

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Monday, March 11, 2019 11:12 AM
To: 'Barbara.Underwood@ag.ny.gov'
Cc: 'Paladino, Victor'; 'Brodie, Frederick'
Subject: CJA v. Cuomo Citizen-Taxpayer -- Court of Appeals March 4, 2019 letter -- extension request, etc.
Attachments: 3-4-19-ltr-from-ct-of-appeals.pdf; 5-18-18-ltr-to-interim-ag-candidates.pdf

TO: Solicitor General Barbara Underwood

Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

On Thursday, March 7th, I received the above-attached March 4th letter from Court of Appeals Deputy Clerk Heather Davis, addressed to me – with a cc to Assistant Solicitor General Brodie – stating, in pertinent part:

“You should file within ten days after this letter’s date your comments in letter format justifying the retention of subject matter jurisdiction, a copy of each brief filed by each party in the Appellate Division and a copy of the record on appeal or appendix filed in that court. By copy of this letter, your adversary is likewise afforded the opportunity to comment in letter format on the Court’s subject matter jurisdiction within the same ten-day period after this letter’s date. All letters shall be filed with proof of service of one copy of the letter on each party.”

On Friday, March 8th, I called Court of Appeals Attorney Susan Dautel (518-455-7701) with questions about the meaning of the letter, particularly its reference to “whether the Appellate Division, Third Department, orders of December 19, 2018; November 13, 2018; October 23, 2018; and August 7, 2018, finally determine the action within the meaning of the Constitution” – as if they were not subsumed, and brought up for review, by the Appellate Division’s December 27, 2018 Memorandum and Order, as I believe I was told they would be when I had previously called the Court in connection with these orders.

Ms. Dautel suggested I do research, which I told her I would do, further stating that her suggestion reinforced that I needed an extension of time for the filing of my comments letter, otherwise due, with the requisite briefs and records, on March 14th. In response to my extension request, Ms. Dautel advised that the procedure was for me to contact my adversary – you – requesting your consent. She stated that if you refused, I could apply to the Court.

I, therefore, request your consent to a week’s extension – which, of course, would give you an extra week for filing your own “comment in letter format on the Court’s subject matter jurisdiction”. Surely, this would be beneficial to your evaluation of your professional and ethical responsibilities, based on the litigation record in Supreme Court/Albany County and at the Appellate Division, Third Department, of which you became fully knowledgeable during your half-year tenure as Attorney General.

By the way, new Attorney General James is herself fully knowledgeable of the record in Supreme Court/Albany County. On July 16, 2018, at a debate among candidates for the Democratic nomination for Attorney General, I publicly asked whether the candidates were aware of the Attorney General’s *modus operandi* of litigation fraud to defeat lawsuits against the state and its public officers, to which it had NO legitimate defense – and whether they would be willing to examine the EVIDENCE. To her credit, then-candidate James was the only candidate who publicly stated she would examine the EVIDENCE – and, at the end of the program, I gave her, *in hand*, a copy of appellants’ July 4, 2018 appeal brief and three-volume record on appeal, as well as a copy of my above-attached May 16, 2018 letter/corruption

complaint addressed to you and its May 18, 2018 coverletter to candidates for interim appointment as Attorney General, to which you were a cc. A month later, on August 15, 2018, at the conclusion of another debate among Democratic A.G. candidates, I gave candidate James, *in hand*, a second copy of the May 16-May 18 correspondence, apprising her then – and, thereafter, by e-mails preceding other debates and until just shortly before her election on November 6, 2018 – as to what was taking place, on appeal, at the Appellate Division, Third Department.

Attorney General James presumably still has the copy of the July 4, 2018 appeal brief and three-volume record on appeal that I gave her eight months ago – as I never received them, in return, and it is hard to imagine that something of that magnitude and consequence, in a live case, would have been discarded by her or by anyone to whom she would have furnished them.

Finally, am I correct that the Attorney General's office either has – or can easily obtain – an extra copy of your September 21, 2018 respondents' brief and supplemental record on appeal that you filed in the Appellate Division? If so, would you be willing to furnish same to the Court of Appeals – as I gave my extra copy to the Compensation Committee at its November 30, 2018 public hearing, in support of my oral and written testimony, which it did not return to me.

Alternatively, and since the Attorney General is defending the Compensation Committee in *Delgado, et al. v. State of New York and Thomas P. DiNapoli, as Comptroller of the State of New York* (Albany Co. #907537-18), would you find out what the answer is to the December 28, 2018 e-mail I sent it, without response, by the below entitled "Where Will the Records of the Compensation Committee be Maintained Upon Expiration & Repeal of the Committee Statute on December 31, 2018?" Such is additionally appropriate as the Attorney General's defense of the constitutionality of the statute establishing the Compensation Committee (Part HHH, Chapter 59 of the Laws of 2018) is predicated on the Appellate Division's December 27, 2018 Memorandum and Order upholding the constitutionality of the statute establishing the Commission on Legislative, Judicial and Executive Compensation (Part E, Chapter 60 of the Laws of 2015).

Thank you.

Elena Sassower, unrepresented plaintiff-appellant
on her own behalf, on behalf of the Center for Judicial Accountability, Inc.,
& on behalf of the People of the State of New York & the Public Interest
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, December 28, 2018 2:29 PM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: Where Will the Records of the Compensation Committee be Maintained Upon Expiration & Repeal of the Committee Statute on December 31, 2018?

TO: The New York State Compensation Committee

Before the Compensation Committee goes out of existence on December 31, 2018, by virtue of the expiration and repeal of Part HHH of Chapter 59 of the Laws of 2018, pursuant to its §7, please advise where the records of the Compensation Committee will be maintained and/or in whose custody they will be. This especially includes the voluminous evidentiary materials I handed up at the November 30, 2018 hearing, in substantiation of my testimony that they were "dispositive", both as to the unconstitutionality of Part HHH and that the Compensation Committee had "nowhere to go" with recommendations of pay raises. The inventory of what I handed up is, as follows:

1.
**Pertaining to CJA's 2nd Citizen-Taxpayer Action,
pending before the Appellate Division, Third Department (#527081-2018)**

[APPELLANTS' BRIEF \(July 4, 2018\)](#)

[Record on Appeal: Volume 1](#)

[Record on Appeal: Volume 2](#)

[Record on Appeal: Volume 3](#)

[RESPONDENTS' BRIEF \(September 21, 2018\)](#)
[Respondents' Supplemental Record on Appeal](#)

[APPELLANTS' REPLY BRIEF \(October 4, 2018\)](#)

2.
**Reports on New York's Legislative Rules,
underlying the description that New York's Legislature is THE MOST "Dysfunctional" of any in the nation**

["Albany's Travesty of Democracy" -- City Journal 1997](#)
by Professor Eric Lane -- genesis of the Brennan Center Reports

2004 [BRENNAN CENTER REPORT:](#)
["NYS Legislative Process: Evaluation and Blueprint for Reform"](#)

2006 [BRENNAN CENTER REPORT:](#)
["Unfinished Business: New York State Legislative Reform: Update"](#)

2008: [BRENNAN CENTER REPORT:](#)
["Still Broken: NY Legislative Reform - Update"](#)

APRIL 21, 2009:
Temporary Senate Committee on Rules & Administration Reform:
[Majority "Draft Report"](#) [Republican Minority Report](#)

3.
**Pertaining to Fiscal Year 2018-2019 Judiciary & Legislative Budgets --
& Governor Cuomo's Budget Bill #S.7501/A.9501**

[CJA's written statement in support of testimony at Legislature's January 30, 2018 budget hearing on "Public Protection"
\(Judiciary budget\)](#)

[CJA's written statement in support of testimony at Legislature's February 5, 2018 hearing on "local government
officials/general government"
\(Legislative budget\)](#)

[Fiscal Year 2018-19 Legislative/Judiciary Bill #S.7501/A.9501](#)
[Section 1: Legislature-appropriations](#)

[Section 2: Judiciary appropriations](#)
[Section 3: Judiciary reappropriations \(marked\)](#)
[Section 4: Legislative reappropriations \(marked\)](#)
[Section 5: effective date](#)
[Table of Contents](#) (marked)

I note that among the several questions from my prior e-mails, to which I received no response from you, was one from three weeks ago, Friday December 7, 2018, in a paragraph that read:

“Also, please advise whether, if I send you pdfs of the EVIDENCE I handed-up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, you will post same. Three years ago, when I testified, at the November 30, 2015 hearing of the Commission on Legislative, Judicial and Executive Compensation, it posted pdfs of comparably voluminous EVIDENCE I had handed up in support of my testimony. So that you can see this for yourselves, here’s the direct link to its webpage posting my November 30, 2015 written statement and the EVIDENCE I had handed up in substantiation: <http://nyscommissiononcompensation.org/Submissions-cja-nov30-v3.shtml>. The video of its November 30, 2015 hearing is here: <http://nyscommissiononcompensation.org/hearings-judicial.shtml> (at 1 hr/52 mins).”

My e-mail on Monday, December 10, 2018 reiterated this request, stating:

“And will you – as I requested – post the EVIDENCE I handed up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, if I send you pdfs? If more convenient, will you post the link to CJA’s webpage of the EVIDENCE I handed up, which is here: <http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/11-30-18-what-was-handed-up.htm>.”

For your convenience, those two e-mails are part of the e-mail chain, below.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, December 10, 2018 11:57 AM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: AGAIN: When will the Compensation Committee be posting the video of its Dec. 6th meeting -- & will it post pdfs of the EVIDENCE I handed up in substantiation of my Nov. 30th oral & written testimony?

TO: The New York State Compensation Committee

I have received no response to my below e-mail, sent at 10:37 am on Friday, December 7, 2018, titled “When will the Compensation Committee be posting the video of yesterday’s meeting -- as well as all comments/submissions received?”

As yet, the Committee's website, <https://nyscompensation.ny.gov/index.html>, still does not post the video of the December 6, 2018 meeting. When will it be posted? And will you – as I requested – post the EVIDENCE I handed up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, if I send you pdfs? If more convenient, will you post the link to CJA's webpage of the EVIDENCE I handed up, which is here: <http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/11-30-18-what-was-handed-up.htm>.

As for “comments/submissions received”, it appears that either late in the day on Friday or on Saturday, you posted a single pdf entitled “[Written Correspondence to the Committee](#)” -- at the very bottom of the webpage for “Archived Meetings”. This single pdf begins with Assembly Speaker Heastie's November 29, 2018 letter to you, identifying that it attaches his “testimony dated October 5, 2016” to the Commission on Legislative, Judicial and Executive Compensation. This so-called “testimony” is his October 5, 2016 letter to that Commission. However, you have not placed it immediately following his November 29, 2018 letter. Rather, you have put it at the end of the pdf compilation.

Your posted pdf compilation of “Written Correspondence to the Committee” consists of the following:

- (1) The November 29, 2018 letter from Assembly Speaker Heastie (2 pages)
- (2) A November 21, 2018 e-mail from Frederick A.O. Schwarz, Jr. (2 pages), identifying that he was attaching the 2015 report of the New York City Quadrennial Advisory Commission which he had chaired. You have not included the pdf of the report in the compilation, nor separately posted it.
- (3) A November 20, 2018 letter from Senator Christopher Jacobs (2 pages, plus 14 pages pertaining to lulus)
- (4) An August 30, 2018 letter from Assemblymen Kevin Byrne and James Skoufis (2 pages)
- (5) A repeat of the 2-page November 20, 2018 letter from Senator Christopher Jacobs
- (6) The October 5, 2018 letter from Assembly Speaker Heastie (5 pages).

I note that both Senator Jacobs' 2-page November 20, 2018 letter and the 2-page letter of Assemblymen Jacobs and Skoufis are also part of your pdf compilation of so-called “[November 28, 2018 Testimonies](#)” – which is still missing Robert Schulz' petition, from which he read during his oral testimony – and distributed to the Committee members.

Please advise.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, December 7, 2018 10:37 AM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: When will the Compensation Committee be posting the video of yesterday's meeting -- as well as all comments/submissions received?

TO: The New York State Compensation Committee

Please advise when the Committee will be posting the video of its yesterday's meeting announcing its pay raise recommendations.

Also, I am still awaiting response to my below December 5th e-mail entitled "Assembly Speaker Heastie's fraudulent, deceitful presentation in support of legislative pay raises -- as established by EVIDENCE". It had requested that you post the two letters that Assembly Speaker Heastie submitted to the Committee, summarized by his written "remarks", which he read at the November 30, 2018 hearing. Please post them, immediately -- or immediately send them to me. Likewise, and as requested by my December 3rd e-mail (1:26 pm), please immediately post -- or immediately send me -- all other written "comments and submissions that the Committee received" -- from legislators, from other affected public officers, and from members of the public.

One such comment/submission -- a November 20, 2018 e-mail to the Committee from a Thomas Amyot -- was included in your pdf compilation of "November 28, 2018 Testimonies". Not included in that compilation, however, was the written "First Amendment Petition to the Government of New York State for Violations of the State and Federal Constitutions" of the fourth and final witness at the Committee's November 28, 2018 hearing, Robert Schulz -- notwithstanding he referred to it, read from it, and physically distributed it to the Committee members. Please promptly rectify the omission of Mr. Schulz' petition from the "November 28, 2018 Testimonies" -- or send same to me.

Also, please advise whether, if I send you pdfs of the EVIDENCE I handed-up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, you will post same. Three years ago, when I testified, at the November 30, 2015 hearing of the Commission on Legislative, Judicial and Executive Compensation, it posted pdfs of comparably voluminous EVIDENCE I had handed up in support of my testimony. So that you can see this for yourselves, here's the direct link to its webpage posting my November 30, 2015 written statement and the EVIDENCE I had handed up in substantiation: <http://nyscommissiononcompensation.org/Submissions-cja-nov30-v3.shtml>. The video of its November 30, 2015 hearing is here: <http://nyscommissiononcompensation.org/hearings-judicial.shtml> (at 1 hr/52 mins).

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, December 5, 2018 5:31 PM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: Assembly Speaker Heastie's fraudulent, deceitful presentation in support of legislative pay raises -- as established by EVIDENCE

TO: The New York State Compensation Committee

Thank you for posting, yesterday night, Assembly Speaker Heastie's written "remarks", which he read at the November 30, 2018 hearing. However, you have not posted the two letters he submitted to the Committee, which his "remarks" identify that he was summarizing. These are his "2016 letter in support of a salary adjustment as well as a new updated letter". Kindly post them, as well.

I believe I have the 2016 letter – if that is Assembly Speaker Heastie’s October 5, 2016 letter to the Commission on Legislative, Judicial and Executive Compensation, posted on that Commission’s website, here: <http://nyscommissiononcompensation.org/Submissions-legislative.shtml>. However, I don’t have his “new updated letter”. Please furnish it to me, as immediately as possible.

Meanwhile, in further substantiation of my assertions at the hearing that Assembly Speaker Heastie had “testified without evidence” – and that his “self-serving-claims” about “how hard-working, how responsive the Senate and the Assembly are, is fraud, is deceit”, rebutted” by CJA’s second citizen-taxpayer action, to which he is a named defendant, as well as by the other evidence I handed up -- below is my FOIL/Records request to the Assembly, of today’s date, pertaining to the “13 joint legislative commissions” to which he referred in testifying. The evidence about these legislative commissions, reflected by the links on the Assembly’s own website, substantiates ¶¶28-33 of CJA’s September 2, 2016 verified complaint in the second citizen-taxpayer action [R.100-102]. For your convenience, these paragraphs read:

“28. ...the Legislature’s proposed budget, *on its face*, is not ‘itemized estimates of the financial needs of the legislature’... its section entitled Senate and Assembly Joint Entities’ (...) omits most of the joint commissions that the Legislature is required to establish and fund pursuant to Legislative Law, Article 5-A (§§82, 83). Among these, the Legislative Commission on State-Local Relations and the Legislative Commission on Government Administration. Additionally, the Administrative Regulations Review Commission, required to be established and funded pursuant to Legislative Law, Article 5-B (§§86-88) is omitted.

29. Upon information and belief, the Legislature’s joint entities, mandated by Legislative Law Articles 5-A and 5-B, to the extent they exist, have only appointed chairs, collecting stipends. They have no funding, or virtually none – a fact concealed by the legislative budget’s violation of the Article VII, §1 requirement of ‘itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house’.

30. The consequence of the Legislature’s facial violation of Article VII, §1 by its budget is the unconstitutionality of that budget, *as applied*. Without funding, the joint legislative commissions are not functioning – and cannot function – as Legislative Law Article 5-A and 5-B intended them to^{fn2}. They are sham, just as the Legislature’s standing committees, which, excepting the Senate Finance Committee and Assembly Ways and Means Committee, have no appreciable funding.

31. As illustrative, neither the Legislative Commission on State-Local Relations, nor the Legislative Commission on Government Administration, nor any of the Legislature’s standing committees, such as the Senate Committee on Local Government, the Assembly Committee on Local Governments, the Senate Judiciary Committee, or the Assembly Judiciary Committee have engaged in any oversight of the statutory link between judicial salaries and district attorney salaries, established more than 40 years ago by Judiciary Law §183-a, or of the related provisions of County Law §§700.10 and 700.11 pertaining to district attorney salaries and state aid to the counties for those salaries, or of the outpouring of state dollars to the counties, *via* the budget, for district attorney salary reimbursement that violates these express statutory provisions.

32. Nor are these legislative committees and commissions – or the Senate Finance Committee and Assembly Ways and Means Committee – remotely responsive and responsible, upon being given notice of their duty to protect the counties and the state from the costs of district attorney salary increases having absolutely no basis other than Judiciary Law §183-a and whose consequence is to compound the theft of taxpayer

monies resulting from the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report. The legislative defendants are perfectly willing to countenance and continue a run-away 'gravy train' of district attorney salary increases that are the by-product of the statutorily-violative, fraudulent, and unconstitutional December 24, 2015 report.

33. As stated by ¶194 of the verified complaint (Exhibit B) – and reiterated by ¶1315 of the verified second supplemental complaint (Exhibit C):

'In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature's own budget, throwing asunder the constitutional command: 'itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house'." (italics, underlining and capitalization in the original).

More to follow.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, December 5, 2018 3:53 PM
To: 'Robin Marilla' <marillar@nyassembly.gov>

Subject: FOIL/Records Access -- The 13 "Legislative Commissions" Enumerated by the Assembly's Website

TO: Assembly Records Access Officer Robin Marilla

Pursuant to Assembly Rule VIII "Public Access to Records", request is made for records reflecting the membership of the 13 "Legislative Commissions", enumerated on the Assembly's webpage of "Committees, Commissions & Task Forces": <https://nyassembly.gov/comm/>. In the order in which they appear, they are:

- (1) Legislative Commission on Administrative Regulations Review, whose homepage: <https://nyassembly.gov/comm/?id=44>, reflects no members other than its chair, Assemblyman Dan Quart – and no activity since a Dec. 2015 hearing;
- (2) Legislative Commission on Council on Health Care Financing, whose homepage: <https://nyassembly.gov/comm/?id=45> reflects no members, including no chair – and no activity whatever;
- (3) Legislative Commission on Critical Transportation Choices, whose homepage: <https://nyassembly.gov/comm/?id=46> reflects no members other than its chair, Assemblyman David Gantt – and no activity whatever;
- (4) Legislative Commission on Governmental Administration, whose homepage: <https://nyassembly.gov/comm/?id=49> reflects no members other than its chair, Assemblyman Thomas Abinanti – and no activity for more than five years (May 2013);
- (5) Legislative Commission on Legislative Ethics, whose homepage: <https://nyassembly.gov/comm/?id=48> reflects no members other than its chair, Assemblywoman Avarella Simotas – and no activity whatever;
- (6) Legislative Commission on Rural Resources, whose homepage: <https://nyassembly.gov/comm/?id=47> reflects that its chair is Assemblyman Angelo Santabarbara and two members, Assemblywomen Barbara Lifton and Carrie Woerner – and no activity for more than eight years (summer 2012);
- (7) Legislative Commission on Science and Technology, whose homepage: <https://nyassembly.gov/comm/?id=51>, reflects no members other than its chair, Assemblyman Sean Ryan – and no activity for more than four years (April 2014);
- (8) Legislative Commission on Skills Development and Career Education, whose homepage: <https://nyassembly.gov/comm/?id=52> reflects no members other than its chair, Assemblyman Harry Bronson – and no activity since an October 2017 posting of a legislative report;
- (9) Legislative Commission on Solid Waste Management, whose homepage: <https://nyassembly.gov/comm/?id=53> reflects no members, including no chair – and no activity since a Feb. 2016 hearing;
- (10) Legislative Commission on State-Local Relations, whose homepage: <https://nyassembly.gov/comm/?id=54&sec=hearings>, reflects no members other than its chair, Assemblyman Victor Pichardo – and no activity since a Nov. 2016 posting of a notice of roundtable;
- (11) Legislative Commission on Tax Study, whose homepage: <https://nyassembly.gov/comm/?id=55> reflects no members, including no chair – and no activity whatever;
- (12) Legislative Commission on Toxic Substances and Hazardous Wastes, whose homepage: <https://nyassembly.gov/comm/?id=56> reflects no members other than its chair, Assemblywoman Christine Pellegrino – and no activity since a Jan. 2018 posted notice of hearing;
- (13) Legislative Commission on Water Resource Needs of New York State, whose homepage: <https://nyassembly.gov/comm/?id=57> reflects no members, including no chair – and no activity for more than five years (Oct. 2013).

Thank you.

Elena Sassower, Director

Center for Judicial Accountability, Inc. (CJA)

www.judgewatch.org

914-421-1200

^{fn2} Likewise not functioning, for lack of funding, is another commission established by the Legislative Law: the Law Revision Commission, established by Legislative Law Article 4-A.”