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July 17, 2018

TO: Shawn Kerby, Records Access Officer for the Office of Court Administration
Valerie Lubanko, Records Access Officer to Governor Cuomo
Francis Patience, Records Access Officer for the Senate
Robin Marilla, Records Access Officer for the Assembly

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

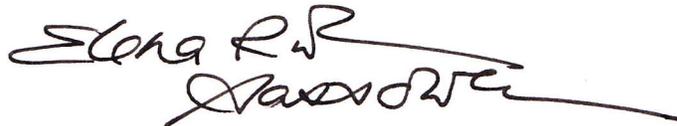
RE: FOIL/Records Request: Part HHH of Fiscal Year 2018-2019 Budget Bill S.7509-C/A.9509-C

Reference is made to the enclosed May 14, 2018 Daily News article "*NYS Chief Judge won't serve on pay raise commission*", identifying a memo from OCA counsel John McConnell "sent to the governor and legislative leaders" concerning "the five-member commission to consider imposing the first state level pay raise in 20 years" created by the "state budget passed in March". Presumably, this is the five-member compensation committee established by Budget Bill S.7509-C/A.9509-C.

Pursuant to §124 of the Chief Administrator's Rules, FOIL [Public Officers Law, Article VI], Senate Rule XV, "Freedom of Information", and Assembly Rule VIII, "Public Access to Records", request is made for the referred-to memo and any correspondence responding and relating thereto.

§124.6 of the Chief Administrator's Rules and Public Officers Law §89.3 requires your response "within five business days" of receipt of this request. Kindly e-mail it to me at elena@judgewatch.org.

Thank you.



Enclosure

EX A-1

May 14, 2018 Daily News

NYS chief judge won't serve on pay raise commission

Kenneth Lovett

The following is an expanded version of the second item of my "Albany Insider" column from Monday's print editions:

The state's chief judge has declined to serve on a commission that will consider enacting the first executive and legislative pay raises in 20 years.

The state budget passed in March created a five-member commission to consider imposing the first state level pay raise in 20 years.

Among the the five people the law places on panel is state Chief Judge Janet DiFiore, whose counsel in a memo obtained by the Daily News argues is not eligible to serve.

"In sum, the proposed appointment of the Chief Judge to the compensation committee would raise serious constitutional issues, and—if signed into law and left unamended—will present the Chief Judge with the impossible ethical choice of either violating the Constitution (by serving on the committee) or violating a statute (by declining to serve)," state court system counsel John McConnell wrote.

The memo sent to the governor and legislative leaders cites a provision in the state Constitution that says a judge may not "hold any other public office or trust except an office in relation to the administration of the courts."

McConnell said intent of the restriction is to avoid conflicts with judicial services, including those involving issues of separation of powers.

It's also meant to ensure it doesn't "give the appearance of compromising judicial impartiality and independence (including independence from the political process)" while keeping a judge from taking a position on issues that might ultimately wind up before the courts, he argues in the memo.

DiFiore spokesman Lucian Chalfen told the News that the chief judge is "fully aware she can't serve."

But even without DiFiore, the panel's work will go on. The four others who will serve are the state and city controllers and the chairmen of the State University and City University systems.

Even though he is the only one on the panel who could potentially benefit

from a pay raise, assuming he's re-elected, state Controller Thomas DiNapoli will serve on the commission, spokeswoman Jennifer Freeman said.

"He was not consulted beforehand, but he will serve," Freeman said.

Under the law, the commission could consider raises that would be phased in over three years. The recommendation would automatically be enacted unless the Legislature takes specific action to change or reject it. The current base salaries for lawmakers \$79,500.

If nothing is done by the end of the year, lawmakers will have to wait two more to consider the issue again because a sitting Legislature can't give itself a raise,