

## Center for Judicial Accountability

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**From:** Center for Judicial Accountability <elena@judgewatch.org>  
**Sent:** Wednesday, February 05, 2014 11:09 AM  
**To:** latimer@nysenate.gov; buchwaldd@assembly.state.ny.us  
**Cc:** mallison@nysenate.gov; weisfeldd@assembly.state.ny.us;  
roithmayra@assembly.state.ny.us  
**Subject:** Drafted Questions for Chief Administrative Judge Prudenti at Today's Feb 5, 2014  
Budget Hearing on "Public Protection"  
**Attachments:** 2-5-14-proposed-questions-for-prudenti.pdf

Dear Senator Latimer & Assemblyman Buchwald,

Attached is what I had drafted for your interrogation of Chief Administrative Judge Prudenti at the Legislature's joint budget hearing on "public protection" that I am now viewing.

Will be in touch with your offices tomorrow, as I understand they are closed today on account of weather.

Thank you.

Elena Sassower, Director  
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## **THE JUDICIARY'S PROPOSED BUDGET FOR FISCAL YEAR 2014-2015**

*"...there can be no doubt that the New York State Judiciary has shown itself to be a faithful steward of the public fisc...and a good partner with its co-equal branches of government..."*

-- Judiciary's Executive Summary to its Proposed Budget, at p. iii

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Examination of the Judiciary's proposed budget for fiscal year 2014-2015 must begin with its total cost, especially as the Judiciary does not provide it – and the Governor's "Commentary", his Division of the Budget website, and the Legislature's "White", "Blue", "Yellow" and "Green" Books diverge as to what that total is.

Certainly, too, ascertaining the total cost of the Judiciary's proposed budget and its percentage of increase over last year are additionally essential as the Governor's "Commentary" urges "the Legislature and Judiciary to reduce it so that it is in line with the rest of State spending" – this being a spending increase of no more than 2%

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### **QUESTIONS FOR CHIEF ADMINISTRATIVE JUDGE PRUDENTI**

*TESTIFYING AT THE LEGISLATURE'S FEBRUARY 5, 2014 JOINT BUDGET HEARING  
ON "PUBLIC PROTECTION"*

- (1) By two memoranda on your letterhead and signed by you, you transmitted to the Governor and Legislature the Judiciary's two-part proposed budget: One part pertained to the Judiciary's operating needs and the other part pertained to General State Charges (pension contributions, social security, medicare, health insurance premiums, dental, vision, & life insurance). Is it correct to say that neither memorandum furnished the cumulative dollar amount of each part – or of the two-part budget presentation taken together?
- (2) A single Executive Summary accompanied your transmitted two-part proposed budget. It consisted of a four-page narrative followed by five pages of statistical tables. Is it correct to say that these also did not furnish the cumulative dollar amount of the Judiciary's proposed budget?
- (3) Why is that? Isn't this the kind of "bottom-line" information that busy public officers in the Executive and Legislative branches need to have, up front, in a transmitting memorandum or Executive Summary?
- (4) The Judiciary also furnished a proposed budget bill – now the judicial portion of the Governor's budget bill #6351/A.8551 (pp. 10 - 26). Is it correct to say that the Judiciary's bill also did not furnish the cumulative dollar total of the Judiciary's proposed budget? Why

- (5) What is the cumulative dollar total of the Judiciary's proposed budget in the bill? Which are the specific figures in the bill that you added to arrive at that figure?<sup>1</sup> Is this the same cumulative dollar total as the various figures in the Judiciary's two-part budget presentation would yield?
- (6) Is the reason the Judiciary furnished no cumulative tally for either its two-part budget presentation or its proposed budget bill to conceal the disparity between them? Or do you dispute that there is a disparity?
- (7) Where in the Judiciary's two-part budget presentation are the \$41,525,000 "Reappropriations" whose tally appears on the first page of the Judiciary's budget bill and whose breakdown appears at its pages 14-16?
- (8) Isn't there only a single reappropriation in the Judiciary's two-part budget presentation – for the \$51 million "Capital Project" reappropriation for the Court Officer Academy in Kings County (at p. 152)?
- (9) And why is this \$51 million "Capital Project" reappropriation not included in the \$41,525,000 tally of reappropriations appearing on the first page of the Judiciary's budget bill?
- (10) As to the \$41,525,000 in reappropriations, is their designation as reappropriations proper? According to the "Citizen's Guide" on the Division of the Budget's website,

"A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years."  
[http://www.budget.ny.gov/citizen/financial/glossary\\_all.html#r](http://www.budget.ny.gov/citizen/financial/glossary_all.html#r)

Can you identify what the various reappropriations, specified at pages 14-15 of the Judiciary's budget bill were for when originally appropriated? Why was this money not used? And what is it now purported to be reappropriated for?

- (11) Is the reason that the Judiciary's two-part budget presentation does not identify the \$41,525,000 in unused appropriations because this is money properly returned to the public treasury?

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<sup>1</sup> Is it the tally of "Appropriations" plus "Reappropriations" at page 1, plus "General State Charges" at page 22? Does it include "Capital Projects-Reappropriations" at p. 26? What about the "New Appropriations (Supplemental)" at pages 20-22?

(12) Except for the last two reappropriations of \$10 million each (at p. 16), all the listed reappropriations (at pp. 14-15) are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2013, 2012, 2011, 2010, 2009 and also chapter 51, section 3 of those laws – which are the budget bills pertaining to the Judiciary for those years, its appropriations and reappropriations, respectively. They furnish no specificity as to their purpose other than a generic “services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1...”; or “services and expenses as provided by section 94-b of the state finance law– Contractual Services”; or “Contractual Services”.

A. Are these reappropriations consistent with State Finance Law §25:

“Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation. If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change.”

B. Are these reappropriations consistent with Article VII, §7 of the New York 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; nor unless such payment be made within two years next after the passage of such appropriation action; 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.”

(13) According to your transmittal memorandum for the Judiciary’s operating budget, the Judiciary’s “General Fund State Operations budget request” is \$1.81 billion” representing “a cash increase of \$44.2 million, or 2.5 percent, over available current year funds.” This is repeated in the Executive Summary (at p. iii), annotated by a footnote:

“The appropriation request associated with the requested increase in cash is \$1.82 billion, which represents at \$63 million, or 3.6 percent increase. The increase in the appropriation request is slightly higher than the increase in the cash request because of technical reasons that relate to the use of reappropriations to pay for the first two years of the judicial salary increase. The cash increase, rather than the appropriation request, is the true measure

of the year-to-year increase sought by the Judiciary.” (fn. 2, underlining added).

Can you explain what this means?

- (14) Looking at the Judiciary budget bill two years ago, for fiscal year 2012-2013, for the first phase of the judicial pay raises, it contains a reappropriation reading:

“By chapter 51, section 2, of the laws of 2008, as reappropriated and amended by chapter 51, section 3 of the laws of 2009, and as reappropriated by chapter 51, section 3 of the laws of 2011: For expenses necessary to fund adjustments in the compensation of state-paid judges and justices of the unified court system and housing judges of the New York City civil court, and for such other services and expenses specified in section two of this act.”  
– Personal service - regular ... 51,006,759 (re. \$31,000,000)”

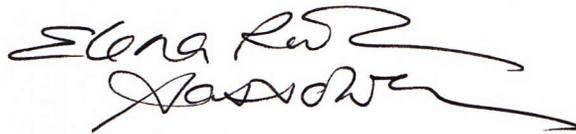
The cost of this first phase of the judicial salary increase appeared in the Judiciary’s Executive Summary as \$27.7 million. Was that, in fact, how much was expended from the \$31 million reappropriation?

- (15) Last year, the Judiciary’s Executive Summary, though identifying the second phase of the judicial salary increase, did not identify its dollar cost. Is that correct? Likewise, the balance of the budget documents identified the second phase, but not the dollar cost. Is that correct? What was the dollar cost of the second phase?
- (16) And is it correct that last year’s budget bill did not specify the reappropriation from which the second phase of the judicial salary increase was to be funded?
- (17) And is it correct that each phase of the judicial salary increase has to be funded not just for one year, but forever because of the non-diminution clause of the New York State Constitution (Article VI, §25a)?
- (18) How was the second year of the first phase of the judicial salary increase funded in the budget bill for fiscal year 2013-2014?
- (19) The budget we are now considering for fiscal year 2014-2015 requires funding for the third year of the first phase of the judicial salary increase and for the second year of the second phase of that judicial salary increase, is that correct? Where are the appropriations for those two phases be in the budget bill?
- (20) Now, a third phase of the judicial salary increase is scheduled to take effect on April 1, 2014, is that correct? Can you tell me where in the Judiciary’s budget presentation there is any reference to this third phase? There is none, right? Yet, the Judiciary is seeking funding for it, correct? How much will this third phase cost this year – and where is it in the budget bill?

- (21) You are familiar with Chapter 567 of the Laws of 2010, are you not? It created the 2011 Special Commission on Judicial Compensation, whose August 29, 2011 Report recommended the three-phase judicial salary increase. However, isn't it correct that Chapter 567 of the Laws of 2010 included a safeguarding provision that the Commission's recommendations would not become law if modified or eliminated prior to April 1<sup>st</sup> of the year to which each recommendation applied? (§1h).
- (22) Isn't the reason the Judiciary failed to put any line-item in its budget bill, this year and last for the second and third phases of the judicial salary increase – and why it used an inappropriate reappropriation description/designation for the first phase – to conceal the Legislature's power, as likewise the Governor's, to strike each phase of increase, pursuant to Chapter 567 of the Laws of 2010?
- (23) Do you dispute that that if the Commission on Judicial Compensation did not comply with the prerequisites for its making judicial pay raise recommendations, set forth in Chapter 567 of the Laws of 2010, it would be the Legislature's duty and that of the Governor, to set its recommendations aside?
- (24) You are familiar with the October 27, 2011 Opposition Report of the Center for Judicial Accountability, are you not? Do you deny the accuracy of its showing that the Commission's judicial salary recommendations flagrantly violated Chapter 567 of the Laws of 2010, including in the following respects:
- (a) *In violation of the statute*, the Commission's judicial salary increase recommendations were unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges were inadequate (at pp. 1, 16, 31);
  - (b) *In violation of the statute*, the Commission examined only judicial salary, not "compensation and non-salary benefits" (at pp. 18-21, 25-31);
  - (c) *In violation of the statute*, the Commission did not consider "all appropriate factors" – a violation it attempted to conceal by transmogrifying the statutory language "all appropriate factors" to "a variety of factors" (at pp. 4-5, 21);
  - (d) *In violation of the statute*, the Commission made no findings as to five of the six statutorily-listed "appropriate factors" it was required to consider (at pp. 21, 23-24);
  - (e) *In violation of the statute*, the Commission did not consider and made no findings as to the "appropriate factors" which the Center for Judicial Accountability presented as disintitling the judiciary to any judicial pay raise. Among these,

- (i) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay (at pp. 10-13); and
- (ii) the fraudulence of claims put forward to support judicial pay raises by judicial pay advocates (at pp. 13-15), including their concealment of pertinent facts, *inter alia*:
  - (a) that New York’s state-paid judges are not civil-service government employees, but “constitutional officers” of New York’s judicial branch;
  - (b) that the salaries of all New York’s “constitutional officers” have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the “constitutional officers” of our executive branch – and the 6[3] Senators and 150 Assembly members who are the “constitutional officers” of our legislative branch;
  - (c) that the compensation of New York’s judicial “constitutional officers” is comparable, if not superior, to the compensation of New York’s executive and legislative “constitutional officers”, with the judges enjoying incomparably superior job security;
  - (d) that New York’s executive and legislative “constitutional officers” have also suffered the ravages of inflation, could also be earning exponentially more in the private sector; and also are earning less than some of their government-paid staff and the government employees reporting to them;
  - (e) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
  - (f) that outside the metropolitan New York City area,

- (27) By the way, the Judiciary's proposed budget (p. 64) seeks \$1,286,199 for the Office of Inspector General, is that correct? Is the Inspector General's handling of the complaints filed with it pertaining to *Center for Judicial Accountability, Inc., et al. v. Cuomo, et. al* illustrative of how it handles complaints, generally? Will the Judiciary produce the records of the Inspector General's disposition of that and other complaints for our oversight inspection?
- (28) Will you, personally, as Chief Administrative Judge, report to us, within two weeks' time, as to the whereabouts of the original verified complaint and all exhibits in *Center v. Judicial Acocountability, Inc. v. Cuomo*?
- (29) Finally, the whole basis for funding the Judiciary is so that it can "fulfill its constitutional duty to the people of New York" "to provide timely and fair justice to every person who comes to our courthouses", which is its "core mission"<sup>2</sup> – a claim paralleling why its purportedly excellent judges deserved and required pay raises. What investigation has the Judiciary done of documentary evidence of systemic corruption within its ranks, infesting supervisory and appellate levels and the Commission on Judicial Conduct, such as attested to:
- (a) by witnesses testifying on June 8, 2009 and September 24, 2009 before the Senate Judiciary Committee, at public hearings conducted by its then Chairman John Sampson, which were aborted without investigations, findings, or any committee report;
  - (b) by witnesses testifying on July 20, 2011 before the Commission on Judicial Compensation at its only public hearing – testimony to which the Commission made no reference in its August 29, 2011 Report extolling New York's judiciary and recommending judicial pay raises;
  - (c) by witnesses testifying on September 17, 2013 before the Commission to Investigate Public Corruption, at its only public hearing at which members of the public were permitted to testify about the breadth of corruption within their knowledge and experience – testimony to which the Commission made no reference in its December 2, 2013 interim report.



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Your memorandum to the Judiciary's operating budget; Executive Summary, p. iii.