

SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.  
and ELENA RUTH SASSOWER, individually and  
as Director of the Center for Judicial Accountability, Inc,  
acting on their own behalf and on behalf of the People  
of the State of New York & the Public Interest,

Index #1788-14

Plaintiffs,

**Reply Affidavit in Further  
Support of Order to Show Cause  
with TRO to Prevent Destruction  
of Original Records & Direct  
Turnover – & for a Court Order  
for Violation of TRO/Contempt  
& for Sanctions**

-against-

ANDREW M. CUOMO, in his official capacity  
as Governor of the State of New York,  
DEAN SKELOS in his official capacity as  
Temporary Senate President,  
THE NEW YORK STATE SENATE,  
SHELDON SILVER, in his official capacity  
as Assembly Speaker, THE NEW YORK  
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,  
in his official capacity as Attorney General of  
the State of New York, and THOMAS DiNAPOLI,  
in his official capacity as Comptroller of  
the State of New York,

Defendants.

-----x  
STATE OF NEW YORK                    )  
WESTCHESTER COUNTY                ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff in this citizen-taxpayer action, fully familiar with all the facts, papers, and proceedings heretofore had. I submit this affidavit in reply to AAG Kerwin’s July 2, 2014 “affirmation in response” and in further support of plaintiffs’ order to

show cause with TRO to prevent destruction of original records and direct turn-over, which this Court signed on June 16, 2014 and made returnable on July 8, 2014.

2. Like her prior submissions, AAG Kerwin's July 2, 2014 affirmation is a flagrant fraud on the Court – and reinforces plaintiffs' entitlement to the granting of all branches of their May 16, 2014 cross-motion. This includes the fourth branch to disqualify Attorney General Schneiderman from representing his fellow defendants on conflict of interest grounds, based, *inter alia*, on his long-standing nonfeasance and misfeasance relating to plaintiffs' October 27, 2011 Opposition Report and the verified complaint in *CJA v. Cuomo I* based thereon<sup>1</sup> – documents whose turn-over to the Court plaintiffs' June 16, 2014 order to show cause seeks.

3. AAG Kerwin's affirmation is also potentially grounds for a citation of contempt. While feigning compliance with the order to show cause, AAG Kerwin reveals that defendants have not only violated Legislative Law §67, but possibly the TRO, whose very existence she conceals. Consequently, this affidavit is submitted in support of a court order requiring sworn answers from AAG Kerwin and sworn statements from her Senate and Assembly clients so as to determine the contempt issue.<sup>2</sup>

4. Thus, AAG Kerwin's four-paragraph affirmation never mentions the TRO. Her ¶2 discloses only that plaintiffs seek an order:

“[e]njoining defendants from destroying the documents that Plaintiff SASSOWER handed up to the Legislature at its February 6, 2013

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<sup>1</sup> See pages 28-29 of plaintiffs' May 16, 2014 Memorandum of Law in Further Support of Order to Show Cause for a Preliminary Injunction, in Opposition to Dismissal Motion, & in Support of Cross-Motion; and page 12 of plaintiffs' Reply Memorandum of Law in Further Support of Cross-Motion & Order to Show Cause for Preliminary Injunction.

<sup>2</sup> As 22 NYCRR §130-1.2 enables the Court to impose \$10,000 sanctions for each “single occurrence of frivolous conduct”, this affidavit is also submitted in support of a request – consistent with the “other and further relief” of the order to show cause – that the Court impose maximum sanctions against AAG Kerwin and those colluding with her, with a maximum award of costs to plaintiffs, and treble damages pursuant to Judiciary Law §487(1), based on AAG Kerwin's latest frivolous and fraudulent conduct, here demonstrated.

joint budget hearing on ‘public protection’ in substantiation of her oral testimony on that date in opposition to the Judiciary’s proposed budget and the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation,

and ‘[d]irecting defendants to furnish all such documents to the Court.’”

She then follows this with a one-sentence ¶3 and a one-one sentence ¶4, reading:

“3. While defendants contend that any such documents are irrelevant to the underlying action, a copy of the only documents that are in the possession of the defendants, that may arguably be those described in the order to show cause, are annexed hereto.

4. The defendants consent to maintaining the original version of the attached until the completion of the underlying action.”

5. This is the sum total of AAG Kerwin’s response to the order to show cause and it is founded on a succession of deceptions, all verifiable from my June 6, 2014 moving affidavit in support of the order to show cause, whose presentation of fact, law, and legal argument is undenied and undisputed by AAG Kerwin’s affirmation and conceded, *as a matter of law*:

First, the “relevance” of the documents I handed up at the Legislature’s February 6, 2013 budget hearing is set forth, repeatedly, by my moving affidavit (¶¶1, 2, 3, 8) as establishing, *prima facie*, plaintiffs’ summary judgment entitlement to a declaration that the third phase of the judicial salary increase, embedded in Budget Bill #S.6351/A.8551, is “a wrongful expenditure, misappropriation...illegal [and] unconstitutional”.

Second, Legislative Law §67 required defendants Senate and Assembly to preserve all the documents I handed up at the Legislature’s February 6, 2013 budget hearing until “adjournment of the next ensuing annual session of the legislature”, *to wit*, June 19, 2014 – meaning that all original documents should be in defendants’

possession, unless defendants Senate and Assembly violated Legislative Law §67 and the Court's TRO extending preservation "pending the hearing and determination of this motion."

Third, my April 2, 2013 letter to the Senate Finance Committee and Assembly Ways and Means Committee, annexed to my moving affidavit, itemizes (at p. 2) precisely what I handed up at the February 6, 2013 budget hearing, leaving nothing "arguably...described";

Fourth, the unidentified "copy of the only documents that are in the possession of the defendants" that AAG Kerwin's affirmation annexes is a single document: plaintiffs' Executive Summary to their October 27, 2011 Opposition Report – and it is explicitly itemized by the April 2, 2013 letter (at p. 2, #1);

Fifth, the Executive Summary is four pages and it is this that defendants "consent to maintaining the original version of" – with no mention by AAG Kerwin of what defendants have done with the balance of the documents I handed up on February 6, 2013, whose volume – the October 27, 2011 Opposition Report; the March 30, 2012 verified complaint in *CJA v. Cuomo I*, based thereon; and my correspondence about them in the week and a half preceding the February 6, 2013 hearing – is visible from the video of the hearing<sup>3</sup> and so-stated by the April 2, 2013 letter (at p. 2).

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<sup>3</sup> The video of the Legislature's February 6, 2013 budget hearing at which I testified as the last witness is posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), including on the webpage for plaintiffs' December 11, 2013 letter on the Judiciary's proposed budget – Exhibit C to the verified complaint herein. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/dec-11-2013-letter.htm>. The Legislature's stenographic transcription of my February 6, 2013 testimony is annexed hereto as Exhibit 1 and I have marked it to reflect the documents I handed up during my testimony and immediately thereafter.

6. As AAG Kerwin's affirmation purports that defendants possess only plaintiffs' four-page Executive Summary, notwithstanding the TRO signed by this Court directed preservation of all the documents I handed-up at the Legislature's February 6, 2013 budget hearing, she must be ordered to furnish sworn statements as to when the voluminous balance of what I handed-up ceased to be in defendants' possession, so as to establish whether defendants Senate and Assembly wilfully violated the TRO in addition to Legislative Law §67.

7. In further support of this Court's issuance of such order – preliminary to a finding that AAG Kerwin and her collaborating superiors and defendants are in contempt of the TRO – it must be noted that AAG Kerwin's July 2, 2014 affirmation repeats the fundamental deficiencies of her April 18, 2014 affirmation, pointed out at pages 3-4 of my May 16, 2014 memorandum of law. Her affirmation does not state the basis upon which it is made, whether on personal knowledge or information and belief – and if the latter, the source thereof. As such, it is completely non-probative, *as a matter of law*. Thus, AAG Kerwin does not recite what efforts, if any, she made to establish that the Executive Summary is, in fact, the sole document that is in defendants' possession from among the volume of documents I had handed up on February 6, 2013. Nor does she otherwise identify the basis of so-representing to the Court.

8. I myself was told, in early December 2013, by counsel to Senator John Bonacic, chair of the Senate Judiciary Committee, that the documents I had handed up at the February 6, 2013 budget hearing had been transferred from the Senate Finance Committee to the Senate Judiciary Committee and were in its files. This is reflected by footnote 3 of my December 11, 2013 letter to defendants Governor Cuomo and Senate and Assembly – Exhibit C to the verified complaint herein – whose dispositive nature is pointed out at ¶3 of my moving affidavit. Indeed, I believe that when I first spoke with AAG Kerwin on March 26, 2014, I directly informed her of what I had been told by

Chairman Bonacic's counsel. In any event, it is additionally reflected by plaintiffs' March 26, 2014 Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit X-2, fn. 1)<sup>4</sup> that I e-mailed her shortly after that conversation (Exhibit X-1), seeking production of the same original documents that I had handed up on February 6, 2013 and attaching the itemizing April 2, 2013 letter.

9. If, in violation of Legislative Law §67 and this Court's TRO, defendants Senate and Assembly have destroyed the voluminous documents I handed up on February 6, 2013, defendants must be ordered to furnish replacement documents for the Court so that it can determine plaintiffs' summary judgment entitlement to a declaration that the third phase of the judicial salary increase, embedded in Budget Bill #S.6351/A.8551, is an unlawful, unconstitutional disbursement. Defendants can easily do this, as I furnished them with all documents but one, repeatedly, including as originals.<sup>5</sup>

10. Thus, I personally delivered originals of CJA's October 27, 2011 Opposition Report, to the offices of defendants Cuomo, Skelos, and Silver on that date. On November 29, 2011, I delivered an original or copy for defendant Schneiderman and on February 23, 2012 furnished him with a further copy. Each of these defendants, as well as defendant DiNapoli and defendants Senate and Assembly – and the State of New York – then received 7 copies on April 5, 2012 – which is when I served them all with the March 30, 2012 verified complaint in CJA v. Cuomo I, to which they

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<sup>4</sup> Annexed to my May 16, 2014 Affidavit in Further Support of Order to Show Cause for Preliminary Injunction, in Opposition to Dismissal Motion, & in Support of Cross-Motion.

<sup>5</sup> As for the one exception, it is #4 listed by the April 2, 2013 letter (at p. 2) – and defendants certainly can easily furnish it to the Court as it is:

“pages 103-107 of the transcript of the Legislature's January 30, 2012 budget hearing on ‘public protection’, containing colloquy as to the cost to the state of the increases in district attorney salaries resulting from the judicial salary increases, to which they are statutorily tied.” (underlining added).

were named defendants and whose most important free-standing exhibit is the October 27, 2011 Opposition Report. On each of these occasions, they received not only the 38-page Opposition Report, but its two-volume Compendium of Exhibits. Additionally, on December 8, 2011, I publicly furnished the Opposition Report, with two-volume Compendium of Exhibits, to then Senate Majority Leader John Sampson, *in hand*. Additionally, on February 6, 2013, immediately prior to commencement of the Legislature’s budget hearing, I furnished the 38-page Opposition Report, without the two-volume Compendium of Exhibits, to Senate Judiciary Committee Chairman Bonacic, *in hand*, and, immediately following the hearing, to Senate Finance Committee Ranking Member Liz Krueger, *in hand*. In other words, and apart from what I handed up at the Legislature’s February 6, 2013 budget hearing, the defendants herein are in possession of 15 originals or hard copies of the October 27, 2011 Opposition Report, plus 7 originals of the March 30, 2012 verified complaint in *CJA v. Cuomo I*.<sup>6</sup>

11. As for “CJA’s correspondence with our highest constitutional officers in our three government branches in the week and a half preceding the February 6, 2013 budget hearing”, itemized by the April 2, 2013 letter (at p. 2, #3), all were repeatedly furnished to defendants, both directly and as enclosures.

12. Consequently, defendants can easily supply this Court with the *prima facie* documentary evidence necessary for declaring the third phase of the judicial salary increase, embedded in Budget Bill #S.6351/A.8551, an unlawful, unconstitutional expenditure – and no further delay by them should be countenanced.

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<sup>6</sup> This count excludes the additional original of the October 27, 2011 Opposition Report, with two-volume compendium of exhibits, which I delivered to Chief Judge Lippman on that date – and the two originals of the verified complaint in *CJA v. Cuomo I* that I served upon him and the Unified Court System on April 5, 2012.

13. Pursuant to State Finance Law §123-c(4), this citizen-taxpayer action is required to be “promptly determined” with “preference over all other causes in all courts”. All the original documents sought by plaintiffs’ June 16, 2014 order to show cause are encompassed by their March 26, 2014 Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c), whose requested production was to enable the Court to determine plaintiffs’ March 28, 2014 order to show cause for a stay with TRO. The preliminary injunction therein sought, including “enjoining defendants from...disbursing monies for...the unitemized funding for the unidentified third phase of the judicial salary increase”, is yet to be determined by the Court.<sup>7</sup>

  
ELENA RUTH SASSOWER

Sworn to before me this  
7<sup>th</sup> day of July 2014

ROSEMARY T. BARTOLOTTA  
Notary Public, State of New York  
No. 01BA6034339  
Qualified in Westchester County  
Commission Expires Feb. 28, 2018

  
Notary Public

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<sup>7</sup> See pages 15-19 of plaintiffs’ June 6, 2014 Reply Memorandum of Law entitled “Plaintiffs’ Entitlement to a Preliminary Injunction, *As a Matter of Law*”.