

State of New York



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Ann T. Pfau
Deputy Chief Administrator

February 5, 1998

Ms. Elena Ruth Sassower
Center for Judicial Accountability, Inc.
P.O. Box 69
Gedney Station
White Plains, NY 10605

Dear Ms. Sassower:

I am responding to your recent letters to Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman concerning Section 211 of the Retirement and Social Security Law and the request made for a waiver on behalf of Court of Claims Judge Andrew O'Rourke.

Please be advised that the determination to approve a request for employment under Section 211 of the Retirement and Social Security Law is but a pro forma ministerial act with regard to appointed judges. Indeed, the determination whether or not to appoint such judges rests solely with the appointing authority — the Governor in this case — and the Chief Administrator cannot approve or disapprove such appointments. The statutory provision relates solely to the decision to employ, a decision made not by the court system but by the appointing authority. Once the request for a Section 211 waiver is made by the applicant, in this case Judge O'Rourke, the waiver results from operation of law, not by the court system's ministerial act in signing the form or by the Governor's appointment. Accordingly, the request, received by me in the normal course as the designee of the Chief Administrative Judge, was approved.

As indicated to Senators Leichter and Dollinger, there is one other sitting judge, a mayoral appointment to the Criminal Court in New York, who applied for employment under Section 211. That application was approved for the same reasons as stated above.

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We recognize that Section 211(6) provides that requests for approval of employment and the determination be made public. Accordingly, I am advising you that the following appears on the request form:

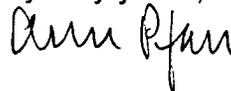
Under the heading "Description of duties and minimum qualifications"—"Mr. O'Rourke will perform all of the duties of a Judge of the Court of Claims."

Under the heading "Justification for hiring retirees"—"[Judge O'Rourke] was appointed by the Governor to the Court of Claims. It is not within the purview of the court system to look beyond the determination by the Governor."

There is no other information on the form, except for biographical data of a personal nature (home address, social security number, etc.).

I hope this information is of assistance.

Very truly yours,



ATP:ms