

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

March 6, 2018

TO: Attorney Grievance Committee for the Third Judicial Department

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

RE: Supplement to CJA's still pending July 28, 2017 reconsideration request or, alternatively, a new conflict-of-interest/misconduct complaint against Albany County District Attorney P. David Soares and his fellow district attorneys, current and former, within the Committee's jurisdiction.

This follows my phone conversation with staff investigator Joe Leonard, on January 31, 2018, inquiring as to the status of my July 28, 2017 request for reconsideration of the dismissal of my October 14, 2016 conflict-of-interest/misconduct complaint against Albany County District Attorney P. David Soares, his "Public Integrity Unit" Chief, and 29 other district attorneys, current and former – a dismissal made by Chief Attorney Monica Duffy, *without* investigation and *without* presentment to the members of the Third Department's Attorney Disciplinary Committee, 8-1/2 months after I had filed the complaint.<sup>1</sup>

Mr. Leonard stated that my July 28, 2017 reconsideration request was still open. I responded that I would be sending correspondence relevant thereto – summarizing what had occurred the day before at the Legislature's budget hearing on "public protection" at which both District Attorney Soares and I had testified.

This is that correspondence – which I ask be deemed either a supplement to my July 28, 2017 reconsideration request – or a new conflict-of-interest/misconduct complaint against District Attorney Soares and his fellow current and former district attorneys.

As you know, the gravamen of the October 14, 2016 complaint is that since 2013 District Attorney Soares has been "sitting on" three corruption complaints against, *inter alia*, Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, the Legislature, and Chief Judge for

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<sup>1</sup> CJA's webpage for the October 14, 2016 complaint to the Third Department Attorney Grievance Committee and subsequent correspondence thereon – including this letter and the substantiating EVIDENCE to which it refers – is accessible *via* the side panel "Searching for Champions-NYS", which brings up a menu page for New York's court-controlled attorney disciplinary committees. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/oct-14-2016-district-attorney-complaint/3rd-dept.htm>.

“grand larceny of the public fisc” with respect to the state budget because of conflicts of interest. The most direct and disqualifying is his financial interest in the August 29, 2011 report of the Commission on Judicial Compensation and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – on which district attorney salary increases rest. The gravamen of the October 14, 2016 complaint against the 29 other district attorneys is that because they have the same financial interest in the August 29, 2011 and December 24, 2015 commission reports, they are aiding and abetting District Attorney Soares’ nonfeasance.

The October 14, 2016 complaint described the financial conflict as follows:

“...the financial interest of D.A. Soares and his fellow district attorneys in the three corruption complaints is HUGE. Since 2012, as a result of the August 29, 2011 report of the Commission on Judicial Compensation, the yearly salary of each district attorney has risen nearly \$40,000. Now, with the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, their yearly salaries rise by another \$19,000 – and in some cases considerably more. And, it doesn’t end there. Based on the December 24, 2015 report, their yearly salaries will likely go up next year to reflect a cost-of-living increase and then, as of April 1, 2018, will be upped another \$10,000, with a likely further cost-of-living increase the following year.

As a consequence, exposing the penal law violations represented by these two commission reports would mean that the yearly salary of each district attorney would take a nearly \$60,000 nosedive. On top of that, there would be a ‘claw-back’ of the salary increases each district attorney received since April 1, 2012 – approximately \$100,000 to date – plus tens of thousands of additional dollars from salary-based non-salary benefits, such as pensions.” (at pp. 5-6).

On January 30, 2018, District Attorney Soares, who is president-elect of the District Attorneys Association of the State of New York (DAASNY), appeared before the Legislature at its January 30, 2018 budget hearing on “public protection”. Without disclosing that he has been “sitting on” corruption complaints pertaining to the August 29, 2011 and December 24, 2015 commission reports, he furnished legislators with a written summary of DAASNY’s budget request to the Governor for fiscal year 2018-2019. Among the “key items” it identified:

“.. An additional \$1.7 million for reimbursement to counties for District Attorney Salaries already voted for in 2015 by the New York State Commission on Legislative Judicial and Executive Compensation” (Exhibit A-1, at p. 1).

An October 16, 2017 letter to Governor Cuomo, on DAASNY’s letterhead, was annexed to the summary, furnishing the following amplification:



“District Attorney Salary Reimbursement Program

In December 2015, the New York State Commission on Legislative, Judicial and Executive Compensation voted to increase the salaries of New York State judges. State Judicial Law 183-a requires that a District Attorney's salary match the County Court Judge or Supreme Court Judge in a county depending on the population of that county. In the last two State budgets, the legislature did not allocate funding to help counties meet the District Attorney salary increases that were tied by statute to judicial salary increases. Cash-strapped counties were reluctant to pay for that unfunded mandate. As a result, not all District Attorneys are being paid what the law requires them to be paid for their services and they are in a political quandary if they demand what is rightfully owed to them by statute. With due consideration to this new and ongoing financial obligation, it is essential that the budget be modified to provide this support.

In 2017-2018, \$4.2 million was appropriated to salary reimbursement. For the 2018-2019 budget years we strongly request increasing the funding by \$1.7 million to cover the salary increase. This would bring total funding to \$5.9 million.” (Exhibit A-2, at p. 3).

As established by the October 14, 2016 complaint – including its Exhibits C, D, E, and F – District Attorney Soares and DAASNY have had the EVIDENCE that the December 24, 2015 commission report is “a false instrument”, since June 2016 – the accuracy of which they have never denied or disputed. This includes the EVIDENCE, *verifiable within minutes*, that the December 24, 2015 commission report must be voided because it violates the very statute pursuant to which it purports to be rendered, laid out by the fifteenth cause of action of CJA’s March 23, 2016 verified second supplemental complaint in our first citizen-taxpayer action (¶¶453-457—Exhibit B) and by the eighth cause of action of CJA’s September 2, 2016 verified complaint in our second citizen-taxpayer action (¶¶77-80 – Exhibit C). Nor have they denied or disputed that the state of the record, with respect to those causes of action establishes CJA’s entitlement to summary judgment, *as a matter of law*.

Under such circumstances, by affirmatively seeking the salary benefits of a commission report they know to be statutorily-violative and a “false instrument” by reason thereof – quite apart from its other frauds – District Attorney Soares and DAASNY not only violated ethical codes of professional responsibility pertaining to honesty and proscribing self-dealing, but violated the very penal laws recited by the October 14, 2016 complaint as germane to the December 24, 2015 report:

Penal Law §175.35 (“offering a false instrument for filing in the first degree”);  
Penal Law §155.42 (“grand larceny in the first degree”);  
Penal Law §190.65 (“scheme to defraud in the first degree”);  
Penal Law §195.20 (“defrauding the government”);  
Penal Law §195 (“official misconduct”);  
Penal Law §105.15 (“conspiracy in the second degree”);  
Penal Law §20.00 (“criminal liability for conduct of another”); and,



most significantly, Penal Law §496 (“corrupting the government”) – part of the “Public Trust Act”, whose importance was the pretext for Governor Cuomo’s establishing the Commission to Investigate Public Corruption, in July 2013 and for shutting it down, in March 2014, as part of a behind-closed-doors “three men in a room” budget deal.

District Attorney Soares’ concluding words to the legislators at the January 30, 2018 hearing were:

“If you ever need anybody to serve as a witness for you, that you all work very hard, please call me”.

So flabbergasted was I by this proffered testimonial that I rose from my seat and intercepted him as he was exiting the hearing room. Reminding him that the corruption complaints he has been “sitting on” since 2013 document the legislators’ corruption with respect to the state budget and the commission reports raising judicial and district attorney salaries, I handed him a copy of my written statement in support of the testimony I would be giving at the budget hearing. Such furnished him with an update of where matters stood as a result of his inaction on the corruption complaints, namely, the constitutional, statutory, and rule violations and fraud, chronicled by CJA’s citizen-taxpayer actions with respect to the budget for fiscal years 2014-2015, 2015-2016, 2016-2017, 2017-2018, were repeating with respect to the budget for fiscal year 2018-2019 – with the second citizen-taxpayer action, like the first, having been torpedoed by a “double whammy” of litigation fraud by Attorney General Schneiderman and fraudulent judicial decisions.

It would be three hours later before I would testify, as the last witness at the January 30, 2018 budget hearing on “public protection” – giving testimony establishing the legislators’ collusion in the Judiciary’s fraudulent and larcenous fiscal year 2018-2019 budget, including as demonstrated by the appearance of Chief Administrative Judge Lawrence Marks, as their first witness. My concluding words were as follows:

“The Center’s website is [www.judgewatch.org](http://www.judgewatch.org) and from the prominent center link entitled ‘Outing Corrupt & Collusive Incumbents & Ending their Road to Re-election & Higher Office – with Evidence’ is posted the ‘2018 Legislative Session’ and clicking on that the public can see what a charade this hearing was, that you allowed, you didn’t, the public can see the kinds of questions that you did not see fit to ask of the Judiciary.

There is no excellence in the Judiciary. The Judiciary is as dishonest in its budget as it is in its decisions. The Judiciary is throwing cases. That includes the lawsuit against you, suing you for your corruption with respect to the budget.

I leave with you, my time is up, I leave with you the evidence: the judicial misconduct complaint filed with the Commission on Judicial Conduct against the judge and the complaint filed against Attorney General Schneiderman, who is your co-defendant and has represented you with litigation fraud because you had no defense to any of the causes of action. Cases are perfect paper trails –”

Senator Krueger: “Thank you.”

“Last thing I will say is that DA Soares has been sitting on a corruption complaint involving what you have been doing with respect to the budget since 2013 and that is also the subject of a misconduct complaint filed with the Attorney Grievance Committees.”

Indeed, not only did I leave with the legislators a copy of my June 16, 2017 complaint against Acting Supreme Court Justice Denise Hartman, filed with the Commission on Judicial Conduct – and the record thereon – and a copy of my September 16, 2017 complaint against Attorney General Schneiderman and his culpable staff attorneys, filed with you – and the record thereon – but ALSO a copy of my October 14, 2016 complaint against District Attorney Soares, filed with you – and the record thereon.

Additionally, I furnished the legislators with a copy of the EVIDENCE they have long had, including as part of CJA’s citizen-taxpayer actions, establishing that the December 24, 2015 commission report and August 29, 2011 commission report on which it rests are “false instruments”, violative of the very statutes pursuant to which they purport to be rendered and fraudulent, *to wit*:

- CJA’s December 31, 2015 letter to then New York Chief Judge Nominee/Westchester District Attorney Janet DeFiore<sup>2</sup>;
- CJA’s January 15, 2016 letter to Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie, including its 12-page statement of particulars as to why the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation had to be voided<sup>3</sup>;
- CJA’s October 27, 2011 opposition report to the Commission on Judicial Compensation’s August 29, 2011 report (w/o exhibits);
- CJA’s executive summary to the October 27, 2011 opposition report.

This is EVIDENCE that District Attorney Soares and his fellow district attorneys have also long had – and my October 14, 2016 complaint against them so-reflects.

As there is NO explanation for Chief Attorney Duffy’s inordinately delayed and indefensible dismissal of my October 14, 2016 complaint and for the inordinate delay in determining my July 28,

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<sup>2</sup> Exhibit 37 to CJA’s March 23, 2016 verified second supplemental complaint in the first citizen-taxpayer action (*see, inter alia*, ¶¶274-276 thereof).

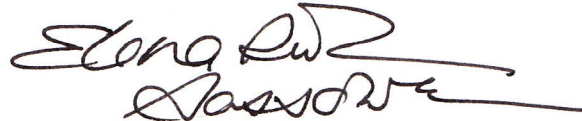
<sup>3</sup> Exhibit 40 to CJA’s March 23, 2016 verified second supplemental complaint in the first citizen-taxpayer action (*see, inter alia*, ¶455).



2017 reconsideration request – whose merit is readily apparent – and, likewise, the inordinate delay in determining my separate, but related, September 16, 2017 complaint against Attorney General Schneiderman’s staff attorneys other than actual bias, born of the fact that Chief Attorney Duffy and the Committee chair and members are all court-appointed, with relationships and interests that would be adversely impacted by proper determination of the complaints, I reiterate my request for disclosure and disqualification.

Meantime, enclosed is the new corruption complaint I am initiating with District Attorney Soares, seeking enforcement of “The Public Trust Act” – Penal Law §496 (“corrupting the government”) – as to which his duty, as with my prior three corruption complaints that he is “sitting on”, is to disqualify himself and secure appointment of a special prosecutor.

Thank you.

A handwritten signature in black ink, appearing to read "Eric Galarneau". The signature is stylized with a large, sweeping initial "E" and a long horizontal flourish at the end.

Enclosure: March 6, 2018 corruption complaint to Albany County District Attorney Soares

cc: Albany County District Attorney Soares  
& his Public Integrity Unit Bureau Chief Assistant District Attorney Eric Galarneau