

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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6 pages

January 27, 1998

John Eiseman, Deputy Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: Public's Right of Access to Court of Claims Judge Andrew
O'Rourke's Waiver Request and Right to Oppose it

Dear Mr. Eiseman:

Following up your phone call, this letter constitutes the Center for Judicial Accountability's written request for a copy of Andrew O'Rourke's request for a waiver of the state law that would restrict him from obtaining an annual state pension of \$80,000 on top of his \$113,000 salary as a State Court of Claims judge.

According to the January 23, 1998 Gannett article, "State Judge O'Rourke Files Request to Double Dip" -- a copy of which is enclosed -- such waiver request is being reviewed by the Office of Court Administration. We, therefore, also request information as to the OCA's review procedures, including any procedures for citizen participation in its evaluation process.

Since you stated you were unfamiliar with the Center for Judicial Accountability, Inc. (CJA), we enclose a copy of our informational brochure, together with a copy of our January 13, 1998 two-page hand-out to the New York State Senate reflecting the nature and seriousness of our citizen opposition to Mr. O'Rourke's confirmation to the Court of Claims.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

Ex "A"

Local News

State Judge O'Rourke files request to double dip

By Kyle Hughes

Albany Bureau

ALBANY — Former Westchester County Executive Andrew P. O'Rourke has asked the state court system for a waiver to collect an annual state pension of \$80,000 on top of his \$113,000 judicial salary, officials confirmed yesterday.

"We have received a request," said David Bookstaver, spokesman for the Office of Court Administration. "We are in the process of reviewing that request. No determination have been made as yet."

O'Rourke, the 1986 Republican candidate for governor, was nominated by Gov. George Pataki to become a state judge after his retirement as county executive.

Though O'Rourke had no judicial experience and had not served as a private lawyer for more than a decade, he was confirmed last week by the state Senate to serve as a state Court of Claims judge. The Court of Claims hears lawsuits filed against state government.

He put in the double-dip request this week, Bookstaver said.

State law restricts the ability of public employees to collect two checks if they retire from one job and start work at another but allows exceptions.

The law restricts the amount of money retirees who go back to work for government can earn while collecting a pension and bars them from working for their former employer, unless a special permission is granted.

In O'Rourke's case, he requires the permission of the state court system.

O'Rourke is entitled to collect 64 percent of his final average salary of \$124,000.

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Tuesday, January 13, 1998

WHY YOU MUST VOTE AGAINST SENATE CONFIRMATION OF ANDREW O'ROURKE TO A \$113,000 COURT OF CLAIMS JUDGESHIP

1. The nomination of Andrew O'Rourke is *not* properly before you. Under Executive Order #10, ¶2(d), the State Judicial Screening Committee, which reviews qualifications of candidates to the Court of Claims, is *expressly* required to render "written reports" on the qualifications of candidates it recommends to the Governor as "highly qualified". These written reports are *expressly* required to be made "publicly available" "upon the announcement by the Governor of [the] appointment". Yet, in the month since Mr. O'Rourke's December 12, 1997 nomination was announced, neither the Governor's office nor the State Judicial Screening Committee has made any written report on Mr. O'Rourke's qualifications "publicly available" -- although we have repeatedly requested it. In a December 27th Gannett article, "*Judicial Reform Group Challenges O'Rourke Judgeship*", describing our written request for the report, a Governor's spokesman is quoted as saying "I don't think there is a report". **IF THERE IS NO WRITTEN COMMITTEE REPORT ON MR. O'ROURKE'S QUALIFICATIONS -- AND NONE HAS BEEN PRODUCED -- MR. O'ROURKE'S NOMINATION IS A NULLITY AND THERE IS NOTHING FOR THE SENATE TO CONFIRM.**

2. **THERE IS NO EVIDENCE THAT THE STATE JUDICIAL SCREENING COMMITTEE COMPLIED WITH OTHER EXPRESS REQUIREMENTS OF EXECUTIVE ORDER #10.** This includes that it "actively recruit" a field of candidates, and not determine any candidate to be "highly qualified" unless by "majority vote of all members of the committee". Executive Order #10, ¶2(c) *expressly* bars the Committee from passing on a candidate's qualifications "until after a thorough inquiry has been made by the committee and its staff". The State Judicial Screening Committee has ignored our written requests that it substantiate compliance with these *express* requirements of Executive Order #10 and with *express* provisions of the Governor's "Uniform Rules" -- and has not even baldly purported to have complied therewith. The Governor's office has, likewise, ignored these reasonable requests.

3. **THERE IS DISPOSITIVE AND INDEPENDENTLY-VERIFIABLE EVIDENCE THAT THE STATE JUDICIAL SCREENING COMMITTEE FAILED TO CONDUCT A "THOROUGH INQUIRY" INTO MR. O'ROURKE'S QUALIFICATIONS, AS REQUIRED.** Six years ago, Mr. O'Rourke's federal judgeship were derailed when our citizens organization presented to the U.S. Senate Judiciary Committee a 50-page written report of Mr. O'Rourke's qualifications. Supported by a 224-page compendium of exhibits, our May 1992 written report documentarily established that Mr. O'Rourke was "thoroughly unfit" for any judicial office. We did this by investigating and analyzing Mr. O'Rourke's *own* representations of his credentials, as he set them forth in written responses to a questionnaire that the U.S. Senate Judiciary Committee required him to complete. What we discovered were more lies than a person has fingers and toes.

The centerpiece of our report was our analysis of Mr. O'Rourke's response to the Committee's most pivotal question for determining the legal competence of a judicial candidate, such as he, with *no* prior judicial experience: the question requiring him to describe his "ten most significant litigated matters which [he] personally handled". Mr. O'Rourke responded with only three cases, giving reasons for presenting less than the requisite ten which we showed to be sham. As to those three, our investigation of the *actual* case files and our interviews of those having *first-hand personal knowledge* revealed that Mr. O'Rourke's description of the cases -- and his participation therein -- was, over and over, false and misleading and that the true facts revealed him to have been an incompetent and unethical practitioner when he practiced law -- which was not since 1983. Indeed, one of the three cases that Mr. O'Rourke identified as among his "most significant" was actually

generated by his incompetence and insensitivity to conflict of interest.

Our report additionally demonstrated that the favorable ratings Mr. O'Rourke received from the American Bar Association and the Association of the Bar of the City of New York -- bare-bones ratings *unaccompanied by any report* -- were *not* the product of any meaningful investigation.

Had the State Judicial Screening Committee conducted any "thorough inquiry" into Mr. O'Rourke's qualifications, as it was required to do, it would have uncovered the existence of our 1992 report on Mr. O'Rourke's judicial qualifications and exposed the baselessness of any claim that Mr. O'Rourke possesses the competence, integrity, and temperament requisite for judicial office. Nor did the State Judicial Screening Committee *ever* contact us -- even though we had given it notice that our citizens organization is a resource for verifiable documentary information on candidates seeking judicial office, particularly those in Westchester, where we are based and our web-site, which we likewise brought to its attention, identifies our 1992 report on Mr. O'Rourke's qualifications. This, in addition to the fact that the Governor's office was repeatedly notified, as early as two years ago, of our interest in and concern over any consideration of Mr. O'Rourke for a state judgeship.

4. THERE IS EVIDENCE THAT MR. O'ROURKE OBTAINED HIS "HIGHLY QUALIFIED" RATING BY FRAUD, TO WIT, BY FAILING TO DISCLOSE AND/OR BY MISREPRESENTING MATERIAL FACTS PERTINENT TO HIS QUALIFICATIONS. The State Judicial Screening Committee has ignored our written request for a blank copy of the questionnaire it requires candidates -- such as Mr. O'Rourke -- to complete as part of their screening. Mr. O'Rourke, likewise has ignored our request that he provide us with a copy of the blank form -- or that he waive confidentiality and disclose, in whole or in part, his responses to such questionnaire, if in fact he did complete a questionnaire. As was the case with the questionnaire used by one of Governor Cuomo's judicial screening committees, Mr. O'Rourke may have been *expressly* required to identify whether he had been interviewed and/or rated by any group in connection with any other judicial office. If so, Mr. O'Rourke had an affirmative obligation to have notified the State Judicial Screening Committee of our 1992 rating that he was "thoroughly unfit for judicial office", as substantiated by our written report. In any event, the December 22, 1997 Gannett article, "*O'Rourke Could Be Wearing Judge's Robes in January*", makes plain that the State Judicial Screening Committee had reservations that Mr. O'Rourke had not practiced law for 15 years but that he allayed its concerns by "remind[ing] it that he had been favorably rated by the ABA and City Bar in connection with his federal judgeship. From our 1992 report, Mr. O'Rourke well knew that those ratings had been exposed as fraudulent.

5. MR. O'ROURKE HAS IGNORED OUR WRITTEN REQUEST THAT HE SUBSTANTIATE THE HIGHLY-QUALIFIED RATING HE RECEIVED FROM THE STATE JUDICIAL SCREENING COMMITTEE. Such written request also invited Mr. O'Rourke to deny or dispute the showing in our 1992 report that he is "thoroughly unfit for judicial office" and his obligation to have apprised the State Judicial Screening Committee that the report had demonstrated his ABA and City Bar approval ratings were fraudulent.

6. THE STATE SENATE JUDICIARY COMMITTEE HAS KNOWINGLY AND DELIBERATELY VIOLATED THE MOST BASIC PROCEDURES IN PROCESSING MR. O'ROURKE'S NOMINATION. These procedures include interviewing those opposing the nominee to ascertain the nature and seriousness of their opposition. This is particularly essential because the Committee does *not* hold confirmation "hearings" for Court of Claims judgeships. Nevertheless, although we notified the Senate Judiciary Committee of our strenuous opposition to Mr. O'Rourke's nomination -- on the *first* business day after the nomination was announced, to wit, December 15, 1997 -- it has *not* interviewed us. Nor has it responded to *any* of our informational requests about its review procedures and for publicly-available information about Mr. O'Rourke's nomination. This, despite several subsequent phone calls and letters from us and its receipt of copies of our substantive correspondence, *inter alia*, (1) to the Governor's office, calling upon the Governor to withdraw the nomination; (2) to the State Judicial Screening Committee, calling upon it to retract its "highly qualified" rating of Mr. O'Rourke; (3) to Mr. O'Rourke calling upon him to substantiate the rating. etc. The Committee has even failed to confirm whether it retained the copy of our 1992 report, which we provided it four years ago in conjunction with our testimony against a Court of Appeals nominee or requires another copy.