

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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July 6, 2011

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: NYT Questions & OCA Answers Underlying & Substantiating William Glaberson's July 5, 2011 NYT Article "Pay Frozen, More New York Judges Leave Bench", Pursuant to §124 of the Rules of the Chief Administrator & F.O.I.L.

Dear Ms. Kerby:

This follows up my telephone conversation a short time ago with OCA Director of Communications David Bookstaver about the front-page, above-the-fold article "*Pay Frozen, More New York Judges Leave Bench*" in yesterday's New York Times. According to the article by William Glaberson:

"In response to questions for this article, the state's Office of Court Administration studied judicial attrition. The analysis found that in 1999, 48 of the 1,300 state judges left their positions. Last year, 110 judges left, with the number of departures increasing sharply over the last five years."

Apparently this is the "new study" referred to earlier in Mr. Glaberson's article as follows:

"for the first time in memory, judges are leaving the bench in relatively large numbers – not to retire, but to return to being practicing lawyers. Turnover in New York has increased rapidly in the last few years: nearly 1 in 10 judges are now leaving annually, a new study shows.

In New York State, at least a dozen have resigned and explicitly cited the pay. The latest is James M. McGuire..." (underlining added).

* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

Mr. Bookstaver stated that he did not have a copy of the OCA study, suggested that the OCA may have “crunched numbers” for Mr. Glaberson, and recommended that I make a FOIL request.

Therefore, pursuant to FOIL and §124 of the Rules of the Chief Administrator, CJA requests ALL publicly-available documents pertaining to the “questions” and OCA answers underlying and substantiating Mr. Glaberson’s July 5, 2011 New York Times article. This would include any documents reflecting the names of the “at least a dozen” New York judges who have “resigned and explicitly cited the pay” – and the dates of their resignation notices.

Please also advise as to the legal authority, if any, that Mr. Glaberson invoked in submitting questions to the OCA and securing its response, in the event they are not reflected by any documents.

On June 10, 2011, CJA made a FOIL request for “copies of all publicly-available records in the possession of the Office of Court Administration as to the number and names of New York State judges who have resigned from office on grounds of insufficient compensation – particularly during the last ten years” – a copy of which I provided to The New York Times and Mr. Glaberson on June 13, 2011 and thereafter.

Your response, by letter dated June 17, 2011, was as follows:

“...please be advised that we have no existing record that lists such judges. We do not maintain our records in a manner that would permit us to respond to your request and FOIL does not require that we compile information to create a record for you. See Public Officers Law §89(3). Your request would require us to research various records regarding judges who retired or resigned, compile those records, read through the records contained in those files to determine whether any indicated the reasons for their retirements or resignations, and either compile the information for you or create a record listing such judges.

Moreover, even if you were to submit a FOIL request for a copy of a specific judge’s letter of resignation, the disclosure of any existing responsive letter would be restricted partially. The non-factual portions, such as an opinion or subjective reason provided for a resignation or retirement, and any private or otherwise personal portions, would be redacted as they would not be subject to disclosure. See Public Officers Law §§87(2)(b); 87(2)(g); 89(2)(b). That you reference a particular newspaper article in which a specific judge volunteered his personal reasons for resigning from judicial office does not alter this FOIL analysis.”

Pursuant to §124.6 of the Chief Administrator's Rules and Public Officers Law §89.3, your response is required "within five business days" of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower", with a long, sweeping underline that extends to the right.

ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

cc: The New York Times

Metro Desk: William Glaberson, James Barron, Michael Powell

Albany Bureau: Danny Hakim, Nicholas Confessore

Editorial Board

David Bookstaver, OCA Communications Director