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BY E-MAIL & PRIORITY MAIL

May 30, 2018

TO: Attorney General Barbara D. Underwood

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

RE: What is the Status? – CJA's May 16, 2018 letter: "NOTICE: Corruption and Litigation Fraud by Former Attorney General Eric Schneiderman and his Office – and Your Duty to Take Investigative and Remedial Action, most immediately, in the Citizen-Taxpayer Action *Center for Judicial Accountability, et al. v. Cuomo, ...Schneiderman, et al.* (Albany Co. #5122-16; RJI #01-16-122174) and pursuant to 'The Public Trust Act' (Penal Law §496: 'Corrupting the government')";

(1) Disclosure of facts giving rise to your duty to secure appointment of independent/outside counsel to investigate and report on your ethical and law enforcement obligations with respect to the May 16, 2018 NOTICE, or a special prosecutor;

(2) FOIL/records request – conflicts of interest; Executive Law §63.11; legislative oversight.

I have received no response to my May 16, 2018 letter to you with its above-entitled NOTICE – a further copy of which is enclosed for your convenience. Have you responded? If not, is it because of the conflicts of interest you face, as for instance:

- Your personal and professional relationships with the supervisory and managerial attorneys whose misconduct is the subject of my September 16, 2017 misconduct complaint to the Attorney Grievance Committees for the First and Third Judicial Departments – who continue to work for you, just as they worked for Attorney General Schneiderman;

- Your personal and professional relationships with Judge Denise Hartman whose misconduct in the second citizen-taxpayer action is the subject of my June 16, 2017 misconduct complaint to the Commission on Judicial Conduct – and who not only worked in the attorney general's office for 30 years until Governor Cuomo appointed her to the bench and the Senate confirmed her in May 2015, but was an assistant solicitor general, under you;

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- Your personal and professional relationships with Governor Andrew Cuomo, who, upon being elected attorney general in November 2006, appointed you to be his solicitor general, which position you assumed in January 2007;

- Your personal and professional relationships with Attorney General Eric Schneiderman, who, upon being elected to that office in November 2010, retained you as his solicitor general and designated you his successor.

The May 16, 2018 NOTICE expressly stated:

> "As your response to this NOTICE is additionally a TEST of your fitness to serve as interim attorney general, please advise, by no later than Monday, May 21, 2018, as to what actions you will be taking consistent with the EVIDENCE to which you are here alerted and furnished." (underlining in the original, at p. 6).

Your then-pending application to the Legislature for appointment as interim attorney general gave you a direct, personal interest in the NOTICE – as surely Assembly Speaker Carl Heastie and Temporary Senate President John Flanagan would NOT have orchestrated a vote on your appointment on May 22nd had you announced on May 21st – consistent with the open-and-shut, *prima facie* EVIDENCE before you – that you would be moving to vacate Judge Hartman's November 28, 2017 decision and judgment in the second-citizen-taxpayer action, of which they are beneficiaries – and would be indicting them and their co-defendants in the citizen-taxpayer action for the corruption and larceny of taxpayer monies particularized by its verified pleadings and by the further EVIDENCE pertaining to the budget for this fiscal year that I had publicly presented by my testimony before the legislators on January 30, 2018, February 2, 2018, and February 5, 2018.

And wouldn't you agree that the manner in which the Legislature appointed you on May 22nd now gives you a direct, personal interest in the second citizen-taxpayer action itself – and, in particular, its challenge to the unconstitutionality of how the Legislature operates, hijacked by leadership, with sham committees and closed-door majority and minority conferences. Or can you explain how, without any public "process", the interviews of 11 candidates by the Legislature's screening committee morphed into the May 22nd vote on your appointment? Weren't the Legislature's closed-door party conferences the place where the discussion of the merits of the 11 candidates interviewed by the screening committee took place – outside of public view? Isn't that where the political deal between Assembly Speaker Heastie and Temporary Senate President Flanagan to put only your name in nomination was agreed to by the Legislature's rank-and-file?[1]

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[1] My May 23, 2018 FOIL/records request to the Assembly and Senate to procure the pertinent records of the "process" giving rise to your appointment is posted on CJA's webpage for this letter: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/5-30-18-ltr-to-underwood.htm. The Assembly's May 30, 2018 response states, in pertinent part:

> "There are no publicly-available records for any meetings of any Assembly standing

Since it is the attorney general's primary function to opine as to constitutionality, how do you reconcile the Legislature's closed-door party conferences, substituting for open committee deliberations and votes, with Article III, §10 of the New York State Constitution:

> "Each house of the legislature shall keep a journal of its proceedings, and publish the same…The doors of each house shall be kept open…"?

That it cannot be reconciled is the basis of the challenge in CJA's second citizen-taxpayer action[2] – to which Attorney General Schneiderman had no answer and which Judge Hartman's fraudulent decisions concealed. It is one of the many questions, arising from the second citizen-taxpayer action and bearing on your fitness, that I would have alerted the Legislature to, had its screening committee reconvened, after the interviews, as Assembly Chair Joseph Lentol indicated it would, in stating, on

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> committee at which the Attorney General vacancy was discussed and/or voted on. Additionally, there are no publicly-available records of the Assembly majority and minority party conferences at which the Attorney General vacancy was discussed and/or voted on.
>
> The bi-partisan, bi-cameral committee who conducted the public interviews of the Attorney General candidates did not meet after those public interviews and no report has been or is expected to be filed with the Legislature."

Only one legislator – Assemblyman Charles Barron – "blew the whistle" on this charade, in explaining his vote, the only no vote on your appointment – and the transcript reflects that the mic was possibly shut off, as Assembly Speaker Heastie tried to cut him off:

> "…I knew from the very beginning that it would conclude like this because I also knew as we go through a public process, there is a private process between the powers that be…I despise processes that have a very democratic public face and a very private backdoor deal made by those in power…So, I just think that the process is flawed…I vote no and I think we should reconsider the process and have independent people in these –" (joint session transcript, at pp. 16-17).

[2] See September 2, 2016 verified complaint in CJA's second citizen-taxpayer action, "Prayer for Relief", #1E (at p. 40):

> "that the behind-closed-doors Senate and Assembly majority and minority political conferences, which serve as the venue for discussing, debating, and voting on bills that are not being discussed, debated, voted on, and amended in committee are unconstitutional, as is Public Officers Law, §108.2 exempting them from the Open Meetings Law and FOIL" (underlining in the original).

and, *inter alia*, the March 23, 2016 verified second supplemental complaint in CJA's first citizen-taxpayer action, annexed as Exhibit A thereto (at ¶365, citing and quoting (by its footnote 14) "*Albany's Dysfunction Denies Due Process*", 30 Pace L. Rev, 965, 992, 997-8 (2010), Eric Lane, Laura Seago).

May 16th:

> "This concludes our process, and we will be back here, the committee will meet at some future time together, to discuss the nominees and a report will be filed to the Legislature".

The failure of the Legislature's screening committee to publicly reconvene – and to publicly announce the "process" going forward – or any schedule[3] – meant that by the time May 21st had come and gone with no response from you to the NOTICE, there was no opportunity for me to make my intended presentation to the Legislature, then racing to the unannounced May 22nd vote on your candidacy – and only your candidacy. The only legislators to whom I had furnished the May 16, 2018 NOTICE were the two legislators who, like you, were candidates: Assemblyman Thomas Abinanti and Assemblyman Daniel O'Donnell – and I e-mailed it to them under a May 18, 2018 letter entitled "Testing the Fitness of Acting Attorney General Barbara Underwood – & Every Other Candidate for Interim Attorney General", to which you were an indicated recipient.

Unless you deny or dispute the foregoing relationships and interests, your duty is to disqualify yourself from determination of the relief the May 16, 2018 NOTICE seeks – and, by reason thereof, to secure appointment of independent/outside counsel to investigate and report as to your mandatory ethical and law-enforcement duties, which presumably you already know,[4] or to secure a special prosecutor.

Of course, the foregoing does not exhaust the facts giving rise to the appearance and actuality of your disqualification. Certainly, it is reasonable to assume that having been solicitor general since 2007

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[3] This mirrors how the Senate-Assembly general budget conference committee operates, as likewise its subcommittees, including its subcommittee on "public protection, criminal justice, and Judiciary", whose Assembly co-chair is invariably Assemblyman Lentol. This is chronicled by the verified pleadings and litigation record of both the first and second citizen-taxpayer actions, setting forth the facts pertaining to their cameo appearance, giving "lip service" to deliberative process, but then totally disappearing from public view and not reconvening for any final session and producing no report of their activities, deliberations, and votes.

[4] Public Officers Law §61 furnishes a powerful assist to putting the attorney general's own "house in order". Entitled "Investigations by state officers", it reads, in pertinent part:

> "Every state officer, in any proceeding held before him, or in any investigation held by him for the purpose of making inquiry as to the official conduct of any subordinate officer or employee, shall have the power to issue subpoenas for and require the attendance of witnesses and the production of all books and papers relating to any matter under inquiry. All such subpoenas shall be issued under the hand and seal of the state officer holding such proceeding. A subpoena issued under this section shall be regulated by the civil practice law and rules. The testimony of witnesses in any such proceeding shall be under oath and the state officer instituting the proceeding shall have power to administer oaths…"

you were involved in decisions made in the attorney general's office under then Attorney General Cuomo relating to the judges' lawsuits, commencing in 2007, suing the state for judicial pay raises – and the judicial decisions that were rendered. The most important of these was the Court of Appeals' February 23, 2010 decision finding a constitutional separation-of-powers violation – intimidating the Legislature into enacting Chapter 567 of the Laws of 2010, establishing a Commission on Judicial Compensation and setting in motion the train of events giving rise to CJA's declaratory judgment and citizen-taxpayer action lawsuits.

Suffice to say that my March 2, 2012 letter entitled "YOUR FINDINGS OF FACT & CONCLUSIONS OF LAW: Protecting the People of this State & the Public Purse from Judicial Pay Raises that are Unconstitutional, Unlawful & Fraudulent" — which is described and extensively quoted at ¶¶121-125 of the March 30, 2012 verified complaint in CJA's declaratory judgment action and annexed thereto as Exhibit Q – questioned why the fraudulent February 23, 2010 decision, demonstrated as such by my July 19, 2011 letter to Attorney General Schneiderman[5], had not been appealed to the Supreme Court, nor reargued before the Court of Appeals – questions within the purview of Attorney General Schneiderman's Division of Appeals and Opinions to answer, headed by the solicitor general, who was then you. Indeed, the March 2, 2012 letter expressly requested that Attorney General Schneiderman "secure an opinion from…the Division of Appeals and Opinions", if he had any doubt that his duty, pursuant to Executive Law §63.1 and "the interests of the state", was to bring a lawsuit to void Chapter 567 of the Laws of 2010 and the judicial pay raises recommended by the Commission on Judicial Compensation's August 29, 2011 report, in the event that – based on CJA's October 27, 2011 opposition report establishing, *prima facie*, that the Commission's August 29, 2011 report was unconstitutional, statutorily-violative, and fraudulent – the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge failed to take steps to prevent the judicial pay raises from taking effect on April 1, 2012. Were you aware of none of this?

One final observation is in order – and this pertaining to the question at the outset of the May 16, 2018 NOTICE as to whether, in testifying the previous day before the legislative screening committee, you were "in fact, unaware" of "any corruption problems within the attorney general's office. The "corruption problems" the NOTICE particularizes – litigation fraud by Attorney General Schneiderman's office to defeat meritorious citizen-challenges to unconstitutional statutes and to unconstitutional and unlawful conduct by state officers and entities, thereupon rewarded by fraudulent judicial decisions – are not unique to his office. It is a *modus operandi* of the offices of New York's attorneys general spanning back at least 40 years and the tenure of Attorney General Robert Abrams. This, too, is easily proven by EVIDENCE: records of lawsuits defended by your predecessor attorneys general and of lawsuits suing them and of misconduct/criminal complaints based thereon. This is not completely foreign to you – as 20 years ago, when you were second-in-command to U.S. Solicitor General Seth Waxman, you signed an August 10, 1998 letter responding to a July 20, 1998 letter I had written for *amicus curiae* support before the U.S. Supreme Court for a

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[5] The July 19, 2011 letter, constituting an analysis of the February 23, 2010 Court of Appeals decision in the judges' judicial pay raise lawsuits, is identified at ¶95 of the March 30, 2012 verified complaint – and annexed thereto as Exhibit J.

cert petition in a §1983 federal action suing Attorney General G. Oliver Koppell for litigation fraud, which Attorney General Dennis Vacco had defended by litigation fraud – each rewarded by fraudulent judicial decisions, obliterating the most basic adjudicative standards. Suffice to here enclose CJA's two public interest ads reflecting the situation at an earlier juncture "*Where Do You Go When Judges Break the Law?*" (NYT, 10/26/94; NYLJ, 11/1/94); and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97) – both enclosed with my July 20, 1998 letter.

CJA's webpage for this letter furnishes links to the full complement of referred-to substantiating EVIDENCE. It is accessible from CJA's homepage, www.judgewatch.org, *via* the center link for the "2018 Legislative Session". This brings up a menu page for selections including "Choosing an Interim Attorney General Who Won't Indict Them All", from which the webpage can be reached. The direct link is here: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/5-30-18-ltr-to-underwood.htm.

For the benefit of all concerned, I invoke FOIL [Public Officers Law, Article VI] and, by copy of this letter to your records access officer, request:

(1) written protocols, policies, and/or guidelines of the attorney general's office governing the conflicts of interest afflicting you – and procedures for securing independent/outside counsel, as well as a special prosecutor;

(2) records of how the attorney general's office has implemented Executive Law §63.11, conferring upon you the duty to "Receive complaints concerning violations of section seventy-four of the public officers law" – including the make-up of your "advisory committee on ethical standards"; and instances where, based on its "findings and recommendations", the attorney general has brought "a civil action…for the recovery of moneys…received or expended by an officer";

(3) records establishing when, if ever, any committee of the Legislature has held an oversight hearing of the operations of the attorney general's office with respect to its constitutional and statutory function, discharge of its duties, and its budget.

Thank you.

cc's & enclosures: see next page

Enclosures: (1) CJA's May 16, 2018 letter/NOTICE
(2) CJA's March 2, 2012 letter
(3) CJA's July 19, 2011 letter
(4) CJA's paid ad: "*Where Do You Go When Judges Break the Law?*", (NYT, October 26, 1994; NYLJ, November 1, 1994)
(5) CJA's paid ad: "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", (NYLJ, August 27, 1997)

cc: Attorney General/FOIL Records Access Officer
The Legislature
Candidates for Attorney General/Interim & Elected
The Press