

Elena Sassower

From: Elena Sassower <elena@judgewatch.org>
Sent: Friday, June 24, 2016 4:24 PM
To: 'pcummings@nysac.org'
Cc: 'sacquario@nysac.org'
Subject: Ending the Gravy Train of County District Attorney Salary Increases: Proposal for Input from the 57 County Attorneys, the 57 County Legislative Boards -- and from the 57 County District Attorneys

Dear Pat,

Thank you for your call this morning – and the generous amount of time you gave to our conversation together. I look forward to continuing it, next week, at your convenience – and, particularly, after you have had an opportunity to read CJA's March 23, 2016 verified second supplemental complaint in our citizen-taxpayer action to void the judicial salary increases on which the district attorney salary increases rest (See, in particular, the 13th, 14th, and 15th causes of action (paras. 385-457): <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>. After you do, I think you will agree that the 57 county attorneys outside New York City, whose duty it is to advise the 57 county legislative boards and executive officers, should be advising them to request that NYSAC file an *amicus curiae* brief on behalf of the counties, so as to obtain the judicial determination that the facts and law overwhelmingly compel, *to wit*, a declaration that the district attorney salary increases, arising from statutorily-violative, fraudulent, and unconstitutional judicial salary increases, are unlawful and void. Indeed, so dispositive are the 13th, 14th, and 15th causes of action of the March 23, 2016 verified second supplemental complaint that each of the 57 county attorneys, legislative boards, and executive officers should request that their 57 district attorneys supply them with findings of fact and conclusions of law with respect thereto. That way, the counties can know, for a certainty, that their district attorneys cannot, without committing fraud, lay claim to the salary increases, and are, as a matter of law and ethics, duty-bound to take appropriate action, including by assisting the counties in obtaining a judicial declaration of nullity.

Similarly, based on spadework by NYSAC, the 57 county legislative boards and executives, on advice of their 57 county attorneys, should be requesting NYSAC to press for legislation repealing Judiciary Law 183-a (effective April 1, 2016, if not April 1, 2012) – and, in conjunction therewith, for a first-ever legislative oversight hearing of the statutory link between district attorney and judicial salaries, whose enactment, in 1972, was at a time when the counties, not the state, were setting and paying the salaries of county judges. In other words, Judiciary Law 183-a, when enacted, did not, in fact, remove control of district attorney salaries from the counties (other than the very few, if any, which then had populations over 500,000 – outside New York City).

Moreover, since 2012, Judiciary Law 183-a has enabled a biased, agenda-driven, seven-member commission to effectively compel the counties to increase district attorney salaries – without even a request being made for such increases, without any evidence to justify them, and without any oversight by either the Legislature or Executive -- such that now the district attorney salaries in the 57 counties outside New York City are utterly disproportionate: being, by tens of thousands of dollars, the highest salaries of county elected officials for which the counties are responsible. As such, Judiciary Law 183-a is utterly unconstitutional, as applied.

As for prior legal challenges to Judiciary Law 183-a, the IMPORTANT case is NOT the 1982 Court of Appeals decision in *Kelly v. McGee*, upholding Judiciary Law 183-a and the Appellate Division, 4th Dept.'s decision in

Harvey v. Finnick – one of three district attorney salary cases decided therein. Rather, it is the Ontario County Supreme Court decision in *Harvey v. Finnick*, 111 Misc. 2d 197 (1981), which had struck down Judiciary Law 183-a as unconstitutional – with facts and argument that the decisions of neither the Appellate Division, 4th Dept. nor the Court of Appeals thereafter confronted – or revealed. CJA’s webpage “Securing Legislative Oversight of D.A. Salaries -- & the D.A.’s” contains the links to those decisions: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/leg-oversight-over-das.htm>.

Please do check whether NYSAC participated as *amicus* – or has the briefs – in the *Kelly v. McGee*, *Harvey v. Finnick*, or other cases involving Judiciary Law 183-a. As for the state interest in the adequacy of county district attorney salaries so as to ensure the enforcement of the penal law, was there any evidence in 1972 that any of the state’s counties were not setting and would not set adequate salaries for such important purpose? And by that reasoning, did the state then or thereafter take over determining the budget of each county’s district attorney office – and funding them? Wasn’t there a state interest that each county district attorney office have sufficient and appropriate staffing for purposes of enforcing the penal law?

Again thank you – and thanks to Steve for asking you to follow-up with this.

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