

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Friday, May 02, 2014 1:50 PM
To: 'James B. McGowan'
Cc: adrienne.kerwin@ag.ny.gov; 'rward@osc.state.ny.us'; 'hfanshawe@osc.state.ny.us'; 'ngroenwegen@osc.state.ny.us'; Frank Mauro (mauro@fiscalpolicy.org)
Subject: The Duty of Supervisory Oversight & Independent Evaluation Consistent with Executive Law 63.1 & State Finance Law Article 7-A: CJA v Cuomo Citizen-Taxpayer Action: Albany Co #1788-14
Attachments: 10-9-13-email-to-scholars.pdf

Dear Mr. McGowan,

Please promptly furnish me with Deputy Attorney General Levine's phone number and/or e-mail.

State Comptroller DiNapoli is an independent constitutional officer, charged with safeguarding the public fisc and taxpayer monies. As such, the Comptroller's duty is to ensure the proper disposition of plaintiffs' citizen-taxpayer action, whose merit, entitling plaintiffs to a summary judgment disposition, is obvious from the most cursory review of its particularized verified complaint, the annexed exhibits, and the CPLR §2214(c) notice to furnish papers to the court.

For this reason, shortly before 10 a.m. on April 2nd, I phoned the Comptroller's fraud hotline (1-888-672-4555), filing with Investigator Frank Smith a complaint of grand larceny of the public fisc and taxpayer dollars, stating that the particularizing facts and evidentiary proof were furnished by the lawsuit papers I had served on Comptroller DiNapoli on March 28th, service of which had been accepted by the Comptroller's Deputy Counsel, Helen Fanshawe. I further told Investigator Smith that the Comptroller's fraud investigations unit could readily examine the lawsuit papers from CJA's website, www.judgewatch.org, accessible from the prominent homepage link entitled "CJA Leads the Way to NYS Budget Reform...".

An hour and a half later, after calling the Comptroller's office and leaving a phone message for Deputy Counsel Fanshawe (518-474-3444) – and for Rich Redlo, an assistant counsel, who I was told would be handling the case – I received an e-mail from Ms. Kerwin that the Attorney General would be representing the Comptroller.

Did Comptroller DiNapoli hand over representation with knowledge that the Attorney General, a defendant in the action, would, through Ms. Kerwin, brazenly corrupt the judicial process by litigation fraud, continuing what she had done on March 28th before Justice Michael Lynch in opposing plaintiffs' order to show cause for a stay with TRO? Comptroller DiNapoli must not be ignorant of what is being done in his name, which, consistent with his ethical responsibilities and constitutional function, he must disavow.

As I have repeatedly requested, please advise as to who at the Attorney General's office is evaluating plaintiffs' entitlement to the Attorney General's representation and intervention. Such is not only required by Executive Law §63.1, which predicates the Attorney General's litigation position on "protect[ing] the interest of the state", but State Finance Law, Article 7-A – the citizen-taxpayer action statute – which clearly contemplates representation and intervention by the Attorney General.

Plaintiffs' citizen-taxpayer action is expressly brought "on behalf of the People of the State of New York & the Public Interest". If the Attorney General is not going to undertake independent evaluation of his duty with respect thereto, the Comptroller, with his own counsel resources, must step in for that purpose.

Yesterday afternoon, I endeavored to speak with Deputy Counsel Fanshawe. However she refused to take my call, advising, through an assistant, that I must speak with Ms. Kerwin. My request to speak with her superior, the Comptroller's Counsel, Nancy Groenwegen, resulted in my call being routed to Ms. Kerwin's line, on which I left a voice mail message, requesting the names of her superiors so that appropriate steps could be taken, beginning with withdrawing her fraudulent dismissal motion. I also left a phone message for Robert Ward, Deputy Comptroller for Budget and Policy Analysis, who I met last October at a program on the state Constitution, discussing with him the disparity between Article VII, *as written*, and the on-the-ground reality with respect to the Judiciary and Legislative budgets.

As I have Deputy Comptroller Ward's e-mail, a copy of this is being furnished to him, with a request that he forward it to Deputy Counsel Fanshawe and Counsel Gorenwegen, in the event my guess as to their e-mail addresses is incorrect – and, additionally, that he furnish it to Comptroller DiNapoli. To further remind Mr. Ward of our conversation together last October – and what I furnished him, *in hand*, so that he could “initiate appropriate investigation and corrective action at the Comptroller's office” – attached is the October 9, 2013 e-mail I sent him.

For the convenience of all, the direct link to CJA's webpage on which our citizen-taxpayer lawsuit and Ms. Kerwin's dismissal motion are posted is here: <http://www.judgewatch.org/web-pages/searching-nys/budget-2014-2015/lawsuit-citizen-taxpayer%20action.htm>.

Thank you.

Elena Sassower, Plaintiff *Pro Se*,
acting on her own behalf & on behalf of the People of the State of New York & the Public Interest
914-455-4373

From: James B. McGowan [mailto:James.McGowan@ag.ny.gov]
Sent: Friday, May 02, 2014 10:25 AM
To: 'elena@judgewatch.org'
Cc: Adrienne Kerwin
Subject: Center for Judicial Accountability, Inc, etc. v. Cuomo et al., Alb Ind # 1788-14

Ms. Sassower, Assistant Attorney General Adrienne J. Kerwin has appeared in the above referenced matter of counsel to Attorney General Eric T. Schneiderman, for all of the named defendants, and provided contact information in the papers served upon you. I am lead to believe, however, that you recently reached out to the Attorney General's client, the State Comptroller, by phone in relation to this litigation, after her appearance. It is generally inappropriate for a party or a party's attorney to contact another party directly once an attorney has entered the proceeding on the latter's behalf. See, e.g., People v. Yut Wai Tom, 53 N.Y.2d 44, 53 (1981). Please refrain from contacting the defendants directly with anything in reference to this litigation. Papers and communications within this litigation should be addressed to Assistant Attorney General Kerwin as provided in her appearance.

Be further advised that you may address any concerns you have about the conduct of this litigation in writing to Meg Levine, Deputy Attorney General, Division of State Counsel, The Capitol, Albany, NY 12224-0341.

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Wednesday, October 09, 2013 4:51 PM
To: galie@canisius.edu
Cc: 'mauro@fiscalpolicy.org'; 'rward@osc.state.ny.us'
Subject: The New York State Constitution -- a Potemkin Village Throughout

Dear Professor Galie,

Thank you again for your devastating overview of New York's Constitution at yesterday's forum "A New New York: The Constitutional Dimension".

I was glad to have had the opportunity to briefly chat with you at the end of the program – and to learn that you are proceeding with the project you first described to me last November 29th at the Rockefeller Institute of Government: examining the disparity between the text of New York's Constitution and the on-the-ground reality – revealing what you've described as a Potemkin village. How wonderful that this project will be a book that will bring together different scholars examining the different Articles.

As you did not recall which scholar was going to be comparing the text and reality of Article VI – the Judiciary Article – this is to remind you to send me his/her name as soon as possible. After laboring in the trenches for nearly 25 years, our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA) has a goldmine of primary-source documentary evidence to furnish him/her, as likewise other scholars examining the on-the-ground reality of other Articles of our state Constitution. Can you give me a list of who these scholars are, their contact info, and the Articles they will be examining?

How thrilling that Frank Mauro will be examining the disparity between the text and reality of Article VII -- the state budget – as I had a good conversation with him and Robert Ward about the corruption of the budget that I experienced, first-hand, this year with respect to the Judiciary and Legislative budgets, embodied in a single appropriations bill, as to which there is absolutely NO oversight or legitimate "process". For your information – and that of Mr. Mauro to whom I am sending a copy of this e-mail – here's the link to the (webpage of my) April 15, 2013 corruption complaint to US Attorney Bharara, summarizing that experience and furnishing the substantiating primary-source proof, including the video of my testimony at the Legislature' February 6, 2013 budget hearing on "public protection": <http://www.judgewatch.org/web-pages/judicial-compensation/corruption-complaint-to-us-attorney-bharara2.htm> .

I had a single copy of this April 15, 2013 complaint with me yesterday – and gave it to Mr. Ward, as he is Deputy Comptroller for Budget and Policy Analysis, presumably, in a position to initiate appropriate investigation and corrective action at the Comptroller's Office.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-455-4373
elena@judgewatch.org