plaintiffs,

Index #1788-2014

-against-

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity
as Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants.

----- x

“...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York’s Constitution ‘... The doors of each house shall be kept open...’; Public Officers Law, Article VI ‘The legislature therefore declares that government is the public’s business...’; Senate Rule XI, §1 ‘The doors of the Senate shall be kept open’; Assembly Rule II, §1 ‘A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public’ – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, [FLANAGAN], [HEASTIE], SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget.”

– culminating final paragraph of plaintiffs’ verified complaint (¶126)
& verified supplemental complaint (¶236)

EA

Plaintiffs, as and for their verified second supplemental complaint, respectfully set forth and allege:

237. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001. The expenditures of such budget bill – embodying the Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

238. Plaintiffs also seek, pursuant to State Finance Law Article 7-A, a declaration voiding the “force of law” judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with a further declaration striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent.

239. Additionally, plaintiffs seek declarations that the so-called “one-house budget proposals”, emerging from the closed-door political conferences of the Senate and Assembly majority party/coalitions, are unconstitutional, as are the proceedings based thereon of the Senate and Assembly joint budget conference committee and its subcommittees; and that the behind-closed-doors, three-men-in-a-room budget dealing-making by the Governor, Temporary Senate President, and Assembly Speaker – such as produced Chapter 60, Part E, of the Laws of 2015 – is unconstitutional and enjoining same with respect to Judiciary/Legislative Budget Bill #S.6401/A.9001 and the whole of the Executive Budget.

240. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint pertaining to the Legislature’s and Judiciary’s proposed budgets and the Governor’s Legislative/Judiciary Budget Bill #S.6351/A.8551 for fiscal year 2014-2015 and the entirety of their March 31, 2015 verified supplemental complaint pertaining to the Legislature’s and Judiciary’s proposed budgets and the Governor’s Legislative/Judiciary Budget Bill #S.2001/A.3001 for fiscal year 2015-2016, incorporating both by reference, as likewise the record based thereon.

241. Virtually all the constitutional, statutory, and rule violations therein detailed are replicated in the Legislature’s and Judiciary’s proposed budgets for fiscal year 2016-2017 and the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001 – including as to the judicial salary increases that will automatically take effect April 1, 2016. As stated at ¶129 of the verified supplemental complaint – and even truer now – “It is, as the expression goes, “déjà vu all over again”.

242. For the convenience of the Court, a Table of Contents follows:

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The Legislature’s Proposed Budget for Fiscal Year 2016-2017,
Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’”.

316. Once again, defendant CUOMO has abetted this constitutional defiance – including by not even furnishing a recommendation on the Legislature’s budget that he sends back to it “without revision”.



AS AND FOR A TENTH CAUSE OF ACTION

**The Judiciary’s Proposed Budget for 2016-2017,
Embodied in Budget Bill #S.6401/A.9001,
is Unconstitutional & Unlawful**

317. Plaintiffs repeat, reiterate, and reallege ¶¶1-316 with the same force and effect as if more fully set forth herein – and, specifically, their “Questions for Chief Administrative Judge Marks”, transmitted by their February 2, 2016 e-mail (Exhibit 44).

318. The Judiciary’s proposed budget for fiscal year 2016-2017, embodied by Budget Bill #S.6401/A.9001, is materially identical to the Judiciary’s proposed budget for fiscal years 2014-2015 and 2015-2016, embodied by the Governor’s Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs’ verified complaint (¶¶99-108), reiterated and reinforced by the sixth cause of action of plaintiffs’ supplemental verified complaint (¶¶179-193).

319. Identical to the Judiciary’s proposed budget for the past two fiscal years, defendant CUOMO, his Division of the Budget, and defendants SENATE and ASSEMBLY are unable to comprehend the Judiciary’s proposed budget for fiscal year 2016-2017 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary’s budget for the current

fiscal year. As stated at the outset of plaintiffs' "Questions for Chief Administrative Judge Marks" (Exhibit 44), they diverge as to relevant figures and percentages:

A. Defendant CUOMO's "Commentary of the Governor on the Judiciary" (Exhibit 79-a):

"The Judiciary has requested appropriations of \$2.13 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund are projected to grow by \$44.4 million or 2.4 percent."

B. Defendant CUOMO's Division of the Budget website, which defers to text furnished by Judiciary (Exhibit 29-a):

"The Judiciary's General Fund Operating Budget requests \$1.9 billion, excluding fringe benefits, for Fiscal Year 2016-2017. This represents a cash increase of \$44.4 million, or 2.4%. The appropriation request is \$1.9 billion, which represents a \$43.4 million, or 2.3%, increase.

...
The Judiciary's All Funds budget request for Fiscal Year 2016-2017, excluding fringe benefits, totals \$2.13 billion, an appropriation increase of \$48.3 million or 2.3% over the 2014-2015 All Funds budget..."

C. Senate Majority's "White Book", under Senate Finance Committee Chair Young's auspices (Exhibit 29-b):

"The FY 2017 Executive Budget proposes All Funds spending of \$2.9 billion, an increase of \$112.2 million, or 4.1 percent." (p. 91). This is further particularized by a chart representing this as "Proposed Disbursements – All Funds": \$2,865,600,000 – representing a change of \$112,224,000 and a percentage of 4.08% (p. 93).

"the Judiciary's proposed budget would increase general fund cash spending by \$44.4 million, or 2.4 percent".

D. Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices (Exhibit 29-c):

"The Judiciary proposed Budget is \$2.13 billion, an increase of \$48.2 million or 2.3% from the SFY 2015-2016 Enacted Budget..." (p. 179).

This is further particularized by a chart as the “Executive Recommendation 2016-17”: \$2,132,526,345, the “\$ change” as \$48,254,307, and the “% Change” as 2.3% (p. 179).

E. Assembly Majority’s “Yellow Book”, under Assembly Ways and Means Committee Chair Farrell’s auspices (Exhibit 29-d):

“The Judiciary’s proposed budget request recommends appropriations of \$2.9 billion, which is an increase of \$81.94 million or 2.9 percent from the State Fiscal Year (SFY) 2015-16 level.” (p. 145).

A table of “Appropriations” shows the “Exec Request”, in millions, at “2,877.49” millions of dollars, representing a change of “81.94” millions of dollars with a percent change of “2.93”. A table of “Disbursements” shows an “Exec Request”, in millions, at “2,865.60” millions of dollars, representing a change of “112.23” millions of dollars, for a percent change of “4.08”. (p. 145).

F. Assembly Minority’s “Green Book”, under Assembly Ways and Means Committee Ranking Member Oaks’ auspices (Exhibit 29-e):

“\$2.1 billion for the Judiciary, \$48.3 million more than last year. This represents a 2.3% increase in spending.”

“General State Charges: (Non-Salary) Benefits: \$730 million for General State charges. \$34 million more than last year. This pays for fringe benefits of employees of the court system, including all statutorily-required and collectively bargained benefits.”

320. Plaintiffs now additionally challenge the constitutionality and lawfulness of the interchange provision appearing at §2 of the Judiciary’s “single budget bill” (Exhibit 25-d) – and replicated, *verbatim*, in §2 of defendant CUOMO’s Legislative/Judiciary Budget Bill #S.6401/A.9001⁷ (Exhibit 27-b, p. 10). Such challenge is both *as written and as applied*.

321. Plaintiffs’ challenge to the constitutionality of the interchange provisions, *as written*, begins with *Hidley v. Rockefeller*, 28 N.Y.2d 439, 447-449 (1971), wherein then Chief Judge Stanley Fuld, writing in dissent from the Court’s decision addressed only to the issue of standing, stated:

⁷ The same interchange provision identically appears at §2 of the Judiciary’s “single budget bill” for the past two fiscal years, incorporated *verbatim* in defendant CUOMO’s Legislative/Judiciary budget bills for those years.

“...the provisions which permit the free interchange and transfer of funds are unconstitutional on their face...To sanction a complete freedom of interchange renders any itemization, no matter how detailed, completely meaningless and transforms a schedule of items or of programs into a lump sum appropriation in direct violation of Article VII of the Constitution. (underlining added).

322. *As written*, the interchange provision here at issue states:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.” (Exhibit 27-b, p. 10).

323. *As written*, the “notwithstanding any provision of law” language is vague and overbroad. The “law” includes the New York State Constitution – and such is unconstitutional, *on its face*, as no statute can override the Constitution.

324. At bar, the “notwithstanding any provision of law” language authorizes the Judiciary to violate New York State Constitution, Article VII, §1, §4, §6, and §7, which speak of “itemized estimates”, “items of appropriations”; “stated separately and distinctly...and refer each to a single object or purpose”; made for “a single object or purpose”, that are “particular” and “limited”; that “distinctly specify the sum appropriated, and the object or purpose to which it is to be applied” as well as Article IV, §7 pertaining to the Governor’s line-item veto of “items of appropriations”.⁸

325. Moreover, the “law” includes the very statute governing judiciary interchanges, Judiciary Law §215 – and there is no basis for *sub silentio* repudiating its careful statutory

⁸ So, too, do the statutes pertaining to appropriations and reappropriations require specificity. See, also, State Finance Law §43, entitled “Specific appropriations limited as to use; certain appropriations to be specific”: “Money appropriated for a specific purpose shall not be used for any other purpose, and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated...”

restrictions and safeguards, other than to accomplish what both the statute and Constitution proscribe.

326. Judiciary Law §215(1), entitled “Special provisions applicable to appropriations made to the judiciary in the legislature and judiciary budget”, states:

“1. The amount appropriated for any program within a major purpose within the schedule of appropriations made to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be increased or decreased by interchange with any other program within that major purpose with the approval of the chief administrator of the courts who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee except that the total amount appropriated for any major purpose may not be increased or decreased by more than the aggregate of five percent of the first five million dollars, four percent of the second five million dollars and three percent of amounts in excess of ten million dollars of an appropriation for the major purpose. The allocation of maintenance undistributed appropriations made for later distribution to major purposes contained within a schedule shall not be deemed to be part of such total increase or decrease.

327. Judiciary Law §215(1) restricts interchanges and their amounts to programs within the same “major purpose” – as to which the Chief Administrator’s approval must be filed with “the department of audit and control and copies thereof with the state finance committee and the assembly ways and means committee”. Such accords with statutory requirements, conditions, and procedures set forth in State Finance Law §51 entitled “Interchange of appropriations or items therein” and the statutory sections to which State Finance Law §51 refers in stating:

“No appropriation shall be increased or decreased by transfer or otherwise except as provided for in this section or section fifty-three, sixty-six-f, seventy-two or ninety-three of this chapter, or article eight of the education law”⁹

328. In other words, *as written*, the interchange provision of §2 gives the Chief Administrator complete discretion to do whatever he wants, unbounded by any standard and by any

⁹ State Finance Law §53, entitled “Special emergency appropriations”; State Finance Law §66-f, entitled “Certain interagency transfers authorized”; State Finance Law §72, entitled “General fund”; State Finance Law

reporting/notice requirement to the other two government branches. Such is unconstitutional and unlawful.

329. *As applied*, the interchange provision is unconstitutional and unlawful in that it creates a slush-fund and permits concealment of true costs. It has enabled the Judiciary to surreptitiously fund, in fiscal year 2013-2014, the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report, without identifying the dollar amount of such increase, and, in fiscal year 2014-2015, to even more surreptitiously fund the third phase of the judicial salary increase recommended by the Commission's August 29, 2011 Report, without even identifying the third phase.

330. The Judiciary's responses to legitimate FOIL requests about its use of the interchange provision in fiscal year 2015-2016 – and about the dollar costs of the Commission on Judicial Compensation's three-phase judicial salary increases, funded from reappropriations (Exhibits 50, 49) – only further reinforce the unconstitutionality of the interchange provision, *as applied*.

331. Should defendant CUOMO adhere to his Commentary, "...I expect that [the Judiciary] will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget" (Exhibit 27-a), the Judiciary will presumably fund the first phase of the judicial salary increase recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation from the §3 reappropriations, *via* the §2 interchange provision.

§93, entitled "Capital projects fund"; and Education Law §355(4)(c), "Powers and duties of trustees-

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THE JUDICIARY'S PROPOSED BUDGET FOR FISCAL YEAR 2019-2020 – AND THE GOVERNOR'S LEGISLATIVE/JUDICIARY BUDGET BILL #S.1501/A.2001

Examination of the Judiciary's proposed budget for fiscal year 2019-2020 must begin with its bottom-line, total cost, especially as it is not contained within its budget.

The Governor offered no written commentary to guide the Legislature and the Legislature's "White", "Blue", "Yellow" and "Green" Books diverge as to the relevant dollar figures and percentage increase over fiscal year 2018-2019.

* * *

QUESTIONS FOR CHIEF ADMINISTRATIVE JUDGE LAWRENCE MARKS¹

- (1) By two memoranda dated December 1, 2018, you transmitted to the Governor and Legislature the Judiciary's two-part budget for fiscal year 2019-2020. 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 either the cumulative dollar amount of the Judiciary's two-part budget presentation taken together or its cumulative percentage increase, is that correct?
- (2) Each of the two parts of the Judiciary's proposed budget contained a "Chief Judge's Certification" and "Court of Appeals Approval", pursuant to Article VII, §1 of the Constitution of the State of New York. The certification for the part pertaining to operating expenses stated that it was certifying that "the attached schedules" were "the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2019". Which are the "attached schedules" referred-to?
- (3) Your December 1, 2018 memorandum transmitting the itemized estimate of "General State Charges" states: "The Judiciary will submit a single budget bill, which includes requests for funding for operating expenses and fringe benefits costs for the 2019-2020 Fiscal Year."
 - (a) Why did you use the word "will"? Were you implying that the "single-budget bill" was submitted subsequent to the

¹ The Judiciary's proposed budget, Legislative/Judiciary Budget Bill #S.1501/A.2001, and all referred-to documents are posted on CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link: "2019 Legislative Session".

Judiciary's two-part budget presentation? If so, when did the Judiciary submit the "single budget bill" and was it certified to be accurate and true?; and

- (b) Why did you use the word "includes"? Were you implying that the "single budget bill" contains funding requests other than for "operating expenses and fringe benefit costs" – as, for instance, "reappropriations"?
- (4) The Judiciary's "single budget bill" also did not identify the cumulative dollar total of the Judiciary's proposed budget, is that correct? Why is that?
- (5) What is the cumulative dollar total of the "single budget bill"? Which are the specific figures in the bill that you add to arrive at that figure? Is it the tally of the figures, on page 1, for: "Appropriations" \$2,336,671,887, consisting of: \$2,197,800,718 for "state operations"; \$114,871,169 for "aid to localities"; and \$24,000,000 "capital projects", plus, also on page 1, the figure for "Reappropriations" \$63,180,000, plus, on page 10, the figure for "General State Charges": \$814,814,979?
- (6) Is this the same cumulative dollar total as would result from adding the various figures in the Judiciary's two-part budget presentation?
- (7) Do you agree that there is a disparity of \$63,180,000 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"? Isn't this disparity the result of the \$63,180,000 in "Reappropriations" in the "single budget bill" that are not in the two-part budget presentation? 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 \$63,180,000 "Reappropriations" itemized in the "single budget bill" by the "Schedule" that appears at its pages 12-14 under the headings "State Operations and Aid to Localities – Reappropriations 2019-2020" and "Capital Projects – Reappropriations 2019-2020"?
- (9) Do you consider the Judiciary's budget to be reasonably clear and straightforward as to the cumulative amount of its request and its percentage increase over fiscal year 2018-2019? Have you examined the Legislature's analyses of the Judiciary's budgets?:
- (a) According to the Senate (Democratic) Majority's "Blue Book" (at p. 63) "The Judiciary request for SFY 2020 includes a total appropriation authority of \$3.2 billion, an increase of \$102 million or 3.4 percent compared to SFY 2019 available funds. This total includes All Funds appropriations of \$2.3 billion and \$814.8 million in General State Charges (GSC). The increase consists of \$70.9 million in All Funds appropriations and \$31.4 million in

General State Charges.” (see also chart at p. 54 and text at p. 55).

- (b) According to the Senate (Republican) Minority’s “White Book” (at p. 84), “The FY 2019 Executive Budget recommends All Funds spending at \$3.1 billion, an increase of \$91.7 million, or 3.0 percent.” (also chart at p. 85).
- (c) According to the Assembly (Democratic) Majority’s “Yellow Book” (at p. 153), “The Judiciary’s proposed budget request recommends All Funds appropriations of \$3.17 billion, which is an increase of \$102.19 million or 3.33 percent from the SFY 2018-19 level.”
- (d) According to the Assembly (Republican) Minority’s “Green Book”, “2.34 billion, \$76 million more than last year. This represents a 3.2% increase in spending.”

Which of these is correct as to the dollar figures and percentage increase from fiscal year 2018-2019?

- (10) By the way, why does your one-page December 1, 2018 memorandum transmitting the Judiciary’s proposed budget of general state charges not identify either dollar amounts or percentage increase for the transmitted general state charge budget, whereas, by contrast, your one-page December 1, 2018 memorandum transmitting the operating funds budget identifies: “The 2019-20 State Operating Funds budget request totals \$2.28 billion, a cash increase of \$44.7 million, or 2 percent, over available current-year funds”?
- (11) Why does the Judiciary furnish only a single Executive Summary for its two-part budget proposal? And why does this Executive Summary omit information about both “general state charges” and “reappropriations”?
- (12) Also, why does the Executive Summary omit mention of the judicial salary increase recommendations of the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation for fiscal year 2019-2020.
- (13) Wouldn’t you agree that the Executive Summary is the appropriate place for the Judiciary to have alerted the Governor, Legislature, and the public of the relevant statutory provision pertaining to the Commission on Legislative, Judicial and Executive Compensation’s judicial salary increase recommendations for fiscal year 2019-2020 which reads:

“...Each recommendation...shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law..., unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation...” (Chapter 60, Part E, of the Laws of 2015: §3, ¶7)

Do you agree that the only reference to the Commission on Legislative, Judicial and Executive Compensation's judicial salary recommendations for fiscal year 2019-2020 is in the narrative of the Judiciary's operating budget which, in ten separate places, states: "Funding for judicial positions includes salary increases in compliance with the mandate of the Commission on Judicial and Legislative Salaries."²

- (14) Why does the Judiciary's budget narrative not refer to the Commission on Legislative, Judicial and Executive Compensation by its correct name – and what is the referred-to "mandate" that the Commission imposed on the Judiciary?
- (15) You do know the difference between "salary" and "compensation", right? Can you explain that difference – and how the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation addressed the compensation issue that its very name reflects and that the statute pursuant to which it purports to be rendered – Chapter 60, Part E of the Laws of 2015 – requires it address as a condition precedent for any recommendation?
- (16) What were the Commission on Legislative, Judicial and Executive Compensation's judicial salary increase recommendations for fiscal year 2019-2020? What do they translate to, in dollar amounts and percentage increase for the Judiciary's judicial salary appropriations, cumulatively and for each category of judge. And what does this translate to in additional general state charges for salary-based compensation benefits.
- (17) Is there any line item in the Judiciary's proposed operating budget for the dollar appropriations for the judicial salary increases – and in the Judiciary's proposed budget of general state charges for the increased dollar costs of salary-based, non-salary compensation benefits, such as pensions and social security? Why not? Did the Judiciary not believe such line items important for the Legislature and Governor in exercising their "mandate" to "modif[y] or abrogate[]", pursuant to Chapter 60, Part E, of the Laws of 2015: §3, ¶7.³

² (Courts of Original Jurisdiction") (at p. 5); "Supreme and County Courts Program" (at p. 18); "Family Courts Program" (at p. 21); "Surrogates Courts Program" (at p. 25); "Multi-Bench Courts Program" (at p. 28); "City and District Courts Program" (at p. 32); "New York City Housing Court Program" (at p. 35); "Court of Claims Program" (at p. 44); "Court of Appeals" (at p. 86); "Appellate Court Operations" (at p. 90).

³ Only the Senate (Democratic) Majority's "Blue Book" (at p. 63) makes any reference to the judicial salary increases embedded in the Judiciary's budget – but does not identify that same can be abrogated or modified. It states:

"The funding increase also supports salary adjustments for State Judges due to the recent change in salary for Federal District Judges. In 2015, the New York State Commission on Legislative, Judicial, and Executive Compensation recommended that the salary of State Supreme Court Judges be the same as Federal District Judges."

- (18) Can you furnish figures as to the cost, to date, of the judicial salary increase recommendations in the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report – including as to increased salary-based benefits? How about cost figures for how much has been paid, to date, as a result of the August 29, 2011 report of the predecessor Commission on Judicial Compensation? Does the dollar amount approach \$400 million. Can you supply more exact figures?
- (19) Also, where can the Governor, Legislature – and public – find the current salary levels of the Judiciary's judges and justices? Would you agree that those salary levels are currently about \$75,000 higher than what appears in Article 7-B of the Judiciary Law, which has not been amended, at any time, since April 1, 2012 – the date the first phase of the salary increase recommendations of the Commission on Judicial Compensation's August 29, 2011 report took effect. And what has the Judiciary done, if anything, to alert the Legislature to amend Article 7-B so that no one is misled as to the heights to which judicial salaries have reached?
- (20) Also, what will be the increased salary levels of the Judiciary's judges and justices that will take effect on April 1, 2019, pursuant to the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report unless “modified or abrogated” by the Legislature or Governor before then? Where can the Governor, Legislature – and public – find that information?
- (21) Similarly, where can the Governor, Legislature – and public – find the monetary value of the non-salary compensation benefits that each state-paid judge and justice receives, in addition to salary – both currently and, after April 1, 2019, should the Legislature and Governor not “modif[y] or abrogate[e]” the salary increases for fiscal year 2019-2020 recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.
- (22) Does the Judiciary recommend that the Governor and Legislature allow the Commission on Legislative, Judicial and Executive Compensation's salary increase recommendations for fiscal year 2019-2020 to take effect – and on what basis?
- (23) As you know, immediately following the Commission on Legislative, Judicial and Executive Compensation's rendering of its December 24, 2015 report, CJA furnished then Chief Judge Nominee/Westchester District Attorney Janet DiFiore with correspondence⁴ demonstrating that it was even more statutorily-violative, fraudulent, and unconstitutional than the

⁴ This correspondence starts with CJA's December 30, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore entitled “So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?”. The succession of subsequent correspondence includes CJA's January 15, 2016 letter to Senate and Assembly majority and minority leaders – including chairs and ranking members of appropriate committees – entitled “IMMEDIATE OVERSIGHT REQUIRED” and CJA's February 2, 2016 e-mail entitled “Feb. 4th ‘Public Protection’ Budget Hearing: Questions for Chief Administrative Judge Marks”. These are Exhibits 37-44 to CJA's March 23, 2016 verified second supplemental complaint in the first citizen-taxpayer action.

predecessor August 29, 2011 report of the Commission on Judicial Compensation, on which it materially relies.

- (24) Did Chief Judge Nominee, later Chief Judge, DiFiore, ever deny or dispute the accuracy of that correspondence? How about you?
- (25) As you know, neither the Senate nor Assembly, by its Judiciary Committees or any other committee, has ever held an oversight hearing with respect to either the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation or the August 29, 2011 report of the Commission on Judicial Compensation. Does the Judiciary have no view on the subject?
- (26) As you know, as a result of Chief Judge DiFiore's willful failure and refusal to discharge any oversight responsibilities with respect to these two commission reports – and her complicity in the Legislature's willful failure and refusal to discharge oversight responsibilities with respect to these two commission reports – CJA filed, on March 23, 2016, a verified second supplemental complaint in its first citizen taxpayer action (#1788-2014) particularizing the facts and furnishing the relevant documents in support of three new causes of action: the thirteenth, fourteenth, and fifteenth, to void Chapter 60, Part E of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 report recommending judicial salary increases. Thereafter, on September 2, 2016, CJA embodied these three causes of action in a second citizen-taxpayer action (#5122-2016), naming Chief Judge DiFiore as a defendant "in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System", where they were the sixth, seventh, and eighth causes of action.
- (27) What steps have you and Chief Judge DiFiore taken to keep informed of the progress of the second citizen-taxpayer action to which Chief Judge DiFiore is a named defendant, upon whom the September 2, 2016 verified complaint was served on that date – where she, you and all the Judiciary's state-paid judges and justices have a HUGE and direct financial interest in the sixth, seventh, and eighth causes of action, as well as interests in the second cause of action challenging the constitutionality and lawfulness of the Judiciary budgets, including for the current fiscal year?
- (28) Do you dispute the accuracy of CJA's assertion, stated in its last year's written and oral testimony for the Legislature's January 30, 2018 and February 5, 2018 budget hearings that both citizen-taxpayer actions were "thrown" by fraudulent judicial decisions, upending ALL cognizable judicial standards to grant defendants relief to which it was not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*?
- (29) Would you agree that establishing that this is what happened – including with respect to the causes of action pertaining to the Judiciary's budgets and the judicial salary increases – can be verified by examining the court record?

- (30) In view of Chief Judge DiFiore’s “Excellence Initiative”, referred to at the outset of the Judiciary’s Executive Summary (p. i), as being her “highest priority” – with a goal of achieving “operational and decisional excellence in everything that we do” – would the Judiciary be willing to demonstrate how its “Excellence Initiative” works by evaluating the “decisional excellence” in the citizen-taxpayer actions in which it was interested, furnishing the Legislature with its findings of fact and conclusions of law with respect to the judicial decisions, particularly as relates to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases?
- (31) Do you agree that this is now the third year in a row that Governor Cuomo has not furnished the Legislature with any written “Commentary of the Governor on the Judiciary”, with recommendations pursuant to Article VII, §1 of the New York State Constitution?
- (32) Going back to the \$63,180,000 in “Reappropriations” in the “single budget bill” (pp. 1, 12-14) – are they properly designated as such – and have they been approved by the Court of Appeals and certified by the Chief Judge, as required by Article VII, §1?
- (33) 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.”
https://www.budget.ny.gov/citizen/financial/glossary_all.html#r

Can you identify what the reappropriations listed at pages 12-13 of the Judiciary’s “single budget bill” and totaling \$17,680,000, were for when originally appropriated? Why was this money not used? And what is it now purported to be reappropriated for?

- (34) Is the reason the Judiciary’s two-part budget presentation does not identify these unused appropriations because they are not properly reappropriations and should be returned to the public treasury?
- (35) Would you agree that the aforesaid reappropriations at pages 12-13 of the “single budget bill” are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2018, 2017, 2016, 2015, 2014 – which are the appropriations of the enacted budget bills pertaining to the Judiciary for those years. 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 “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 State 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 last three reappropriations at pages 13-14 of the “single budget bill” – these being the two \$20,000,000 “Aid to Localities” reappropriations (at pp. 13-14) and the five “Capital Projects” reappropriations of \$2,000,000, \$1,000,000, \$2,000,000, \$1,000,000, and \$500,000 (at p. 14)? Are they consistent with State Finance Law §25, with Article VII, §7, and with Article III, §16 of the New York Constitution?

- (36) The Judiciary’s “single budget bill” – which the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 reproduces, *verbatim*, as its judiciary portion – consists of a §2, containing a “Schedule” of appropriations, followed by a §3, which are reappropriations. The text directly beneath the §2 title “Schedule” reads:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other

major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.”

This same text was in the Judiciary’s “single budget bill” for fiscal year 2018-2019, which the Governor reproduced, *verbatim*, in his Legislative/Judiciary Budget Bill #S.7501/A.9501. Pursuant thereto, in fiscal year 2018-2019, did you, as Chief Administrative Judge, approve any increases or decreases in the amounts set forth in the enacted Budget Bill #S.7501/A.9501 – or are you yet going to do so in the remainder of this fiscal year? If so, what are the particulars and why does the Judiciary’s proposed budget for fiscal year 2019-2020 fail to even identify this reshuffling of appropriations in fiscal year 2018-2019?

- (37) Can you explain why notwithstanding the September 24, 2015 report of former Chief Judge Lippman’s Commission on Statewide Attorney Discipline recommending an “Increase to funding and staffing across-the-board for the disciplinary committees” (Executive Summary, at p. 4), stating “Additional funding and staffing must be made available to the disciplinary committees” (at p. 57), the Judiciary’s proposed appropriation of \$15,435,741 for fiscal year 2019-2020 is almost \$80,000 less than the \$15,514,625 appropriation for fiscal year 2018-2019, which was LESS than its 2011-2012 request of \$15,547,143 – and not appreciably greater than the \$14,859,673 it was when the Commission on Statewide Attorney Discipline rendered its September 24, 2015 report.
- (38) The Senate and Assembly Judiciary Committees held no oversight hearing to review the Commission on Statewide Attorney Discipline’s September 24, 2015 report, is that correct? How about oversight hearings of the court-controlled attorney disciplinary system, at which the public was given notice and opportunity to testify and submit evidence? Do you know when such hearings were held by the Senate and Assembly Judiciary Committees to review the efficacy and fairness of the court-controlled attorney disciplinary that the state is funding – and what findings of fact and conclusions of law were made based thereon?
- (39) How about Senate and Assembly Judiciary Committee oversight hearings of the Commission on Judicial Conduct, at which the public was given notice and the opportunity to testify and submit evidence? Do you know when they were last held – and what findings of fact and conclusions of law were made based thereon? Although the Commission is not funded through the Judiciary budget, it is among the agencies within the Legislature’s “public protection” budgeting. Surely, Chief Judge DiFiore’s “Excellence Initiative” recognizes the Judiciary’s obligation to ensure that the Commission on Judicial Conduct is adequately funded and properly functioning, does it not? What advocacy, if any, has it undertaken, with respect to funding, which in this year’s State Operations Budget Bill #S.1500/A.2000 (at p. 447) is \$5,696,000. And what has it done to advance an independent auditing of the Commission on Judicial Conduct’s handling of judicial misconduct complaints – the necessity of which was recognized nearly 30 years ago, in the 1989 report of the then state Comptroller Edward Regan, entitled Commission on Judicial Conduct – Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, whose press release was equally blunt: “COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT”.

- (40) Doubtless in the nearly three years since Chief Judge DiFiore announced her “Excellence Initiative”, many members of the public have complained to her about the lawlessness that prevails in the judiciary, resulting from a Commission on Judicial Conduct that is worthless, as well as the worthlessness of entities within the judiciary charged with oversight, including the court-controlled attorney disciplinary system and the Judiciary’s Office of Inspector General. What has she done to verify the situation?
- (41) By the way, the Judiciary’s proposed budget for fiscal year 2019-2020 (at p. 60) seeks \$1,466,580 for the Office of Inspector General, is that correct? Does the Judiciary’s Office of Inspector General render annual reports of its activities to the Office of Court Administration? Will the Judiciary produce these or similar reports as to the number, type, and disposition of complaints received by its Inspector General? Is the Office of Court Administration unaware of evidence of the corruption of its Office of Inspector General, as for instance, its failure and refusal to investigate record tampering in the declaratory judgment action, *CJA v. Cuomo, et al* (Bronx Co. #302951-2012; NY Co. #401988-2012), and the misfeasance and nonfeasance of the New York County Clerk and his staff in connection therewith – whose consequence was to stall the case and prevent prompt determination of the statutory violations, fraud, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 report – which, to date, have yet to be declared.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, December 18, 2019 10:55 AM
To: 'nyscompensation@gmail.com'
Cc: 'lmarks@nycourts.gov'; 'jshukin@nycourts.gov'; 'skerby@nycourts.gov';
'rmaldonado@nycbar.org'; 'rmaldonado@sgrlaw.com'; 'hgreenberg@nysba.org';
'greenbergh@gtlaw.com'
Subject: Today's 4 pm Commission meeting -- & my third supplemental submission in further support of my Nov. 4th testimony
Attachments: 11-26-19-email-to-commission-with-11-25-19-ltr-to-marks.pdf; 12-11-19-email-to-commission-with-attachments.pdf

TO: Commission on Legislative, Judicial & Executive Compensation

My November 26th and December 11th e-mails to you – each supplemental submissions in further support of my November 4th testimony – must top the agenda of your today's 4 pm meeting, as they are dispositive that not only can the Commission make NO pay raise recommendations, but that the Judiciary and judicial pay raise advocates have been engaged in pervasive fraud, including as to the supposedly minimal costs of COLAs.

Do you disagree? And will you, consistent with your duty, “blow the whistle” on what has been going on – identified by my November 4th testimony as “a grand larceny of the public fisc” involving, to date, “on the order of half a billion dollars” paid out in “fraudulent, statutorily-violative, and unconstitutional judicial pay raises” [Tr. 70] – the product of two commission reports that are each “false instrument(s), violative of a succession of Penal Laws and the Public Trust Act” [R.69] – and which would have been so-declared judicially and VOIDED but for the fact that since 2012, New York judges, in collusion with New York's attorney general, have upended all adjudicative standards to “throw” successive lawsuits for such declarations – the culminating lawsuit, *CJA v. Cuomo...DiFiore*, being now at the Court of Appeals, where the same obliteration of the rule of law has been happening.

And do you agree that if you do not do your duty to “whistle-blow” with respect to *CJA v. Cuomo...DiFiore*, “suing all three branches for collusion against the people with respect to these force of law commissions, a scheme, a corrupt and unconstitutional scheme to give pay raises to corrupt public officers who should be removed for their corruption in office” – challenging, as well “the Judiciary budget, which embeds, hides the pay raises, has hidden them, concealed their costs, the legislative budget, the entirety of the executive budget” whose record I identified as “Exhibit A” as to “how the Judiciary operates” [Tr. 65-66] – it is because of the conflicts of interest from which you suffer – and have not disclosed?

In that regard, I take this opportunity to slightly revise my November 4th testimony wherein I stated that “most of you are afflicted by conflict of interest” [Tr. 70]. In fact, ALL the Commissioners suffer from disqualifying conflicts of interest and demonstrated bias – except possibly one, Commissioner Madonia, ironically the sole Commissioner not physically or electronically present at the November 4th hearing. To enable you to confront this, CJA's webpages for this Commission: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/menu-2019-2020-commission.htm> includes a webpage entitled “Informed Consent? – Appointment of Commissioners Disqualified for Interest and Bias” from which the EVIDENCE is accessible. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/informed-consent-disqualification.htm>.

By the way, the Commission's webpage of submissions: <http://nyscommissiononcompensation.org/Submissions-judicial.shtml> is seriously deficient, including by its failure to post my November 26th e-mail and December 11th e-mail as my first and second supplemental submissions. Above attached are the pdfs of those e-mails that I sent the Commission

on December 10th and 11th, expressly for such posting. Why have they not been posted? And why has the Commission still not corrected its posting of my submission on “Nov 4” to include my letter to the editor about the *CJA v. Cuomo...DiFiore citizen-taxpayer action*, at the Court of Appeals – “*A Call for Scholarship, Civic Engagement, & Amicus Curiae Before the NYCOA*”, published in the August 21, 2019 New York Law Journal [Tr. 65, 68] – about which I alerted the Commission by a December 4th e-mail. How about posting my three FOIL requests, one submitted on November 27th and two on December 9th – each further substantiating my November 4th testimony.

Please deem this e-mail, with its below e-mail from yesterday addressed to Chief Administrative Judge Marks and Chief Judge DiFiore, entitled “Housekeeping: Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD: Have you responded to my Dec. 11th & Nov 26th e-mails?” – to which I cc’d the Commission – to be my third supplemental submission in support of my November 4th testimony. I will shortly send you a pdf to facilitate your posting it on the Commission’s website, which I also expressly request.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, December 17, 2019 8:35 AM
To: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>; 'jshukin@nycourts.gov' <jshukin@nycourts.gov>; 'skerby@nycourts.gov' <skerby@nycourts.gov>
Cc: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>; 'rmaldonado@nycbar.org' <rmaldonado@nycbar.org>; 'rmaldonado@sgrlaw.com' <rmaldonado@sgrlaw.com>; 'hgreenberg@nysba.org' <hgreenberg@nysba.org>; 'greenbergh@gtlaw.com' <greenbergh@gtlaw.com>
Subject: **Housekeeping: Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD: Have you responded to my Dec. 11th & Nov 26th e-mails?**

TO: Chief Administrative Judge Marks and Chief Judge DiFiore

I have received no response from you – or from the OCA’s records access officer – to my below December 11, 2019 e-mail entitled “Protecting the Commission from FRAUD -- CJA’s Second Supplemental Submission in Specific Rebuttal to Chief Administrative Judge Marks’ Nov. 22, 2019 Supplemental Submission”.

Did you respond to me or to the Commission? Please advise – and send me a copy of your response(s), if you did.

I also received no response from you to my November 26, 2019 e-mail – also below – transmitting my November 25, 2019 letter addressed to Chief Administrative Judge Marks entitled:

“Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony”.

Did you respond to me or to the Commission? Here, too, please advise – and send me a copy of your response(s), if you did.

For your convenience, the attachments to those two below e-mails are above – and everything is posted on CJA’s website, www.judgewatch.org, accessible from the prominent homepage link “NY’s ‘Force of Law’ Commissions –

Unconstitutionality & Fraud IN PLAIN SIGHT". The direct link to the menu page for the current Commission on Legislative, Judicial and Executive Compensation is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/menu-2019-2020-commission.htm>.

Finally, as I inadvertently neglected to send my December 11th e-mail to New York City Bar Association President Maldonado and New York State Bar Association President Greenberg for their responses, I do so now, by this e-mail – relying on you to forward this same e-mail to the other judicial pay raise advocates who testified at the Commission’s November 4th and November 14th hearings, ALL judges except for Fund for Modern Courts Executive Director Hawkins. This, I now expressly request you do, much as I did by my November 26th e-mail.

As the Commission is meeting at 4 pm tomorrow – and my December 11th and November 26th e-mails should TOP its agenda – responses by you and the other judicial pay raise advocates are required expeditiously.

Thank you.

Elena Sassower, Director
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, December 11, 2019 9:23 AM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Cc: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>; 'jshukin@nycourts.gov' <jshukin@nycourts.gov>; 'skerby@nycourts.gov' <skerby@nycourts.gov>
Subject: Protecting the Commission from FRAUD -- CJA's Second Supplemental Submission in Specific Rebuttal to Chief Administrative Judge Marks' Nov. 22, 2019 Supplemental Submission

TO: Commission on Legislative, Judicial & Executive Compensation

Following up my below December 9, 2019 e-mail to you, identifying that “the reason Chief Administrative Judge Marks is able to propose that the Judiciary will self-fund COLAs from its own budget is because the Judiciary budget is a larcenous SLUSH-FUND, born of constitutional violations, statutory-violations, and fraud”, please deem that December 9th e-mail and this to be my second supplemental submission, in specific response to Chief Administrative Judge Marks’ November 22, 2019 supplemental submission. There, he makes the extraordinary statement:

“...since inception of the Salary Commission system in 2011, the Judiciary has consistently absorbed the costs of *all* judicial pay adjustments recommended by a Commission without asking for any additional funding to pay those costs. We did this even during the years for which prior Commissions were making salary recommendations when, because those recommendations were geared to help State judges catch up after a 13-year pay freeze, the cost of the increase, and therefore the impact of the Judiciary budget, was far greater. Those adjustments were much larger than even the largest salary adjustment that we might today imagine the Federal Judiciary will receive over the next several years. For example, during the 2012-2015 salary cycle, State Supreme Court Justices received a 17% pay increase for the 2012-13 fiscal year (with other State Judges receiving proportionate increases); a 4.3% increase for the 2013-14 fiscal year; and a 4.2% increase for the 2014-15 fiscal year. During the first fiscal year of the 2016-2019 salary cycle, the Justices received an 11% increase; and in 2018-19, another 6.7%.

We promised the prior commissions the Judiciary budget would absorb the costs of all of these increases without asking for additional funding and then proceeded to live up to that commitment, notwithstanding their size and the fiscal burden they presented..." (italics in the original).

As Chief Administrative Judge Marks' scant 1-1/2 page supplemental submission identifies not a single dollar amount, the Commission must demand that he specify the dollar amounts he is claiming the Judiciary self-funded from its budget, arising from the August 29, 2011 report of the Commission on Judicial Compensation and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation. Upon information and belief, the Judiciary only absorbed the first year of each COLA or judicial pay raise increase – and did this to avoid having to identify their dollar amounts, or even their existence, in its proposed "single-budget" bills – and the Legislature's right to modify or strike them out.

In his original submission (at p. 21), Chief Administrative Judge Marks' purports that the Judiciary's proposed "series of four...cost-of-living adjustments for New York's state-paid judges over the four fiscal years beginning April 1, 2020" is "very modest", that "The cost of these adjustments in each fiscal year, and the aggregate cost over the full four years is almost certain to be de minimus" and in dollar terms would "cost the State \$13.9 million, or an average of \$3.46 million annually" . This is false. The \$3.46 million cost of each COLA increase, essentially repeated by Chief Administrative Judge Marks in testifying on November 4th (at pp. 7, 12), becomes, after the initial year, embedded as increased judicial salaries, COMPOUNDING yearly. Thus, while the first COLA, in fiscal year 2020-21, would cost \$3.46 million in that first year, the second COLA, in fiscal year 2021-22, is another \$3.46 million, plus the original COLA of \$3.46 million, now shifted to a permanent increase in judicial salary costs – for a total of \$6.92 million in the second year. The third COLA, in fiscal year 2022-23, is a further \$3.46 million, plus \$6.92 million from the two prior COLAs, now shifted to increased judicial salary costs – bringing the total to \$10.38 million in the third year. The fourth COLA, in fiscal year 2023-24, is another \$3.45 million, plus \$10.38 million from the three prior COLAs, now shifted to increased judicial salary costs – thereby totaling \$13.84 million in the fourth year. The dollar total for these four years of COMPOUNDING judicial salary increases originating as COLAs is the addition of \$3.46 million for the first year, \$6.92 million for the second year, \$10.38 million for the third year, and \$13.84 million for the fourth year, which is \$34.56 million. And it does not end there, as this \$34.56 million is then forever a recurring yearly cost upon the state for judicial salaries – on top of which the state must pay out for the increased costs of salary-based non-salary compensation benefits, such as pensions. Does Chief Administrative Judge Marks deny this? Is this why he has submitted no sworn statements of projected costs – or past costs – including from the Judiciary's own budget director?

As I stated in testifying on November 4th, I believe that what the state has already paid out in commission-based judicial salary increases is now "on the order of half a billion dollars" (Tr. 70). Getting more precise figures must be a Commission priority, especially as the Judiciary has withheld relevant costs in its SLUSH FUND budgets and in responding to FOIL/records requests. My attached February 20, 2013, December 9, 2015, and December 9, 2016 FOIL/records requests – and the Judiciary's responses thereto – are illustrative.

Finally, over and beyond my sworn testimony and the EVIDENCE from the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action that I handed up to the Commissioners pertaining to the Judiciary budget is the further EVIDENCE I had brought with me to the November 4th hearing, but inadvertently forgot to hand up, *to wit*, my October 7, 2019 FOIL/records request to the Judiciary for its "independent audits" pursuant to Judiciary Law §249-c" – encompassing my comparable November 28, 2016 FOIL/records request, to which the Judiciary had made no responsive production. It is attached, as are my follow-up November 29, 2019 and December 5, 2019 e-mails, reflecting the Judiciary's failure, yet again, to even respond. There are only three possibilities: either the Judiciary cannot make production because it has NOT complied with its "independent audit" obligations; or because production would reveal that its "independent audits" are sham; or because its "independent audits" have yielded results not favorable to the Judiciary. Each of these possibilities should be concerning to the Commission – and the Commission's duty, based on Chief Administrative Judge Marks' claims about the Judiciary's budget, is to verify the situation by obtaining from him the records those October 7, 2019 and November 28, 2016 FOIL/records request seek – and by subpoena, if necessary.

Needless to say, costs to the state of prospective COLA increases are ALL irrelevant because – as demonstrated by the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action – the Judiciary is systemically corrupt on adjudicative, administrative, and financial levels, making any judicial salary increases, by COLA or otherwise, unconstitutional. Indeed, the record of the lawsuit reveals NO adjudication of the constitutional issue presented by both the sixth cause of action (¶64) and seventh cause of action (¶74) of CJA’s September 2, 2016 verified complaint that corruption is an “appropriate factor” that the Commission must “take into account” for Chapter 60, Part E, of the Laws of 2015 to be constitutional.

Later in the day, I will furnish you a pdf of this e-mail, combined with its attachments, to facilitate your posting this second supplemental submission on your webpage for submission: <http://www.nyscommissiononcompensation.org/Submissions-judicial.shtml>. Meantime, I am furnishing it to Chief Administrative Judge Marks, Chief Judge DiFiore, and the Judiciary’s records access officer for response.

Thank you.

Elena Sassower, Director
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, December 10, 2019 8:04 AM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Cc: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>; 'jshukin@nycourts.gov' <jshukin@nycourts.gov>; 'skerby@nycourts.gov' <skerby@nycourts.gov>
Subject: (Corrected) Status & Posting -- CJA's Nov. 26, 2019 e-mail to the Commissioners, with attached Nov. 25, 2019 letter to Chief Administrative Judge Marks

TO: Commission on Legislative, Judicial & Executive Compensation

My yesterday’s e-mail, which is below, contained two errors, now corrected:

- (1) Its title misdated the year of my letter to Chief Administrative Judge Marks. The date of the letter is November 25, **2019**, not 2015;
- (2) Its message identified only Commissioners Eng and Lachman as having been given, *in hand*, the particularized EVIDENCE that the Judiciary budget is a “SLUSH FUND” – omitting Commissioner Hormozi, to whom I also gave a copy of that same EVIDENCE, *in hand*.

Please furnish this corrected e-mail to all seven Commission members – and post my November 25, 2019 letter to Chief Administrative Judge Marks, transmitted to the Commission by my November 26, 2019 e-mail to it, as my “First Supplemental Submission in Further Support of Testimony”. To assist you in posting it as such, the above-attached first pdf contains both the 3-page November 26, 2019 e-mail and the 7-page letter.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, December 9, 2019 3:56 PM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Cc: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>; 'jshukin@nycourts.gov' <jshukin@nycourts.gov>; 'skerby@nycourts.gov' <skerby@nycourts.gov>
Subject: Status & Posting -- CJA's Nov. 26, 2019 e-mail to the Commissioners, with attached Nov. 25, 2019 letter to Chief Administrative Judge Marks

TO: Commission on Legislative, Judicial & Executive Compensation

Please confirm that my below November 26, 2019 e-mail entitled "Protecting the Commission on Legislative, Judicial and Executive Compensation from FRAUD", with its now signed above-attached November 25, 2019 letter to Chief Administrative Judge Marks, was forwarded to "each of the Commission's seven members", as requested – AND that it will be posted on the Commission's webpage of submissions:

<http://www.nyscommissiononcompensation.org/Submissions-judicial.shtml>.

To date, I have received no response to the letter from Chief Administrative Judge Marks – nor from any of the other witnesses who testified at the Commission's November 4th and 14th hearings. Has the Commission received any response? If not, has the Commission requested responses from Chief Administrative Judge Marks and the other witnesses – as any fair and impartial tribunal would have done. Please advise.

By the way, the reason Chief Administrative Judge Marks is able to propose that the Judiciary will self-fund COLAs from its own budget is because the Judiciary budget is a larcenous SLUSH-FUND, born of constitutional violations, statutory-violations, and fraud. Indeed, the Commission has the particularized EVIDENCE of this, as I gave it, *in hand*, to Commissioners Eng, Lachman, and Hormozi, on November 4th at the conclusion of my testimony – and the Commission has posted it on its webpage of submissions. For your convenience, that EVIDENCE is attached, *to wit*:

- (1) the second cause of action of the September 2, 2016 verified complaint in the *CJA v. Cuomo...DiFiore* taxpayer action pertaining to the Judiciary budget (§§39), with its incorporated tenth cause of action from the March 23, 2016 verified second supplemental complaint in the first *CJA v. Cuomo* citizen-taxpayer action (§§329-331); and
- (2) CJA's "Questions for Chief Administrative Judge Lawrence Marks" pertaining to the fiscal year 2019-2020 Judiciary budget (§§1-36), which I furnished to the Legislature on February 19, 2019 and annexed as Exhibit F-1 to CJA's May 31, 2019 motion to the Court of Appeals.

To enable Chief Administrative Judge Marks to respond – including as to the capacity of the Judiciary budget to absorb COLA and other commission-based judicial pay raises, whose cumulative and compounding dollar amounts he concealed on November 4th and by his November 22nd supplemental submission – a copy of this e-mail is being sent to him, so that he can not only address same, but do so in the context of the Judiciary's proposed two-part budget for fiscal year 2020-2021, which he furnished the Governor and Legislature on November 29, 2019, with certifications by Chief Judge DiFiore and approvals by the Court of Appeals dated November 19, 2019:

<http://ww2.nycourts.gov/admin/financialops/Budgets.shtml>.

Suffice to say – and as highlighted by my November 25, 2019 letter to Chief Administrative Judge Marks (at p. 4) – ALL the specified financial and economic factors that Chapter 60, Part E, of the Laws of 2015 requires the Commission to "take into account" in examining the adequacy of judicial pay are "IRRELEVANT", when the Judiciary is "not 'excellent' and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct". Such is the situation, at bar – proven, EVIDENTIARILY, by the record of the *CJA v.*

Cuomo...DiFiore citizen-taxpayer action: <http://judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>. This is why the Commission must demand that Chief Administrative Judge Marks and other judicial pay raise advocates produce their findings of facts and conclusions of law with respect thereto, including by subpoena, if necessary.

Thank you.

Elena Sassower, Director
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, November 26, 2019 5:11 PM
To: 'nyscompensation@gmail.com' <nyscompensation@gmail.com>
Subject: Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD

TO: Commission on Legislative, Judicial & Executive Compensation

Below is my just-sent e-mail to Chief Administrative Judge Marks, with the above attachment. Please forward to each of the Commission's seven members.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, November 26, 2019 4:58 PM
To: 'lmarks@nycourts.gov' <lmarks@nycourts.gov>
Cc: 'rmaldonado@nycbar.org' <rmaldonado@nycbar.org>; 'rmaldonado@sgrlaw.com' <rmaldonado@sgrlaw.com>; 'hgreenberg@nysba.org' <hgreenberg@nysba.org>; 'greenbergh@gtlaw.com' <greenbergh@gtlaw.com>
Subject: Protecting the Commission on Legislative, Judicial & Executive Compensation from your FRAUD

TO: Chief Administrative Judge Lawrence Marks

Attached is my self-explanatory letter to you of yesterday's date, entitled:

"Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony".

CJA's webpage for the letter on which is posted the referred-to substantiating evidence is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

Please be sure to respond promptly – and especially do not overlook the paragraph at page 7 that I quoted in my yesterday’s motion to the Court of Appeals in CJA’s citizen-taxpayer action, *CJA v. Cuomo...DiFiore*. That paragraph reads:

“By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) ‘Judges...must comply with the Chief Administrative Judge’s Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges’ public and private conduct and activities’ citing ‘NY Const., Art. VI, §20(b), (c)’ – thereby implying that New York’s judges do comply and that there is enforcement when they don’t – approved by Chief Judge DiFiore and the associate judges– or was its content known to them and, if so, when? Did you – and they – actually believe that New York’s Judiciary was not obligated to include ANY information as to CJA’s succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator’s Rules Governing Judicial Conduct and any cognizable judicial ‘process’^{fn10}” (underlining in the original).

The annotating footnote 10 reads:

“Notably, when you testified, you stated – without specificity:

‘...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue.’ (Tr. 3).”

The direct link to CJA’s webpage for my yesterday’s motion, to which my letter to you is Exhibit F and quoted at pages 20-21, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/11-25-19-motion-5015-etc.htm>.

As for the indicated recipients of my yesterday’s letter to you, I am sure you have more direct e-mail addresses than I have and I ask that you assist in distribution. Indeed, I have no e-mail addresses for the judges who testified at the November 4, 2019 and November 14, 2019 hearings – and for the judicial associations on whose behalf they spoke. I, therefore, expressly request that you forward this e-mail to them, so that they can each respond to my letter’s demand at page 3:

“By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.” (underlining in the original).

Also, please forward this e-mail to Chief Judge DiFiore’s “Excellence Initiative”, to which you and the other judges who testified praised as increasing judicial excellence.

Finally, in view of your reliance on the Chief Administrator’s Rules Governing Judicial Conduct (22 NYCRR Part 100) for the judicial salary increases you seek, I would remind you and your fellow judges of its §100.3D, “Disciplinary Responsibilities”, reading, in pertinent part:

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.”

Presented by my attached letter – and by my November 4, 2019 testimony on which it is based – is not “information indicating a substantial likelihood”, but EVIDENCE PROVING IT. And an excellent starting point for your demonstrating your adherence to §100.3D of the Chief Administrator’s Rules is my December 31, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore, about which I testified at the November 4, 2019 hearing and also highlighted at ¶13 of my yesterday’s motion.

The direct link to CJA’s webpage for that December 31, 2015 letter and its accompanying EVIDENCE is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>. Surely, though, such link is superfluous. I cannot imagine Chief Judge DiFiore would have discarded the originals I hand-delivered to her Westchester District Attorney’s Office on December 31, 2015, as they EVIDENTIARILY PROVED that the December 24, 2015 Report of the Commission on Legislative, Judicial, and Executive Compensation – and the August 29, 2011 Report of the Commission on Judicial Compensation on which it relied – were each “false instruments”, violative of a succession of penal laws. Or do you disagree?

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

ANNOTATION of the 2019 Commission's Posting of CJA's Submissions on Judicial Compensation

Nov. 4 [Elena Sassower](#) – CJA's Dec 31, 2015 letter to Chief Judge Nominee DiFiore pertaining to the "false instrument" 2011 and 2015 commission reports

[Addendum](#) -- CJA's "Inventory of Evidence to be Recovered by the 2019 Commission" from the 2011, 2015, and 2018 commissions

[Addendum 3](#) -- combining, in a single document, 150 pages:

- (1) CJA's Dec 31, 2015 letter to Chief Judge Nominee DiFiore;
- (2) CJA's written testimony for the Legislature's Feb. 11, 2019 budget hearing on "local gov't officials/general gov't", with its written questions for Chief Admin Judge Marks about the FY 2019-20 Judiciary budget & the Legislative/Judiciary budget bill;
- (3) *CJA v. Cuomo, et al.* (1st Citizen-Taxpayer Action): Verified 2nd Supplemental Complaint pp. 1-3, 10th, 13th, 14th, 15th, & 16th causes of action;
- (4) *CJA v. Cuomo...DiFiore* (2nd Citizen-Taxpayer Action): Verified Complaint pp. 1-3, 2nd, 6th, 7th, 8th 9th causes of action;
- (5) *CJA v. Cuomo...DiFiore* (2nd Citizen-Taxpayer Action): Verified Supplemental Complaint pp. 1-4, 10-14, 23-24, 64;
- (6) CJA's June 10, 2019 FOIL request – 2019 Commission & its commissioners – & correspondence relating thereto;
- (7) CJA's Sept 6, 2019 FOIL request – AGAIN, 2019 Commission & its commissioners – & correspondence relating thereto;
- (8) CJA's June 20, 2019 FOIL request – Records of the 2018 Compensation Committee – & correspondence relating thereto;
- (9) CJA's July 9, 2019 e-mail to *Pro Bono* Counsel to 2018 Compensation Committee – "Whereabouts of the Records of the Committee on Legislative & Executive Compensation – & Responsibility for its Website" – & correspondence relating thereto;
- (10) CJA's July 2, 2019 FOIL request – "Compensations Commissions – & their website" – & correspondence relating thereto.

[Addendum 4](#) – CJA's Dec 11, 2019 e-mail "Protecting the Commission from FRAUD – CJA's Second Supplemental Submission in Specific Rebuttal to Chief Administrative Judge Marks' Nov 22, 2019 Supplemental Submission", with its indicated attachments:

- (a) CJA's Feb 20, 2013 FOIL request – Judiciary budgets for FY2013-14 & 2012-13 – & correspondence relating thereto;
- (b) CJA's Dec. 9, 2015 FOIL request – "The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and 'General State Charges' Resulting Therefrom" -- & correspondence relating thereto;
- (c) CJA's Dec. 9, 2016 FOIL request – "Chief Administrative Judge Marks' approvals of increases, decreases, and interchanges in fiscal year 2016-2017, as authorized by §2 of Legislative/Judiciary Budget Bill..." – & correspondence thereon;
- (d) CJA's Oct. 7, 2019 FOIL request – "The Judiciary's 'Independent audits' pursuant to Judiciary Law §249-c", attaching CJA's comparable Nov. 28, 2016 FOIL request & correspondence thereon – & correspondence as to the Oct. 7, 2019 FOIL;

- (e) *CJA v. Cuomo...DiFiore* (2nd citizen-taxpayer action): verified complaint pp. 1-3, 2nd cause of action, with *CJA v. Cuomo, et al.* (1st citizen-taxpayer action): verified second supplemental complaint pp. 1-3, 10th cause of action;
- (f) CJA's questions for Chief Administrative Judge Marks pertaining to the FY2019-20 judiciary budget & the Legislative/Judiciary budget bill

[Addendum 5](#) – CJA's Dec 18, 2019 e-mail "Today's 4pm Commission meeting – & my third supplemental submission in further support of my Nov. 4th testimony", without its indicated attachments

[Addendum 6](#) – CJA's Dec. 9, 2016 FOIL request "Chief Administrative Judge Marks' approvals of increases, decreases, and interchanges in fiscal year 2016-2017, as authorized by §2 of Legislative/Judiciary Budget Bill..." – & correspondence relating thereto

[Addendum 7](#) – CJA's Dec. 9, 2015 FOIL request "Dollar Amounts of Judicial Salary Increases Recommended by Commission on Judicial Compensation's Aug 29, 2011 Report – & 'General State Charges' Resulting Therefrom" – & correspondence relating thereto

[Addendum 8](#) – CJA's Feb 20, 2013 FOIL request "Judiciary's budgets for fiscal years 2013-2014 & 2012-2013" – & correspondence relating thereto

[Addendum 9](#) – CJA's Oct 7, 2019 FOIL request "Judiciary's 'Independent audits' pursuant to Judiciary Law §249-c", attaching CJA's comparable Nov. 28, 2016 FOIL request & correspondence thereon – & correspondence as to the Oct. 7, 2019 FOIL

[Addendum 10](#) – *CJA v. Cuomo...DiFiore* (2nd Citizen-Taxpayer Action) verified complaint pp. 1-3, 2nd cause of action, with *CJA v. Cuomo, et al* (1st Citizen-Taxpayer Action.): verified second supplement complaint pp. 1-3, 10th cause of action

[Addendum 11](#) – CJA's Questions for Chief Administrative Judge Marks – FY2019-20 Judiciary Budget & Legislative/Judiciary Budget Bill

[Addendum 12](#) – CJA's November 25, 2019 letter to Chief Administrative Judge Marks – "Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of my Sworn Testimony"

[Addendum 13](#) – CJA's November 26, 2019 e-mail to Commission – "Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD", with its attached November 25, 2019 letter to Chief Administrative Judge Marks – "Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of my Sworn Testimony"