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March 11, 2013

TO: Senate Budget Subcommittee for "Public Protection"¹
Senator Michael F. Nozzolio, Chair
Senator Greg Ball
Senator Patrick M. Gallivan
Senator Martin J. Golden

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

RE: Rectifying your Absence at the February 6, 2013 Budget Hearing on "Public Protection" by Verifying the Dispositive Nature of the Opposition Testimony to the Judiciary Budget & its Judicial Salary Increase Request

This follows my notification to your offices on Tuesday, March 5, 2013, expressing concern that you, as Chair and Members of the Senate Budget Subcommittee for "Public Protection", were not present for my testimony on February 6, 2013 at the Senate and Assembly joint budget hearing on "public protection".

Indeed, it would appear that the reason I was assigned to be the last speaker at the February 6, 2013 "public protection" hearing was to ensure that as few Senators and Assembly Members as possible would be present when I testified, more than seven hours after the hearing began.

Tellingly, the Senate Finance Committee has not posted the video of the February 6, 2013 "public protection" hearing on its website, but only the list of scheduled speakers and their written "testimony". However, my testimony was not written, unlike that of Chief Administrative Judge Prudenti, the first scheduled speaker. Rather, I spoke extemporaneously in opposition to the Judiciary's proposed budget and its request for funding for the second phase of the judicial salary

¹ It is unclear what Committee this is a "Subcommittee" of.

* **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.

increase, citing to, and handing up, substantiating proof.²

Fortunately, the search feature on the Senate’s website produces the video of the February 6, 2013 “public protection” hearing – posted on Senator Nozzolio’s website³. As it is none too accessible in this fashion, our own website, www.judgewatch.org, has rescued the video from oblivion by featuring it on our webpage entitled “Securing Legislative Oversight & Override of the 2nd & 3rd phases of the judicial pay raises...”, conveniently accessible *via* our website’s top panel “Latest News”. This “Legislative Oversight & Override” webpage additionally posts all the evidentiary proof and legal authority on which my February 6, 2013 testimony was based, including the dispositive documents I handed up when I testified and immediately thereafter, *to wit*:

- (1) CJA’s October 27, 2011 Opposition Report to the Commission on Judicial Compensation’s August 29, 2011 Report, whose recommendations are the sole basis for the second phase of the judicial pay raises for which the Judiciary’s budget is seeking funding;
- (2) the March 30, 2012 verified complaint in CJA’s People’s lawsuit against New York’s highest constitutional officers and three government branches for collusion against the People in connection with the judicial pay raises – whose most important exhibit is CJA’s October 27, 2011 Opposition Report;
- (3) CJA’s correspondence with our highest constitutional officers in our three government branches in the week and a half preceding the February 6, 2013 budget hearing on “public protection”, largely based on the dispositive significance of the October 27, 2011 Opposition Report and verified complaint based thereon⁴;

² What is posted, beside my name, on the Senate Finance Committee’s website, <http://www.nysenate.gov/testimony-february-6-2013-budget-hearing-public-protection>, is the Executive Summary to CJA’s October 27, 2011 Opposition Report, copies of which I supplied to legislative staff before the February 6, 2013 hearing began – and which it distributed to the few Senators and Assembly Members who remained, more than seven hours later, as I began to testify, extemporaneously.

³ <http://www.nysenate.gov/event/2013/feb/06/joint-legislative-public-hearing-2013-2014-executive-budget-proposal-topic-public->. My testimony is at 7:21:50.

⁴ This correspondence, four copies of which I handed up, consisted of the following:
To the Legislative branch: (1) CJA’s January 30, 2013 letter to Temporary Senate President Skelos and Assembly Speaker Silver; (2) CJA’s January 30, 2013 letter to the Chairs & Ranking Members of the Senate Finance Committee, Senate Judiciary Committee, Assembly Ways & Means Committee, and Assembly Judiciary Committee;

To the Judicial branch: (1) CJA’s January 29, 2013 letter to Chief Administrative Judge Prudenti, with a copy to Chief Judge Lippman; (2) CJA’s February 2, 2013 e-mail to the Office of Court Administration; (3) CJA’s February 4, 2013 e-mail to the Office of Court Administration;

To the Executive branch: (1) CJA’s February 1, 2013 letter to Governor Cuomo; (2) CJA’s February 1, 2013 letter to Attorney General Schneiderman & Comptroller DiNapoli; (3) CJA’s February 5, 2012 e-mail

- (4) pages 103-107 of the transcript of the January 31, 2012 Senate and Assembly joint budget hearing on “public protection”, containing colloquy between then-Senator Stephen Saland and Acting Commissioner of the Division of Criminal Justice Services Sean Byrne as to the cost to the state of the increases in district attorney salaries resulting from the judicial salary increases, to which they are statutorily tied.

These documents must be personally reviewed by you, so that you can verify, for yourselves, that CJA’s October 27, 2011 Opposition Report irrefutably establishes that the judicial salary increases recommended by the Commission on Judicial Compensation are statutorily-violative, fraudulent, and unconstitutional – and that it is the Legislature’s absolute duty, based thereon, to override those increases, along with the statutorily-linked increases for such other public officers as district attorneys,⁵ contained in the Executive budget. As your review will further make obvious, Senate and Assembly Members, now knowledgeable of CJA’s October 27, 2011 Opposition Report, cannot approve the Judiciary’s request for funding of the second phase of judicial salary increases without being chargeable with official misconduct that is both criminal and impeachable. Indeed, at issue, is nothing short of grand larceny of the public fisc, involving tens of millions of dollars this year alone.

As for that portion of my February 6, 2013 testimony addressed to the Legislature’s power and duty to disapprove the Judiciary’s requested budget for fiscal year 2013-2014, in its entirety, because its insufficient itemization frustrates meaningful review and renders it unconstitutional, I cited and quoted the Supreme Court decision in *Pines v. New York State* (Nassau Co. #10-13518), one of the judges’ judicial compensation cases which is still live, pending appeal before the Appellate Division, Second Department (#2011-02821). That decision, finding the state liable for over \$51 million in judicial pay raises based on the appropriations bill the Legislature passed for the Judiciary in 2009, is a “must read”. It, too, is posted on our website⁶, as are the Court of Appeals decisions it

to the Governor’s Division of the Budget.

⁵ The salaries of county clerks are also statutorily-linked to judicial salaries. *See, inter alia*, N.Y. Cnt. Law §908.

⁶ Also posted are the transcripts of the Senate and Assembly floor debates on the 2009 appropriations bill for the Judiciary. This, because the *Pines* decision brazenly falsifies their content so as to purport that the Legislature, in passing what became Chapter 51 of the Laws of 2009, intended to raise judicial salaries. Thus, the decision states:

“Defendant [NYS] suggests that the legislative intent is demonstrated by the debate on the chamber floor. The Court finds unavailing defendant’s submission of Assembly and Senate floor debate transcripts for the very reason that those transcripts represent just that, which is debate about the issue. While illustrative of the animus and disdain of less than a handful of legislators for the judiciary, a co-equal branch of government, the colloquy is unpersuasive...” (underlining added).

In fact, as the April 3, 2009 Senate transcript shows, the unidentified “legislators” were Senator DeFrancisco, then Ranking Member of the Senate Finance Committee, and Senator Sampson, then Chairman of the Senate

identifies for the proposition that the budget must be itemized and that the Legislature must reject a budget it cannot meaningfully review. These also are “required reading” – and not only *Saxton v. Carey*, 44 NY2d 545 (1978), quoted by *Pines*. Read also *Hidley v. Rockefeller*, 28 N.Y.2d 439

Judiciary Committee, and the unidentified “unavailing”, “unpersuasive” “colloquy” between them was solely as to whether, in passing the appropriations bill for the Judiciary, the Legislature would be raising judicial salaries. The following is illustrative:

Senator DeFrancisco: “In order for the judiciary to receive a salary increase, is it correct that there would have to be a separate bill authorizing such an increase separate and apart from this budget?”

Senator Sampson: “...That’s correct, Senator...”

Senator DeFrancisco: “Stated another way, the only mechanism for a judicial salary increase would be through a separate piece of legislation...”

Senator Sampson: “...you are correct, Senator DeFrancisco.”

Thereupon, and without disputing comment from a single Senator, the Senate voted to pass the appropriations bill.

Similarly, the March 31, 2009 Assembly transcript shows that the unidentified “legislators” were, in the first instance, Assembly Ways and Means Committee Chairman Farrell, who did not engage in any colloquy, but, rather, made the following emphatic statement:

“As required by New York State’s Constitution, judicial salaries are and have always been set by law, Article VII(B) of the Judiciary Law. A reappropriation of potentially available monies cannot and does not change that law and what it certainly does not authorize is any salary increases. The notion that the Office of Court Administration has been somehow authorized or empowered to ignore both the New York State Constitution and Article VII(B) of the Judiciary Law by some words stricken from an appropriation is 100 percent incorrect. Simply stated, some redundant words were removed, but these words could be replaced if that was deemed necessary to eliminate any contrived confusion in a chapter amendment. No New York State court in any case, and there have been several, has ever determined that judicial salaries could be adjusted without amendment to Article VII(B) of the Judiciary Law.”

This was not contested by a single Assembly member. The only other Assembly member who thereafter spoke about the Judiciary budget, without any colloquy – following which the Assembly vote was directly taken – was former Assemblyman William Parment, who, citing figures showing that the Judiciary’s budget had increased 121% in 10 years, from 1999-2009, stated:

“Now I believe that this Legislature should take a responsibility to more closely examine what the Judiciary is doing with all the money we’ve been spending on the Judiciary...And so, I would recommend all of you to vote against this budget and we come back and work on it again at a later date.” (underlining added).

(1971), where the important dissent is not that of Judge Breitel, but of then Chief Judge Fuld, who would have held unconstitutional the Executive budget therein challenged. Additionally read *People v. Tremaine*, 281 NY. 1 (1939), whose passing references to the Judiciary budget make apparent that the Judiciary budget, at that time, like other budgets, contained itemization altogether lacking in the Judiciary's budget request for fiscal year 2013-2014, *to wit*, "every place and position are stated with the salary connected therewith." (at p. 9), albeit recognizing that "it is not necessary to state the salaries of all clerks or of all stenographers, but it may be appropriate to state the number that is required to do such class of work and the lump sum that is to be appropriated for the purpose." (at p. 10).

Examination of the Judiciary's budget request for fiscal year 2013-2014 reveals precisely what I stated at the February 6, 2013 hearing: it does not identify the dollar amount of the judicial salary increases and does not identify the dollar amount of "judicial compensation and non-salary benefits", excluding salary. Indeed, the budget also does not identify the dollar amount for judicial salaries. Instead, it lumps salaries of judges, whose numbers are not given, with salaries of employees on the Judiciary payroll, whose numbers are also not given – listing the combined salaries as "Personal Service" – and also lumps together "fringe benefits" of judges and employees on the Judiciary payroll. Similarly, the Governor's appropriations bill for the Judiciary (S2601; A3001), essentially replicating the Judiciary's proposed appropriations bill, does not identify the cost of the judicial salary increase – or even that there is one – and lumps together salaries of judges and judicial employees, as likewise "fringe benefits" of judges and judicial employees.⁷

That this is improper may be seen by comparison with the Legislature's requested budget for fiscal year 2013-2014, which separately itemizes the salaries of legislators and legislative employees⁸.

⁷ That the Judiciary budget combines judges with employees mirrors what the Judiciary did in campaigning for judicial salary increases. As the Judiciary well knows, including from CJA's October 27, 2011 Opposition Report (at p. 14), judges are NOT employees. Rather, they are "constitutional officers" of the Judicial branch – co-equal with the "constitutional officers" of the Executive branch: the Governor, Lieutenant Governor, Attorney General, and Comptroller, and the "constitutional officers" of the Legislative branch: the Senators and Assembly Members, none of whom have had salary increases since 1999 – in contrast to this state's 195,000 employees to whom the judges always compared themselves in whining for pay raises and claiming they were being "subjugated" by the Legislative and Executive branches.

⁸ As illustrative, for the Senate:

"For payment of salaries to members, 63, pursuant to section five of the legislative law.....\$5,008,500"

"For payment of allowances to members designated by the temporary president, pursuant to the schedule of such allowances set forth in section 5-a of the legislative law....\$1,289,500"

"For personal service of employees and for temporary and expert services of members' offices and of standing committees: Personal Service Regular.....\$32,404,725"

The same is true of the Governor’s appropriations bill for the Legislature based thereon – which is the same appropriations bill as for the Judiciary (S2601; A3001).

In testifying on February 6, 2013, I stated:

“The finance committees have in prior years objected to the lack of itemization in the Judiciary’s budget. This year, in this hearing, there was no, there was no comment about the insufficiency of the budget, the lack of itemization.”

In support, I brought with me the pertinent pages of the transcripts of the Legislature’s joint budget hearings on “public protection” from 2010, 2011, and 2012. In each of these years – the only years of transcripts I could find on the internet⁹ – the objections of Senators and Assembly Members were without apparent recognition of the Legislature’s power and duty to reject a budget it could not meaningfully review for lack of appropriate itemization. At the February 9, 2011 “public protection” hearing, three separate Senators objected: Senator Nozzolio being one, in addition to Senate Judiciary Committee Chairman Bonacic and Senate Finance Committee Chairman DeFrancisco. Their comments followed upon the testimony of Chief Administrative Judge Pfau, who had stated:

“I want to also discuss what the budget looks like this year, which is different from last year. What we have presented this year, for purposes of clarity and to conform

“For personal service of employees and for temporary and expert services for senate operations: Personal Service Regular.....\$27,984,758”
(appropriations bill, underlining added).

Similarly, for the Assembly:

“Members, 150, payment of salaries pursuant to section five of the legislative law.....\$11,925,000”

“For payment of allowances to members designated by the speaker pursuant to the provisions of section 5-a of the legislative law\$1,592,500”

“For personal service of employees and for temporary and expert services of members’ offices and of standing committees and subcommittees:

Personal Service Regular.....\$23,112,207
Temporary Service.....\$2,261,960”

“For personal service of employees and for temporary and expert services for administrative and program support operations:

Personal Service regular.....\$38,770,768
Temporary Service.....\$460,907”

(Appropriations bill, underlining added)

⁹ These transcripts are posted on our website, as likewise the corresponding videos for the 2011 and 2012 “public protection” hearings.

our format to that used by the other branches, are two separate documents. One contains the operating budget, which are really the operating needs for the courts for the coming fiscal year. And the second contains the general state charges; that is the pension and health-related costs – costs that certainly are outside of our control – again for the judiciary for the coming fiscal year.

This is the first step in what we hope to continue working with you to continue to make sure that our budget is as transparent, as simple, and as straightforward as possible so everybody understands very clearly how the taxpayers’, hardworking taxpayers’ dollars are being put to use in the New York State judiciary.” (at pp. 9-10, underlining added).

Senator Bonacic’s questioning was as follows:

“...you know, with the legislative budget we itemize in very specific detail every aspect of every elected official’s office. And we’re wondering if – we would like to see the Judiciary do that with respect to every judge and office with personnel and expenditures, to the same standard with respect to the legislative budget. Because we need transparency and accountability.

Is that something that you would be willing to undertake and do, to the same degree of itemization as our legislative budget?” (at pp. 23-24).

The response from Chief Administrative Judge Pfau was this:

“...I couldn’t agree with you more that our budget, like your budget, like every budget, has to be transparent, has to be readable. Any citizen should be able to pick it up and understand where their taxpayer dollars have gone. So we would absolutely be willing to work with you, to work with the Division of the Budget towards a budget that works and is as transparent and as itemized as possible...” (at p. 24, underlining added).

Senator Nozzolio thereafter stated:

“I’d like to follow up on Senator Bonacic’s question regarding an open judicial budget. And I believe your answer missed the point. The point that Senator Bonacic was asking you about were not the budgeting process, not the allocation of those resources during a budgetary review, but rather the itemization of the specific expenditures made by each individual judge and each individual court across this state.

Each individual legislator sitting at this dais, as well as all the other legislators, as well as the Executive, have the requirement of itemizing their expenditures. Why don’t judges do the same?” (at p. 32).

...

...let’s start with the judges’ cost of operating their offices, including their staff. And then the next step would logically be the list, the roster of those researchers and other court personnel connected with the administration of the court.

Now, that’s what we’re asking for. We believe the Judiciary should follow the example of itemizing their expenditures. Whether they be assigned to an individual judge or an individual court is not determinative factor. What is the determinative factor is that each expenditure be open and itemized for public review.

And we hope that in order to restore confidence in the Judiciary, as well as we’re trying to restore confidence in all areas of government, that the Judiciary does not drag its feet, does not try to hide behind a cloak of secrecy, and itemizes those expenses appropriately.” (at pp. 34-35, underlining added).

Again Chief Administrative Judge Pfau pledged improvement:

“...is this the budget that tells the story the way it should be told? Probably not. Do we have to do better? Of course. And what exactly the right answer is for us to make sure our budget is one that everyone has confidence in and understands what their dollars are for, I think that’s a process that we absolutely will work with you, with the Division of the Budget. It has to be something that everybody can use and understand. But we will do that, absolutely.” (at p. 35, underlining added).

Senator DeFrancisco then followed with questioning about the Judicial Institute at Pace Law School:

Chairman DeFrancisco: “It’s very – it’s impossible, under this budget, to figure out exactly what the cost of Pace is, because all the personnel are lumped together.

And so when you talk about itemized budgets, it’s not only itemized budgets of a court, a judge and who participates in that courtroom, but it’s also the Pace – can you, the financial person or somebody tell me what the total cost of the Judicial Institute is in this budget?”

Chief Admin. Judge Pfau: “I can tell you the operating cost, just operating the building costs, the MPS cost is about \$300,000 a year.”

Chairman DeFrancisco: “To operate the building.”

Chief Admin. Judge Pfau: “To operate the building. But you’re asking about the people.”

Chairman DeFrancisco: “Well, personnel is the real cost to running an institute, I would think. And my question is, how many – is there lawyers, judges, teachers?”

Chief Admin. Judge Pfau: “I’m being told it’s about \$3 million a year.”
(at pp. 46-47, underlining added)

Today – two budget requests later – it is still “impossible” to figure out the actual cost of the Judicial Institute at Pace Law School – or to intelligently assess the costs of salary and “fringe benefits” of judges and varying classes of employees and the operations of any number of offices, programs, and commissions within the Judiciary. Indeed, the Judiciary budgets for fiscal years 2012-2013 and 2013-2014 are LESS ITEMIZED and MORE INDECIPHERABLE than the Judiciary budget for fiscal year 2011-2012,¹⁰ about which Senators Nozzolio, Bonacic, and DeFrancisco complained at the 2011 “public protection” hearing – failing even to identify the number of judges and non-judges on the Judiciary’s payroll, information contained in those previous budgets.¹¹

The inability of Senators and Assembly members to comprehend the Judiciary budget in any meaningful way was evidenced at the February 6, 2013 hearing. Indeed, when I stated, following my reading aloud from *Pines v New York State*:

“I respectfully submit that the reason why there was so little number-crunching at this committee hearing is because the members of this committee really don’t understand the budget. It escapes them. And I think it’s time to ‘fess up’ to that reality”,

Senate Finance Committee Ranking Member Liz Krueger broke into a smile, in recognition of its truth.

Needless to say, the Judiciary is not “an agency” – but a separate branch of government whose requested budget should have been the subject of its own hearing, rather than lumped in with agencies under the rubric of “public protection”, with my opposition testimony shoved to the end.

¹⁰ The Judiciary’s budgets for fiscal years 2012-2013 and 2013-2014 are approximately 200 pages each – including the separately presented “General State Charges” of “fringe benefits. By contrast, the Judiciary’s budgets for fiscal years 2009-2010, 2010-2011, and 2011-2012 were more than 2-1/2 times the size: approximately 550 pages each.

¹¹ Omission of this previously included information in the Judiciary’s budgets for fiscal years 2012-2013 and 2013-2014 is all the more significant in view of former Assemblyman Parment’s questioning of Chief Administrative Judge Pfau at the February 8, 2010 “public protection” hearing, challenging her as to the number of employees indicated in the Judiciary’s budgets for fiscal year 2010-2011 and fiscal year 1999-2000, which he had prefaced, as follows:

“...I have several questions about the Budget, and my comments and questions are based on the presentations that the Unified Court System has presented to the Legislature over the past decade.

...I will tell you that the presentations do not submit an easy understanding, and it’s very difficult to develop metrics based on the data presented...” (at p. 37, underlining added).

Examination of the Judiciary’s requested budget for 2013-2014 discloses a succession of material deceptions by the Judiciary, as to which there needed to be appropriate questioning of Chief Administrative Judge Prudenti at the February 6, 2013 hearing, of which there was none.

Notably, in testifying on February 6, 2013, the Chief Administrative Judge did not state the dollar amount of the Judiciary’s request. Instead, and notwithstanding the Judiciary’s “General State Charges” portion of its budget identifies growth of \$93 million, which it calculated as a 16.4% increase from the previous year, she stated that the Judiciary budget, “in terms of [its] General Fund operating budget, is flat, seeking no increase over the current year” (at p. 1), and was a “zero-growth budget” (pp. 2, 9).

This concealment by the Chief Administrative Judge of the dollar cost of the Judiciary budget is no accident. It mirrors a similar concealment in the Judiciary budget which nowhere identifies an “All Funds” total for its two component parts: the “Operating” budget, which the Judiciary tallies as \$1,973,235,869, and its “General State Charges” budget, which it tallies as \$660,660,607. The simple addition of these two is \$2,633,896,476.

Nevertheless, this is not the figure that either the Senate Majority Coalition or the Senate Democratic Minority identify as the “All Funds” total. Thus, according to the Senate’s “White Book” of its Finance Committee’s Majority Coalition (at p. 75), the total “All Funds” figure is \$2,662,000,000. According to the Senate’s “Blue Book” of its Finance Committee’s Democratic Minority (at p. 232), it is \$2,660,128,900. In other words, the Senate cannot agree as to the dollar amount of the Judiciary’s “All Funds” budget – diverging, in their respective totals by \$1,871,000 and each, respectively, \$28,103,254 and \$26,232,154 more than what a straight add of the “Operating” budget and “General State Charges” should produce.

The Judiciary’s “single budget bill” also provides no cumulative tally of the appropriations it contains. Is the \$50,095,000 of “Reappropriations” a sum on top of the “All Funds”, and “General State Charges” – in which case isn’t the total monies being appropriated \$2,683,991,476? Or does the bill contain more appropriations, as, for instance, \$15,000,000 for “New Appropriations (Supplemental)” and \$51,000,000 for “Capital Projects-Reappropriations”, both tucked in the back.

As for the Governor’s “Commentary” to the Judiciary’s budget, accompanying his transmittal to the Legislature of the Judiciary’s budget and his appropriations bill based on the Judiciary’s bill¹², it is of no help. It identifies the Judiciary’s requested budget as “\$2.6 billion” – a rounded figure able to conceal many tens of millions of dollars: a veritable slush fund – made all the worse by “transfer provisions” that Chief Judge Fuld’s dissent in *Hidley v. Rockefeller*, 28 N.Y.2d 448 (1971) would have declared unconstitutional, *on their face*, because:

¹² These are not completely consistent – especially as to the \$50,095,000 “Reappropriations”. Thus the Judiciary’s budget bill gives figures of \$14,000,000; \$16,095,000; \$20,000,000 as the breakdown of “Reappropriations” from “General Fund-State and Local”; “Special Revenue Funds – Federal”; and “Special Revenue Funds-Other”. In the Governor’s bill they are \$14,000,000; \$14,375,000; and \$21,720,000.

“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”.

Certainly, too, it appears from the Judiciary’s budget bill – and the Governor’s appropriations bill based thereon (S2601; A3001) – that the repetitive references to prior budget appropriations for unidentified “services and expenses including travel outside the state and the payment of liabilities incurred...” flagrantly violate 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...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.” (underlining added).

None of this, however, was inquired about at the February 6, 2013 “public protection” hearing. Nor, for that matter, was there any questioning of Chief Administrative Judge Prudenti about the “second phase of the judicial salary increase” to which the Judiciary’s budget prominently and repeatedly refers, but without any dollar amount or percentage figure – and as to which the Chief Administrative Judge stated in both her oral and written testimony:

“We face significant cost increases in the coming year, including the cost of the judicial salary adjustments recommended by the Judicial Salary Commission” (at p. 2, underlining added).

There is no “Judicial Salary Commission”. As Chief Administrative Judge Prudenti well knows, the name of the Commission is the Commission on Judicial Compensation, so-named by the statute that created it – Chapter 567 of the Laws of 2010 – because the statute required the Commission to “examine, evaluate and make recommendations with respect to...compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system” as a predicate to any determination it might make for salary adjustment. This, the Commission did not do, examining only – and in the most superficial way – judicial salary, as is highlighted by CJA’s Opposition Report (at pp. 18-21, 25-31, 33) and the verified complaint in the lawsuit based thereon (¶¶110, 118, 169(ii), “WHEREFORE”, ¶4). Thus, unexamined by the Commission were “non-salary benefits” – these being what the Judiciary’s budget refers to as “fringe benefits” and defines as including “pension contributions, Social Security and Medicare, health, dental, vision and life insurance”, whose ballooning cost, from \$567,639,322 last year to \$660,660,607 this year, it attempts to distance itself from by calling them “General State Charges”.

Notwithstanding the Governor’s constitutional obligation to make “such recommendations as he may deem proper” with respect to the Judiciary budget (Article VII, §1, 2), his Director of the Division of the Budget, Robert Megna, with full knowledge of CJA’s Opposition Report, including as to the Commission’s violation of the statutory requirement that it examine “judicial compensation and non-salary benefits”, failed to ensure that the Division of the Budget would appropriately examine the Judiciary budget so that the Governor might make proper recommendations to the Legislature with respect thereto.

Nor have the Senate and Assembly, thus far, done better in discharging their checks and balances responsibilities with respect to the Judiciary budget. Evidence the Senate Finance Committee and Assembly Ways and Means Committee, each having budgets of more than \$5,800,000 and huge staff and counsel resources, yet producing largely duplicative volumes of statistical summaries and budget analyses – all useless as aids to the legislators in evaluating the 200-plus-page Judiciary budget and the second phase of the judicial salary increase. As may be seen from our analysis of their “White”, “Blue”, “Yellow” and “Green” Book summaries of the Judiciary budget, to be shortly supplied, their staff and counsel either do not themselves understand the Judiciary budget or they consider its examination not worth their time. As for the Senate and Assembly Judiciary Committees, there is no evidence of their members having reviewed the Judiciary budget for fiscal year 2013-2014 – nor of their ever having reviewed the August 29, 2011 Report of the Commission on Judicial Compensation, whose violation of the statutory requirement that the Commission “examine, evaluate and make recommendations with respect to...compensation and non-salary benefits for judges and justices of the state-paid courts” does not require CJA’s October 27, 2011 Opposition Report to discern, as it is evident from the face of the Report, as are other of the Commission’s flagrant statutory violations. Indeed, the evidence is ALL to the contrary.

Suffice to say that in the weeks following the February 6, 2013 “public protection” hearing, I have repeatedly called the offices of the Chairs and Ranking Members of these four committees directly responsible for overseeing the Judiciary’s budget – the Senate Finance Committee, the Senate Judiciary Committee, the Assembly Ways and Means Committee, and the Assembly Judiciary Committee – in an effort to schedule a meeting with them to discuss my testimony, to provide additional information, and to answer their questions. I received no response from them to my meeting requests, virtually no call-backs from their committee staff to discuss such further information as I might provide, and little response as to:

- (1) who was reviewing the documents I handed up and to which I referred at the February 6, 2013 budget hearing on “public protection” in support of my testimony in opposition to the Judiciary’s budget and judicial salary increases;
- (2) the date their findings of fact and conclusions of law would be made public with respect to their review of my document-supported testimony;
- (3) The date(s), following the February 6, 2013 hearing, that the members of these four committees would be meeting to discuss and vote on the Judiciary’s budget;

- (4) The date(s), prior to the February 6, 2013 hearing, that the members of these four committees had met to review and discuss the Judiciary's budget, received by their Chairs on or about November 30, 2012.

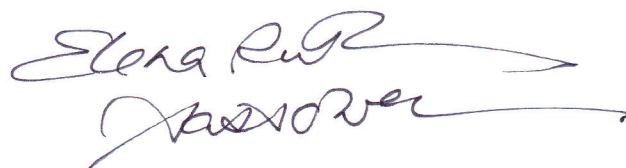
I, therefore, request that, in discharge of your duties as the Chair and Members of the Senate Budget Subcommittee on "Public Protection", that you ascertain the answers to these questions from Senator DeFrancisco and Senator Krueger, the Chair and Ranking Member, respectively, of the Senate Finance Committee, and from Senator Bonacic and Senator Sampson, the Chair and Ranking Member, respectively, of the Senate Judiciary Committee – as well as their answers to the following:

- (1) the basis for the "All Funds" tallies for the Judiciary budget that appear in the Senate's "White Book" and in its "Blue Book", *to wit*, \$2,662,000,000 and \$2,660,128,900, respectively;
- (2) the cumulative dollar amount of the appropriations bill for the Judiciary (S2601; A3001) – and where such figure appears on the appropriations bill;
- (3) the dollar amount of the second phase of the judicial salary increase – and where such figure appears in the appropriations bill;
- (4) the dollar amount for judicial salaries – and where such figure appears in the appropriations bill; and
- (5) the dollar amount for "compensation and non-salary benefit" of judges, exclusive of salary – and where that figure appears in the appropriations bill.

In that connection, I request you aid your fellow Senators by providing them with your own answers to these two sets of questions – and that you make their answers and yours public – consistent with Senator Nozzolio's declaration in the January 31, 2013 announcement of his appointment as chair of the Senate Joint Budget Conference Committee for "Public Protection" that he "will fight to make sure State government, including the judiciary, remains accountable to the taxpayers of New York State".

As time is of the essence – and to ensure that every Senator and Assembly member is personally knowledgeable of my testimony so that, like yourselves, they might be held accountable for their votes – copies of this letter will be furnished to them.

Thank you.

The image shows two handwritten signatures in black ink. The top signature is "Elena Ruiz" and the bottom signature is "James Over" (partially obscured). Both signatures are written in a cursive, flowing style.

cc: All Senators & Assembly Members – beginning with
Senate Majority Coalition Leaders Dean Skelos & Jeff Klein/Malcolm Smith
Senate Minority Conference Leader Andrea Stewart-Cousins
Assembly Speaker Sheldon Silver
Assembly Minority Leader Brian Kolb
Senate Finance Committee
Senator John A. DeFrancisco, Chair
Senator Liz Krueger, Ranking Member
Senate Judiciary Committee
Senator John J. Bonacic, Chair
Senator John L. Sampson, Ranking Member
Assembly Ways & Means Committee
Assemblyman Herman D. Farrell, Jr., Chair
Assemblyman Robert Oaks, Ranking Member
Assembly Judiciary Committee
Assemblywoman Helene E. Weinstein, Chair
Assemblyman Tom McKeivitt, Ranking Member
The Public & Press