

CENTER *for* **J**UDICIAL **A**CCOUNTABILITY, INC.

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January 28, 2016

TO: Senate Finance Committee

Chair: Senator Catharine Young

Ranking Member: Senator Liz Krueger

Assembly Ways and Means Committee

Chair: Assemblyman Herman Farrell, Jr.

Ranking Member: Assemblyman Bob Oaks

Senate Judiciary Committee

Chair: Senator John Bonacic

Ranking Member: Senator Ruth Hassell-Thompson

Assembly Judiciary Committee

Chair: Assemblywoman Helene Weinstein

Ranking Member: Assemblyman Michael Montesano

FROM: Elena Sassower, Director

Center for Judicial Accountability, Inc. (CJA)

SUBJECT: The Legislature's February 4, 2016 "Public Protection" Budget Hearing:

Your scrutiny of the Judiciary's two-part budget and of the Governor's Budget Bill #S.6401/A.9001, embodying the Judiciary's discrepant "single budget bill"

To assist you in discharging your duty to meaningfully scrutinize the Judiciary's two-part budget and its "single budget bill", embodied by the Governor's Budget Bill #S.6401/A.9001, enclosed is my January 26, 2016 letter to Chief Judge DiFiore, a copy of which I sent to Chief Administrative Judge Marks, who acknowledged receipt.

Entitled "...Will You Do Your Duty to Apprise the Legislature of its Own Duty?", it specifies, as the Legislature's duty: "(1) to override the judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report because they flagrantly violate the commission statute, in addition to being fraudulent and unconstitutional; and (2) to strike \$33,760,000 of the Judiciary's 'reappropriations' because they are uncertified/unapproved by the Chief Judge and Court of Appeals, in violation of Article VII, §1 of the New York State Constitution – and/or to strike \$13,760,000 of this sum because it violates Article VII, §7 and Article III, §16 and State Finance Law §25."

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Once the Legislature does its duty with respect to these, there will be tens of millions of dollars from which to fund urgently needed new Family Court judgeships, upon their being established by the Legislature. This should be done forthwith, following a hearing on the issue by the Senate and Assembly Judiciary Committees, if deemed necessary.

There will also be ample money for the Judiciary's grossly underfunded "Attorney Discipline Program". Indeed, notwithstanding the demonstrable fraud of the September 24, 2015 Report of former Chief Judge Lippman's Commission on Statewide Attorney Discipline – chaired by former Appellate Division Justice Barry Cozier, who was simultaneously his appointee to the Commission on Legislative, Judicial and Executive Compensation¹ – it recommended an "Increase to funding and staffing across-the-board for the disciplinary committees" (Executive Summary, at p. 4), stating "Additional funding and staffing must be made available to the disciplinary committees" (p. 57).

How surprising then that there is ESSENTIALLY NO INCREASE for the "Attorney Discipline Program" in the Judiciary's December 1, 2015 budget for fiscal year 2016-2017. By the Judiciary's own figures, its request is only .02% or \$34,687 higher than its request for fiscal year 2015-2016, which was \$14,859,673. And putting this in further perspective, its fiscal year 2016-2017 request of \$14,885,360 is nearly \$700,000 LESS than the Judiciary's request from five years ago.

Enclosed is a single-page compilation of the Judiciary's budget requests for its "Attorney Discipline Program" since fiscal year 2011-2012 – identical to what I furnished the Commission on Statewide Attorney Discipline when I testified before it at its August 11, 2015 hearing to a disinterested and hostile Chair Cozier. What it shows is that up until this fiscal year, the Judiciary's budget requests for its "Attorney Discipline Program" for each of the four fiscal years after 2011-2012 went down almost a million dollars:

2011-12 Budget Request.....\$15,547,142...down to
2012-13 Budget Request.....\$15,016,357....down to
2013-14 Budget Request.....\$14,809,235....down to
2014-15 Budget Request.....\$14,461,352....up to
2015-2016 Budget Request...\$14,859,673....

I said as much – and gave it context – by my concluding words on August 11, 2015 before the Commission on Statewide Attorney Discipline, stating:

¹ Mr. Cozier's demonstrated actual bias and interest, disqualifying him from BOTH positions, is particularized by my December 2, 2015 supplemental statement to the Commission on Legislative, Judicial and Executive Compensation (at pp. 3-5). It is posted on CJA's webpage for this letter, accessible from our homepage, www.judgewatch.org, via the prominent link: "NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!" All other referred-to documents and evidence substantiating this letter is posted there, as well.

“The judiciary, the judiciary has consistently not requested funding for the attorney disciplinary system, consistently. In fact, the funding has gone down. The funding has gone down even as they were clamoring for judicial pay raises, which they secured. The annual budgeting for the attorney disciplinary system is \$15 million. The judicial pay raises paid out, since 2012, are at least \$150 million and \$50 million each and every year.” (video, at 16:55 mins.).

The Senate and Assembly Judiciary Committees, in particular, should be inquiring about this.

Suffice to note that there has been no legislative oversight hearing of the Judiciary’s “Attorney Discipline Program” since 2009, which was when the Senate Judiciary Committee’s then chairman, former Senator John Sampson, held combined hearings on New York’s court-controlled attorney disciplinary system and the Commission on Judicial Conduct, at which witnesses testified and furnished and proffered documents so dispositive of the corruption of both that the hearings were aborted after the second, with no investigation, no findings, and no committee report.

I do not know when, before that, the Senate or Assembly Judiciary Committees held oversight hearings of the attorney disciplinary system— soliciting testimony and substantiating documents from members of the public who had filed attorney misconduct complaints and from attorneys who had been the subject of proceedings. However, in September 1993, the Assembly Judiciary Committee, under the chairmanship of then Assemblyman G. Oliver Koppell, held three hearings on “Legislative proposals arising out of the recommendations of the Committee to Examine Lawyer Conduct in Matrimonial Actions”. I have several pages of a transcript from what appears to be either its September 23 or September 24, 1993 hearing – and I brought them with me when I testified before the Commission on Statewide Attorney Discipline on August 11, 2015, expecting to hand them up in response to the Commissioners’ questions to me about my testimony and the documents I had handed up to each of them in file folders before I began to testify. However, there were no questions, only interjections by Chairman Cozier that my 10-minute time was over.

These transcript pages include colloquy about the disciplinary committees’ lack of funding and resources – resulting in dismissals of attorney misconduct complaints that otherwise might have been pursued. The response of the then Chief Counsel of the First Department Disciplinary Committee, Hal Lieberman², to Chairman Koppell’s expression of surprise was:

² Hal Lieberman, now in private practice, specializing in attorney discipline and an author and commentator on the subject, was a member of the Commission on Statewide Attorney Discipline. Like so many of the commissioners, all appointed by former Chief Judge Lippman, he is an attorney discipline insiders, responsible for, and complicit in, its corruption. Indeed, one of the five illustrative wrongfully dismissed attorney misconduct complaints that I furnished to the Commission in substantiation of my testimony – against the OCA’s then counsel, had been dismissed by him, in 1989, as Acting Chief Counsel of the First Department Disciplinary Committee: <http://www.judgewatch.org/web-pages/searching-nys/2015-commission-on-attorney-discipline/public-testimony-hearings/file-folders/gs-complaint-1989.htm>. However, the issue of the commissioners’ disqualification for interest and actual bias, raised by my August 11, 2015 written testimony (<http://www.judgewatch.org/correspondence-nys/2015/statewide-attorney-discipline/ers-testimony->

“I don’t know why you should be shocked. I mean, we’ve been telling you for years that this system is underfunded.” (at p. 107).

Yet, the problems at the grievance committees, in the Appellate Divisions, and in the Court of Appeals with respect to attorney discipline go far beyond funding – and the Legislature must not allocate any additional monies for the Judiciary’s “Attorney Discipline Program” until a hearing is held on the Commission on Statewide Attorney Discipline’s September 24, 2015 Report, as it is pervasively deceptive and fraudulent. Its pretenses (at p. 81) that “the existing system is not ‘broken’” and that “In many ways, it works quite well” – and that these conclusions are based on the “Commission’s thorough examination of the attorney disciplinary process” – are only possible because the Report TOTALLY conceals the testimony and evidence of the corruption of attorney discipline and the unconstitutionality of New York’s attorney disciplinary law that had been presented. My own testimony at the August 11, 2015 hearing – and the documentary proof I handed up – all graphically recorded by videos³ – are dispositive of the Commission’s fraud, including its passing observation, with seeming approval, that “Consistently, more than 90 percent of the complaints are dismissed”. As I stated in testifying, only an independent audit of the record of those complaints can determine the legitimacy of the dismissals – and the necessity of such audit I demonstrated by furnishing five illustrative examples of complaints wrongfully dismissed, as to which – as with everything else I furnished, the Commission made no findings of fact or conclusions of law. Certainly, too, a hearing is necessary because the Judiciary’s new uniform rules of attorney discipline, released on December 29, 2015 and effective on July 1, 2016, are even more egregious than the old disparate rules in vesting arbitrary, unchecked power in the chief attorneys. Not only do they not require that facially-meritorious complaints of attorney misconduct be investigated, they explicitly empower chief attorneys of the grievance committees to dismiss such complaints, indeed to dismiss complaints that may be fully documented, without involvement of a single committee member. As for review of the chief attorneys’ dismissals of complaints, the new rules permit the

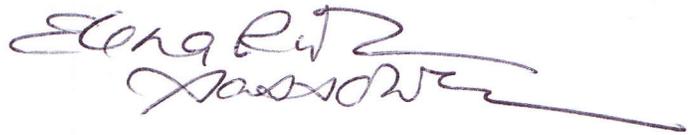
[research/commissioner-hearing-folder/8-11-15-written-statement.pdf](#): at pp. 4-5) and referred to when I orally testified, was simply ignored by the Commission, whose September 24, 2015 Report then manifested the Commissioners’ interest and actual bias by its flagrant dishonesty.

³ The videos of my August 11, 2015 testimony before the Commission on Statewide Attorney Discipline – from a number of angles so as to enable better viewing of Chairman Cozier, in particular, and of the file folder of materials that I had handed up for his review, which he sullenly left untouched at the edge of the dais in front of him during my testimony – and which he left behind when the hearing concluded – as well as: (1) post-hearing interviews about the discovery of his file folder on the dais and my opening it and describing some of its content; and (2) photos of my delivery, immediately thereafter, of the folder, placed in a manila envelope, and all the documentary evidence that had supported my testimony – 2 cartons of casefile evidence and a redweld of further proof, including the five illustrative examples of improperly dismissed attorney misconduct complaints – to the Office of Court Administration, for Chairman Cozier c/o Chief Administrative Judge Marks, are posted on CJA’s webpage of my oral and written testimony: <http://www.judgewatch.org/web-pages/searching-nys/2015-commission-on-attorney-discipline/public-testimony-hearings/ers-testimony.htm>. CJA’s webpage for this letter posts the link (fn. 1, *supra.*)

committees' lawyer-chairs to decide them, without involvement of the committees or of a single non-lawyer member. In other words, the situation I described in testifying on August 11, 2015 is now uniform:

"Now, we talk about the grievance committees but the fact of the matter is, the grievance committees are sham entities. They don't really exist. They are not operating as committees with all of their membership because most of the complaints that are filed with the committees are going out at a stage where none of the committee members have ever seen those complaints. They are being processed by staff... (video, at 6:19 mins.)

...And the truth of it is that those dismissals are not being made by the committee. You can talk about the presence of non-lawyers on the committee. No non-lawyers and, actually, it would appear that, with the exception of possibly the First Department, all these dismissals at the outset are not seen by a single committee member, lawyer or lay. In the First Department, these dismissals possibly, and it is not clear from a reading of the rules, are with the acquiescence of a single lawyer member." (video, at 8:58 mins.).



Enclosure: January 26, 2016 letter

cc: Chief Judge Janet DiFiore
Chief Administrative Judge Lawrence Marks

Temporary Senate President John Flanagan
Assembly Speaker Carl Heastie
Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian Kolb

Senate Committee on Investigations and Government Operations

Chair: Senator Andrew Lanza/Deputy Senate Majority Leader
for Government Oversight & Accountability

Ranking Member: Senator Brad Hoylman

Assembly Committee on Government Operations

Chair: Assemblywoman Crystal Peoples-Stokes

Ranking Member: Assemblywoman Janet Duprey

Assembly Committee on Oversight, Analysis and Investigation

Chair: Assemblywoman Ellen Jaffee

Ranking Member: Assemblyman Peter Lawrence

Sponsors of Assembly Bill #7997

Assembly Members Goodell, Lopez, Duprey, Nojay, Johns