

CENTER for JUDICIAL ACCOUNTABILITY, INC.

*A national, nonpartisan, nonprofit citizens' organization, working to advance justice
by depoliticizing and opening up our closed and dysfunctional judicial selection and discipline processes,
so that only the most qualified lawyers become, and remain, judges*

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March 2, 2012

TO: Andrew M. Cuomo, Governor of the State of New York
Dean G. Skelos, Temporary President of the New York State Senate
Sheldon Silver, Speaker of the New York State Assembly
Jonathan Lippman, Chief Judge of the State of New York

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

RE: YOUR FINDINGS OF FACT & CONCLUSIONS OF LAW: Protecting the
People of this State & the Public Purse from Judicial Pay Raises that are
Unconstitutional, Unlawful, & Fraudulent

It is now more than four months since delivery to your offices of the Center for Judicial Accountability's October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 "Final Report".

Please advise as to your findings of fact and conclusions of law with respect thereto – and confirm that you will be taking action, consistent therewith, to protect the People of this State and the public purse from the succession of constitutional and statutory violations therein particularized.

As you know, absent action to modify or abrogate the statute which created the Commission, its recommendations to raise this year's salaries of Supreme Court Justices from \$136,700 to \$160,000 and to boost other judicial salaries accordingly will take effect on April 1, 2012.

For your convenience, the Executive Summary to our Opposition Report is enclosed (Exhibit A). The full Opposition Report is posted on our website, www.judgewatch.org, accessible *via* the top panel, "Latest News".

Although you are the highest constitutional officers of our State's three government branches, you are not the only constitutional officers to whom we have provided the Opposition Report.

On November 29, 2011, we provided it to Attorney General Eric Schneiderman¹ and on

¹ On that date, Attorney General Scheiderman was honored by the Fund for Modern Courts with the "2011 Cyrus R. Vance Tribute" for having "worked to restore the public's faith in its public and private sector institutions by focusing on public integrity..." and for having "expanded his office's authority to investigate public corruption involving taxpayer funds by partnering with the state Comptroller", with the further accolade that:

"Before becoming Attorney General, he was a leading reformer in the State Senate where he sponsored sweeping ethics reforms and the toughest law in the nation to root out fraud against taxpayers, as well as chairing the committee to expel a corrupt senator for the first time in modern history."

As Chief Judge Lippman can attest, because he was present at the event with Chief Administrative Judge Gail Prudenti, Attorney General Schneiderman took no questions or comments from the audience, upon his acceptance of the award and remarks.

The event having concluded, attendees approached the Attorney General to speak with him. However, I alone was prevented from doing so by his aides, while the Attorney General, who knows who I am from my years of advocacy before the Senate Judiciary Committee, smirked at me. As a consequence, I gave the Opposition Report, two-volume Exhibit Compendium, and Executive Summary to the Attorney General through one of those aides – together with a complaint for investigation by the Attorney General's Public Integrity Bureau. The complaint, which was against the Commission on Judicial Compensation, identified it as having "operated out of the Executive Chamber at the Capitol" and stated, in pertinent part:

"On August 29, 2011, the Commission on Judicial Compensation committed fraud upon the public and upon Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman, by a Report recommending 27% pay raises for New York State judges over the next three years. Absent legislative override, these judicial pay raise recommendations will become law on April 1, 2012, effectively stealing from the People of New York hundreds of millions of taxpayer dollars, while depriving them of the means afforded by the New York State Constitution for securing judicial accountability." (underlining added).

Enclosed is a copy of the complaint and the e-mail I sent to the Public Integrity Bureau hours after the event, recounting how I had been "bodily prevented me from personally presenting it to Attorney General Schneiderman..." (Exhibits B-1, B-2). Also enclosed is the December 7, 2011 form letter I received from the Public Integrity Bureau, bearing no person's name or signature and stating in bald, conclusory fashion: "The Public Integrity Bureau has carefully reviewed your correspondence and has determined that your complaint does not warrant action by this office at this time." (Exhibits B-3).

Stacy Aronowitz, Deputy Bureau Chief of the Public Integrity Bureau, with whom I spoke some weeks later and again yesterday, adhered to the December 7, 2011 determination, which she acknowledged authorizing. She would not directly identify whether it had been approved by William Schaeffer, the Public Integrity Bureau's Bureau Chief, but did admit that the complaint had not been furnished to the State Comptroller.

With respect to the State Comptroller, the Attorney General's website, www.ag.ny.gov, promotes the partnership between the Comptroller and the Public Integrity Bureau in its description "About the Public Integrity Bureau" (Exhibit C-1), with his further website, www.ericshneiderman.com, posting news items including a May 23, 2011 New York Times article by Nicholas Confessore, "*Accord with Comptroller Will*

December 8, 2011, provided it to Senate Minority Leader John Sampson². Like you, they are duty-bound to protect the People of this State and taxpayer money. Therefore, by copy of this letter to them, we ask that they also identify their findings of fact and conclusions of law with respect to our Opposition Report.

Indeed, inasmuch as Attorney General Schneiderman is New York's highest law enforcement officer and "The People's Lawyer", we ask that he confirm that in the event you fail to take steps to modify or abrogate the Commission statute, as is your duty based on our Opposition Report, he will bring a lawsuit prior to April 1, 2012 to void the statute and the Commission's judicial pay raise recommendations and will accompany it with an order to show cause for a temporary restraining order to enjoin the judicial pay raise recommendations from becoming law on April 1, 2012 – both based on what should be evident from the findings of fact and conclusions of law you have made, namely, the merit of our Opposition Report in establishing, *prima facie*, constitutional and statutory violations, in addition to fraud perpetrated on the People of the State.

Based on those findings of fact and conclusions of law, it is the Attorney General's duty to undertake such lawsuit and injunction on the People's behalf. Should he doubt that "the interests of the state so warrant" and that this is what Executive Law §63.1 requires, we request that he promptly secure an opinion from whatever division within the Attorney General's Office examines such matters, the Division of Appeals and Opinions, among them.

Suffice to say, Attorney General Schneiderman's obligations are reinforced by the telling fact that neither you, he, nor anyone else has denied or disputed the accuracy of our Opposition Report *in any respect*. This includes as to the fraudulence of the February 23, 2010 Court of Appeals decision, analyzed by our July 19, 2011 letter to Attorney General Schneiderman, which is Exhibit E-1 to the Opposition Report, and our further analysis, based thereon, that systemic judicial corruption, encompassing appellate and supervisory levels and the Commission on Judicial Conduct, is a constitutional bar to judicial pay raises, set forth at pages 10-12 of the Opposition Report, quoting from our August 8, 2011 letter to the Commission on Judicial Compensation, which is Exhibit I.

Help Attorney General Pursue Corruption Cases" (Exhibit C-2) and a May 30, 2011 Albany Times Union article by Fred LeBrun, "*AG, comptroller partnership a no-brainer*" (Exhibit C-3).

² On that date, Senator Sampson was a panelist at a program at the New York City Bar Association entitled, "Albany Reform: The Road Ahead", exploring the 2011 Public Integrity Reform Act and other reforms to make New York State government "more functional, transparent, and effective" and "fully restore New Yorkers' confidence in their government".

In the question segment of the program, I asked Senator Sampson, formerly chairman of the Senate Judiciary Committee, under whose leadership, in 2009, the aborted hearings were held on the Commission on Judicial Conduct and court-controlled attorney disciplinary system – as to which no investigation, findings, or committee report was ever made – about how to make the systemic corruption of New York's judiciary, infesting appellate and supervisory levels and encompassing the Commission on Judicial Conduct, an explicit issue for "Albany Reform". In that context, I publicly handed him our Opposition Report, two-volume Exhibit Compendium, and the Executive Summary, walking from the audience microphone to the dais to do so.

As our July 19, 2011 letter to Attorney General Schneiderman further sets forth, including by its title:

“Vindicating the Public’s Rights against Judicial Fraud: The Court of Appeals’ February 23, 2010 Decision Underlying BOTH the Creation of the Commission on Judicial Compensation & the Perpetuation of the Judicial Compensation Lawsuits” (CJA’s Opposition Report, Exhibit E-1, underlining and capitalization in the original),

the Court of Appeals decision has emboldened judges to seek retroactive pay and damages for the purported separation of powers violation. This is what the judges in *Larabee v. Governor* are presently seeking by a renewal motion. Consequently, Attorney General Schneiderman should be introducing our analysis as to the fraudulence of that decision into defending against *Larabee*, rather than, as he still is doing, accepting the decision as legitimate and exposing the People of this State to hundreds of millions of dollars in liability. For this reason, at the February 23, 2012 conference on the judges’ motion³, I gave Assistant Attorney General Joel Graber, who handles the judicial compensation lawsuits on behalf of the Governor, Legislature, and Comptroller – and who was an indicated recipient of our July 19, 2011 letter by reason thereof – a copy of the Opposition Report, its two-volume Exhibit Compendium, and the Executive Summary. .

In the presence of the press, I also questioned Mr. Graber as to what the July 19, 2011 letter describes as:

“the inexplicable failure of the Attorney General’s Office...to have moved to reargue the palpably deficient February 23, 2010 decision before the Court of Appeals and/or to have filed a petition for a writ of certiorari with the U.S. Supreme Court, where the consequences were so violative of the New York Constitution and so potentially catastrophic to New York taxpayers – and where the dissent of Judge Smith would have dismissed all claims” (CJA’s Opposition Report, Exhibit E-1, p. 8, underlining in the original).

Mr. Graber’s response was that the answer was “out of his pay grade”. Since Governor Cuomo was the Attorney General throughout 2010, he assumedly knows the answer, as do the constitutional officers of the executive and legislative branches he was defending. We therefore respectfully request that the Governor disclose it – so as to dispel the appearance that the executive and legislative constitutional officers were, as they are now, colluding against the People to secure their own pay raises.

³ Oral argument that had been scheduled for October 20, 2011 was put over to February 23, 2012 – at which time it was postponed to March 15, 2012.

Indeed, the ONLY explanation for Attorney General Cuomo failing to appeal the February 23, 2010 Court of Appeals decision to the U.S. Supreme Court – which plainly was not in the interest of the People of this State – is that keeping that fraudulent decision intact furthered the interests of the constitutional officers of the executive and legislative branches who were his clients. Self-interest, rather than the People's interest, is also the ONLY explanation for your failing to respond to our serious and substantial May 23, 2011, June 23, 2011, and June 30, 2011 correspondence⁴ and to our October 27, 2011 Opposition Report.

It seems obvious that the reason you have not come forward with your findings of fact and conclusions of law during the past four months is because these establish where the People's interest lies – which is not where you want it to be because it prevents you from touting the “success” of the judicial compensation commission and using it to create a comparable commission to adjust compensation of executive and legislative branch constitutional officers, to be enacted, just as the judicial compensation commission was, without any hearings and whose recommendations would take effect just as automatically, no matter how violative of the People's rights and interests.

Certainly, it is a great surprise to us to have received no response from the Governor's Budget Director, Robert Megna, to our November 1, 2011 letter to him⁵ – a copy of which we sent you – wherein we stated to him:

“Consistent with your July 20th testimony [before the Commission on Judicial Compensation], CJA calls upon you to protect the public purse and public interest by [facilitating Governor Cuomo's introduction of legislation to override the Commission's judicial pay raise recommendations]. As our October 27th Opposition Report demonstrates (at pp. 1, 18-21, 23, 25, 26, 29, 31, 33), the Commission flagrantly failed ‘to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices’, as was its statutory duty to do – and its judicial pay raise recommendations are unsupported by any finding that current ‘pay levels and non-salary benefits’ are inadequate. Based on our showing therein, we respectfully request that you present Governor Cuomo with a report supplementing our own, amplifying the critical difference between salary and ‘compensation and non-salary benefits’, wholly disregarded by the Commission. This, in addition to addressing such other ‘appropriate factors’ as the Commission wilfully failed to consider, in violation of the Commission statute and New York's Constitution. Among these, ‘rates of inflation’; ‘changes in public-sector spending’; ‘the state's ability to fund increases in compensation and non-salary benefits’ – as well as the ‘skewing’ and ‘distorting’ of the salary structure for ‘constitutional officers’ and executive branch commissioners,

⁴ This correspondence is Exhibits A-1, B-2, and C-3 to our Opposition Report and discussed in its “Introduction” (pages 1-4).

⁵ Our November 1, 2011 letter to Budget Director Megna is posted on the same webpage of our website as our Opposition Report.

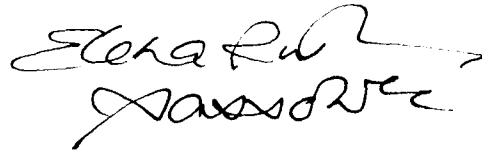
to which you alluded when you testified.” (underlining in the original).

If Budget Director Megna has furnished such a report, as was his duty to do, we request a copy – as likewise such information as he and/or the Office of Court Administration have furnished you as to the cost to this State’s taxpayers of the judicial pay increases that, absent action, will take effect on April 1, 2012.

Finally, by copy of this letter to State Comptroller Thomas DiNapoli, we request that he immediately secure from his fellow constitutional officers in the executive branch – the Governor or the Attorney General – our October 27, 2011 Opposition Report so that he can make his own findings of facts and conclusions of law and thereby determine his further duty to the taxpayers and People of this State. A copy of the complaint we filed yesterday with the Comptroller’s Investigations Unit of his Legal Services Division is enclosed (Exhibit D).

So that we may be guided accordingly in safeguarding the public’s trampled rights, please respond no later than Thursday, March 8, 2012, by e-mail, to elena@judgewatch.org.

Thank you.



Enclosures

cc: Attorney General Eric Schneiderman
Assistant Attorney General Joel Graber/Special Litigation Counsel
Public Integrity Bureau:
William Schaeffer, Bureau Chief
Stacy Aronowitz, Deputy Bureau Chief
Senate Minority Leader John Sampson
Budget Director Robert Megna
Comptroller Thomas DiNapoli
Investigations Unit of the Legal Services Division
The Public & The Press