



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL

November 30, 2020

By Email: EForman@nycourts.gov

Hon. Janet DiFiore
Chief Judge of the Court of Appeals and of the State of New York
c/o Elizabeth A. Forman
Deputy Counsel
New York State Unified Court System
Office of Court Administration
25 Beaver Street
New York, New York 10004

Re: *Judges' Associations, et al. v. Administrative Board, et al.*
Index No. [pending] (Sup. Ct. Suffolk Cty.)

Your Honor:

This Office has received your request for representation in the above-referenced matter. We have concluded, based on the facts and circumstances available to us, that it would be inappropriate for the Attorney General to represent you in this matter.

We are, however, certifying to the State Comptroller that you are entitled to be represented by private counsel under Public Officers Law § 17. Upon this certification, the State will pay for reasonable attorneys' fees and litigation expenses, subject to (1) certification by the Office of Court Administration that you are entitled to representation under Public Officers Law § 17, and (2) the audit and warrant of the State Comptroller. Additionally, under Public Officers Law § 17(2)(b), you and Chief Administrative Judge Lawrence K. Marks shall be jointly represented by the same counsel. We suggest that you share this letter with your attorney and notify him or her to contact Caitlin D. Heim, Assistant Counsel, Office of the State Comptroller, at (518) 408-3139, regarding this matter.

Your attention is called to Public Officers Law § 17(3)(a), which provides that the State may indemnify you in the amount of any judgment obtained against you in any Court, or in the amount of any settlement of any claim, if the act or omission from which the judgment or settlement arose occurred while you were acting within the scope of your public employment or duties and did not result from intentional wrongdoing on your part. Please note that any decision

regarding indemnification is made only after a judgment is rendered against you or at the time that a settlement is proposed. Payment would then be made following the audit and review of the State Comptroller. In the event the State determines to indemnify you, by accepting representation at State expense you will be deemed to have released the State, its agencies, officers, and employees from any claims you might have under Public Officers Law § 17.

Your attention is also called to Public Officers Law § 17(3)(b), which requires you or your attorney to submit any proposed settlement to the Office of the Attorney General for review and approval as to both form and amount. Therefore, should you or your attorney wish to consider settlement of the claims asserted against you in this action, you must comply with this provision and obtain the approval of this Office prior to agreeing to any settlement of this case. For this purpose, you or your attorney may contact me directly.

These and other provisions of Public Officers Law § 17, a copy of which is enclosed for your convenience, should be carefully studied by your attorney. It is important that all procedures referenced therein be carefully followed.

Further, if upon analysis of this case, the private counsel who will represent you determines that you have a compulsory counterclaim and believes that it would be legally appropriate, beneficial to your defense, and in the interest of the State of New York to interpose a compulsory counterclaim on your behalf for money damages, the following conditions apply:

- (1) In order for the private counsel who will represent you under Public Officers Law § 17 to represent you on such a counterclaim, you must agree that if they present you with a proposed settlement of the action against you and you reject the settlement, you waive your right to indemnification under Public Officers Law § 17 for the amount of any judgment, costs, and attorneys' fees awarded against you in excess of the amount of the proposed settlement.
- (2) You must also assign to the State of New York any damages awarded to you on the counterclaim up to an amount equal to any judgment, costs and attorneys' fees awarded against you. If there is an award in your favor in excess of any award, including costs and attorneys' fees, that excess amount will belong to you.
- (3) Finally, if the proceeding is withdrawn or it is dismissed before trial, and only your counterclaim is pending, private counsel will not be compensated at State expense on the counterclaim. They must, however, take appropriate steps to protect your position in the litigation until you have had an opportunity to retain other counsel or they may agree to continue to represent you at your own expense.

Hon. Janet DiFiore
November 30, 2020
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Should you or your attorney have any questions regarding the contents of this correspondence, please feel free to contact me.

Respectfully,

/s/ CHRISTINE A. RYAN

Christine A. Ryan
Deputy Attorney General
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Enclosure