

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewidth.org>
Sent: Tuesday, July 02, 2013 1:29 PM
To: kfischer@alm.com
Cc: Kris Fischer (wstorey@alm.com); 'joelstashenko@aol.com'; 'joel.stashenko@alm.com'; John Caher
Subject: What is Your Response to Our Notice, Now 3 Weeks Old, of Knowing & Deliberate Material Falsehoods in the NYLJ's June 6th Front-Page Article "State Judges Go to Battle for Retroactive Pay"? -- & When Will the NYLJ Report on CJA's 10-27-11 Opp. Report, Etc?
Attachments: 6-4-13-letter-to-legislative-oversight-investigations-committees.pdf

What is Your Response to Our Notice, Now 3 Weeks Old, of Knowing & Deliberate Material Falsehoods in the NYLJ's June 6th Front-Page Article "State Judges Go to Battle for Retroactive Pay"? - & When Will the NYLJ Report on CJA's October 27, 2011 Opposition Report, Etc?

Dear Ms. Fischer:

On Monday, June 10th, I called your office and, in your absence, spoke at length with your assistant, Tania Karas. I advised her of the material falsity of Joel Stashenko's article "*State Judges Go to Battle for Retroactive Pay*", published, above-the fold, on the front page of the June 6th New York Law Journal. I also described to her my conversation with Mr. Stashenko before calling you, in which I asked him whether his printed article was as he had written it or had been edited. Mr. Stashenko stated that it was his – including the three sentences that I objected to as materially false. As I recollect, Mr. Stashenko did not deny they were false – or that he knew them to be false – or that they were material to the case. Indeed, he was so uninterested in the integrity of his journalism that upon my stating to him that his article was materially false, he did not ask me for the specifics. I had to insist on providing them to him. His express position was that if there was a problem with his article I should be calling you directly – as I told Ms. Karas.

Thereafter, I telephoned you a second time. This time Ms. Karas did not pick up – and I left a voice message. Did you or anyone else ever respond? I received no return call, voice message, or e-mail with respect to either call.

The three sentences of Mr. Stashenko's article that are not only materially false – but knowingly so – are the following:

#1: "Steven Cohn of Carle Place, who represents six plaintiff judges, urged four justices of the Appellate Division, Second Department, to ignore the state's argument that the appropriation of \$51 million for 'adjustments' in judicial pay was not valid because legislative leaders disavowed the raise after the fact..." (underlining added).

#2: "Legislative leaders such as Dennis Farrell Jr., D-Manhattan, chair of the Assembly Ways and Means Committee, made disclaimers soon after the budget passed in 2009 that the appropriation for judicial salaries 'certainly does not authorize' a pay raise (NYLJ, April 3, 2009)." (underlining added).

#3: "In an amicus curiae brief before the Second Department in support of the judges, a coalition of judicial associations argued that it is the duty of the appeals judges to look at what the Legislature did through their 2009 appropriation, not what legislators after the fact said they did not mean to do." (underlining added).

powerfully reinforce our October 27, 2011 Opposition Report to the Commission on Judicial Compensation –

These three falsehoods are designed to conceal the fraudulence of the *Pines v. NYS lawsuit* – and the material fraud committed by Nassau County Supreme Court Justice Karen Murphy in her decision for the judges that is the subject of the appeal.

As to the falsity of sentence #1, the best proof is the Appellate Division video recording of the June 5th oral argument. I would gladly furnish it to you, but it is not available to the public (itself a story, as likewise whether it is available to the press). Certainly, from the number of quotes from the oral argument that appear in Mr. Stashenko's article – though not for the proposition that legislators disavowed the pay raises "after the fact" – he was likely assisted by a recording, perhaps one he himself made. Mr. Stashenko's own recording would also constitute best proof – and, after that, his own handwritten notes of the oral argument, which should be turned over to you.

Clearly what Mr. Cohn "urged" at the oral argument -- and the state's "argument" – may be presumed to mirror the briefs and record on appeal. These prove the falsity of sentences #2 and #3, including by the following:

- (1) pages 2-3, 12-14, 19, 25-26, 30 of the Attorney General's appellant's brief – and the referred-to pages of the record on appeal of transcripts of the Assembly and Senate floor proceeding preceding the Assembly and Senate votes on the judiciary appropriations bill for fiscal year 2009-2010;
- (2) pages 1, 5, 10-13 of the *amicus curiae* brief – where the "post-enactment statements" have nothing to do with the Assembly and Senate floor debate -- but pertained to the Commission on Judicial Compensation.

Here's the link to our website on which those pages are posted, beneath this letter: <http://www.judgewatch.org/web-pages/judicial-compensation/press-cja-opposition-report.htm>.

Also posted there, in substantiation, is page 6 of the appealed-from decision of Nassau County Supreme Court Justice Karen Murphy, itself identifying that at issue in *Pines v. New York State* was what took place during the Assembly and Senate floor debates prior to the vote on the judicial appropriations bill. Thus, the appealed-from decision states:

"Defendant suggests that the legislative intent is demonstrated by the debate on the chamber floor. The Court finds unavailing defendant's submission of Assembly and Senate floor debate transcripts for the very reason that those transcripts represent just that, which is debate about the issue. While illustrative of the animus and disdain of less than a handful of legislators for the judiciary, a co-equal branch of government, the colloquy is unpersuasive. Ultimately, the Legislature saw fit to pass the appropriation for judicial salary increases..." (p. 6, underlining added).

Indeed, I discussed this very paragraph with Mr. Stashenko in the minutes before the June 5th oral argument – because, as I told him, it is there that Justice Murphy commits the pivotal fraud without which she could not have rendered her self-interested decision, finding the state liable for more than \$51 million to the judges. Thus, to advance her bald pretense that that the legislators' "debate" and "colloquy" about the judiciary appropriations bill were "unavailing" and "unpersuasive", she conceals what the legislators said – and who those legislators were. I identified both to Mr. Stashenko: the legislators were Assembly Ways and Means Committee Chair Herman Farrell, Jr., the Senate's then ranking member of its Finance Committee, John DeFrancisco, and its then Judiciary Committee chair, John Sampson. And what Chairman Farrell expressly stated, *sua sponte*, and without any questioning of him – and what Chairman Sampson expressly stated in response to questioning by Senator DeFrancisco – was that the language of the judiciary appropriations bill did NOT raise judicial salaries. The vote of the Assembly and Senate on the judiciary appropriations bill then followed.

I look forward to discussing with you with the balance of what I explained to Mr. Stashenko about *Pines v. New York State* – and about *Bransten v. New York State*, whose recent decision by New York County Supreme Court Justice Carol Edmead was reported by the May 24th Law Journal in a lengthy, front-page, above-the fold item "*Judges' Suit Proceeds Over Health Premium Increase*" by John Caher. Both these judicial compensation

lawsuits are concocted on fraud by the judicial plaintiffs – and have been the beneficiary of materially fraudulent judicial decisions – readily-verifiable from examination of the record of each case. Indeed, they powerfully reinforce our October 27, 2011 Opposition Report to the Commission on Judicial Compensation’s August 29, 2011 Report, our People’s lawsuit based thereon – *Center for Judicial Accountability, Inc. et al. v. Cuomo, et al.* – and our extensive advocacy over the past several months chronicling an utterly dysfunctional, budget and legislative process, as to which, in addition to phone calls to Mr. Stashenko and Mr. Caher, we have furnished them -- and you -- with a steady stream of e-mails.

Suffice to say that in my June 5th conversation with Mr. Stashenko, he repeated to me what he had stated when I phoned him on February 15th, *to wit*, that he had not read our October 27, 2011 Opposition Report – a claim echoing Mr. Caher’s claim to me that he had not read our October 27, 2011 Opposition Report when I phoned him on February 5th -- both phone calls made by me in an unsuccessful effort to secure Law Journal coverage of CJA’s opposition to the Judiciary’s budget request for funding of the second phase of the judicial pay raises recommended by the Commission on Judicial Compensation’s August 29, 2011 Report.

Please let me hear from your as soon as possible – including as to when the Law Journal will be reporting on our October 27, 2011 Opposition Report that I hand-delivered for you on that date – and on our advocacy based thereon – as to which there has been NO reporting by the Law Journal, other than, 15 months ago, by Mr. Stashenko’s April 3, 2012 front-page item “*Court Rejects Bid to Halt Pay Increases for Judges*”, whose gratuitous besmirchments of me and the *CJA v. Cuomo* lawsuit were in face of the verified complaint thereof, accessible to him from our website, and his knowledge that “widespread corruption in the Judiciary” is NOT a matter of my “insist[ence]”, but of documentary evidence, which, for more than a decade, I have proffered him and brought with me to the hearings at which I have been “a fixture”.

By the way, Mr. Stashenko who was at the Senate Judiciary Committee’s June 8, 2009 hearing on the Commission on Judicial Conduct and court-controlled attorney disciplinary system – and who wrote the Law Journal’s front-page June 9, 2009 article about it “*Grievances against Lawyer, Judge Discipline Panels Aired at Capital*” – has yet to report on what the Senate Judiciary Committee did with respect to the testimony and evidence of judicial corruption that it received from witnesses – focally presented by our Opposition Report, the *CJA v. Cuomo* verified complaint, and by our subsequent advocacy. This includes, most recently, our June 4, 2013 letter to the Senate Committee on Investigations and Governmental Operations and Assembly Committee on Oversight, Analysis, and Investigation – a copy of which is enclosed. When can we expect such story to appear?

Thank you.

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