

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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March 19, 2013

TO: Governor Andrew M. Cuomo

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

RE: Assisting the Legislature in Discharging its Constitutional Duty: The People's Right to Know the Dollar Cost of the Judiciary Budget & of the Appropriations Bill for the Judiciary & to be Protected from "Grand Larceny of the Public Fisc" by Unidentified, Unitemized Judicial Pay Raises, whose Fraudulence, Statutory-Violations, and Unconstitutionality are Proven by Documentary Evidence in Your Possession & the Legislature's

The letter calls upon you to answer the same three questions that we have asked of Senate and Assembly members: "Is the Judiciary Budget a 'Slush Fund'? What is its Dollar Cost – and that of the Appropriations Bill?"

These questions are set forth by the Center for Judicial Accountability's March 18, 2013 letter to all members of the Senate and Assembly. Because you and Budget Director Megna are each indicated recipients, we e-mailed it to you yesterday. For your convenience, a further copy is enclosed.

As highlighted by the letter, your "Commentary" to the Judiciary budget that you presented to the Legislature did not specify its precise dollar amount, but only an approximation: "\$2.6 billion – "a rounded figure that can conceal many tens of millions of dollars". As for your appropriations bill for the Judiciary, it, like the Judiciary's "single budget bill" on which it is based, does not provide a cumulative total of its appropriations.

Please, therefore, identify the precise dollar amount requested by the Judiciary's two-part budget and by your Judiciary appropriations bill. This would greatly aid the Legislature which has been unable to determine these dollar amounts. Indeed, simple addition is apparently too complex for Senate Finance Committee and Assembly Ways and Means Committee staff and majority and minority counsel, whose "White", "Blue", and "Yellow" books, on which legislators rely, differ in their totals, with the "Green" book furnishing no total. The result may also be seen in erroneous Senate Resolution 818 which "concur[s] with the Executive recommendation of \$1.75 billion" for the Judiciary.

* **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.

Further deficiencies in specificity and itemization of the Judiciary's budget, of its "single budget bill", and of your own appropriations bill based thereon are set forth in the March 11, 2013 letter that we sent to every member of the Legislature's General Conference Committee and its Subcommittee on "Public Protection", Criminal Justice, and Judiciary – to which our March 18th letter to all Senate and Assembly members refers and rests. Among these:

- No identification of the dollar cost of the judicial salary increases;
- No identification of the dollar cost of judicial salaries, which are improperly combined with salaries of nonjudicial personnel;
- No identification of the dollar cost of "judicial compensation and non-salary benefits" for judges and justices of the Unified Court System, excluding salary – these being 'fringe benefits', which are improperly combined with "fringe benefits" of nonjudicial personnel
- No identification of the number of judges and non-judges on the Judiciary payroll, let alone for different types of courts and offices.

Surely, had there been any appropriate, independent review of the Judiciary budget and its "single budget bill" by your Division of Budget, it would have alerted you to these deficiencies so that you could have avoided them in your own Judiciary appropriations bill as, likewise, the repetitive references to prior budget appropriations for unidentified "services and expenses including travel outside the state and the payment of liabilities incurred...", which your appropriations bill takes, *verbatim*, from the "single budget bill" – in flagrant violation of Article VII, §7 of the New York State Constitution:

"No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law...and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum." (March 11, 2013 letter, at p. 11, underlining in original).

Please, therefore, identify what independent review was done by your Division of Budget. Here, too, this information is vital for the Legislature to have, as your Division of Budget has known since February 1, 2013, when we first sought its answer to the straightforward question "What critical review does the Division of Budget actually do of the Judiciary budget?" This culminated in our February 26, 2013 letter to Budget Director Megna, entitled:

"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?" (underlining in the original).

We received no response from Budget Director Megna – notwithstanding the letter expressly stated:

“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.” (February 26, 2013 letter, at p. 2, underlining added).

A copy is enclosed.

As we did not yet furnish the February 26th letter to the chairs and ranking members of the Senate Finance Committee, Assembly Ways and Means Committee, and Senate and Assembly Judiciary Committees, we will do so now by a further letter to all Senate and Assembly members. That way all legislators can better understand that their constitutional duty of oversight over the Judiciary budget is reinforced by the failure of the Executive branch to engage in even perfunctory oversight of the Judiciary budget, in contravention of New York's Constitution which, by empowering you to make “such recommendations as [you] deem proper” to the Judiciary budget, necessarily requires you to have critically examined it.

If you have anything to say to the Legislature regarding Executive branch review of the Judiciary budget and in justification of your “Commentary”, implicitly recommending adoption of the Judiciary's budget through your appropriations bill for it, this is the time to set it forth.

As for CJA's February 1, 2013 letter to you, entitled

“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” (at p 1, underlining in the original),

this is your last opportunity to deny or dispute what is obvious from the most cursory examination of our October 27, 2011 Opposition Report, hand-delivered to your Manhattan office on that date, and, thereafter, served upon you as the most important exhibit to the March 30, 2012 verified complaint in our People's lawsuit against you and all three government branches, *Center for Judicial Accountability, Inc., et al, v. Andrew Cuomo, et al.*, based on your failure and theirs to protect the

People of this State from those judicial salary increases, namely, that it:

“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” (at p 1, underlining in the original).

Your failure to deny or dispute this – let alone, as our February 1st letter requested:

“to 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” (at p. 1, capitalization in the original),

as likewise the failure of Budget Director Megna to do so, must – *as a matter of law* – be deemed a concession that neither of you can. Under such circumstances, your failure “to amend or supplement” the budget and your appropriations bill for the Judiciary to remove funding for the second phase of the judicial salary increases – as our February 1st expressly called upon you to do – is official misconduct that is both criminal and impeachable.

That you would have the Legislature likewise engage in criminal and impeachable official misconduct by voting for your Judiciary appropriations bill – with its unidentified, unitemized funding for the second phase of the judicial salary increases – when it possesses the same documentary proof as you possess of their fraudulence, statutory violations, and unconstitutionality, is – to use the words of our March 15th and March 11th letters— “grand larceny of the public fisc, involving tens of millions of dollars this year alone” (underlining in the originals).



- Enclosures: (1) CJA’s March 18, 2013 letter to all Senate & Assembly Members, with its referred-to March 11, 2013 letter¹
(2) CJA’s February 26, 2013 letter to Budget Director Robert Megna
(3) CJA’s February 1, 2013 letter to Governor Cuomo

cc: Budget Director Robert L. Megna
All Senate & Assembly Members
The Public & The Press

¹ Our separate analysis of the Legislature’s “White”, “Blue”, “Yellow” and “Green” books, establishing their uselessness as aids to legislators, identified at page 12 of the March 11th letter, is posted on our website, www.judgewatch.org, on our webpage devoted to “Securing Legislative Oversight & Override of the 2nd & 3rd phases of the judicial pay raises...”, accessible *via* the top panel “Latest News”. That is where all the letters furnished herewith are posted – and where this letter will be.