

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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June 4, 2013

TO: Senate Committee on Investigations and Government Operations

Chairman: Senator Carl Marcellino

Ranking Member: Senator Brad Hoylman

Members: Senator David Carlucci, Senator Ruben Diaz,
Senator Martin J. Golden, Senator Michael Nozzolio,
Senator Thomas O'Mara, Senator Daniel Squadron,
Senator Lee Zeldin

Assembly Committee on Oversight, Analysis and Investigation

Chairman: Assemblyman Andrew Hevesi

Ranking Member: Assemblyman Michael Montesano

Members: Assemblyman Michael Kearns,
Assemblyman William Magnarelli, Assemblyman Philip Palmesano,
Assemblyman Annette Robinson, Assemblyman Fred Thiele

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: DOING YOUR PART TO END PUBLIC CORRUPTION: PART III:
Request for Legislative Oversight, Analysis and Investigation of CJA's April 15,
2013 corruption complaint to U.S. Attorney Bharara and, specifically:

(1) of Chapter 567 of the Laws of 2010, *as written and applied* – as to which, to date, there has been no oversight, analysis, and investigation; and
(2) of the Commission on Judicial Conduct & court-controlled attorney disciplinary system – as to which, in 2009, the Senate Judiciary Committee held oversight hearings that were aborted, with no analysis, investigation, findings, or committee report of the document-supported testimony of witnesses

On May 7th and 22nd, we sent letters to ALL Senators and Assembly Members entitled “Doing Your Part to End Public Corruption” concerning the April 15th corruption complaint we filed with U.S. Attorney Preet Bharara and then, additionally, with U.S. Attorney Loretta Lynch.

The April 15th complaint is about systemic corruption by all three branches of our State government, involving grand larceny of the public fisc, arising from the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation. It chronicles

* **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.

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the Legislature's willful and deliberate failure and refusal to oversee the judiciary, including with respect to:

(1) Chapter 567 of the Laws of 2010, as written and applied, whose cost to New York State taxpayers is already tens of millions of dollars in statutorily-violative, fraudulent, and unconstitutional judicial salary increases, resulting from the Commission on Judicial Compensation's August 29, 2011 Report; and

(2) the Commission on Judicial Conduct and court-controlled attorney disciplinary system, as to which, in 2009, the Senate Judiciary Committee held oversight hearings that were aborted with no investigation, findings, or committee report, thereby perpetuating the systemic judicial corruption to which witnesses had attested with substantiating proof.¹

¹ These aborted 2009 Senate Judiciary Committee hearings were the Legislature's first oversight hearings of the Commission on Judicial Conduct in 22 years – the Assembly Judiciary Committee having held a single oversight hearing in 1987, with the only prior oversight hearing being in 1981, held jointly by the Senate and Assembly Judiciary Committees. Upon information and belief, the Legislature has never held an oversight hearing of the court-controlled attorney disciplinary system other than the 2009 aborted Senate Judiciary Committee hearings.

As identified by our May 22nd letter to all Senators and Assembly members, the videos and transcripts of the 2009 Senate Judiciary Committee oversight hearings of the Commission on Judicial Conduct and court-controlled attorney disciplinary system are posted on our website, www.judgewatch.org, accessible via the top panel "Latest News" – and, among the most powerful witnesses was Regina Felton, Esq., a distinguished black attorney, whose testimony (at the September 24, 2009 hearing) is all the more relevant as the judge whose abusive, corrupt conduct she was testifying about – and about which the Commission on Judicial Conduct did nothing – was:

"a plaintiff in *Maron v. Silver*, whose ultimate result was Chapter 567 of the Laws of 2010, the 2011 Special Commission on Judicial Compensation, and the fraudulent, statutorily-violative, and unconstitutional judicial pay raises that is the 'grand larceny of the public fisc' for which the April 15th corruption complaint seeks indictment of New York's all-white, highest constitutional officers, each directly and personally involved." (May 22nd letter, at p. 3).

Indeed, that very judge, New York Supreme Court Justice Arthur M. Schack, is now a plaintiff in a further lawsuit brought against the State by judges, *Bransten v. The State of New York* – commenced in December 2012, which, exploiting and concealing the material fraud committed by the 2011 Special Commission on Judicial Compensation in recommending judicial salary increases when it had examined ONLY salary, NOT "compensation and non-salary benefits" of judges, as Chapter 567 of the Laws of 2010 expressly requires, argues that the State, by increasing their health insurance contributions, is unconstitutionally diminishing their compensation. Annexed are two articles about the May 21, 2013 decision of Justice Carol Robinson Edmead which denied the State's motion to dismiss the lawsuit: "*N.Y. judges' lawsuit over health benefits can move forward: judge*" Thomson Reuters, May 22, 2013; and "*Judges' Suit Proceeds Over Health Premium Increase*", New York Law Journal, May 24, 2013. Ironically, Judge Edmead's "landmark" decision in another case, also on the front-page of the New York Law Journal, was

The April 15th corruption complaint is appropriately within the jurisdiction of your two committees. This is obvious from your 2012 annual reports. Indeed, the 2012 annual report of the Assembly Committee on Oversight, Analysis and Investigation contains an extensive discussion entitled “LEGISLATIVE OVERSIGHT”, worth quoting, in full:

“LEGISLATIVE OVERSIGHT

The Role of Legislative Oversight

Every year, the Legislature and Governor enact hundreds of new laws. Legislative oversight enables policymakers to examine how those laws are implemented and, to ensure that the intent of the legislature is being followed

The power of the New York State Legislature to conduct oversight activities is inherent in Article III of the State Constitution. The Constitution allows the Legislature to appoint committees to investigate matters relating to the property and affairs of government and the State. The Constitution empowers the Legislature to modify existing roles and assign new functions and powers to executive departments.

Several laws and rules reinforce the Legislature’s mandate to conduct oversight. The Legislative and Civil Rights Laws allow a legislative committee to require the appearance of witnesses at a hearing. The State Finance Law strengthens the Legislature’s ‘power of the purse’ by requiring legislative appropriations before any State monies are spent and by limiting the ability of the Executive to move money within and between agencies.

The Assembly’s oversight role was strengthened when its House Rules were amended to allow standing committees more time to focus on oversight. Specifically, House Rule IV, §1(d) was revised to require every standing committee to ‘devote substantial efforts to the oversight and analysis of activities, including but not limited to the implementation and administration of programs, of departments, agencies,

raised by a witness testifying about the attorney disciplinary system at the 2009 Senate Judiciary Committee hearings. (June 8, 2009 hearing, testimony of Paul Altman).

Such outrageous lawsuit, brought before a financially self-interested tribunal, whose decision for the plaintiff judges reflects as much, is a DIRECT consequence of the Legislature’s willful and deliberate failure to effect any oversight of Chapter 567 of the Laws of 2010 – as was its duty upon receipt of the Commission on Judicial Compensation’s facially-violative August 29, 2011 Report, thereafter made more compelled by CJA’s October 27, 2011 Opposition Report and March 30, 2011 lawsuit based thereon, each pivotally identifying the Commission on Judicial Compensation’s violation of the statutory requirement that it examine “compensation and non-salary benefits” – and not just judicial salary, as it had done in the most superficial way in making its three-phase 27% judicial pay raise recommendations that would have the force of law, automatically, unless overridden by the Legislature or vetoed by the Governor. [See Opposition Report, at pp. 18-21, 25-31; Verified Complaint, at ¶¶110, 130, 132, 169].

divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction.’ Also, House Rule IV, §4(b) was amended in 2005 to require all standing committees to conduct at least one public hearing after adoption of the State budget. ‘The purpose of such public hearing shall include, but not be limited to, the impact, if any, of the State budget on the implementation and administration of the programs within such entities’ jurisdiction.’

Investigations by the Committee on Oversight, Analysis and Investigation help shed light on governmental and non-governmental actions and promote honesty and efficiency in the administration of laws. They help identify whether programs operate as required and if State funds are effectively spent, which is the foundation for making sound policy decisions.

The Function of the Oversight, Analysis and Investigation Committee

The Oversight, Analysis and Investigation Committee plays a number of important roles in furthering the Assembly’s oversight activities. The Committee:

- **Reviews implementation and adequacy of laws and programs**

The Committee is charged with reviewing the implementation and adequacy of laws and programs to ensure compliance by State governmental agencies. Through its assistance to standing committees and lawmakers and its own investigative activities the Committee seeks to determine whether programs operate as required and whether program funds are spent effectively, efficiently, and in accordance with Legislative intent.

- **Conducts program and budget reviews**

The Committee conducts targeted program and budget reviews both jointly with other Committees and individually based on suggestions of the Speaker, the Committee Chair, individual members, governmental sources, or the public. Projects can be short-term, involving only a few telephone calls, in-depth, financial and historical data collection, field investigations, on-site State agency visits, interviews, and public hearings.

- **Helps to create a climate for change**

Findings are often compiled in a report or memorandum and distributed publicly to help create a climate for necessary change. Recommendations may be incorporated into the lawmaking process through the budget, legislation, or administrative recommendations to the Executive.

- **Acts as a resource to other Assembly standing committees**

With expertise in research and data collection, the Committee acts as a resource to other Assembly standing committees, lawmakers and staff by providing technical assistance and guidance during program reviews. Additionally, each lawmaker is provided with a copy of the Committee's 'A Guide to Legislative Oversight,' which explains how effective oversight reviews are conducted and sets forth the Assembly's authority to perform oversight activities."

As for the 2012 annual report of the Senate Committee on Investigations and Government Operations, it succinctly states:

"The New York State Senate Standing Committee on Investigations and Government Operations has legislative oversight responsibilities on initiatives amending a variety of laws focusing on government operations. The Committee is charged with the responsibility of overseeing State actions and policies. In addition, the Committee does have the authority to conduct investigations of State entities."

Suffice to also note that Senate Rule VIII, §4(c), entitled "Committee oversight function", reads:

"Each standing committee is required to conduct oversight of the administration of laws and programs by agencies within its jurisdiction."

Consequently, we request that the Senate Committee on Investigations and Governmental Operations and the Assembly Committee on Oversight, Analysis and Investigation undertake oversight, analysis and investigation of the corruption chronicled by our April 15th complaint – or, alternatively direct it for oversight, analysis, and investigation by other appropriate legislative committees. This is additionally essential as the constitutional and statutory infirmities of Chapter 567 of the Laws of 2010, establishing a special commission on judicial compensation, have been replicated, *verbatim*, in Senate bill S-2953 and Assembly bill A-246, establishing a special commission on compensation of managerial and confidential state employees – a state of affairs detailed by our April 26th letter to ALL Senators, our April 20th letter to ALL members of the Assembly Committee on Governmental Employees, and our April 26th letter to ALL members of the Assembly Ways & Means Committee.

Although the evidentiary proof substantiating our April 15th corruption complaint is already in the possession of the Legislature and accessible from our website, www.judgewatch.org, via its top panel "Latest News" by its hyperlink "Holding Government Accountable for its Grand Larceny of the Public Fisc and Other Corruption",² the most dispositive documents – CJA's October 27, 2011

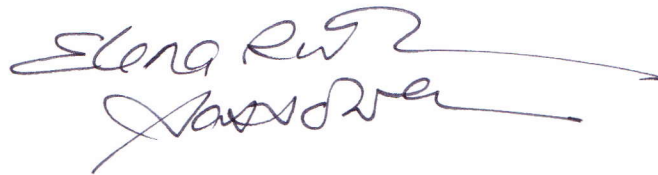
² That webpage in turn contains hyperlinks for "CJA's April 15, 2013 Corruption Complaint to U.S. Attorney Bharara" and "CJA's Correspondence with the Legislature pertaining to the April 15, 2013 Corruption Complaint". As for CJA's correspondence pertaining to S-2953 and A-246, it is accessible directly

Opposition Report and March 30, 2012 Verified Complaint – have been furnished to Assemblyman Michael Kearns, a member of the Assembly Committee on Oversight, Analysis, and Investigation, with a request that he furnish them to the Committee:

“in support of its oversight, analysis, and investigation of the April 15th corruption complaint – beginning with oversight, analysis, and investigation of the implementation of Chapter 567 of the Laws of 2010, on which the judicial salary increases rest.”

A copy of our May 29th letter to Assemblyman Kearns is enclosed. Needless to say, we are ready to furnish you with whatever additional information you deem helpful or necessary, and to testify before you under oath.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Ruiz", with a long horizontal flourish extending to the right.

- Enclosures: (1) “*N.Y. judges’ lawsuit over health benefits can move forward: judge*”
Thomson Reuters, May 22, 2013
(2) “*Judges’ Suit Proceeds Over Health Premium Increase*”,
New York Law Journal, May 24, 2013
(3) CJA’s May 29, 2013 letter to Assemblyman Michael Kearns

cc: U.S. Attorney Preet Bharara
U.S. Attorney Loretta Lynch
ALL Senators & Assembly Members
The Public & the Press

from “Latest News” by the hyperlink “Fighting Off Progeny of the Judicial Compensation Statute -- & Securing a Functioning Legislative Process”.

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N.Y. judges' lawsuit over health benefit cuts can move forward: judge

5/22/2013

By Joseph Ax

COMMENTS (0)

NEW YORK (Reuters) - A lawsuit brought by current and retired New York State Supreme Court justices challenging a 2011 law that increased their healthcare costs can proceed, a judge has ruled.

Manhattan Supreme Court Justice Carol Edmead denied the state's motion to dismiss, allowing the justices to press their claim that reducing state contributions to their health insurance premiums amounts to an unconstitutional salary cut.

The lawsuit, filed in December, sought a declaratory judgment that the change in health benefits violated the state constitution's mandate that judges' compensation cannot be diminished while they remain in office.

"It is beyond cavil that 'compensation' in the context of one's employment constitutes more than mere wages," Edmead wrote in Monday's ruling. "Indeed, the general consensus among the Courts is that compensation includes wages and benefits, including health insurance benefits."

The state attorney general's office, which is defending the law, declined to comment, citing pending litigation.

The litigation is virtually identical to a lawsuit filed by judges in New Jersey that successfully reversed cuts to healthcare and pension benefits. In 2011, the New Jersey Supreme Court ruled in *DePascale v. State of New Jersey* that the changes represented an unconstitutional decrease in judicial compensation.

Judicial pay has been a longstanding hot-button topic in New York, with judges saying that their salaries have fallen far behind those of their federal counterparts.

Last year, the legislature adopted the recommendations of an independent commission to phase in a 27 percent increase over three years for the state's approximately 1,250 judges, the first judicial pay hike since 1999. The raises will ultimately result in a salary of \$174,000 in 2014 for state Supreme Court justices, up from \$136,700 in 2011.

The New York lawsuit stems from 2011, when the state legislature negotiated agreements with several public-service unions to reduce the percentage of the state's contribution toward their healthcare premiums in an effort to avoid layoffs during a budget crisis. Lawmakers then extended that change to non-union state employees and retirees, including judges.

The result was a 6 percent increase in healthcare costs for active judges and judges who retired after October 2011, a hike that could be \$2,000 a year or more, according to a lawyer for the plaintiffs. Judges who stepped down prior to October 2011 were given a 2 percent increase.

The state attorney general's office argued in court papers that the state constitution's provision on judicial compensation only applied to salary, not to benefits, a position Edmead rejected.

"As pointed out by DePascale contributions to health insurance benefits which are deducted from a judge's paycheck is directly related to the amount of salary paid to a judge," Edmead wrote.

Joseph Forstadt of Stroock & Stroock & Lavan, who represents the judges, said he was pleased to have won the first round but that there was a long way to go.

"The whole concept of the state constitution and the U.S. Constitution is to protect judges from the diminution of their compensation," he said.

In addition to more than a dozen active and retired Supreme Court justices, the plaintiffs include the state Supreme Court justices association and the New York City Supreme Court justices association.

The case is *Bransten v. State of New York*, New York State Supreme Court, New York County, No. 159160/2012.

For the judges: Joseph Forstadt, Alan Klinger, Ernst Rosenberger, Burton Lipshie and Linda Melendres of Stroock & Stroock & Lavan.

For the state: Assistant Attorneys General Andrew Meier and Garrett Coyle.

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FRIDAY, MAY 24, 2013

NEWS IN BRIEF

Judges' Suit Proceeds Over Health Premium Increase

In a decision strongly suggesting that the state violated the Constitution when it increased judges' health insurance premiums—and warning the Legislature not to seek retribution the next time the judges are up for a raise—Manhattan Supreme Court Justice Carol Robinson Edmead has refused to dismiss an action in which judges claimed lawmakers illegally reduced their pay by boosting the cost of their benefits.

Edmead said that increasing the judges' health insurance contribution 6 percent in October 2011 "constitutes an unconstitutional intrusion as applied to the judiciary, whose compensation is guarded by the Compensation Clause." Her decision in *Bransten v. State of New York*, 159160/2012, stemmed from a declaratory judgment action brought by the Association of Justices of the Supreme Court of the State of New York on behalf of current and retired judges. It arose in the wake of two occurrences: the first judicial pay raise in a dozen years and an unrelated decision by the Legislature to reduce the state's contribution for employee health insurance premiums.

At the time, judges had gone without a raise for more than 12

years and the state was struggling with a crushing deficit. In lieu of layoffs, agreements were negotiated with public employee unions increasing the workers' share of health premiums. That deal also increased the premiums of judges, who are not represented by a union.

The judges' group argued that the increased expense amounted to a decrease in salary, in violation of the Constitution. In response, the state moved to dismiss the judges' complaint, claiming that even though the insurance increase reduced the take home pay of judges, it was not an unconstitutional reduction in salary because it did not discriminate against the judges.

Edmead rejected the state's argument and refused to dismiss the case. "While the amendment does not single out judges, the Compensation Clause singly protects judges from overly broad laws that have the direct effect of diminishing that compensation," she wrote. "Here, the diminishment has a unique impact upon the judiciary... by virtue of the fact that it diminishes the compensation the judiciary is guaranteed to receive."

—John Caher