

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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February 1, 2013

TO: Governor Andrew M. Cuomo

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

RE: Discharging Your Constitutional Duty with Respect to the Judiciary Budget Request for Funding of the Judicial Salary Increases Recommended by the August 29, 2011 "Final" Report of the Special Commission on Judicial Compensation

As you know, your constitutional duty as Governor is to "take care that the laws are faithfully executed" (New York State Constitution, Article IV, §3). It is for this reason that Article VII, §1 empowers you to make "such recommendations as [you] deem proper", upon transmitting the Judiciary's budget to the Legislature.

Demand is hereby made that you explain why, upon transmitting the Judiciary's budget to the Legislature, both this year and last, you failed to "recommend[]" that it override the judicial salary increases for which the Judiciary was seeking funding.

Do you deny or dispute that the Center for Judicial Accountability's October 27, 2011 Opposition Report, hand-delivered to your Manhattan office on that date, dispositively established that those judicial salary increases, recommended by the August 29, 2011 "Final" Report of the Special Commission on Judicial Compensation, are unconstitutional, statutorily-violative, and fraudulent? If so, PROVE IT by producing such findings of fact and conclusions of law as you made, or as were made by your counsel, with respect to our Opposition Report, if not, additionally, with respect to the four causes of action of the verified complaint in our People's lawsuit against you, *Center for Judicial Accountability, Inc., et al. v. Andrew Cuomo, et al.*, based upon your failure to protect the People of this State from those judicial salary increases.¹

On February 6, 2013, the Senate and Assembly will be holding a joint legislative hearing on the Judiciary's budget. It is a perfect opportunity for you to appear before the Legislature, pursuant to Article VII, §3, which gives you "the right...to appear and be heard...during the consideration

* **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.

¹ Our October 27, 2011 Opposition Report and the verified complaint in *CJA v. Cuomo* are posted on our website, most readily accessible *via* the top panel "Latest News".

[of the budget] and to answer inquiries relevant thereto.”

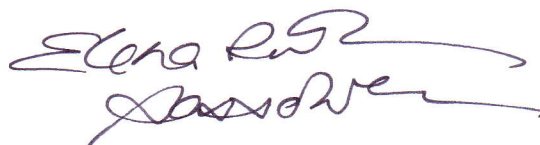
We call upon you to exercise that right – and we demand that you exercise the further right that Article VII, §3 confers upon you, namely, “within thirty days” of the January 22, 2013 date upon which you submitted your budget to the Legislature “to amend or supplement the budget and submit amendments to any bills submitted by [you] or submit supplemental bills”. This, because there is NO DEFENSE to the unconstitutionality, statutory-violations, and fraud demonstrated by our October 27, 2011 Opposition Report and the four causes of action of the *CJA v. Cuomo* verified complaint – as your findings of fact and conclusions of law would reveal.

On the subject of the February 6, 2013 hearing, we enclose copies of our January 29th and January 30th correspondence with the Judiciary and Legislature, to which you and Budget Director Robert Megna are indicated recipients.

We would have no objection to Budget Director Megna appearing in your stead at the February 6, 2013 hearing – even to the limited extent of his testifying as to the specific matters set forth by our November 1, 2011 letter to him, entitled “Protecting the Public Purse & Public Interest: Request that You Take Steps to Secure Governor Cuomo’s Introduction of Legislation to Override the Commission on Judicial Compensation’s Statutorily-Violative and Unconstitutional Judicial Pay Raise Recommendations”, to which we received no response. A copy of that November 1, 2011 letter is enclosed in support of our further demand – pursuant to FOIL and otherwise – for a copy of such supplemental report as Director Megna may have submitted to you, as requested by the letter as follows:

“...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, to which you alluded when you testified.” (November 1, 2011 letter, at p. 2).²

Thank you.



² The November 1, 2011 letter is Exhibit P to the verified complaint in *CJA v. Cuomo* and discussed at ¶¶118 and 119 thereof.

Enclosures: (1) CJA's November 1, 2011 letter to Budget Director Megna
(2) CJA's January 30, 2013 letter to Legislative Leadership
(3) CJA's January 30, 2013 letter to Legislative Oversight Committees
(4) CJA's January 29, 2013 letter to Chief Administrative Judge

cc: Budget Director Robert Megna

Executive Branch Constitutional Officers

Comptroller Thomas DiNapoli
Attorney General Eric T. Schneiderman

Judicial Branch Constitutional Officers

Chief Judge Jonathan Lippman
Chief Administrative Judge A. Gail Prudenti

Legislative Branch Constitutional Officers

Senate Majority Coalition Leaders Dean Skelos & Jeff Klein
Senate Minority Conference Leader Andrea Stewart-Cousins
Assembly Speaker Sheldon Silver
Assembly Minority Leader Brian Kolb

Senate Finance Committee

Senator John A. DeFrancisco, Chair
Senator Liz Krueger, Ranking Member

Assembly Ways & Means Committee

Assemblyman Herman D. Farrell, Jr., Chair
Assemblyman Robert Oaks, Ranking Member

Senate Judiciary Committee

Senator John J. Bonacic, Chair;
Senator Ruth Hassell-Thompson, Ranking Member

Assembly Judiciary Committee

Assemblywoman Helene E. Weinstein, Chair
Assemblyman Tom McKeivitt, Ranking Member

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

November 1, 2011

Robert L. Megna, Director of the Budget
State of New York/Executive Department
Division of the Budget
State Capitol
Albany, New York 12224

RE: Protecting the Public Purse & Public Interest: Request That You Take Steps to Secure Governor Cuomo's Introduction of Legislation to Override the Commission on Judicial Compensation's Statutorily-Violative and Unconstitutional Judicial Pay Raise Recommendations

Dear Budget Director Megna,

This follows my phone call to your office on July 21st, identifying that I was the person who had risen from her seat to applaud and thank you, on behalf of the People of the State of New York, at the conclusion of your testimony at the Commission on Judicial Compensation July 20th hearing.

Yesterday, I again called your office and, again leaving a message of thanks for your July 20th testimony, stated that our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), had presented Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman with an Opposition Report in support of legislative override of the Commission's recommendations to raise judicial salaries 27% over the next three years.

I further stated that you were an indicated recipient of that Opposition Report¹ – and that I would be transmitting it to you. I do so now, by attachment to this e-mail. The Opposition Report is also readily accessible from CJA's website, www.judgewatch.org, most conveniently *via* the top panel "Latest News" and left side panel "Judicial Compensation-NYS" – together with the substantiating exhibits referred-to therein. Upon your request, I would be pleased to furnish you with a "hard copy", especially if doing so would facilitate your securing Governor Cuomo's introduction of legislation to override the Commission's judicial pay raise recommendations.

¹ The Opposition Report mentions you and/or the Division of Budget at pp. 5, 8, 22-23, 24, 36.

Consistent with your July 20th testimony, CJA calls upon you to protect the public purse and public interest by taking such action. 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, to which you alluded when you testified.

As you are also an indicated recipient of CJA’s October 28th letters to the Commissioners and judicial pay raise advocates, transmitting our Opposition Report to them, those letters are enclosed herewith.

Again, thank you for your past and anticipated upcoming advocacy on behalf of the public purse and public interest.

Yours for a quality judiciary –
& government integrity,



ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

Attachment: CJA’s October 27, 2011 Opposition Report,
with a link to CJA’s webpage on which it and the exhibits are posted
Enclosure: CJA’s October 28, 2011 letters to the Commissioners & Judicial Pay Raise Advocates

cc: Governor Andrew M. Cuomo
Temporary Senate President Dean G. Skelos
Assembly Speaker Sheldon Silver
Chief Judge Jonathan Lippman
Commission on Judicial Compensation
Judicial Pay Raise Advocates
Public & Press