

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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Elena Ruth Sassower, Director

BY E-MAIL: c/o_pmingion@courts.state.ny.us

October 26, 2012

New York County Clerk Norman Goodman
New York County Courthouse
60 Centre Street, Room 161
New York, New York 10007

RE: Quality Control at the New York County Clerk's Office:
Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.,
(NY Co. #401988/2012):

- (1) Official Misconduct by Chief Deputy County Clerk James A. Rossetti
- (2) Official Misconduct by Chief Clerk Joseph F. Antonelli
- (3) Official Misconduct by a Uniformed Officer, believed to be a "major", who refused to give his name or badge number
- (4) Certification Request Pursuant to Judiciary Law §255

Dear County Clerk Goodman:

This follows up my visit to your office in Room 161 on Friday afternoon, October 19, 2012, to report to you the official misconduct of your Chief Deputy County Clerk, James A. Rossetti, and of your Chief Clerk, Joseph F. Antonelli, in connection with documents missing from the file of the above-entitled public interest lawsuit against New York State's highest constitutional officers and three government branches – including Chief Judge Jonathan Lippman and the Unified Court System – sued for constitutional and statutory violations and fraud in connection with the judicial pay raise issue.¹

¹ The verified complaint – and all the documents that should be in the New York County case file – are posted on CJA's website, www.judgewatch.org, accessible via the top panel "Latest News", whose first section contains a hyperlink entitled "The People's Lawsuit vs NY's...Highest Constitutional Officers to Void the Judicial Pay Raises – & Secure Judicial Accountability".

* **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.

In your absence, I spoke with your counsel, Phyllis M. Mingione, who then witnessed Mr. Rossetti's interference with my oral report to her of his misconduct, when – as I was speaking with her – he entered Room 161, demanded that I leave, and thereupon stalked off to get officers to physically remove me. A minute or so later, when I exited Room 161 upon the conclusion of my conversation with Ms. Mingione, Mr. Rossetti approached with officers – including one wearing a uniform marked “major”, who ordered me to leave the courthouse and not only refused my requests for an explanation or legal authority, but for his name or badge number.

Mr. Rossetti, your deputy, was appointed by you and is removable by you.² Perhaps, similarly, Mr. Antonelli. The facts pertaining to their nonfeasance, malfeasance, and misfeasance are set forth by my accompanying affidavit in support of this formal complaint against them for official misconduct and obstruction of justice in aiding and abetting record tampering involving removal of documents from the record of *Center for Judicial Accountability, Inc. v. Cuomo*.

The most important missing document is the one on which the lawsuit rests: plaintiffs' October 27, 2011 Opposition Report to the August 29, 2011 “Final Report” of the Special Commission on Judicial Compensation, documentarily establishing:

- that there is NO merits defense to the lawsuit;
- that plaintiffs are entitled to summary judgment, *as a matter of law*, and a preliminary injunction by reason thereof;
- that the Attorney General's representation of defendants, of which he is one, is improper and violates Executive Law §63.1; and
- that the Attorney General's April 13, 2012 cross-motion in Bronx Supreme Court to transfer the case to New York County is a flagrant fraud, as likewise the April 16, 2012 order of Bronx Supreme Court Justice Mary Ann Brigante-Hughes granting it.

² N.Y. Cnt. Law §526 (NY Code §526): “Deputy county clerk”:

“1. ...each county clerk shall appoint a deputy county clerk by an instrument in writing filed and recorded in his office. The deputy county clerk shall perform such duties as may be assigned by the county clerk and during the temporary absence or inability of the county clerk, have and exercise all of the powers and duties of the office...

3. The county clerk may appoint and remove such additional duties authorized to act generally for and in the place of their principle as shall be authorized by resolution of the board of supervisors.”

Because of the appearance, if not actuality, that your decades-old professional and personal relationships with Messrs. Rossetti and Antonelli will compromise you in pursuing this misconduct complaint – and because your salary, and possibly theirs, are dependent upon defendant Unified Court System and tied to judicial salaries³ whose increase is challenged by *Center for Judicial Accountability, Inc. v. Cuomo* – I am forwarding this misconduct complaint against Messrs. Rossetti, Antonelli, and the unnamed “major” to the other authorities within the Unified Court System who, like the Clerk’s Office, are featured in its brochure JusticeWorks as overseeing non-judicial personnel. These are the Administrative Judge for Civil Matters in the First Judicial District, Sherry Klein Heitler, who directly benefits from the judicial salary increase, and the Inspector General for the Unified Court System, Sherrill Spatz.

Additionally, and because official misconduct, obstructing justice, and record tampering are prosecutable crimes, I am furnishing this misconduct complaint to New York County District Attorney Cyrus Vance, Jr., for investigation and prosecution by Dan Cort, Chief of his Public Integrity Unit.

Both Messrs. Rossetti and Antonelli are presumed familiar with Judiciary Law §255, “Clerk must search files upon request and certify as to result”. It reads:

“A clerk of a court must, upon request, and upon payment of, or offer to pay...diligently search the files, papers, records, and dockets in his office; and... certify that a document or paper, of which the custody legally belongs to him, can not be found.”⁴

³ N.Y. Cnt. Law §908 (NY Code §908): “Appointment and salary of county clerks”:

“1. The county clerks of the counties comprising the city of New York shall be appointed and removable in pursuance of section thirteen of article thirteen of the constitution.

2. Each of the county clerks of the counties comprising the city of New York shall receive an annual salary of not less than the compensation received by a judge of the civil court of the city of New York.

3. Such salaries shall be in lieu of all other fees or forms of compensation for services rendered in the performance of the duties of the office.

4. Notwithstanding any of the provisions of this section or of any other law, the salaries of any such county clerks may be increased by the chief administrator of the courts upon the recommendation of the administrative board of the courts, provided that if the salaries of any such county clerks are thus increased above the salaries provided for in this section, such salaries may likewise be decreased to any salaries not lower than the salaries provided for in this section.”

⁴ Related statutory provisions include CPLR §4521 “Lack of record”:

Pursuant thereto – and so that you can begin the verification that Messrs. Rossetti and Antonelli refused to do – I hereby request that you “diligently search the files, papers, records, and dockets” of *Center for Judicial Accountability, Inc. v. Cuomo*, NY Co. #401988/2012, and certify that you cannot find the following record documents that my September 14th e-mail to Mr. Antonelli enumerated as missing, without response from him then or thereafter upon my resending him the September 14th e-mail on four subsequent dates: September 20th, September 28th, October 10th, and October 11th – each time furnishing a copy to Mr. Rossetti.⁵ Such missing documents are:

- (1) the original Summons and Verified Complaint, dated March 30, 2012;
- (2) ALL the exhibits to the Verified Complaint, *to wit*:
 - A. Exhibits A-Q, constituting a Compendium of Exhibits to the Verified Complaint;

“A statement signed by an officer or a deputy of an officer having legal custody of specified official records of the United States or of any state, territory or jurisdiction of the United States, or of any court thereof, or kept in any public office thereof, that he has made diligent search of the records and has found no record or entry of a specified nature, is prima facie evidence that the records contain no such record or entry, provided that the statement is accompanied by a certificate that legal custody of the specified official records belongs to such person, which certificate shall be made by a person described in rule 4540.”

Sample forms for a “4121 Certificate of Clerk That a Certain Paper Is Not on File” appear in LEXSTAT at NY CPLR 4521 (New York Consolidated Law Service, 2008, Mathew Bender), including the following:

“Certificate

[Title of court and cause] Index No. ---1--

I, [title of office, as, Chief Deputy Clerk] of the County of --2-- State of New York, do hereby certify that as part of my official duties I have legal custody of the official records of the [set forth nature of records] for the County of ---4---, that I have made diligent search of the said records of my office, and I have not found therein any record or entry of [set forth record for which search was made].

In Witness Whereof, I have hereunto set my hand and the seal of my office at ---5--- , on ---6--
-, 20 -7-.

[Signature, with name printed underneath]
[Title of officer]”.

⁵ See my accompanying affidavit, Exhibit F thereto.

B. Chapter 567 of the Laws of 2010;

C. the "Final Report" of the Special Commission on Judicial Compensation, August 29, 2011;

D. plaintiffs' October 27, 2011 Opposition Report to the "Final Report" of the Special Commission on Judicial Compensation, with its two-volume Compendium of Exhibits;

E. the final two motions in the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York, to wit*, (a) my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief; and (b) my October 24, 2002 motion for leave to appeal – with the Court of Appeals' December 17, 2002 decision/orders thereon.

- (3) plaintiffs' March 30, 2012 order to show cause for a preliminary injunction with TRO;
- (4) the two stenographic transcripts of the proceedings before Justice Mary Ann Brigante-Hughes on March 30, 2012 and April 16, 2012.

Thank you.

Yours for a quality judiciary,

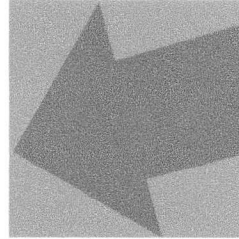
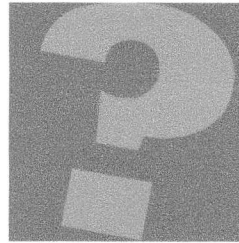


ELENA RUTH SASSOWER

Director, Center for Judicial Accountability, Inc. (CJA)
& individual plaintiff *pro se*

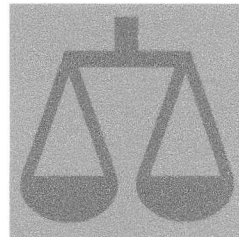
Enclosures: (1) JusticeWorks brochure: cover, introduction, pp. 18-19
(2) affidavit in support of misconduct complaint

cc: Phyllis M. Mingione, Counsel, County Clerk, New York County
James A. Rossetti, Chief Deputy County Clerk, New York County
Joseph F. Antonelli, Chief Clerk, New York County
Sherry Klein Heitler, Administrative Judge for Civil Matters, First Judicial District
Sherrill Spatz, Inspector General for the Unified Court System
Cyrus Vance, Jr., New York County District Attorney/
Public Integrity Unit: Dan Cort, Chief
Andrew Meier, Assistant Attorney General

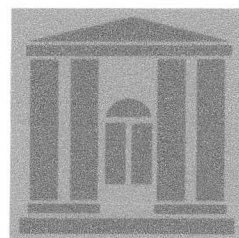


justiceworks:

**A Public Guide
to Ensuring
Access and
Equality in the
New York
State Courts**



**find out about programs
that work for you**



Introducing **justiceworks**:

Everyone entering a New York State court should expect to easily obtain information and efficiently move through court proceedings. Court users also should feel confident that court representatives will perform professionally, providing courteous service and accurate information. State and federal laws mandate further guarantees that your experience in the courts is free from bias, discrimination or harassment. Quite simply, the court system's guiding standard of operation is quality justice and service.

To ensure that we meet these priorities, we have developed an information network called Justiceworks.

justiceworks strives to make navigating New York's courts easier by outlining the various resources and services available to court users. All of the Justiceworks resources described in this brochure have been designed to promote and maintain fair treatment and quality service for all those using or working in New York's courts.

This brochure is just one of Justiceworks' informational tools, providing important facts that will help in reporting court-related problems, obtaining assistance with a case or arranging for special court accommodations, such as a court interpreter or an assistive listening device.

For more comprehensive information about the New York State court system, we encourage you to explore our website at www.nycourts.gov.

We hope that these informational tools prove useful to you during your time in the courts.

Ann Pfau
Chief Administrative Judge
New York State
Unified Court System

Assistance in Dealing with Court Personnel

Where can I direct questions or problems involving a Unified Court System employee?

Court system employees perform a special role in managing cases while responding to the service needs of court users. As representatives of the courts, they are always obligated to perform professionally and ethically.

Court system supervisors are required to monitor employee performance, to counsel employees to adapt their conduct to appropriate standards, and to recommend the initiation of disciplinary action against employees.

Chief Clerks serve in courts throughout the state to oversee the day-to-day operations of the courts. The most important part of their responsibilities is the supervision of all nonjudicial personnel. Every court has a Chief Clerk.

If you have problems with court employees that you cannot resolve, you may contact the Chief Clerk's Office in the court where the problem arose. You may also contact the Administrative Judge's Office, located in each judicial district and in each New York City court, to report problem encounters with court employees. See pages 26-28 of this brochure for a list of the Administrative Judges' Offices.

What if I believe that I have witnessed or if I know about serious misconduct by court personnel?

You may contact the court system's Inspector General's Office if you have complaints or information about court system personnel that may involve serious infractions of disciplinary standards, criminal activities, conflicts of interest or other misconduct. The Inspector General has the power to investigate employee activity of this nature, as well as to investigate potential illegal activity involving corporations or vendors doing business with the courts.

These investigations may ultimately subject an employee to discipline, including suspension or termination and referral to federal, state, or local law enforcement or regulatory agencies. In contacting the Inspector General's Office, your confidentiality will be preserved to the extent practicable.

Contact Information

Unified Court System
Inspector General
Office of Court Administration
25 Beaver Street
New York, New York 10004
(646) 386-3500