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BY HAND

December 31, 2015

TO: NY Court of Appeals Chief Judge Nominee/
Westchester County District Attorney Janet DiFiore

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

RE: So, You Want to Be New York's Chief Judge? – Here's Your Test:
Will You Safeguard the People of the State of New York – & the Public Fisc?
(1) The Commission on Judicial Compensation's August 29, 2011 Report;
(2) The Commission on Legislative, Judicial and Executive Compensation's
December 24, 2015 Report;
(3) The Judiciary budgets – including for fiscal year 2016-2017

Our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), congratulates you on your nomination as Chief Judge of the New York Court of Appeals and of the New York court system. We consider it most fortunate that Governor Cuomo has selected a district attorney as it means our new top judge will have an expertise in New York's penal law, including such felonies as "offering a false instrument for filing in the first degree" (§175.35), "grand larceny in the first degree" (§155.42), "scheme to defraud in the first degree" (§190.65), "defrauding the government" (§195.20), and the class A misdemeanor "official misconduct" (§195).

Then, too, there is the "Public Trust Act", whose passage, as part of Governor Cuomo's behind-closed-doors, three-men-in-a-room budget deal in March 2014 with then Temporary Senate President Skelos and then Assembly Speaker Silver, was the pretext for his shut-down of the Commission to Investigate Public Corruption. It created the felony crime "Corrupting the Government" – Penal Law §496 – especially relevant to the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and the further judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, and to the Judiciary budget – all subjects of this letter.



* 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.

37 to March 23, 2016 verified second supplemental complaint in 1st citizen taxpayer action R.135-225

Because district attorney salaries are statutorily-linked to judicial salaries (Judiciary Law §1[83]-a), you have been a beneficiary of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report. That is why, in 2012, your \$136,700 salary was increased to \$160,000 and then, in 2013, increased to \$167,000 and then, in 2014, increased again to \$174,000. It is also why, upon becoming Chief Judge, you again will be a beneficiary of the August 29, 2011 Report: your salary as Chief Judge will be \$198,600, not the \$156,000 it was in 2011.

In the event you are unaware, the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and all the related costs, including the increases in district attorney salaries – are “ill-gotten gains’, stolen from the taxpayers”. And proving this, resoundingly, is CJA's October 27, 2011 Opposition Report, detailing the fraudulence, statutory-violations, and unconstitutionality of the August 29, 2011 Report. Addressed to the Commission's four appointing authorities – Governor Cuomo, then Temporary Senate President Skelos, then Assembly Speaker Silver, and Chief Judge Lippman – the Opposition Report expressly called upon them to take the following four steps to protect the public:

- (1) legislation voiding the Commission's judicial pay raise recommendations;
- (2) repeal of the statute creating the Commission;
- (3) referral of the Commissioners to criminal authorities for prosecution;
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Yet they took no steps. Indeed, they did not even respond – and their inaction and the collusion therein of Attorney General Schneiderman and Comptroller DiNapoli, “motivated by a scheme to also raise legislative and executive salaries”¹, gave rise to a declaratory judgment action against all of them, *CJA v. Cuomo, et al.*, which we commenced in March 2012, on behalf of the People of the State of New York and the public interest.

What became of that lawsuit? For the past three years it has been in limbo, sitting on a shelf in the Clerk's Office in Supreme Court/New York County after the original verified complaint and all exhibits – including the October 27, 2011 Opposition Report – went missing upon being fraudulently transferred from Supreme Court/Bronx County (#302951-12). The particulars are recited by the March 2014 verified complaint² in a citizen-taxpayer action, also *CJA v. Cuomo, et al.*, which we commenced in Supreme Court/Albany County (#1788-2014), also on behalf of the

¹ ¶1 of the March 2012 verified complaint. See also ¶¶122, 138.

² ¶5(c), (d), (e) of the March 2014 verified complaint.

People of the State of New York and the public interest. It challenges the slush-fund Judiciary budget for fiscal year 2014-2015 in which the judicial salary increases are embedded and, by a March 2015 supplemental complaint, additionally challenges the slush-fund Judiciary budget for fiscal year 2015-2016 and its embedded judicial salary increases. This citizen-taxpayer action is live and unfolding on a record entitling us to summary judgment, *as a matter of law* – and not only with respect to the judicial salary increases recommended by the Commission on Judicial Compensation’s August 29, 2011 Report, but as to the Judiciary budgets for fiscal years 2014-2015 and 2015-2016, whose constitutional and statutory infirmities, enabling fraud, are replicated in the Judiciary’s budget for fiscal year 2016-2017.

On November 30, 2015 – the day before the Governor announced your nomination – I testified before the Commission on Legislative, Judicial and Executive Compensation at its public hearing in Manhattan. That commission emerged from the March 2015 behind-closed-doors, three-men-in-a-room budget deal-making by Governor Cuomo, then Temporary Senate President Skelos, and Assembly Speaker Heastie, wherein – following rubber-stamping by the Legislature – the statute that created the Commission on Judicial Compensation was repealed and, in its place, a materially-identical statute creating the Commission on Legislative, Judicial and Executive Compensation was substituted. In advance of my testimony, I created a webpage for the Commission on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS: The Money Belongs to Their Victims!” It is there that I posted the evidence supporting my testimony, beyond what I handed up at the hearing.

The focus of my testimony was CJA’s October 27, 2011 Opposition Report, the declaratory judgment action and citizen taxpayer action based thereon – as well as a third litigation, in April 2014, in which we sought to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption (*NYS Senate, NYS Assembly v. Rice, et al.*, NY Co. #160941/2013), also on behalf of the People of the State of New York and the public interest. I stated that “But for the evisceration of any cognizable judicial process in ALL three of these litigations – resulting from the double-whammy of Attorney General Schneiderman’s litigation fraud, rewarded by fraudulent judicial decisions – judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating [the Commission on Legislative, Judicial and Executive Compensation], would have been declared unconstitutional, long, long ago.” (at p. 2, capitalization in original).

Indeed, I stated that the ONLY recommendation the Commission could properly make, based on CJA’s October 27, 2011 Report, was “for the nullification/voiding of the [Commission on Judicial Compensation’s August 29, 2011 Report AND a ‘claw-back’ of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto” – and that the “only way” the Commission could “get away with doing anything else” in its own report, statutorily-required by December 31, 2015, would be by “obliterating the existence of our Opposition Report, the record of our three litigations based thereon – and all findings of fact and conclusions of law that [were its] duty to make with respect thereto.”

This, of course, is exactly what the Commission did by its December 24, 2015 “Final Report”. It materially replicated the fraud, statutory violations, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 Report – which also had been denominated a “Final Report”. Thus, identical to the August 29, 2011 Report, the December 24, 2015 Report:

- willfully concealed, as if it did not exist, the threshold issue of the Commissioners’ disqualifying interest and actual bias that had been raised, most formidably by CJA – because it was dispositive; and
- willfully concealed, as if it did not exist, the opposition to judicial salary increases that had been raised, most formidably by CJA – because it was dispositive.

This enabled it to then flagrantly and identically violate the Commission statute:

- by making no finding that current “pay levels and non-salary benefits” of New York State judges are inadequate, required by the statute;
- by examining only judicial salary, not “compensation and non-salary benefits”, required by the statute ;
- by not considering “all appropriate factors”, required by the statute – and making no claim that it had;
- by making no findings as to “appropriate factors” that CJA had identified as disintitling New York’s judges to any pay raises. Among these:
 - (a) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay; and
 - (b) the fraudulent claims of judicial pay raise advocates in support of judicial pay raises.

All the foregoing is readily-verifiable from the Commission on Legislative, Judicial and Executive Compensation’s website and from CJA’s own webpage for the Commission. Links for both are posted on the webpage I’ve created for this letter on CJA’s website, www.judgewatch.org. You can reach it easily *via* the top panel “Latest News”, which will bring you to a link bearing the title of this letter: “So, You Want to be New York’s Chief Judge? – Here’s Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?”³

³ The letter is also accessible *via* the left sidebar panel “Judicial Selection-State-NY”, which leads to a menu page containing a link for “Merit Selection” to the New York Court of Appeals.

The Judiciary has, at least, three copies of CJA's October 27, 2011 Opposition Report: the one I originally delivered for Chief Judge Lippman on October 27, 2011 at the Office of Court Administration in Manhattan, and the two full copies that accompanied the two copies of the verified complaint in the *CJA v. Cuomo, et al.* declaratory judgment action that I delivered in Albany on April 5, 2012 to the Clerk of the Court of Appeals, who accepted service for Chief Judge Lippman and the Unified Court System, each named defendants therein. Nevertheless, because the October 27, 2011 Opposition Report is so dispositive, I am herewith furnishing you with your own full copy – by which I mean the included October 15, 2002 and October 24, 2002 two final motions that were before the Court of Appeals in CJA's monumental 3-in-1 lawsuit against the Commission on Judicial Conduct, about which I testified on July 20, 2011 before the Commission on Judicial Compensation, handing up a copy of each motion to substantiate my words, publicly-stated:

“...you can verify that the Commission was the beneficiary of a succession of fraudulent judicial decisions without which it would not have survived, including four of the Court of Appeals....the Commission has been the beneficiary of fraudulent judicial decisions. The *modus operandi* in this state, fraudulent judicial decisions. The judiciary of this state is corrupt, pervasively, systemically corrupt.”⁴

I am also furnishing you with my written submissions to the Commission on Legislative, Judicial and Executive Compensation:

- my November 30, 2015 written testimony, with its attached exhibits;
- my December 2, 2015 supplemental statement; and
- my December 21, 2015 further statement.

From these, you can speedily verify the fraudulence, statutory violations, and unconstitutionality of BOTH the Commission on Judicial Compensation's August 29, 2011 Report and the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report – each the product of tribunals disqualified for interest and actual bias – and that your duty is to take steps to protect the People of the State of New York, be it as the district attorney you currently are or the chief judge you aspire to be.

⁴ See transcription of my July 20, 2011 testimony, annexed as part of Exhibit I to CJA's October 27, 2011 Opposition Report – and, additionally, the further substantiating documents I handed up to the Commission on Judicial Compensation on July 20, 2011: Exhibit F-1 (hand-out: “No Pay Raises for NYS Judges who Corrupt Justice: The Money Belongs to the Victims”); Exhibit F-2 (CJA's draft statement for the Senate Judiciary Committee's aborted December 16, 2009 hearing on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system); Exhibits F-3 and F-4 (written statements for the Senate Judiciary Committee's March 6, 2007 hearing in opposition to confirmation of Chief Judge Kaye to the Court of Appeals).

Indeed, your disregard of that duty would make you an accessory and criminally liable⁵ for the felony crimes here at issue: “offering a false instrument for filing in the first degree” (Penal Law §175.35), “grand larceny in the first degree” (Penal Law §155.42), “scheme to defraud in the first degree” (Penal Law §190.65), “defrauding the government” (Penal Law §195.20), “corrupting the government in the first degree” (Penal Law §496.05), “public corruption” (Penal Law §496.06), and, of course, the misdemeanor of “official misconduct” (Penal Law §195)?

The People of New York cannot suffer yet another constitutional officer compromised by pecuniary and other interests and relationships, who corrupts his public office as a result. Will you do what is right and what the law and ethics require, notwithstanding you are a beneficiary of the judicial salary increases and have personal, professional, and political relationships with those involved in the felonies now before you and who are responsible for your Court of Appeals nomination and control your confirmation?

On the subject of conflicts of interest – and because, in December 2011, Governor Cuomo appointed you to chair the then-newly created Joint Commission on Public Ethics,⁶ whose jurisdiction includes conflict of interest complaints against him and other constitutional officers of the executive and legislative branches – I am enclosing the June 27, 2013 conflict-of-interest ethics complaint that we filed with JCOPE, two months after you resigned as chair – and which JCOPE has been sitting on ever since. It is against Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, legislators and their culpable staff and is based on their conflicts of interest that are the ONLY explanation for their knowing and deliberate failure to protect the public from the Commission on Judicial Compensation’s fraudulent, statutorily-violative and unconstitutional August 29, 2011 Report.⁷

⁵ As illustrative, Penal Law §105.15 “conspiracy in the second degree”.

⁶ In the words of the Governor’s December 12, 2012 press release: “‘The Joint Commission on Public Ethics is an independent monitor that will aggressively investigate corruption and help maintain integrity in state government,’ Governor Cuomo said. ‘I am confident that under the leadership of Chair DiFiore and the other board members, the Commission will be the toughest ethics enforcer in our state’s history.’” <http://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-appoint-members-joint-commission-public-ethics>.

⁷ At the November 30, 2015 hearing, I furnished this June 27, 2013 conflict-of-interest ethics complaint – and CJA’s related December 11, 2014 conflict-of-interest ethics complaint that JCOPE has also been sitting, also against the Governor, *et al.* – to Commissioner Mitra Hormozi, one of the Governor’s three appointees to the Commission on Legislative, Judicial and Executive Compensation and his appointed chair of the Commission on Public Integrity, when JCOPE replaced it, under your chairmanship. CJA’s webpage for my November 30, 2015 testimony posts this additional December 11, 2014 complaint. The direct link is: <http://www.judgewatch.org/web-pages/judicial-compensation/2015/testimony.htm>. CJA’s subsequent correspondence pertaining to the JCOPE/LEC Review Commission – and my October 14, 2015 testimony before the JCOPE/LEC Review Commission about the conflicts of interest of executive and legislative constitutional officers with respect to the judicial pay raises and the Commission on Judicial Compensation’s August 29, 2011 Report is posted here: <http://www.judgewatch.org/web-pages/searching-nys/commission-to->

As I greatly prefer to testify in support of your nomination at the Senate Judiciary Committee's upcoming hearing on your confirmation, rather than in opposition, please confirm, as soon as possible, that based on your findings of fact and conclusions of law with respect to the foregoing, you will be taking steps, as Chief Judge, to:

- (1) void the judicial pay raise recommendations;
- (2) repeal the commission statute;
- (3) refer the commissioners to criminal authorities for prosecution; and
- (4) investigate the systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Legislative, Judicial and Executive Compensation – like the Commission on Judicial Compensation before it – unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Further, please advise, with respect to the Judiciary's budget for fiscal year 2016-2017, transmitted to Governor Cuomo and legislative leadership, including Senate Judiciary Committee Chairman Bonacic, on the day you were nominated, December 1, 2015:

- (1) whether the Judiciary's "single budget bill" is encompassed within the certification of the Chief Judge and the approval of the Court of Appeals;
- (2) the cumulative dollar total of the Judiciary's budget request in its two-part budget presentation;
- (3) the cumulative dollar total of the appropriations and reappropriations in the Judiciary's "single budget bill";
- (4) whether the reappropriations in the "single budget bill" are consistent with Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25.

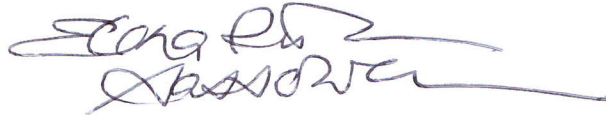
Insofar as the Executive Summary to the Judiciary's budget for fiscal year 2016-2017 states (at fn. 4) that the Judiciary's budget does not include the Commission on Legislative, Judicial and Executive Compensation salary recommendations – as they were not then made – but that "If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment", do you not agree that any such supplemental budget request would be – like the Commission's December 24, 2015 Report – fraudulent, statutorily-violative, and unconstitutional.

I would welcome your invitation to meet together in advance of your Senate Judiciary Committee confirmation hearing so that we may discuss these and other issues germane to the top leadership position to which you have been nominated. This would include CJA's constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits and from Article VI of the New York State Constitution – highlighted by my November 30, 2015 testimony before the Commission on Legislative, Judicial and Executive Compensation (at p. 2) and annexed as its Exhibit 3 – that:

“The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.^{fn4}” (CJA's October 27, 2011 Opposition Report, prefatory quote & page 12, underlining in the original).

May I hear from you soon – and may the New Year be the beginning of respect for law, evidence, and honesty, under your leadership.

Thank you.

A handwritten signature in blue ink, appearing to read "Craig R. DiFiore". The signature is stylized with a large, sweeping initial "C" and "D".

Enclosures

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WRITTEN TESTIMONY FOR THE LEGISLATURE'S FEBRUARY 11, 2019 BUDGET HEARING ON "LOCAL GOVERNMENT OFFICIALS/GENERAL GOVERNMENT"

February 19, 2019

My name is Elena Sassower. I am director and co-founder of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), which for more than a quarter of a century has been furnishing the Legislature with EVIDENCE that New York's Judiciary is corrupt and "throws" cases by fraudulent judicial decisions, obliterating the most fundamental adjudicative standards – aided and abetted by a long list of governmental actors, including:

(1) the monitor of New York's Judiciary, the state Commission on Judicial Conduct, which dumps, without investigation, facially-meritorious, judicial misconduct complaints, particularly when they are against high-level, politically-connected judges, as opposed to non-lawyer judges of the town and village courts;

(2) New York's highest law enforcement officer, the state attorney general, whose *modus operandi* in defending lawsuits against the Commission on Judicial Conduct, the Judiciary, and other public officers and entities, sued for corruption, where he has NO legitimate defense, is to corrupt the judicial process with litigation fraud; and

(3) New York's district attorneys, who ignore fully-documented public corruption complaints filed with them, relating to the Judiciary, the Commission on Judicial Conduct, the attorney general, and other public officers and entities.

Cases are "perfect paper trails" – and the EVIDENCE that CJA has furnished the Legislature has included litigation records from which the foregoing is readily verifiable. Among these:

- (1) Three Article 78 proceedings, suing the Commission on Judicial Conduct for dumping, without investigation, facially-meritorious judicial misconduct complaints, defended by the attorney general;
- (2) A federal action, suing New York's Judiciary for corrupting the attorney disciplinary system it controls and using it to retaliate against a judicial whistle-blowing attorney, defended by the attorney general, also a defendant therein;

- (3) A declaratory judgment action – to which the Legislature was a named defendant – challenging the commission-based judicial salary increases resulting from Chapter 567 of the Laws of 2010, defended by the attorney general, also a defendant therein;
- (4) A motion to intervene in the Legislature’s declaratory judgment action against the district attorney-stacked Commission to Investigate Public Corruption, defended by the attorney general, who had participated with the Governor in establishing the Commission;
- (5) Two citizen-taxpayer actions – to which the Legislature was and is a named defendant – challenging the commission-based judicial salary increases resulting from Chapter 567 of the Laws of 2010 and from its successor, Chapter 60, Part E of the Laws of 2015, and also challenging the judiciary, legislative, and executive budgets, including the budget “process” and its culminating behind-closed-doors “three-men-in-a-room” budget deal-making, defended by the attorney general, also a defendant therein.

The Legislature’s response to this and other EVIDENCE of systemic governmental corruption has been to willfully and deliberately ignore it. Indeed, it appears that the Legislature has NEVER held an oversight hearing of the function and functioning of the attorney general, nor of the role of the district attorneys in upholding public integrity, as, for instance, their handling of public corruption complaints and control of access to the grand jury.

As for New York’s Judiciary, including its attorney disciplinary system and the Commission on Judicial Conduct, the Legislature has, for decades, refused to hold oversight hearings at which the public could testify about what has been going on. The most recent oversight hearing was nearly ten years ago, on June 8 and September 24, 2009, when then Senate Judiciary Committee Chair John Sampson held two oversight hearings of the Commission on Judicial Conduct and of the court-controlled attorney grievance committees, at which nearly two dozen witnesses testified about the corruption. A third hearing, scheduled for December 16, 2009, was cancelled and not rescheduled. As for the oral and written witness testimony and substantiating EVIDENCE the Committee received, it went uninvestigated. The Senate Judiciary Committee made NO findings of fact, no conclusions of law, and rendered no committee report. This, even as the Judiciary was suing the Legislature and Governor for salary raises for its supposedly excellent, high-quality judges – securing, in February 2010, a fraudulent judicial decision by the New York Court of Appeals, intimidating the Legislature and Governor to enact, in November-December 2010, without legislative due process and in a lame-duck legislative session, Chapter 567 of the Laws 2010, establishing a quadrennial Commission on Judicial Compensation, whose “force of law” judicial salary increase recommendations of its subsequent August 29, 2011 report neither the Legislature, Governor, nor Judiciary would oversee, despite their fraud and violations of the statute pursuant to which they purport to be rendered.

With even less legislative due process, on March 31/April 1, 2015, the Legislature, in collusion with the Governor – and as part of their behind-closed-doors “three-men-in-a-room” budget deal-making – repealed Chapter 567 of the Laws of 2010 and replaced it with a materially identical statute, Chapter 60, Part E of the Laws of 2015, establishing the quadrennial Commission on Legislative, Judicial and Executive Compensation. Here, too, the Legislature, Governor, and Judiciary would discharge no oversight over that Commission’s December 24, 2015 report, whose “force of law” judicial salary recommendations were correspondingly fraudulent and violative of the statute pursuant to which they purport to be rendered.

Since 2012, the cost to New York taxpayers of the August 29, 2011 and December 24, 2015 commission reports, which, to date, have raised judicial salaries by approximately \$75,000 per judge – and, additionally, the salaries of district attorneys, which are statutorily-linked to judicial salaries – is on the order of \$400 million dollars and currently grows by about \$70 million a year. And whatever the exact figures are, they will increase in fiscal year 2019-2020 because the December 24, 2015 report contains final judicial salary increase recommendations, effective April 1, 2019 – and appropriations for it are embedded in the Judiciary’s proposed fiscal year 2019-2020 budget and in the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 embodying it. Identically to past years, there is no line-item for the increase – and the Judiciary’s proposed budget not only conceals any information about its cumulative dollar amount and its percent increase, but that the Legislature is statutorily-empowered to abrogate it, which is what it must do.

In holding these public hearings on the state budget, the Legislature affords the Judiciary’s proposed budget no hearing of its own, as would be consistent with its status as a separate government branch, constitutionally empowered, with the Legislature, to construct its own budget. Perhaps this is because, were it to do so, it would be more obvious that the Legislature holds no public hearing on its own proposed budget. Nor has it placed the Judiciary’s proposed budget in its “general government” budget hearing, as might be reasonably expected. Instead, it is in the “public protection” budget hearing, where the Chief Administrative Judge testifies first.

Since 2013, I have alerted the Legislature, over and again, that the Judiciary’s proposed budgets and the Chief Administrative Judge’s hearing testimony are materially false and misleading and obscure and conceal the most pertinent facts in its larceny of taxpayer money. And, repeatedly, I have supplied the Legislature with a list of questions to guide it in questioning the Chief Administrative Judge about the specifics of the Judiciary’s budget and the legislative/judiciary budget bill to which it relates. This the Legislature ignores, in favor of questioning the Chief Administrative Judge about “policy” – largely, but not necessarily, arising from the “policy” legislation that the Governor unconstitutionality places within the Executive budget.

To assist the Legislature in discharging its constitutional responsibilities with respect to the Judiciary’s proposed budget for fiscal year 2019-2020 and the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 – not remotely discharged when Chief Administrative Judge Marks testified at its January 29, 2019 “public protection” budget hearing – attached is a list of questions for Chief Administrative Judge Marks, modelled on the essentially identical questions I furnished last year, in advance of his testimony at the January 30, 2018 “public protection” budget hearing – not a

single one of which any legislator asked, either at that budget hearing or thereafter.

Two of the questions on that list are directly relevant to the Commission on Judicial Conduct, whose administrator and counsel, Robert Tembeckjian, this year, like last year, testified for increased funding, immediately following Chief Administrative Judge Marks' testimony at the "public protection" budget hearing. These two questions read:

- "39. How about Senate and Assembly Judiciary Committee oversight hearings of the Commission on Judicial Conduct, at which the public was given notice and the opportunity to testify and submit evidence? Do you know when they were last held – and what findings of fact and conclusions of law were made based thereon? Although the Commission is not funded through the Judiciary budget, it is among the agencies within the Legislature's 'public protection' budgeting. Surely, Chief Judge DiFiore's 'Excellence Initiative' recognizes the Judiciary's obligation to ensure that the Commission on Judicial Conduct is adequately funded and properly functioning, does it not? What advocacy, if any, has it undertaken, with respect to funding, which in this year's State Operations Budget Bill #S.1500/A.2000 (at p. 447) is \$5,696,000. And what has it done to advance an independent auditing of the Commission on Judicial Conduct's handling of judicial misconduct complaints – the necessity of which was recognized nearly 30 years ago, in the 1989 report of the then state Comptroller Edward Regan, entitled Commission on Judicial Conduct – Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, whose press release was equally blunt: 'COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT'.
40. Doubtless in the nearly three years since Chief Judge DiFiore announced her 'Excellence Initiative', many members of the public have complained to her about the lawlessness that prevails in the judiciary, resulting from a Commission on Judicial Conduct that is worthless, as well as the worthlessness of entities within the judiciary charged with oversight, including the court-controlled attorney disciplinary system and the Judiciary's Office of Inspector General. What has she done to verify the situation?"

The attached list also includes questions – likewise repeated from last year – about the Judiciary's "throwing" cases by fraudulent judicial decisions, such as:

- "28. Do you dispute the accuracy of CJA's assertion, stated in its last year's written and oral testimony for the Legislature's January 30, 2018 and February 5, 2018 budget hearings, that both citizen-taxpayer actions were 'thrown' by fraudulent judicial decisions, upending ALL cognizable judicial standards to grant defendants relief to which it was not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of*

law?

29. Would you agree that establishing that this is what happened – including with respect to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases – can be verified by examining the court record?
30. In view of Chief Judge DiFiore’s ‘Excellence Initiative’, referred to at the outset of the Judiciary’s Executive Summary (p. i), as being her ‘highest priority’ – with a goal of achieving ‘operational and decisional excellence in everything that we do’ – would the Judiciary be willing to demonstrate how its ‘Excellence Initiative’ works by evaluating the ‘decisional excellence’ in the citizen-taxpayer actions in which it was interested, furnishing the Legislature with its findings of fact and conclusions of law with respect to the judicial decisions, particularly as relates to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases?”

Suffice to say that at the January 29, 2019 “public protection” budget hearing, the legislators engaged Chief Administrative Judge Marks and Administrator Tembeckjian, as if completely unaware of any corruption problem relating to the Judiciary and Commission on Judicial Conduct, let alone of EVIDENCE establishing it, *prima facie*. Certainly, they expressed no awareness that Mr. Tembeckjian was responding to their questioning with brazen lies – as would have been obvious to them had they examined the EVIDENCE I handed up at last year’s “public protection” budget hearing, stating, as follows, at the conclusion of my testimony:

“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 codefendant and has represented you with litigation fraud, because you had no defense to any of the causes of action.

Cases are perfect paper trails.

...

The 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.

Thank you.”

This statement was made in the presence of then Senate Finance Committee Ranking Member Krueger and Assembly Ways and Means Chair Weinstein, whose responsibility it was to alert the members of the fiscal committees, and of such other appropriate committees as the Assembly and Senate Judiciary and Codes Committees, of their duty to investigate and report on the truth of what I

had said – and the EVIDENCE I had provided in substantiation. Such EVIDENCE included Comptroller Regan’s 1989 report on the Commission on Judicial Conduct – the same as referred-to by the above-quoted question I had furnished the Legislature last year – in which the comptroller identified that without access to the records of the Commission’s handling of judicial misconduct complaints, which the Commission refused to give him, NO assessment could be made as to whether the Commission was doing the job the taxpayers were paying it to do.

That same principle – access to, and review of, EVIDENTIARY RECORDS – applies to:

- (1) the Judiciary’s handling of litigations by its judges and its handling of attorney misconduct complaints by its attorney grievance committees;
- (2) the district attorneys’ handling of public corruption complaints; and
- (3) the attorney general’s handling of public corruption/misconduct complaints.

And, of course, it applies to every other government entity, whose claim to taxpayer monies rests on doing the job they are paid to do, absent which any increased salaries and funding are an unconstitutional imposition on the taxpayers.

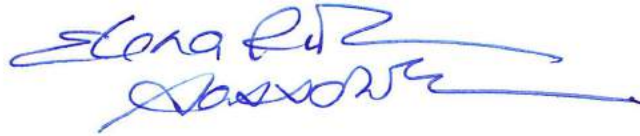
To further assist the Legislature in discharging its constitutional responsibilities, as laid out herein, and by my written and oral testimony at five prior legislative budget hearings: the first time, in 2013, then twice in 2017, and twice last year, plus at two local budget forums, in 2017 and 2018, sponsored by legislators from Westchester, CJA’s webpage for this written testimony¹ will post links for that EVIDENCE-supported testimony, and for the records of the above-itemized lawsuits, and for the records of the misconduct/corruption complaints I filed with the Commission on Judicial Conduct and the court-controlled attorney grievance committees, subsequent to my testimony at last year’s budget hearings. Suffice to say, that since furnishing the Legislature with the record EVIDENCE, last year, that CJA’s citizen-taxpayer actions had been “thrown” in Supreme Court/Albany County, by a double-whammy of litigation fraud by the attorney general and fraudulent judicial decisions, facilitated by the Commission on Judicial Conduct and the court-controlled attorney grievance committees – the record now establishes that the same double-whammy has been repeated at the Appellate Division, Third Department, aided and abetted by the Commission on Judicial Conduct and court-controlled attorney grievance committees. And the result? The budget for fiscal year 2019-2020 repeats, thus far, ALL the constitutional, statutory, and rule violations that those two citizen-taxpayer actions challenged – and to which, as the lawsuit records establish, the People of the State of New York were, and are, entitled to summary judgment.

Finally, since this year, as in previous years, the Legislature has not discharged any oversight over its own proposed budget – or of the legislative portion of the Governor’s legislative/judiciary budget bill

¹ CJA’s webpage for this written testimony is accessible from CJA’s homepage, www.judgewatch.org, via the center link for the “2019 Legislative Session”. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/2019-legislative/feb-19-2019-written-testimony.htm>.

– also attached is a list of questions to facilitate its doing so. Such are rightfully answered by former Temporary Senate President Flanagan, Assembly Speaker Heastie – and by now Temporary Senate President Stewart-Cousins – each of whom should have come forward to testify in support of the Legislature’s proposed budget. The list of questions for them is likewise modelled on the questions I previously furnished, including last year, for the February 5, 2018 budget hearing on “local government officials/general government”.

Thank you.



Enclosures:

- (1) The Judiciary’s Proposed Budget for Fiscal Year 2019-2020...
Questions for Chief Administrative Judge Marks
- (2) The Legislature’s Proposed Budget for Fiscal Year 2019-2020...
Question for Former Temporary Senate President Flanagan,
Assembly Speaker Heastie, & Temporary Senate President Stewart-Cousins

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THE JUDICIARY'S PROPOSED BUDGET FOR FISCAL YEAR 2019-2020 – AND THE GOVERNOR'S LEGISLATIVE/JUDICIARY BUDGET BILL #S.1501/A.2001

Examination of the Judiciary's proposed budget for fiscal year 2019-2020 must begin with its bottom-line, total cost, especially as it is not contained within its budget.

The Governor offered no written commentary to guide the Legislature and the Legislature's "White", "Blue", "Yellow" and "Green" Books diverge as to the relevant dollar figures and percentage increase over fiscal year 2018-2019.

* * *

QUESTIONS FOR CHIEF ADMINISTRATIVE JUDGE LAWRENCE MARKS¹

- (1) By two memoranda dated December 1, 2018, you transmitted to the Governor and Legislature the Judiciary's two-part budget for fiscal year 2019-2020. One part pertained to the Judiciary's operating expenses and the other part pertained to "General State Charges" – these being "the fringe benefits of judges, justices and nonjudicial employees". Neither memorandum identified either the cumulative dollar amount of the Judiciary's two-part budget presentation taken together or its cumulative percentage increase, is that correct?
- (2) Each of the two parts of the Judiciary's proposed budget contained a "Chief Judge's Certification" and "Court of Appeals Approval", pursuant to Article VII, §1 of the Constitution of the State of New York. The certification for the part pertaining to operating expenses stated that it was certifying that "the attached schedules" were "the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2019". Which are the "attached schedules" referred-to?
- (3) Your December 1, 2018 memorandum transmitting the itemized estimate of "General State Charges" states: "The Judiciary will submit a single budget bill, which includes requests for funding for operating expenses and fringe benefits costs for the 2019-2020 Fiscal Year."
 - (a) Why did you use the word "will"? Were you implying that the "single-budget bill" was submitted subsequent to the

¹ The Judiciary's proposed budget, Legislative/Judiciary Budget Bill #S.1501/A.2001, and all referred-to documents are posted on CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link: "2019 Legislative Session".

Judiciary's two-part budget presentation? If so, when did the Judiciary submit the "single budget bill" and was it certified to be accurate and true?; and

- (b) Why did you use the word "includes"? Were you implying that the "single budget bill" contains funding requests other than for "operating expenses and fringe benefit costs" – as, for instance, "reappropriations"?
- (4) The Judiciary's "single budget bill" also did not identify the cumulative dollar total of the Judiciary's proposed budget, is that correct? Why is that?
- (5) What is the cumulative dollar total of the "single budget bill"? Which are the specific figures in the bill that you add to arrive at that figure? Is it the tally of the figures, on page 1, for: "Appropriations" \$2,336,671,887, consisting of: \$2,197,800,718 for "state operations"; \$114,871,169 for "aid to localities"; and \$24,000,000 "capital projects", plus, also on page 1, the figure for "Reappropriations" \$63,180,000, plus, on page 10, the figure for "General State Charges": \$814,814,979?
- (6) Is this the same cumulative dollar total as would result from adding the various figures in the Judiciary's two-part budget presentation?
- (7) Do you agree that there is a disparity of \$63,180,000 between the cumulative tally of figures in the Judiciary's two-part budget presentation and the cumulative tally of figures in the "single budget bill"? Isn't this disparity the result of the \$63,180,000 in "Reappropriations" in the "single budget bill" that are not in the two-part budget presentation? Is the reason the Judiciary does not furnish cumulative budget tallies in these documents to conceal the disparity?
- (8) Where in the Judiciary's two-part budget presentation are the \$63,180,000 "Reappropriations" itemized in the "single budget bill" by the "Schedule" that appears at its pages 12-14 under the headings "State Operations and Aid to Localities – Reappropriations 2019-2020" and "Capital Projects – Reappropriations 2019-2020"?
- (9) Do you consider the Judiciary's budget to be reasonably clear and straightforward as to the cumulative amount of its request and its percentage increase over fiscal year 2018-2019? Have you examined the Legislature's analyses of the Judiciary's budgets?:
- (a) According to the Senate (Democratic) Majority's "Blue Book" (at p. 63) "The Judiciary request for SFY 2020 includes a total appropriation authority of \$3.2 billion, an increase of \$102 million or 3.4 percent compared to SFY 2019 available funds. This total includes All Funds appropriations of \$2.3 billion and \$814.8 million in General State Charges (GSC). The increase consists of \$70.9 million in All Funds appropriations and \$31.4 million in

General State Charges.” (see also chart at p. 54 and text at p. 55).

- (b) According to the Senate (Republican) Minority’s “White Book” (at p. 84), “The FY 2019 Executive Budget recommends All Funds spending at \$3.1 billion, an increase of \$91.7 million, or 3.0 percent.” (also chart at p. 85).
- (c) According to the Assembly (Democratic) Majority’s “Yellow Book” (at p. 153), “The Judiciary’s proposed budget request recommends All Funds appropriations of \$3.17 billion, which is an increase of \$102.19 million or 3.33 percent from the SFY 2018-19 level.”
- (d) According to the Assembly (Republican) Minority’s “Green Book”, “2.34 billion, \$76 million more than last year. This represents a 3.2% increase in spending.”

Which of these is correct as to the dollar figures and percentage increase from fiscal year 2018-2019?

- (10) By the way, why does your one-page December 1, 2018 memorandum transmitting the Judiciary’s proposed budget of general state charges not identify either dollar amounts or percentage increase for the transmitted general state charge budget, whereas, by contrast, your one-page December 1, 2018 memorandum transmitting the operating funds budget identifies: “The 2019-20 State Operating Funds budget request totals \$2.28 billion, a cash increase of \$44.7 million, or 2 percent, over available current-year funds”?
- (11) Why does the Judiciary furnish only a single Executive Summary for its two-part budget proposal? And why does this Executive Summary omit information about both “general state charges” and “reappropriations”?
- (12) Also, why does the Executive Summary omit mention of the judicial salary increase recommendations of the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation for fiscal year 2019-2020.
- (13) Wouldn’t you agree that the Executive Summary is the appropriate place for the Judiciary to have alerted the Governor, Legislature, and the public of the relevant statutory provision pertaining to the Commission on Legislative, Judicial and Executive Compensation’s judicial salary increase recommendations for fiscal year 2019-2020 which reads:

“...Each recommendation...shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law..., unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation...” (Chapter 60, Part E, of the Laws of 2015: §3, ¶7)

Do you agree that the only reference to the Commission on Legislative, Judicial and Executive Compensation's judicial salary recommendations for fiscal year 2019-2020 is in the narrative of the Judiciary's operating budget which, in ten separate places, states: "Funding for judicial positions includes salary increases in compliance with the mandate of the Commission on Judicial and Legislative Salaries."²

- (14) Why does the Judiciary's budget narrative not refer to the Commission on Legislative, Judicial and Executive Compensation by its correct name – and what is the referred-to "mandate" that the Commission imposed on the Judiciary?
- (15) You do know the difference between "salary" and "compensation", right? Can you explain that difference – and how the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation addressed the compensation issue that its very name reflects and that the statute pursuant to which it purports to be rendered – Chapter 60, Part E of the Laws of 2015 – requires it address as a condition precedent for any recommendation?
- (16) What were the Commission on Legislative, Judicial and Executive Compensation's judicial salary increase recommendations for fiscal year 2019-2020? What do they translate to, in dollar amounts and percentage increase for the Judiciary's judicial salary appropriations, cumulatively and for each category of judge. And what does this translate to in additional general state charges for salary-based compensation benefits.
- (17) Is there any line item in the Judiciary's proposed operating budget for the dollar appropriations for the judicial salary increases – and in the Judiciary's proposed budget of general state charges for the increased dollar costs of salary-based, non-salary compensation benefits, such as pensions and social security? Why not? Did the Judiciary not believe such line items important for the Legislature and Governor in exercising their "mandate" to "modif[y] or abrogate[]", pursuant to Chapter 60, Part E, of the Laws of 2015: §3, ¶7.³

² (Courts of Original Jurisdiction") (at p. 5); "Supreme and County Courts Program" (at p. 18); "Family Courts Program" (at p. 21); "Surrogates Courts Program" (at p. 25); "Multi-Bench Courts Program" (at p. 28); "City and District Courts Program" (at p. 32); "New York City Housing Court Program" (at p. 35); "Court of Claims Program" (at p. 44); "Court of Appeals" (at p. 86); "Appellate Court Operations" (at p. 90).

³ Only the Senate (Democratic) Majority's "Blue Book" (at p. 63) makes any reference to the judicial salary increases embedded in the Judiciary's budget – but does not identify that same can be abrogated or modified. It states:

"The funding increase also supports salary adjustments for State Judges due to the recent change in salary for Federal District Judges. In 2015, the New York State Commission on Legislative, Judicial, and Executive Compensation recommended that the salary of State Supreme Court Judges be the same as Federal District Judges."

- (18) Can you furnish figures as to the cost, to date, of the judicial salary increase recommendations in the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report – including as to increased salary-based benefits? How about cost figures for how much has been paid, to date, as a result of the August 29, 2011 report of the predecessor Commission on Judicial Compensation? Does the dollar amount approach \$400 million. Can you supply more exact figures?
- (19) Also, where can the Governor, Legislature – and public – find the current salary levels of the Judiciary's judges and justices? Would you agree that those salary levels are currently about \$75,000 higher than what appears in Article 7-B of the Judiciary Law, which has not been amended, at any time, since April 1, 2012 – the date the first phase of the salary increase recommendations of the Commission on Judicial Compensation's August 29, 2011 report took effect. And what has the Judiciary done, if anything, to alert the Legislature to amend Article 7-B so that no one is misled as to the heights to which judicial salaries have reached?
- (20) Also, what will be the increased salary levels of the Judiciary's judges and justices that will take effect on April 1, 2019, pursuant to the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report unless “modified or abrogated” by the Legislature or Governor before then? Where can the Governor, Legislature – and public – find that information?
- (21) Similarly, where can the Governor, Legislature – and public – find the monetary value of the non-salary compensation benefits that each state-paid judge and justice receives, in addition to salary – both currently and, after April 1, 2019, should the Legislature and Governor not “modif[y] or abrogate[e]” the salary increases for fiscal year 2019-2020 recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.
- (22) Does the Judiciary recommend that the Governor and Legislature allow the Commission on Legislative, Judicial and Executive Compensation's salary increase recommendations for fiscal year 2019-2020 to take effect – and on what basis?
- (23) As you know, immediately following the Commission on Legislative, Judicial and Executive Compensation's rendering of its December 24, 2015 report, CJA furnished then Chief Judge Nominee/Westchester District Attorney Janet DiFiore with correspondence⁴ demonstrating that it was even more statutorily-violative, fraudulent, and unconstitutional than the

⁴ This correspondence starts with CJA's December 30, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore entitled “So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?”. The succession of subsequent correspondence includes CJA's January 15, 2016 letter to Senate and Assembly majority and minority leaders – including chairs and ranking members of appropriate committees – entitled “IMMEDIATE OVERSIGHT REQUIRED” and CJA's February 2, 2016 e-mail entitled “Feb. 4th ‘Public Protection’ Budget Hearing: Questions for Chief Administrative Judge Marks”. These are Exhibits 37-44 to CJA's March 23, 2016 verified second supplemental complaint in the first citizen-taxpayer action.

predecessor August 29, 2011 report of the Commission on Judicial Compensation, on which it materially relies.

- (24) Did Chief Judge Nominee, later Chief Judge, DiFiore, ever deny or dispute the accuracy of that correspondence? How about you?
- (25) As you know, neither the Senate nor Assembly, by its Judiciary Committees or any other committee, has ever held an oversight hearing with respect to either the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation or the August 29, 2011 report of the Commission on Judicial Compensation. Does the Judiciary have no view on the subject?
- (26) As you know, as a result of Chief Judge DiFiore's willful failure and refusal to discharge any oversight responsibilities with respect to these two commission reports – and her complicity in the Legislature's willful failure and refusal to discharge oversight responsibilities with respect to these two commission reports – CJA filed, on March 23, 2016, a verified second supplemental complaint in its first citizen taxpayer action (#1788-2014) particularizing the facts and furnishing the relevant documents in support of three new causes of action: the thirteenth, fourteenth, and fifteenth, to void Chapter 60, Part E of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 report recommending judicial salary increases. Thereafter, on September 2, 2016, CJA embodied these three causes of action in a second citizen-taxpayer action (#5122-2016), naming Chief Judge DiFiore as a defendant "in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System", where they were the sixth, seventh, and eighth causes of action.
- (27) What steps have you and Chief Judge DiFiore taken to keep informed of the progress of the second citizen-taxpayer action to which Chief Judge DiFiore is a named defendant, upon whom the September 2, 2016 verified complaint was served on that date – where she, you and all the Judiciary's state-paid judges and justices have a HUGE and direct financial interest in the sixth, seventh, and eighth causes of action, as well as interests in the second cause of action challenging the constitutionality and lawfulness of the Judiciary budgets, including for the current fiscal year?
- (28) Do you dispute the accuracy of CJA's assertion, stated in its last year's written and oral testimony for the Legislature's January 30, 2018 and February 5, 2018 budget hearings that both citizen-taxpayer actions were "thrown" by fraudulent judicial decisions, upending ALL cognizable judicial standards to grant defendants relief to which it was not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*?
- (29) Would you agree that establishing that this is what happened – including with respect to the causes of action pertaining to the Judiciary's budgets and the judicial salary increases – can be verified by examining the court record?

- (30) In view of Chief Judge DiFiore’s “Excellence Initiative”, referred to at the outset of the Judiciary’s Executive Summary (p. i), as being her “highest priority” – with a goal of achieving “operational and decisional excellence in everything that we do” – would the Judiciary be willing to demonstrate how its “Excellence Initiative” works by evaluating the “decisional excellence” in the citizen-taxpayer actions in which it was interested, furnishing the Legislature with its findings of fact and conclusions of law with respect to the judicial decisions, particularly as relates to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases?
- (31) Do you agree that this is now the third year in a row that Governor Cuomo has not furnished the Legislature with any written “Commentary of the Governor on the Judiciary”, with recommendations pursuant to Article VII, §1 of the New York State Constitution?
- (32) Going back to the \$63,180,000 in “Reappropriations” in the “single budget bill” (pp. 1, 12-14) – are they properly designated as such – and have they been approved by the Court of Appeals and certified by the Chief Judge, as required by Article VII, §1?
- (33) According to the “Citizen’s Guide” on the Division of the Budget’s website,

“A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.”
https://www.budget.ny.gov/citizen/financial/glossary_all.html#r

Can you identify what the reappropriations listed at pages 12-13 of the Judiciary’s “single budget bill” and totaling \$17,680,000, were for when originally appropriated? Why was this money not used? And what is it now purported to be reappropriated for?

- (34) Is the reason the Judiciary’s two-part budget presentation does not identify these unused appropriations because they are not properly reappropriations and should be returned to the public treasury?
- (35) Would you agree that the aforesaid reappropriations at pages 12-13 of the “single budget bill” are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2018, 2017, 2016, 2015, 2014 – which are the appropriations of the enacted budget bills pertaining to the Judiciary for those years. They furnish no specificity as to their purpose other than a generic “services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1...”; or “Contractual Services”.
- A. Can you explain how these reappropriations are consistent with State Finance Law §25:

“Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation. If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change.”

- B. Are these reappropriations consistent with Article VII, §7 of the New York State Constitution?

“No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation action; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.”

- C. Are they consistent with Article III, §16 of the New York State Constitution:

“No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.”

- D. How about the last three reappropriations at pages 13-14 of the “single budget bill” – these being the two \$20,000,000 “Aid to Localities” reappropriations (at pp. 13-14) and the five “Capital Projects” reappropriations of \$2,000,000, \$1,000,000, \$2,000,000, \$1,000,000, and \$500,000 (at p. 14)? Are they consistent with State Finance Law §25, with Article VII, §7, and with Article III, §16 of the New York Constitution?

- (36) The Judiciary’s “single budget bill” – which the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 reproduces, *verbatim*, as its judiciary portion – consists of a §2, containing a “Schedule” of appropriations, followed by a §3, which are reappropriations. The text directly beneath the §2 title “Schedule” reads:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other

major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.”

This same text was in the Judiciary’s “single budget bill” for fiscal year 2018-2019, which the Governor reproduced, *verbatim*, in his Legislative/Judiciary Budget Bill #S.7501/A.9501. Pursuant thereto, in fiscal year 2018-2019, did you, as Chief Administrative Judge, approve any increases or decreases in the amounts set forth in the enacted Budget Bill #S.7501/A.9501 – or are you yet going to do so in the remainder of this fiscal year? If so, what are the particulars and why does the Judiciary’s proposed budget for fiscal year 2019-2020 fail to even identify this reshuffling of appropriations in fiscal year 2018-2019?

- (37) Can you explain why notwithstanding the September 24, 2015 report of former Chief Judge Lippman’s Commission on Statewide Attorney Discipline recommending an “Increase to funding and staffing across-the-board for the disciplinary committees” (Executive Summary, at p. 4), stating “Additional funding and staffing must be made available to the disciplinary committees” (at p. 57), the Judiciary’s proposed appropriation of \$15,435,741 for fiscal year 2019-2020 is almost \$80,000 less than the \$15,514,625 appropriation for fiscal year 2018-2019, which was LESS than its 2011-2012 request of \$15,547,143 – and not appreciably greater than the \$14,859,673 it was when the Commission on Statewide Attorney Discipline rendered its September 24, 2015 report.
- (38) The Senate and Assembly Judiciary Committees held no oversight hearing to review the Commission on Statewide Attorney Discipline’s September 24, 2015 report, is that correct? How about oversight hearings of the court-controlled attorney disciplinary system, at which the public was given notice and opportunity to testify and submit evidence? Do you know when such hearings were held by the Senate and Assembly Judiciary Committees to review the efficacy and fairness of the court-controlled attorney disciplinary that the state is funding – and what findings of fact and conclusions of law were made based thereon?
- (39) How about Senate and Assembly Judiciary Committee oversight hearings of the Commission on Judicial Conduct, at which the public was given notice and the opportunity to testify and submit evidence? Do you know when they were last held – and what findings of fact and conclusions of law were made based thereon? Although the Commission is not funded through the Judiciary budget, it is among the agencies within the Legislature’s “public protection” budgeting. Surely, Chief Judge DiFiore’s “Excellence Initiative” recognizes the Judiciary’s obligation to ensure that the Commission on Judicial Conduct is adequately funded and properly functioning, does it not? What advocacy, if any, has it undertaken, with respect to funding, which in this year’s State Operations Budget Bill #S.1500/A.2000 (at p. 447) is \$5,696,000. And what has it done to advance an independent auditing of the Commission on Judicial Conduct’s handling of judicial misconduct complaints – the necessity of which was recognized nearly 30 years ago, in the 1989 report of the then state Comptroller Edward Regan, entitled Commission on Judicial Conduct – Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, whose press release was equally blunt: “COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT”.

- (40) Doubtless in the nearly three years since Chief Judge DiFiore announced her “Excellence Initiative”, many members of the public have complained to her about the lawlessness that prevails in the judiciary, resulting from a Commission on Judicial Conduct that is worthless, as well as the worthlessness of entities within the judiciary charged with oversight, including the court-controlled attorney disciplinary system and the Judiciary’s Office of Inspector General. What has she done to verify the situation?
- (41) By the way, the Judiciary’s proposed budget for fiscal year 2019-2020 (at p. 60) seeks \$1,466,580 for the Office of Inspector General, is that correct? Does the Judiciary’s Office of Inspector General render annual reports of its activities to the Office of Court Administration? Will the Judiciary produce these or similar reports as to the number, type, and disposition of complaints received by its Inspector General? Is the Office of Court Administration unaware of evidence of the corruption of its Office of Inspector General, as for instance, its failure and refusal to investigate record tampering in the declaratory judgment action, *CJA v. Cuomo, et al* (Bronx Co. #302951-2012; NY Co. #401988-2012), and the misfeasance and nonfeasance of the New York County Clerk and his staff in connection therewith – whose consequence was to stall the case and prevent prompt determination of the statutory violations, fraud, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 report – which, to date, have yet to be declared.

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity
as Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants.
-----X

**VERIFIED SECOND
SUPPLEMENTAL COMPLAINT**

Index #1788-2014

JURY TRIAL DEMANDED

“...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York’s Constitution ‘...The doors of each house shall be kept open...’; Public Officers Law, Article VI ‘The legislature therefore declares that government is the public’s business...’; Senate Rule XI, §1 ‘The doors of the Senate shall be kept open’; Assembly Rule II, §1 ‘A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public’ – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, [FLANAGAN], [HEASTIE], SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget.”

– culminating final paragraph of plaintiffs’ verified complaint (¶126)
& verified supplemental complaint (¶236)

Ex A

Plaintiffs, as and for their verified second supplemental complaint, respectfully set forth and allege:

237. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001. The expenditures of such budget bill – embodying the Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

238. Plaintiffs also seek, pursuant to State Finance Law Article 7-A, a declaration voiding the “force of law” judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with a further declaration striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent.

239. Additionally, plaintiffs seek declarations that the so-called “one-house budget proposals”, emerging from the closed-door political conferences of the Senate and Assembly majority party/coalitions, are unconstitutional, as are the proceedings based thereon of the Senate and Assembly joint budget conference committee and its subcommittees; and that the behind-closed-doors, three-men-in-a-room budget dealing-making by the Governor, Temporary Senate President, and Assembly Speaker – such as produced Chapter 60, Part E, of the Laws of 2015 – is unconstitutional and enjoining same with respect to Judiciary/Legislative Budget Bill #S.6401/A.9001 and the whole of the Executive Budget.

240. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint pertaining to the Legislature’s and Judiciary’s proposed budgets and the Governor’s Legislative/Judiciary Budget Bill #S.6351/A.8551 for fiscal year 2014-2015 and the entirety of their March 31, 2015 verified supplemental complaint pertaining to the Legislature’s and Judiciary’s proposed budgets and the Governor’s Legislative/Judiciary Budget Bill #S.2001/A.3001 for fiscal year 2015-2016, incorporating both by reference, as likewise the record based thereon.

241. Virtually all the constitutional, statutory, and rule violations therein detailed are replicated in the Legislature’s and Judiciary’s proposed budgets for fiscal year 2016-2017 and the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001 – including as to the judicial salary increases that will automatically take effect April 1, 2016. As stated at ¶129 of the verified supplemental complaint – and even truer now – “It is, as the expression goes, “déjà vu all over again”.

242. For the convenience of the Court, a Table of Contents follows:

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 The Legislature’s Proposed Budget for Fiscal Year 2016-2017,
 Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

~~2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’”.~~

316. Once again, defendant CUOMO has abetted this constitutional defiance – including by not even furnishing a recommendation on the Legislature’s budget that he sends back to it “without revision”.

✓ **AS AND FOR A TENTH CAUSE OF ACTION**

**The Judiciary’s Proposed Budget for 2016-2017,
Embodied in Budget Bill #S.6401/A.9001,
is Unconstitutional & Unlawful**

317. Plaintiffs repeat, reiterate, and reallege ¶¶1-316 with the same force and effect as if more fully set forth herein – and, specifically, their “Questions for Chief Administrative Judge Marks”, transmitted by their February 2, 2016 e-mail (Exhibit 44).

318. The Judiciary’s proposed budget for fiscal year 2016-2017, embodied by Budget Bill #S.6401/A.9001, is materially identical to the Judiciary’s proposed budget for fiscal years 2014-2015 and 2015-2016, embodied by the Governor’s Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs’ verified complaint (¶¶99-108), reiterated and reinforced by the sixth cause of action of plaintiffs’ supplemental verified complaint (¶¶179-193).

319. Identical to the Judiciary’s proposed budget for the past two fiscal years, defendant CUOMO, his Division of the Budget, and defendants SENATE and ASSEMBLY are unable to comprehend the Judiciary’s proposed budget for fiscal year 2016-2017 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary’s budget for the current

fiscal year. As stated at the outset of plaintiffs' "Questions for Chief Administrative Judge Marks" (Exhibit 44), they diverge as to relevant figures and percentages:

A. Defendant CUOMO's "Commentary of the Governor on the Judiciary" (Exhibit 79-a):

"The Judiciary has requested appropriations of \$2.13 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund are projected to grow by \$44.4 million or 2.4 percent."

B. Defendant CUOMO's Division of the Budget website, which defers to text furnished by Judiciary (Exhibit 29-a):

"The Judiciary's General Fund Operating Budget requests \$1.9 billion, excluding fringe benefits, for Fiscal Year 2016-2017. This represents a cash increase of \$44.4 million, or 2.4%. The appropriation request is \$1.9 billion, which represents a \$43.4 million, or 2.3%, increase.

...

The Judiciary's All Funds budget request for Fiscal Year 2016-2017, excluding fringe benefits, totals \$2.13 billion, an appropriation increase of \$48.3 million or 2.3% over the 2014-2015 All Funds budget..."

C. Senate Majority's "White Book", under Senate Finance Committee Chair Young's auspices (Exhibit 29-b):

"The FY 2017 Executive Budget proposes All Funds spending of \$2.9 billion, an increase of \$112.2 million, or 4.1 percent." (p. 91). This is further particularized by a chart representing this as "Proposed Disbursements – All Funds": \$2,865,600,000 – representing a change of \$112,224,000 and a percentage of 4.08% (p. 93).

"the Judiciary's proposed budget would increase general fund cash spending by \$44.4 million, or 2.4 percent".

D. Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices (Exhibit 29-c):

"The Judiciary proposed Budget is \$2.13 billion, an increase of \$48.2 million or 2.3% from the SFY 2015-2016 Enacted Budget..." (p. 179).

This is further particularized by a chart as the “Executive Recommendation 2016-17”: \$2,132,526,345, the “\$ change” as \$48,254,307, and the “% Change” as 2.3% (p. 179).

E. Assembly Majority’s “Yellow Book”, under Assembly Ways and Means Committee Chair Farrell’s auspices (Exhibit 29-d):

“The Judiciary’s proposed budget request recommends appropriations of \$2.9 billion, which is an increase of \$81.94 million or 2.9 percent from the State Fiscal Year (SFY) 2015-16 level.” (p. 145).

A table of “Appropriations” shows the “Exec Request”, in millions, at “2,877.49” millions of dollars, representing a change of “81.94” millions of dollars with a percent change of “2.93”. A table of “Disbursements” shows an “Exec Request”, in millions, at “2,865.60” millions of dollars, representing a change of “112.23” millions of dollars, for a percent change of “4.08”. (p. 145).

F. Assembly Minority’s “Green Book”, under Assembly Ways and Means Committee Ranking Member Oaks’ auspices (Exhibit 29-e):

“\$2.1 billion for the Judiciary, \$48.3 million more than last year. This represents a 2.3% increase in spending.”

“General State Charges: (Non-Salary) Benefits: \$730 million for General State charges. \$34 million more than last year. This pays for fringe benefits of employees of the court system, including all statutorily-required and collectively bargained benefits.”

320. Plaintiffs now additionally challenge the constitutionality and lawfulness of the interchange provision appearing at §2 of the Judiciary’s “single budget bill” (Exhibit 25-d) – and replicated, *verbatim*, in §2 of defendant CUOMO’s Legislative/Judiciary Budget Bill #S.6401/A.9001⁷ (Exhibit 27-b, p. 10). Such challenge is both *as written and as applied*.

321. Plaintiffs’ challenge to the constitutionality of the interchange provisions, *as written*, begins with *Hidley v. Rockefeller*, 28 N.Y.2d 439, 447-449 (1971), wherein then Chief Judge Stanley Fuld, writing in dissent from the Court’s decision addressed only to the issue of standing, stated:

⁷ The same interchange provision identically appears at §2 of the Judiciary’s “single budget bill” for the past two fiscal years, incorporated *verbatim* in defendant CUOMO’s Legislative/Judiciary budget bills for those years.

“...the provisions which permit the free interchange and transfer of funds are unconstitutional on their face...To sanction a complete freedom of interchange renders any itemization, no matter how detailed, completely meaningless and transforms a schedule of items or of programs into a lump sum appropriation in direct violation of Article VII of the Constitution. (underlining added).

322. *As written*, the interchange provision here at issue states:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.” (Exhibit 27-b, p. 10).

323. *As written*, the “notwithstanding any provision of law” language is vague and overbroad. The “law” includes the New York State Constitution – and such is unconstitutional, *on its face*, as no statute can override the Constitution.

324. At bar, the “notwithstanding any provision of law” language authorizes the Judiciary to violate New York State Constitution, Article VII, §1, §4, §6, and §7, which speak of “itemized estimates”, “items of appropriations”; “stated separately and distinctly...and refer each to a single object or purpose”; made for “a single object or purpose”, that are “particular” and “limited”; that “distinctly specify the sum appropriated, and the object or purpose to which it is to be applied” as well as Article IV, §7 pertaining to the Governor’s line-item veto of “items of appropriations”.⁸

325. Moreover, the “law” includes the very statute governing judiciary interchanges, Judiciary Law §215 – and there is no basis for *sub silentio* repudiating its careful statutory

⁸ So, too, do the statutes pertaining to appropriations and reappropriations require specificity. See, also, State Finance Law §43, entitled “Specific appropriations limited as to use; certain appropriations to be specific”: “Money appropriated for a specific purpose shall not be used for any other purpose, and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated...”

restrictions and safeguards, other than to accomplish what both the statute and Constitution proscribe.

326. Judiciary Law §215(1), entitled “Special provisions applicable to appropriations made to the judiciary in the legislature and judiciary budget”, states:

“1. The amount appropriated for any program within a major purpose within the schedule of appropriations made to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be increased or decreased by interchange with any other program within that major purpose with the approval of the chief administrator of the courts who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee except that the total amount appropriated for any major purpose may not be increased or decreased by more than the aggregate of five percent of the first five million dollars, four percent of the second five million dollars and three percent of amounts in excess of ten million dollars of an appropriation for the major purpose. The allocation of maintenance undistributed appropriations made for later distribution to major purposes contained within a schedule shall not be deemed to be part of such total increase or decrease.

327. Judiciary Law §215(1) restricts interchanges and their amounts to programs within the same “major purpose” – as to which the Chief Administrator’s approval must be filed with “the department of audit and control and copies thereof with the state finance committee and the assembly ways and means committee”. Such accords with statutory requirements, conditions, and procedures set forth in State Finance Law §51 entitled “Interchange of appropriations or items therein” and the statutory sections to which State Finance Law §51 refers in stating:

“No appropriation shall be increased or decreased by transfer or otherwise except as provided for in this section or section fifty-three, sixty-six-f, seventy-two or ninety-three of this chapter, or article eight of the education law”⁹

328. In other words, *as written*, the interchange provision of §2 gives the Chief Administrator complete discretion to do whatever he wants, unbounded by any standard and by any

⁹ State Finance Law §53, entitled “Special emergency appropriations”; State Finance Law §66-f, entitled “Certain interagency transfers authorized”; State Finance Law §72, entitled “General fund”; State Finance Law

reporting/notice requirement to the other two government branches. Such is unconstitutional and unlawful.

329. *As applied*, the interchange provision is unconstitutional and unlawful in that it creates a slush-fund and permits concealment of true costs. It has enabled the Judiciary to surreptitiously fund, in fiscal year 2013-2014, the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report, without identifying the dollar amount of such increase, and, in fiscal year 2014-2015, to even more surreptitiously fund the third phase of the judicial salary increase recommended by the Commission's August 29, 2011 Report, without even identifying the third phase.

330. The Judiciary's responses to legitimate FOIL requests about its use of the interchange provision in fiscal year 2015-2016 – and about the dollar costs of the Commission on Judicial Compensation's three-phase judicial salary increases, funded from reappropriations (Exhibits 50, 49) – only further reinforce the unconstitutionality of the interchange provision, *as applied*.

331. Should defendant CUOMO adhere to his Commentary, "...I expect that [the Judiciary] will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget" (Exhibit 27-a), the Judiciary will presumably fund the first phase of the judicial salary increase recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation from the §3 reappropriations, *via* the §2 interchange provision.

§93, entitled "Capital projects fund"; and Education Law §355(4)(c), "Powers and duties of trustees-

~~budget.²⁰ As for meaningful and accurate information about the Legislature's budget, the legislative committees whose charge that would be – the Senate Committee on Investigations and Government Operations; the Assembly Committee on Governmental Operations, and the Assembly Committee on Oversight, Analysis, and Investigation – will offer nothing on the subject.~~

✓ **AS AND FOR A THIRTEENTH CAUSE OF ACTION**

**Chapter 60, Part E of the Laws of 2015 is Unconstitutional, As Written –
and the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof**

385. Plaintiffs repeat, reiterate, and reallege ¶¶1-384, with the same force and effect as if more fully set forth herein.

386. The budget bill statute establishing the Commission on Legislative, Judicial and Executive Compensation – Chapter 60, Part E, of the Laws of 2015 – is more egregiously unconstitutional than the materially identical statute it repealed and replaced: Chapter 567 of the Laws of 2010, which established the Commission on Judicial Compensation, as, unlike the predecessor statute, it is the product of behind-closed-doors, three-men-in-a-room budget deal-

twenty-two of this article. The findings and descriptions contained in the report required by this section shall constitute the expression of legislative intent with respect to the budget to which such report relates.”

²⁰ The Senate Judiciary Committee's 2015 Annual Report's section on the Judiciary budget for fiscal year 2015-2016 is two sentences: “The Legislature adopted a Unified Court System Budget increase to \$1.85 billion. This reflects an increase of \$36.3 million. The overall Judiciary budget increase was 2%.” (Exhibit 33-a).

The Assembly Judiciary Committee 2015 Annual Report's section is a single sentence longer, but only the first sentence contains any numbers: “The 2015-2016 State budget adopted without change the Judiciary's budget request for appropriations in the amount of \$2.8 billion.” (Exhibit 33-b, underlining added).

Quite apart from the nearly 1 billion dollar difference between their figures as to the dollar cost of the Judiciary budget for fiscal year 2015-2016, the Assembly Judiciary Committee's assertion that the Judiciary's budget request was “adopted without change” is false. There were approximately \$9 million dollars cut from the Judiciary's budget request, but in the complete absence of any formatting changes in the amended bill and the complete absence of amended introducer's memoranda, fiscal note, fiscal impact statement, or reports pursuant to Legislative Law §54 and State Finance Law §22-b, the only way to discern is a line-by-line comparison of the original and enacted bill. Apparently the Assembly Judiciary Committee was unwilling to do even that.

making by defendants CUOMO, HEASTIE, and then Temporary Senate President SKELOS, with a timetable reinforcing it as “a devious and underhanded means” for legislators” to obtain “a salary increase without accepting any responsibility therefor”.²¹

387. The record of this citizen-taxpayer action already contains a full briefing as to the unconstitutionality of both statutes, *as written*.²² Below is a synthesis of what is already briefed and before the Court, now exclusively addressed to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, *as written*:

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission’s Judicial Salary Recommendations “the Force of Law”

388. On June 3, 2015, five Assembly members, all in the minority, and including the ranking member of the Assembly Committee on Governmental Operations, introduced a bill to amend Chapter 60, Part E, of the Laws of 2015 to remove its provision giving the Commission’s salary increase recommendations “the force of law” and making its report for legislative and executive officers due at the same time as for judicial officers. The bill was A.7997 and its accompanying introducers’ memorandum, submitted “in accordance with Assembly Rule III, Sec 1(f)” (Exhibit 34), stated, in pertinent part:

“On March 31, 2015, a 137 page budget bill (S4610-A/A6721-A) was introduced, and was adopted by the Senate late that evening. The Senate bill was adopted by the Assembly after 2:30am on April 1, 2015.

This budget bill included, inter alia, legislation to establish a special commission on compensation (hereinafter ‘Commission’) consisting of seven members, with three appointed by the Governor, one appointed by the Temporary

²¹ Quote from introducers’ memorandum to A.7997, *infra* at ¶388 (Exhibit 34).

²² Plaintiffs’ challenge to the constitutionality of Chapter 567 of the Laws of 2010, *as written*, is the second cause of action of their March 30, 2012 verified complaint in their declaratory judgment action, *CJA v. Cuomo, et al.* – a full copy of which plaintiff SASSOWER had handed up to defendants SENATE and ASEMBLY when she testified at their February 6, 2013 “public protection” hearing – and a duplicate of which she furnished the Court in support of plaintiffs’ September 22, 2015 cross-motion in support of summary judgment and other relief. Plaintiffs’ September 22, 2015 cross-motion and their November 5, 2015 reply papers expanded the challenge to encompass Chapter 60, Part E, of the Laws of 2015, *as written*.

President of the Senate, one appointed by the Speaker of the Assembly, and two appointed by the Chief Judge of the State of New York. There were no appointments from the Senate minority or the Assembly minority.

This budget bill required the Commission to make its recommendations for judicial compensation not later than December 31, 2015, and for legislative and executive compensation not later than November 15, 2016. The budget bill further stated that such determinations shall have ‘the force of law’ and shall ‘supercede’ inconsistent provisions of the Judiciary Law, Executive Law, and the Legislative Law, unless modified or abrogated by statute.

This budget bill would enable legislators to receive substantial salary increases after the next election without incurring any political backlash for voting for those increases.

The budget bill was clear that the salary recommendations for legislators would not be announced until after the next election, too late to encourage potential candidates to run in the election against the incumbents and too late to require incumbents to justify such a salary increase during the election.

By making the salary increases automatic, the legislators would not need to vote on such increases at all, thereby enabling the legislators to avoid the political liability that would result from voting for large and unpopular salary increases for themselves. Indeed, since the Legislature would normally not be in session immediately after an election, there would not even be an opportunity for individual legislators to vote on such salary increase unless both houses of the legislature were called back into special session for this specific purpose. This would enable all the legislators to speak out against the salary recommendations, while knowing that they would not actually need to vote against such increases.”

389. The memorandum then specified six different respects in which the bill’s provision giving the Commission’s salary recommendations “the force of law” was unconstitutional:

“b. Article III, Section 1 of the New York State Constitution states that the legislative power ‘shall be vested in the Senate and Assembly.’ A non-elected commission cannot be delegated legislative power to enact recommendations ‘with the force of law’ that can ‘supercede’ inconsistent provisions of law.

...

d. Article III, Section 13 of the New York State Constitution states that ‘no law shall be enacted except by a bill,’ yet the salary commission was given the power to enact salary recommendations ‘with the force of law’ without any legislative bill approving of such salaries being considered by the legislature.

e. Article III, Section 14 of the New York State Constitution states that no bill shall be passed ‘or become law’ except by the vote of a majority of the members elected to each branch of the legislature. The budget bill, however, stated that the recommendations of the salary commission would ‘have the force of law’ without any vote whatsoever by the legislators. Such a provision deprives the members of

the legislature of their Constitutional right to vote on every bill prior to its enactment into law.

f. Article IV, Section 7 of the New York State Constitution gives the Governor the authority to veto any bill, but there is no corresponding ability of the Governor to veto any recommendations of the salary commission before such recommendations would become effective.”

And, additionally:

“a. Article III, Section 6 of the New York State Constitution states that each member of the legislature shall receive an annual salary ‘to be fixed by law.’ The Constitution does not state that members of the legislature shall receive a salary ‘to be fixed by a commission.’

...

c. Article III, Section 6 of the New York State Constitution states that legislators shall continue to receive their current salary ‘until changed by law.’ A non-elected commission cannot ‘change the law’ since only the State Legislature has the power to change the law.” (Exhibit 34).

390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave “force of law” effect to a special commission’s recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:

“It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature.” *Id.*, 152.

391. Justice Fahey’s dissent was cited by the New York City Bar Association’s *amicus curiae* brief to the Court of Appeals in a different case challenging the same statute, *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743 (S.Ct. Bronx 2006), *affm’d* 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 N.Y.3d 891 (2007),

appeal denied, 9 N.Y.3d 815; motion granted, 9 N.Y.3d 986. It characterized “the force of law” provision as:

‘a process of lawmaking never before seen in the State of New York’ (at p. 24);

a ‘novel form of legislation...in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)’;

a ‘gross violation of the State Constitution’s separation-of-powers and...the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State’s laws’ (at p. 25);

‘most unusual [in its]...self-executing mechanism by which recommendations formulated by an unelected commission automatically become law...without any legislative action’ (at p. 28);

unlike ‘any other known law’ (at p. 29);

‘a dangerous precedent’ (at p. 11) that

‘will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).²³

392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.

393. The unconstitutionality of “the force of law” provision of Chapter 60, Part E, of the Laws of 2015 – and of the timing for the Commission’s recommendation for legislative and

²³ The City Bar’s *amicus* brief is posted on the webpage of this verified second supplemental complaint, on the Center for Judicial Accountability’s website, www.judgewatch.org, accessible from the sidebar panel “Judicial Compensation-NY”.

executive branch officers – requires the striking of the statute, in its entirety – there being no severability provision in the statute. (*St. Joseph Hospital, et al. v. Novello, et al., id.*).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

394. By contrast to *McKinney*, where the Supreme Court upheld the statute because of the safeguarding provisions it contained, such safeguards are here absent.

395. Unlike the statute in *McKinney*, Chapter 60, Part E, of the Laws of 2015 does not provide for a commission of sufficient size and diversity, nor furnish the commission with sufficient guidance as to standards and factors governing its determinations.

396. It establishes a seven-member commission – and of these, only two members are legislative appointees, designated by the majority leaders of each house. This is an insufficient number to reflect the diversity of either the Legislature or the State.

397. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the Judiciary’s agenda of pay raises.

398. As the Judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the Chief Judge is directly interested in the determination, the Chief Judge’s participation as an appointing authority is, at very least, a constitutional infirmity.

399. Additionally, Chapter 60, Part E, of the Laws of 2015 furnishes insufficient guidance to the Commission as to the “appropriate factors” for it to consider. The statute requires the Commission to “take into account all appropriate factors, including but not limited to” six enumerated factors (§2, ¶3). These six enumerated factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the

People their due process and equal protection rights under Article I of the New York State Constitution.

400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.*

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are “appropriate factors” for its consideration in making salary recommendations renders the statute unconstitutional, as written.

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

403. Article XIII, §7 of the New York State Constitution states:

“Each of the state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed”.

404. This express prohibition was highlighted by the then Governor and the Senate and Assembly in 2009 in defending against the judges' judicial pay raise lawsuits before the New York Court of Appeals. Their November 23, 2009 brief stated:

“This Court has never decided whether the provision of Article XIII, §7, banning salary increases during a State officer’s term of office, applies to judges.... it seems unlikely that this Court could uphold the order below, to the extent it was adverse to Defendants, or grant relief to Plaintiffs on their appeal, without addressing Article XIII, §7.”

405. Yet, the Court of Appeals' February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, granting judgment in favor of the judges, neither addressed nor even mentioned Article XIII, §7.

406. Because Chapter 60, Part E, of the Laws of 2010, *as written*, allows the Commission to effectuate salary increases for judges during their terms, it violates Article XIII, §7 and is unconstitutional.

D. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #S.4610/A-6721 Violated Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3

407. Beyond the six constitutional violations that the legislators' introducers' memorandum for A.7997 itemized concerning “the force of law” provision of Chapter 60, Part E, of the Laws of 2015 (Exhibit 34), their memorandum included a further constitutional violation as to the whole of Part E:

“Article VII, Section 6 of the New York State Constitution states in relevant part that ‘(n)o provision shall be embraced in any appropriation bill unless it relates specifically to some particular appropriation in the bill,’ yet there was no appropriation in the budget bill relating to the salary commission. Thus, this legislation was improperly submitted and considered by the legislature as an unconstitutional rider to a budget bill.”

408. In fact, Part E, which was Part E of defendant CUOMO's Budget Bill #S.4610/A.6721 (Exhibit 35-a), violated not only Article VII, §6, but Article VII, §§2 and 3.

409. In pertinent part, Article VII, §§2 and 3 state:

§2. ...on or before the second Tuesday following the first day of the annual meeting of the legislature..., the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law.

§3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein. The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills...”

410. Pursuant to Article VII, §2, defendant CUOMO submitted his executive budget for fiscal year 2015-2016 on January 21, 2015. No Budget Bill #S.4610/A.6721 was part of his submission – nor any legislation proposing a Commission on Legislative, Judicial and Executive Compensation.

411. On March 31, 2015, following behind-closed-doors, three-men-in-a-room budget deal-making, Budget Bill #S.4610/A.6721, bearing the date March 31, 2015, was introduced (Exhibit 35-a) – containing a Part E (pp. 93-95), summarized at the outset of the bill as:

“establishing a commission on legislative, judicial and executive compensation, and providing for the powers and duties of the commission and for the dissolution of the commission and repealing chapter 567 of the laws of 2010 relating to establishing a special commission on compensation, and providing for their powers and duties; and to provide periodic salary increases to state officers”.

412. Such Budget Bill #S.4610/A.6721 was unconstitutional, *on its face*:

(a) it was untimely – Article VII, §3 required defendant CUOMO to submit his “bills containing all the proposed appropriations and reappropriations” when he submitted

his executive budget, on January 21, 2015. Likewise his proposed legislation relating thereto. No new budget bill, embracing never-proposed legislation, could be constitutionally submitted by him on March 31, 2015 (*Winner v. Cuomo*, 176 A.D.2d 60, 63 (3rd Dept. 1992));²⁴

(b) its content was improper – Part E was not legislation capable of providing “monies and revenues” for expenditures of the budget, as Article VII, §2 specifies and, compared to other Parts of the bill, it had the most tenuous connection to the budget, having no relation at all. (*Pataki v. Assembly*, 4 NY3d 75 (2004)).²⁵

²⁴ *Winner v. Cuomo*, at p. 63: “As Members of the State Assembly, plaintiffs are charged with acting on the Executive Budget (NY Const, art VII, § 4). Defendant, in turn, has a constitutional and statutory obligation to timely submit his budget bills to the Legislature (NY Const, art VII, §3; State Finance Law §24). By reducing the time available to review the budget bills, defendant impinges upon the Legislature’s opportunity to timely review his proposals and hampers the ability to question Executive Department heads regarding the budget (Legislative Law § 31).”

State Finance Law §24. “Budget bills”: “1. The budget submitted annually by the governor shall be simultaneously accompanied by a bill or bills for all proposed appropriations and reappropriations and for the proposed measures of taxation or other legislation, if any, recommended therein. Such bills shall be submitted by the governor and shall be known as budget bills.”

²⁵ While the three-judge plurality opinion in *Pataki v. Assembly*, 4 NY 3d. at 99, “le[ft] for another day the question of what judicially enforceable limits, if any, beyond the anti-rider clause of article VII, §6, the Constitution imposes on the content of appropriation bill”, the concurrence of Judge Rosenblatt, which had made the plurality a majority, took issue with their approach stating (at 101-102):

“A proper resolution of these lawsuits requires a test, consisting of a number of factors, no single one of which is conclusive, to determine when an appropriation becomes unconstitutionally legislative. To begin with, anything that is more than incidentally legislative should not appear in an appropriation bill, as it impermissibly trenches on the Legislature’s role. The factors we consider in deciding whether an appropriation is impermissibly legislative include the effect on substantive law, the durational impact of the provision, and the history and custom of the budgetary process.

In determining whether a budget item is or is not essentially an appropriation, one must look first to its effects on substantive law. The more an appropriation actively alters or impairs the State’s statutes and decisional law, the more it is outside the Governor’s budgetary domain. A particular ‘red flag’ would be non-pecuniary conditions attached to appropriations.

History and custom also count in evaluating whether a Governor’s budget bill exceeds the scope of executive budgeting. The farther a Governor departs from the pattern set by prior executives, the resulting budget actions become increasingly suspect. I agree that customary usage does not establish an immutable model of appropriation (*see* plurality op at 98). At the same time, it would be wrong to ignore more than 70 years of executive budgets that basically consist of line items.

The more an executive budget strays from the familiar line-item format, the more likely it is to be unauthorized, nonbudgetary legislation. As an item exceeds a simple identification of a sum of money along with a brief statement of purpose and a recipient, it takes on a more legislative character. Although the degree of specificity the Governor uses in describing an appropriation is within executive discretion (*see People v Tremaine*, 281 N.Y. 1, 21 N.E.2d 891 [1939]), when the specifics transform an appropriation into proposals for programs, they poach on powers reserved for the Legislature.

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #S.4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process

413. Budget Bill #S.4610/A.6721, both introduced and amended on March 31, 2015 (Exhibits 35-a, 35-b), stated in its first section:

“This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2015-2016 state fiscal year. Each component is wholly contained within a Part identified as Parts A through J.”

414. This was false and fraudulent with respect to Part E. Part E was in no way a “component[] of legislation necessary to implement the state fiscal plan for the 2015-2016 state fiscal year”, let alone a “major” one.

415. Also materially false and fraudulent was the prefatory paragraphs to the amended Budget Bill #S.4610-A/A.6721-A (Exhibit 35-b), insofar as they connote legitimate legislative process:

“IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance – committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means – again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee”.

In addition, the more a provision affects the structure or organization of government, the more it intrudes on the Legislature’s realm. The executive budget amendment contemplates funding – but not organizing or reorganizing – state programs, agencies and departments through the Governor’s appropriation bills.

The durational consequences of a provision should also be taken into account. As budget provisions begin to cast shadows beyond the two-year budget cycle, they look more like nonbudget legislation. The longer a budget item’s potential lifespan, the more legislative is its nature. Similarly, the more a provision’s effects tend to survive the budget cycle, the more it usurps the legislative function.”

416. The amending of Budget Bill #S.4610/A.6721 was completely opaque, both in the Senate and Assembly. Upon information and belief, the amendments were not voted on in any committee or on the Senate and Assembly floor and no amended introducers' memorandum revealed the changes to the bill. Reflecting this – as relates to the Senate Finance Committee – is the video of its two-minute March 31, 2015 meeting,²⁶ whose sole agenda item was #S.4610-A/A.6721-A. Notwithstanding audio unintelligibility in parts, the following can be discerned:

Chair DeFrancisco: Senate Finance Committee meeting for this budget cycle and would you please read.

Clerk: Senate Bill 4610-A, a budget bill, enacts various provisions of law necessary to implement the state fiscal plan for the 2015-2016 state fiscal year.

Chair DeFrancisco: Is there a motion?

Unidentified woman: Yes.

Chair DeFrancisco: Senator Squadron. Yes, Senator Squadron.

Senator Squadron: I note this is an A. When did the original..?

Chair DeFrancisco: Sometime before the A, I don't know.

Laughter

Chair DeFrancisco: I simply don't, I simply don't. And is there some relevance to when it was actually?

Senator Squadron: I was just curious as to highlight, when this bill came out.

Chair DeFrancisco: It was before the Governor's original submission was the bill number 4610. This is an A because it made changes

Senator Squadron: They were both submitted then?

Chair DeFrancisco: They were what?

²⁶ <http://www.nysenate.gov/calendar/meetings/finance/march-31-2015/finance-meeting-1>. The Senate webpage shows the vote as having been 29 ayes, 2 nays, with 6 ayes without rec.

Senator Squadron: They were both submitted then?

Chair DeFrancisco: The Governor's bill was submitted a long time ago.

Senator Squadron: The original 4610 wasn't [unintelligible].

Chair DeFrancisco: Clarification.

Ranking Member Krueger: The section C in this bill between the, sorry, Senator Squadron? In the amended version, section C is different than in the previous version. And, also, the fact sheet has not been updated, so that it's actually not correct, so you might just want to double check section C.

Senator Squadron: Thank you very much.

Chair DeFrancisco: The bill has been moved. The bill has been moved and seconded. All in favor.

Voices: Aye.

Chair DeFrancisco: Opposed.

Silence.

Senator Squadron: Without rec.

Chair DeFrancisco: Without rec, Senator Squadron, Rivera, Dilan. Perkins?

Chair DeFrancisco: No, for Senator Perkins. The bill is reported direct to the third reading. (gavel) We are adjourned.

417. Such video additionally establishes that the vote by the Senate Finance Committee – without which Budget Bill #S.4610-A/A.6721-A could not have proceeded to the Senate floor – was fraudulently procured by then Senate Judiciary Committee Chair DeFrancisco and Ranking Member Krueger, both of whom knew – including from the very face of the bill which identified that day's date – that it was not introduced “a long time ago”.

418. Part E, which was not amended when Budget Bill #S.4610/A.6721 was amended, was entirely new legislation. However, notwithstanding the bill's “EXPLANATION – Matter in *italics*

(underscored) is new; matter in brackets [] is old law to be omitted”, nothing in either the unamended bill nor the amended bill revealed that Part E was new (Exhibits 35-a, 35-b).

419. In fact, Part E did not belong in Budget Bill #S.4610/A.6721. If it belonged in any budget bill, it would have been defendant CUOMO’s Budget Bill #S.2005/A.3005, introduced on January 21, 2015 as his “Public Protection and General Government Article VII Legislation” (Exhibit 36-a) – and containing a Part I (eye) establishing a Commission on Executive and Legislative Compensation, structured differently from Chapter 567 of the Laws of 2010, which it did not repeal. Most significantly, the salary recommendations of the Commission on Executive and Legislative Compensation would not have “the force of law” (Exhibits 36-a, 36-b, 36-c).

420. On March 27, 2015, by an opaque amendment process, this Protection/General Government Budget Bill #S.2005/A.3005 was amended twice – the first time, retaining Part I (eye) (pp. 42-44), and second time, dropping it as “Intentionally Omitted” (p. 21). The Assembly memorandum for this second amendment, A.3005-B, (Exhibit 36-d) gave no explanation for why Part I (eye) was dropped – or, for that matter, what the now omitted Part I (eye) had consisted of.

421. Four days later, on March 31, 2015, and without any accompanying introducer’s memorandum, in violation of Senate Rule VII, §1 and Assembly Rule III, §§1f, 2(a), defendant CUOMO’s Budget Bill #S.4610/A.6721 (Exhibits 35-a, 35-b) was untimely introduced in violation of Article VII, §§2, 3 of the New York State Constitution and State Finance Law §24 based thereon, and then, in violation of Senate Rule VII, §4b and Assembly Rule III, §§1f, 6, amended in an even more opaque fashion (Exhibits 35-a, 35-c) and without any amended introducer’s memorandum (Exhibit 35-d). Its Part E repealed Chapter 567 of the Laws of 2010, thereupon modeling the Commission on Legislative, Judicial and Executive Compensation on the repealed statute – including its provision for giving the Commission’s salary recommendations “the force of law”.

422. The fact that this just-introduced/just-amended S.4610-A/A.6721-A, with its Part E, was then sped through to the Senate and Assembly floor, on a “message of necessity”, to meet an April 1 fiscal year deadline, which had no relevance to it, only exacerbates the injury to the public which, pursuant to Legislative Law §32-a, had a right to be heard at a legislative hearing on the budget about a budget bill containing Part E (*Winner v. Cuomo, supra*, at p. 62, fn. 24.)

423. At bar, defendants’ violations of multitudinous constitutional, legislative, and mandatory Senate and Assembly rule provisions, denying the People legislative due process and perpetrating fraud, render Chapter 60, Part E, of the Laws of 2015 unconstitutional. “*Albany’s Dysfunction Denies Due Process*”, 30 Pace L. Rev. 965, 982-983 (2010) Eric Lane, Laura Seago.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, As Applied –
& the Commission’s Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof**

424. Plaintiffs repeat, reiterate, and reallege ¶¶1-423, with the same force and effect as if more fully set forth herein.

425. Defendants’ refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, as applied. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute’s unconstitutionality, as written and as applied – such as plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48).

426. The Commission on Legislative, Judicial and Executive Compensation operated unconstitutionally in at least four specific respects – and plaintiffs presented these to the Commission as threshold issues for its determination.

427. The Commissioners' willful disregard of these four threshold issues suffice to render the judicial salary increase recommendations of their December 24, 2015 Report void *ab initio* – and Chapter 60, Part E, of the Law of 2015 unconstitutional, *as applied*.

A. **As Applied, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional**

428. Plaintiff SASSOWER raised the threshold issue of the disqualification of three of the Commission's seven members – Barry Cozier, Esq., James J. Lack, Esq., and Chair Sheila Birnbaum, Esq. – directly to them at the conclusion of the Commission's first organizational meeting on November 3, 2015. The context was her furnishing to each Commissioner a copy of plaintiffs' October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report, pivotally demonstrating that systemic judicial corruption, involving supervisory and appellate levels and embracing the Commission on Judicial Conduct is a constitutional bar to raising judicial salaries.

429. Later that day, plaintiff SASSOWER reiterated the disqualification issue by a November 3, 2015 e-mail,²⁷ stating:

“...should any of the Commissioners feel themselves unable to discharge their duties with respect to the systemic, three-branch corruption issues presented by CJA's citizen opposition – and that other citizens will be presenting, as well – they should step down from the Commission forthwith. Two Commissioners, Cozier and Lack, are absolutely disqualified by reason of their active role in that corruption – and Chairwoman Birnbaum perhaps as well. I so-stated this to them, this morning – and will particularize the details, with substantiating evidence, in advance of the November 30, 2015 public hearing, should they fail to step down from the Commission – or publicly disclose and address their conflicts of interest.”

²⁷ Exhibit 6 to plaintiffs' November 30, 2015 written testimony, contained in accompanying free-standing folder, at pp. 3-4.

430. In testifying at the Commission's November 30, 2015 hearing, plaintiff SASSOWER repeated that:

"This Commission's threshold duty is, of course, to address issues of the disqualification of its members for actual bias and interest" (testimony, p. 4)

and that, with respect to Commissioners Cozier and Lack and Chair Birnbaum,

"all three [had] demonstrated their utter disregard for casefile evidence of judicial corruption, particularly as relates to the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, whose corruption they have perpetuated." (testimony, p. 4).

431. Plaintiff SASSOWER's December 2, 2012 supplemental submission furnished the particulars as to why these three Commissioners could not examine the evidence of systemic judicial corruption, raised by plaintiffs and other citizens in opposition to judicial salary increases, without exposing their pivotal roles in covering up that evidence and perpetuating the corruption (free-standing folder).

432. The failure and refusal of Commissioners Cozier, Lack, and Chair Birnbaum to rule upon the disqualification issue raised, the failure and refusal of their fellow Commissioners to rule upon it, and the concealment of the disqualification issue from the Commission's December 24, 2015 Report – simultaneously with concealing that systemic judicial corruption was ever raised in opposition to the judicial salary increases and that it is an "appropriate factor" – concede the disqualifications, *as a matter of law* – and renders the Report a nullity.

B. *As Applied, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an "Appropriate Factor" Barring Judicial Salary Increases is Unconstitutional*

433. In testifying before the Commission on November 30, 2015 at its one and only hearing on judicial compensation, plaintiff SASSOWER identified, both by her oral and written presentation, that:

“The appellate, administrative, disciplinary, and removal provisions of Article VI [of the New York State Constitution] are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’ [for the Commission’s consideration], but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.”

434. In so-stating, she was quoting from plaintiffs’ October 27, 2011 Opposition Report which presented a constitutional analysis of the Court of Appeals February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, and Article VI of the New York State Constitution – and her written testimony appended the analysis, in full (Exhibit 3 thereto).

435. The Commissioners’ failure to deny or dispute the accuracy of that analysis in any respect – and their concealment, by their December 24, 2015 Report, of the very issue that systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct is an “appropriate factor” of constitutional magnitude – concedes it, *as a matter of law*.

C. As Applied, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional

436. From the very first of plaintiff SASSOWER’s e-mails to the Commission – on November 2, 2015²⁸ – she advised that the Commission on Judicial Compensation’s August 29, 2011 Report was the product of fraud “covered up by all the executive and legislative public officers who believe themselves entitled to pay raises”. Her e-mail stated that this was:

“chronicled in CJA’s October 27, 2011 Opposition Report, in a mountain of correspondence, criminal and ethics complaints relating thereto, and by the public interest litigations we have undertaken over the past four years, all accessible from the prominent links on CJA’s homepage, www.judgewatch.org. ...

Please forward this e-mail to all seven members of the Commission on Legislative, Judicial and Executive Compensation so that they can be

²⁸ Exhibit 6 to plaintiff SASSOWER’s November 30, 2015 testimony, at pp. 5-6.

apprised of the systemic fraud, corruption, and dysfunction that is before them, threshold, not only with respect to judicial compensation, but with respect to legislative and executive compensation.” (underlining in the original).

437. The following morning, November 3, 2015, before the Commission’s first organizational meeting, plaintiff SASSOWER sent a second e-mail stating:

“...inasmuch as CJA’s October 27, 2011 Opposition Report to the Commission on Judicial Compensation’s August 29, 2011 Report is the STARTING POINT for your determination of the compensation issues as relate to ALL THREE BRANCHES, I take this opportunity to furnish you that link, directly. Here it is: <http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm>. The four-page executive summary is attached.

I am available to answer questions, including publicly and under oath.” (red and capitalization in the original).

438. Following the November 3, 2015 first organizational meeting, plaintiff SASSOWER sent a second November 3, 2015 e-mail,²⁹ stating:

“I hereby request to testify at the Commission’s November 30, 2015 public hearing in New York City.

Such hearing date, nearly 4 full weeks from now, gives each Commissioner ample time to individually determine whether, as particularized by CJA’s October 27, 2011 Opposition Report, the 3-phase judicial pay raises recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and received by this state’s judges beginning April 1, 2012, are statutory-violative, fraudulent, and unconstitutional – thereby requiring that this Commission’s recommendations – having ‘the force of law’ – be for the nullification/voiding of the August 29, 2011 Report AND a ‘claw-back’ of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto.

Because of the importance of CJA’s October 27, 2011 Opposition Report, not only to your statutorily-required December 31, 2015 report of ‘adequate levels of compensation and non-salary benefits’ for this state’s judges, but to your statutorily-required November 15, 2016 report of ‘adequate levels of compensation and non-salary benefits’ for our legislative and executive constitutional officers, I furnished a hard copy of the full October 27, 2011 Opposition Report to Chairwoman Birnbaum at the conclusion of this morning’s organizational meeting. It consisted of: (1)

²⁹ Exhibit 6 to plaintiff SASSOWER’s November 30, 2015 testimony, at pp. 3-4.

CJA's 38-page Opposition Report; (2) CJA's substantiating two-volume Compendium of Exhibits; and (3) the final two motions in CJA's lawsuit against the Commission on Judicial Conduct that went up to the Court of Appeals in 2002 – identified by the Opposition Report as having been handed up by me to the Commission on Judicial Compensation at its one and only July 20, 2011 public hearing, in support of my testimony.

To the other three Commissioners physically present at this morning's meeting – Commissioners Johnson, Cozier, and Lack – I furnished to each, *in hand*, a copy of the 38-page Opposition Report and its 4-page Executive Summary.

As for the three Commissioners not physically present – Commissioners Hedges, Reiter, and Hormozi – I had brought to the meeting copies of the 38-page Opposition Report and 4-page Executive Summary for them, as well. Unless they request same, I will assume they will be reading and/or downloading the Opposition Report from CJA's webpage: <http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm>. The Executive Summary is attached. ..." (underlining, capitalization, and italics in the original).

439. Two weeks later, by a November 18, 2015 e-mail,³⁰ plaintiff SASSOWER stated that by now the Commissioners

"should have each read and considered [the October 27, 2011 Opposition Report] so dispositive as to mandate a Commission request, if not demand, to the Judiciary and other judicial pay raise advocates for their comment, including their findings of fact and conclusions of law with respect thereto." (underlining in the original).

Based thereon, she stated:

"please deem this e-mail as CJA's request that the Commission...give notice to the Judiciary and judicial pay raise advocates for their findings of fact and conclusions of law with respect to CJA's October 27, 2011 Opposition Report. As seen from the annexed October 28, 2011 e-mail from CJA to the Judiciary and judicial pay raise advocates, they have had a FULL FOUR YEARS to have made findings of fact and conclusions of law.

Needless to say, the Commission's notice to the Judiciary and judicial pay raise advocates – particularly those who have already contacted the Commission about testifying at the November 30th Manhattan hearing – should request their response to CJA's assertion that the October 27, 2011 Opposition Report requires "that this Commission's recommendations – having 'the force of law' – be for the nullification/voiding of the August 29, 2011 Report AND a 'claw-back' of the \$150 million-plus dollars that the

³⁰ Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 2-3.

judges unlawfully received pursuant thereto.” (underlining added, capitalization in the original).

440. Yet, eleven days later, at the Commission’s November 30, 2015 public hearing, the Commissioners allowed the Judiciary and judicial pay raise advocates to urge them to rely on the Commission on Judicial Compensation’s August 29, 2011 Report – without the slightest inquiry as to their findings of fact and conclusions of law with respect to plaintiffs’ October 27, 2011 Opposition Report.

441. Plaintiff SASSOWER’s own testimony at the hearing reiterated that plaintiffs’ October 27, 2011 Opposition Report “proved” the “fraudulence, statutory violations, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 Report and its recommended judicial salary increases – and that the record of plaintiffs’ three litigations based thereon established that:

“But for the evisceration of any cognizable judicial process in ALL three of these litigations...current judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating this Commission, would have been declared unconstitutional, long, long ago.” (testimony, p. 2).

She stated:

“The Judiciary and judicial pay raise advocates testifying here today, and by their written submissions, tout the excellence and high-quality of the Judiciary – implicitly recognizing that judicial salary increases are predicated on judges fulfilling their constitutional function of rendering justice. Plainly, they need a reality check if they are actually unaware of the lawlessness and non-accountability that reigns in New York’s judicial branch, notwithstanding our notice to them, again, and again, and again. Let them confront, with findings of fact and conclusions of law, our October 27, 2011 Opposition Report and our three litigations arising therefrom. This includes our constitutional analysis, drawn from the Court of Appeals’ February 23, 2010 decision in the judges’ judicial compensation lawsuits and from Article VI of the New York State Constitution...” (testimony, p. 2, underlining added).

She further stated that each of the Commissioners, by then, had had ample time to verify the accuracy of the October 27, 2011 Opposition Report and that “current judicial salary levels are... ‘ill-gotten gains’, stolen from the taxpayers” (at p. 4).

442. On December 2, 2015, plaintiffs furnished the Commission with a supplemental submission stating:

“The Commission’s charge is to ‘examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits’ (§2.1) and ‘the prevailing adequacy of pay levels and other non-salary benefits’ (§2.2a(2)). None of the judges and other pay raise advocates testifying before you identified this. Instead, they misled you with rhetoric that the levels you should be setting are the ones they view as ‘fair’, ‘equitable’, and commensurate with their self-serving notions of the dignity and respect to be accorded the judiciary, furnishing NO EVIDENCE as to the inadequacy of current judicial salary levels – bumped up \$40,000 by the Commission on Judicial Compensation’s August 29, 2011 Report. They did not even assert that current salary levels are inadequate, let alone after the addition of non-salary benefits. In fact, and repeating their fraud at the Commission on Judicial Compensation’s July 20, 2011 hearing, they made no mention of non-salary benefits – or their monetary value – a concealment also characterized by their written submissions before you.

...CJA’s October 27, 2011 Opposition Report...highlighted (at pp. 1, 17-18, 22, 31) that among the key respects in which the Commission on Judicial Compensation’s August 29, 2011 Report was statutorily-violative and fraudulent is that its salary increase recommendations were ‘unsupported by any finding that current ‘pay levels and non-salary benefits’ [were] inadequate’ – reflective of the fact that the judges and judicial pay raise advocates had not furnished probative evidence from which such finding could be made. Such finding, moreover, would require an articulated standard for determining adequacy...” (pp. 1-2, capitalization in the original).

The December 2, 2015 supplemental submission then went on to show (pp. 2-3) that the ONLY evidence that the Commission had before it was as to the adequacy of existing salary and non-compensation benefits.

443. On December 21, 2015, plaintiff SASSOWER furnished the Commission with a further submission. Entitled “Assisting the Commission in discharging its statutory duty of ‘tak[ing]

into account all appropriate factors’ as to ‘adequate levels of compensation and non-salary benefits’,
it presented:

“further evidence of ‘the lawlessness and non-accountability that reigns in New York’s judicial branch, to which [she] testified at the November 30, 2015 hearing as not only an ‘appropriate factor’ for the Commission’s consideration, disentitling the judiciary to any salary increases, but a ‘factor’ of constitutional magnitude.” (underlining in the original).

The letter reiterated that the judges and judicial pay raise advocates could easily corroborate this – prefatory to furnishing the Commission “with findings of fact and conclusions of law with respect to...CJA’s October 27, 2011 Opposition Report and the record of the three litigations based thereon.

444. The Commission’s December 24, 2015 Report ignored ALL the foregoing. It made no mention of any opposition to the judicial salary increases, made no mention of plaintiffs’ October 27, 2011 Opposition Report, made no findings of fact and conclusions of law with respect to it – or with respect to the record of the three lawsuits based thereon – or as to the adequacy of existing levels of judicial compensation and non-salary benefits. Its judicial salary increase recommendations rested on the Commission on Judicial Compensation’s August 29, 2011 Report – and on no finding that existing levels of judicial compensation and non-salary benefits were inadequate. In other words, the December 24, 2015 Report is based on the very fraud and absence of evidence that plaintiffs had presented in opposition.

D. **As Applied, a Commission that Suppresses and Disregards the Input of Taxpaying Citizens, Particularly in Opposition to Salary Increases, is Unconstitutional**

445. By an November 18, 2015 e-mail,³¹ plaintiff SASSOWER objected to the Commission’s decision, at its November 3, 2015 first organizational meeting, to hold only a single hearing on judicial compensation, in Manhattan – “without the slightest discussion of whether that

³¹ Exhibit 6 to plaintiff SASSOWER’s November 30, 2015 testimony, at p. 2.

would be fair to New Yorkers in the state's vast western, northern, and central regions, where, additionally, salaries and costs of living are so markedly lower." She requested that the Commission "schedule at least one upstate public hearing on judicial compensation".

446. Later that day, plaintiff SASSOWER sent another e-mail,³² this one entitled: "Informing the Public about the Commission's Nov. 30 Public Hearing on Judicial Compensation & its Opportunity to be Heard". Noting that in the two weeks since the Commission had scheduled its November 30, 2015 public hearing in Manhattan, it had "yet to send out a press release about it and the opportunity the public has to testify and/or make written submissions about salaries and benefits for judges, whose costs it pays for", she requested that the Commission immediately put out a press release about the November 30th hearing – "and the opportunity the public has to testify and/or to furnish written comment". She further stated:

"the only reason for the Commission's proceeding 'quietly' – as it has – is its knowledge that the taxpaying public would never tolerate pay raises for corrupt and incompetent judges – such as we have and cannot rid ourselves of. Likewise pay raises for our collusive and corrupt Legislators and Governor, Attorney General, and Comptroller..."

447. Plaintiff SASSOWER received no response to either of these two requests because the Commissioners did not send her any response.

448. At the November 30, 2015 public hearing, plaintiff SASSOWER preceded her testimony by the observation that:

"There was no press announcement from this Committee, press release sent out notifying the public of this hearing today and, consequently, there are not many people present, nor who requested to testify because they didn't know about this hearing. Nor did they ever know or do they know that they have an opportunity to make written submissions." [transcript, p. 70].

³² Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at p. 1.

449. None of the Commissioners disputed that there had been no press announcement or release sent out to inform the public. Nevertheless, a week later, Chair Birnbaum opened the Commission's December 7, 2015 meeting – its first after the hearing – by stating:

“there was a statement made about that we did not get notice of the hearings out to the public. I just would like to tell you that there was an in-media advisory that is on our website and that was sent out to over 100 media outlets throughout the state and that was also distributed to wire services who have nationwide distribution. So we feel strongly that there was more than sufficient publicity about the hearings. And the hearings were very well attended...” [transcript, p. 2].

450. Upon information and belief, Chair Birnbaum's assertion that a media advisory posted on the Commission's website had been sent out to over 100 media outlets throughout the state and ...distributed to wire services who have nationwide distribution” is false.³³ No substantiation was furnished in response to plaintiff SASSOWER's FOIL request.³⁴

451. The Commission's December 24, 2015 Report concealed the paucity of its outreach. Stating that it had “invited written commentary and established post office and e-mail addresses” (at p. 4), the Report did not reveal how this had been publicized or the opportunity to testify at the hearing, which, in three separate places (Chair Birnbaum's coverltr, pp. 1, 4), it misrepresented as being “day-long”, when, in fact, it was only 2-1/2 hours. It concealed entirely that there was any opposition to judicial salary increases, whether from “interested individuals” or “organizations”, let alone its basis, and made no finding as to its legitimacy or sufficiency in rebutting support for the judicial salary increases.

³³ The Commission made no claim to having sent out any press release for its March 10, 2016 hearing on legislative and executive compensation, held in the same location as its November 30, 2015 hearing. The result was that it had only two witnesses testifying – the executive directors of Common Cause-NY and Citizens Union.

³⁴ Plaintiffs' FOIL requests to the Commission are in the accompanying free-standing folder containing their submissions to the Commission.

452. The Commission’s failure to meaningfully elicit citizen input – and to address the citizen opposition to judicial salary increases and its basis that it had before it – renders its December 24, 2015 Report unconstitutional, *as a matter of law*.³⁵

AS AND FOR A FIFTEENTH CAUSE OF ACTION

**The Commission’s Violation of Express Statutory Requirements
of Chapter 60, Part E, of the Laws of 2015 Renders
their Judicial Salary Increase Recommendations Null & Void**

453. Plaintiffs repeat, reiterate, and reallege ¶¶1-452, with the same force and effect as if more fully set forth herein.

454. The Commission on Legislative, Judicial and Executive Compensation violated Chapter 60, Part E, of the Laws of 2015 in multiple respects:

- (i) in violation of §2, ¶¶1, 2(a), the Commission examined only judicial salary, not “compensation” apart from salary, and not “non-salary benefits”;
- (ii) in violation of §2, ¶¶1, 2(a), the Commission made no finding and furnished no evidence that current “compensation and non-salary benefits” or “pay levels and non-salary benefits” of New York State judges are inadequate;
- (iii) in violation of §2, ¶3, the Commission did not “take into account all appropriate factors”, such as systemic judicial corruption and citizen opposition – and made no claim that it had;
- (iv) in violation of §2, ¶3, the Commission did not “take into account three of the six enumerated “appropriate factors”.

455. Each of these statutory violations is particularized by plaintiffs’ 12-page “Statement of Particulars in Further Support of Legislative Override of the ‘Force of Law’ Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.” (Exhibit 40), which plaintiffs January 15, 2015 letter to defendants FLANAGAN and HEASTIE furnished those defendants and

³⁵ “It is basic that an ‘act of the legislature is the voice of the People speaking through their representatives. The authority of the representatives in the legislature is a delegated authority and it is wholly derived from and dependent upon the Constitution’ (*Matter of Sherrill v O’Brien*, 188 NY 185, 199).”, *New York State Bankers Association, Inc. v. Wetzler*, 91 N.Y.2d 98, 102 (1993) (underlining added).

the chairs and ranking members of the Legislature's "appropriate committees" (Exhibit 39). Individually and collectively, these statutory violations are sufficient to void the judicial salary increase recommendations of its December 24, 2015 Report, *as a matter of law*.

456. The Commission's foregoing statutory violations do not exhaust all its statutory violations which additionally include:

(i) in violation of §2, ¶1, the Commission was not "established" "commencing June 1, 2015". Instead, the Commission's four appointing authorities delayed their appointments, with defendant Cuomo's appointments not until almost four months later, October 30, 2015. The result was that the Commission did not have the statutorily-contemplated six months to discharge its duties with respect to "judges and justices of the state-paid courts of the unified court system". Instead, it had but two months, further reduced by the holiday season;

(ii) in violation of §3, ¶2, requiring that the Commission be "governed by articles 6, 6-A and 7 of the public officers law", it failed to furnish records it was duty-bound to disclose under Public Officers Law, Article VI [Freedom of Information Law [FOIL] (see accompanying folder);

(iii) in violation of §3, ¶¶2, 5, and 6, the Commission did not utilize the significant investigative powers and resources available to it to discharge its statutory-mandate.

457. Underlying all these statutory violations was the Commissioners' bias and interest in securing the predetermined result of increasing judicial salary levels, additionally rendering its Report and recommendations unconstitutional, *as applied*.

AS AND FOR A SIXTEENTH CAUSE OF ACTION

**Three-Men-in-a-Room, Budget Dealing-Making is Unconstitutional,
*As Unwritten and As Applied***

458. Plaintiffs repeat, reiterate, and reallege ¶¶1-457, with the same force and effect as if more fully set forth herein.

A. Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, As Unwritten

459. The procedure governing the submission and enactment of the state budget is laid out in Article VII, §§1-7 of the New York State Constitution. Upon the Governor's submission of the budget to the Legislature pursuant to §2, the procedure, is spelled out in §§3, 4.³⁶

460. Pursuant thereto, once the Governor submits the budget, it is within the legislative branch. He has thirty days, as of right, within which to submit any amendments or supplements to his bills, following which it is by "consent of the legislature". He also has the right "to appear and be heard during the consideration thereof, and to answer inquiries relevant thereto." Further, the Legislature may request the Governor to appear before it – and may command the appearance of his department heads to "answer inquiries" with regard to the executive budget. Based thereon, and in such public fashion, it may "consent" to the Governor's further amending and supplementing his budget.

461. Neither the Constitution, nor statute, nor Senate and Assembly rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it is an flagrant violation of Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so.

³⁶ Article VII, §3 is quoted at ¶¶377, 379, *supra*. Article VII, §4 is quoted at ¶369.

462. Consistent with the Court of Appeals decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993) – and for the multitude of reasons that decision gives with respect to the bicameral recall practice – such three-men-in-a-room, budget deal-making must be declared unconstitutional.

463. The parallels between the bicameral recall practice declared unconstitutional in *King v. Cuomo* and the challenge, at bar, to three-men-in-a-room budget deal-making are obvious. Only minor alterations in the text of the decision in *King v. Cuomo* are needed to support the declaration here sought, as by the below bold-faced & bracketed insertions to pp. 251-255:

“The challenged [] practice significantly unbalances the law-making options of the Legislature and the Executive beyond those set forth in the Constitution. By modifying the nondelegable obligations and options reposed in the Executive **[and Legislature]**, the practice compromises the central law-making rubrics by adding an expedient and uncharted bypass. The Legislature **[and Executive]** must be guided and governed in this particular function by the Constitution, not by a self-generated additive (see, *People ex rel. Bolton v Albertson*, 55 NY 50, 55).

Article IV, §7 and **[Article VII, §§1-4]** of the State Constitution prescribes how a **[budget]** bill becomes a law and explicitly allocates the distribution of authority and powers between the Executive and Legislative Branches...

The description of the process is a model of civic simplicity...

The putative authority **[for behind-closed-doors, three-men-in-a-room budget deal-making]** ‘is not found in the constitution’ (*People v Devlin*, 33 NY 269, 277). We conclude, therefore, that the practice is not allowed under the Constitution....

When language of a constitutional provision is plain and unambiguous, full effect should be given to ‘the intention of the framers ... as indicated by the language employed’ and approved by the People (*Settle v Van Evrea*, 49 NY 280, 281 [1872]; see also, *People v Rathbone*, 145 NY 434, 438). In a related governance contest, this Court found ‘no justification ... for departing from the literal language of the constitutional provision’ (*Anderson v Regan*, 53 NY2d 356, 362 [emphasis added]). As we stated in *Settle v Van Evrea*:

‘[I]t would be dangerous in the extreme to extend the operation and effect of a written Constitution by construction beyond the fair scope of its terms, merely because a restricted and more literal interpretation might be inconvenient or impolitic, or because a case may be supposed to be, to some extent, within the reasons which led to the introduction of some particular provision plain and precise in its terms.

‘That would be *pro tanto* to establish a new Constitution and do for the people what they have not done for themselves’ (49 NY 280, 281, *supra*).

Thus, the State's argument that the [**three-men-in-a-room budget deal-making**] method, in practical effect and accommodation, merely fosters the underlying purpose of article IV, §7 [**and article VII, §§1-4**] is unavailing (see, *New York State Bankers Assn. v Wetzler*, 81 NY2d 98, 104, *supra*).

If the guiding principle of statutory interpretation is to give effect to the plain language (*Ball v Allstate Ins. Co.*, 81 NY2d 22, 25; *Debevoise & Plimpton v New York State Dept. of Taxation & Fin.*, 80 NY2d 657, 661; McKinney's Cons Laws of NY, Book 1, Statutes §94), '[e]specially should this be so in the interpretation of a written Constitution, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State' (*Settle v Van Evrea*, 49 NY, at 281, *supra*). These guiding principles do not allow for interstitial and interpretative gloss by the courts or by the other Branches themselves that substantially alters the specified law-making regimen. Courts do not have the leeway to construe their way around a self-evident constitutional provision by validating an inconsistent 'practice and usage of those charged with implementing the laws' (*Anderson v Regan*, 53 NY2d 356, 362, *supra*; see also, *People ex rel. Burby v Howland*, 155 NY 270, 282; *People ex rel. Crowell v Lawrence*, 36 Barb 177, *affd* 41 NY 137; *People ex rel. Bolton v Albertson*, 55 NY 50, 55, *supra*).

The New York Legislature's long-standing [**three-men-in-a-room budget deal-making**] practice has little more than time and expediency to sustain it. However, the end cannot justify the means, and the Legislature, even with the Executive's acquiescence, cannot place itself outside the express mandate of the Constitution. We do not believe that supplementation of the Constitution in this fashion is a manifestation of the will of the People. Rather, it may be seen as a substitution of the People's will expressed directly in the Constitution.

The Governor has been referred to as the 'controlling element' of the legislative system (4 Lincoln, *The Constitutional History of New York*, at 494 [1906]). The [**three-men-in-a-room budget deal-making**] practice unbalances the constitutional law-making equation... By the ultra vires [] method, the Legislature [**and Executive**] significantly suspends and interrupts the mandated regimen and modifies the distribution of authority and the complementing roles of the two law-making Branches. It thus undermines the constitutionally proclaimed, deliberative process upon which all people are on notice and may rely. Realistically and practically, it varies the roles set forth with such careful and plain precision in the constitutional charter...

Though some practical and theoretical support may be mustered for this expedient custom (see, e.g., 4 Lincoln, *op. cit.*, at 501), we cannot endorse it. Courteous and cooperative actions and relations between the two law-making Branches are surely desirable and helpful, but those policy and governance arguments do not address the issue to be decided. Moreover, we cannot take that aspirational route to justify this unauthorized methodology.

The inappropriateness of this enterprise, an 'extraconstitutional method for resolving differences between the legislature and the governor,' also outweighs the claimed convenience (Zimmerman, *The Government and Politics of New York State*, at 152). For example, '[t]his procedure 'creates a negotiating situation in which,

under the threat of a full veto, the legislature **[through its Temporary Senate President and Assembly Speaker negotiate with]** the governor, thus allowing him to exercise *de facto* amendatory power” (Fisher and Devins, *How Successfully Can the States’ Item Veto be Transferred to the President?*, 75 Geo LJ 159, 182, quoting Benjamin, *The Diffusion of the Governor’s Veto Power*, 55 State Govt 99, 104 [1982]).

Additionally, the **[three-men-in-a-room]** practice ‘affords interest groups another opportunity to amend or kill certain bills’ (Zimmerman, *op. cit.*, at 152), shielded from the public scrutiny which accompanies the initial consideration and passage of a bill. This ‘does not promote public confidence in the legislature as an institution’ because ‘it is difficult for citizens to determine the location in the legislative process of a bill that may be of great importance to them’ (*id.*, at 145, 152). Since only ‘insiders’ are likely to know or be able to discover the private arrangements between the Legislature and Executive when the **[three-men-in-a-room]** method is employed, open government would suffer a significant setback if the courts were to countenance this long-standing practice.

In sum, the practice undermines the integrity of the law-making process as well as the underlying rationale for the demarcation of authority and power in this process. Requiring that the Legislature adhere to this constitutional mandate is not some hypertechnical insistence of form over substance, but rather ensures that the central law-making function remains reliable, consistent and exposed to civic scrutiny and involvement.

...It is no justification for an extraconstitutional practice that it is well intended and efficient, for the day may come when it is not so altruistically exercised.

Appellants are entitled, therefore, to a judicial declaration that the **[three-men-in-a-room]** practice is not constitutionally authorized.”

464. At bar, the unconstitutionality is *a fortiori* to that in *King* because, unlike with bicameral recall, no Senate and Assembly rules “reflect and even purport to create the [three-men-in-a-room] practice” (at p. 250) AND such budget deal-making by them, conducted behind-closed-doors, is UNIFORMLY derided as deleterious to good-government.

465. Further underscoring the unconstitutionality of three-men-in-a-room budget dealmaking is the Court of Appeals decision in *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995), where the Court held that the Legislature’s withholding of a passed-bill from the Governor violates Article IV, §7. In addition to resting on *King v. Cuomo*, the Court reiterated:

“The practice of withholding passed bills while simultaneously conducting discussions and negotiations between the executive and legislative branches is just

another method of thwarting open, regular governmental process, not unlike the unconstitutional ‘recall’ policy, which, similarly, violated article IV, §7.”, *id.*, at 239.

466. Additionally, the “three-men-in-a-room” shrinks the two-branch 213-member legislature to just two members, flagrantly violating the constitutional design, which recognized in size a safeguard against corruption. *Cf.*, *The Anti-Corruption Principle*” by Zephyr Teachout, *Cornell Law Review*, Vol 94: 341-413.³⁷

B. Three-Men-in-a-Room Deal-Making is Unconstitutional, As Applied

467. Three-men-in-a-room budget deal-making, *unwritten* in the Constitution, in statute, and in Senate and Assembly rules, is entirely unregulated.

468. That it takes place behind-closed-doors, out of public view, is a further constitutional violation – violating Article III, §10: “The doors of each house shall be kept open”, as well as Senate and Assembly rules consistent therewith: Senate Rule XI, §1 “The doors of the Senate shall be kept

³⁷ The framers were “obsessed with corruption” and “one of the most extensive and recurring discussions among the delegates [to the Constitutional Convention] about corruption concerned the size of the various bodies.” It was the reason they made the House of Representatives larger than to the Senate because, in their view, “[t]he larger the number, the less the danger of their being corrupted.”

“Several delegates reiterated a relationship between size and corruption, suggesting that it was, or at least was becoming, conventional wisdom. Magistrates, small senates, and small assemblies were easier to buy off with promises of money, and it was easier for small groups to find similar motives and band together to empower themselves at the expense of the citizenry. Larger groups, it was argued, simply couldn’t coordinate well enough to effectively corrupt themselves.

...
Notably, George Washington’s only contribution to the Constitutional Convention arose in the context of a debate about the size of the House of Representatives.^{fn.} First, it would take too much time for representatives in a large legislative body to create factions. Second, differences between legislators would lead to factional jealousies and personality conflicts if the same corrupting official tried to buy, or create dependency, across a large body. Because secrets are hard to keep in large groups, and dependencies are therefore difficult to create, the sheer size and diversity of the House would present a formidable obstacle to someone attempting to buy its members.

Madison claimed that they had designed the Constitution believing that ‘the House would present greater obstacles to corruption than the Senate with its paucity of members.’^{fn.} ...” (at p. 356).

open”; Assembly Rule II, §1 “A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public” and Public Officers Law, Article VI “The legislature therefore declares that government is the public’s business...”.

469. Compounding the unconstitutional exclusion of the public from the three-men-in-a-room budget negotiations is that the three-men do not, thereafter, disclose the extent of their discussions and changes to budget bills. As illustrative, neither last year nor the year before was there any memo, itemized sheet, or report setting forth their agreed-to changes to the Legislative/Judiciary budget bills – each unamended bills prior to the three-men-in-a-room huddle, but, after the huddle, introduced as amended bills and referred to the fiscal committees. Nor were the changes identified by italics, underscoring, or bracketing in the amended bills’ formatting – at least with respect to the Judiciary/Legislative budget bills.

470. That what they have done to alter massive budget bills, in secret and without full disclosure to legislators and the public, they then speed through the Legislature on a “message of necessity”, dispensing with the requirement that each bill be “upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage”, pursuant to Article III, §14, further compounds the constitutional violations.

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

VERIFIED COMPLAINT
Index #5122-16

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants.

-----X
“It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein.”

State Finance Law Article 7-A, §123: “Legislative purpose”

Plaintiffs, as and for their verified complaint, respectfully set forth and allege:

1. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs seek declaratory judgments as to the unconstitutionality and unlawfulness of the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001, both the original bill and the enacted amended bill #S.6401-a/A.9001-a. The expenditures of the enacted budget bill – embodying the

Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and tens of millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

2. Plaintiffs also seek declarations voiding the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with further declarations striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent – and injunctions to prevent further disbursement of state money pursuant thereto.

3. Additionally, plaintiffs seek declarations that the “process” by which the State budget for fiscal year 2016-2017 was enacted is unconstitutional, specifically including:

- the failure of Senate and Assembly committees and the full chambers of each house to amend and pass the Governor's appropriation bills and to reconcile them so that they might “become law immediately without further action by the governor”, as mandated by Article VII, §4 of the New York State Constitution;
- the so-called “one-house budget proposals”, emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly joint budget conference committee and its subcommittees, conducted by staff, behind-closed-doors, based on the “one-house budget proposals”; and
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

4. Finally, plaintiffs seek declarations as to the unconstitutionality and unlawfulness of the appropriation item entitled “For grants to counties for district attorney salaries” in the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget

Bill #S.6403-d/A.9003-d and of items of reappropriation therein pertaining to previous “grants to counties for district attorney salaries” and “recruitment and retention” incentives – and enjoining disbursement of state monies pursuant thereto.

5. For the convenience of the Court, a Table of Contents follows:

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✓
AS AND FOR A SECOND CAUSE OF ACTION

**The Judiciary's Proposed Budget for 2016-2017,
Embodied in the Governor's Budget Bill #S.6401/A.9001,
is Unconstitutional & Unlawful**

34. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-33 herein with the same force and effect as if more fully set forth.

35. Plaintiffs' second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331). Such is not barred by Justice McDonough's August 1, 2016 decision (Exhibit D) – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

36. Establishing that the August 1, 2016 decision is a judicial fraud -- and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

37. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' second and sixth causes of action (Exhibit B: ¶¶99-108; Exhibit C: ¶¶179-193) – which correspond to their tenth cause of action (Exhibit A: ¶¶317-331) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on “documentary evidence” that he did not identify – and which does not exist.

38. Plaintiffs analysis is accurate, true, and correct in all material respects.

39. In addition to the facts set forth by the tenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint (Exhibit A: ¶¶317-331) is the further fact, anticipated by its ¶331, namely, that the Judiciary is funding the 2016 phase of the judicial salary increase recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation from its §3 reappropriations, *via* its §2 interchange provision. Such reinforces the unconstitutionality of the interchange provision and the reappropriations, detailed at ¶¶320-331— key features of the Judiciary's slush-fund budget.

AS AND FOR AN THIRD CAUSE OF ACTION

**The Governor's Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
"Without Revision"**

40. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-39 herein with the same force and effect as if more fully set forth.

41. Plaintiffs' third cause of action herein is the eleventh cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶332-335). Such is not barred by Justice McDonough's August 1, 2016 decision – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

42. Establishing that the August 1, 2016 decision is a judicial fraud – and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

- the failure of the Senate and Assembly, by their committees and by their full chambers, to amend and pass the Governor's appropriation bills and to reconcile them so that they might "become law immediately without further action by the governor", as mandated by Article VII, §4 of the New York State Constitution;
- the so-called "one-house budget proposals", emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly Joint Budget Conference Committee and its subcommittees, conducted by staff, behind-closed-doors, based on the "one-house budget proposals";
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

58. The specified violations of Article VII, §4, 5, 6 of the New York State Constitution, particularized by and comprising this separate cause of action, pertaining to the "process" by which the fiscal year 2016-2017 budget was enacted, are accurate, true, and correct.

AS AND FOR A SIXTH CAUSE OF ACTION

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, As Written –
and the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof**

59. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-58 herein with the same force and effect as if more fully set forth.

60. Plaintiffs' sixth cause of action herein is the thirteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶385-423. It is accurate, true, and correct in all material respects.

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission’s Judicial Salary Recommendations “the Force of Law”

61. Plaintiffs’ showing as to the unconstitutionality of the statute’s delegation of “force of law” legislative power is set forth by the incorporated Exhibit A: ¶¶388-393. It is accurate, true, and correct in all material respects.

62. Also true and correct is the constitutional significance of ¶392. Containing underscoring and capitalization for emphasis, it reads, in full:

“392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.” (underlining and capitalization in the original).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

63. Plaintiffs’ showing as to the unconstitutionality of the statute’s delegation of legislative power without safeguarding provisions is set forth by the incorporated Exhibit A: ¶¶394-402. It is accurate, true, and correct in all material respects.

64. Also accurate, true, and correct is the constitutional significance of ¶¶400-402. Containing underscoring and italics for emphasis, it reads, in full:

“400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office

for corruption – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are ‘appropriate factors’ for its consideration in making salary recommendations renders the statute unconstitutional, as written.”

65. As Judiciary Law §183-a statutorily links district attorney salaries with judicial salaries, the failure of the Commission statute to include an express provision requiring the Commission to take into account such “appropriate factor” means that district attorneys become the beneficiary of judicial salary increase recommendations, without ANY evidence, or even claim, that existing district attorney salaries are inadequate – and, likewise, without ANY evidence, or even claim, that district attorneys are discharging their constitutional and statutory duties to enforce the penal law and that mechanisms to remove them for corruption are functional. Such additionally renders the Commission statute unconstitutional, *as written*.

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

66. Plaintiffs’ showing that the Commission statute violates Article XIII, §7 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶403-406. It is accurate, true, and correct in all material respects.

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3

67. Plaintiffs’ showing that the Commission statute violates Article VII, §6, 2, 3 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶407-412. It is accurate, true, and correct in all material respects.

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process

68. Plaintiffs' showing that the Commission statute is unconstitutional because it was procured fraudulently and without legislative due process is set forth by the incorporated Exhibit A: ¶¶413-423. It is accurate, true, and correct in all material respects.

AS AND FOR A SEVENTH CAUSE OF ACTION

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Applied* –
& the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof**

69. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-68 herein with the same force and effect as if more fully set forth.

70. Plaintiffs' seventh cause of action herein is the fourteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶424-452). It is accurate, true, and correct in all material respects.

71. The first and overarching ground upon which Chapter 60, Part E, of the Laws of 2015 is unconstitutional, *as applied*, was set forth at ¶425. Its importance was such that its pertinent words were capitalized and the whole of it was underscored, as follows:

“Defendants’ refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, *as applied*. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute’s unconstitutionality, *as written and as applied* – such as plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48).”

72. Subsequent events reinforce this key ground of unconstitutionality. Thus, even upon being given notice of, and furnished with, plaintiffs' March 23, 2016 verified second supplemental

complaint (Exhibit A), the legislative defendants have continued to willfully and deliberately refuse to discharge ANY oversight duties with respect to the constitutionality and operations of the statute:

a. On April 1, 2016, with full knowledge that the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation are statutorily-violative, fraudulent, and unconstitutional for all the multitude of reasons particularized by the verified second supplemental complaint (¶¶385-457), the legislative defendants allowed its judicial salary recommendations for fiscal year 2016-2017 to take effect.

b. Since mid-April 2016, the legislative defendants have sought to have the state reimburse the counties for the district attorney salary increases resulting from the April 1, 2016 fraudulent, statutorily-violative, and unconstitutional judicial salary increases, disregarding notice from plaintiffs on the subject, including as to the necessity of repealing Judiciary Law §183-a, statutorily-linking district attorney and judicial salaries – as to which there had been no oversight by the legislative defendants since its enactment 40 years ago.

A. As Applied, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional

73. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶428-432. It is accurate, true, and correct in all material respects.

B. As Applied, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an "Appropriate Factor" is Unconstitutional

74. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶433-435. It is accurate, true, and correct in all material respects.

C. As Applied, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional

75. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶436-444. It is accurate, true, and correct in all material respects.

D. As Applied, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional

76. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶445-452. It is accurate, true, and correct in all material respects.

AS AND FOR AN EIGHTH CAUSE OF ACTION

The Commission's Violations of Express Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders its Judicial Salary Increase Recommendations Null and Void

77. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-76 herein with the same force and effect as if more fully set forth.

78. Plaintiffs' eighth cause of action herein is the fifteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶453-457. It is accurate, true, and correct in all material respects.

79. A further "appropriate factor" that the Commission failed to "take into account", in violation of §2, ¶3 of the Commission statute, is the statutory link between judicial salaries and district attorneys, plainly impacting upon "the state's ability to fund increases in compensation and non-salary benefits" – one of the six factors enumerated by §2, ¶3 of the Commission statute.

80. The Commission's disregard of this "appropriate factor" for its consideration was not inadvertent. Plaintiffs' advocacy alerted the Commissioners to the statutory link between judicial salaries and district attorney salaries and its financial impact to the state.³

³ Plaintiffs' October 27, 2011 opposition report (at p. 24); the video of plaintiff Sassower's testimony before the Legislature at its February 6, 2013 "public protection" budget hearing, accessible from the links plaintiffs furnished.

AS AND FOR AN NINTH CAUSE OF ACTION

**Three-Men-in-a-Room Budget Dealing-Making is Unconstitutional,
*As Unwritten and As Applied***

81. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-80 herein with the same force and effect as if more fully set forth.

82. Plaintiffs' ninth cause of action herein is the sixteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶458-470. It is accurate, true, and correct in all material respects.

A. **Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, As Unwritten**

83. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶459-466. It is accurate, true, and correct in all material respects.

B. **Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, As Applied**

84. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶467-470. It is accurate, true, and correct in all material respects.

AS AND FOR A TENTH CAUSE OF ACTION

**The Appropriation Item Entitled "For grants to counties for district attorney salaries",
in the Division of Criminal Justice Services' Budget, Contained in Aid for Localities
Budget Bill #S.6403-d/A.9003-d, Does Not Authorize Disbursements
for Fiscal Year 2016-2017 and is Otherwise Unlawful and Unconstitutional.
Reappropriation Items are also Improper, if not Unlawful**

85. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-84 herein with the same force and effect as if more fully set forth.

86. Defendant CUOMO's Aid to Localities budget bill for fiscal year 2016-2017, #S.6403/A.9003, was over 900 pages. In addition to the first two amendments to the Aid to

Plaintiffs' March 29, 2017 Verified Supplemental Complaint [R.671-743]

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

superseding/corrected

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index # 5122-16
RJI #01-16-122174

**VERIFIED SUPPLEMENTAL
COMPLAINT**

Plaintiffs,
-against-

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants.
-----x

Plaintiffs, as and for their Verified Supplemental Complaint, respectfully set forth and allege:

111. Plaintiffs repeat, reallege, and reiterate the entirety of their September 2, 2016 verified complaint in this citizen-taxpayer action, which they incorporate by reference, including its incorporated three pleadings from their prior citizen-taxpayer action, *CJA v. Cuomo, et al* (Albany Co. #1788-2014), *to wit*, their March 23, 2016 proposed verified second supplemental complaint, their March 28, 2014 verified complaint, and their March 31, 2015 verified supplemental complaint – Exhibits A, B, and C thereto.¹

¹ The record of the prior citizen-taxpayer action, as likewise of this citizen-taxpayer action, is posted on plaintiff CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link: "CJA's Citizen-

112. Virtually all the constitutional, statutory, and rule violations detailed by plaintiffs' September 2, 2016 verified complaint pertaining to the budget for fiscal year 2016-2017 – and by their incorporated pleadings pertaining to the budgets for fiscal years 2016-2017, 2014-2015 and 2015-2016 – are replicated with respect to the budget for fiscal year 2017-2018. Indeed, the constitutional violations are not only replicated, but the legislative defendants have so brazenly repudiated Article VII, §§4, 5, 6 of the New York State Constitution – and the controlling consolidated Court of Appeals decision in the budget lawsuits to which they were parties: *Silver v. Pataki* and *Pataki v. Assembly*, 4 N.Y.3d 75 (2004) – that nothing more is required for summary judgment to plaintiffs on their reiterated fifth cause of action (¶¶54-58)² than to compare defendant Governor's budget bills for fiscal year 2017-2018 with the legislative defendants' "amended" budget bills. And facilitating the comparison are the legislative defendants' one-house budget resolutions and their accompanying summary/report of recommended budget changes, already embodied in their "amended" budget bills – as well as their own press releases and public statements.

113. Suffice to here quote the unequivocal language of Article VII, §§4, 5, 6, which the legislative defendants have utterly transgressed:

§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to

Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance".

² As identified by ¶56, the fifth cause of action is ¶¶362-383 of the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint and its sixteenth cause of action (¶¶458-470), in its entirety.

the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.

§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill.

§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation.”

114. Indeed, because the legislative defendants' "amending" of defendant Governor's budget bills not only violates Article VII, §§4, 5, 6, but was fraud and no "amending" in fact, accomplished by their violation of their own legislative rules, summary judgment for plaintiffs is also mandated on their reiterated fourth cause of action (¶¶48-53)³ pertaining to the legislative defendants' plethora of statutory, legislative rule, and other constitutional violations with respect to the fiscal year 2017-2018 budget.

115. As stated by plaintiffs' September 2, 2016 complaint (¶ 33) – quoting from their prior pleadings – and hereinbelow further demonstrated:

“In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized

³ As identified by ¶49, the fourth cause of action is the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint, (Exhibit A: ¶¶336-384).

control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’.”

116. For the convenience of the Court, a Table of Contents follows:

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Accountability, Audit and Internal Control Act of 1987 and 1999, requiring internal controls, internal audits and, every three years, independent audits. Plaintiffs' FOIL requests to defendants SENATE and ASSEMBLY for documents establishing compliance have not resulted in responses consistent therewith.

129. The failure of defendants FLANAGAN and HEASTIE to include, in their budget narrative – or their transmittal letter – any information about compliance with Article VI of the Legislative Law (§§89-92) has enabled them to conceal that the “independent audits” are sham, fraudulent documents, not the least reason because of their bald and fraudulent representations – accepted by the “independent audit” – as to “controls” pertaining to enactment of the Legislature’s budget.

✓ **The Judiciary’s Proposed Budget for Fiscal Year 2017-2018**
(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))⁷

130. By two memoranda, dated December 1, 2016, Chief Administrative Judge Lawrence Marks furnished a two-part presentation of the Judiciary’s proposed budget to the same recipients as last year: defendants CUOMO, FLANAGAN, and HEASTIE, Senate Coalition Leader Jeffrey Klein, Senate Minority Leader Andrea Stewart-Cousins, Assembly Minority Leader Brian Kolb, as well as the chair and ranking member of the Senate Finance Committee – Senator Catharine Young and Senator Liz Krueger –; the chair and ranking member of the Assembly Ways and Means Committee – Assemblyman Herman Farrell, Jr. and Assemblyman Bob Oaks –; and the chairs of the Senate and Assembly Judiciary Committees – Senator John Bonacic and Assemblywoman Helene Weinstein.

⁷ As identified by ¶35, plaintiffs’ second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331).

131. In language identical to that used for the past three years, the Chief Administrative Judge's memoranda represented this two-part proposed budget as: "itemized estimates of the annual financial needs of the Judiciary..." for its operating expenses and

"itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary."

132. The latter memorandum explained that the two-part presentation:

"follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2017-2018 Fiscal Year." (underlining added).

133. The two parts of the Judiciary's proposed budget contained, for each part, a certification by the Chief Judge and approval by the Court of Appeals identical to those furnished in the last three years. However, identically to the last three years, because of the future tense "will" pertaining to the "single budget bill" and the bill's placement in the "Executive Summary" section, NO certification appeared to encompass the "single budget bill".

134. Identically to the last three years, the Judiciary's two-part budget, including its single "Executive Summary" and statistical tables, did not provide a cumulative dollar total for the Judiciary's budget request. Likewise, the Judiciary's "single budget bill" did not provide a cumulative tally.

135. Identically to the last three years, the Judiciary's failure to provide a cumulative dollar total for its two-part budget and to tally the figures in its "single budget bill" enabled it to conceal a discrepancy of tens of millions of dollars between them. This discrepancy was the result of

reappropriations in the “single budget bill” (at pp. 13-16) that were not in the Judiciary’s two-part budget presentation.

136. The Judiciary’s two-part budget presentation contained no reappropriations. They appeared only in the “single budget bill”. Their amount, as identified on the first page of the “single budget bill”, was \$84,350,000. This did not include the \$15,000,000 in IOLA reappropriations, identified on the last page of the “single budget bill” as part of its “SCHEDULE” (at p. 13) – and which, if added, make a cumulative total of \$99,350,000 in reappropriations.

137. Identically to the last three years, the Judiciary’s “single budget bill” consisted of two sections: the first, denominated §2, containing appropriations, including “General State Charges” (pp. 1-12), and the second, denominated §3, containing reappropriations (pp. 13-15).

138. Identically to the last three years, §2 of the “single budget bill” began with a paragraph reading:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2017.” (at p. 1).

Further down the page, under the heading “SCHEDULE”, another paragraph, stated:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.” (at p. 1).

139. Identically to the last three years, §3 of the “single budget bill” began with a paragraph reading:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year’s appropriation, are hereby reappropriated from the

same funds and made available for the same purposes as the prior year's appropriation, unless amended herein, for the state fiscal year beginning April 1, 2017." (at p. 13).

140. Identically to the last three years, the §3 listing of reappropriations under the heading "SCHEDULE" were pretty barren. Most referred to chapter 51, section 2 of the laws of 2016, 2015, 2014, 2013, 2012 and also chapter 51, section 3 of the laws of 2016 – which are the enacted budget bills for the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1..."; or "Contractual Services" (at pp. 13-14).

141. Missing from the Judiciary's two-part budget presentation, including in its Executive Summary, was:

- (a) any reference to the Judiciary's compliance with Article 7-D (§249), entitled "Internal Control Responsibilities of the Judiciary", whose section c requires "independent audits" every three years. Plaintiffs' FOIL requests to the Judiciary for documents establishing compliance therewith have not resulted in ANY production.
- (b) any reference to the judicial salary increase that would take effect by "force of law" on April 1, 2017 based on the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – unless overridden by the Legislature. Plaintiffs' FOIL requests for documents pertaining to the cost of that judicial salary increase have not resulted in ANY production by the Judiciary.
- (c) any reference to the judicial salary increase that had taken effect "by force of law" on April 1, 2016 based on the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – including its cost, and how the Judiciary had paid for it, inasmuch as defendants CUOMO and SENATE and ASSEMBLY had not appropriated monies to the Judiciary to fund it;
- (d) the Chief Administrative Judge's approvals of increases, decreases, and interchanges pursuant to the §2 text of the legislative/judiciary budget bill for fiscal year 2016-2017 – particularly the approvals that "enabled the Judiciary to fund the 'force of law' judicial salary increases for 2016-2017

recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and, additionally, to fund the increases in general state charges resulting therefrom”. Plaintiffs’ FOIL requests to the Judiciary for documents pertaining thereto have not resulted in ANY production.

A New Legislative Session

(Facts Pertaining to a Reiterated Fourth Cause of Action (¶¶48-53))

142. Pursuant to Article III, §8 of the New York State Constitution, all members of the New York State Legislature were elected/re-elected on the Tuesday following the first Monday in November 2016. Pursuant to Article XIII, §4, the new legislative session commenced six weeks later, on January 4, 2017, with each house beginning by swearing in its members by the oath of office, prescribed by Article XIII, §1:

“I do solemnly swear that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of, according to the best of my ability”.

143. Additionally, and pursuant to Article III, §9, defendant SENATE chose “a temporary president”, defendant FLANAGAN, and defendant ASSEMBLY chose “a speaker”, defendant HEASTIE, thereupon adopting rules for the 2017-2018 legislative session.

144. Inasmuch as the December 1, 2016 proposed budgets of both the Legislature and Judiciary already replicated ALL of the constitutional and statutory violations of their prior budgets, laid out by the pleadings in plaintiffs’ instant and prior citizen-taxpayer actions – as to which plaintiffs’ summary judgment entitlement, *as a matter of law*, is established by the record – plaintiff SASSOWER reached out to defendants FLANAGAN, HEASTIE, and to Senate Minority Leader Stewart-Cousins and Assembly Minority Leader Kolb, the chairs and ranking members of appropriate Senate and Assembly committees, as well as their rank-and-file members, especially those who are lawyers. Such outreach efforts, by phone and e-mail, commenced on January 9, 2017.

~~“Legislature: The Legislature proposes a 3% increase, its first budget increase since 2011.” (at p. 111)~~

175. The Assembly Minority’s “Green Book” was only slightly more expansive:

~~“Significant increases include:~~

~~* \$226.1 million for the Legislature, \$6.2 million more than last year.~~

~~This represents a 2.7% increase in spending.”~~

Yet these figures from the “Green Book” were different from the figures in the budget narrative that defendants FLANAGAN and HEASTIE transmitted to defendant CUOMO, which were, as follows:

~~“The recommended General Fund appropriation of \$224,380,145 for FY 2017-18 for the Legislature represents an increase of 3% or \$6,535,344 from the amount appropriated for FY 2016-17.” (at p. 1).~~

✓ **With respect to the Judiciary’s proposed budget:**

(Facts Pertaining to Reiterated Second Cause of Action (¶¶34-39))

176. The Senate Minority’s “Blue Book” omitted any information about the Judiciary’s proposed budget, notwithstanding its two sections entitled “Public Protection, Legislature and Judiciary Fact Sheet” (pp. 111-112) and “Public Protection, Legislature and Judiciary Agency Details” (pp. 113-123).

177. The Assembly Minority’s “Green Book” furnished the following, which was the sum total of its presentation, on its “Legislature and Judiciary” page,

“Judiciary:

Significant increases include:

\$2.2 billion for the Judiciary, \$64.3 million more than last year. This represents a

2.9% increase in spending.” (underlining added).

178. The Senate Majority’s “White Book” stowed four paragraphs about the Judiciary’s proposed budget in its section entitled “Public Protection”. It opened with a one-sentence paragraph:

“THE FY 2018 Executive budget proposes All Funds spending of \$2.97 billion, an increase of \$119.7 million, or 4.2 percent.” (Exhibit GG, at p. 86)⁸

The limited detailing of the three further paragraphs, while referencing the judicial salary increase, made it appear inconsequential and not requiring any action by legislators:

“The increase in personal service is primarily driven by the Judiciary’s plan to add 200 new Full Time Equivalent (FTE) positions, and incremental salary increases for Judges and other employees... Spending for Judicial salaries would increase by \$2.4 million, or 1 percent.” (at p. 86, underlining added).

179. The Assembly Majority’s “Yellow Book” contained a 1-1/3 page section entitled “Judiciary” (pp. 155-156) stating:

“The Judiciary’s proposed budget request recommends All Funds appropriations of \$2.98 billion, which is an increase of \$98.7 million, or 3.43 percent, from the State Fiscal Year (SFY) 2016-17 level.” (underlining added)⁹

The limited detailing that followed, in four paragraphs that were each highlighted by a subject title, included one entitled “Judicial Compensation”. Its two sentences gave the appearance that the judicial salary increase was required – and that nothing need be, nor could be, done:

“The proposed budget includes \$2.4 million to support a salary increase for State Supreme Court Judges recommended by the Commission on Legislative, Judicial and Executive Compensation. Per the Commission, salaries must be fixed at 95 percent of the salary of a Federal District Court Judge effective April 1, 2016, and 100 percent effective April 1, 2018, with the salaries of all other state judges adjusted accordingly.” (at p. 156, underlining added)

~~**With respect to district attorney salary reimbursement to the counties in the Governor’s Aid to Localities Budget Bill #S.2003/A.3003: (Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶85-110))**~~

180. The Assembly Minority’s “Green Book” omitted it entirely.

⁸ This information was reflected, as well, in a chart of “Proposed Disbursements – All Funds” (p. 88).

⁹ This is followed by two tables. The first, of “Appropriations” essentially repeats in chart form, the above-quoted narrative statement by identifying the Judiciary’s 2017-2018 request as “2,976.20” millions, representing a “98.70” millions change and a percentage change of “3.43. The second chart, “Disbursements”,

✓
**As to the Second Cause of Action (¶¶34-39),
Reiterated for Fiscal Year 2017-2018**

The Judiciary's Proposed Budget for 2017-2018,
Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

That the Judiciary's proposed budget for fiscal year 2017-2018, embodied in Legislative/Judiciary Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because [as chronicled by ¶¶130-141, 176-179, *supra* and discussed by plaintiffs' second cause of action herein (¶¶34-39) and its incorporated corresponding second, sixth, and tenth causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)]: (1) the Judiciary budget is so incomprehensible that the Senate majority and minority and Assembly majority and minority cannot agree on its cumulative cost and percentage increase; (2) its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; (3) the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a "slush fund" and concealing relevant costs; (4) it conceals and embeds funding for judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional, *to wit*, the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.

~~**As to the Third Cause of Action (¶¶40-47),
Reiterated for Fiscal Year 2017-2018**~~

~~Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
"Without Revision"~~

That Legislative/Judiciary Budget Bill #2001/A.3001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because [as chronicled by ¶¶148-163, *supra* and discussed by plaintiffs' third cause of action herein (¶¶40-47) and its incorporated

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BY E-MAIL

June 10, 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:
2019 Commission on Legislative, Judicial and Executive Compensation –
(Chapter 60, Part E, of the Laws of 2015)

Chapter 60, Part E, of the Laws of 2015 established – on June 1, 2019 – a Commission on Legislative, Judicial and Executive Compensation (§2.1).

This is to request¹ all publicly-available records reflecting that the Commission has been fully appointed (§2.1) 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;

¹ 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) records establishing Chief Judge Janet DiFiore's appointment of two commissioners – especially letters of appointment and public announcements or press releases with respect thereto;
- (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.

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.

Thank you.

Enclosure

cc: The Public & Press, on its Behalf

Center for Judicial Accountability, Inc. (CJA)

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Monday, June 10, 2019 9:28 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: FW: FOIL/Records Request: 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015
Attachments: 6-10-19-foil-leg-jud-exec-compensation-committee.pdf

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Monday, June 10, 2019 9:22 AM
To: records.access@exec.ny.gov; 'Senate Foil' <foil@nysenate.gov>; 'Robin Marilla' <marillar@nyassembly.gov>; Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015

Attached is CJA's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewidth.org
914-421-1200

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Center for Judicial Accountability, Inc. (CJA)

From: Senate Foil <foil@nysenate.gov>
Sent: Monday, June 17, 2019 3:00 PM
To: elena@judgewatch.org
Subject: Fw: FOIL/Records Request: 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015
Attachments: Rules and Regulations relating to Public Inspection and Copying of Legislative Records - January 2019_blue.pdf; 6-10-19-foil-leg-jud-exec-compensation-committee.pdf

----- Forwarded by Senate Foil/senate on 06/17/2019 02:58 PM -----

From: Senate Foil/senate
To: mail@judgewatch.org
Date: 06/17/2019 02:55 PM
Subject: Re: FOIL/Records Request: 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015

June 17, 2019

Ms. Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
www.judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated June 10, 2019 pursuant to the Freedom of Information Law.

You are requesting "all publicly available records reflecting that the Commission has been fully appointed (S2.1) and is operational..." .

Please be advised there are no records that match your request as stated.

I have attached a copy of the Senate's Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Alejandra N. Paulino, Esq.
Secretary of the Senate

From: "Center for Judicial Accountability, Inc.\(CJA)" <elena@judgewatch.org>
To: <records.access@exec.ny.gov>, "Senate Foil" <foil@nysenate.gov>, "Robin Marilla" <marillar@nyassembly.gov>.



**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

Public Information Office
Robin Marilla
Records Access Officer

Room 202
Legislative Office
Building
Albany, New York 12248
(518) 455-4218

June 17, 2019

Dear Ms. Sassower:

On June 10, 2019, we received your FOIL request for records relating to the 2019 Commission on Legislative, Judicial, and Executive Compensation.

The Assembly maintains no responsive records to your request.

If you have any questions or if I can be of any further assistance, please let me know.

Sincerely,
Robin L. Marilla



June 17, 2019

Via Email: mail@judicialwatch.org

Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

FOIL Request: #2509

Dear Ms. Sassower:

The Executive Chamber acknowledges receipt of your FOIL request dated June 10, 2019, seeking:

all publicly-available records reflecting that the Commission has been fully appointed (§2.1) 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;
- (4) records establishing Chief Judge Janet DiFiore's appointment of two commissioners - especially letters of appointment and public announcements or press releases with respect thereto;
- (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.

We are conducting a search for records that respond to your request and, if applicable, will review them for appropriate exemptions under FOIL. We will provide you with a status update on or before July 16, 2019.

If any documents are located that respond to your request, you will be charged \$.25 per page for photocopies. If the response to your request will be provided in another media, we will notify you of any charges.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie Lubanko".

Valerie Lubanko
FOIL Counsel
Records Access Officer



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

July 16, 2019

Via Email: elena@judgewatch.org
Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

FOIL Requests: #2509 & #2510

Dear Ms. Sassower:

Please be advised that we require additional time to complete our response to your FOIL requests dated June 10, 2019. We will provide you with a status update on or before August 13, 2019, if we have not completed our response by then.

Thank you for your courtesy in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie Lubanko".

Valerie Lubanko
FOIL Counsel
Records Access Officer



August 13, 2019

Via Email: elena@judgewatch.org

Elena Sassower
Center for Judicial Accountability, Inc.
PO Box 8101
White Plains, NY 10602

FOIL Request: #2509

Dear Elena Sassower:

This letter responds to your correspondence dated June 10, 2019, which pursuant to FOIL, requested:

all publicly-available records reflecting that the Commission has been fully appointed (§2.1) 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;
- (4) records establishing Chief Judge Janet DiFiore's appointment of two commissioners - especially letters of appointment and public announcements or press releases with respect thereto;
- (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.

As of the date of your request, the Governor has not yet appointed any members to the Commission on Legislative, Judicial and Executive Compensation. Accordingly, the New York State Executive Chamber does not have any records responsive to your request.

Please also keep in mind that the Executive Chamber does not possess or maintain records of other State agencies, including the New York State Judiciary, the New York State Assembly and the New York State Senate.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie Lubanko".

Valerie Lubanko
FOIL Counsel
Records Access Officer

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

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 request¹ 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;

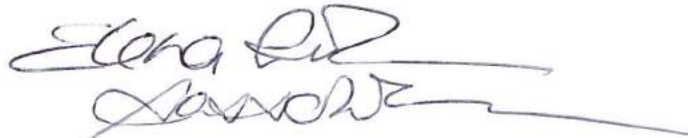
¹ Pursuant to Public Officers Law Article VI [Freedom of Information Law (F.O.I.L.)], Senate Rule XIV [“Freedom of Information”], Assembly Rule VIII [“Public Access to Records”], and §124 of the Chief Administrator’s Rules.

- (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.

Thank you.

A handwritten signature in black 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

**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

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,

Center for Judicial Accountability, Inc. (CJA)

From: FOIL <FOIL@nycourts.gov>
Sent: Friday, September 6, 2019 2:19 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: FOIL/Records Request: AGAIN -- 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Friday, September 6, 2019 2:14 PM
To: records.access@exec.ny.gov; 'Senate Foil' <foil@nysenate.gov>; 'Robin Marilla' <marillar@nyassembly.gov>; Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/Records Request: AGAIN -- 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015

Attached is CJA's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewidth.org
914-421-1200

Please be CAREFUL when clicking links or opening attachments from external senders.



September 13, 2019

Via Email: elena@judgewatch.org
Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

FOIL Request: #2601

Dear Elena Sassower:

The Executive Chamber acknowledges receipt of your FOIL request dated September 6, 2019, seeking:

All publicly-available records reflecting that the Commission has been fully-appointed and is operational - find, 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;
- (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.

We are conducting a search for records that respond to your request and, if applicable, will review them for appropriate exemptions under FOIL. We will provide you with a status update on or before October 15, 2019.

If any documents are located that respond to your request, you will be charged \$.25 per page for photocopies. If the response to your request will be provided in another media, we will notify you of any charges.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie Lubanko". The signature is written in black ink and is positioned above the typed name.

Valerie Lubanko
FOIL Counsel
Records Access Officer



October 15, 2019

Via Email: elena@judgewatch.org

Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

FOIL Request: #2601

Dear Elena Sassower:

This letter responds to your correspondence dated September 6, 2019, which pursuant to FOIL, requested:

All publicly-available records reflecting that the Commission has been fully-appointed and is operational - find, 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;
- (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.

The New York State Executive Chamber (Executive Chamber) has conducted a diligent search for part 1 of your request and found three (3) pages of records responsive to your request. Please be advised that portions of the records that respond to your request are exempt from disclosure pursuant to Public Officers Law § 87(2)(b) because disclosure would "constitute an unwarranted invasion of personal privacy."

Additional records responsive to part 1 of your request may be found at the following website: <https://www.governor.ny.gov/news>. Please utilize the keyword function to refine your search.

Please keep in mind that the Executive Chamber does not possess or maintain records of other State agencies, including the New York State Judiciary, the New York State Assembly and the New York State Senate.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie Lubanko".

Valerie Lubanko
FOIL Counsel
Records Access Officer



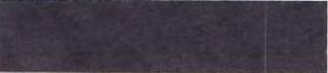
STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

FILED
STATE RECORDS
SEP 24 2019

DEPARTMENT OF STATE

Ms. Mitra Hormozi



Dear Ms. Hormozi:

Pursuant to Part E of Chapter 60 of 2015, I have today appointed you as a Member of the Commission on Legislative, Judicial and Executive Compensation for a term to expire on November 16, 2020.

I am gratified you have accepted this appointment and I am confident you will serve the people of New York State with dedication and distinction.

Sincerely,

ATTEST: State of New York

Dated: September 20, 2019

By:
Special Deputy Secretary of State

WE WORK FOR THE PEOPLE
PERFORMANCE * INTEGRITY * PRIDE

printed on recycled paper



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

FILED
STATE RECORDS
SEP 24 2019

DEPARTMENT OF STATE

Mr. James Malatras
[REDACTED]

Dear Mr. Malatras:

Pursuant to Part E of Chapter 60 of 2015, I have today appointed you as a Member of the Commission on Legislative, Judicial and Executive Compensation for a term to expire on November 16, 2020.

I am gratified you have accepted this appointment and I am confident you will serve the people of New York State with dedication and distinction.

Sincerely,

ATTEST: State of New York

Dated: September 20, 2019

By:
Special Deputy Secretary of State

WE WORK FOR THE PEOPLE
PERFORMANCE * INTEGRITY * PRIDE

printed on recycled paper



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

FILED
STATE RECORDS

SEP 24 2019

DEPARTMENT OF STATE

Mr. Robert L. Megna

Dear Mr. Megna:

Pursuant to Part E of Chapter 60 of 2015, I have today appointed you as a Member of the Commission on Legislative, Judicial and Executive Compensation for a term to expire on November 16, 2020.

I am gratified you have accepted this appointment and I am confident you will serve the people of New York State with dedication and distinction.

Sincerely,

ATTEST: State of New York

Dated: September 20, 2019

By: May Turchi
Special Deputy Secretary of State

WE WORK FOR THE PEOPLE
PERFORMANCE * INTEGRITY * PRIDE

printed on recycled paper

Center for Judicial Accountability, Inc. (CJA)

From: Senate Foil <foil@nysenate.gov>
Sent: Friday, September 13, 2019 5:03 PM
To: Center for Judicial Accountability, Inc.(CJA)
Subject: Re: FOIL/Records Request: AGAIN -- 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015
Attachments: Rules and Regulations relating to Public Inspection and Copying of Legislative Records - January 2019_blue.pdf

September 13, 2019

Elena Sassower
Center for Judicial Accountability, Inc.
Post Office Box 8101
White Plains, NY 10602
mail@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated September 6, 2019 pursuant to the Freedom of Information Law.

You are requesting 2019 Commission on Legislative, Judicial and Executive Compensation -(Chapter 60, Part E, of the Laws of 2015);

Please be advised the records you request are not available pursuant to Senate Rules.

I have attached a copy of the Senate's Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Alejandra N. Paulino, Esq.
Secretary of the Senate

-----"Center for Judicial Accountability, Inc.\(CJA\)" <elena@judgewatch.org> wrote: -----
To: <records.access@exec.ny.gov>, "'Senate Foil'" <foil@nysenate.gov>, "'Robin Marilla'" <marillar@nyassembly.gov>, <skerby@nycourts.gov>
From: "Center for Judicial Accountability, Inc.\(CJA\)" <elena@judgewatch.org>
Date: 09/06/2019 02:14PM
Subject: FOIL/Records Request: AGAIN -- 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, October 3, 2019 7:53 AM
To: 'Senate Foil'
Subject: YET AGAIN --FOIL/Records Request: AGAIN -- 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015
Attachments: 10-2-19-state-of-politics.pdf

TO: Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, Esq.

I invite you to resend your below September 13, 2019 e-mail, without the garbling.

In any event, yesterday's article in "State of Politics" entitled "Legislative Leaders Make Pay Commission Appointments": <https://www.nystateofpolitics.com/2019/10/legislative-leaders-make-pay-commission-appointments/> reports that Senate Majority Leader Stewart-Cousins sent a letter to Governor Cuomo, appointing former State Senator Seymour Lachman to the Commission on Legislative, Judicial and Executive Compensation.

Pursuant to Senate Rule XIV "Freedom of Information", this is to request a copy of Senate Majority Leader Stewart-Cousins' letter to the Governor and any separate letter to Mr. Lachman concerning the appointment.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA) www.judgewatch.org
914-421-1200

-----Original Message-----

From: Senate Foil <foil@nysenate.gov>
Sent: Friday, September 13, 2019 5:03 PM
To: Center for Judicial Accountability, Inc.(CJA) <elena@judgewatch.org>
Subject: Re: FOIL/Records Request: AGAIN -- 2019 Commission on Legislative, Judicial and Executive Compensation -- Chapter 60, Part E, of the Laws of 2015

September 13, 2019

Elena Sassower
Center for Judicial Accountability, Inc.
Post Office Box 8101
White Plains, NY 10602
mail@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated September 6, 2019 pursuant to the Freedom of Information Law.

You are requesting …” 2019 Commission on Legislative, Judicial and Executive Compensation -(Chapter 60, Part E, of the Laws of 2015)…”.

Please be advised the records you request are not available pursuant to Senate Rules.

state of politics - October 2, 2019 Nick Reisman

Legislative Leaders Make Pay Commission Appointments

From the Morning Memo:

The top Democratic leaders in the state Assembly and Senate have appointed new members to the state's Commission on Legislative, Judicial and Executive Compensation.

Senate Majority Leader Andrea Stewart-Cousins has tapped former state Sen. Seymour Lachman, a history professor who wrote what has become a seminal account on Albany's budget-making process, "Three Men In A Room."

Assembly Speaker Carl Heastie appointed Peter Madonia, the chief operating officer at the Rockefeller Foundation and a former advisor to New York City Mayor Michael Bloomberg.

The appointments were made in letters to Gov. Andrew Cuomo.

The commission Madonia and Lachman were appointed to is separate from the panel that backed recommended pay increases for statewide elected officials and state lawmakers last year, tying the salary increases to a cap on outside income for the Legislature and a scaling back in leadership post stipends.

Comments are closed.



**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

Public Information Office
Robin Marilla
Records Access Officer

Room 202
Legislative Office
Building
Albany, New York 12248
(518) 455-4218

September 13, 2019

Dear Ms. Sassower:

On September 6, 2019, we received your FOIL request for records relating to the 2019 Commission on Legislative, Judicial, and Executive Compensation.

The Assembly does not have any records that are responsive to your request.

If you have any questions or if I can be of any further assistance, please let me know.

Sincerely,
Robin L. Marilla

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, October 3, 2019 8:41 AM
To: 'Robin Marilla'
Subject: YET AGAIN -- FOIL/Records Request -- Commission on Legislative, Judicial and Executive Compensation
Attachments: Sassower #2 Response.pdf; 10-2-19-state-of-politics.pdf

TO: Assembly Records Access Officer Robin Marilla –

On September 13, 2019, by the below and attached, you advised that the Assembly had no records responsive to CJA's September 6, 2019 FOIL/records request pertaining to the Commission on Legislative, Judicial and Executive Compensation.

In any event, yesterday's article in "State of Politics" entitled "*Legislative Leaders Make Pay Commission Appointments*": <https://www.nystateofpolitics.com/2019/10/legislative-leaders-make-pay-commission-appointments/> reports that Assembly Speaker Heastie sent a letter to Governor Cuomo, appointing Peter Madonia to the Commission.

Pursuant to Assembly Rule VIII "Public Access to Records", this is to request a copy of Assembly Speaker Heastie's letter to the Governor and any separate letter to Mr. Madonia concerning the appointment.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Robin Marilla <marillar@nyassembly.gov>
Sent: Friday, September 13, 2019 1:16 PM
To: 'Center for Judicial Accountability, Inc. (CJA)' <elena@judgewatch.org>
Subject: Foil Response

Please see attached.

Robin Marilla

Records Access Officer
NYS Assembly Public Information Office
Legislative Office Building, 202
Albany, NY 12248
518-455-4218

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, June 20, 2019 10:50 AM
To: 'records.access@exec.ny.gov'; 'Senate Foil'; 'Robin Marilla'
Cc: 'Compensation Committee'
Subject: FOIL/Records Access: Records of the Compensation Committee Established Pursuant to Part HHH of Chapter 59 of the Laws of 2018

TO: FOIL/Records Access Officers of the Governor, Senate & Assembly
Executive Chamber Record Access Officer Valerie Lubanko
Secretary of the Senate Alejandra Paulino
Assembly Records Access Officer Robin Marilla

On December 28, 2018, by the below e-mail to the Compensation Committee, established by Part HHH of Chapter 59 of the Laws of 2018, I inquired where its records would be maintained and/or in whose custody they would be. I received no response.

As the Governor, Senate, and Assembly each bear responsibility for the Committee – through which they have secured fraudulent, statutorily-violative, and unconstitutional salary increases – this is to request access to the Committee's records, 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"].

Please be further advised that at some point after January 1, 2019, the VIDEO of the Committee's November 28, 2018 public hearing, accessible from its website: <https://nyscompensation.ny.gov/>, ceased to be accessible. The direct link to the Committee's posting of the VIDEO for the November 28, 2018 public hearing is here: https://players.brightcove.net/2886492229001/default_index.html?videoid=5972684677001. Please rectify this, promptly.

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.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, December 28, 2018 2:29 PM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: Where Will the Records of the Compensation Committee be Maintained Upon Expiration & Repeal of the Committee Statute on December 31, 2018?

TO: The New York State Compensation Committee

Before the Compensation Committee goes out of existence on December 31, 2018, by virtue of the expiration and repeal of Part HHH of Chapter 59 of the Laws of 2018, pursuant to its §7, please advise where the records of the Compensation Committee will be maintained and/or in whose custody they will be. This especially includes the voluminous evidentiary materials I handed up at the November 30, 2018 hearing, in substantiation of my testimony that they were "dispositive", both as to the unconstitutionality of Part HHH and that the Compensation Committee had "nowhere to go" with recommendations of pay raises. The inventory of what I handed up is, as follows:

1.

**Pertaining to CJA's 2nd Citizen-Taxpayer Action,
pending before the Appellate Division, Third Department (#527081-2018)**

[APPELLANTS' BRIEF \(July 4, 2018\)](#)

[Record on Appeal: Volume 1](#)

[Record on Appeal: Volume 2](#)

[Record on Appeal: Volume 3](#)

[RESPONDENTS' BRIEF \(September 21, 2018\)](#)
[Respondents' Supplemental Record on Appeal](#)

[APPELLANTS' REPLY BRIEF \(October 4, 2018\)](#)

2.

**Reports on New York's Legislative Rules,
underlying the description that New York's Legislature is THE MOST "Dysfunctional" of any in the nation**

["Albany's Travesty of Democracy" -- City Journal 1997](#)
by Professor Eric Lane -- genesis of the Brennan Center Reports

2004 [BRENNAN CENTER REPORT:](#)
["NYS Legislative Process: Evaluation and Blueprint for Reform"](#)

2006 [BRENNAN CENTER REPORT:](#)
["Unfinished Business: New York State Legislative Reform: Update"](#)

2008: [BRENNAN CENTER REPORT:](#)
["Still Broken: NY Legislative Reform - Update"](#)

APRIL 21, 2009:

Temporary Senate Committee on Rules & Administration Reform:
[Majority "Draft Report"](#) [Republican Minority Report](#)

3.

**Pertaining to Fiscal Year 2018-2019 Judiciary & Legislative Budgets --
& Governor Cuomo's Budget Bill #S.7501/A.9501**

[CJA's written statement in support of testimony at Legislature's January 30, 2018 budget hearing on "Public Protection"
\(Judiciary budget\)](#)

CJA's written statement in support of testimony at Legislature's February 5, 2018 hearing on "local government officials/general government" (Legislative budget)

Fiscal Year 2018-19 Legislative/Judiciary Bill #S.7501/A.9501

Section 1: Legislature-appropriations

Section 2: Judiciary appropriations

Section 3: Judiciary reappropriations (marked)

Section 4: Legislative reappropriations (marked)

Section 5: effective date

Table of Contents (marked)

I note that among the several questions from my prior e-mails, to which I received no response from you, was one from three weeks ago, Friday December 7, 2018, in a paragraph that read:

"Also, please advise whether, if I send you pdfs of the EVIDENCE I handed-up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, you will post same. Three years ago, when I testified, at the November 30, 2015 hearing of the Commission on Legislative, Judicial and Executive Compensation, it posted pdfs of comparably voluminous EVIDENCE I had handed up in support of my testimony. So that you can see this for yourselves, here's the direct link to its webpage posting my November 30, 2015 written statement and the EVIDENCE I had handed up in substantiation: <http://nyscommissiononcompensation.org/Submissions-cja-nov30-v3.shtml>. The video of its November 30, 2015 hearing is here: <http://nyscommissiononcompensation.org/hearings-judicial.shtml> (at 1 hr/52 mins)."

My e-mail on Monday, December 10, 2018 reiterated this request, stating:

"And will you – as I requested – post the EVIDENCE I handed up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, if I send you pdfs? If more convenient, will you post the link to CJA's webpage of the EVIDENCE I handed up, which is here: <http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/11-30-18-what-was-handed-up.htm>.

For your convenience, those two e-mails are part of the e-mail chain, below.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, December 10, 2018 11:57 AM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: AGAIN: When will the Compensation Committee be posting the video of its Dec. 6th meeting -- & will it post pdfs of the EVIDENCE I handed up in substantiation of my Nov. 30th oral & written testimony?

Center for Judicial Accountability, Inc. (CJA)

From: Senate Foil <foil@nysenate.gov>
Sent: Thursday, June 27, 2019 4:22 PM
To: Center for Judicial Accountability, Inc.(CJA)
Cc: 'Compensation Committee'; 'Robin Marilla'; records.access@exec.ny.gov
Subject: FOIL request/response Records of the Compensation Committee Established Pursuant to Part HHH of Chapter 59 of the Laws of 2018
Attachments: Rules and Regulations relating to Public Inspection and Copying of Legislative Records - January 2019_blue.pdf

June 27, 2019

Ms. Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, NY 10602
www.judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated June 20, 2019 pursuant to the Freedom of Information Law.

You are requesting ... “the Governor, Senate, and Assembly each bear responsibility for the Committee – through which they have secured fraudulent, statutorily-violative, and unconstitutional salary increases – this is to request access to the Committee’s records, 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”].”

Please be advised the records you request, if the records even exist, are not subject to disclosure pursuant to Senate Rules.

I have attached a copy of the Senate’s Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Alejandra N. Paulino, Esq.
Secretary of the Senate

From: "Center for Judicial Accountability, Inc.\(CJA\)" <elena@judgewatch.org>
To: <records.access@exec.ny.gov>, "Senate Foil" <foil@nysenate.gov>, "Robin Marilla" <marillar@nyassembly.gov>
Cc: "Compensation Committee" <compensation.committee2018@gmail.com>
Date: 06/20/2019 10:49 AM



**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

Public Information Office
Robin Marilla
Records Access Officer

Room 202
Legislative Office
Building
Albany, New York 12248
(518) 455-4218

June 27, 2019

Dear Ms. Sassower:

On June 20, 2019, we received your FOIL request for records of the Compensation Committee.

The New York State Assembly did not take possession of any Compensation Committee records and is not involved in the Committee's website in any way. Therefore, there are no responsive records for your request.

If you have any questions or if I can be of any further assistance, please let me know.

Sincerely,
Robin L. Marilla

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, July 1, 2019 11:30 AM
To: 'records.access@exec.ny.gov'
Subject: AGAIN: FOIL/Records Access: Records of the Compensation Committee Established Pursuant to Part HHH of Chapter 59 of the Laws of 2018

TO: Executive Chamber FOIL Counsel/Record Access Officer Valerie Lubanko

I have received no response from you to my below June 20, 2019 FOIL/records access request, additionally advising that the VIDEO of the Compensation Committee's November 28, 2018 public hearing, posted on its website, is not operational.

Please advise by e-mail to elena@judgewatch.org.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, June 20, 2019 10:50 AM
To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'Senate Foil' <foil@nysenate.gov>; 'Robin Marilla' <marillar@nyassembly.gov>
Cc: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: FOIL/Records Access: Records of the Compensation Committee Established Pursuant to Part HHH of Chapter 59 of the Laws of 2018

TO: FOIL/Records Access Officers of the Governor, Senate & Assembly
Executive Chamber Record Access Officer Valerie Lubanko
Secretary of the Senate Alejandra Paulino
Assembly Records Access Officer Robin Marilla

On December 28, 2018, by the below e-mail to the Compensation Committee, established by Part HHH of Chapter 59 of the Laws of 2018, I inquired where its records would be maintained and/or in whose custody they would be. I received no response.

As the Governor, Senate, and Assembly each bear responsibility for the Committee – through which they have secured fraudulent, statutorily-violative, and unconstitutional salary increases – this is to request access to the Committee's records, 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"].

Please be further advised that at some point after January 1, 2019, the VIDEO of the Committee's November 28, 2018 public hearing, accessible from its website: <https://nyscompensation.ny.gov/>, ceased to be accessible. The



July 3, 2019

Via Email: elena@judgewatch.org

Elena Sassower
Center for Judicial Accountability, Inc.
PO Box 8101
White Plains, NY 10602

FOIL Request: #2529

Dear Ms. Sassower:

This letter responds to your correspondence dated June 20, 2019, which seeks:

access to the Committee's records, 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"].

Please be further advised that at some point after January 1, 2019, the VIDEO of the Committee's November 28, 2018 public hearing, accessible from its website: <https://nyscompensation.ny.gov/>, ceased to be accessible. The direct link to the Committee's posting of the VIDEO for the November 28, 2018 public hearing is here: https://players.brightcove.net/2886492229001/default_default/index.html?videoId=5972684677001.

To the extent your correspondence is a Freedom of Information Law (FOIL) Request pursuant to Article 6 of the Public Officers Law, the New York State Executive Chamber does not maintain or possess the records that you seek.

Furthermore, the Executive Chamber does not have the authority to compel the Committee on Legislative and Executive Compensation to produce records pursuant to FOIL, nor does it have the authority to render an opinion regarding another state agency's or committee's decision to except documents from production pursuant to FOIL.

Finally, the Executive Chamber does not maintain the website referenced in your correspondence.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

A handwritten signature in black ink, appearing to read "Valerie Lubanko". The signature is written in a cursive, flowing style.

Valerie Lubanko
FOIL Counsel
Records Access Officer

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, July 9, 2019 3:07 PM
To: 'aklinger@stroock.com'; 'dkolker@stroock.com'
Subject: Whereabouts of the Records of the Committee on Legislative & Executive Compensation -- & Responsibility for its Website

TO: Pro Bono Counsel to the Committee on Legislative & Executive Compensation
Stroock, Stroock & Lavan attorneys: Alan Klinger, Esq. & Dina Kolker, Esq.

On December 28, 2018, by the below e-mail to the Compensation Committee, I inquired where the Committee's records would be maintained and/or in whose custody they would be after December 31, 2018 – the date on which, pursuant to §7 of Part HHH of Chapter 59 of the Laws of 2018, Part HHH would be repealed and the Committee would go out of existence. I received no response.

As you were *pro bono* counsel to the Compensation Committee, I assume my December 28, 2018 e-mail was forwarded to you. Is that correct? And did you advise the Committee not to respond?

In any event, please advise as to whether you deemed the Compensation Committee to be an executive entity, a legislative entity, or some hybrid – and to whose custody the Committee's records were given for retention. Additionally, please advise who was – and presumably still is – responsible for the Committee's website: <https://nyscompensation.ny.gov/>, since at some point after January 1, 2019 the VIDEO for the Committee's November 28, 2018 public hearing ceased to be accessible: https://players.brightcove.net/2886492229001/default_default/index.html?videoid=5972684677001.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, December 28, 2018 2:29 PM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: Where Will the Records of the Compensation Committee be Maintained Upon Expiration & Repeal of the Committee Statute on December 31, 2018?

TO: The New York State Compensation Committee

Before the Compensation Committee goes out of existence on December 31, 2018, by virtue of the expiration and repeal of Part HHH of Chapter 59 of the Laws of 2018, pursuant to its §7, please advise where the records of the Compensation Committee will be maintained and/or in whose custody they will be. This especially includes the voluminous evidentiary materials I handed up at the November 30, 2018 hearing, in substantiation of my testimony that they were “dispositive”, both as to the unconstitutionality of Part HHH and that the Compensation Committee had “nowhere to go” with recommendations of pay raises. The inventory of what I handed up is, as follows:

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[Record on Appeal: Volume 2](#)

[Record on Appeal: Volume 3](#)

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[Respondents' Supplemental Record on Appeal](#)

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["Still Broken: NY Legislative Reform - Update"](#)

APRIL 21, 2009:

Temporary Senate Committee on Rules & Administration Reform:
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[CJA's written statement in support of testimony at Legislature's February 5, 2018 hearing on "local government
officials/general government"
\(Legislative budget\)](#)

[Fiscal Year 2018-19 Legislative/Judiciary Bill #S.7501/A.9501](#)

[Section 1](#): Legislature-appropriations

[Section 2](#): Judiciary appropriations

[Section 3](#): Judiciary reappropriations (marked)

[Section 4](#): Legislative reappropriations (marked)

[Section 5](#): effective date

[Table of Contents](#) (marked)

I note that among the several questions from my prior e-mails, to which I received no response from you, was one from three weeks ago, Friday December 7, 2018, in a paragraph that read:

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My e-mail on Monday, December 10, 2018 reiterated this request, stating:

“And will you – as I requested – post the EVIDENCE I handed up at the November 30, 2018 hearing, in substantiation of my oral and written testimony, if I send you pdfs? If more convenient, will you post the link to CJA’s webpage of the EVIDENCE I handed up, which is here: <http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/11-30-18-what-was-handed-up.htm>.”

For your convenience, those two e-mails are part of the e-mail chain, below.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, December 10, 2018 11:57 AM
To: 'Compensation Committee' <compensation.committee2018@gmail.com>

Subject: AGAIN: When will the Compensation Committee be posting the video of its Dec. 6th meeting -- & will it post pdfs of the EVIDENCE I handed up in substantiation of my Nov. 30th oral & written testimony?

TO: The New York State Compensation Committee

Center for Judicial Accountability, Inc. (CJA)

From: Kolker, Dina <dkolker@stroock.com>
Sent: Wednesday, July 10, 2019 12:43 PM
To: 'Center for Judicial Accountability, Inc. (CJA)'; Klinger, Alan M.
Subject: Whereabouts of the Records of the Committee on Legislative & Executive Compensation -- & Responsibility for its Website

Please be advised that your inquiry has been forwarded to Helena Lynch and Beth Garvey, so that it may be directed to the appropriate office.

Dina Kolker
Special Counsel

STROOCK

180 Maiden Lane, New York, NY 10038
D: 212.806.5606
M: 917.862.7831

dkolker@stroock.com | [vCard](#) | www.stroock.com

From: Center for Judicial Accountability, Inc. (CJA) [<mailto:elena@judgewatch.org>]
Sent: Tuesday, July 09, 2019 3:07 PM
To: Klinger, Alan M.; Kolker, Dina
Subject: <EXTERNAL> Whereabouts of the Records of the Committee on Legislative & Executive Compensation -- & Responsibility for its Website

TO: [Pro Bono Counsel to the Committee on Legislative & Executive Compensation](#)
Stroock, Stroock & Lavan attorneys: Alan Klinger, Esq. & Dina Kolker, Esq.

On December 28, 2018, by the below e-mail to the Compensation Committee, I inquired where the Committee's records would be maintained and/or in whose custody they would be after December 31, 2018 – the date on which, pursuant to §7 of Part HHH of Chapter 59 of the Laws of 2018, Part HHH would be repealed and the Committee would go out of existence. I received no response.

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Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, July 2, 2019 9:29 AM
To: 'records.access@exec.ny.gov'; 'Senate Foil'; 'Robin Marilla'; 'skerby@nycourts.gov'
Subject: FOIL/records request: Compensation Commissions -- & their websites
Attachments: chapter567-laws-of-2010.pdf; chapter60-part-e-laws-of-2015.pdf

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

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 ["Public Access to Records"], this is to request access to all publicly-available records of:

- the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010; and
- the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015.

For your convenience, each statute is attached. Their reports, which have cost taxpayers hundreds of millions of dollars in statutorily-violative, fraudulent, and unconstitutional salary increases and salary-related benefits to judges (and to district attorneys by reason of Judiciary Law §183-a), are dated August 29, 2011 and December 24, 2015.

Additionally, please restore to functionality the Commission on Judicial Compensation's website, www.judicialcompensation.ny.gov, as it has ceased to be accessible, including *via* the sidebar panel "Prior Salary Commission" of the Commission on Legislative, Judicial and Executive Compensation's website: <http://nyscommissiononcompensation.org/index.shtml>.

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.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

Center for Judicial Accountability, Inc. (CJA)

From: Shawn Kerby <skerby@nycourts.gov>
Sent: Tuesday, July 2, 2019 10:22 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: FOIL/records request: Compensation Commissions -- & their websites

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Tuesday, July 2, 2019 9:29 AM
To: records.access@exec.ny.gov; 'Senate Foil' <foil@nysenate.gov>; 'Robin Marilla' <marillar@nyassembly.gov>; Shawn Kerby <skerby@nycourts.gov>
Subject: FOIL/records request: Compensation Commissions -- & their websites

TO: FOIL/Records Access Officers of the Governor, Senate, Assembly, and Chief Judge
Executive Chamber Record Access Officer Valerie Lubanko
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For your convenience, each statute is attached. Their reports, which have cost taxpayers hundreds of millions of dollars in statutorily-violative, fraudulent, and unconstitutional salary increases and salary-related benefits to judges (and to district attorneys by reason of Judiciary Law §183-a), are dated August 29, 2011 and December 24, 2015.

Additionally, please restore to functionality the Commission on Judicial Compensation’s website, www.judicialcompensation.ny.gov, as it has ceased to be accessible, including *via* the sidebar panel “Prior Salary Commission” of the Commission on Legislative, Judicial and Executive Compensation’s website: <http://nyscommissiononcompensation.org/index.shtml>.

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@judgewidth.org.

Thank you.

Center for Judicial Accountability, Inc. (CJA)

From: Senate Foil <foil@nysenate.gov>
Sent: Thursday, July 11, 2019 12:06 PM
To: Center for Judicial Accountability, Inc.(CJA)
Subject: Re: FOIL/records request: Compensation Commissions -- & their websites
Attachments: chapter567-laws-of-2010.pdf; chapter60-part-e-laws-of-2015.pdf; Rules and Regulations relating to Public Inspection and Copying of Legislative Records - January 2019_blue.pdf

July 11, 2019

Ms. Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, NY 10602
www.judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated July 2, 2019 pursuant to the Freedom of Information Law.

You are requesting “all publicly available records of the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010; and

“the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015”

Please be advised the report requested “the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015”, is available on the commission’s website. Below please see a link pursuant to your request that we were able to locate.
www.nyscommissioncompensation.org.

If you would like copies made of either when we receive a check in the amount of \$3.75 (15 pages @ \$.25 per page) or \$4.25 (17 pages @ \$.25) or; \$8.00 (32 pages total @ \$.25 per page) made payable to the New York State Senate, we will forward the material.

I have attached a copy of the Senate’s Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Alejandra N. Paulino, Esq.
Secretary of the Senate



July 10, 2019

Via Email: mail@judicialwatch.org

Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

FOIL Request: #2539

Dear Ms. Sassower:

The Executive Chamber acknowledges receipt of your FOIL request dated July 2, 2019, seeking:

access to all publicly-available records of:

- the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010; and
- the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015.

For your convenience, each statute is attached. Their reports, which have cost taxpayers hundreds of millions of dollars in statutorily-violative, fraudulent, and unconstitutional salary increases and salary-related benefits to judges (and to district attorneys by reason of Judiciary Law §183-a), are dated August 29, 2011 and December 24, 2015.

Additionally, please restore to functionality the Commission on Judicial Compensation's website, www.judicialcompensation.ny.gov, as it has ceased to be accessible, including via the sidebar panel "Prior Salary Commission" of the Commission on Legislative, Judicial and Executive Compensation's website: <http://nyscommissiononcompensation.org/index.shtml>.

We are conducting a search for records that respond to your request and, if applicable, will review them for appropriate exemptions under FOIL. We will provide you with a status update on or before August 8, 2019.

If any documents are located that respond to your request, you will be charged \$.25 per page for photocopies. If the response to your request will be provided in another media, we will notify you of any charges.

Very truly yours,

A handwritten signature in black ink, appearing to read "Valerie Lubanko". The signature is written in a cursive, flowing style.

Valerie Lubanko
FOIL Counsel
Records Access Officer

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, July 10, 2019 5:27 PM
To: 'records.access@exec.ny.gov'
Subject: Correction Requested -- FOIL Request
Attachments: Sassower (#2539) - Letter - 7.10.19.pdf

Dear Ms. Corellis --

Please note that your attached July 10th acknowledgment contains an error. We are NOT @judicialwatch.org. We are @judgewatch.org. My direct e-mail is: elena@judgewatch.org, which I prefer you to use, rather than the generic mail@judgewatch.org

Kindly correct on future correspondence.

Thank you.

Elena Sassower
914-421-1200

From: Records _Access <Records._Access@exec.ny.gov>
Sent: Wednesday, July 10, 2019 5:01 PM
To: 'elena@judgewatch.org' <elena@judgewatch.org>
Subject: FOIL Request

Dear Ms. Sassower,

Please see the attached correspondence in relation to your Freedom of Information Law ("FOIL") request.

Regards,

Suzi Corellis
Assistant to the Records Officer



August 9, 2019

Via Email: elena@judgewatch.org

Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

FOIL Request: #2539

Dear Elena Sassower:

This letter responds to your correspondence dated July 2, 2019, which pursuant to FOIL, requested:

access to all publicly-available records of:

- the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010; and
- the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015.

For your convenience, each statute is attached. Their reports, which have cost taxpayers hundreds of millions of dollars in statutorily-violative, fraudulent, and unconstitutional salary increases and salary-related benefits to judges (and to district attorneys by reason of Judiciary Law §183-a), are dated August 29, 2011 and December 24, 2015.

Additionally, please restore to functionality the Commission on Judicial Compensation's website, www.judicialcompensation.ny.gov, as it has ceased to be accessible, including via the sidebar panel "Prior Salary Commission" of the Commission on Legislative, Judicial and Executive Compensation's website:
<http://nyscommissiononcompensation.org/index.shtml>.

To the extent that your request is reasonably described, the New York State Executive Chamber (Executive Chamber) has conducted a diligent search and found records responsive to the portion of your request seeking "all publically available records" for the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015. Records responsive to this portion of your request is attached to the email

transmitting this letter. Please be advised that portions of the records that respond to your request are exempt from disclosure pursuant to Public Officers Law § 87(2)(b) because they “constitute an unwarranted invasion of personal privacy....”

The Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010, was established before Governor Cuomo took office. Accordingly, the Executive Chamber does not possess any records responsive to this portion of your request.

Finally, the Executive Chamber does not maintain the website referenced in your request.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Valerie Lubanko".

Valerie Lubanko
FOIL Counsel
Records Access Officer



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

October 28, 2015

Honorable John J. Flanagan
Temporary President and Majority Leader
New York State Senate
Legislative Office Building, Room 805
Albany, NY 12247

Honorable Carl E. Heastie
New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

Honorable Jonathan Lippman
Chief Judge of the State of New York
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

Dear Senator Flanagan, Speaker Heastie, and Chief Judge Lippman:

Please be advised that pursuant to Part E of Chapter 60 of the Laws of 2015, I am hereby appointing Mitra Hormozi, Gary Johnson, and Fran Reiter, to the Commission on Legislative, Judicial and Executive Compensation.

These individuals have extensive experience in determining executive compensation, human resource administration, and financial management. I have every confidence that Ms. Hormozi, Mr. Johnson, and Ms. Reiter are well-equipped to accomplish this commission's important mission. Copies of their resumes are enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Andrew M. Cuomo', written over a horizontal line.

Andrew M. Cuomo

WE WORK FOR THE PEOPLE
PERFORMANCE * INTEGRITY * PRIDE

printed on recycled paper

MITRA HORMOZI

EXPERIENCE

REVLON

Apr. 2015 – present

EVP, General Counsel & Chief Compliance Officer

Oversee Global Legal Department and responsible for all legal matters including Corporate Securities, Mergers & Acquisitions, Patents, Trademarks & Copyrights, Employee Litigation, Compliance, etc. Member of the Global Leadership Team reporting directly to the CEO.

ZUCKERMAN SPAEDER

Feb. 2013 – Mar. 2015

Partner

Represent corporations and individuals in connection with investigations conducted by the U.S. Department of Justice, NY State Dept. of Financial Services, NY State Attorney General and Manhattan District Attorney's Office.

KIRKLAND AND ELLIS

Sep. 2011 – Feb. 2013

Partner

Member of the firm's White Collar & Regulatory Defense practice group. Represented individuals and corporations in connection with investigations and prosecutions conducted by the U.S. Department of Justice, the Federal Trade Commission and States Attorneys General. Appointed as Special Master in DOJ litigation against New York City Fire Department over discriminatory hiring practices.

JOINT COMMISSION ON PUBLIC ETHICS

Jan. 2011 – Aug. 2011

formerly NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

Commissioner (Appointment by Governor Cuomo)

Chaired New York State Commission on Public Integrity from January 2011 until November 2011 when New York State passed a law creating the Joint Commission on Public Ethics. As Chair, oversaw staff of forty-seven employees. Commission's mandate is the governance and compliance of Public Officer laws by the Legislative and Executive branches of New York state government as well as the oversight of the registration of all lobbying activities and enforcement of applicable laws.

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL, Andrew M. Cuomo

Executive Division

Mar. 2008 – Jan. 2011

Special Deputy Chief of Staff for Litigation

Responsible for overseeing high priority civil and criminal cases involving public corruption, charities violations, false claims act violations and fraud. Worked directly with Attorney General. Supervised assistant attorney generals throughout regional offices on all affirmative cases. Interacted and coordinated with other state agencies on various inter-governmental initiatives.

UNITED STATES ATTORNEY'S OFFICE, Eastern District of N.Y.

Oct. 2001 – Mar. 2008

Criminal Division

Chief, Organized Crime and Racketeering Section 2007-2008

Deputy Chief, Organized Crime and Racketeering Section 2006-2007

Lead counsel on complex investigations and prosecutions involving wide array of crimes, including money laundering, racketeering, obstruction of justice, mail fraud, wire fraud and tax evasion. Supervised activities of junior prosecutors, and teams of federal, state and local law enforcement personnel. Successfully prosecuted several high profile cases including the boss of one of the five New York mafia families and the "Mafia Cops" case. Briefed and successfully argued appeals before Second Circuit Court of Appeals, including appeal in Mafia Cops case.

KRONISH LIEB WEINER & HELLMAN LLP, New York, N.Y (now known as Cooley Godward)

Litigation Associate

Sep. 1999 – Oct. 2001

Engaged in all aspects of civil and criminal litigation including answering complaints, drafting briefs, defending depositions, attending proffers and assisting in all phases of trial preparation. Part of trial team in criminal antitrust case.

STRANG HAYES CONSULTING, INC., New York, N.Y. May 1998 – Sep. 1999
Vice President of Investigations
Organized and managed all aspects of domestic and international corporate due diligence investigations, including discovery and review of criminal and civil litigation, regulatory and bankruptcy filings.

UNITED STATES DEPARTMENT OF TREASURY, New York, N.Y. Sep. 1996 – May 1988
Office of International Trade Litigation
Staff Attorney

UNITED STATES DEPARTMENT OF COMMERCE, Washington, D.C. Aug. 1995 – Aug. 1996
Honors Program
Honors Attorney

EDUCATION

NEW YORK UNIVERSITY, SCHOOL OF LAW, New York, N.Y.
J.D. May 1995, member of New York State Bar
Journal of International Law & Politics, Staff Editor

UNIVERSITY OF MICHIGAN, Ann Arbor, MI
Honors College
B.A. in History, *with distinction*, May 1991

Gary Johnson

Executive Legal Counsel
Medgar Evers College, Brooklyn 2013-present

General counsel to the college. Provides legal advice to the President and staff regarding issues of law and governance. Assists university counsel in litigation.

Director
New York State Governor's Office of Employee Relations 2007-2013

CEO of the state agency that negotiates and administers collective bargaining agreements with the state employee unions.

Associate Counsel
New York State United Teachers 2004-2007

Represented teachers and other professionals and support personnel in public and private sector disciplinary proceedings, and state litigation.

Associate Counsel and Director of Litigation
New York State Public Employment Relations Board 1994-2004

Litigation counsel for the state agency that mediates public sector bargaining disputes and adjudicates improper practice charges. Directed office that defends Board decisions, enforces Board orders, and prosecutes agency appeals.

Administrative Law Judge
New York State Public Service Commission 1994

Administrative Law Judge
New York State Public Employment Relations Board 1991-1994

Adjudicated public sector improper practice charges and administered bargaining unit representation proceedings.

Associate Counsel
New York State Office of Court Administration 1991

Represented state court system in all phases of state litigation, including appeals.

Assistant Counsel
Governor's Office of Employee Relations 1988-1991

Litigated improper practice charges and representation petitions before the Public Employment Relations Board. Represented state agencies in contract grievance arbitrations. Represented the State of New York in collective bargaining.

Assistant District Attorney
Office of the District Attorney, Kings County 1985-1988

Tried felony narcotics cases. Investigated homicide and sex crimes arrests. Supervised assistant district attorneys in central booking complaint room.

Student Legal Intern
Office of the Corporation Counsel, City of New York 1981-1985

Represented City in examinations before trial and conferenced City calendar in personal injury cases in Supreme Court, New York County. Drafted memorandums of law and pleadings, and discovery demands and responses.

Teacher
Various New York City Catholic High Schools 1974-1981

Education

Fordham University School of Law
Juris Doctor, 1985

Fordham University, College at Lincoln Center
Bachelor of Arts in Religious Studies, *summa cum laude*, 1973

Publications

Contributing Editor, *Public Sector Labor Law (3rd ed., revised 2013)*, New York State Bar Association

"Recent Taylor Law Developments," New York State Bar Association, Labor and Employment Section Newsletter, Vol. 28, No. 4 (Winter 2003)

Co-Editor-in-Chief, *Public Sector Labor Law (2nd ed.), 2002 Supplement*, New York State Bar Association

"Recent Taylor Law Developments," New York State Bar Association, Labor and Employment Section Newsletter, Vol. 27, No. 4 (Winter 2002)

"Recent Taylor Law Developments," New York State Bar Association, Labor and Employment Section Newsletter, Vol. 26, No. 3 (Fall/Winter 2001)

"Lessons of Disintegrating Settlements," PERB News, June 2000

Contributor, *Public Sector Labor Law (2nd ed., 1998)*, New York State Bar Association

Boards and Committees

Member, Independent Judicial Qualification Commission, 3d Department, 3d Judicial District, 2007 to 2012

Member, New York State Continuing Legal Education Board, 2001 to 2006

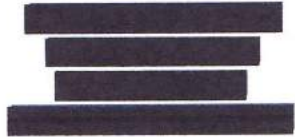
Member, Advisory Board, the Government Law Center, Albany Law School, 2003 to 2013

Member, Board and Executive Committee, Unity House, Troy, NY, 2004 to 2011

Admitted to Practice

New York State, U.S. District Court (Southern, Eastern, Western, and Northern Districts of N.Y.), Second Circuit Court of Appeals, U.S. Supreme Court

Fran Reiter



RESUME

Professional Experience

The Reiter Giuliani Group, LLC (d/b/a RG Group) / Partner (1/11 – 10/12 & 9/14 – present)

Consultant providing government relations, lobbying, marketing and non-profit management services to an array of businesses and non-profit organizations doing or seeking to do business with New York City and/or New York State government.

State of New York, Executive Chamber / Executive Deputy Director for State Operations (11/12 – 8/14)

Oversaw day-to-day operations of all state agencies and led Governor Cuomo's major enterprise-wide consolidation and IT initiatives.

Reiter/Begun Associates, LLC / Managing Partner (3/02 – 12/10)

Consultant providing government relations, lobbying, marketing and non-profit management services to an array of businesses and non-profit organizations doing or seeking to do business with New York City and/or New York State government.

New York Shakespeare Festival/Joseph Papp Public Theatre / Executive Director (11/00 – 10/01)

Responsible for finance, development, marketing, fundraising, board relations and development, and capital projects for this leading New York cultural institution, overseeing an annual \$13 million operating budget and \$50 million capital plan.

NYC & Company (formerly the NY Convention & Visitors Bureau) / President & CEO (1/98 – 9/99)

Led a major expansion of this hospitality industry non-profit member organization, including increasing its annual operating budget from \$7.5 million to \$13.8 million in less than two years and expanding its mission to include the attraction and/or development and marketing of major sports, entertainment and cultural events to be held in New York City.

Friends of Rudy Giuliani / Campaign Manager (3/97 – 11/97)

Oversaw all aspects of NYC Mayor Rudolph Giuliani's successful 1997 re-election campaign.

City of New York, Office of the Mayor / Deputy Mayor for Economic Development and Planning & Deputy Mayor for Planning and Community Relations (1/95 – 3/97)

Oversaw NYC agencies and offices for economic and industrial development, planning, housing, parks, cultural affairs, public libraries, landmark preservation, immigrant and veterans' affairs, and community relations. Accomplishments include: authored and implemented the Lower Manhattan Revitalization Plan; chaired Mayor's Manufacturing Task Force; led successful effort to create and pass into law citywide adult use rezoning; led City's negotiations with NYS to determine the governing structure of the NYC Empowerment Zone and served as its first chairman; developed Crown Heights Mediation Center; led City's effort to assist not-for-profit supportive housing developers; oversaw the restructuring of the Division of AIDS Services; and working with NYPD, implemented NYC's Abortion Clinic Access Law.

Additional Professional Experience

Baruch College, CUNY – School of Public Affairs / Adjunct Professor (summer 2000 – fall 2003)

Developed new syllabus and taught graduate course PAF 9132 - *Governing New York City* and co-taught with Professor Douglas Muzzio PAF 9100 – *Introduction to Public Affairs*.

New York University School of Continuing Education and Professional Studies – Center for Hospitality, Tourism and Travel Administration / Adjunct Professor (fall 1999 semester)

Developed and co-taught graduate course, *Management of Non-Profit Organizations*.

Mayor-Elect Giuliani's Transition Committee / Executive Director (11/93 – 12/93)

Friends of Rudy Giuliani / Deputy Campaign Manager for Operations (8/93 – 11/93)

Fran Reiter Communications / President (11/88 – 7/93)

Management and marketing consultant to independent program syndication firms and producers.

Television Program Syndication Executive (1978 – 11/88)

Served in senior management positions for a number of television program syndication firms including: Syndicast Services, Inc. and TEN, The Entertainment Network (Senior Vice President, General Sales Manager); Orbis Communications, Inc. and MG/Perin, Inc. (Vice President, Sales Manager).

Prior to 1978

Served in various production capacities in film, television and theater production.

Political Candidacies / Political Party Positions

Friends of Fran Reiter 2001 (4/99 – 2/00)

Organized and developed a political committee to explore a NYC mayoral candidacy for the 2001 election.

Reiter for Congress (1990)

Democratic and Liberal candidate for the U.S. House of Representatives from New York's former 15th Congressional District.

Liberal Party of New York State

Served as State Chairman (1990 – 1993) and Co-Chair, Liberal Party of New York County (1986 – 1990).

Former Board Memberships / Civic Activities

Member, Board of Directors: Housing and Services, Inc.; NARAL/NY; American Jewish Committee/NY Chapter; Jewish Community Relations Council of NYC; Gay Men's Health Crisis; A.R.T./New York; The New York Pops.

Member, Board of Advisors: NYC Inner City Games; The Weissman Center for International Business/Baruch College.

Member, Board of Trustees: New York Public Library (Mayor's representative).

Education

Graduate, CUNY Baccalaureate for Unique and Interdisciplinary Studies / Baruch College; Awarded B.S. in Public Affairs, *cum laude* (May 2015)

Attended Boston University, School of Fine Arts / Theater Department (9/72 – 5/74)

Graduate, Fiorello H. LaGuardia School of Music and the Arts / High School of Performing Arts Division / Drama major (1972)

References furnished upon request.