

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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November 25, 2019

TO: Chief Administrative Judge Lawrence Marks  
Office of Court Administration/Unified Court System

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

RE: Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony.

On November 4, 2019, I gave sworn testimony to the Commission on Legislative, Judicial and Executive Compensation, at which I identified that the 2011 report of the Commission on Judicial Compensation and the 2015 report of the prior Commission on Legislative, Judicial and Executive Compensation that had raised judicial salaries “are fraudulent, are false instruments, are violative on their face...of the statute[s] pursuant to which they purport to be rendered.” (Tr. 67)<sup>1</sup> – further stating (Tr. 68-69) that I had set this forth, by a December 31, 2015 letter to Chief Judge DiFiore, then the Westchester County District Attorney, identifying that the two commission reports were “violative of a succession of penal laws and the Public Trust Act” and furnishing her with evidentiary proof, in substantiation.<sup>2</sup>

You are familiar with that December 31, 2015 letter, calling upon then Chief Judge Nominee DiFiore to demonstrate her fitness to be New York’s highest judge by taking actions to safeguard the People of the State of New York and the public fisc from the commission reports and, likewise, from the Judiciary budget, also rife with fraud, statutory violations – and unconstitutionality. Indeed, on both subjects, you were an indicated recipient of my January 26 – February 2, 2016 correspondence to Chief Judge DiFiore and the Legislature, which I e-mailed you.

Neither you nor Chief Judge DiFiore responded or denied or disputed the accuracy of my December 31, 2015 letter and subsequent correspondence. Despite my demands, neither of you came forward

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<sup>1</sup> The transcript of the November 4, 2019 hearing of the Commission on Legislative, Judicial and Executive Compensation and all the referred-to evidence to which this letter refers are posted on CJA’s webpage for this letter, here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

<sup>2</sup> CJA’s webpage for the hand-delivered December 31, 2015 letter, posting the evidentiary proof that accompanied it, is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>.

with any findings of fact and conclusions of law about the commission reports, about the Judiciary budget, or about the corruption of any cognizable judicial process in CJA's three litigations challenging the reports and the Judiciary budget – the same three litigations as my December 31, 2015 letter specified (at pp. 2-3).

Instead, what you and Chief Judge DiFiore did was to collusively cover-up and perpetuate the corruption and larceny of taxpayer monies that my December 31, 2015 letter and subsequent correspondence documented. On March 23, 2016, I set this forth, furnishing my December 31, 2015 letter and related correspondence as exhibits to a verified second supplemental complaint in CJA's then-live citizen-taxpayer action<sup>3</sup> – the only one of CJA's aforesaid three litigations then live.

Four months later, that citizen-taxpayer action was also dead, killed off by a fraudulent judicial decision that simultaneously denied leave to supplement by the March 23, 2016 verified second supplemental complaint. As a result, CJA was burdened with presenting the facts and causes of action of the March 23, 2016 verified second supplemental complaint in a new citizen-taxpayer action. It was commenced, on September 2, 2016, by a summons and verified complaint naming Chief Judge DiFiore as its last defendant “in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System” – annexing as its Exhibit A and expressly incorporating the March 23, 2016 verified second supplemental complaint.<sup>4</sup> This is the citizen-taxpayer action, now at the Court of Appeals, about which I testified at the November 4, 2019 hearing.<sup>5</sup>

In the unlikely event you forgot about *CJA v. Cuomo...DiFiore* and about the corrupting of any cognizable judicial process in the case, about which I alerted you, by e-mails, in April 2017 and January 2018<sup>6</sup> – and about which you presumably were kept apprised from other sources – the New York Law Journal published my letter to the editor about the lawsuit, “*A Call for Scholarship, Civic Engagement, and Amicus Curiae Before the NYCOA*”, on August 21, 2019. Assuredly, you and the

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<sup>3</sup> The direct link to CJA's webpage for the March 23, 2016 verified second supplemental complaint with its accompanying compendia of exhibits is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>. My December 31, 2015 letter to Chief Judge Nominee/Westchester D.A. DiFiore and my subsequent correspondence, sent to her and you, are Exhibits 37-41.

<sup>4</sup> The direct link to CJA's webpage for the September 2, 2016 summons and verified complaint, with its exhibits, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/supreme-ct/9-2-16-osc-verified-complaint.htm>.

<sup>5</sup> As you know, CJA's website, [www.judgewatch.org](http://www.judgewatch.org), posts the entire record of this second citizen-taxpayer action and of the first, accessible from the prominent center link on CJA's homepage entitled “CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance”.

<sup>6</sup> My e-mails to you in April 2017 transmitted to you copies of my April 10, 2017 letter for “immediate supervisory oversight” [R.1039-1047] and my April 21, 2017 letter for “immediate supervisory action” [R.1052-1059]. My e-mail to you in January 2018 transmitted to you the written statement I would be submitting to the Legislature for its January 30, 2018 budget hearing, at which you would be testifying.

lawyers and judges of the Office of Court Administration are Law Journal readers.

Before beginning my testimony, at the November 4, 2019 hearing (Tr. 61), I handed up to the four commissioners physically present – Lachman, Hormozi, Cardozo, and Eng – four copies of my August 21, 2019 New York Law Journal letter and four copies of my December 31, 2015 letter to Chief Judge DiFiore – thereupon describing – by reading from the opening of my testimony at the November 30, 2015 hearing of the prior Commission on Legislative, Judicial, and Executive Compensation – how New York’s systemically-corrupt Judiciary operates, *to wit*, “throwing” cases by fraudulent judicial decisions – and with the connivance of New York’s attorney general, in cases involving governmental defendants (Tr. 62). I stated that the *CJA v. Cuomo...DiFiore* citizen-taxpayer action is Exhibit A (Tr. 65) – and that the Commission’s duty was to verify this, which it could easily do, as the lawsuit record was a “paper trail”, readily available from CJA’s website, [www.judgewatch.org](http://www.judgewatch.org) – and, of course, from the Judiciary (Tr. 62, 69-70).

I also pointed out that pursuant to the budget statute establishing the Commission, it had “the resources of every department, every agency” and also had subpoena power – and that it should charge the judges and lawyers who had testified before it with furnishing it with findings of fact and conclusions of law “because what you have here is a grand larceny of the public fisc”, currently “on the order of half a billion dollars”, “paid out in fraudulent, statutorily violative, unconstitutional pay raises” (Tr. 69-70).

I believe you were present when, as the Commission’s last witness, I began my sworn testimony, but that you fled from the room as some point before the end, along with most of the judges and lawyers whose unsworn testimony, like your own, had preceded mine. All of you had urged the Commission to rely on the 2011 and 2015 commission reports, further justifying COLA salary increases as warranted by the quality of New York’s judiciary, enhanced by Chief Judge DiFiore’s “Excellence Initiative”.

Doubtless, you have since viewed the VIDEO of my testimony, posted on the Commission’s website: <http://www.nyscommissiononcompensation.org/index.shtml> – and/or read the posted transcript – and know that I accused you and them of inundating the Commission with fraud (Tr. 61, 64, 67-68).

By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.

To facilitate this, CJA’s webpage for this letter furnishes the link to the webpage posting the evidence to which I referred in testifying<sup>7</sup>. This includes the evidence I delivered to Chief Judge DiFiore with my December 31, 2015 letter to her – a copy of which I physically held up, above my head (Tr. 69), in testifying at the November 4, 2019 hearing:

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<sup>7</sup> The direct link to CJA’s webpage for my November 4, 2019 testimony is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/cja-nov4-2019-testimony.htm>.

- (1) a full copy of CJA's October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report;
- (2) a copy of CJA's November 30, 2015 written testimony (with attachments) that I had orally read at the November 30, 2015 public hearing of the prior Commission on Legislative, Judicial and Executive Compensation – as well as CJA's December 2, 2015 and December 21, 2015 supplemental submissions, the former detailing the frauds that you and other judicial pay raise advocates committed by your testimonies at the November 30, 2015 hearing and the latter indicating you as a recipient and which I had e-mailed to you;
- (3) CJA's June 27, 2013 conflict-of-interest/corruption complaint to the Joint Commission on Public Ethics (JCOPE), with its annexed April 15, 2013 corruption complaint to then U.S. Attorney Preet Bharara.

Suffice to say that among the express statutory violations which my December 31, 2015 letter to Chief Judge DiFiore highlighted (at p. 4) were:

- that the two commission reports had examined only “salary” – not “compensation and non-salary benefits”, required by the statutes;
- that the two commission reports had made no findings that current “pay levels and non-salary benefits” of New York’s judges were inadequate, required by the statutes.

These are the same statutory violations I identified by my November 4, 2019 testimony – and which, by your unsworn testimony (Tr. 2-17) and written submission, you would have the instant Commission repeat. So, too, the other judicial pay raise advocates who followed you, at the November 4, 2019 and November 14, 2019 hearings, also with unsworn testimony and submissions. Like you, none mentioned non-salary benefits, nor compensation other than salary. And, like you too, none furnished evidence that current judicial salary levels are inadequate – or even actually claimed that they are.

Then, too, neither you nor they alerted the Commission to the statutory requirement that it to “take into account” other “appropriate factors”, not enumerated. This, with knowledge, that no factor is more “appropriate” – and of greater constitutional magnitude – than evidence that New York’s judiciary is not “excellent” and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct. Indeed, such unenumerated “appropriate factor”, when established, renders IRRELEVANT the enumerated six factors, all financial and economic.

As for the Exhibit A evidence I identified as establishing the systemic corruption of New York’s judiciary: the record of the CJA v. Cuomo...DiFiore citizen-taxpayer action<sup>8</sup> – its September 2,

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<sup>8</sup> The direct link to CJA’s webpage for the record of its second citizen-taxpayer action, *CJA v.*

2016 verified complaint include four causes of action whose handling by three levels of New York's judiciary demands finding of facts and conclusions of law on a priority basis. It is for this reason that, at the conclusion of the November 4, 2019 hearing, I handed copies of the below to Commissioners Eng, Lachman, and Hormozi.<sup>9</sup> These four causes of action are, in the order of highest priority:

- The eighth cause of action of the September 2, 2016 verified complaint (¶¶77-80) pertaining to the violations of EXPRESS statutory requirements by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, voiding it as a matter of law – embodying the fifteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶453-457) [R.114, R.212-213];
- The seventh cause of action of the September 2, 2016 verified complaint (¶¶69-76) based, in the main, on the unconstitutional conduct of the prior Commission on Legislative, Judicial and Executive Compensation, including as relates to the unenumerated “appropriate factors”, also voiding its December 24, 2015 report, as a matter of law – embodying the fourteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶424-452) [R.112-114, R.201-212];
- the sixth cause of action of the September 2, 2016 verified complaint (¶¶59-68) as to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, as written and by its enactment – embodying the thirteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶385-423) [R.109-112, R.187-201];
- the second cause of action of the September 2, 2016 verified complaint (¶¶34-39) pertaining to the constitutional and statutory violations of the slush-fund Judiciary budget– embodying the tenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶327-331) [R.103-104, R.162-167].

The frauds committed by Albany Supreme Court with respect to the eighth, seventh, sixth, and second causes of action are summarized, with record references for further particulars, by CJA's July 4, 2018 appellants' brief to the Appellate Division, Third Department. So, too, with respect to the frauds it committed as to the verified complaint's other six causes of action – and as to the threshold integrity issues before it.

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Cuomo...DiFiore, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>.

<sup>9</sup> Additionally, and because Commissioner Lachman wrote the book Three Men in a Room: The Inside Story of Power and Betrayal in an American Statehouse, I also handed up to him and to Commissioners Eng and Hormozi, the ninth cause of action of the September 2, 2016 verified complaint (¶¶81-84) [R.115], as to the unconstitutionality of “three-men-in-a-room” budget deal-making, as unwritten and as applied – embodying the sixteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶458-470) [R.214-219].

The frauds committed by the Appellate Division, Third Department with respect to the eighth, seventh, sixth, and second causes of action, the other six causes of action, and the threshold integrity issues before it, are particularized by CJA's "legal autopsy"/analysis of the December 27, 2018 decision of its four-judge appellate panel, furnished to the Court of Appeals on March 26, 2019, in substantiation of CJA's appeal of right.

As for the Court of Appeals' frauds – starting with its concealment of the threshold integrity issues before its associate judges – they are conveniently particularized by CJA's May 31, 2019 motion, pertaining to the May 2, 2019 order of its associate judges, dismissing appellants' appeal of right. Their frauds with respect to that motion, and appellants' June 6, 2019 motion for leave to appeal and August 8, 2019 motion to strike the attorney general's opposition as "fraud on the court", manifested by their three October 24, 2019 orders disposing of the motions, are particularized by CJA's motion of today's date – posted on the webpage for this letter. I expressly incorporate the motion herein by reference, just as the motion expressly incorporates this letter, annexed thereto as Exhibit F.

By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) "Judges...must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities" citing "NY Const., Art. VI, §20(b), (c)" – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate judges – or was its content known to them and, if so, when? Did you – and they – actually believe that New York's Judiciary was not obligated to include ANY information as to CJA's succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial "process"?<sup>10</sup>

Finally, so that you may respond, additionally, to the further evidence I handed up to the Commission, at the conclusion of the November 4, 2019 hearing, in substantiation of my testimony, it was, as follows:

- my February 19, 2019 written statement to the Legislature for its February 11, 2019 budget hearing, with its accompanying 10 pages of Questions for the Legislature to ask you pertaining to the fiscal year 2019-2020 Judiciary budget and the commission-based judicial salary increases it embeds<sup>11</sup> – which my May 31, 2019

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<sup>10</sup> Notably, when you testified, you stated – without specificity:

"...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue." (Tr. 3).

<sup>11</sup> The direct link to CJA's webpage for the February 19, 2019 written statement, with its appended Questions for you to answer, furnishing links to referred-to substantiating evidence, is here:

motion to the Court of Appeal in *CJA v. Cuomo...DiFiore* annexed as its Exhibits F-2 and F-1– copies of which I furnished, in hand, to Commissioners Lachman and Eng;

- my June 10, 2019 and September 6, 2019 FOIL requests to the Commission’s appointing authorities – the Governor, Temporary Senate President, Assembly Speaker, Chief Judge – pertaining to the Commission’s functioning and their responses thereto – one copy of which I furnished, in hand, to Commissioner Lachman;
- my June 20, 2019 and July 2, 2019 FOIL records requests pertaining to the whereabouts of records and website issues pertaining to the prior Compensation Commissions/Committees and their responses thereto – one copy of which I furnished, in hand, to Commissioner Lachman.

There’s more evidence that I will be furnishing you, your fellow judicial pay raise advocates, and the Commission, but the above more than suffices, for now.

Thank you.

cc: Commission on Legislative, Judicial and Executive Compensation  
The other judicial pay raise witnesses testifying before the Commission  
at its November 4, 2019 and November 14, 2019 hearings  
Chief Judge DiFiore’s “Excellence Initiative”