

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

BY FAX & E-MAIL

February 26, 2013

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

RE: Furnishing the Legislature with Essential Information:

- (1) What review did the Division of the Budget do of the Judiciary's budget for fiscal year 2013-2014?
- (2) What is the Division of the Budget's response to CJA's testimony at the Legislature's February 6, 2013 budget hearing on "public protection", opposing the Judiciary's budget and funding for the judicial salary increase?

Dear Budget Director Megna,

This follows my phone conversation on Friday, February 22, 2013, with Chief Budget Examiner Susan Knapp, who, initially was not available when I telephoned to speak with her (518-474-4313), but who then hurriedly returned my call upon my communicating to her secretary, Karen Mattison, what I was intending to inform the Legislature in the event I did not hear back from her promptly, *to wit*, that the Division of the Budget does NO critical review of the Judiciary's budget.

In the event you did not see my February 5, 2013 e-mail to Ms. Mattison entitled "Waiting to Hear from You: What Review Does the Division of the Budget Do of the Judiciary Budget, etc.?" – to which you were an indicated recipient and to which Ms. Mattison had not responded – a copy is enclosed.

As Ms. Knapp told me that nothing she said could be quoted, and because what she told me was so palpably disingenuous, I stated to Ms. Knapp that you should be the one to respond to the straightforward question as to "what critical review does the Division of Budget do of the Judiciary budget?" For that reason, I asked Ms. Knapp to relay my request that you call me. As she expressed reluctance to do so, I stated I would write you a letter.

I also told Ms. Knapp that the Legislature would clearly benefit from having your response to my testimony at its February 6, 2013 budget hearing on “public protection”, opposing not only the judicial salary increase, but the whole of the Judiciary’s budget as lacking necessary itemization for meaningful review. Ms. Knapp stated to me that she had watched my testimony – and I understood from her that she had watched it live, as had you. If, in fact, you did not see it, the video is posted on CJA’s website, www.judgewatch.org, on the webpage devoted to “Securing Legislative Oversight & Override of the 2nd & 3rd phases of the judicial pay raises...”, whose hyperlink is accessible from the top panel “Latest News”.

To further ensure that the Legislature will have your answers so that it can more intelligently exercise its duties with respect to the Judiciary’s budget, I will furnish a copy of this letter to the chairs and ranking members of the Senate Finance Committee and Assembly Ways and Means Committee, as well as to the chairs and ranking members of the Senate and Assembly Judiciary Committees, with a request that should you fail to respond, in writing, to the two questions in the “RE: clause” of this letter, that it be deemed a concession that you did not critically review the Judiciary’s budget and that you do not deny or dispute any aspect of my February 6, 2013 testimony.

Alternatively, I will request that these Committees require that you appear before them to be questioned on the subject, pursuant to Article VII, §3 of the New York State Constitution and Legislative Law §31 and §60. This will, additionally, give them an opportunity to question you as to what you did upon receiving CJA’s November 1, 2011 letter to you, furnishing our October 27, 2011 Opposition Report and calling upon you, based thereon, to take steps to secure the Governor’s override of the judicial salary increases recommended by the Commission on Judicial Compensation’s August 29, 2011 “Final” Report, including by presenting the Governor 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 [before the Commission on July 20, 2011].”

A copy of that November 1, 2011 letter, as annexed to our February 1, 2013 letter to the Governor, to which you were an indicated recipient – and to which we received no response – is enclosed for your convenience.

Needless to say, your appearance before the Committees would be salutary for yet another reason: it will enable them to question you as to the Division of the Budget’s own \$53,878,000 budget request for fiscal year 2013-2014.

Thank you.

Yours for a quality judiciary –
& government integrity,



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

Enclosures

cc: Susan Knapp, Chief Budget Examiner/Division of Budget
Senate Finance Committee
Senator John A. DeFrancisco, Chair
Senator Liz Krueger, Ranking Member
Robert f. Mujica, Finance Committee Secretary
Assembly Ways and Means Committee
Assemblyman Herman D. Farrell, Jr., Chair
Assemblyman Robert Oaks, Ranking Member
Matthew A. Howard, Ways and Means Committee Secretary
Senate Judiciary Committee
Senator John J. Bonacic, Chair
Senator John Sampson, Ranking Member
Assembly Judiciary Committee
Assemblywoman Helene E. Weinstein, Chair
Assemblyman Tom McKeivitt, Ranking Member

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, February 05, 2013 4:00 PM
To: karen.mattison@budget.ny.gov
Cc: 'budgetdirector@budget.ny.gov'
Subject: Waiting to Hear from You: What Review Does the Division of Budget Do of the Judiciary Budget, etc.?

TO: Susan Knapp, Chief Budget Examiner

This memorializes my several phone calls, beginning last Friday, February 1st and continuing Monday, February 4th and today, February 5th, requesting to speak with you about the Judiciary's budget. I understand that you head the unit whose responsibilities include the Judiciary's budget.

Each time I have called I have been told by your secretary, Karen Mattison, that you are at a meeting. Ms. Mattison has confirmed, however, that she did forward to you the e-mail I had sent for you on Friday, February 1st: these being CJA's letters of that date to the Governor and to the Comptroller and Attorney General, to which Budget Director Megna was an indicated recipient.

Although I have requested to speak with your deputy or such other staff as you might designate about the Judiciary budget, if you are unavailable, Ms. Mattison told me, when I called again this morning, that "due to the sensitivity of the matter", I could only speak to you.

It is now nearly 4 pm – and I have received no call from you. As I am testifying tomorrow at the Senate and Assembly joint hearing on "public protection", please call me without further delay; or delegate such call to an associate; or respond, by e-mail. My questions, which I identified to Ms. Mattison, include the following:

- (1) What critical review does the Division of Budget actually do of the Judiciary budget?
- (2) The dollar amount of this year's second phase of the judicial salary increase. Where, if at all, is it identified in this year's Judiciary budget? Last year's budget identified the dollar amount for the first phase of the judicial salary increase as \$27.7 million. Such appeared in the Executive Summary, but where, additionally in that budget?
- (3) The dollar amount for "compensation and non-salary benefits" for state-paid judges and justices of the unified court system, excluding salary. Where does this figure appear in the Judiciary's budgets for this year and last?
- (4) The "single budget bill" that the Judiciary submitted for the budgets this year and last – these being identified in the November 30, 2012 and November 30, 2011 letters transmitting the budget of "General State Charges".

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-455-4373
www.judgewatch.org

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

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.”

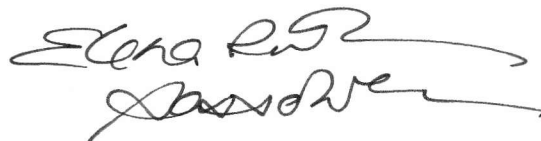
We call upon you to exercise that right – and we demand that you exercise the further right that Article VII, §3 confers upon you, namely, “within thirty days” of the January 22, 2013 date upon which you submitted your budget to the Legislature “to amend or supplement the budget and submit amendments 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

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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