

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

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**From:** Center for Judicial Accountability, Inc. (CJA) [elena@judgewidth.org]  
**Sent:** Monday, November 23, 2009 3:58 PM  
**To:** 'spotts@senate.state.ny.us'  
**Cc:** 'sampson@senate.state.ny.us'  
**Subject:** CJA's comment to proposed revised rules of the Commission on Judicial Nomination  
**Attachments:** 11-23-09-memo-bar-good-govt.pdf

Dear Mr. Spotts,

As discussed in our phone conversation earlier today, there is no reason for the Senate Judiciary Committee not to avail itself of the legal and constitutional resources of the bar associations and lawyer-staffed "good government" groups by calling upon them to respond to the serious and substantial constitutional and evidentiary issues presented by CJA's September 21, 2009 comment to the Commission on Judicial Nomination's proposed revised rules. These are issues as to which the Senate Judiciary Committee must make findings in its report on the nomination process to the Court of Appeals, if it is to be a legitimate report.

Attached is CJA's memo of today's date to the pertinent bar associations & "good government" groups, to which Chairman Sampson and Ranking Member Maziarz are indicated recipients.

More to follow.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
631-377-3583

# CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

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BY FAX: 5 pages

November 23, 2009

TO: New York State Bar Association  
Fax: 315-732-0755 ATT: Michael E. Getnick, President  
Fax: 518-487-5564 ATT: Patricia Bucklin, Executive Director  
Fax: 518-487-5694 ATT: Ronald Kennedy, Director/Governmental Affairs  
Kathleen Mulligan Baxter, Counsel

New York City Bar Association  
Fax: 212-768-8116 ATT: Patricia M. Hynes, President  
Fax: 212-398-6634 ATT: Alan Rothstein, General Counsel  
Fax: 212-812-8365 ATT: Jay Safer, Chair/Council on Judicial Administration

New York County Lawyers' Association  
Fax: 212-859-4000 ATT: Ann B. Lesk, President  
Fax: 212-406-9252 ATT: Sophia J. Gianacoplos, Executive Director  
Marilyn J. Flood, Counsel

Fund for Modern Courts  
Fax: 212-489-8340 ATT: Victor Kovner, Chair  
Fax: 212-541-7301 ATT: Dennis Hawkins, Executive Director

Citizens Union  
Fax: 212-227-0345 ATT: Dick Dadey, Executive Director

League of Women Voters/New York  
Fax: 518-465-0812 ATT: Laura Ladd Bierman, Executive Director

Common Cause/New York  
Fax: 212-807-1809 ATT: Susan Lerner, Executive Director

Institute of Judicial Administration  
Fax: 212-995-4036 ATT: Torrey L. Whitman, Executive Director

Michael Cardozo, Esq.  
Fax: 212-227-5641

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

RE: Building Dialogue & Scholarship: "Merit Selection" to the New York Court of Appeals

On September 21, 2009, CJA filed comment to the Commission on Judicial Nomination's proposed

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\* **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.

revised rules, a copy of which we provided you under a September 24, 2009 covermemo entitled "Building Dialogue & Scholarship: 'Merit Selection' to the New York Court of Appeals." In pertinent part it stated:

"We invite your response for the benefit of the Commission [on Judicial Nomination], the Senate Judiciary Committee – and Assembly Judiciary Committee member Rory Lancman, whose bill [A-3866-A] to repeal Judiciary Law §63.2 so as to require the Commission to furnish the Governor with all "well qualified" candidates – consistent with the constitutional amendment – we seek to have re-introduced and approved in this legislative session."

To date, we have received no response from you.

By covermemo to Assemblyman Lancman, dated October 2, 2009 and entitled "'Reforming [the] Court of Appeals Nominating System' by Re-introducing A-3866-A & Other Legislation", we provided him with a copy of our September 24, 2009 covermemo and September 21, 2009 comment. In so doing, we highlighted that:

"CJA's comment expressly calls upon the Commission [on Judicial Nomination] to substantively respond, especially as to the unconstitutionality of Judiciary Law §63.2 in restricting the number of 'well qualified' candidates the Commission furnishes the Governor, which your bill corrects. It also calls upon the recipients of our coverletter to substantively respond in furtherance of 'building dialogue and scholarship' so that re-introduction of your bill and other essential legislation may be guided by accurate history and fidelity to the Constitution.

Should the Commission and other recipients not respond, such must be deemed a concession of the truth and accuracy of CJA's comment, propelling the critical statutory, if not constitutional, changes discussed therein."

A copy of our October 2, 2009 covermemo to Assemblyman Lancman– to which you are indicated recipients – is enclosed, as is an additional copy of our September 24, 2009 covermemo to you.

Should you disagree with the proposition that your failure to respond "must be deemed a concession of the truth and accuracy of CJA's comment", please advise Assemblyman Lancman and the Senate Judiciary Committee, providing the basis therefor.

Thank you.

Enclosures (2)



cc: Assembly Judiciary Committee Member Rory Lancman  
Senate Judiciary Committee Chairman John Sampson  
Senate Judiciary Committee Ranking Member George Maziarz  
Commission on Judicial Nomination

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October 2, 2009

TO: Assembly Judiciary Committee Member Rory I. Lancman

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

RE: “Reforming [the] Court of Appeals Nominating System”  
by Re-introducing Bill A-3866-A & Other Legislation

This follows up my recent phone conversations with your Deputy Chief of Staff, Jane Carey.

The Center for Judicial Accountability, Inc. (CJA) supports your bill, A-3866-A, to repeal Judiciary Law §63.2 so as to require the Commission on Judicial Nomination to furnish the Governor with all “well qualified” candidates, and urges its re-introduction in this session as part of a legislative package “reforming [the] Court of Appeals nominating system”<sup>1</sup>.

Unlike Judiciary Law §63.2, which materially altered the 1977 constitutional amendment establishing the Commission, your bill is faithful to the amendment and to the will of the voters reflected therein. This important fact is highlighted by CJA’s September 21, 2009 comment to the Commission’s proposed revised rules and by our September 24, 2009 coverletter transmitting the comment to supporters of the 1977 amendment, including several who opposed your bill.<sup>2</sup>

CJA’s comment expressly calls upon the Commission to substantively respond, especially as to the unconstitutionality of Judiciary Law §63.2 in restricting the number of “well qualified” candidates the Commission furnishes the Governor, which your bill corrects. It also calls upon the recipients of our coverletter to substantively respond in furtherance of “building dialogue and scholarship” so that re-introduction of your bill and other essential legislation may be guided by accurate history and

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<sup>1</sup> Your February 4, 2009 press release “State Lawmakers Unveil Legislation Reforming Court Of Appeals Nomination System” – referring to, quoting, and including a photograph of Senate Judiciary Committee Chairman John L. Sampson and Assembly Judiciary Committee member Peter M. Rivera, in addition to yourself.

<sup>2</sup> These opponents include the New York State Bar Association and the New York County Lawyers’ Association, whose written opposition I have secured. Please let me know if you have other written opposition. I understand from the Fund for Modern Courts’ Executive Director Dennis Hawkins that its opposition to your bill was expressed orally.

fidelity to the Constitution.

Should the Commission and other recipients not respond, such must be deemed a concession of the truth and accuracy of CJA's comment, propelling the critical statutory, if not constitutional, changes discussed therein.

I would be pleased to meet with you and answer any questions you may have about CJA's comment so as to assist you in "reforming [the] Court of Appeals nominating system" to ensure its fidelity to the People's will, expressed in their 1977 vote.

Thank you.

A handwritten signature in black ink, appearing to read "Rory I. Lancman". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Enclosures: CJA's comment & coverletter

cc: Commission on Judicial Nomination  
Senate Judiciary Committee  
Recipients of CJA's September 24, 2009 coverletter

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September 24, 2009

TO: New York State Bar Association  
New York City Bar Association  
New York County Lawyers' Association  
Fund for Modern Courts  
Citizens Union  
League of Women Voters/New York  
Common Cause/New York  
Institute of Judicial Administration  
Michael Cardozo, Esq.

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

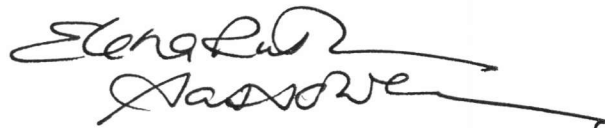
RE: Building Dialogue & Scholarship: "Merit Selection" to the New York Court of Appeals

As you were all proponents of the 1977 constitutional amendment to end judicial elections to the New York Court of Appeals and establish the Commission on Judicial Nomination, enclosed is the Center for Judicial Accountability's comment to the Commission's proposed revised rules.

We invite your response for the benefit of the Commission, the Senate Judiciary Committee – and Assembly Judiciary Committee member Rory Lancman, whose bill to repeal Judiciary Law §63.2 so as to require the Commission to furnish the Governor with all "well qualified" candidates – consistent with the constitutional amendment – we seek to have re-introduced and approved in this legislative session.

In any event, please advise as to whether you have files of historical materials germane to that 1977 constitutional amendment and the implementing Judiciary Law, including materials shedding light on the May 10, 1978 letter of then Assemblyman Charles Henderson to then Governor Hugh Carey – annexed to our comment as Exhibit D-1. If so, would you be willing to make them available to us for our further research in constructing an accurate historical record, for which we earnestly seek your collaboration.

Thank you.



Enclosure

cc: Commission on Judicial Nomination  
Senate Judiciary Committee  
Assemblyman Rory Lancman

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