

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583

E-Mail: cja@judgewatch.org

Website: www.judgewatch.org

Elena Ruth Sassower, Director
Doris L. Sassower, President

June 23, 2011

TO: Governor Cuomo's Appointees to New York's Judicial Compensation Commission
William C. Thompson, Jr., Chairman
Richard Cotton, Member
William Mulrow, Member

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

RE: (1) Bringing Public Accessibility, Input, and Accountability to the Judicial Compensation Commission – Facilitated by the Open Meetings Law & Executive Order #3; and
(2) Chairman Thompson's Disqualifying Conflict of Interest, Requiring his Resignation

On June 10, 2011, Governor Cuomo released an announcement that you were his three appointees to the seven-member Judicial Compensation Commission and that he had designated "Bill Thompson" as its Chair.

In accepting such appointments, were you aware that two a half weeks earlier, on May 23, 2011, our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), had written Governor Cuomo about his failure to make his appointments to the Commission? We described the Commission as "inoperative and inaccessible to the public" – a characterization continuing to this date: Day 84 of the Commission's statutorily-limited 150-day existence on which it still has no telephone number, no fax number, no e-mail address, and, apparently, no office or staff.

Enclosed is our May 23rd letter to the Governor, additionally addressed to the three leaders of New York's other two government branches who had each previously made their Commission appointments: Temporary President of the Senate Skelos, Assembly Speaker Silver, and Chief Judge Lippman – with copies to their four Commission appointees, Robert Fiske, Jr., Kathryn S.

* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

Wylde, James Tallon, Jr., and Mark Mulholland. We received no response from any of them.

We also received no response from any of New York's other public officers who were indicated recipients of our May 23rd letter: Senate Minority Leader Sampson, Senate Judiciary Committee Chairman Bonacic, Senate Judiciary Committee Ranking Member Hassell-Thompson, and the Senate Judiciary Committee's 21 other members – notwithstanding the letter's content largely concerned their nonfeasance, including by its "RE" clause:

"(2) Evidence Disentitling NYS's Judiciary to Increased Compensation, Presented and Proffered by the Public at the NYS Senate Judiciary Committee's June 8, 2009 and September 24, 2009 Public Hearings – as to which There Has Been No Investigation, No Findings, and No Committee Report." (CJA's May 23rd letter, at p. 1, underlining in the original).

Meantime, on June 16th, Reuters reported, in an article by Jennifer Golson entitled "*New York judges ask for 41-percent raise, retroactive pay*":

"Commission chairman Bill Thompson said the commission is still in the early stages of its work. 'We have not established an agenda or a timetable yet,' he said, but added that the members will meet within the next two weeks to start planning a schedule and determine what information they will need."

We request that our May 23rd letter be on the table for discussion by the Commissioners at the Commission's upcoming meeting – as its content is THRESHOLD. Indeed, unless the Commission disagrees with the proposition that corruption and lawlessness by New York's state judiciary, infesting its supervisory and appellate levels, would – *without more* – disentitle it to ANY boost in judicial compensation, the Commission's "FIRST order of business" must be – as the May 23rd letter stated (at p. 4) – a request to Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman for their "assistance in securing factual findings as to [the] testimony and documentation" the public presented and proffered to the Senate Judiciary Committee in connection with its 2009 hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system – as to which, as stated in our May 23rd letter, "There Has Been No Investigation, No Findings, and No Committee Report."

On this THRESHOLD corruption issue, Chairman Thompson suffers from disqualifying conflict of interest, requiring his resignation from the Commission. His father, former Appellate Division, Second Department Justice William C. Thompson, was a key participant in the corruption of our judiciary – including of the Commission on Judicial Conduct, of which he was its highest-ranking judicial member for many years, and of the attorney disciplinary system, which he and his fellow Appellate Division justices utilized for ulterior, retaliatory purposes as an ongoing pattern and practice. The evidence of this, embodied in four lawsuits we brought, two against the Appellate Division, Second Department justices, including Justice

Thompson, personally, and two against the Commission on Judicial Conduct, was to have been submitted by CJA at the Senate Judiciary Committee's aborted December 16, 2009 public hearing. This can be *readily-verified* from the written statement CJA drafted for that hearing and subsequently provided to Senate Judiciary Committee Member Adams to reinforce his suggestion, made at the September 24, 2009 hearing, that a task force be formed to examine the scathing testimony and evidence the Committee was receiving.¹

Our December 16, 2009 statement describes the record of our four lawsuits as:

“perfect ‘paper trails’ establishing, *prima facie*, how New York state judges and the federal courts, aided and abetted by New York’s Attorney General, obliterated ALL cognizable legal standards in fraudulent judicial decisions that falsified and omitted the material facts and controlling law to protect and perpetuate New York’s verifiably-corrupt attorney disciplinary system and Commission on Judicial Conduct.” (CJA’s December 16, 2009 statement, at p. 3, underlining, italics, and capitalization in the original).²

A link to this December 16, 2009 statement appears on our website, www.judgewatch.org, on the webpage indicated by our May 23rd letter (at p. 3) as devoted to the Senate Judiciary Committee’s 2009 hearings. It opens to a further webpage which not only posts the statement, but the primary-source record documents that were to be submitted to the Senate Judiciary Committee in substantiation.

That link will now be included with this letter on CJA’s newly-created webpage “Bringing Transparency, Evidence, & Public Accountability to the One-Sided, Media-Created View (Swallowed Whole from the Legal-Judicial Establishment) that NY Judges are Underpaid & Entitled to a Raise”, accessible *via* the top panel “Latest News”. To further assist Chairman Thompson – and the other Commissioners – in recognizing that he must resign from the Judicial Compensation Commission, the succession of judicial misconduct complaints we filed with the Commission on Judicial Conduct against and involving his father – and which were exhibits to our two lawsuits against it – will now be highlighted in bold on the webpage and identify Justice Thompson’s name in parentheses.

¹ See page 3 of CJA’s May 23, 2011 letter – and its annotating footnote 2.

² Highlighting the critical importance of the record in evaluating judicial decisions – and that judges slant, misstate, and make up facts to fit the outcomes they desire in the cases before them – is the 2009 law review article “*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*”, 73 Albany Law Review 1), by Gerald Caplan: “assessment is not possible without access to the record” (at p. 3); “Performance assessment cannot occur without close examination of the trial briefs, oral argument and the like...” (at p. 53).

As CJA's May 23rd letter further identified (at p. 3) that the Commission on Judicial Compensation is empowered to "hold public hearings" and that we would be requesting that it do so:

"to ensure that its work is informed by evidence-based facts as to the supposed quality of our state judges entitling them to increased compensation, including the quality of those judges who have complained that they are underpaid",

this letter constitutes that formal request.

Finally, we have verified with New York's Committee on Open Government (518-474-2518) that the Judicial Compensation Commission is subject to the Open Meetings Law. This means that ALL Commission meetings – including its upcoming meeting to set an agenda, timetable, and what information it will need – must be open to the public, with advance notice to the public and news media of the time and place, and, further, that minutes must be taken and made publicly available. Indeed, under former Governor Spitzer's Executive Order #3 "Promotion of Public Access to Government Decisionmaking" —which the Committee on Open Government informed us also applies – the Commission's meetings are required to be videoed and broadcast on the internet.

To facilitate public access to the Commission's meeting notices, meeting minutes, and videocasts, CJA requests that the Commission establish a website – and that it post relevant background materials, such as the FULL record of the judiciary's lawsuits underlying the Court of Appeals' self-serving, constitution-repudiating February 23, 2010 decision on judicial compensation³, as well as ALL submissions the Commission receives on the judicial compensation issue. This would include the 247-page report by the Coalition of New York State Judicial Associations, requesting a 41% pay increase and retroactive pay, reported by the June 16th Reuters article.

Despite phone messages for the report on June 20th, left on the voice mail of Coalition organizer Brooklyn Family Court Judge Daniel Turbow (347- 401-9870) and with the law clerk of the report's author, Albany Family Court Judge W. Dennis Duggan (518-285- 8681), they have not furnished us with a copy. Fortunately, the report has since been posted on the internet by Reuters. Hopefully, it will also be posting this letter and our May 23rd letter, after writing a story about their content – and about CJA's People's Coalition of Taxpayers Opposed to Pay Raises for New York's Judges.

³ The Court of Appeals' flagrant self-interest and disregard for the New York State Constitution was shockingly evident at the January 12, 2010 oral argument of these lawsuits in its exchange with Richard H. Dolan, Esq., counsel for the Governor and Legislature. The video is posted on CJA's website on our above-indicated newly-created webpage.

Thank you.

A handwritten signature in black ink, appearing to read "Jennifer Golson". The signature is written in a cursive style with a long horizontal line extending to the right.

Enclosures: CJA's May 23, 2011 letter
"New York judges ask for 41-percent raise, retroactive pay", Reuters,
June 16, 2011, by Jennifer Golson

cc: Other Appointed Members of the Judicial Compensation Commission:
Robert Fiske, Jr.; Kathryn S. Wylde; James Tallon, Jr.; Mark Mulholland
Governor Andrew M. Cuomo
Temporary Senate President Dean G. Skelos
Assembly Speaker Sheldon Silver
Chief Judge Jonathan Lippman
Senate Minority Leader John L. Sampson
Senate Judiciary Committee
Chairman John J. Bonacic
Ranking Member Ruth Hassell-Thompson
The Committee's 21 Other Members – including Senator Eric Adams
Witnesses at the 2009 Senate Judiciary Committee Hearings
New York Committee on Open Government
Richard H. Dolan, Esq.
Jennifer Golson, Reuters
Other Press

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May 23, 2011

TO: Andrew M. Cuomo, Governor of the State of New York
Dean G. Skelos, Temporary President of the New York State Senate
Sheldon Silver, Speaker of the New York State Assembly
Jonathan Lippman, Chief Judge of the State of New York

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

RE: (1) NYS's Commission on Judicial Compensation – Inoperative & Inaccessible to the Public;
(2) Evidence Disentitling NYS's Judiciary to Increased Compensation, Presented and Proffered by the Public at the NYS Senate Judiciary Committee's June 8, 2009 and September 24, 2009 Public Hearings – as to which There Has Been No Investigation, No Findings, and No Committee Report.

On December 10, 2010, lame-duck Governor David Paterson signed into law legislation he had submitted to the lame-duck Legislature on November 29, 2010, which it passed that very night, with no public input or true deliberative process, creating a Commission on Judicial Compensation to potentially hike compensation for New York State judges¹

The law fixes April 1, 2011 as the date for the Commission's establishment, with the date of its dissolution being not later than 150 days thereafter, upon submission of a report to the Governor, Legislature, and Chief Judge containing its "findings, conclusions, determinations and recommendations". Such recommendations "have the force of law", unless modified or abrogated by statute prior to April 1st of the year to which the recommendations apply.

¹ Governor Program No. 333; Assembly Bill A42010; Senate Bill S68010.

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Of the Commission's seven members, the Governor appoints three, the Temporary President of the Senate appoints one, the Assembly Speaker appoints one, and the Chief Judge appoints two. From these seven, the Governor designates the chair.

On April 14, 2011, unable to find contact information for the Commission and aware of Chief Judge Lippman's appointment to the Commission of Robert Fiske, Jr. and Kathryn S. Wylde, which he announced in his February 15, 2011 State of the Judiciary address, I telephoned the Office of Court Administration. It had no phone number or other contact information for the Commission. Four days later, its counsel's office called me back, stating that the Commission didn't have an "actual office", didn't have any staff, and was "still being set up". It gave me the names of only two other Commission members: John R. Dunn and Milton Mollen – stated to be appointees of the Governor.

As of this date – 53 days into the Commission's 150-day existence – it appears that the Commission still doesn't have an "actual office", still doesn't have any staff, and is still "being set up". Indeed, neither the internet nor directory assistance has any contact information for the Commission. This includes directory assistance for New York State government: 518-474-2121.

On Friday, May 20th, upon telephoning Governor Cuomo's office, I learned that the Governor has not made any appointments to the Commission, nor, by reason thereof, designated its chair. Thereupon calling the legislature, I learned that Assembly Speaker Silver did not make his appointment to the Commission until April 29th – appointing James Tallon, Jr., unaccompanied by any press release or other statement. Likewise no press release or statement accompanied the appointment of Mark Mullholland by Temporary Senate President Skelos on February 14th.

In determining the adequacy of judicial compensation, the law charges the Commission with taking "into account all appropriate factors". Surely you would agree that topping the list of "appropriate factors" would be evidence that New York's state judiciary is, at all levels, pervasively corrupt and lawless. As to this, our New York-based nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), intends to make a FULLY-DOCUMENTED presentation, vigorously opposing any increase in judicial compensation until mechanisms are in place and functioning to remove a multitude of miscreant judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of "judicial perjuries", being knowingly false and fabricated. Such judges, willfully destroying the lives of countless New Yorkers, the wellbeing of our state, and our democracy as a whole, are unworthy of their current salaries and benefits – being paid by hardworking New Yorkers.

The corruption and lawlessness of New York's state judiciary, infesting its supervisory and appellate levels, collusively condoned by the New York State Commission on Judicial Conduct, was the subject of testimony by more than two dozen New Yorkers, including lawyers, at

hearings held by the New York State Senate Judiciary Committee on June 8, 2009 and September 24, 2009. You can hear for yourselves what these New Yorkers had to say, as the full videos of both hearings are posted on CJA's website, www.judgewatch.org, accessible *via* the top panel "Latest News" and, additionally, *via* the sidebar panel "Judicial Discipline: State-NY".

As reflected by the videos –and by the transcripts of the hearings, which are also posted – the Senate Judiciary Committee could not accommodate all the members of the public who clamored to testify – and its then chairman, Senator John Sampson, promised that the Committee would hold additional hearings. He also endorsed a proposal by fellow Committee member Senator Eric Adams that a task force be appointed to assist the Committee in addressing the mountain of information and evidence the public was presenting of corruption.² Yet, no task force was appointed and the Senate Judiciary Committee's continued hearings were aborted. A third hearing, calendared for December 16, 2009 – at which CJA was slated to testify – was cancelled and not re-scheduled. To date, the Senate Judiciary Committee has NOT rendered any report nor made any findings with respect to the mountain of documentary evidence of systemic judicial corruption it received at the two hearings. Indeed, its 2009 annual report, purporting to "detail the activities of the Judiciary Committee" in 2009, contains no reference to the hearings – the first legislative hearings on the Commission in 22 years.

As the Commission on Judicial Compensation is empowered to "hold public hearings", CJA will be requesting that it do so – to ensure that its work is informed by evidence-based facts as to the supposed quality of our state judges entitling them to increased compensation, including the quality of those judges who have complained that they are underpaid.

There must be NO increase in judicial compensation UNTIL there is an official investigation of the testimony and documentation that the public provided and proffered to the Senate Judiciary Committee in connection with its 2009 hearings and UNTIL there is a publicly-rendered report with factual findings with respect thereto. CJA, therefore, calls upon you – our leaders of our three branches of New York State's government – to take steps to ensure that IF the Senate Judiciary Committee does not undertake the investigation and report, as is its duty to do – that you secure same, be it by a special prosecutor appointed by the Governor, by a task force appointed by the Legislature, or by the Chief Judge's appointment of an inspector general and commission for such purpose.

² Senator Adams' eloquent words, at the September 24, 2009 hearing, were as follows:

"... This is extensive... The best way to resolve inefficiencies and corruption in government is to allow people who are personally touched by the matter to empower us with information. So I am going to ask the Chair if he will put in place a task force that will be comprised of individuals like yourself and those who are victims to assist us in navigating how this problem is being hidden from public view." (transcript at pages 37-38; video at 0:34:44).

A copy of this letter is being furnished to former Senate Judiciary Committee Chairman Sampson, who, as Senate Minority Leader, is a member of the Committee *ex officio*, as well as to the Senate Judiciary Committee's current chairman, Senator John Bonacic, its ranking member, Senator Ruth Hassell-Thompson – as well as its 21 other members – Senator Adams among them – so that they may identify for you, for the Commission on Judicial Compensation, and for the public, what they intend to do with the information and documentation the public supplied and proffered the Senate Judiciary Committee for its June 8, 2009 and September 24, 2009 hearings – and aborted December 16, 2009 hearing.

As the law creating the Commission on Judicial Compensation expressly entitles it to request and receive:

“such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof...to carry out properly its powers and duties”

and to

“reasonable assistance from state agency personnel as necessary for the performance of its functions”,

the Commission is empowered to request your assistance in securing factual findings as to that testimony and documentation. Needless to say, such request should be the Commission's FIRST order of business.



- cc: Appointed Members of the Commission on Judicial Compensation:
Robert Fiske, Jr.
Kathryn S. Wylde
James Tallon, Jr.
Mark Mullholland
Senate Minority Leader John L. Sampson
Senate Judiciary Committee
Chairman John J. Bonacic
Ranking Member Ruth Hassell-Thompson
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New York judges ask for 41-percent raise, retroactive pay

6/16/2011

COMMENTS (0)

NEW YORK, June 16 (Reuters) - A coalition of more than 1,100 New York judges has asked the state's newly-created Judicial Compensation Commission for a 41-percent pay hike, after more than a dozen years without a raise.

The request would increase the salary for state trial-court judges to \$192,500 from \$136,700, where it has held steady since 1999.

The figure is the centerpiece of a 247-page report compiled by the Coalition of New York State Judicial Associations, which includes groups representing nearly 90% of the state judiciary, from Supreme Court justices to Family, Criminal, and Housing Court judges.

The report, which was delivered to the compensation commission this week, lands amidst a \$170-million cut to the state court system's budget, which has led to the layoffs of 411 non-judicial court employees and the demotion or transfer of 241 others.

"While it is very unfortunate that there is a need to lay off some workers, judges are the only State employees who have not received any raises over the last 12 years, although their case loads have increased dramatically during that time," Brooklyn Family Court Judge Daniel Turbow, who organized the coalition, wrote in an email.

"It is grossly unfair to suggest that the judges, who did not obtain any raises during times of plenty, should continue to be singled out as the lone group not entitled to a salary increase," Turbow added.

The report estimates that the requested raises will cost \$78 million, but points out that even so, the judges' salaries "will approach, but still significantly lag behind" the salaries of judges in the nation's five other largest metropolitan areas, when adjusted for cost of living.

COMMISSION IN PLACE

The commission, a seven-member panel established in 2010 by former Gov. David Paterson, was slated to begin work on April 1, but was not filled out until last Friday, when Gov. Andrew Cuomo made the final three appointments. The members have until the end of August to make salary recommendations, which would take effect on April 1, 2012, and last for four years, unless modified or repealed by statute.

Commission chairman Bill Thompson said the commission is still in the early stages of its work. "We have not established an agenda or a timetable yet," he said, but added that the members will meet within the next two weeks to start planning a schedule and determine what information they will need.

The report may provide the commission with a substantial chunk of that information.

Authored by Albany Family Court Judge W. Dennis Duggan, the report was partly the result of dissatisfaction with several elements of the legislation that created the commission, said Turbow.

In particular, the judges were upset that the raises would not take effect until 2012, that the legislature would have the ability to block a judicial raise, and that there was no provision for a retroactive salary increase.

"The judges believed it was necessary to present a position on their own behalf, independent of that presented by the Office of Court Administration," Turbow said in an interview.

LUMP-SUM PAYMENT

In addition to the requested 2012 raise, the report calls for a lump-sum payment equal to the cost-of-living-adjusted, or COLA, salary levels for each year since 2005.

The report also noted that since the last judicial raise in 1999, the Consumer Price Index has increased 41 percent. During that time, it said, 220,000 non-judicial state employees have received raises totaling 44 percent.

While the report focuses on the state's approximately 380 Supreme Court justices, who earn \$136,700, the coalition requests that all trial judges at the county level and above should receive the same salary, and asks that the chief judge's salary be "markedly increased" to \$290,000.

"Not only is the chief judge the leader of the Court of Appeals, our highest court, but also the leader of one of the largest, most complex court systems in America," it said.

Duggan acknowledged that the average person who doesn't make \$136,700 might find a 41-percent raise "astounding."

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"But the average person didn't have to have 20 years of education and 10 years of experience and then get elected to get their jobs," he said.

If judges had received normal cost-of-living adjustments, he added, "nobody would be objecting to our pay."

The report notes that previous state budgets have included allocations for judicial raises. For example, in 2006 the legislature and Governor George Pataki approved a budget that contained a \$69.5 million appropriation for judicial salary increases.

"The taxpayers paid for a judicial pay raise that the judges never got," the report said.

The report also suggests revenue sources the state could tap to fund judicial raises, such as passing a sugared-drink tax, increasing the bottle tax, or not letting the "millionaire's tax" expire.

(Reporting by Jennifer Golson)

(Corrects paragraph 16, which erroneously stated that there are 800 Supreme Court justices in New York. There are approximately 380 Supreme Court justices.)

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