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TO: Commission on Legislative, Judicial and Executive Compensation

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

RE: (1) The absence of any evidence bearing on the Commission's charge "adequate levels of compensation and non-salary benefits"; (2) The actual bias and interest of Commissioners Cozier, Lack, and Chairwoman Birnbaum – mandating their disqualification

This supplemental submission is necessitated by the Commission's shameful performance at its one and only November 30, 2015 public hearing, at which not a single Commissioner asked a single question of a single witness. This notwithstanding each Commissioner is presumed to know – from the statute defining the Commission's charge – that the oral and written presentations of the Judiciary and other judicial pay raise advocates were misleading and unsupported by probative evidence. This, I tried to communicate to you at the conclusion of my testimony, only to be abused by Chairwoman Birnbaum and Commissioner Reiter, without a single Commissioner taking exception:

Sassower:	You have no evidentiary presentation –
Chair Birnbaum:	Ms. Sassower, we're done. Please. We have –
Sassower:	by judicial pay raise advocates –
Comm'r Reiter:	You are done.
Chair Birnbaum:	We have other people. Please.
Sassower:	– as to the inadequacies of current salaries–
Chair Birnbaum:	Will you give up the microphone –
Sassower:	–as to any problem in attracting qualified candidates to the bench or –

The Commission's charge is to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits" (§2.1) and "the prevailing adequacy of pay

levels and other non-salary benefits" (§2.2a(2)). None of the judges and other pay raise advocates testifying before you identified this. Instead, they misled you with rhetoric that the levels you should be setting are the ones they view as "fair", "equitable", and commensurate with their self-serving notions of the dignity and respect to be accorded the judiciary, furnishing NO EVIDENCE as to the inadequacy of current judicial salary levels – bumped up $40,000 by the Commission on Judicial Compensation's August 29, 2011 Report. They did not even assert that current salary levels are inadequate, let alone after the addition of non-salary benefits. In fact, and repeating their fraud at the Commission on Judicial Compensation's July 20, 2011 hearing, they made no mention of non-salary benefits – or their monetary value – a concealment also characterized by their written submissions before you.

In face of this, and making your non-questioning of them the more egregious, as likewise your disrespectful treatment of me, is that CJA's October 27, 2011 Opposition Report – which I furnished you nearly four full weeks before the hearing – highlighted (at pp. 1, 17-18, 22, 31) that among the key respects in which the Commission on Judicial Compensation's August 29, 2011 Report was statutorily-violative and fraudulent is that its salary increase recommendations were "unsupported by any finding that current 'pay levels and non-salary benefits' [were] inadequate" – reflective of the fact that the judges and judicial pay raise advocates had not furnished probative evidence from which such finding could be made. Such finding, moreover, would require an articulated standard for determining adequacy, such as had been enunciated nearly 30 years earlier by the Temporary State Commission on Judicial Compensation, chaired by William T. Dentzer:

> "'the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only pay level which is fair to State taxpayers; any higher pay would require unnecessarily high taxes.'" (Opposition Report, at p. 22).

This is the same Commission as had wisely stated:

> "...there are significant differences in the cost of living in various areas of the State; and [] it makes much more sense to adjust the salaries of judges who reside where it is more expensive to live to reflect that fact, rather than to establish a single salary for each office, which, while perhaps adequate in part of the State, might be inadequate or excessive in the rest of the State.[fn]" (Opposition Report, at p. 30).

The judges who testified before you at this past Monday's hearing surely consider themselves well-qualified. Yet, not one stated that he/she would be resigning from the bench, if no salary increase was forthcoming. Indeed, it was most telling that Supreme Court Justice William Condon identified that he sits in Long Island and had been elected in 2008. That was nine years into the so-called "salary freeze", hitting hardest judges in the high-cost-of-living metropolitan New York City area, where he would be. Yet, he plainly had not considered it cause for not joining the bench. Likewise, First Department Appellate Division Justice Paul Feinman, who identified that he had come to the

bench in 1997. This was before the 1999 judicial pay raises, in other words, during a prior "salary freeze" period. Yet, that also did not seem to dampen his judicial aspirations – and he sought re-election, twice, in 2006 and also 2007 – which were subsequent "salary freeze" years.

Any legitimate inquiry by this Commission would rapidly disclose that there is no shortage of experienced, well-qualified New York lawyers who would make superlative judges – and who would embrace the current $174,000 Supreme Court salary level as a HUGE step up from what they are currently making. For that matter, there is also no shortage of experienced, well-qualified lawyers who would embrace the prior $136,700 Supreme Court salary level as a HUGE step up. Certainly, had the Commission questioned Adriene Holder, Attorney-in-Charge for Civil Practice at the Legal Aid Society, about her support for judicial salary increases, it would have learned that the $136,700 prior salary level is more than $20,000 beyond the maximum salary paid to Legal Aid's TOP, most senior attorneys, which is what I learned upon questioning her following her testimony. Indeed, Exhibit L to CJA's October 27, 2011 Opposition Report furnishes relevant figures from 2009 as to what attorneys make in each of New York's 62 counties from which it is evident that neither the current $174,000 Supreme Court salary level or the prior $136,700 Supreme Court level are remotely inadequate for most of the state, and especially when considered with the non-salary benefits, as to which there has been no disclosure as to their cost to the taxpayers. Presumably, you would have learned a lot more about salaries and costs-of-living in the vast areas of upstate and western New York had you held hearings in those parts, which you did not do.

The reality is that judicial turnover is not great. Overwhelmingly New York's judges seek re-election and re-appointment, if not to the same judicial positions, than to higher ones. The Judiciary could certainly have provided the statistics – but has not, presumably because the statistics would not show any significant departure from the bench, let alone attributable to pay. And apart from statistics, the Judiciary does not even furnish the names of judges who have stepped down for the self-described reason of salary, thereby precluding any examination as to whether their departure is a loss.

An example of a judge who New York is best rid of is Commissioner Barry Cozier, who stepped down from the Appellate Division, Second Department in 2006. To the best of my knowledge, the Judiciary and judicial pay raise advocates never identified him in their 2011 advocacy before the Commission on Judicial Compensation as a judge who left the bench due to inadequate pay. Nevertheless, the Unified Court System's June 30, 2015 press announcement that Chief Judge Lippman had appointed him to this Commission stated that after two decades as a judge, serving "with distinction", he had "decided to leave the bench in large measure due to the lengthy pay freeze — from 1999 through 2011 — endured by New York State's judges" – thereby making him "acutely aware of the importance of setting a fair judicial pay scale to reduce turnover and ensure New York's citizens access to a high quality bench."

Apart from the fact that "a fair judicial pay scale" is not this Commission's charge – but one that is "adequate" – and that his impartiality might reasonably be questioned if – as purported – he left the bench "in large measure due to the lengthy pay freeze", his departure is to be celebrated, not mourned. He was a corrupt judge who perpetuated the systemic judicial corruption, involving the

court-controlled attorney disciplinary system and Commission on Judicial Conduct.

Proving this is my transmittal to his White Plains appellate chambers of the casefile evidence of the Appellate Division, Second Department's corrupting of attorney discipline by 25 orders, virtually all giving no reasons and making no findings – and which, when compared to the record, were outright frauds, obliterating all adjudicative standards – and serving only a retaliatory purpose – to destroy judicial whistleblowing attorney Doris Sassower, my mother, who had brought an Election Law lawsuit challenging the political manipulation of elective judgeships. These 25 orders – and the underlying record – together with the papers seeking review by the New York Court of Appeals, and by the federal court, culminating in two cert petitions to the U.S. Supreme Court laying out the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*– filled two boxes, whose content was inventoried to facilitate review. These were furnished to Justice Cozier for two reasons. First, because he was a member of the Committee appointed by then Appellate Division, Second Department Presiding Justice Prudenti, whose purpose was to examine whether the Second Department was "'acting fairly and equitably' when dealing with a lawyer's right to practice law". Second, because he was also a member of Chief Judge Kaye's Committee to Promote Public Trust and Confidence in Judicial Elections. These two-fold reasons were so-stated by CJA's November 13, 2003 transmitting letter.

Notwithstanding this comprehensive transmittal of casefile proof to Justice Cozier, germane to both committees on which he served, he allowed both committees to render cover-up reports concealing all allegations of judicial corruption – and the proof furnished in support.

You can examine for yourselves the same evidence-filled two boxes that I had hand-delivered to Justice Cozier's chambers in November 2003 – and which I picked up from his chambers in January 2005 – as I kept them all these years until August 11, 2015 when I presented them to the Commission on Statewide Attorney Discipline at its public hearing in Manhattan, furnishing them in support of my testimony. By then, Mr. Cozier was chair of that Commission – and there are videos of my testimony, from which you can see his indecent, despicable conduct. Not only was he not ashamed to try to stop me from furnishing him and the Commissioners with materials substantiating my testimony, which I offered up before I testified, but he never opened the folder I laid in front of him containing those materials, leaving it on the dais at the close of the hearing, and walking out without concerning himself about it or about the other substantiating documents I presented during my testimony, including the two boxes of casefile proof as to the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. As a result, I was burdened with hand-delivering all this documentary evidence to the Office of Court Administration, which I did immediately upon the conclusion of the August 11, 2015 hearing. It was taken up to the office of Chief Administrative Judge Marks, which is where you can find it – and I incorporate it by reference.

On September 24, 2015, the Commission on Statewide Attorney Discipline, under Mr. Cozier's chairmanship, rendered its fraudulent report, purporting that "after thorough examination of the attorney disciplinary process", it had concluded that "the existing system is not 'broken'" and "In many ways, it works quite well" – concealing that anyone had raised any issue of corruption or that dispositive case file proof had been furnished in substantiation.

As Commissioner Cozier well knows, but has not disclosed, he cannot examine the evidence of systemic judicial corruption that I have raised in opposition to judicial salary increases without exposing his pivotal role in covering up the evidence and perpetuating the corruption.

Similarly with respect to Commissioner Lack, appointed to this Commission by Temporary Senate President Flanagan. The facts pertaining to his disqualification arise from his eight years as chairman of the Senate Judiciary Committee, from 1994 to 2002. His corruption in that position – obliterating the oversight role of the Senate Judiciary Committee – is laid out by CJA's December 16, 2002 letter in opposition to his confirmation to the New York Court of Claims – addressed to the Senate Majority and Minority Leaders and also sent to Senator Lack and all Senators. It details that as chairman of the Senate Judiciary Committee, Senator Lack corruptly used his position to put on the bench, retain on the bench, and to elevate to higher judicial office unfit, politically-connected judges, refusing to examine documentary evidence of their unfitness and/or of the corruption of the screening apparatus that purported to evaluate their qualifications. This, with knowledge that the People of New York would be *defenseless* against the judicial misconduct of the nominees being confirmed, as they are of every other New York judge, because of the corruption of the Commission on Judicial Conduct, as to which CJA furnished him with casefile proof: the record of our two lawsuits against the Commission on Judicial Conduct, suing it for corruption – enabling him to verify the fraudulent judicial decisions of which it was the beneficiary. The second lawsuit was the direct result of his nonfeasance with respect to the first, as to which we had furnished him the casefile in 1996, and combined his fraud in steamrolling the December 1998 Senate confirmation of Appellate Division, Second Department Justice Albert Rosenblatt to the Court of Appeals. Indeed, in June 2001, when the Court of Claims judge who had "thrown" the second lawsuit by a fraudulent judicial decision was the subject of Senate confirmation of his reappointment to the Court of Claims, we offered up the casefile to Chairman Lack in opposition to confirmation.

Chairman Lack was also a member of Chief Judge Kaye's Commission to Promote Public Trust and Confidence in the Legal System, whose 1999 report falsely purported that "errant attorneys and judges are accountable", and, with Judge Cozier, was a member of her Commission to Promote Public Trust and Confidence in Judicial Elections.

As for Chairwoman Birnbaum, appointed to this Commission by Chief Judge Lippman, she too cannot confront the evidence of judicial corruption presented by our citizen opposition to the judicial pay raises without confronting her own pivotal role in perpetuating it. In 1999, then Chief Judge Kaye appointed her as chair of her Commission on Fiduciary Appointments. In that position, she covered up the corruption of the Commission on Judicial Conduct and court-controlled attorney disciplinary system, as well as other public officers, in preventing and rectifying violations of clear and unequivocal law pertaining to fiduciary appointments, when victims of such violations had turned to them with complaints.

The transcript of my testimony before Chairwoman Birnbaum at the Commission on Fiduciary Appointment's December 7, 2000 public hearing reflects my focused presentation on the problem of enforcement, and, in particular, the Commission on Judicial Conduct. I stated that notwithstanding

the clear and unequivocal language of Judiciary Law §44.1 mandating investigation of facially-meritorious complaints, the Commission on Judicial Conduct was dumping complaints that are not only facially-meritorious, but documented – including complaints involving fiduciary appointments, involving patronage. I further pointed out that CJA's first lawsuit against the Commission had challenged its self-promulgated rule, 22 NYCRR §7000.1, by which it had given itself unfettered discretion to do anything or nothing with the complaints it receives – and that although the rule had to be stricken as violative of the statute, it was upheld by a fraudulent judicial decision and that, likewise, the two subsequent lawsuits against the Commission had fallen victim to fraudulent judicial decisions, with all three of the lawsuits defended by litigation misconduct by the Attorney General.

Upon Chairwoman Birnbaum's asking if I had "some concluding remarks", I stated:

> "I propose that if you plan to give any teeth to the explicit rules that already exist, mandatory rules relating to fiduciary appointments, that you make sure that the enforcing mechanism provided by the Commission [on Judicial Conduct] is work[ing] and that you begin, since you are focused primarily on rules, that I leave it to you to put §44.1 in front of you and next to it 22 NYCRR §7000.1 and you see whether you can make them harmonious, because they are not, and when you find that you cannot, and when you further find that the pretense in the 1995 case that they are harmonious is fraud, that you take appropriate action, including if it's not within your jurisdiction that you make it a formal recommendation, not to Chief Judge Kaye, because she's responsible for the ongoing cover-up, but to everyone in a position of power and leadership in this State who can vindicate the public's rights so that the public is not repeatedly deprived and raped in Estates and Trusts, and all other kinds of fiduciary appointments as well as everything else." (Transcript pp. 153-154).

I further noted that most of the record of the three lawsuits against the Commission was with Chief Judge Kaye's appointed Inspector General for Fiduciary Appointments, at the Office of Court Administration – in other words that she would have no problem verifying the course of the proceedings in these three lawsuits.

My salutary, essential proposal was apparently too much for Chairwoman Birnbaum and the Commission on Fiduciary Appointments, of which now Chief Administrative Judge Marks was counsel, as likewise for Chief Judge Kaye's Inspector General for Fiduciary Appointments, Sherill Spatz. Both issued December 3, 2001 reports – neither mentioning the Commission on Judicial Conduct or the court-controlled attorney disciplinary system, let alone the culpability of the Judiciary's supervisory and appellate levels for the massive, system-wide violations of law pertaining to fiduciary appointments they found. Nor was any of this documented corruption embodied in the Commission on Fiduciary Appointment's 2005 report.

I would note that this was not the first time Chairwoman Birnbaum was given notice – and furnished evidence – of fraudulent judicial decisions and New York's corrupt attorney disciplinary system. In 1995, she was the volunteer Executive Director of the Second Circuit Task Force on Gender, Racial

and Ethnic Fairness in the Courts, before which I and my mother testified on November 28, 1995. The Task Force Report addressed none of the corruption, bias issues we had raised.

The documents substantiating the disqualifying actual bias and interest of Commissioners Cozier, Lack, and Chairwoman Birnbaum are posted 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!" – as I stated they would be at the conclusion of my testimony at the Commission's November 30th hearing.