



New York State Joint Commission on Public Ethics
 540 Broadway Plaza
 Albany, New York 12207
 www.jcopeny.gov
 518-408-3976

SWORN COMPLAINT

The Joint Commission on Public Ethics has jurisdiction to investigate potential violations of Public Officers Law §73, §73-a, §74, Civil Service Law §107 and Legislative Law article 1-A as they apply to state legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch state employees, certain political party chairs, and lobbyists and their clients.

COMPLAINANT NAME Center for Judicial Accountability, Inc.
 ADDRESS Box 8101
 CITY, STATE, ZIP White Plains, New York 10602
 TELEPHONE 914-455-4373
 EMAIL elena@judgewatch.org

Elena Sassower
SASSOWER
Director

Please provide a statement or description of the alleged violation of Public Officers Law §73, §73-a, §74, Civil Service Law §107 or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

see accompanying note 27, 2013.
ethics complaint

and Comptroller's Investigations Unit
and US Attorneys for the Southern
Eastern, & Northern Districts of NY

Has this matter been referred to any other agency?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, which agency?	<u>Attorney General's Public Integrity Bureau</u>	
Is there a pending legal action you are aware of?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, where?	<u>Supreme Court - New York County</u>	

I, Elena Sassower, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sworn to before me this 27th day of
JUNE, 2013
 MONTH

Elena Sassower
SIGNATURE

Jane Romero
NOTARY PUBLIC

JANE ROMERO
 Notary Public, State of New York
 No. 01RO6176895
 Qualified in Westchester County
 Commission Expires Nov. 5, 2015

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CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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June 27, 2013

TO: New York State Joint Commission on Public Ethics

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

RE: (1) Conflict of interest ethics complaint against executive & legislative branch constitutional officers & employees whose grand larceny of the public fisc and other corrupt acts are particularized by CJA's April 15, 2013 corruption complaint to U.S. Attorney Bharara;

(2) Request for advisory opinion as to whether Senate and Assembly rules, vesting domineering powers in the Temporary Senate President and Assembly Speaker, create coercive and retaliatory conditions, substantially interfering with the ability of Senate and Assembly Members to discharge their constitutional duties, where doing so exposes the official misconduct of those leaders

Pursuant to Executive Law §94.9(g), this is to initiate an ethics complaint against three of the four statewide elected officials within your jurisdiction: Governor Andrew Cuomo, Attorney General Eric Schneiderman, and Comptroller Thomas DiNapoli, as well as all New York State legislators within your jurisdiction, beginning with Temporary Senate President Dean Skelos and Assembly Speaker Sheldon Silver and those occupying positions of Senate and Assembly leadership. Additionally, this complaint is against their complicit counsel and professional staffs, who are executive and legislative employees over whom you also have jurisdiction. The most important of these, in the executive branch, is Budget Director Robert Megna.

At issue is their willful and deliberate violation of Public Officers Law §74, including, specifically:

“2. Rule with respect to conflict of interest: No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

* **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.

3. Standards.

...

d. No officer or employee of a state agency, member of the Legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

...

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

...

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”

The facts pertaining to their violation of these ethical rules, spanning to April 15, 2013, are set forth in the Center for Judicial Accountability’s corruption complaint of that date to U.S. Attorney Preet Bharara. It summarizes the evidence establishing that these public officers and employees have willfully and deliberately disregarded their duty to protect the public purse against judicial pay raises they KNOW to be statutorily-violative, fraudulent, and unconstitutional – pay raises which, unless halted, will cost New York taxpayers well over \$100 million dollars at the end of next fiscal year – and, thereafter, approximately \$50 million each year in perpetuity.¹

The evidence presented by our April 15th corruption complaint is as follows:

- (1) CJA’s October 27, 2011 Opposition Report to the August 29, 2011 Final Report of the Commission on Judicial Compensation, furnished to the complained-against public officers and employees;
- (2) CJA’s March 30, 2012 Verified Complaint in our lawsuit based thereon, *CJA, et al. v. Cuomo, et al.*, furnished to the complained-against public officers and employees;
- (3) CJA’s voluminous correspondence to the complained-against public officers and employees about the Opposition Report and Verified Complaint – both before and

¹ The April 15, 2013 corruption complaint is also against Chief Judge Jonathan Lippman and judicial constitutional officers and employees, who are not within your ethics jurisdiction.

after I testified at the Legislature's February 6, 2013 joint public hearing on "public protection" about them;

(4) my February 6, 2013 testimony at the Legislature's joint public hearing on "public protection" about the Opposition Report, Verified Complaint, and lack of itemization in the Judiciary's budget.

All this evidence and the April 15th corruption complaint are posted on our website, www.judgewatch.org, via the webpage "Holding Government Accountable for its Grand Larceny of the Public Fisc and Other Corruption", accessible via the top panel "Latest News".

In the interest of economy, we rest on the factual recitation of the April 15th corruption complaint, a copy of which we enclose for your convenience. The focus here is on the conflicts of interest, proscribed by Public Officers Law §74, that underlie the larcenous and corrupt conduct that the April 15th complaint particularizes. Indeed, ONLY conflicts of interest can explain the willful and deliberate failure of Governor Cuomo, Temporary Senate President Skelos, and Assembly Speaker Silver to take the action to protect the public, expressly requested by the cover of the Opposition Report addressed to them – and warranted by its content:

- (1) "Legislation Voiding the Commission's Judicial Pay 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."

That all such relief – possibly excepting repeal of the statute – was compelled, *as a matter of law*, gives you probable cause to subpoena Governor Cuomo, Temporary Senate President Skelos, and Assembly Speaker Silver for their testimony as to what they did upon receiving the Opposition Report and for production of their findings of fact and conclusions of law with respect thereto. Likewise, you have probable cause to similarly subpoena the other constitutional and public officers and employees who, thereafter, had a duty with respect to the Opposition Report when it was presented to them for action.

Among the conflicts of interest that would account for their criminal disregard of their duty with respect to the four branches of relief sought by the October 27, 2011 Opposition Report:

- (1) Their self-interest in the judicial pay raises. The most expeditious way for executive and legislative branch constitutional officers to secure their own pay raises was to raise judicial salaries – there being an obvious, if not constitutionally-dictated, correlation in the salaries of judicial constitutional officers and the salaries of executive and legislative constitutional officers in a system of government with three co-equal branches. (Verified Complaint, ¶¶1, 59, 95, 165). This gave them a direct interest in not exposing any of the statutory and constitutional violations and fraud committed by the commissioners, demonstrated by the Opposition Report;
- (2) Their self-interest in the “success” of the statute creating the Commission on Judicial Compensation. The most politically advantageous way for the executive and legislative constitutional officers to secure their own pay raises was if it could be done, indirectly, through a statute creating a commission modeled after the statute that had created the Commission on Judicial Compensation, Chapter 567 of the Laws of 2010. (Verified Complaint, ¶¶1, 138). This gave them a direct interest in not exposing any of the constitutional and statutory infirmities of Chapter 567 of the Laws of 2010 or the constitutional and statutory violations in its implementation, demonstrated by the Opposition Report;
- (3) Their self-interest in not referring the commissioners for criminal prosecution. The brazenness of the commissioners’ constitutional and statutory violations and fraud – indeed, of their disrespect for the most basic conflict of interest rules in allowing their chairman, William C. Thompson, Jr., to disregard the threshold issue of his disqualification for interest – suggests that the authorities who appointed them – Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman – gave them reason to believe that they would be “above the law” and shielded from any consequences. Under such circumstances, the appointing authorities could not refer the commissioners for criminal prosecution, without implicating themselves in their transgressions.

Certainly, too, the seven commissioners had personal and professional relationships with the appointing authorities – creating conflict of interest for the authorities in referring the commissioners for criminal prosecution. As illustrative, Temporary Senate President Skelos’ sole appointee to the Commission was Mark S. Mulholland, Esq., managing partner of Ruskin, Moscou, & Faltischek, P.C., the law firm to which Temporary Senate President Skelos is “of counsel”. Assembly Speaker Silver’s sole appointee was James Tallon, Jr., whose relationship with the Speaker may be presumed from the fact that Mr. Tallon was an Assembly Member for 19 years and its Majority Leader from 1987-1993. (Opposition Report, at pp. 16-17).

- (4) Their self-interest in not appointing 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 had ignored, without findings, in recommending judicial pay raises. Because this evidence was sufficient, *without more*, to disentitle the judiciary from any pay raises – and so-stated by CJA’s June 23, 2011 letter requesting Chairman Thompson’s disqualification for interest based thereon (Opposition Report, Ex. B-1; Verified Complaint, ¶79) – the executive and legislative officers had an interest in preventing investigation of that evidence, their compensation being properly correlated to judicial compensation. (Opposition Report, at pp. 14, 26-29, 36-37, Verified Complaint, ¶¶59, 165).

Appointment of a special prosecutor, task force, and/or inspector general would expose other self-interest and conflict of interest, as for instance:

Governor Cuomo’s knowledge of, and complicity in, systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct, going back to 2006, when he was candidate for Attorney General. Likewise, his continued complicity in judicial corruption, upon becoming Attorney General, including by his inexplicable failure to reargue or appeal to the U.S. Supreme Court the February 24, 2010 Court of Appeals’ decision in the judges’ judicial compensation lawsuits – underlying the statute creating the Commission on Judicial Compensation – Chapter 567 of the Laws of 2010. (Verified Complaint, ¶¶5(e), 6, 61, 122).

Temporary Senate President Skelos’ knowledge of, and complicity in, systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct, while a member of the Senate Judiciary Committee (Verified Complaint, ¶9). Likewise, the corruption of his own brother, Appellate Division, Second Department Justice Peter Skelos, who corrupted appellate and supervisory remedies in the case of *McFadden v. Sassower*, which CJA presented to the Commission on Judicial Compensation (Opposition Report, Ex. K-1: CJA’s Aug. 23, 2011 ltr to Chief Administrative Judge Pfau (at p. 5), plus attachments thereto: CJA’s June 14, 2011 ltr to Chief Administrative Judge Pfau (pp. 4-7) & CJA’s March 16, 2011 ltr to Justice Peter Skelos) – the same case as is described at ¶5(e) of the Verified Complaint;

Assembly Speaker Silver’s close friendship, from childhood, with Chief Judge Jonathan Lippman, whose role in perpetuating systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct, would be exposed by any investigation (Verified Complaint, ¶¶13, 11);

Attorney General Schneiderman’s knowledge of, and complicity in, systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct, as a member of the Senate Judiciary Committee, including in 2009 when then-Chairman John Sampson held hearings on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system. Also, his complicity in judicial corruption as Attorney General, including by his willful failure to furnish the Commission on Judicial Compensation with information essential to its consideration (Verified Complaint, ¶¶7, 47-55, 95 122; Exhibit E-1 to Verified Complaint).

Obviously, there are a multitude of conflicts of interest which individually or in combination could explain why our highest constitutional officers: Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, Attorney General Schneiderman, and Comptroller DiNapoli – the public's first line of defense – each knowingly and deliberately refused to protect the public by taking the action sought and compelled by CJA's Opposition Report. Your subpoena for their testimony will answer which specific conflicts kept them from doing so.

Counsel and professional staff of these highest constitutional officers undoubtedly undertook the initial review of the Opposition Report. If they were unconflicted and discharging their "duties in the public interest", as they were required to do, the least of their recommendations would have to have been for an override of the judicial pay raises. All we know is that none of our highest constitutional officers, with their ample counsel and professional staffs, took any action to uphold the public interest and protect the public pocketbook.

And what about Governor Cuomo's budget director, Robert Megna – to whom we independently turned with a November 1, 2011 letter entitled "Protecting the Public Purse & Public Interest: Request That You Take Steps to Secure Governor Cuomo's Introduction of Legislation to Override the Commission on Judicial Compensation's Statutorily-Violative and Unconstitutional Judicial Pay Raise Recommendations"?² The "proper discharge of his duties in the public interest" required him to notify the Governor, as the letter requested, that the judicial pay raises could not stand because the Commission had only examined judicial salary, not "compensation and non-salary benefits" as the statute required, and failed to address other statutorily-mandated "appropriate factors". Did he do that? Or did he hold back because he was subordinate to the Governor, to whose conflicts of interest he was hostages? Or did he have his own additional conflicts? All we know is that the Governor took no action.

The public's second line of defense were the Senators and Assembly Members in leadership positions, other than Temporary Senate President Skelos and Assembly Speaker Silver. These included, in addition to the minority leadership in each house, the chairs and ranking members of the four committees having principal oversight over the Judiciary and appropriations to it: the Senate Judiciary Committee and Assembly Judiciary Committee, the Senate Finance Committee, and the Assembly Ways and Means Committee – all with counsel and professional staffs assisting them. Additionally, in connection with the budget for fiscal year 2013-2014, the Senators and Assembly Members appointed to the General Budget Conference Committee and its Subcommittee on "Public Protection", Criminal Justice, & Judiciary. The public's third line of defense were the rank and file Senators and Assembly Members.

Investigation would reveal the extent to which these legislative constitutional officers and their counsel and professional staff abandoned "the proper discharge of [their] duties in the public interest" because of their personal, professional, and political relationships – whether with the higher up constitutional officers, whose criminal nonfeasance with respect to CJA's Opposition Report

² The November 1, 2011 letter is Exhibit P to our Verified Complaint.

would otherwise be exposed, or with the Commission on Judicial Compensation's members, whose corruption and fraud would otherwise be exposed, or with the judiciary and other advocates of judicial pay raises who perpetrated the mountain of deceptions on the judicial pay raise issue that would otherwise be exposed – or because of their self-interest in their own compensation.

Certainly, too, Senators and Assembly Members are disabled by Senate and Assembly rules vesting domineering powers in the Temporary Senate President and Assembly Speaker and creating coercive and retaliatory conditions that impinges on their discharging their constitutional duties, where doing so would reflect adversely on the leadership that holds such power over them – as at bar. In the context of calls for Sheldon Silver's ouster as Assembly Speaker over his handling of the sexual harassment complaints against Assemblyman Vito Lopez, Assembly Members have referred to his enormous power inhibiting their colleagues – without connecting this power to the rules.

Assemblyman Kieran Lalor:

“Speaker Silver is a bully. He has bullied down opposition to the point where there is very little opposition. And some of his tactics have come right up to the line of what's ethical and what's not. Moving offices around, taking away salaries. He intimidates. He uses taxpayer money and campaign money to intimidate his own conference and the other conference... For Democrats, it's the internal Assembly workings: stipends, leadership posts, all that, and campaign cash to [Democratic] campaigns. Everybody wants to get re-elected, to come back up here and represent their people...”, May 23, 2013 press conference (at 20:48 mins.);

Assemblyman Steve McLaughlin:

“...you talked about intimidation and some of the pressure that can be brought to bear...I'm not sure which member said it, I read it over the weekend, but it wasn't attributed to a specific Democratic member, but it was one of the female members and she said, 'I still want to get things done' and I just thought that was a very telling quote as to why a lot of people choose not to stand up and push back”, May 23, 2013 press conference (at 23:32 mins).

Assemblyman Bill Nojay:

“I just want to make a two-word answer to the questions as to why there is not more support for doing these things within the Democratic conference. I'm not going to speak for them, but I'll speculate. And those two words are: Michael Bragman. Anybody who was around at that time knows what happened. They know the consequences... Michael Bragman wanted a change of leadership”, May 23, 2013 press conference (at 24:14 mins.).

Assemblyman Michael Kearns:

“Speaker Silver is a very powerful person...from the person who cleans the bathroom to the person at the highest level, is the person who reports to the Speaker.” (at 2:23 mins.);

“...anyone who knows the mechanics of Albany, knows that this is a huge risk on my part, whether it be legislatively, staffing, it’s something, though, I believe in, we cannot stand by...” (at 3:30 mins.);

“Any legislation that comes up starts with the Speaker...the one thing he can control is what legislation comes to the floor and what can be brought up... take a look at this office, it will probably be the last time I’m in it. ...I don’t know what those consequences will be, but I’ll face them...” (4:40 – 5:40 mins.);

“I’ll face the consequences whatever they may be...for four months I had legislation that just sat there...” (7:50 mins.);

“we have good bills out there that are not getting to the floor. Why is that? Because someone controls the democratic process, the legislative process” (9:06 mins.);

“I’m going to suffer the consequence of this...whether it’s loss of staffing... (10:40 mins). May 20, 2013 press conference.

Similarly, press reporting has not connected Speaker Silver’s power to the rules:

The New York Times:

“Mr. Silver, from Manhattan, has consolidated power by rewarding his loyal supporters with higher-paying leadership posts, placing his allies throughout state government and using his considerable campaign war chest and redistricting know-how to assist any endangered Democratic candidates....

For years, Albany watchers have discussed and debated how Mr. Silver, who was elected in 1976 and became speaker in 1994, maintains his grip on power. The administration of Eliot Spitzer, a Democratic governor with a combative relationship with the Legislature, even once prepared a 21-page opposition research report on the speaker — a telling step given that both men were from the same party.

The report surveyed criticism of Mr. Silver, citing a Buffalo News editorial that said he ‘controls everything from the legislation that can be voted on to how his normally docile members vote on it,’...

Mr. Silver has proved himself a master of wielding the levers of power at the Capitol. He controls where members park, the size and location of their offices and how much money they can spend on their staffs. He also can increase, or decrease, their pay, by offering them myriad leadership posts.

Lawmakers have not had a raise since 1999, and Mr. Silver put down a rebellion in 2000, leaving those who remain in the Assembly, or who have been elected since, with diminished prestige and scant influence on the operations of the

chamber. ...

Members of the Assembly ‘fear the speaker more than they fear the voters,’ said Charmian Neary, a former legislative aide who brought a sexual harassment lawsuit against the Assembly two decades ago. She added, ‘With a 96 percent re-election rate for incumbents, they don’t have to worry about getting turned out of office.’ ...

Outsiders are still mystified..., “*Bad Week is Merely Bump for Assembly’s Master of Power*”, New York Times, May 20, 2013, Danny Hakim, Thomas Kaplan

The New York Post:

“You’d better not criticize Sheldon Silver if you know what’s good for you.

A Silver ally warned a GOP critic of the powerful Democratic Assembly speaker that she’d better stop her attacks — or else, The Post has learned.

Assemblywoman Deborah Glick (D-Manhattan) was overheard telling Republican colleague Nicole Malliotakis that there would be consequences if the GOPer kept calling for Silver to step down over the Vito Lopez sexual-harassment scandal.

‘You’ve been in the paper a lot talking about the speaker. You should quiet down before someone starts playing games with you,’ Glick told Malliotakis on the floor of the Assembly, according to a person who overheard the conversation...” “*Assemblywoman Glick overheard warning GOP colleague not to criticize Speaker Silver: ‘You should quiet down before someone starts playing games with you’*”, New York Post, June 25, 2013, Beth DeFalco

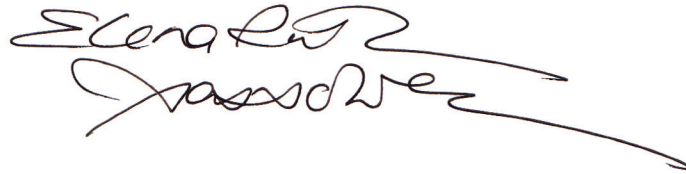
To the extent the Joint Commission on Public Ethics can render an advisory opinion to the Legislature about its rules³, we hereby request that it do so.

I would be pleased to testify under oath with respect to this ethics complaint, to answer your questions, and to furnish you with hard copies of any of the substantiating documents posted on our website.

³ Cf., Executive Law §94.9(j), authorizing the Joint Commission on Public Ethics to:

“Advise and assist any state agency in establishing rules and regulations relating to possible conflicts between private interests and official duties of present or former statewide elected officials and state officers and employees”.

Thank you.

A handwritten signature in black ink, appearing to read "Senator Jassow". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Enclosure: CJA's April 15, 2013 corruption complaint to U.S. Attorney Bharara

cc: Governor Andrew Cuomo
Attorney General Eric Schneiderman
Comptroller Thomas DiNapoli
Temporary Senate President Dean Skelos
Assembly Speaker Sheldon Silver
Budget Director Robert Megna
All Senators & Assembly Members
U.S. Attorney Preet Bharara/Southern District of NY
U.S. Attorney Loretta Lynch/Eastern District of NY
U.S. Attorney Richard Hartunian/Northern District of NY
The Public & The Press