

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Wednesday, December 11, 2019 9:23 AM  
**To:** 'nyscompensation@gmail.com'  
**Cc:** 'lmarks@nycourts.gov'; 'jshukin@nycourts.gov'; 'skerby@nycourts.gov'  
**Subject:** Protecting the Commission from FRAUD -- CJA's Second Supplemental Submission in Specific Rebuttal to Chief Administrative Judge Marks' Nov. 22, 2019 Supplemental Submission  
**Attachments:** record-2-20-13-foil-compressed.pdf; record-12-9-15-foil-compressed.pdf; record-12-9-16-foil-compressed.pdf; record-10-7-19-foil-compressed.pdf; 2nd-cause-of-action-compressed.pdf; 2-19-19-questions-for-marks-10pp-compressed.pdf

### TO: Commission on Legislative, Judicial & Executive Compensation

Following up my below December 9, 2019 e-mail to you, identifying that “the reason Chief Administrative Judge Marks is able to propose that the Judiciary will self-fund COLAs from its own budget is because the Judiciary budget is a larcenous SLUSH-FUND, born of constitutional violations, statutory-violations, and fraud”, please deem that December 9<sup>th</sup> e-mail and this to be my second supplemental submission, in specific response to Chief Administrative Judge Marks’ November 22, 2019 supplemental submission. There, he makes the extraordinary statement:

“...since inception of the Salary Commission system in 2011, the Judiciary has consistently absorbed the costs of *all* judicial pay adjustments recommended by a Commission without asking for any additional funding to pay those costs. We did this even during the years for which prior Commissions were making salary recommendations when, because those recommendations were geared to help State judges catch up after a 13-year pay freeze, the cost of the increase, and therefore the impact of the Judiciary budget, was far greater. Those adjustments were much larger than even the largest salary adjustment that we might today imagine the Federal Judiciary will receive over the next several years. For example, during the 2012-2015 salary cycle, State Supreme Court Justices received a 17% pay increase for the 2012-13 fiscal year (with other State Judges receiving proportionate increases); a 4.3% increase for the 2013-14 fiscal year; and a 4.2% increase for the 2014-15 fiscal year. During the first fiscal year of the 2016-2019 salary cycle, the Justices received an 11% increase; and in 2018-19, another 6.7%.

We promised the prior commissions the Judiciary budget would absorb the costs of all of these increases without asking for additional funding and then proceeded to live up to that commitment, notwithstanding their size and the fiscal burden they presented...” (italics in the original).

As Chief Administrative Judge Marks’ scant 1-1/2 page supplemental submission identifies not a single dollar amount, the Commission must demand that he specify the dollar amounts he is claiming the Judiciary self-funded from its budget, arising from the August 29, 2011 report of the Commission on Judicial Compensation and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation. Upon information and belief, the Judiciary only absorbed the first year of each COLA or judicial pay raise increase – and did this to avoid having to identify their dollar amounts, or even their existence, in its proposed “single-budget” bills – and the Legislature’s right to modify or strike them out.

In his original submission (at p. 21), Chief Administrative Judge Marks’ purports that the Judiciary’s proposed “series of four...cost-of-living adjustments for New York’s state-paid judges over the four fiscal years beginning April 1, 2020” is “very modest”, that “The cost of these adjustments in each fiscal year, and the aggregate cost over the full four years is almost certain to be de minimus” and in dollar terms would “cost the State \$13.9 million, or an average of \$3.46 million annually” . This is false. The \$3.46 million cost of each COLA increase, essentially repeated by Chief Administrative



Judge Marks in testifying on November 4<sup>th</sup> (at pp. 7, 12), becomes, after the initial year, embedded as increased judicial salaries, COMPOUNDING yearly. Thus, while the first COLA, in fiscal year 2020-21, would cost \$3.46 million in that first year, the second COLA, in fiscal year 2021-22, is another \$3.46 million, plus the original COLA of \$3.46 million, now shifted to a permanent increase in judicial salary costs – for a total of \$6.92 million in the second year. The third COLA, in fiscal year 2022-23, is a further \$3.46 million, plus \$6.92 million from the two prior COLAs, now shifted to increased judicial salary costs – bringing the total to \$10.38 million in the third year. The fourth COLA, in fiscal year 2023-24, is another \$3.45 million, plus \$10.38 million from the three prior COLAs, now shifted to increased judicial salary costs – thereby totaling \$13.84 million in the fourth year. The dollar total for these four years of COMPOUNDING judicial salary increases originating as COLAs is the addition of \$3.46 million for the first year, \$6.92 million for the second year, \$10.38 million for the third year, and \$13.84 million for the fourth year, which is \$34.56 million. And it does not end there, as this \$34.56 million is then forever a recurring yearly cost upon the state for judicial salaries – on top of which the state must pay out for the increased costs of salary-based non-salary compensation benefits, such as pensions. Does Chief Administrative Judge Marks deny this? Is this why he has submitted no sworn statements of projected costs – or past costs – including from the Judiciary’s own budget director?

As I stated in testifying on November 4<sup>th</sup>, I believe that what the state has already paid out in commission-based judicial salary increases is now “on the order of half a billion dollars” (Tr. 70). Getting more precise figures must be a Commission priority, especially as the Judiciary has withheld relevant costs in its SLUSH FUND budgets and in responding to FOIL/records requests. My attached February 20, 2013, December 9, 2015, and December 9, 2016 FOIL/records requests – and the Judiciary’s responses thereto – are illustrative.

Finally, over and beyond my sworn testimony and the EVIDENCE from the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action that I handed up to the Commissioners pertaining to the Judiciary budget is the further EVIDENCE I had brought with me to the November 4<sup>th</sup> hearing, but inadvertently forgot to hand up, *to wit*, my October 7, 2019 FOIL/records request to the Judiciary for its “independent audits” pursuant to Judiciary Law §249-c” – encompassing my comparable November 28, 2016 FOIL/records request, to which the Judiciary had made no responsive production. It is attached, as are my follow-up November 29, 2019 and December 5, 2019 e-mails, reflecting the Judiciary’s failure, yet again, to even respond. There are only three possibilities: either the Judiciary cannot make production because it has NOT complied with its “independent audit” obligations; or because production would reveal that its “independent audits” are sham; or because its “independent audits” have yielded results not favorable to the Judiciary. Each of these possibilities should be concerning to the Commission – and the Commission’s duty, based on Chief Administrative Judge Marks’ claims about the Judiciary’s budget, is to verify the situation by obtaining from him the records those October 7, 2019 and November 28, 2016 FOIL/records request seek – and by subpoena, if necessary.

Needless to say, costs to the state of prospective COLA increases are ALL irrelevant because – as demonstrated by the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action – the Judiciary is systemically corrupt on adjudicative, administrative, and financial levels, making any judicial salary increases, by COLA or otherwise, unconstitutional. Indeed, the record of the lawsuit reveals NO adjudication of the constitutional issue presented by both the sixth cause of action (¶64) and seventh cause of action (¶74) of CJA’s September 2, 2016 verified complaint that corruption is an “appropriate factor” that the Commission must “take into account” for Chapter 60, Part E, of the Laws of 2015 to be constitutional.

Later in the day, I will furnish you a pdf of this e-mail, combined with its attachments, to facilitate your posting this second supplemental submission on your webpage for submission:

<http://www.nyscommissiononcompensation.org/Submissions-judicial.shtml>. Meantime, I am furnishing it to Chief Administrative Judge Marks, Chief Judge DiFiore, and the Judiciary’s records access officer for response.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)



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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Tuesday, December 10, 2019 8:04 AM  
**To:** 'nyscompensation@gmail.com' <[nyscompensation@gmail.com](mailto:nyscompensation@gmail.com)>  
**Cc:** 'lmarks@nycourts.gov' <[lmarks@nycourts.gov](mailto:lmarks@nycourts.gov)>; 'jshukin@nycourts.gov' <[jshukin@nycourts.gov](mailto:jshukin@nycourts.gov)>;  
'skerby@nycourts.gov' <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Subject:** (Corrected) Status & Posting -- CJA's Nov. 26, 2019 e-mail to the Commissioners, with attached Nov. 25, 2019 letter to Chief Administrative Judge Marks

**TO: Commission on Legislative, Judicial & Executive Compensation**

My yesterday's e-mail, which is below, contained two errors, now corrected:

- (1) Its title misdated the year of my letter to Chief Administrative Judge Marks. The date of the letter is November 25, **2019**, not 2015;
- (2) Its message identified only Commissioners Eng and Lachman as having been given, *in hand*, the particularized EVIDENCE that the Judiciary budget is a "SLUSH FUND" – omitting **Commissioner Hormozi**, to whom I also gave a copy of that same EVIDENCE, *in hand*.

Please furnish this corrected e-mail to all seven Commission members – and post my November 25, 2019 letter to Chief Administrative Judge Marks, transmitted to the Commission by my November 26, 2019 e-mail to it, as my "First Supplemental Submission in Further Support of Testimony". To assist you in posting it as such, the above-attached first pdf contains both the 3-page November 26, 2019 e-mail and the 7-page letter.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
914-421-1200

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Monday, December 9, 2019 3:56 PM  
**To:** 'nyscompensation@gmail.com' <[nyscompensation@gmail.com](mailto:nyscompensation@gmail.com)>  
**Cc:** 'lmarks@nycourts.gov' <[lmarks@nycourts.gov](mailto:lmarks@nycourts.gov)>; 'jshukin@nycourts.gov' <[jshukin@nycourts.gov](mailto:jshukin@nycourts.gov)>;  
'skerby@nycourts.gov' <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Subject:** Status & Posting -- CJA's Nov. 26, 2019 e-mail to the Commissioners, with attached Nov. 25, 2019 letter to Chief Administrative Judge Marks

**TO: Commission on Legislative, Judicial & Executive Compensation**

Please confirm that my below November 26, 2019 e-mail entitled "Protecting the Commission on Legislative, Judicial and Executive Compensation from FRAUD", with its now signed above-attached November 25, 2019 letter to Chief Administrative Judge Marks, was forwarded to "each of the Commission's seven members", as requested – AND that it will be posted on the Commission's webpage of submissions:

<http://www.nyscommissiononcompensation.org/Submissions-judicial.shtml>.



To date, I have received no response to the letter from Chief Administrative Judge Marks – nor from any of the other witnesses who testified at the Commission’s November 4<sup>th</sup> and 14<sup>th</sup> hearings. Has the Commission received any response? If not, has the Commission requested responses from Chief Administrative Judge Marks and the other witnesses – as any fair and impartial tribunal would have done. Please advise.

By the way, the reason Chief Administrative Judge Marks is able to propose that the Judiciary will self-fund COLAs from its own budget is because the Judiciary budget is a larcenous SLUSH-FUND, born of constitutional violations, statutory-violations, and fraud. Indeed, the Commission has the particularized EVIDENCE of this, as I gave it, *in hand*, to Commissioners Eng, Lachman, and Hormozi, on November 4<sup>th</sup> at the conclusion of my testimony – and the Commission has posted it on its webpage of submissions. For your convenience, that EVIDENCE is attached, *to wit*:

(1) the second cause of action of the September 2, 2016 verified complaint in the *CJA v. Cuomo...DiFiore* taxpayer action pertaining to the Judiciary budget (¶39), with its incorporated tenth cause of action from the March 23, 2016 verified second supplemental complaint in the first *CJA v. Cuomo* citizen-taxpayer action (¶¶329-331); and

(2) CJA’s “Questions for Chief Administrative Judge Lawrence Marks” pertaining to the fiscal year 2019-2020 Judiciary budget (##1-36), which I furnished to the Legislature on February 19, 2019 and annexed as Exhibit F-1 to CJA’s May 31, 2019 motion to the Court of Appeals.

To enable Chief Administrative Judge Marks to respond – including as to the capacity of the Judiciary budget to absorb COLA and other commission-based judicial pay raises, whose cumulative and compounding dollar amounts he concealed on November 4<sup>th</sup> and by his November 22<sup>nd</sup> supplemental submission – a copy of this e-mail is being sent to him, so that he can not only address same, but do so in the context of the Judiciary’s proposed two-part budget for fiscal year 2020-2021, which he furnished the Governor and Legislature on November 29, 2019, with certifications by Chief Judge DiFiore and approvals by the Court of Appeals dated November 19, 2019:

<http://ww2.nycourts.gov/admin/financialops/Budgets.shtml>.

Suffice to say – and as highlighted by my November 25, 2019 letter to Chief Administrative Judge Marks (at p. 4) – ALL the specified financial and economic factors that Chapter 60, Part E, of the Laws of 2015 requires the Commission to “take into account” in examining the adequacy of judicial pay are “IRRELEVANT”, when the Judiciary is “not ‘excellent’ and doing its job – but, rather, corrupt systemically, including at appellate and supervisory levels and involving the Commission on Judicial Conduct”. Such is the situation, at bar – proven, EVIDENTIARILY, by the record of the *CJA v. Cuomo...DiFiore* citizen-taxpayer action: <http://judgewidth.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>. This is why the Commission must demand that Chief Administrative Judge Marks and other judicial pay raise advocates produce their findings of facts and conclusions of law with respect thereto, including by subpoena, if necessary.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewidth.org](http://www.judgewidth.org)  
914-421-1200

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewidth.org](mailto:elena@judgewidth.org)>  
**Sent:** Tuesday, November 26, 2019 5:11 PM  
**To:** 'nyscompensation@gmail.com' <[nyscompensation@gmail.com](mailto:nyscompensation@gmail.com)>  
**Subject:** Protecting the Commission on Legislative, Judicial & Executive Compensation from FRAUD



**TO: Commission on Legislative, Judicial & Executive Compensation**

Below is my just-sent e-mail to Chief Administrative Judge Marks, with the above attachment. Please forward to each of the Commission's seven members.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
914-421-1200

---

**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Tuesday, November 26, 2019 4:58 PM  
**To:** 'lmarks@nycourts.gov' <[lmarks@nycourts.gov](mailto:lmarks@nycourts.gov)>  
**Cc:** 'rmaldonado@nycbar.org' <[rmaldonado@nycbar.org](mailto:rmaldonado@nycbar.org)>; 'rmaldonado@sgrlaw.com' <[rmaldonado@sgrlaw.com](mailto:rmaldonado@sgrlaw.com)>; 'hgreenberg@nysba.org' <[hgreenberg@nysba.org](mailto:hgreenberg@nysba.org)>; 'greenbergh@gtlaw.com' <[greenbergh@gtlaw.com](mailto:greenbergh@gtlaw.com)>  
**Subject:** **Protecting the Commission on Legislative, Judicial & Executive Compensation from your FRAUD**

**TO: Chief Administrative Judge Lawrence Marks**

Attached is my self-explanatory letter to you of yesterday's date, entitled:

“Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony”.

CJA's webpage for the letter on which is posted the referred-to substantiating evidence is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/11-25-19-ltr-to-marks-etc.htm>.

Please be sure to respond promptly – and especially do not overlook the paragraph at page 7 that I quoted in my yesterday's motion to the Court of Appeals in CJA's citizen-taxpayer action, *CJA v. Cuomo...DiFiore*. That paragraph reads:

“By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) ‘Judges...must comply with the Chief Administrative Judge’s Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges’ public and private conduct and activities’ citing ‘NY Const., Art. VI, §20(b), (c)’ – thereby implying that New York’s judges do comply and that there is enforcement when they don’t – approved by Chief Judge DiFiore and the associate judges– or was its content known to them and, if so, when? Did you – and they – actually believe that New York’s Judiciary was not obligated to include ANY information as to CJA’s succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator’s Rules Governing Judicial Conduct and any cognizable judicial ‘process’<sup>fn10</sup> (underlining in the original).

The annotating footnote 10 reads:



“Notably, when you testified, you stated – without specificity:

‘...the history of judicial compensation in New York, at least the modern history of judicial compensation in New York, has been a troubled one. There have been lawsuits filed over the years on this issue.’ (Tr. 3).”

The direct link to CJA’s webpage for my yesterday’s motion, to which my letter to you is Exhibit F and quoted at pages 20-21, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/11-25-19-motion-5015-etc.htm>.

As for the indicated recipients of my yesterday’s letter to you, I am sure you have more direct e-mail addresses than I have and I ask that you assist in distribution. Indeed, I have no e-mail addresses for the judges who testified at the November 4, 2019 and November 14, 2019 hearings – and for the judicial associations on whose behalf they spoke. I, therefore, expressly request that you forward this e-mail to them, so that they can each respond to my letter’s demand at page 3:

“By this letter, I demand that you – and the other judicial pay raise advocates who testified – deny or dispute the accuracy of my November 4, 2019 testimony – or else withdraw your own testimonies and written submissions for their fraud.” (underlining in the original).

Also, please forward this e-mail to Chief Judge DiFiore’s “Excellence Initiative”, to which you and the other judges who testified praised as increasing judicial excellence.

Finally, in view of your reliance on the Chief Administrator’s Rules Governing Judicial Conduct (22 NYCRR Part 100) for the judicial salary increases you seek, I would remind you and your fellow judges of its §100.3D, “Disciplinary Responsibilities”, reading, in pertinent part:

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.”

Presented by my attached letter – and by my November 4, 2019 testimony on which it is based – is not “information indicating a substantial likelihood”, but EVIDENCE PROVING IT. And an excellent starting point for your demonstrating your adherence to §100.3D of the Chief Administrator’s Rules is my December 31, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore, about which I testified at the November 4, 2019 hearing and also highlighted at ¶13 of my yesterday’s motion.

The direct link to CJA’s webpage for that December 31, 2015 letter and its accompanying EVIDENCE is here: <http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm>. Surely, though, such link is superfluous. I cannot imagine Chief Judge DiFiore would have discarded the originals I hand-delivered to her Westchester District Attorney’s Office on December 31, 2015, as they EVIDENTIARILY PROVED that the December 24, 2015 Report of the Commission on Legislative, Judicial, and Executive Compensation – and the August 29, 2011 Report of the Commission on Judicial Compensation on which it relied – were each “false instruments”, violative of a succession of penal laws. Or do you disagree?

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)







# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

BY FAX: 212-428-2155 (1 page)

February 20, 2013

TO: Office of Court Administration  
ATT: Shawn Kerby, Assistant Deputy Counsel/Records Access Officer

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

RE: Request for records pertaining to the Judiciary's budgets for fiscal years 2013-2014 & 2012-2013 pursuant to F.O.I.L. and §124 of the Chief Administrator's Rules

Pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)] and §124 of the Chief Administrator's Rules, this is to request any and all records reflecting:

(1) the dollar amounts for judicial salaries requested by the Judiciary's budgets for fiscal years 2013-2014 and 2012-2013;

(2) the dollar amounts for judicial salary increases requested by the Judiciary's budgets for fiscal years 2013-2014 and 2012-2013;

(3) the dollar amounts for "compensation and non-salary benefits for judges and justices of the unified court system" requested by the Judiciary's budgets for fiscal years 2013-2014 and 2012-2013;

(4) the dollar amounts for "compensation and non-salary benefits for judges and justices of the unified court system", exclusive of salary, requested by the Judiciary's budgets for fiscal years 2013-2014 & 2012-2013, including as broken down into categories of "pension contribution"; "Social Security"; "Medicare"; "health, dental, vision and life insurance" and other "fringe benefits".

Pursuant to Public Officers Law §89.3 and §124.6 of the Chief Administrator's Rules, your response is required "within five business days" of your receipt of this request.<sup>1</sup> As time is of the essence, please respond by e-mail to [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.



<sup>1</sup> CJA's letterhead herein reflects our mailing address and telephone number, which changed last year. Please adjust your records accordingly.



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004  
TEL: (212) 428-2150  
FAX: (212) 428-2155

**A. GAIL PRUDENTI**  
Chief Administrative Judge

**JOHN W. MCCONNELL**  
Counsel

February 20, 2013

Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc.  
P.O. Box 8101  
White Plains, New York 10602

Dear Ms. Sassower:

In response to your recent Freedom of Information Law ("FOIL") request, please be advised that the Judiciary budgets reflecting the information you are seeking are available at the following links:

<http://www.nycourts.gov/admin/financialops/BGT12-13/Final2012-13Budget.pdf>

[http://www.nycourts.gov/admin/financialops/BGT12-13/Final-GSC-Budget\\_2012-13.pdf](http://www.nycourts.gov/admin/financialops/BGT12-13/Final-GSC-Budget_2012-13.pdf)

<http://www.nycourts.gov/admin/financialops/BGT13-14/Final-13-14Budget.pdf>

<http://www.nycourts.gov/admin/financialops/BGT13-14/Final-13-14Bud-GSC.pdf>

Very truly yours,

A handwritten signature in cursive script, appearing to read "Shawn Kerby".

Shawn Kerby  
Assistant Deputy Counsel



## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Friday, February 22, 2013 10:01 AM  
**To:** 'FOIL@courts.state.ny.us'  
**Subject:** Furnishing Responsive Documents -- RE: foil request

Dear Ms. Kerby,

Following up my phone call to you yesterday, advising that the website links you furnished by your February 20, 2013 letter do NOT provide the information sought by CJA's February 20, 2013 FOIL request, kindly respond, as soon as possible, with such responsive documents as exist. To expedite my receipt, kindly use this e-mail: [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-455-4373

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**From:** [FOIL@courts.state.ny.us](mailto:FOIL@courts.state.ny.us) [<mailto:FOIL@courts.state.ny.us>]  
**Sent:** Thursday, February 21, 2013 9:46 AM  
**To:** [elena@judgewatch.org](mailto:elena@judgewatch.org)  
**Subject:** foil request

Dear Ms. Sassower:

Attached please find our response to your recent FOIL request.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

 Please consider the environment before printing this email.

## Center for Judicial Accountability, Inc. (CJA)

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**From:** FOIL@courts.state.ny.us  
**Sent:** Friday, February 22, 2013 10:19 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** Furnishing Responsive Documents -- RE: foil request

Dear Ms. Sassower:

I am processing your request and will attempt to respond as soon as I receive the information. I have asked for the budget office to provide any responsive existing figures.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

..Please consider the environment before printing this email.

>>> "Center for Judicial Accountability, Inc. (CJA)" <[elena@judgewatch.org](mailto:elena@judgewatch.org)> 2/22/2013 10:00 AM >>>

Dear Ms. Kerby,

Following up my phone call to you yesterday, advising that the website links you furnished by your February 20, 2013 letter do NOT provide the information sought by CJA's February 20, 2013 FOIL request, kindly respond, as soon as possible, with such responsive documents as exist. To expedite my receipt, kindly use this e-mail: [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-455-4373

---

**From:** [FOIL@courts.state.ny.us](mailto:FOIL@courts.state.ny.us) [<mailto:FOIL@courts.state.ny.us>]  
**Sent:** Thursday, February 21, 2013 9:46 AM  
**To:** [elena@judgewatch.org](mailto:elena@judgewatch.org)  
**Subject:** foil request

Dear Ms. Sassower:

Attached please find our response to your recent FOIL request.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

..Please consider the environment before printing this email.



## Center for Judicial Accountability, Inc. (CJA)

---

**From:** FOIL@courts.state.ny.us  
**Sent:** Friday, February 22, 2013 10:59 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** Furnishing Responsive Documents -- RE: foil request

Dear Ms. Sassower:

The budget office provided the following breakdown of figures that you requested:

fiscal year 2012/13 :

Judicial Base Salaries - \$162,300,000  
Judicial Raise - \$27,713,000  
Judicial Social Security - \$8,580,000  
Judicial Medicare - \$2,755,000

fiscal year 2013/14 :

Judicial Base Salaries - \$190,000,000  
Judicial Raise - \$8,235,000  
Judicial Social Security - \$8,861,000  
Judicial Medicare - \$2,875,000

With regard to your remaining request for further breakdown of pension, insurance, and other fringe benefits, please be advised that the Office of the State Comptroller calculates the amounts in a lump sum without distinctions between judicial and non-judicial personnel. You may wish to contact the Comptroller's Office for information about that agency's breakdown for those categories just for judges.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

 ..Please consider the environment before printing this email.

>>> "Center for Judicial Accountability, Inc. (CJA)" <[elena@judgewatch.org](mailto:elena@judgewatch.org)> 2/22/2013 10:00 AM >>>

Dear Ms. Kerby,

Following up my phone call to you yesterday, advising that the website links you furnished by your February 20, 2013 letter do NOT provide the information sought by CJA's February 20, 2013 FOIL request, kindly respond, as soon as possible, with such responsive documents as exist. To expedite my receipt, kindly use this e-mail: [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

BY E-MAIL: [skerby@nycourts.gov](mailto:skerby@nycourts.gov)

December 9, 2015

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel  
Office of Court Administration  
25 Beaver Street, 11th Floor  
New York, New York 10004

RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and "General State Charges" Resulting Therefrom

The first page of the Executive Summary of the Judiciary's "operating budget" for fiscal year 2016-2017 states that in the past six years, the Judiciary has "absorbed hundreds of millions of dollars in higher costs."<sup>1</sup> The annotating footnote 1 identifies these to include "judicial salary adjustments implemented pursuant to the recommendations of the 2011 Special Commission on Judicial Compensation."

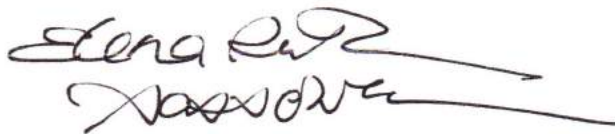
By the euphemism "judicial salary adjustments", the Judiciary means judicial salary increases – and their costs were borne by the taxpayers – just as the costs of additional "General State Charges" resulting therefrom.

The Judiciary's "operating budget" for fiscal year 2016-2017 does not furnish the dollar amounts of the judicial salary increases the Judiciary "absorbed" for fiscal years 2012-2013; 2013-2014; 2014-2015; 2015-2016, either as to those years individually or those years cumulatively. Nor does its separately-presented "General State Charges" identify dollar changes resulting from the judicial salary increases.

Pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], this is to request all publicly-available records identifying these dollar amounts in each of the four past fiscal years.

Public Officers Law §89.3 requires your response "within five business days" of receipt of this request – and I would appreciate if you e-mailed it to me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.



March 23, 2016  
verified second  
supplemental complaint  
(1st citizen taxpayer action) EX 49-a



## Center for Judicial Accountability

---

**From:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Sent:** Wednesday, December 09, 2015 10:24 AM  
**To:** Center for Judicial Accountability  
**Subject:** RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability [<mailto:elena@judgewatch.org>]  
**Sent:** Wednesday, December 09, 2015 9:07 AM  
**To:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Subject:** FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

Attached is CJA's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200

## Center for Judicial Accountability

---

**From:** Center for Judicial Accountability <elena@judgewidth.org>  
**Sent:** Friday, January 22, 2016 10:26 AM  
**To:** skerby@nycourts.gov  
**Subject:** STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

I have not received any further response from you to my December 9th records access/FOIL request, beyond your acknowledgment to me on that date.

The exchange of e-mails is below.

Please advise.

Thank you.

Elena Sassower  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200

---

**From:** Shawn Kerby [<mailto:skerby@nycourts.gov>]  
**Sent:** Wednesday, December 09, 2015 10:24 AM  
**To:** Center for Judicial Accountability  
**Subject:** RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability [<mailto:elena@judgewidth.org>]  
**Sent:** Wednesday, December 09, 2015 9:07 AM  
**To:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Subject:** FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

Attached is CJA's above-entitled FOIL/records request of today's date.

Thank you.



## Center for Judicial Accountability

---

**From:** Shawn Kerby <skerby@nycourts.gov>  
**Sent:** Friday, January 22, 2016 4:16 PM  
**To:** Center for Judicial Accountability  
**Subject:** RE: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

I am still processing your FOIL request to attempt to determine if responsive records exist that might relate to your broad request for "all" records concerning the budget footnote that you reference. I hope to be able to respond to you shortly.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability [<mailto:elena@judgewatch.org>]  
**Sent:** Friday, January 22, 2016 10:26 AM  
**To:** Shawn Kerby <skerby@nycourts.gov>  
**Subject:** STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

I have not received any further response from you to my December 9th records access/FOIL request, beyond your acknowledgment to me on that date.

The exchange of e-mails is below.

Please advise.

Thank you.

Elena Sassower  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200

---

**From:** Shawn Kerby [<mailto:skerby@nycourts.gov>]  
**Sent:** Wednesday, December 09, 2015 10:24 AM  
**To:** Center for Judicial Accountability  
**Subject:** RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

## Center for Judicial Accountability

---

**From:** Center for Judicial Accountability <elena@judgewatch.org>  
**Sent:** Wednesday, February 24, 2016 9:40 AM  
**To:** skerby@nycourts.gov  
**Subject:** AGAIN WHAT IS THE STATUS: Dec. 9, 2015 FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom  
**Attachments:** 12-9-15-foil-oca-judicial-compensation.pdf

Dear Ms. Kerby,

It has been over a month since I last heard from you with respect to my December 9, 2015 FOIL/records request for "all publicly-available records" pertaining to the dollar amounts of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and "General State Charges" resulting therefrom.

Your January 22, 2016 response to my status inquiry of that date is below.

Kindly furnish me with such responsive records as you have thus far obtained. You can supply the balance at a later date.

Thank you.

Elena Sassower

---

**From:** Shawn Kerby [<mailto:skerby@nycourts.gov>]  
**Sent:** Friday, January 22, 2016 4:16 PM  
**To:** Center for Judicial Accountability

**Subject: RE: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom**

Dear Ms. Sassower:

I am still processing your FOIL request to attempt to determine if responsive records exist that might relate to your broad request for "all" records concerning the budget footnote that you reference. I hope to be able to respond to you shortly.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability [<mailto:elena@judgewatch.org>]  
**Sent:** Friday, January 22, 2016 10:26 AM  
**To:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>

**Subject: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom**

1  
EX 49-e



## Center for Judicial Accountability

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**From:** FOIL <FOIL@nycourts.gov>  
**Sent:** Wednesday, February 24, 2016 10:40 AM  
**To:** Center for Judicial Accountability  
**Subject:** RE: AGAIN WHAT IS THE STATUS: Dec. 9, 2015 FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Sassower:

This is in response to the below email and the prior email today inquiring about outstanding FOIL requests, dated January 4, 2016.

Given your numerous FOIL requests, we have been continuing to process them. Given litigation obligations as well, I will continue to process your request and hope to respond to all outstanding FOIL requests by next week.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability [<mailto:elena@judgewatch.org>]  
**Sent:** Wednesday, February 24, 2016 9:40 AM  
**To:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Subject:** AGAIN WHAT IS THE STATUS: Dec. 9, 2015 FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases Recommended by the Commission on Judicial Compensation's Aug 29, 2011 Report -- & 'General State Charges' Resulting Therefrom

Dear Ms. Kerby,

It has been over a month since I last heard from you with respect to my December 9, 2015 FOIL/records request for "all publicly-available records" pertaining to the dollar amounts of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and "General State Charges" resulting therefrom.

Your January 22, 2016 response to my status inquiry of that date is below.

Kindly furnish me with such responsive records as you have thus far obtained. You can supply the balance at a later date.

Thank you.

Elena Sassower

---

**From:** Shawn Kerby [<mailto:skerby@nycourts.gov>]  
**Sent:** Friday, January 22, 2016 4:16 PM  
**To:** Center for Judicial Accountability

**Subject: RE: STATUS: RE: FOIL/Records Request: The Dollar Amounts of the Judicial Salary Increases**



NEW YORK STATE  
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL  
COUNSEL

March 4, 2016

Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc.  
P.O. Box 8101  
White Plains, New York 10602

Via email to: [elena@judgewatch.org](mailto:elena@judgewatch.org)

Dear Ms. Sassower:

This is in response to your Freedom of Information Law ("FOIL") request dated December 9, 2015, concerning the judicial salary increases recommended by the Commission on Judicial Compensation ("Commission") in its August 29, 2011 report.

Your request for "all publicly-available records identifying" budget amounts, "General State Charges," "costs," and "increases" for judicial salaries for four fiscal years is overly broad, does not reasonably identify specific records to permit a search, and would require interpretation, research, compilation of information, and creation of records. See Public Officers Law § 89(3).

To the extent you can compile related information, please refer to the following link regarding Judiciary budgets and General State Charges:  
<http://www.nycourts.gov/admin/financialops/budgets.shtml>

You may wish to contact the Comptroller's Office in the event that agency maintains any responsive related records subject to public disclosure.

Very truly yours,

Shawn Kerby  
Assistant Deputy Counsel

EX 49-9



# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

BY E-MAIL: [skerby@nycourts.gov](mailto:skerby@nycourts.gov)

December 9, 2016

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel  
Office of Court Administration  
25 Beaver Street, 11<sup>th</sup> Floor  
New York, New York 10004

RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases, and interchanges in fiscal year 2016-2017, as authorized by §2 of Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a

Dear Records Access Officer Kerby,

The Judiciary's "single budget bill" for fiscal year 2016-2017 – embodied, without revision, in the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 and retained in the amended/enacted bill, #S.6401-a/A.9001-a – consisted of two sections: §2 containing a schedule of appropriations and §3 containing a schedule of reappropriations.

The text in §2, directly beneath the word "Schedule", was as follows:

"Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts."

Missing from the Judiciary's December 1, 2016 budget request for fiscal year 2017-2018 is any disclosure of what increases, decreases, and interchanges were made for fiscal year 2016-2017 pursuant to this §2. Consequently, pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], I request to inspect and copy records of all Chief Administrative Judge Lawrence Marks' approvals of same.

Needless to say, the interchanges of greatest interest to me are those that enabled the Judiciary to fund the "force of law" judicial salary increases for 2016-2017 recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and, additionally, to fund the increases in general state charges resulting therefrom.

§124.6 of the Chief Administrator's Rules and Public Officers Law §89.3 require your response "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.



## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Shawn Kerby <skerby@nycourts.gov>  
**Sent:** Friday, December 9, 2016 3:18 PM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

---

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:[elena@judgewatch.org](mailto:elena@judgewatch.org)]  
**Sent:** Friday, December 09, 2016 2:43 PM  
**To:** Shawn Kerby <skerby@nycourts.gov>  
**Subject:** FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
[www.judgewatch.org](http://www.judgewatch.org)

## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Wednesday, February 22, 2017 4:25 AM  
**To:** 'skerby@nycourts.gov'  
**Subject:** STATUS: Dec. 9, 2016 FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a  
**Attachments:** 12-9-16-oca-foil-transfers2016-2017.pdf

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled December 9, 2016 FOIL/records request – other than your below December 9, 2016 e-mail acknowledgment that you “expect[ed] to respond within 20 business days”.

Please advise.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
[www.judgewatch.org](http://www.judgewatch.org)

---

**From:** Shawn Kerby [mailto:skerby@nycourts.gov]  
**Sent:** Friday, December 9, 2016 3:18 PM  
**To:** Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org](mailto:elena@judgewatch.org)

**Subject: RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a**

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

---

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]  
**Sent:** Friday, December 09, 2016 2:43 PM  
**To:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>

**Subject: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a**

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.



## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Shawn Kerby <skerby@nycourts.gov>  
**Sent:** Wednesday, February 22, 2017 10:53 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** RE: STATUS: Dec. 9, 2016 FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We are still processing the request and expect to respond shortly. I apologize for the delay.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

---

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:[elena@judgewatch.org](mailto:elena@judgewatch.org)]  
**Sent:** Wednesday, February 22, 2017 4:25 AM  
**To:** Shawn Kerby <skerby@nycourts.gov>  
**Subject:** STATUS: Dec. 9, 2016 FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled December 9, 2016 FOIL/records request – other than your below December 9, 2016 e-mail acknowledgment that you “expect[ed] to respond within 20 business days”.

Please advise.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
[www.judgewatch.org](http://www.judgewatch.org)

---

**From:** Shawn Kerby [mailto:[skerby@nycourts.gov](mailto:skerby@nycourts.gov)]  
**Sent:** Friday, December 9, 2016 3:18 PM  
**To:** Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org](mailto:elena@judgewatch.org)

**Subject:** RE: FOIL/Records Request: Chief Administrative Judge Marks' approvals of increases, decreases & interchanges in fiscal year 2016-2017, as authorized by Sec. 2 of Leg/Judiciary Budget Bill S.6401-a/A.9001-a

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

October 7, 2019

TO: Shawn Kerby, Records Access Officer  
Office of Court Administration

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

RE: FOIL/RECORDS REQUEST: The Judiciary's "Independent audits" pursuant to  
Judiciary Law §249-c

Judiciary Law Article 7-D (§249) is entitled "Internal Control Responsibilities of the Judiciary". Its section c, entitled "Independent audits", states as follows:

"1. At least once every three years, the independent certified public accountant selected pursuant to this section shall conduct audits of the internal controls of the judiciary. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the judiciary's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section two hundred forty-nine of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the judiciary, the independent auditor shall so state. The chief judge shall make available to the public the results of such audits, including any related management letters. The chief judge and any officer or employee of the judiciary shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The chief judge shall request proposals from independent certified public accountants for audits of the internal controls of the judiciary. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The chief judge shall select such independent auditor in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals."



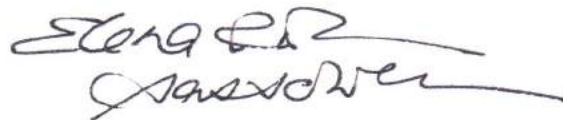
Pursuant to Public Officers Law Article VI (Freedom of Information Law [FOIL]) and §124 of the Rules of the Chief Administrator, this is to request a copy of:

- (1) publicly-available records pertaining to the “competitive procedure” utilized by the chief judge to select the independent certified accountants for the most recent “independent audit” of the “internal controls of the judiciary”, including:
  - (a) the chief judge’s written request(s) to independent certified public accountants for proposals for the “independent audit”;
  - (b) the winning proposal, selected for the “independent audit”; and
  - (c) the proposals not selected – or records reflecting the number and names of the certified public accountants who submitted proposals.
- (2) “the results” of this most recent “independent audit” – “including any related management letters”.
- (3) your response, if any, to CJA’s comparable November 28, 2016 FOIL/records request, subsequent to your February 22, 2017 e-mail stating: “We are still processing the request and expect to respond shortly. I apologize for the delay”.<sup>1</sup>

Pursuant to §124.6 of the Chief Administrator’s Rules and Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request.

To expedite my receipt, kindly e-mail me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.



---

<sup>1</sup> A copy of the November 28, 2016 FOIL/records request and exchange is attached.

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-12003

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)

Website: [www.judgewatch.org](http://www.judgewatch.org)

November 28, 2016

TO: Shawn Kerby, Records Access Officer  
Office of Court Administration

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

RE: FOIL/RECORDS REQUEST: The Judiciary's "Independent audits" pursuant to  
Judiciary Law §249-c

Judiciary Law Article 7-D (§249) is entitled "Internal Control Responsibilities of the Judiciary". Its section c, entitled "Independent audits", states as follows:

"1. At least once every three years, the independent certified public accountant selected pursuant to this section shall conduct audits of the internal controls of the judiciary. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the judiciary's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section two hundred forty-nine of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the judiciary, the independent auditor shall so state. The chief judge shall make available to the public the results of such audits, including any related management letters. The chief judge and any officer or employee of the judiciary shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The chief judge shall request proposals from independent certified public accountants for audits of the internal controls of the judiciary. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The chief judge shall select such independent auditor in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals."



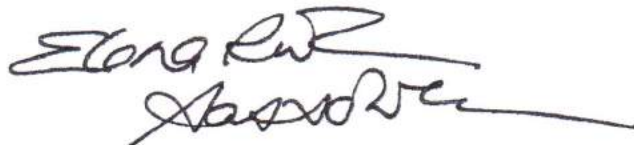
Pursuant to Public Officers Law Article VI (Freedom of Information Law [FOIL]) and §124 of the Rules of the Chief Administrator, this is to request a copy of:

- (1) publicly-available records pertaining to the “competitive procedure” utilized by the chief judge to select the independent certified accountants for the most recent “independent audit” of the “internal controls of the judiciary”, including:
  - (a) the chief judge’s written request(s) to independent certified public accountants for proposals for the “independent audit”;
  - (b) the winning proposal, selected for the “independent audit”; and
  - (c) the proposals not selected – or records reflecting the number and names of the certified public accountants who submitted proposals.
- (2) “the results” of this most recent “independent audit” – and of the previous two “independent audits” – “including any related management letters”.

Pursuant to §124.6 of the Chief Administrator’s Rules and Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request.

To expedite my receipt, kindly e-mail me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

Thank you.

Handwritten signature of Elena R. W. Kerby in black ink.

## Center for Judicial Accountability, Inc. (CJA)

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**From:** FOIL <FOIL@nycourts.gov>  
**Sent:** Monday, November 28, 2016 3:54 PM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** RE: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:[elena@judgewatch.org](mailto:elena@judgewatch.org)]  
**Sent:** Monday, November 28, 2016 3:43 PM  
**To:** FOIL <FOIL@nycourts.gov>  
**Subject:** FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL request of today's date.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
[www.judgewatch.org](http://www.judgewatch.org)



## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Wednesday, February 22, 2017 4:29 AM  
**To:** 'skerby@nycourts.gov'  
**Subject:** STATUS: Nov. 28, 2016 FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c  
**Attachments:** 11-28-16-foil-judiciary-independent-audit.pdf

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled November 28, 2016 FOIL/records request – other than your below November 28, 2016 e-mail acknowledgment that you "expect[ed] to respond within 20 business days".

Please advise.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
[www.judgewatch.org](http://www.judgewatch.org)

**From:** FOIL [mailto:FOIL@nycourts.gov]  
**Sent:** Monday, November 28, 2016 3:54 PM  
**To:** Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org](mailto:elena@judgewatch.org)

**Subject: RE: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c**

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:[elena@judgewatch.org](mailto:elena@judgewatch.org)]  
**Sent:** Monday, November 28, 2016 3:43 PM  
**To:** FOIL <[FOIL@nycourts.gov](mailto:FOIL@nycourts.gov)>  
**Subject:** FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL request of today's date.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Shawn Kerby <skerby@nycourts.gov>  
**Sent:** Wednesday, February 22, 2017 10:53 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** RE: STATUS: Nov. 28, 2016 FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We are still processing the request and expect to respond shortly. I apologize for the delay.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:[elena@judgewatch.org](mailto:elena@judgewatch.org)]  
**Sent:** Wednesday, February 22, 2017 4:29 AM  
**To:** Shawn Kerby <skerby@nycourts.gov>  
**Subject:** STATUS: Nov. 28, 2016 FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Kerby,

I have received no response from you to CJA's attached, above-entitled November 28, 2016 FOIL/records request – other than your below November 28, 2016 e-mail acknowledgment that you “expect[ed] to respond within 20 business days”.

Please advise.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
[www.judgewatch.org](http://www.judgewatch.org)

**From:** FOIL [mailto:[FOIL@nycourts.gov](mailto:FOIL@nycourts.gov)]  
**Sent:** Monday, November 28, 2016 3:54 PM  
**To:** Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org](mailto:elena@judgewatch.org)

**Subject:** RE: FOIL/Records Request: The Judiciary's "independent audits" pursuant to Judiciary Law Sec. 249-c

Dear Ms. Sassower:

We will process your request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel



## Center for Judicial Accountability, Inc. (CJA)

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**From:** Shawn Kerby <skerby@nycourts.gov>  
**Sent:** Monday, October 7, 2019 9:48 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** FW: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c  
**Attachments:** 10-7-19-foil-judiciary-audit-249-c-with-enclosures.pdf

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Monday, October 7, 2019 9:15 AM  
**To:** Shawn Kerby <skerby@nycourts.gov>  
**Subject:** FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
914-421-1200

Please be CAREFUL when clicking links or opening attachments from external senders.

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Friday, November 29, 2019 4:19 PM  
**To:** 'skerby@nycourts.gov'  
**Subject:** STATUS -- Oct 7, 2019 FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c  
**Attachments:** 10-7-19-foil-judiciary-audit-249-c-with-enclosures.pdf

Dear Ms. Kerby,

On October 7, 2019, you sent me the below e-mail advising that you "expect[ed] to respond within 20 business days" to CJA's attached October 7, 2019 FOIL/records request for "The Judiciary's 'Independent audits' pursuant to Judiciary Law §249-c". I have received nothing from you – or anyone else from the Office of Court Administration – since.

Please confirm that there has been no response – and advise when one will be forthcoming.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
914-421-1200

-----  
**From:** Shawn Kerby <skerby@nycourts.gov>  
**Sent:** Monday, October 7, 2019 9:48 AM  
**To:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Subject:** FW: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,  
Shawn Kerby  
Assistant Deputy Counsel

**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Monday, October 7, 2019 9:15 AM  
**To:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Subject:** FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Attached is the Center for Judicial Accountability's above-entitled FOIL/records request of today's date.

Thank you.

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

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>  
**Sent:** Thursday, December 5, 2019 9:15 AM  
**To:** 'skerby@nycourts.gov'  
**Subject:** AGAIN, STATUS -- Oct 7, 2019 FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c  
**Attachments:** 10-7-19-foil-judiciary-audit-249-c-with-enclosures.pdf

Dear Ms. Kerby,

As I have received no acknowledgment or response to my below November 29, 2019 e-mail pertaining to CJA's above-attached October 7, 2019 FOIL/records request for the Judiciary's "independent audits" pursuant to Judiciary Law §249-c, I am re-sending it to you. Please advise.

Thank you.

Elena Sassower

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>  
**Sent:** Friday, November 29, 2019 4:19 PM  
**To:** 'skerby@nycourts.gov' <skerby@nycourts.gov>  
**Subject:** STATUS -- Oct 7, 2019 FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Dear Ms. Kerby,

On October 7, 2019, you sent me the below e-mail advising that you "expect[ed] to respond within 20 business days" to CJA's attached October 7, 2019 FOIL/records request for "The Judiciary's 'Independent audits' pursuant to Judiciary Law §249-c". I have received nothing from you – or anyone else from the Office of Court Administration – since.

Please confirm that there has been no response – and advise when one will be forthcoming.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewidth.org](http://www.judgewidth.org)  
914-421-1200

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**From:** Shawn Kerby <[skerby@nycourts.gov](mailto:skerby@nycourts.gov)>  
**Sent:** Monday, October 7, 2019 9:48 AM  
**To:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewidth.org](mailto:elena@judgewidth.org)>  
**Subject:** FW: FOIL/Records Request: The Judiciary's "Independent audits" pursuant to Judiciary Law §249-c

Dear Ms. Sassower:



SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

September 2, 2016  
verified complaint  
(2nd citizen-taxpayer act)

----- x  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.  
and ELENA RUTH SASSOWER, individually and  
as Director of the Center for Judicial Accountability, Inc.,  
acting on their own behalf and on behalf of the People  
of the State of New York & the Public Interest,

Plaintiffs,

-against-

**VERIFIED COMPLAINT**  
Index #5122-16

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity as Governor  
of the State of New York, JOHN J. FLANAGAN in his official  
capacity as Temporary Senate President, THE NEW YORK  
STATE SENATE, CARL E. HEASTIE, in his official capacity  
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,  
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney  
General of the State of New York, THOMAS P. DiNAPOLI,  
in his official capacity as Comptroller of the State of New York,  
and JANET M. DiFIORE, in her official capacity as Chief Judge of the  
State of New York and chief judicial officer of the Unified Court System,

Defendants.

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“It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein.”

State Finance Law Article 7-A, §123: “Legislative purpose”

Plaintiffs, as and for their verified complaint, respectfully set forth and allege:

1. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs seek declaratory judgments as to the unconstitutionality and unlawfulness of the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001, both the original bill and the enacted amended bill #S.6401-a/A.9001-a. The expenditures of the enacted budget bill – embodying the

Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and tens of millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

2. Plaintiffs also seek declarations voiding the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with further declarations striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent – and injunctions to prevent further disbursement of state money pursuant thereto.

3. Additionally, plaintiffs seek declarations that the “process” by which the State budget for fiscal year 2016-2017 was enacted is unconstitutional, specifically including:

- the failure of Senate and Assembly committees and the full chambers of each house to amend and pass the Governor's appropriation bills and to reconcile them so that they might “become law immediately without further action by the governor”, as mandated by Article VII, §4 of the New York State Constitution;
- the so-called “one-house budget proposals”, emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly joint budget conference committee and its subcommittees, conducted by staff, behind-closed-doors, based on the “one-house budget proposals”; and
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

4. Finally, plaintiffs seek declarations as to the unconstitutionality and unlawfulness of the appropriation item entitled “For grants to counties for district attorney salaries” in the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget



Bill #S.6403-d/A.9003-d and of items of reappropriation therein pertaining to previous “grants to counties for district attorney salaries” and “recruitment and retention” incentives – and enjoining disbursement of state monies pursuant thereto.

5. For the convenience of the Court, a Table of Contents follows:

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<del>    The Legislature’s Proposed Budget for Fiscal Year 2016-2017,     Embodied in Budget Bill #S.6401-a/A.9001-a, is Unconstitutional     &amp; Unlawful</del>	
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<del>AS AND FOR A SIXTH CAUSE OF ACTION.....</del>	<del>23</del>
<del>    Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, <i>As Written</i> –     and the Commission’s Judicial Salary Increase Recommendations     are Null &amp; Void by Reason Thereof</del>	





**AS AND FOR A SECOND CAUSE OF ACTION**

**The Judiciary's Proposed Budget for 2016-2017,  
Embodied in the Governor's Budget Bill #S.6401/A.9001,  
is Unconstitutional & Unlawful**

34. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-33 herein with the same force and effect as if more fully set forth.

35. Plaintiffs' second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331). Such is not barred by Justice McDonough's August 1, 2016 decision (Exhibit D) – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

36. Establishing that the August 1, 2016 decision is a judicial fraud -- and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

37. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' second and sixth causes of action (Exhibit B: ¶¶99-108; Exhibit C: ¶¶179-193) – which correspond to their tenth cause of action (Exhibit A: ¶¶317-331) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on “documentary evidence” that he did not identify – and which does not exist.

38. Plaintiffs analysis is accurate, true, and correct in all material respects.

39. In addition to the facts set forth by the tenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint (Exhibit A: ¶¶317-331) is the further fact, anticipated by its ¶331, namely, that the Judiciary is funding the 2016 phase of the judicial salary increase recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation from its §3 reappropriations, *via* its §2 interchange provision. Such reinforces the unconstitutionality of the interchange provision and the reappropriations, detailed at ¶¶320-331– key features of the Judiciary's slush-fund budget.

~~**AS AND FOR AN THIRD CAUSE OF ACTION**~~

~~**The Governor's Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful  
Over & Beyond the Legislative & Judiciary Budgets it Embodies  
"Without Revision"**~~

40. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-39 herein with the same force and effect as if more fully set forth.

41. Plaintiffs' third cause of action herein is the eleventh cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶332-335). Such is not barred by Justice McDonough's August 1, 2016 decision – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

42. Establishing that the August 1, 2016 decision is a judicial fraud – and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).



Exhibit A to Plaintiffs' September 2, 2016 Verified Complaint [R.135-225]

SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

*March 23, 2016  
verified second  
supplemental  
complaint  
(1st citizen-taxpayer  
action)*

-----x  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.  
and ELENA RUTH SASSOWER, individually and  
as Director of the Center for Judicial Accountability, Inc.,  
acting on their own behalf and on behalf of the People  
of the State of New York & the Public Interest,

**VERIFIED SECOND  
SUPPLEMENTAL COMPLAINT**

Plaintiffs,

Index #1788-2014

-against-

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity  
as Governor of the State of New York,  
DEAN SKELOS in his official capacity  
as Temporary Senate President,  
THE NEW YORK STATE SENATE,  
SHELDON SILVER, in his official capacity  
as Assembly Speaker, THE NEW YORK  
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,  
in his official capacity as Attorney General of  
the State of New York, and THOMAS DiNAPOLI,  
in his official capacity as Comptroller of  
the State of New York,

Defendants.

-----x

“...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York’s Constitution ‘... The doors of each house shall be kept open...’; Public Officers Law, Article VI ‘The legislature therefore declares that government is the public’s business...’; Senate Rule XI, §1 ‘The doors of the Senate shall be kept open’; Assembly Rule II, §1 ‘A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public’ – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, [FLANAGAN], [HEASTIE], SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget.”

– culminating final paragraph of plaintiffs’ verified complaint (¶126)  
& verified supplemental complaint (¶236)

*EA*



**Plaintiffs, as and for their verified second supplemental complaint, respectfully set forth and allege:**

237. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001. The expenditures of such budget bill – embodying the Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

238. Plaintiffs also seek, pursuant to State Finance Law Article 7-A, a declaration voiding the “force of law” judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with a further declaration striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent.

239. Additionally, plaintiffs seek declarations that the so-called “one-house budget proposals”, emerging from the closed-door political conferences of the Senate and Assembly majority party/coalitions, are unconstitutional, as are the proceedings based thereon of the Senate and Assembly joint budget conference committee and its subcommittees; and that the behind-closed-doors, three-men-in-a-room budget dealing-making by the Governor, Temporary Senate President, and Assembly Speaker – such as produced Chapter 60, Part E, of the Laws of 2015 – is unconstitutional and enjoining same with respect to Judiciary/Legislative Budget Bill #S.6401/A.9001 and the whole of the Executive Budget.

240. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint pertaining to the Legislature’s and Judiciary’s proposed budgets and the Governor’s Legislative/Judiciary Budget Bill #S.6351/A.8551 for fiscal year 2014-2015 and the entirety of their March 31, 2015 verified supplemental complaint pertaining to the Legislature’s and Judiciary’s proposed budgets and the Governor’s Legislative/Judiciary Budget Bill #S.2001/A.3001 for fiscal year 2015-2016, incorporating both by reference, as likewise the record based thereon.

241. Virtually all the constitutional, statutory, and rule violations therein detailed are replicated in the Legislature’s and Judiciary’s proposed budgets for fiscal year 2016-2017 and the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001 – including as to the judicial salary increases that will automatically take effect April 1, 2016. As stated at ¶129 of the verified supplemental complaint – and even truer now – “It is, as the expression goes, “déjà vu all over again”.

242. For the convenience of the Court, a Table of Contents follows:

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FACTUAL ALLEGATIONS .....6

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AS AND FOR A NINTH CAUSE OF ACTION.....25

The Legislature’s Proposed Budget for Fiscal Year 2016-2017,  
Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful



2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’”.

316. Once again, defendant CUOMO has abetted this constitutional defiance – including by not even furnishing a recommendation on the Legislature’s budget that he sends back to it “without revision”.



**AS AND FOR A TENTH CAUSE OF ACTION**

**The Judiciary’s Proposed Budget for 2016-2017,  
Embodied in Budget Bill #S.6401/A.9001,  
is Unconstitutional & Unlawful**

317. Plaintiffs repeat, reiterate, and reallege ¶¶1-316 with the same force and effect as if more fully set forth herein – and, specifically, their “Questions for Chief Administrative Judge Marks”, transmitted by their February 2, 2016 e-mail (Exhibit 44).

318. The Judiciary’s proposed budget for fiscal year 2016-2017, embodied by Budget Bill #S.6401/A.9001, is materially identical to the Judiciary’s proposed budget for fiscal years 2014-2015 and 2015-2016, embodied by the Governor’s Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs’ verified complaint (¶¶99-108), reiterated and reinforced by the sixth cause of action of plaintiffs’ supplemental verified complaint (¶¶179-193).

319. Identical to the Judiciary’s proposed budget for the past two fiscal years, defendant CUOMO, his Division of the Budget, and defendants SENATE and ASSEMBLY are unable to comprehend the Judiciary’s proposed budget for fiscal year 2016-2017 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary’s budget for the current



fiscal year. As stated at the outset of plaintiffs' "Questions for Chief Administrative Judge Marks" (Exhibit 44), they diverge as to relevant figures and percentages:

A. Defendant CUOMO's "Commentary of the Governor on the Judiciary" (Exhibit 79-a):

"The Judiciary has requested appropriations of \$2.13 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund are projected to grow by \$44.4 million or 2.4 percent."

B. Defendant CUOMO's Division of the Budget website, which defers to text furnished by Judiciary (Exhibit 29-a):

"The Judiciary's General Fund Operating Budget requests \$1.9 billion, excluding fringe benefits, for Fiscal Year 2016-2017. This represents a cash increase of \$44.4 million, or 2.4%. The appropriation request is \$1.9 billion, which represents a \$43.4 million, or 2.3%, increase.

...  
The Judiciary's All Funds budget request for Fiscal Year 2016-2017, excluding fringe benefits, totals \$2.13 billion, an appropriation increase of \$48.3 million or 2.3% over the 2014-2015 All Funds budget..."

C. Senate Majority's "White Book", under Senate Finance Committee Chair Young's auspices (Exhibit 29-b):

"The FY 2017 Executive Budget proposes All Funds spending of \$2.9 billion, an increase of \$112.2 million, or 4.1 percent." (p. 91). This is further particularized by a chart representing this as "Proposed Disbursements – All Funds": \$2,865,600,000 – representing a change of \$112,224,000 and a percentage of 4.08% (p. 93).

"the Judiciary's proposed budget would increase general fund cash spending by \$44.4 million, or 2.4 percent".

D. Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices (Exhibit 29-c):

"The Judiciary proposed Budget is \$2.13 billion, an increase of \$48.2 million or 2.3% from the SFY 2015-2016 Enacted Budget..." (p. 179).

This is further particularized by a chart as the “Executive Recommendation 2016-17”: \$2,132,526,345, the “\$ change” as \$48,254,307, and the “% Change” as 2.3% (p. 179).

E. Assembly Majority’s “Yellow Book”, under Assembly Ways and Means Committee Chair Farrell’s auspices (Exhibit 29-d):

“The Judiciary’s proposed budget request recommends appropriations of \$2.9 billion, which is an increase of \$81.94 million or 2.9 percent from the State Fiscal Year (SFY) 2015-16 level.” (p. 145).

A table of “Appropriations” shows the “Exec Request”, in millions, at “2,877.49” millions of dollars, representing a change of “81.94” millions of dollars with a percent change of “2.93”. A table of “Disbursements” shows an “Exec Request”, in millions, at “2,865.60” millions of dollars, representing a change of “112.23” millions of dollars, for a percent change of “4.08”. (p. 145).

F. Assembly Minority’s “Green Book”, under Assembly Ways and Means Committee Ranking Member Oaks’ auspices (Exhibit 29-e):

“\$2.1 billion for the Judiciary, \$48.3 million more than last year. This represents a 2.3% increase in spending.”

“General State Charges: (Non-Salary) Benefits: \$730 million for General State charges. \$34 million more than last year. This pays for fringe benefits of employees of the court system, including all statutorily-required and collectively bargained benefits.”

320. Plaintiffs now additionally challenge the constitutionality and lawfulness of the interchange provision appearing at §2 of the Judiciary’s “single budget bill” (Exhibit 25-d) – and replicated, *verbatim*, in §2 of defendant CUOMO’s Legislative/Judiciary Budget Bill #S.6401/A.9001<sup>7</sup> (Exhibit 27-b, p. 10). Such challenge is both *as written and as applied*.

321. Plaintiffs’ challenge to the constitutionality of the interchange provisions, *as written*, begins with *Hidley v. Rockefeller*, 28 N.Y.2d 439, 447-449 (1971), wherein then Chief Judge Stanley Fuld, writing in dissent from the Court’s decision addressed only to the issue of standing, stated:

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<sup>7</sup> The same interchange provision identically appears at §2 of the Judiciary’s “single budget bill” for the past two fiscal years, incorporated *verbatim* in defendant CUOMO’s Legislative/Judiciary budget bills for those years.



“...the provisions which permit the free interchange and transfer of funds are unconstitutional on their face...To sanction a complete freedom of interchange renders any itemization, no matter how detailed, completely meaningless and transforms a schedule of items or of programs into a lump sum appropriation in direct violation of Article VII of the Constitution. (underlining added).

322. *As written*, the interchange provision here at issue states:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.” (Exhibit 27-b, p. 10).

323. *As written*, the “notwithstanding any provision of law” language is vague and overbroad. The “law” includes the New York State Constitution – and such is unconstitutional, *on its face*, as no statute can override the Constitution.

324. At bar, the “notwithstanding any provision of law” language authorizes the Judiciary to violate New York State Constitution, Article VII, §1, §4, §6, and §7, which speak of “itemized estimates”, “items of appropriations”; “stated separately and distinctly...and refer each to a single object or purpose”; made for “a single object or purpose”, that are “particular” and “limited”; that “distinctly specify the sum appropriated, and the object or purpose to which it is to be applied” as well as Article IV, §7 pertaining to the Governor’s line-item veto of “items of appropriations”.<sup>8</sup>

325. Moreover, the “law” includes the very statute governing judiciary interchanges, Judiciary Law §215 – and there is no basis for *sub silentio* repudiating its careful statutory

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<sup>8</sup> So, too, do the statutes pertaining to appropriations and reappropriations require specificity. See, also, State Finance Law §43, entitled “Specific appropriations limited as to use; certain appropriations to be specific”: “Money appropriated for a specific purpose shall not be used for any other purpose, and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated...”



restrictions and safeguards, other than to accomplish what both the statute and Constitution proscribe.

326. Judiciary Law §215(1), entitled “Special provisions applicable to appropriations made to the judiciary in the legislature and judiciary budget”, states:

“1. The amount appropriated for any program within a major purpose within the schedule of appropriations made to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be increased or decreased by interchange with any other program within that major purpose with the approval of the chief administrator of the courts who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee except that the total amount appropriated for any major purpose may not be increased or decreased by more than the aggregate of five percent of the first five million dollars, four percent of the second five million dollars and three percent of amounts in excess of ten million dollars of an appropriation for the major purpose. The allocation of maintenance undistributed appropriations made for later distribution to major purposes contained within a schedule shall not be deemed to be part of such total increase or decrease.

327. Judiciary Law §215(1) restricts interchanges and their amounts to programs within the same “major purpose” – as to which the Chief Administrator’s approval must be filed with “the department of audit and control and copies thereof with the state finance committee and the assembly ways and means committee”. Such accords with statutory requirements, conditions, and procedures set forth in State Finance Law §51 entitled “Interchange of appropriations or items therein” and the statutory sections to which State Finance Law §51 refers in stating:

“No appropriation shall be increased or decreased by transfer or otherwise except as provided for in this section or section fifty-three, sixty-six-f, seventy-two or ninety-three of this chapter, or article eight of the education law”<sup>9</sup>

328. In other words, *as written*, the interchange provision of §2 gives the Chief Administrator complete discretion to do whatever he wants, unbounded by any standard and by any

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<sup>9</sup> State Finance Law §53, entitled “Special emergency appropriations”; State Finance Law §66-f, entitled “Certain interagency transfers authorized”; State Finance Law §72, entitled “General fund”; State Finance Law

reporting/notice requirement to the other two government branches. Such is unconstitutional and unlawful.

329. *As applied*, the interchange provision is unconstitutional and unlawful in that it creates a slush-fund and permits concealment of true costs. It has enabled the Judiciary to surreptitiously fund, in fiscal year 2013-2014, the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report, without identifying the dollar amount of such increase, and, in fiscal year 2014-2015, to even more surreptitiously fund the third phase of the judicial salary increase recommended by the Commission's August 29, 2011 Report, without even identifying the third phase.

330. The Judiciary's responses to legitimate FOIL requests about its use of the interchange provision in fiscal year 2015-2016 – and about the dollar costs of the Commission on Judicial Compensation's three-phase judicial salary increases, funded from reappropriations (Exhibits 50, 49) – only further reinforce the unconstitutionality of the interchange provision, *as applied*.

331. Should defendant CUOMO adhere to his Commentary, "...I expect that [the Judiciary] will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget" (Exhibit 27-a), the Judiciary will presumably fund the first phase of the judicial salary increase recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation from the §3 reappropriations, *via* the §2 interchange provision.

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§93, entitled "Capital projects fund"; and Education Law §355(4)(c), "Powers and duties of trustees-



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**THE JUDICIARY'S PROPOSED BUDGET FOR FISCAL YEAR 2019-2020 –  
AND THE GOVERNOR'S LEGISLATIVE/JUDICIARY BUDGET BILL #S.1501/A.2001**

Examination of the Judiciary's proposed budget for fiscal year 2019-2020 must begin with its bottom-line, total cost, especially as it is not contained within its budget.

The Governor offered no written commentary to guide the Legislature and the Legislature's "White", "Blue", "Yellow" and "Green" Books diverge as to the relevant dollar figures and percentage increase over fiscal year 2018-2019.

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**QUESTIONS FOR CHIEF ADMINISTRATIVE JUDGE LAWRENCE MARKS<sup>1</sup>**

- (1) By two memoranda dated December 1, 2018, you transmitted to the Governor and Legislature the Judiciary's two-part budget for fiscal year 2019-2020. One part pertained to the Judiciary's operating expenses and the other part pertained to "General State Charges" – these being "the fringe benefits of judges, justices and nonjudicial employees". Neither memorandum identified either the cumulative dollar amount of the Judiciary's two-part budget presentation taken together or its cumulative percentage increase, is that correct?
- (2) Each of the two parts of the Judiciary's proposed budget contained a "Chief Judge's Certification" and "Court of Appeals Approval", pursuant to Article VII, §1 of the Constitution of the State of New York. The certification for the part pertaining to operating expenses stated that it was certifying that "the attached schedules" were "the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2019". Which are the "attached schedules" referred-to?
- (3) Your December 1, 2018 memorandum transmitting the itemized estimate of "General State Charges" states: "The Judiciary will submit a single budget bill, which includes requests for funding for operating expenses and fringe benefits costs for the 2019-2020 Fiscal Year."
  - (a) Why did you use the word "will"? Were you implying that the "single-budget bill" was submitted subsequent to the

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<sup>1</sup> The Judiciary's proposed budget, Legislative/Judiciary Budget Bill #S.1501/A.2001, and all referred-to documents are posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), accessible *via* the prominent homepage link: "2019 Legislative Session".



Judiciary's two-part budget presentation? If so, when did the Judiciary submit the "single budget bill" and was it certified to be accurate and true?; and

- (b) Why did you use the word "includes"? Were you implying that the "single budget bill" contains funding requests other than for "operating expenses and fringe benefit costs" – as, for instance, "reappropriations"?
- (4) The Judiciary's "single budget bill" also did not identify the cumulative dollar total of the Judiciary's proposed budget, is that correct? Why is that?
- (5) What is the cumulative dollar total of the "single budget bill"? Which are the specific figures in the bill that you add to arrive at that figure? Is it the tally of the figures, on page 1, for: "Appropriations" \$2,336,671,887, consisting of: \$2,197,800,718 for "state operations"; \$114,871,169 for "aid to localities"; and \$24,000,000 "capital projects", plus, also on page 1, the figure for "Reappropriations" \$63,180,000, plus, on page 10, the figure for "General State Charges": \$814,814,979?
- (6) Is this the same cumulative dollar total as would result from adding the various figures in the Judiciary's two-part budget presentation?
- (7) Do you agree that there is a disparity of \$63,180,000 between the cumulative tally of figures in the Judiciary's two-part budget presentation and the cumulative tally of figures in the "single budget bill"? Isn't this disparity the result of the \$63,180,000 in "Reappropriations" in the "single budget bill" that are not in the two-part budget presentation? Is the reason the Judiciary does not furnish cumulative budget tallies in these documents to conceal the disparity?
- (8) Where in the Judiciary's two-part budget presentation are the \$63,180,000 "Reappropriations" itemized in the "single budget bill" by the "Schedule" that appears at its pages 12-14 under the headings "State Operations and Aid to Localities – Reappropriations 2019-2020" and "Capital Projects – Reappropriations 2019-2020"?
- (9) Do you consider the Judiciary's budget to be reasonably clear and straightforward as to the cumulative amount of its request and its percentage increase over fiscal year 2018-2019? Have you examined the Legislature's analyses of the Judiciary's budgets?:
- (a) According to the Senate (Democratic) Majority's "Blue Book" (at p. 63) "The Judiciary request for SFY 2020 includes a total appropriation authority of \$3.2 billion, an increase of \$102 million or 3.4 percent compared to SFY 2019 available funds. This total includes All Funds appropriations of \$2.3 billion and \$814.8 million in General State Charges (GSC). The increase consists of \$70.9 million in All Funds appropriations and \$31.4 million in



General State Charges.” (see also chart at p. 54 and text at p. 55).

- (b) According to the Senate (Republican) Minority’s “White Book” (at p. 84), “The FY 2019 Executive Budget recommends All Funds spending at \$3.1 billion, an increase of \$91.7 million, or 3.0 percent.” (also chart at p. 85).
- (c) According to the Assembly (Democratic) Majority’s “Yellow Book” (at p. 153), “The Judiciary’s proposed budget request recommends All Funds appropriations of \$3.17 billion, which is an increase of \$102.19 million or 3.33 percent from the SFY 2018-19 level.”
- (d) According to the Assembly (Republican) Minority’s “Green Book”, “2.34 billion, \$76 million more than last year. This represents a 3.2% increase in spending.”

Which of these is correct as to the dollar figures and percentage increase from fiscal year 2018-2019?

- (10) By the way, why does your one-page December 1, 2018 memorandum transmitting the Judiciary’s proposed budget of general state charges not identify either dollar amounts or percentage increase for the transmitted general state charge budget, whereas, by contrast, your one-page December 1, 2018 memorandum transmitting the operating funds budget identifies: “The 2019-20 State Operating Funds budget request totals \$2.28 billion, a cash increase of \$44.7 million, or 2 percent, over available current-year funds”?
- (11) Why does the Judiciary furnish only a single Executive Summary for its two-part budget proposal? And why does this Executive Summary omit information about both “general state charges” and “reappropriations”?
- (12) Also, why does the Executive Summary omit mention of the judicial salary increase recommendations of the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation for fiscal year 2019-2020.
- (13) Wouldn’t you agree that the Executive Summary is the appropriate place for the Judiciary to have alerted the Governor, Legislature, and the public of the relevant statutory provision pertaining to the Commission on Legislative, Judicial and Executive Compensation’s judicial salary increase recommendations for fiscal year 2019-2020 which reads:

“...Each recommendation...shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law..., unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation...” (Chapter 60, Part E, of the Laws of 2015: §3, ¶7)



Do you agree that the only reference to the Commission on Legislative, Judicial and Executive Compensation's judicial salary recommendations for fiscal year 2019-2020 is in the narrative of the Judiciary's operating budget which, in ten separate places, states: "Funding for judicial positions includes salary increases in compliance with the mandate of the Commission on Judicial and Legislative Salaries."<sup>2</sup>

- (14) Why does the Judiciary's budget narrative not refer to the Commission on Legislative, Judicial and Executive Compensation by its correct name – and what is the referred-to "mandate" that the Commission imposed on the Judiciary?
- (15) You do know the difference between "salary" and "compensation", right? Can you explain that difference – and how the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation addressed the compensation issue that its very name reflects and that the statute pursuant to which it purports to be rendered – Chapter 60, Part E of the Laws of 2015 – requires it address as a condition precedent for any recommendation?
- (16) What were the Commission on Legislative, Judicial and Executive Compensation's judicial salary increase recommendations for fiscal year 2019-2020? What do they translate to, in dollar amounts and percentage increase for the Judiciary's judicial salary appropriations, cumulatively and for each category of judge. And what does this translate to in additional general state charges for salary-based compensation benefits.
- (17) Is there any line item in the Judiciary's proposed operating budget for the dollar appropriations for the judicial salary increases – and in the Judiciary's proposed budget of general state charges for the increased dollar costs of salary-based, non-salary compensation benefits, such as pensions and social security? Why not? Did the Judiciary not believe such line items important for the Legislature and Governor in exercising their "mandate" to "modif[y] or abrogate[]", pursuant to Chapter 60, Part E, of the Laws of 2015: §3, ¶7.<sup>3</sup>

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<sup>2</sup> (Courts of Original Jurisdiction") (at p. 5); "Supreme and County Courts Program" (at p. 18); "Family Courts Program" (at p. 21); "Surrogates Courts Program" (at p. 25); "Multi-Bench Courts Program" (at p. 28); "City and District Courts Program" (at p. 32); "New York City Housing Court Program" (at p. 35); "Court of Claims Program" (at p. 44); "Court of Appeals" (at p. 86); "Appellate Court Operations" (at p. 90).

<sup>3</sup> Only the Senate (Democratic) Majority's "Blue Book" (at p. 63) makes any reference to the judicial salary increases embedded in the Judiciary's budget – but does not identify that same can be abrogated or modified. It states:

"The funding increase also supports salary adjustments for State Judges due to the recent change in salary for Federal District Judges. In 2015, the New York State Commission on Legislative, Judicial, and Executive Compensation recommended that the salary of State Supreme Court Judges be the same as Federal District Judges."



- (18) Can you furnish figures as to the cost, to date, of the judicial salary increase recommendations in the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report – including as to increased salary-based benefits? How about cost figures for how much has been paid, to date, as a result of the August 29, 2011 report of the predecessor Commission on Judicial Compensation? Does the dollar amount approach \$400 million. Can you supply more exact figures?
- (19) Also, where can the Governor, Legislature – and public – find the current salary levels of the Judiciary's judges and justices? Would you agree that those salary levels are currently about \$75,000 higher than what appears in Article 7-B of the Judiciary Law, which has not been amended, at any time, since April 1, 2012 – the date the first phase of the salary increase recommendations of the Commission on Judicial Compensation's August 29, 2011 report took effect. And what has the Judiciary done, if anything, to alert the Legislature to amend Article 7-B so that no one is misled as to the heights to which judicial salaries have reached?
- (20) Also, what will be the increased salary levels of the Judiciary's judges and justices that will take effect on April 1, 2019, pursuant to the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report unless “modified or abrogated” by the Legislature or Governor before then? Where can the Governor, Legislature – and public – find that information?
- (21) Similarly, where can the Governor, Legislature – and public – find the monetary value of the non-salary compensation benefits that each state-paid judge and justice receives, in addition to salary – both currently and, after April 1, 2019, should the Legislature and Governor not “modif[y] or abrogate[e]” the salary increases for fiscal year 2019-2020 recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.
- (22) Does the Judiciary recommend that the Governor and Legislature allow the Commission on Legislative, Judicial and Executive Compensation's salary increase recommendations for fiscal year 2019-2020 to take effect – and on what basis?
- (23) As you know, immediately following the Commission on Legislative, Judicial and Executive Compensation's rendering of its December 24, 2015 report, CJA furnished then Chief Judge Nominee/Westchester District Attorney Janet DiFiore with correspondence<sup>4</sup> demonstrating that it was even more statutorily-violative, fraudulent, and unconstitutional than the

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<sup>4</sup> This correspondence starts with CJA's December 30, 2015 letter to then Chief Judge Nominee/Westchester District Attorney DiFiore 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?”. The succession of subsequent correspondence includes CJA's January 15, 2016 letter to Senate and Assembly majority and minority leaders – including chairs and ranking members of appropriate committees – entitled “IMMEDIATE OVERSIGHT REQUIRED” and CJA's February 2, 2016 e-mail entitled “Feb. 4<sup>th</sup> ‘Public Protection’ Budget Hearing: Questions for Chief Administrative Judge Marks”. These are Exhibits 37-44 to CJA's March 23, 2016 verified second supplemental complaint in the first citizen-taxpayer action.



predecessor August 29, 2011 report of the Commission on Judicial Compensation, on which it materially relies.

- (24) Did Chief Judge Nominee, later Chief Judge, DiFiore, ever deny or dispute the accuracy of that correspondence? How about you?
- (25) As you know, neither the Senate nor Assembly, by its Judiciary Committees or any other committee, has ever held an oversight hearing with respect to either the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation or the August 29, 2011 report of the Commission on Judicial Compensation. Does the Judiciary have no view on the subject?
- (26) As you know, as a result of Chief Judge DiFiore's willful failure and refusal to discharge any oversight responsibilities with respect to these two commission reports – and her complicity in the Legislature's willful failure and refusal to discharge oversight responsibilities with respect to these two commission reports – CJA filed, on March 23, 2016, a verified second supplemental complaint in its first citizen taxpayer action (#1788-2014) particularizing the facts and furnishing the relevant documents in support of three new causes of action: the thirteenth, fourteenth, and fifteenth, to void Chapter 60, Part E of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 report recommending judicial salary increases. Thereafter, on September 2, 2016, CJA embodied these three causes of action in a second citizen-taxpayer action (#5122-2016), naming Chief Judge DiFiore as a defendant "in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System", where they were the sixth, seventh, and eighth causes of action.
- (27) What steps have you and Chief Judge DiFiore taken to keep informed of the progress of the second citizen-taxpayer action to which Chief Judge DiFiore is a named defendant, upon whom the September 2, 2016 verified complaint was served on that date – where she, you and all the Judiciary's state-paid judges and justices have a HUGE and direct financial interest in the sixth, seventh, and eighth causes of action, as well as interests in the second cause of action challenging the constitutionality and lawfulness of the Judiciary budgets, including for the current fiscal year?
- (28) Do you dispute the accuracy of CJA's assertion, stated in its last year's written and oral testimony for the Legislature's January 30, 2018 and February 5, 2018 budget hearings that both citizen-taxpayer actions were "thrown" by fraudulent judicial decisions, upending ALL cognizable judicial standards to grant defendants relief to which it was not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*?
- (29) Would you agree that establishing that this is what happened – including with respect to the causes of action pertaining to the Judiciary's budgets and the judicial salary increases – can be verified by examining the court record?



- (30) In view of Chief Judge DiFiore’s “Excellence Initiative”, referred to at the outset of the Judiciary’s Executive Summary (p. i), as being her “highest priority” – with a goal of achieving “operational and decisional excellence in everything that we do” – would the Judiciary be willing to demonstrate how its “Excellence Initiative” works by evaluating the “decisional excellence” in the citizen-taxpayer actions in which it was interested, furnishing the Legislature with its findings of fact and conclusions of law with respect to the judicial decisions, particularly as relates to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases?
- (31) Do you agree that this is now the third year in a row that Governor Cuomo has not furnished the Legislature with any written “Commentary of the Governor on the Judiciary”, with recommendations pursuant to Article VII, §1 of the New York State Constitution?
- (32) Going back to the \$63,180,000 in “Reappropriations” in the “single budget bill” (pp. 1, 12-14) – are they properly designated as such – and have they been approved by the Court of Appeals and certified by the Chief Judge, as required by Article VII, §1?
- (33) According to the “Citizen’s Guide” on the Division of the Budget’s website,

“A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.”  
[https://www.budget.ny.gov/citizen/financial/glossary\\_all.html#r](https://www.budget.ny.gov/citizen/financial/glossary_all.html#r)

Can you identify what the reappropriations listed at pages 12-13 of the Judiciary’s “single budget bill” and totaling \$17,680,000, were for when originally appropriated? Why was this money not used? And what is it now purported to be reappropriated for?

- (34) Is the reason the Judiciary’s two-part budget presentation does not identify these unused appropriations because they are not properly reappropriations and should be returned to the public treasury?
- (35) Would you agree that the aforesaid reappropriations at pages 12-13 of the “single budget bill” are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2018, 2017, 2016, 2015, 2014 – which are the appropriations of the enacted budget bills pertaining to the Judiciary for those years. They furnish no specificity as to their purpose other than a generic “services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1...”; or “Contractual Services”.
- A. Can you explain how these reappropriations are consistent with State Finance Law §25:

“Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation. If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change.”

- B. Are these reappropriations consistent with Article VII, §7 of the New York State Constitution?

“No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation action; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.”

- C. Are they consistent with Article III, §16 of the New York State Constitution:

“No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.”

- D. How about the last three reappropriations at pages 13-14 of the “single budget bill” – these being the two \$20,000,000 “Aid to Localities” reappropriations (at pp. 13-14) and the five “Capital Projects” reappropriations of \$2,000,000, \$1,000,000, \$2,000,000, \$1,000,000, and \$500,000 (at p. 14)? Are they consistent with State Finance Law §25, with Article VII, §7, and with Article III, §16 of the New York Constitution?

- (36) The Judiciary’s “single budget bill” – which the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 reproduces, *verbatim*, as its judiciary portion – consists of a §2, containing a “Schedule” of appropriations, followed by a §3, which are reappropriations. The text directly beneath the §2 title “Schedule” reads:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other



major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.”

This same text was in the Judiciary’s “single budget bill” for fiscal year 2018-2019, which the Governor reproduced, *verbatim*, in his Legislative/Judiciary Budget Bill #S.7501/A.9501. Pursuant thereto, in fiscal year 2018-2019, did you, as Chief Administrative Judge, approve any increases or decreases in the amounts set forth in the enacted Budget Bill #S.7501/A.9501 – or are you yet going to do so in the remainder of this fiscal year? If so, what are the particulars and why does the Judiciary’s proposed budget for fiscal year 2019-2020 fail to even identify this reshuffling of appropriations in fiscal year 2018-2019?

- (37) Can you explain why notwithstanding the September 24, 2015 report of former Chief Judge Lippman’s Commission on Statewide Attorney Discipline recommending 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” (at p. 57), the Judiciary’s proposed appropriation of \$15,435,741 for fiscal year 2019-2020 is almost \$80,000 less than the \$15,514,625 appropriation for fiscal year 2018-2019, which was LESS than its 2011-2012 request of \$15,547,143 – and not appreciably greater than the \$14,859,673 it was when the Commission on Statewide Attorney Discipline rendered its September 24, 2015 report.
- (38) The Senate and Assembly Judiciary Committees held no oversight hearing to review the Commission on Statewide Attorney Discipline’s September 24, 2015 report, is that correct? How about oversight hearings of the court-controlled attorney disciplinary system, at which the public was given notice and opportunity to testify and submit evidence? Do you know when such hearings were held by the Senate and Assembly Judiciary Committees to review the efficacy and fairness of the court-controlled attorney disciplinary that the state is funding – and what findings of fact and conclusions of law were made based thereon?
- (39) How about Senate and Assembly Judiciary Committee oversight hearings of the Commission on Judicial Conduct, at which the public was given notice and the opportunity to testify and submit evidence? Do you know when they were last held – and what findings of fact and conclusions of law were made based thereon? Although the Commission is not funded through the Judiciary budget, it is among the agencies within the Legislature’s “public protection” budgeting. Surely, Chief Judge DiFiore’s “Excellence Initiative” recognizes the Judiciary’s obligation to ensure that the Commission on Judicial Conduct is adequately funded and properly functioning, does it not? What advocacy, if any, has it undertaken, with respect to funding, which in this year’s State Operations Budget Bill #S.1500/A.2000 (at p. 447) is \$5,696,000. And what has it done to advance an independent auditing of the Commission on Judicial Conduct’s handling of judicial misconduct complaints – the necessity of which was recognized nearly 30 years ago, in the 1989 report of the then state Comptroller Edward Regan, entitled Commission on Judicial Conduct – Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, whose press release was equally blunt: “COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT”.

- (40) Doubtless in the nearly three years since Chief Judge DiFiore announced her “Excellence Initiative”, many members of the public have complained to her about the lawlessness that prevails in the judiciary, resulting from a Commission on Judicial Conduct that is worthless, as well as the worthlessness of entities within the judiciary charged with oversight, including the court-controlled attorney disciplinary system and the Judiciary’s Office of Inspector General. What has she done to verify the situation?
- (41) By the way, the Judiciary’s proposed budget for fiscal year 2019-2020 (at p. 60) seeks \$1,466,580 for the Office of Inspector General, is that correct? Does the Judiciary’s Office of Inspector General render annual reports of its activities to the Office of Court Administration? Will the Judiciary produce these or similar reports as to the number, type, and disposition of complaints received by its Inspector General? Is the Office of Court Administration unaware of evidence of the corruption of its Office of Inspector General, as for instance, its failure and refusal to investigate record tampering in the declaratory judgment action, *CJA v. Cuomo, et al* (Bronx Co. #302951-2012; NY Co. #401988-2012), and the misfeasance and nonfeasance of the New York County Clerk and his staff in connection therewith – whose consequence was to stall the case and prevent prompt determination of the statutory violations, fraud, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 report – which, to date, have yet to be declared.