

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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### BY E-MAIL

September 6, 2019

TO: FOIL/Records Access Officers:  
Executive Chamber Records Access Officer Valerie Lubanko  
Secretary of the Senate Alejandra Paulino  
Assembly Records Access Officer Robin Marilla  
Office of Court Administration Records Access Officer Shawn Kerby

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

RE: FOIL/Records Request:  
AGAIN – 2019 Commission on Legislative, Judicial and Executive Compensation –  
(Chapter 60, Part E, of the Laws of 2015)

Following up my June 10, 2019 FOIL records request – and my discovery, today, from the Unified Court System’s website, <http://www.nycourts.gov/>, of the enclosed August 15, 2019 press release announcing Chief Judge Janet DeFiore’s appointment of two members to the Commission on Legislative, Judicial and Executive Compensation – including its chair – this is to AGAIN request<sup>1</sup> all publicly-available records reflecting that the Commission has been fully-appointed and is operational – and, specifically:

- (1) records of Governor Andrew Cuomo’s appointment of three commissioners – especially letters of appointment and public announcements or press releases with respect thereto;
- (2) records of Temporary Senate President Andrea Stewart-Cousins’ appointment of one commissioner – especially a letter of appointment and public announcement or press release with respect thereto;
- (3) records reflecting Assembly Speaker Carl Heastie’s appointment of one commissioner – especially a letter of appointment and public announcement or press release with respect thereto;

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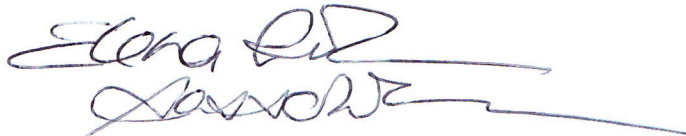
<sup>1</sup> Pursuant to Public Officers Law Article VI [Freedom of Information Law (F.O.I.L.)], Senate Rule XIV [“Freedom of Information”], Assembly Rule VIII [“Public Access to Records”], and §124 of the Chief Administrator’s Rules.

- (4) Chief Judge DiFiore's letters to Michael Cardozo, Esq. and Randall Eng, Esq., appointing them to the Commission, designating Mr. Cardozo as its chair, and advising them of any requirements for their service, such as an oath of office and requirement for its filing;
- (5) records establishing the interpretation intended by §3.1, *to wit*, whether the Commission's chair is to be designated by the Chief Judge from among her two appointees or whether such designation is to be made by the seven appointed commissioners or by the Commission's four appointing authorities;
- (6) records of the Commission's funding, staffing, office address, phone number, e-mail, and website for discharging its statutory duties.

Once again, for your convenience, a copy of Chapter 60, Part E, of the Laws of 2015 is enclosed.

Pursuant to Public Officers Law §89.3, your response is required "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.

A handwritten signature in blue ink, appearing to read "Elena DiFiore". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Enclosures (2)

cc: The Public & Press, on its Behalf



# PRESS RELEASE

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**New York State  
Unified Court System**

**Hon. Lawrence K. Marks  
Chief Administrative Judge**

**Contact:  
Lucian Chalfen,  
Public Information Director  
Arlene Hackel, Deputy Director  
(212) 428-2500**

[www.nycourts.gov/press](http://www.nycourts.gov/press)

**Date: August 15, 2019**

## **Chief Judge Announces Compensation Commission Appointees**

**NEW YORK**—Chief Judge Janet DiFiore has appointed Michael A. Cardozo, Esq. and Hon. Randall T. Eng to the New York State Commission on Legislative, Judicial and Executive Compensation, an independent statutory body established every four years to examine and make recommendations regarding appropriate levels of salary compensation for New York State’s judges, state legislators and statewide elected officials. The Commission is made up of seven appointed members—three designated by the Governor, two by the Chief Judge, one by the President of the Senate and one by the Speaker of the Assembly. Mr. Cardozo will serve as Chair of the Commission.

“We are most fortunate to have two such highly esteemed, accomplished individuals to assume these important posts. Each brings tremendous expertise, wisdom and integrity to the critical work of the Commission,” said Chief Judge DiFiore.

Michael A. Cardozo is a litigation partner at Proskauer Rose LLP and former New York City Corporation Counsel who has vast experience in the workings of the New York State court system. He presently sits on the boards of Citizen’s Union and Sanctuary for Families. Mr. Cardozo previously served as President of the New York City Bar Association, as chair of both the Fund for Modern Courts and the Columbia Law School Board of Visitors, and as head of two court system task forces.



Justice Eng is Of Counsel to Meyer, Suozzi, English & Klein, P.C., and a member of the Litigation Department. Previously, he served as Presiding Justice of the Appellate Division, Second Department. Early in his legal career, he was an Assistant District Attorney in Queens County. He later served as Inspector General of the New York City Correction Department. In 1983, he became the first Asian-American judge in New York State, upon his appointment to the New York City Criminal Court bench. He was subsequently designated an Acting State Supreme Court Justice, and later elected and re-elected to terms on the State Supreme Court bench. He also served as Administrative Judge of Queens County's Supreme Court-Criminal Term. He is a former President of the Association of Supreme Court Justices of the City of New York.

# # #

## PART E

1  
2 Section 1. Chapter 567 of the laws of 2010 relating to establishing a  
3 special commission on compensation, and providing for their powers and  
4 duties; and to provide periodic salary increases to state officers is  
5 REPEALED.

6 § 2. 1. On the first of June of every fourth year, commencing June 1,  
7 2015, there shall be established a commission on legislative, judicial  
8 and executive compensation to examine, evaluate and make recommendations  
9 with respect to adequate levels of compensation and non-salary benefits  
10 for members of the legislature, judges and justices of the state-paid  
11 courts of the unified court system, statewide elected officials, and  
12 those state officers referred to in section 169 of the executive law.

13 2. (a) In accordance with the provisions of this section, the commis-  
14 sion shall examine: (1) the prevailing adequacy of pay levels and other  
15 non-salary benefits received by members of the legislature, statewide  
16 elected officials, and those state officers referred to in section 169  
17 of the executive law; and

18 (2) the prevailing adequacy of pay levels and non-salary benefits  
19 received by the judges and justices of the state-paid courts of the  
20 unified court system and housing judges of the civil court of the city  
21 of New York and determine whether any of such pay levels warrant adjust-  
22 ment; and

23 (b) The commission shall determine whether: (1) for any of the four  
24 years commencing on the first of April of such years, following the year  
25 in which the commission is established, the annual salaries for the  
26 judges and justices of the state-paid courts of the unified court system  
27 and housing judges of the civil court of the city of New York warrant an  
28 increase; and

29 (2) on the first of January after the November general election at  
30 which members of the state legislature are elected following the year in  
31 which the commission is established, and on the first of January follow-  
32 ing the next such election, the like annual salaries and allowances of  
33 members of the legislature, and salaries of statewide elected officials  
34 and state officers referred to in section 169 of the executive law  
35 warrant an increase.

36 3. In discharging its responsibilities under subdivision two of this  
37 section, the commission shall take into account all appropriate factors  
38 including, but not limited to: the overall economic climate; rates of  
39 inflation; changes in public-sector spending; the levels of compensation  
40 and non-salary benefits received by executive branch officials and  
41 legislators of other states and of the federal government; the levels of  
42 compensation and non-salary benefits received by professionals in  
43 government, academia and private and nonprofit enterprise; and the  
44 state's ability to fund increases in compensation and non-salary bene-  
45 fits.

46 § 3. 1. The commission shall consist of seven members to be appointed  
47 as follows: three shall be appointed by the governor; one shall be  
48 appointed by the temporary president of the senate; one shall be  
49 appointed by the speaker of the assembly; and two shall be appointed by  
50 the chief judge of the state, one of whom shall serve as chair of the  
51 commission. With regard to any matters regarding legislative or execu-  
52 tive compensation, the chair shall preside but not vote. Vacancies in  
53 the commission shall be filled in the same manner as original appoint-  
54 ments. To the extent practicable, members of the commission shall have





1 experience in one or more of the following: determination of executive  
2 compensation, human resource administration or financial management.

3 2. The commission shall only meet within the state, may hold public  
4 hearings, at least one of which shall be open for the public to provide  
5 comments and shall have all the powers of a legislative committee pursu-  
6 ant to the legislative law. It shall be governed by articles 6, 6-A and  
7 7 of the public officers law.

8 3. The members of the commission shall receive no compensation for  
9 their services but shall be allowed their actual and necessary expenses  
10 incurred in the performance of their duties hereunder.

11 4. No member of the commission shall be disqualified from holding any  
12 other public office or employment, nor shall he or she forfeit any such  
13 office or employment by reason of his or her appointment pursuant to  
14 this section, notwithstanding the provisions of any general, special or  
15 local law, regulation, ordinance or city charter.

16 5. To the maximum extent feasible, the commission shall be entitled to  
17 request and receive and shall utilize and be provided with such facili-  
18 ties, resources and data of any court, department, division, board,  
19 bureau, commission, agency or public authority of the state or any poli-  
20 tical subdivision thereof as it may reasonably request to carry out  
21 properly its powers and duties pursuant to this section.

22 6. The commission may request, and shall receive, reasonable assist-  
23 ance from state agency personnel as necessary for the performance of its  
24 function.

25 7. The commission shall make a report to the governor, the legisla-  
26 ture and the chief judge of the state of its findings, conclusions,  
27 determinations and recommendations, if any, not later than the thirty-  
28 first of December of the year in which the commission is established for  
29 judicial compensation and the fifteenth of November the following year  
30 for legislative and executive compensation. Any findings, conclusions,  
31 determinations and recommendations in the report must be adopted by a  
32 majority vote of the commission and findings, conclusions, determi-  
33 nations and recommendations with respect to executive and legislative  
34 compensation shall also be supported by at least one member appointed by  
35 each appointing authority. Each recommendation made to implement a  
36 determination pursuant to section two of this act shall have the force  
37 of law, and shall supersede, where appropriate, inconsistent provisions  
38 of article 7-B of the judiciary law, section 169 of the executive law,  
39 and sections 5 and 5-a of the legislative law, unless modified or abro-  
40 gated by statute prior to April first of the year as to which such  
41 determination applies to judicial compensation and January first of the  
42 year as to which such determination applies to legislative and executive  
43 compensation.

44 8. Upon the making of its report as provided in subdivision seven of  
45 this section, each commission established pursuant to this section shall  
46 be deemed dissolved.

47 § 4. Date of entitlement to salary increase. Notwithstanding the  
48 provisions of this act or of any other law, each increase in salary or  
49 compensation of any officer or employee provided by this act shall be  
50 added to the salary or compensation of such officer or employee at the  
51 beginning of that payroll period the first day of which is nearest to  
52 the effective date of such increase as provided in this act, or at the  
53 beginning of the earlier of two payroll periods the first days of which  
54 are nearest but equally near to the effective date of such increase as  
55 provided in this act; provided, however, the payment of such salary  
56 increase pursuant to this section on a date prior thereto instead of on



1 such effective date, shall not operate to confer any additional salary  
2 rights or benefits on such officer or employee. The annual salaries as  
3 prescribed pursuant to this act whenever adjusted pursuant to the  
4 provisions of this act, shall be rounded up to the nearest multiple of  
5 one hundred dollars.

6 § 5. This act shall take effect immediately and shall be deemed to  
7 have been in full force and effect on and after April 1, 2015.

8 PART F

9 Section 1. This act shall be known and may be cited as the "Infras-  
10 tructure investment act".

11 § 2. For the purposes of this act:

12 (a) "authorized state entity" shall mean the New York state thruway  
13 authority, the department of transportation, the office of parks, recre-  
14 ation and historic preservation, the department of environmental conser-  
15 vation and the New York state bridge authority.

16 (b) "best value" shall mean the basis for awarding contracts for  
17 services to the offerer that optimize quality, cost and efficiency,  
18 price and performance criteria, which may include, but is not limited  
19 to:

- 20 1. The quality of the contractor's performance on previous projects;
- 21 2. The timeliness of the contractor's performance on previous  
22 projects;
- 23 3. The level of customer satisfaction with the contractor's perform-  
24 ance on previous projects;
- 25 4. The contractor's record of performing previous projects on budget  
26 and ability to minimize cost overruns;
- 27 5. The contractor's ability to limit change orders;
- 28 6. The contractor's ability to prepare appropriate project plans;
- 29 7. The contractor's technical capacities;
- 30 8. The individual qualifications of the contractor's key personnel;
- 31 9. The contractor's ability to assess and manage risk and minimize  
32 risk impact; and
- 33 10. The contractor's past record of compliance with article 15-A of  
34 the executive law.

35 Such basis shall reflect, wherever possible, objective and quantifi-  
36 able analysis.

37 (c) "capital project" shall have the same meaning as such term is  
38 defined by subdivision 2-a of section 2 of the state finance law.

39 (d) "cost plus" shall mean compensating a contractor for the cost to  
40 complete a contract by reimbursing actual costs for labor, equipment and  
41 materials plus an additional amount for overhead and profit.

42 (e) "design-build contract" shall mean a contract for the design and  
43 construction of a capital project with a single entity, which may be a  
44 team comprised of separate entities.

45 (f) "procurement record" means documentation of the decisions made and  
46 the approach taken in the procurement process.

47 § 3. Notwithstanding the provisions of section 38 of the highway law,  
48 section 136-a of the state finance law, section 359 of the public  
49 authorities law, section 7210 of the education law, and the provisions  
50 of any other law to the contrary, and in conformity with the require-  
51 ments of this act, an authorized state entity may utilize the alterna-  
52 tive delivery method referred to as design-build contracts, in consulta-  
53 tion with relevant local labor organizations and construction industry,  
54 for capital projects related to the state's physical infrastructure,