

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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July 7, 2016

TO: The 56 County Governments of New York State whose Judicially-Linked District Attorney Salaries are Paid from their County Budgets

ATT: County Boards of Supervisors & Boards of Legislators
County Executive Officers & Treasurers
County Attorneys

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

RE: HOW MANY COUNTIES WILL DO THEIR DUTY TO BLOW THE WHISTLE?: GOOD NEWS! You have overwhelming grounds upon which to repudiate and challenge this year's state-imposed district attorney salary increases – and it is your duty to your county's taxpayers to do so.

As you know, most of New York State's 62 counties do not set the salaries of their full-time county-elected district attorneys. Rather, their salaries are set by the state, which has linked them to judicial salaries (Judiciary Law §183-a).¹ On the whole, this has not affected the pocket-books of county taxpayers because the state subsidizes district attorney salary costs that county taxpayers would otherwise bear (County Law §700.10, §700.11). However, this year the state is not picking up the tab for the sizable increases in district attorney salaries for which the counties are liable – increases resulting from the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation for this year and the next three years. Indeed, notwithstanding the advocacy of the New York State Association of Counties (NYSAC) and the District Attorneys Association of the State of New York (DAASNY), no bill was passed by the Legislature to pick up the tab.

¹ All referred-to legal authorities, letters, and documentary evidence are accessible from CJA's webpage for this letter. Go to CJA's homepage, www.judgewatch.org, and click on its prominent center link "NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS – The Money Belongs to their Victims!" This leads to a menu page with a link entitled "HOW MANY D.A.s DOES IT TAKE TO CONFRONT EVIDENCE & ABIDE BY ETHICAL RULES?", posting the webpage for this letter. Here is it, directly: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/7-7-16-ltr-to-counties.htm>.

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

Should the counties count on the Legislature passing a bill to cover the increases to district attorney salaries for this year – and the next three? Absolutely not. The Legislature’s leadership and a significant swath of its rank-and-file have the evidentiary proof establishing that the December 24, 2015 report is a “false instrument”, violative of a succession of penal law provisions. As a matter of fact, the Legislature, Governor Cuomo, Attorney General Schneiderman, and Comptroller DiNapoli are all defendants in a citizen-taxpayer action, suing them for “grand larceny of the public fisc and other corrupt acts” with respect to the December 24, 2015 report – and with respect to the predecessor August 29, 2011 report of the Commission on Judicial Compensation. Both reports are flagrantly violative of the largely identical statutes pursuant to which they purport to be rendered, quite apart from being fraudulent and unconstitutional. This is why the citizen-taxpayer action, *Center for Judicial Accountability, Inc. v. Cuomo, et al.* (Albany Co. #1788-2014), which we brought, expressly, on behalf of the public interest and the People of the State of New York, seeks declarations voiding the reports. As for the posture of the case, it is one of summary judgment for the plaintiffs – as can be readily verified from the record, accessible from the homepage of CJA’s website, www.judgewatch.org.

Last week, we gave notice of this to the district attorney beneficiaries of the December 24, 2015 and August 11, 2011 reports, stating:

...it is the duty of each district attorney, upon verifying the facts and evidence...to apprise his/her county attorney, county legislative board, and county executive officer, that he/she is disavowing the salary increases arising from those reports, and to advise them to secure a judicial declaration to void the reports, including by filing an amicus curiae brief in CJA’s pending citizen-taxpayer action for such a declaration, CJA v. Cuomo, et al. (Albany Co. #1788-2014). For any district attorney to do otherwise and claim, let alone even accept, the salary increases, in face of prima facie proof that they are fraudulent and lawless, would make him/her complicit in the very penal law violations that are his/her duty to prosecute.” (at p. 4, underlining in the original).

Enclosed is a copy of that notice: our July 1, 2016 letter to the district attorneys, attached to our June 29, 2016 letter to DAASNY’s president, laying out the specifics: both the penal law violations and the evidentiary proof establishing them. As stated:

“should ANY of the district attorney beneficiaries of the August 29, 2011 and December 24, 2015 reports believe that [the identified evidentiary proof] is NOT dispositive of the duty they owe to the counties that elected them to repudiate the salary increases and to take steps to secure the voiding of the reports, they must come forward with their findings of fact and conclusions of law with respect to that evidence.” (at p. 4, capitalization and underlining in the original).

By this letter, we now give notice to the governments of the 56 counties whose judicially-linked district attorney salaries are paid from the county budgets. Do not subject yourselves to criminal liability, by aiding and abetting larceny of the public fisc and other brazen corruption. Your duty is to protect your county's tax dollars.

County Law §700, entitled "District attorney; powers and duties", states:

"1. ...it shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he or she shall have been elected or appointed;... He or she shall perform such additional and related duties as may be prescribed by law and directed by the board of supervisors." (underlining added).

Pursuant thereto, each county's board of supervisors – or board of legislators – must direct its district attorney to furnish findings of fact and conclusions of law with respect to the documentary evidence specified by CJA's June 29, 2016 letter as establishing the penal law violations. That way each will know, for a certainty, that the ONLY factual findings and legal conclusions possible are of fraud and unlawfulness – and that you must immediately withdraw any county authorization for payment of the district attorney salary increases that took effect on April 1, 2016, arising from the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and take steps to secure a judicial declaration voiding that report – and, indeed, the predecessor August 29, 2011 report. This can be accomplished, most expeditiously, by the counties intervening in our citizen-taxpayer action for that declaratory relief, as your 62 county attorneys would surely advise.²

Needless to say – and we expect you would agree – a district attorney who does not, on his own, recognize his duty to come forward with findings of fact and conclusions of law with respect to the evidence that his salary increases are founded on fraud and unlawfulness – in other words, who puts his own substantial pecuniary interests above his legal and ethical duties and the public he is sworn to serve – is engaged in official misconduct, unworthy of the public trust – and must be removed.

² Pursuant to County Law §501.1, the county attorneys are "the legal advisor(s) to the board of supervisors and every officer whose compensation is paid from county funds in all matters involving an official act of a civil nature." Like the district attorneys, the county attorneys are certainly qualified to make findings of fact and conclusions of law with regard to the evidence that the judicial salary increases on which the district salary increases rest are fraudulent and unlawful – and this, too, the boards of supervisors and legislators can direct their county attorneys to do (County Law §501.3).

Of course, it does not take a law degree to make the relevant factual findings – and non-lawyer county board members, executive officers, and fiscal officers can make them, easily. The statutory violations of the December 24, 2015 and August 29, 2011 reports are evident from comparing the face of each with the clear, unequivocal directives of the statutes. This can be accomplished within minutes, especially with the aid of CJA's own comparisons. Easy, too, is discerning the fraud that each report perpetrated by concealing the existence of citizen opposition, as to which neither made any findings of fact and conclusions of law – because, as is obvious, doing so would have precluded their indefensible judicial salary increase recommendations.

And shouldn't each county expect that its district attorneys will voluntarily answer questions as to how he runs his county-paid district attorney office in matters pertaining to public corruption? Aren't the list of questions that CJA furnished 2-1/2 years ago to the district attorney-stacked Commission to Investigate Public Corruption by a November 13, 2013 letter to Albany County District Attorney P. David Soares – and which our June 29, 2016 letter enclosed – not only fair and reasonable, but essential? Plainly, if your district attorneys do not answer them, voluntarily, your boards of supervisors and legislators must direct them to do so – expanding the list to include the specific questions whose answers, had they been given at any time previously, would have avoided the burden you are now facing:

- (1) whether, in their view, CJA's July 19, 2013 verified corruption complaint, filed with District Attorney Soares, which he was then "sitting on" and which he continues to "sit on":

“presents an open-and-shut, *prima facie* case of plunder of public monies, verification of which can be accomplished in minutes from comparison of the Commission on Judicial Compensation's August 29, 2011 'Final' Report and [CJA's] October 27, 2011 Opposition Report – as to which the Executive Summary to our Opposition Report provides a handy guide. (CJA's July 19, 2013 complaint, at p. 4, italics and underlining in the original)” [as quoted at p. 2 of CJA's November 13, 2013 letter];

- (2) Whether, in their view, CJA's January 7, 2014 (first) supplement and June 21, 2016 verified second supplement – which D.A. Soares is also "sitting on" – each also present open-and-shut, *prima facie* cases of plunder of public monies by their referred-to documentary evidence?;
- (3) How, in their view, the financial, political, and personal conflicts of interest presented by CJA's July 19, 2013 corruption complaint, January 7, 2014 supplement, and June 24, 2016 second supplement should be handled?; and
- (4) What are their own protocols and procedures for handling conflicts of interest?

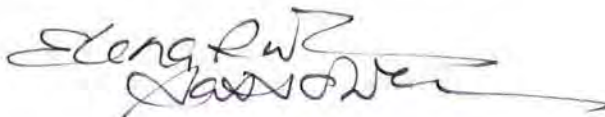
Finally, with respect to CJA's June 10, 2016 e-mail entitled "What are your positions? – beginning with repeal of the statutory link between D.A. and judicial salaries" – highlighted by our June 29, 2016 letter and enclosed with it – that e-mail was not addressed solely to DAASNY's president, but also to NYSAC's president and executive director.

As NYSAC takes its direction from the counties, won't you instruct NYSAC to respond to the June 10, 2016 e-mail so that your organizational voice may be heard with respect to its questions? This, over and beyond each county responding on its own behalf.

I am available – and eager – to assist you and to answer such questions as you may have, including under oath. The counties can play a heroic role in restoring a constitutionally-functioning state government, ending the corrupt cesspool chronicled by the *CJA v. Cuomo, et al* citizen taxpayer action. It starts with one whistle-blowing county – indeed, with one whistle-blowing member of the county boards, one county treasurer, or one county attorney, doing nothing more extraordinary than what his duty compels: obeying the law and ethical rules, including as to reporting corruption.³ The rest will follow suit, if for no other reason than to avoid criminal liability, under the penal law, as accomplices and co-conspirators.

The courtesy of your responses, beginning with your findings of fact and conclusions of law, by July 30, 2016 would be greatly appreciated.

Thank you.



Enclosures: CJA's July 1, 2016 letter to all district attorneys (1 page),
with its attached June 29, 2016 letter to DAASNY's president (8 pages)
plus 2 of its 3 enclosures: CJA's November 13, 2013 letter to D.A. Soares
& CJA's June 10, 2016 e-mail to NYSAC & DAASNY

(everything else accessible via webpage for this letter:

<http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/7-7-16-ltr-to-counties.htm>)

cc: The 5 counties of the City of New York
New York State's least populous Hamilton County, with the only part-time district attorney
New York State Association of Counties (NYSAC)
New York State's 62 district attorneys – & their district attorneys' association (DAASNY)
Senate & Assembly leadership, including committee chairs & ranking members, etc.
New York State Law Revision Commission
U.S. Attorney for the Southern District of New York Preet Bharara
U.S. Attorney for the Northern District of New York Richard Hartunian

³ See, *inter alia*, New York's Rules for Professional Conduct, Rule 8.3(a) "Reporting Professional Misconduct":

"A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation."