

QUESTIONS FOR CHIEF ADMINISTRATIVE JUDGE LAWRENCE MARKS
at the Legislature's February 4, 2016 "Public Protection" Budget Hearing

*Supplementing the Center for Judicial Accountability's January 28, 2016 letter to the Chairs and Ranking Members of the Legislature's Fiscal & Judiciary Committees –
"Your Scrutiny of the Judiciary's two-part budget and of the Governor's Budget Bill #S.6401/A.9001, embodying the Judiciary's discrepant "single budget bill"¹*

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JUDICIARY'S PROPOSED BUDGET FOR FISCAL YEAR 2016-2017

Examination of the Judiciary's proposed budget for fiscal year 2016-2017 must begin with its total cost, especially as it is not contained within the budget – and the Governor's Commentary, his Division of the Budget website, and the Legislature's "White", "Blue", "Yellow" and "Green" Books diverge as to the relevant figures.

Certainly, too, ascertaining the total cost of the Judiciary's proposed budget and its percentage of increase over last year are additionally essential as the Governor's Commentary on the Judiciary Budget "urge[s] the Legislature and Judiciary to reduce the Judiciary's budget commensurate with the State's spending growth level of 2 percent."

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PROPOSED QUESTIONS

- (1) By two memoranda dated December 1, 2015, you transmitted to the Governor and Legislature the Judiciary's two-part budget for fiscal year 2016-2017. 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 identifies the cumulative dollar amount of the budget part it transmits or of the two-part budget presentation taken together, is that correct? Why is that?

- (2) A single Executive Summary accompanies the Judiciary's two-part proposed budget, contained in the proposed budget presentation of operating expenses. It consists of a 5-¼ page narrative followed by four pages of statistical tables. Neither the Executive Summary

¹ CJA's January 28, 2016 letter to the Chairs & Ranking Members of the Legislature's Fiscal & Judiciary Committees and its enclosed January 26, 2016 letter to Chief Judge DiFiore are posted on CJA's website, www.judgewatch.org, accessible via the prominent homepage link "NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!" These "Questions for Chief Administrative Judge Lawrence Marks" will also be posted there.

nor the statistical tables furnish a cumulative dollar amount of the Judiciary's proposed budget, is that correct? Why is that?

- (3) Each of the two parts of the proposed budget contain 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 and approval for the part pertaining to operating expenses each state that they are certifying and approving that "the attached schedules" are "the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2016". Which are "the attached schedules" being referred-to?
- (4) The Judiciary also furnished "a single budget bill", so-described by the memorandum transmitting the "General State Charges". When was the "single budget bill" transmitted?
- (5) This "single budget bill" also did not identify the cumulative dollar total of the Judiciary's proposed budget, is that correct? Why is that?
- (6) What is the cumulative dollar total of the "single budget bill"? Which are the specific figures in the bill that you added to arrive at that figure?² Is this the same cumulative dollar total as would be produced by adding the various figures in the Judiciary's two-part budget presentation?
- (7) Do you agree that there is a disparity of \$73,460,000 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"? 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 \$33,760,000 "Reappropriations" whose tally appears at page 1 of the "single budget bill" and whose "Schedule" appears at its pages 11-12 under the heading "State Operations and Aid to Localities – Reappropriations 2016-2017"?
- (9) The Judiciary's operating expense budget presentation identifies only a single reappropriation – a "Capital Project" for the "Court Officer Academy in Kings County" (at p. 144), isn't that correct? And isn't it also correct that the amount of the original appropriation is not specified, nor the amount of the reappropriation? All it says is: "Funds needed for this project are estimated at \$51 million? (at p. 144).
- (10) Is this "Capital Project" reappropriation of unspecified amount (at p. 144) the same as the two untallied reappropriations of \$33,700,000 and \$6,000,000 appearing at page 13 of the "single budget bill" under the heading "Capital Projects – Reappropriations 2016-2017"?

² Is it the tally of "Appropriations" plus "Reappropriations" at page 1, plus "General State Charges" at page 12? What about the "Capital Projects-Reappropriations" at p. 13?

And why are these not included in the tally of \$33,760,000 “Reappropriations” at page 1 of the “single budget bill” – which would then bring their total to \$73,460,000?

- (11) Are the “\$33,760,000 in tallied “Reappropriations” in the “single budget bill” (pp. 1, 11-12) 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? What about the “Capital Project” reappropriation of unspecified amount at page 144 of the Judiciary’s operating budget – or as specified at page 13 of its “single budget bill?”³
- (12) 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

Can you identify what the various reappropriations, specified at pages 11-12 of the Judiciary’s “single budget bill” as totaling \$33,760,000, were for when originally appropriated? Why was this money not used? And what is it now purported to be reappropriated for?

- (13) Is the reason the Judiciary’s two-part budget presentation does not identify these \$33,760,000 in unused appropriations because they are not properly reappropriations and should be returned to the public treasury?
- (14) Would you agree that except for the last three reappropriations in the “single budget bill”, all the bill’s listed reappropriations (at pp. 11-13) are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2015, 2014, 2013, 2012, 2010 and also chapter 51, section 3 of the laws of 2015 – which are the enacted budget bills pertaining to the Judiciary for those years, its appropriations and reappropriations, respectively. 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”.

³ That the “Capital Project” reappropriation at page 144 of the Judiciary’s budget is unspecified in amount means there was no “itemized estimate” for approval/certification by the Court of Appeals and Chief Judge. As such, CJA’s January 26 and January 28, 2016 letters for the striking of \$33,760,000 of the Judiciary’s “reappropriations” for violation of Article VII, §1 should be enlarged to the striking of ALL \$73,460,000 of Judiciary “reappropriations” on that ground.

- 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 12-13 of the “single budget bill” – these being the \$20,000,000 “Aid to Localities” reappropriation (at p. 12) and the untallied two “Capital Projects” reappropriations of \$33,700,000 and \$6,000,000 (at p. 13)? Are they consistent with State Finance Law §25, with Article VII, §7, and with Article III, §16 of the New York Constitution?

- (15) According to the first page of the Judiciary’s “2016-2017 Budget Request Executive Summary”, the Judiciary has “faced significant, non-discretionary cost escalation without corresponding increases in funding” due to the fiscal crisis. Among the cited costs it has borne, “judicial salary adjustments implemented pursuant to the recommendations of the 2011 Special Commission on Judicial Compensation” (at fn. 1). Weren’t all three phases of

the judicial salary increases recommended by the Commission on Judicial Compensation funded through reappropriations – at least in their initial year?

- (16) After the initial year of funding *via* reappropriations for each of the three phases of the judicial salary increases, wasn't the cost of each phase then shifted to the Judiciary's two-part budget "appropriations" requests? Didn't the Judiciary thereafter embed the cost of the salary increases in its budget of "operating expenses" and embed the cost of salary-based, non-salary benefits, such as pensions and social security, in its budget of "general state charges"?
- (17) The Judiciary's "single budget bill" – which the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 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 2015-2016, reproduced, *verbatim*, as the judiciary portion of the Governor's Legislative/Judiciary Budget Bill #S.6351/A.8551. Pursuant thereto, did you, as Chief Administrative Judge, approve any increases or decreases in the amounts set forth in the enacted Budget Bill #S.6351-A/A.8551-A? If so, what are the particulars and why does the Judiciary's proposed budget for fiscal year 2016-2017 fail to even identify this reshuffling of appropriations in fiscal year 2015-2016?

- (18) And why is it that the Judiciary's proposed budget for fiscal year 2016-2017 does not identify that the Judiciary was required to cut its budget request for fiscal year 2015-2016 by approximately \$9 million to bring it closer to, or within, the 2% cap. Indeed, why does the Executive Summary make it appear as if no reductions were made to the Judiciary's budget for fiscal year 2015-2016?
- (19) The final paragraph of the Judiciary's Executive Summary (at p. v) pertaining to "significant cost increases" in fiscal year 2016-2017 includes an annotating footnote 4, which states:

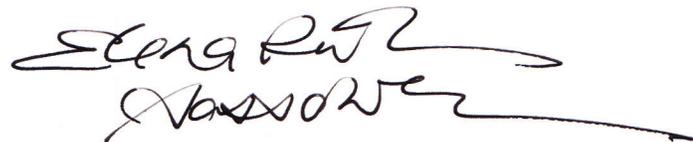
"There is also the currently unknown cost of a salary adjustment for judges that will be recommended by the Commission on Legislative, Judicial and Executive Compensation, to take effect on April 1, 2016. The recommendations of the Commission with respect to judicial compensation are due by December 31, 2015. The recommendations of the Commission with respect to judicial compensation are due by December 31, 2015, and

therefore the cost of the recommended adjustment is not now known and is not included in this request. If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 1, 2016 salary adjustment.”

On December 24, 2015, the Commission on Legislative, Judicial and Executive Compensation rendered its Report recommending judicial salary increases. Pursuant to the Commission statute, the first phase will take effect automatically on April 1, 2016 unless modified or abrogated by the Legislature before then. What is the Judiciary’s recommendation to the Legislature with respect to that Report?

- (20) Is the Commission’s December 24, 2015 Report in conformity with the commission statute, and is it substantiated by any finding, let alone evidence, as to the inadequacy of compensation and non-salary benefits? Where are your findings of fact and conclusions of law with respect to the particularized showing, made by the non-partisan, non-profit citizens’ organization, Center for Judicial Accountability, Inc. (CJA), in correspondence furnished to Chief Judge DiFiore and yourself in advance of this hearing, that the December 24, 2015 report is statutorily-violative, fraudulent, and unconstitutional – and that the ONLY recommendation that the Commission could lawfully make was “for the nullification/voiding of the [Commission on Judicial Compensation’s] August 29, 2011 Report AND a ‘claw-back’ of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto”?
- (21) By the way, what was the dollar cost of each of the three phases of the judicial salary increase recommended by the Commission on Judicial Compensation’s August 29, 2011 Report, both the increased salary costs and the increased costs of salary-based, non-salary benefits. Isn’t it true that these were not only not furnished by the August 29, 2011 Report, but never certified by any of the Judiciary’s budgets implementing them. And what is the cumulative dollar cost, to date, of those fully-implemented judicial salary increase recommendations, including their salary-based, non-salary benefits?
- (22) As for the Commission on Legislative, Judicial and Executive Compensation’s December 24, 2015 Report, where did it get the figure of “approximately \$26.5 million” for the first phase of its judicial salary increase? Did the Judiciary furnish that estimate and does such cost projection include all covered judges and the additional costs that result from non-salary benefits, such as pensions and social security, whose costs to the state are derived from salary?
- (23) Of course, increasing judicial salaries also increases the salaries of district attorneys, because they are statutorily-linked. The December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation does not identify that. Did the Judiciary ever alert the Commission to that fact? Are county clerk salaries also statutorily-linked to judicial salaries? Are there any other public officers and/or employees? And did the Judiciary so-alert the Commission?

- (24) 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 budget for fiscal year 2016-2017 essentially seeks no increase for its "Attorney Discipline Program"?
- (25) By the way, the Judiciary's proposed budget for fiscal year 2016-2017 (at p. 60) seeks \$1,411,199 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 aware 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, *Center for Judicial Accountability, Inc. v. Cuomo, et al*, and the misfeasance and nonfeasance of the New York County Clerk and his staff in connection therewith – whose consequence has been to stall the case and prevent determination of the statutory violations, fraud, and unconstitutionality of the Commission on Judicial Compensation's August 29, 2011 Report?
- (26) How many additional Family Court judgeships are needed to rectify the catastrophic and constitutionally unacceptable caseload conditions described by the Senate Judiciary Committee's 2009 report "*Kids and Families Still Can't Wait: The Urgent Case for New Family Court Judgeships*". Wouldn't the Legislature's discharge of its duty to override the the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation free up ample funds for that purpose?



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