

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Friday, May 14, 2021 10:46 AM  
**To:** 'Robin Marilla'  
**Cc:** 'Theresa Klein-Franke'  
**Subject:** FOIL APPEAL: Assembly's May 13, 2021 response to CJA's March 22, 2021 FOIL request for records pertaining to the retention of Davis Polk & Wardwell LLP for the Assembly's impeachment investigation of Gov. Cuomo  
**Attachments:** 5-13-21-assembly-response.pdf; Fully Executed Copy of Davis Polk Contract (1).pdf; aug2013-justification-of-contract.pdf

### TO: Assembly Records Access Officer Robin Marilla

I hereby appeal your above-attached May 13, 2021 letter, enclosing a pdf entitled "Fully Executed Copy of Davis Polk Contract (1)", in response to my below March 22, 2021 FOIL/records request.

Entirely missing are any "(1) records establishing the 'vigorous search for a top-flight firm to assist with the investigation' undertaken by Chair Lavine". Presumably, the Comptroller required such records BEFORE approving the contract – on May 12, 2021 – putting his imprimatur on compensation rates of \$600 per hour for partners and associates and \$250 per hour for paralegals (paragraph A.2) – for a maximum \$250,000 payment under the contract for a year period spanning from March 17, 2021 to March 16, 2022 (paragraphs A.3; A.1).

At very least, isn't there a "Justification for Contract"? Illustrative is the above-attached "Justification for Contract between the New York State Assembly and Kasowitz Benson Torres Friedman LLP", stating, *inter alia*, with respect to a contract (#C111945) signed in August 2013:

"Several law firms were considered by the Assembly. ... The firm has agreed to offer the Assembly a reduced hourly rate of Two Hundred Eighty-Five Dollars (\$285.00). This is a reasonable market rate for the Albany area and comparable to recently approved contracts for outside counsel. The Assembly does not currently have any on-going contracts with this law firm."

As for the contract itself (#C600004), not signed until April 20, 2021 by a "Partner" of Davis Polk & Wardwell, LLP, nor signed until April 21, 2021 by "Admin Counsel" of the Assembly – and not approved by the Comptroller's office until May 12, 2021 – it may be presumed that Davis Polk & Wardwell, LLP did NOT commence work on March 17, 2021 without the protections of some prior written agreement – and such may be inferred from paragraph Q stating:

"This written Agreement contains the sole and entire Agreement between the parties and shall supersede any and all other Agreements between the parties." (underlining added).

Consistent with my March 22, 201 FOIL/records request, this is to request such "other Agreements between the parties" – as well as any additional written agreements and documents between the parties pursuant to paragraphs P and R, and particularly bearing upon the scope of what paragraph A.1 vaguely identifies as:

"to assist the Judiciary Committee in conducting an investigation into the allegations against Governor Andrew Cuomo that may be the basis of articles of impeachment and assist in any proceedings in the Assembly or other body based on or related to those investigations." (underlining added).

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Thursday, April 29, 2021 9:56 AM  
**To:** 'marillar@nyassembly.gov' <[marillar@nyassembly.gov](mailto:marillar@nyassembly.gov)>; 'FOIL@osc.ny.gov' <[FOIL@osc.ny.gov](mailto:FOIL@osc.ny.gov)>  
**Cc:** 'Theresa Klein-Franke' <[kleinfranket@nyassembly.gov](mailto:kleinfranket@nyassembly.gov)>

**Subject: IMMEDIATE ATTENTION REQUIRED -- FOIL/records request -- retention of Davis Polk & Wardwell LLP for Assembly's impeachment investigation of Gov. Cuomo**

**Assembly Records Access Officer Robin Marilla**  
**Comptroller DiNapoli's Records Access Officer Jane Hall**

I have no record of any response to the below March 22, 2021 FOIL/records request pertaining to the retention of Davis Polk & Wardwell LLP for the Assembly's impeachment investigation of Gov. Cuomo, other than the above attached March 29<sup>th</sup> acknowledgment from the Assembly.

Please advise, IMMEDIATELY.

Thank you.

Elena Sassower, Director  
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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Monday, March 22, 2021 3:06 PM  
**To:** 'marillar@nyassembly.gov' <[marillar@nyassembly.gov](mailto:marillar@nyassembly.gov)>; 'kleinft@nyassembly.gov' <[kleinft@nyassembly.gov](mailto:kleinft@nyassembly.gov)>; 'Theresa Klein-Franke' <[kleinfranket@nyassembly.gov](mailto:kleinfranket@nyassembly.gov)>; 'FOIL@osc.ny.gov' <[FOIL@osc.ny.gov](mailto:FOIL@osc.ny.gov)>

**Subject: FOIL/records request -- retention of Davis Polk & Wardwell LLP for Assembly's impeachment investigation of Gov. Cuomo**

**Assembly Records Access Officer Robin Marilla**  
**Comptroller DiNapoli's Records Access Officer Jane Hall**

Pursuant to Assembly Rule VIII, "Public Access to Records", and Public Officers Law Article VI ("Freedom of Information"), please furnish all publicly available records pertaining to the retention of the law firm Davis Polk & Wardwell, LLP, announced by the Assembly's March 17, 2021 press release "[Speaker Heastie and Judiciary Committee Chair Lavine Announce the Hiring of Davis Polk and Wardwell LLP to Lead Impeachment Investigation of Governor's Conduct](#)", including: (1) records establishing the "vigorous search for a top-flight firm to assist with the investigation" undertaken by Chair Lavine; (2) the contract specifying the basis for the retention, its scope – and the cost; and (3) approval by the Comptroller.

Thank you.

Elena Sassower, Director  
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