

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, December 13, 2018 12:27 PM
To: 'Barbara.Underwood@ag.ny.gov'; 'Brodie, Frederick'; 'Paladino, Victor'; 'Brian.Mahanna@ag.ny.gov'; 'Alvin.Bragg@ag.ny.gov'; 'Janet.Sabel@ag.ny.gov'; 'gary.brown@ag.ny.gov'; 'Matthew.Colangelo@ag.ny.gov'; 'Margaret.Garnett@ag.ny.gov'; 'manisha.sheth@ag.ny.gov'; 'Kent.Stauffer@ag.ny.gov'; 'Meg.Levine@ag.ny.gov'; 'Jeffrey Dvorin'; 'Adrienne Kerwin'; 'Helena.Lynch@ag.ny.gov'
Cc: 'ad3clerksoffice@nycourts.gov'; 'Jane Landes'
Subject: NOTICE: Your Duty to Withdraw Asst. Solicitor General Brodie's Dec. 10, 2018 opposing memorandum in CJA v. Cuomo, No. 527081 -- & to ENJOIN the "force of law" salary & lulu recommendations of the NYS Compensation Committee prior to Jan. 1, 2019
Attachments: 12.10.18 Mem. in Opp. to Mtn. for Disqualification.pdf; 11-30-18-statement-with-constitutional-provisions.pdf

TO: Attorney General Barbara Underwood

As Assistant Solicitor General Brodie's below December 10, 2018 e-mail to me does not cc you or any other supervisory/managerial attorneys of your office, including Assistant Solicitor General Paladino, **this is to give you NOTICE that his attached December 10, 2018 memorandum in opposition to appellants' November 27, 2018 order to show cause (#4) to disqualify the appeal panel for demonstrated actual bias, to certify questions to the Court of Appeals, and for other relief, signed by Associate Justice Christine Clark on December 3, 2018, is fraudulent, from beginning to end – and your duty is to withdraw it forthwith.** Absent your doing so, I will be filing reply papers, laying out its deceit – and seeking sanctions and disciplinary and criminal relief against you.

To assist you in comparing Mr. Brodie's opposing memorandum to appellants' order to show cause, from which his fraud is IMMEDIATELY obvious, here's CJA's webpage for the order to show cause, previously furnished to you, twice: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/11-27-18-osc.htm>.

Additionally, this is to give you NOTICE that the direct and foreseeable consequence of Mr. Brodie's flagrant and unceasing fraud before the Appellate Division, Third Department, spanning from his July 23, 2018 letter to his December 10, 2018 opposing memorandum – which you and your supervisory/managerial attorneys have permitted, if not directed – is the unconstitutionality and fraud of the New York State Compensation Committee, perpetrated on the People of the State of New York, from its first meeting on November 13, 2018 to its December 10, 2018 report. **Based on the record of CJA's second citizen-taxpayer action, entitling appellants to summary judgment on their ten causes of action – and, in particular, on its sixth cause of action (sub-causes A & B) -- it is your duty to enjoin the Compensation Committee's "force of law" salary and lulu recommendations, resulting from its report – and to do so before January 1, 2019, the date the first phase of its recommendations takes effect.**

In the event you are unaware of my oral and written testimony to the Compensation Committee at its November 30, 2018 hearing identifying the DISPOSITIVE nature of the record of CJA's second citizen-taxpayer action, here's CJA's menu webpage entitled "New York State Compensation Committee -- Unconstitutionality in Plain Sight", from which my testimony and the substantiating EVIDENCE is posted: <http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/2018-compensation-committee.htm>. For your further convenience, my written testimony is also attached.

Suffice to note that on July 23, 2018, when Mr. Brodie interposed his fraudulent letter to the Appellate Division, Third Department, urging that it NOT sign appellants' initial order to show cause, it was in face of ¶31 of my moving affidavit identifying yet a further reason why appellants were entitled to the relief sought by its third branch, "an accelerated

schedule for briefing, oral argument, and decision...” , consistent with the expedition mandated by the citizen-taxpayer action statute:

“31. ...this year’s behind-closed-doors three-men-in-the-room, ‘amending’ of budget bills resulted in the insertion of a Part HHH into Budget Bill #S.7509-C/9509-C, establishing a compensation committee for legislative and executive pay raises (Exhibit H). Such suffers from substantially the same constitutional and statutory infirmities as Part E of fiscal year 2015-2016 Budget Bill #S.4610-A/A.6721-A (Chapter 60, Part E, of the Laws of 2015), challenged by appellants’ sixth and seventh causes of action [R.109-112 (R.187-201); R.112-113 (R.201-212)].^{fn.9} As the judicial declarations to which appellants are entitled herein would render that compensation committee and its work a nullity, the sooner that happens, the better for all concerned.”

The annotating footnote 9 read:

“One material difference is that Part HHH specifies (Exhibit H, at §3) that ‘the parties’ performance and timely fulfillment of statutory and Constitutional responsibilities’ is among the ‘appropriate factors’ the compensation committee must ‘take into account’ (also see §4b). By contrast, Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] does not so-specify ‘performance’ or ‘fulfillment of statutory and Constitutional responsibilities’ as among the ‘all appropriate factors’ for the Commission on Legislative, Judicial and Executive Compensation to ‘take into account’ – and this is a key ground upon which appellants’ sixth cause of action challenges the statute as unconstitutional, phrasing the issue as follows, in three paragraphs from appellants’ March 23, 2016 verified second supplemental complaint, followed by a new fourth paragraph [R.110-111]:

“400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are ‘appropriate factors’ for its consideration in making salary recommendations renders the statute unconstitutional, as written.’

65. As Judiciary Law §183-a statutorily links district attorney salaries with judicial salaries, the failure of the Commission statute to include an express provision requiring the Commission to take into account such ‘appropriate factor’ means that district attorneys become the beneficiary of judicial salary increase recommendations, without ANY evidence, or even claim, that existing district attorney salaries are inadequate – and, likewise, without ANY evidence, or even claim, that district attorneys are discharging their constitutional and statutory duties to enforce the penal law and that mechanisms to remove them for corruption are functional. Such additionally renders the

Commission statute unconstitutional, *as written.*" [underlining, italics, and capitalization in the original]."

One final observation is in order. Based upon the statement in the Compensation Committee's report (at p. 11, #7) that the recommended "force of law" salary increases for Executive Law §169 commissioners "will thus allow for other staff salaries to be increased accordingly", it would appear that the same will happen in attorney general's office, namely, that the recommended "force of law" salary increase for the attorney general will allow for increases in salaries for the attorney general's staff. This includes for the solicitor general, whose compensation is fixed by the attorney general, pursuant to Executive Law §61. As you will be returning to that position on January 1, 2018, upon the swearing-in of Attorney General-Elect Letitia James, please promptly advise how you will now address this further conflict of interest, afflicting you and, pursuant to Executive Law §62, other staff of the attorney general's office.

Once again, I ask that you respond personally, or by a high-ranking supervisory/managerial attorney, not via the complained-against Mr. Brodie.

Thank you.

Elena Sassower, unrepresented plaintiff-appellant

On her own behalf, on behalf of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York and the Public Interest.

914-421-1200

www.judgewatch.org

From: Brodie, Frederick <Frederick.Brodie@ag.ny.gov>
Sent: Monday, December 10, 2018 1:30 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Subject: CJA v. Cuomo, No. 527081

Dear Ms. Sassower and Center for Judicial Accountability, Inc.,

Attached is respondents' memorandum in opposition to your motion for disqualification and other relief in *CJA v. Cuomo*, No. 527081 (3d Dep't).

Very truly yours,

Frederick A. Brodie
Assistant Solicitor General
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