

## Center for Judicial Accountability

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**From:** Center for Judicial Accountability <elena@judgewidth.org>  
**Sent:** Monday, January 11, 2016 4:34 PM  
**To:** 'cherry@nysenate.gov'  
**Subject:** Testing the Fitness of Chief Judge Nominee/D.A. DiFiore -- CJA's December 31, 2015 letter  
**Attachments:** 12-31-15-ltr-to-difiore.pdf

TO: Senate Judiciary Committee Counsel/Jessica Cherry

Following up our 1-1/2 hour phone conversation this morning, for which I thank you, attached, as you requested, is my December 31, 2015 letter to Chief Judge Nominee/Westchester County District Attorney Janet DiFiore pertaining to her Senate confirmation. It is entitled "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York -- & the Public Fisc?". CJA's webpage for the letter, which I showed you as we spoke, posts all the substantiating evidentiary proof. Here is the direct link: <http://www.judgewidth.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>.

Please furnish this e-mail with the letter and webpage link, as soon as possible, to Senate Judiciary Committee Chairman Bonacic and all members of the Senate Judiciary Committee, in support of my request to testify at the Committee's January 20, 2016 confirmation hearing. Whether my testimony will be in favor of D.A. DiFiore's confirmation – or opposed – depends entirely on her response to the December 31, 2015 letter – and my letter to her so-states (p. 7).

Indeed, D.A. DiFiore's response to the letter should be dispositive of how the Senators vote -- as the supervisory and administrative issues the letter presents will be before her, IMMEDIATELY, should she be confirmed as head of New York's court system – and are NOW before the Senate Judiciary Committee and Legislature:

(1) the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, whose judicial pay raise recommendations for fiscal year 2016-2017 will take effect automatically on April 1, 2016 unless overridden by the Legislature before then; and

(2) the December 1, 2015 Judiciary budget for fiscal year 2016-2017, on which the Legislature must vote, by April 1, 2016 and which will need to be supplemented, if it is to include the judicial pay raises for fiscal year 2016-2017 recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation.

Inasmuch as Chairman Bonacic is currently NOT allowing anyone to testify at the Senate Judiciary Committee's January 20, 2016 confirmation hearing except for the bar associations which rated the Commission on Judicial Nomination's list of seven nominees – D.A. DiFiore, among them – I request that you forward this e-mail to those same bar associations so that they can comment as to whether any nominee for the Chief Judge position may be deemed "qualified" who fails to respond to the December 31, 2015 letter.

If, based upon my December 31, 2015 letter, Chairman Bonacic nonetheless does not permit me to testify at the January 20, 2016 confirmation hearing – and the members of the Senate Judiciary Committee do not vote to override him – the letter must be the basis of the Committee's interrogation of D.A. DiFiore at the hearing, including as to her findings of fact and conclusions of law with respect to the evidence the letter presents. First and foremost, CJA's October 27, 2011 Opposition Report and its constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judge' judicial compensation lawsuits and from Article VI of the New York State Constitution that:

“The appellate, administrative, disciplinary, and removal provisions of Article VI [of the New York State Constitution] are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.” (CJA’s October 27, 2011 Opposition Report, prefatory quote & page 12, underlining in the original).

Certainly, too, if the bar associations do not furnish their comment about my December 31, 2015 letter to the Senate Judiciary Committee in advance of the January 20, 2016 hearing – and fail to do so in their testimony at the January 20, 2016 hearing – the Committee members must grill them about the December 31, 2015 letter at the hearing, including as to their findings of fact and conclusions of law with respect to its referred-to evidence.

Suffice to note, that Legislative Law, Article 4 empowers the Committee to compel the testimony of witnesses and require the production of records, including by subpoena. In other words, the Committee could subpoena records of the nominee and bar associations reflecting their findings of fact and conclusions of law.

Finally, and bearing upon the accuracy – or lack thereof – of the bar associations’ rating of D.A. DiFiore and the other six nominees, this is to reiterate my statement to you that shortly after the Commission on Judicial Nomination announced its list of seven nominees, I telephoned the bar associations to furnish them with information germane to their screening, but received no call backs in response to the messages I left.

In that connection, I would note that more than 15 years ago, CJA presented the Senate Judiciary Committee, under the chairmanship of then Senator James Lack, with a formal report on the bar associations’ complicitous role in the corruption of “merit selection” appointment to the New York Court of Appeals. This November 13, 2000 Report, detailing how the bar associations rigs their ratings by “screening out” information adverse to the nominees, can be readily accessed, as it is among the evidence I provided to the Commission on Legislative, Judicial and Executive Compensation by a December 2, 2015 supplemental submission to substantiate that former Senate Judiciary Committee Chairman Lack was disqualified from serving on the Commission by reason of his actual bias and interest. The link to CJA’s webpage for the December 2, 2015 supplemental submission, from which the November 13, 2000 Report is accessible *via* links, is

<http://www.judgewatch.org/web-pages/judicial-compensation/2015/dec-2-2015-supplemental-statement.htm> -- and is also accessible from the webpage of my December 31, 2015 letter to D.A. DiFiore. For your further convenience, the direct link to CJA’s webpage posting the November 13, 2000 Report is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/lack-2002substantiating-docs.htm>.

Tomorrow, I will hand-deliver a copy of this e-mail to D.A. DiFiore so that she may advise when her response to my December 31, 2015 letter will be forthcoming.

Thank you.

Elena Sassower, Director  
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