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David L. Lewis  
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April 24, 2008

Steven M. Boggess  
Secretary of the Senate  
The Capitol  
Room 321  
Albany, New York 12247

**RE: Defense of the New York State Senate  
and Joseph L. Bruno as Temporary  
President in his official capacity**

Dear Mr. Boggess:

I have been asked to set forth a proposal for the defense of the New York State Senate in the declaratory judgment brought by Honorable Judith Kaye and the Unified Court System against the New York State Senate and Senator Bruno, in his capacity as the Temporary President.

The caption of the case is JUDITH S. KAYE, in her official capacity as Chief Judge of the State of New York, and

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EX 23-6

THE NEW YORK STATE UNIFIED COURT SYSTEM, against SHELDON SILVER, in his official capacity as Speaker of the New York State Assembly, THE NEW YORK STATE ASSEMBLY, JOSEPH L. BRUNO, in his official capacity as Temporary President of the New York State Senate, THE NEW YORK STATE SENATE, DAVID A. PATERSON, in his official capacity as Governor of the State of New York and THE STATE OF NEW YORK. It bears the Index No. 400763/08.

The basis of the action is the claim that the Senate, along with the Assembly and the Governor, has deliberately not raised judicial salaries and has done so to the detriment of the independence of the judiciary. The plaintiffs claim that the failure to raise salaries of the judges is a violation of Article VI of the New York State Constitution in terms of the existence of an independent judiciary, and the particular section of the State Constitution that forbids the reduction of judicial salaries during their term of office. This litigation was brought by Judge Kaye's pro bono counsel in the Supreme Court of the State of New York, New York County before the Honorable Edward H. Lehner, who has another judicial pay raise matter before him.

#### **OBJECTIVE**

The purpose of this engagement is to defend the Senate and Senator Bruno in his official capacity. The plaintiffs have demanded an immediate trial on the matter. The litigation as it is brought, apart from being an unseemly way for a Chief Judge to act, is a direct attack by the Judicial Branch upon the political organs of government who are entrusted with the decision to either appropriate money or not for any and all public purposes.

The Senate has an objective separate from the other defendants. Unlike the Assembly and the Governor, the Senate in the closing days of last year's session passed a bill providing for exactly what the suit seeks to compel. To that end, our interest and our position in this litigation is in conflict with the Assembly which failed to adopt the Senate bill, and the Governor who, of course, was not then the Governor and had no power to act institutionally without the Assembly passing the pay raise bill. ✓

Finally, while we do not oppose the principle of judicial pay raises and will not question entitlement in the abstract, the purpose of this litigation for the defense is to demonstrate that this is an improper means of proceeding. The defense will move to dismiss the Complaint under CPLR 3211 (a) and for summary judgment under CPLR 3212. Such a course expected to be successful would bring the litigation to a close in favor of the Senate leaving the plaintiffs only the right to appeal or to go forward against the Assembly and the Governor, or prosecute the appeal and try the Assembly and the Governor elements separately from us.

#### **SCOPE OF SERVICES**

A. We will review the complaint and analyze the separate claims for the following legal requirements:

1. Standing to sue.
2. Suit against the proper parties.
3. Is the action brought in the proper form.
4. Rules of judicial prudence apply.

5. Legal bases for maintaining the action.

B. We will analyze all the relevant state constitutional issues:

1. Legislative powers
2. Speech or Debate protections
3. Judicial powers and limitations
4. Judicial salary and compensation issues

C. We will analyze the complaint for factual veracity.

If the complaint is factually flawed and that is demonstrable by documentary evidence it may be dismissed.

D. We will investigate which of any defenses apply:

1. Procedural defenses to the complaint.
2. Subject matter defenses rooted in the power of the Senate.
3. The fact that we did pass the judicial salary bill.

E. We will then move against the complaint by filing a motion to dismiss the causes of action on basis not limited to the following:

1. Documentary evidence.
2. Jurisdiction.
3. Justiciability - is it a political matter.
4. The same action is pending.
5. No claim is stated.

F. The matter will have to be present and argued before the Court and we will do that as well.

In order to complete all these services we will undertake the full factual investigation as to the claims of the plaintiffs. Likewise, we will undertake a thorough review of existing law in this state, the federal system and the other states of the union on the issue of judicial pay issues to demonstrate flaws in this lawsuit.

**PROFESSIONAL FEES AND EXPENSES**

We propose the following fees schedule:

**LEGAL FEES**

David L. Lewis	\$300/hour
Charles G. Fiore	\$300/hour
Paralegal Services	\$ 50/hour

**EXPENSES**

We bill the expenses of the litigation including but not limited to the preparation, duplication and service of relevant documents, the costs of copies, legal research, mailing and other transmissions and costs associated solely with this litigation.


**CAP**

In order to insure that the engagement in this action is reasonable from the needs of both parties, it is hereby proposed that the fees and expenses be capped at Two Hundred Thousand (\$200,000) Dollars.

**CLOSING**

We appreciate the opportunity to represent the New York State Senate in this clearly historic and unprecedented litigation.

Very truly yours,

  
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DAVID L. LEWIS

DLL/bf