

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Brodie, Frederick <Frederick.Brodie@ag.ny.gov>  
**Sent:** Tuesday, July 3, 2018 12:15 PM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Cc:** Paladino, Victor  
**Subject:** CJA v. Cuomo: Comments on Proposed Record on Appeal  
**Attachments:** p. 15 of 3.22.17 opp. mem..pdf; p. 1 of 7.21.17 opp. mem..pdf; p. 14 of 7.21.17 opp. mem..pdf; 9.15.16 Aff. of Service.pdf; 1.20.17 Aff. of Service.pdf; 3.22.17 Aff. of Service.pdf; 7.21.17 Aff. of Service.pdf

Dear Ms. Sassower,

Treating the link on your webpage as a proof copy, here are my comments on the proposed record.

1. After page 428 of the proposed record, please add defendants' 9.15.17 affidavit of service (copy attached). (Note, the four affidavits of service attached to this email were sent to you previously, but are included here again for convenience.)
2. Please add a copy of defendants' Answer (reproduced as Exhibit T-4, beginning on page 548 of the proposed record) somewhere else in the record and after it add defendants' 1.20.17 affidavit of service (copy attached). At page 548, you may either leave the exhibit as-is or insert a cross-reference page in its place.
3. Page 581 of the proposed record is not included in the copy of Exhibit W-1 in our files. Please confirm that this page was contained in your as-served document.
4. The proposed record is missing page 15 (the final page) of defendants' 3.22.17 opposition memo. A copy is attached – please insert it after page 633.
5. After page 15 of the 3.22.17 opposition memo (see item 4 above), please add defendants' 3.22.17 affidavit of service (copy attached).
6. The Table of Contents indicates that Plaintiffs' 8.25.17 reply memo is found at page 1238. That must be a typo – page 1238 appears to be part of Exhibit Z from AAG Kerwin's 7.21.17 opposition affidavit.
7. The proposed record is missing page 1 of defendants' 7.21.17 opposition memo. A copy is attached – please insert it after page 1248.
8. The proposed record is missing page 14 of defendants' 7.21.17 opposition memo. A copy is attached – please insert it after page 1260.
9. After page 1271 of the proposed record, please insert defendants' 7.21.17 affidavit of service (copy attached).

Once the record is complete, I will be in a position to stipulate as requested. Thank you in advance for your attention to these details.

Very truly yours,

Frederick A. Brodie  
Assistant Solicitor General

New York State Office of the Attorney General  
Appeals & Opinions Bureau  
The Capitol  
Albany, NY 12224-0341  
(518) 776-2317  
[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)

**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Friday, June 29, 2018 1:52 PM  
**To:** Brodie, Frederick <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>  
**Cc:** Paladino, Victor <[Victor.Paladino@ag.ny.gov](mailto:Victor.Paladino@ag.ny.gov)>; Kerwin, Adrienne <[Adrienne.Kerwin@ag.ny.gov](mailto:Adrienne.Kerwin@ag.ny.gov)>; Lynch, Helena <[Helena.Lynch@ag.ny.gov](mailto:Helena.Lynch@ag.ny.gov)>; Dvorin, Jeffrey <[Jeffrey.Dvorin@ag.ny.gov](mailto:Jeffrey.Dvorin@ag.ny.gov)>; Levine, Meg <[Meg.Levine@ag.ny.gov](mailto:Meg.Levine@ag.ny.gov)>  
**Subject:** Record on Appeal -- RE: Status on this end -- appeal & OSC: CJA v. Cuomo, et al.

Dear Assistant Solicitor General Brodie –

I have just discovered your e-mail. As I am rushed for time, I am responding only to the extent of furnishing you with the pdf of the Record on Appeal, which I transmitted to the printer yesterday morning. It is posted on CJA's website, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/complaints-notice/moving-forward-appeal.htm>.

I will respond further, as soon as I am able.

Thank you.

Elena Sassower  
914-421-1200

**From:** Brodie, Frederick <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>  
**Sent:** Wednesday, June 27, 2018 10:35 AM  
**To:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Cc:** Paladino, Victor <[Victor.Paladino@ag.ny.gov](mailto:Victor.Paladino@ag.ny.gov)>  
**Subject:** RE: Status on this end -- appeal & OSC: CJA v. Cuomo, et al.

Dear Ms. Sassower,

Thank you for your email. I will again address your points in the order in which they appear.

1. As previously indicated, before I can stipulate to the Record on Appeal pursuant to CPLR 5532, I need to see a proof copy. I expect the printer will be able to transmit that electronically (which may be more convenient for you).
2. For service by mail of legal papers, "The Capitol" is the correct address. Alternatively, however, you can send legal papers (as well as a proof copy of the record) to me at

Frederick A. Brodie  
Assistant Solicitor General  
New York State Office of the Attorney General  
Robert Abrams Building for Law and Justice  
Empire State Plaza  
Albany, NY 12224-0341.

3. The CPLR 5531 Statement and Questions Presented are to be prepared by the appellant, and thus I will provide no input on them.
4. Regarding the table of contents for the record, as noted in item 4 of my June 19, 2018 email, if the “free-standing evidence” is not included in the printed record, then it should not be referenced in the Table of Contents. From your description, the documents in question are legislative history materials, which can be cited without inclusion in the record. Alternatively, you could have the documents scanned onto a CD, and insert the CD into a pouch in the record.
5. I see that you are including your affidavits of service in the record. I have therefore provided ours as well. The attached pdf file contains the affidavits of service for defendants’ papers served 9/15/16, 1/20/17, 3/22/17, and 7/21/17. I was not able to put my hands immediately on the affidavit of service for defendants’ 4/21/17 papers. Please advise whether service of those papers is contested – if so, I will make further efforts to locate the affidavit.
6. I will review your appellate arguments in detail after being served with a final copy of the brief and record. I will not comment on preliminary versions of your brief, and will not debate the merits of your arguments via email.
7. I will be arguing in the Ninth Circuit Court of Appeals in Seattle, Washington on July 9, 2018, and taking the “redeye” flight back to the East Coast late that night. I do not expect to be in the office on the morning of July 10 (and possibly not in the afternoon, either). In any event, based on my experience, the Third Department does not hold oral argument on applications for emergency relief. Rather, the clerk of the court would provide the Attorney General with an opportunity to respond, and would then render a decision on the papers.
8. I have been assigned to represent all defendants-respondents in this appeal. There is consequently no need for you to email Attorney General Underwood or her executive staff concerning the appeal.
9. Attorney General Underwood continues to serve as Solicitor General. My immediate supervisor on this particular appeal is Victor Paladino.
10. I do not believe Executive Law 63(1) or State Finance Law 123 *et seq.* entitles you to a formal determination by the attorney general of the “interests of the state” or the appointment of an independent counsel. Executive Law 63(1) provides, in part, that “[n]o action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality **of the state**, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant.” (Emphasis added.) Because you and CJA are not a part “of the state,” the provision does not appear to apply to you. State Finance Law 123 *et seq.* authorizes citizen-taxpayer suits under certain circumstances, and I understand you have proceeded under that section. State Finance Law 123-c(3) requires that citizen-taxpayer complaints be served on the attorney general, but does not appear to require the attorney general to make a formal determination. If you have contrary authority, please bring it to my attention.

Very truly yours,

Frederick A. Brodie  
Assistant Solicitor General  
New York State Office of the Attorney General  
Appeals & Opinions Bureau  
The Capitol  
Albany, NY 12224-0341  
(518) 776-2317

[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)

**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>

**Sent:** Tuesday, June 26, 2018 6:56 PM

**To:** Brodie, Frederick <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>

**Cc:** Paladino, Victor <[Victor.Paladino@ag.ny.gov](mailto:Victor.Paladino@ag.ny.gov)>; Underwood, Barbara <[Barbara.Underwood@ag.ny.gov](mailto:Barbara.Underwood@ag.ny.gov)>; Sabel, Janet <[Janet.Sabel@ag.ny.gov](mailto:Janet.Sabel@ag.ny.gov)>; Stauffer, Kent <[Kent.Stauffer@ag.ny.gov](mailto:Kent.Stauffer@ag.ny.gov)>; Levine, Meg <[Meg.Levine@ag.ny.gov](mailto:Meg.Levine@ag.ny.gov)>; Dvorin, Jeffrey <[Jeffrey.Dvorin@ag.ny.gov](mailto:Jeffrey.Dvorin@ag.ny.gov)>; Kerwin, Adrienne <[Adrienne.Kerwin@ag.ny.gov](mailto:Adrienne.Kerwin@ag.ny.gov)>; Lynch, Helena <[Helena.Lynch@ag.ny.gov](mailto:Helena.Lynch@ag.ny.gov)>; Mahanna, Brian <[Brian.Mahanna@ag.ny.gov](mailto:Brian.Mahanna@ag.ny.gov)>; Bragg, Alvin <[Alvin.Bragg@ag.ny.gov](mailto:Alvin.Bragg@ag.ny.gov)>; Mack, Marty <[Marty.Mack@ag.ny.gov](mailto:Marty.Mack@ag.ny.gov)>; Colangelo, Matthew <[Matthew.Colangelo@ag.ny.gov](mailto:Matthew.Colangelo@ag.ny.gov)>; Garnett, Margaret <[Margaret.Garnett@ag.ny.gov](mailto:Margaret.Garnett@ag.ny.gov)>; Sheth, Manisha <[Manisha.Sheth@ag.ny.gov](mailto:Manisha.Sheth@ag.ny.gov)>

**Subject:** Status on this end -- appeal & OSC: CJA v. Cuomo, et al.

Dear Assistant Solicitor General Brodie –

I have just about finished the arduous job of readying the Record on Appeal for printing. I will notify you as soon as it is printed and about to be mailed. Please furnish me with your street address/suite # – as the post office always balks when I give them the Attorney General’s address: “The Capitol, Albany NY 12224-0341”.

Attached is the Table of Contents for the Record on Appeal. Likewise attached are plaintiffs’ “Statement Pursuant to CPLR 5531” and “Questions Presented” – essentially identical to what I furnished on June 14<sup>th</sup>, *via* CJA’s webpage for the appeal being perfected: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/complaints-notice/moving-forward-appeal.htm> – though now annotated by citations to the Record on Appeal.

Also attached is plaintiffs’ appellate Brief, to which I have not yet added citations to the Record on Appeal. It is also virtually unchanged from what I furnished on June 14<sup>th</sup>. The only substantive addition is on page 48, which – after reciting the three “legal autopsy”/analyses of Judge Hartman’s decisions, in the record before her— states:

“Because these analyses are dispositive of plaintiffs’ entitlement to answers in their favor on their ‘Questions Presented’, their appeal has been perfected by an appendix featuring them.”

Assuredly, by now, you have examined the analyses – and the record on which they are based – and know that Judge Hartman’s decisions are indefensible, unconstitutional, and must be vacated, *as a matter of law*.

July 10<sup>th</sup> is the date on which, in 1776, at the county courthouse in White Plains, just blocks from where I live and from CJA’s postal address, “the Provincial Congress proclaimed the passing of the dependent colony and the birth of the independent State of New York”. That is the date on which I am planning to rent a car, drive up to Albany, and file the perfected appeal with the Appellate Division, Third Department – and, simultaneously, present plaintiffs’ order to show cause for a preliminary injunction and TRO, based on our summary judgment entitlement to the granting of our ten causes of action. The order to show cause will also seek an expedited schedule, consistent with State Finance Law §123-c(4), as well as a *subpoena duces tecum* for the original record of the citizen-taxpayer action and its incorporated predecessor to be brought up from the Albany County Clerk’s Office. On or about July 4<sup>th</sup>, I will e-mail you a draft of the order to show cause.

As I have still received NO response from Attorney General Underwood – or any of her high-level supervisory/managerial attorneys – to my May 16<sup>th</sup> NOTICE, May 30<sup>th</sup> letter, and June 6<sup>th</sup> and June 14<sup>th</sup> e-mails, I am cc’ing them on this e-mail, with an express request that they IMMEDIATELY advise as to who is evaluating the “interest of the state” on this appeal – and, consistent therewith, plaintiffs’ entitlement to the Attorney General’s representation/intervention, pursuant to Executive Law §63.1 and State Finance Law §123 *et seq.*, including *via* appointment of independent/outside counsel. Needless to say, such will be a threshold issue at the July 10<sup>th</sup> argument

of the order to show cause – and if Attorney General Underwood is not personally present to address it – and the state of the record – I will request the Court to command her appearance and response.

By the way, who has succeeded Attorney General Underwood as Solicitor General – and is she/he your immediate supervisor, or do you have others?

Thank you.

Elena Sassower,  
Unrepresented plaintiff-appellant, acting on her own behalf  
and “on behalf of the People of the State of New York & the Public Interest”  
914-421-1200

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**From:** Brodie, Frederick <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>  
**Sent:** Monday, June 25, 2018 10:14 AM  
**To:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Cc:** Paladino, Victor <[Victor.Paladino@ag.ny.gov](mailto:Victor.Paladino@ag.ny.gov)>  
**Subject:** CJA v. Cuomo

Dear Ms. Sassower,

I have not heard from you since last Tuesday regarding the record. Please let me know when you expect to send a proof copy for review.

Very truly yours,

Frederick A. Brodie  
Assistant Solicitor General  
New York State Office of the Attorney General  
Appeals & Opinions Bureau  
The Capitol  
Albany, NY 12224-0341  
(518) 776-2317  
[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)

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