

Center for Judicial Accountability, Inc. (CJA)

From: Brodie, Frederick <Frederick.Brodie@ag.ny.gov>
Sent: Wednesday, June 27, 2018 10:35 AM
To: Center for Judicial Accountability, Inc. (CJA)
Cc: Paladino, Victor
Subject: RE: Status on this end -- appeal & OSC: CJA v. Cuomo, et al.
Attachments: Affidavits of Service.pdf

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
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Appeals & Opinions Bureau
The Capitol
Albany, NY 12224-0341
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Frederick.Brodie@ag.ny.gov

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, June 26, 2018 6:56 PM
To: Brodie, Frederick <Frederick.Brodie@ag.ny.gov>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>; Underwood, Barbara <Barbara.Underwood@ag.ny.gov>; Sabel, Janet <Janet.Sabel@ag.ny.gov>; Stauffer, Kent <Kent.Stauffer@ag.ny.gov>; Levine, Meg <Meg.Levine@ag.ny.gov>; Dvorin, Jeffrey <Jeffrey.Dvorin@ag.ny.gov>; Kerwin, Adrienne <Adrienne.Kerwin@ag.ny.gov>; Lynch, Helena <Helena.Lynch@ag.ny.gov>; Mahanna, Brian <Brian.Mahanna@ag.ny.gov>; Bragg, Alvin <Alvin.Bragg@ag.ny.gov>; Mack, Marty <Marty.Mack@ag.ny.gov>; Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Garnett, Margaret <Margaret.Garnett@ag.ny.gov>; Sheth, Manisha <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 14th, *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.