

From: Tatiana Neroni <tatiana.neroni@gmail.com>
Sent: Thursday, January 14, 2016 11:49 AM
To: Jessica Cherry
Subject: Re: confirmation hearing of Janet DiFiore for NYS Court of Appeals/application to testify/FOIL request

Ms. Cherry

I request to replace bar associations endorsing Janet DiFiore with witnesses with real evidence of Janet DiFiore's misconduct, and/or to expand the time allotted for the confirmation hearing to accommodate all people who asked you for an opportunity to orally testify. After all, the bar associations can submit descriptions of their ranking systems in writing, while witnesses with personal knowledge of Janet DiFiore's misconduct in office, like myself, should be allowed to testify publicly, otherwise it is a very lopsided policy of invitations to testify, giving appearance of corruption, especially in view of the fact that Senator Bonacic is a licensed attorney, and the Chief Judge of the State of New York is the main rule-maker for the market of legal services.

I am sure you understand that a written submission is not the same as oral testimony. There are no questions to be asked of a written submission, and the public who watches the confirmation at this time is not even allowed an opportunity to read written submissions, unless, of course, you allow all written submissions to be posted on the Senate's website prior to the confirmation hearing, preferably, immediately on receipt.

I certainly did not see my submission posted yet, but I insist it should be, otherwise it seems like a choice of witnesses slanted towards confirmation, and, once again, gives an appearance of pre-judgment and, possibly, corruption in how confirmation of judges for the Court of Appeals are handled by the Senate and by Senator Bonacic's Committee.

The way you set selection of witnesses for oral testimony as you described to me, it clearly sends me as a member of the public, a message that Senator Bonacic, a licensed attorney, officer of the court and thus a market player from the point of view of Federal Trade Commission and U.S. Supreme Court (see North Carolina Board of Dental Examiners v FTC, 574 U.S. ___ (2015), see also Guidelines to Staff by FTC as to unsupervised market players regulating their own professions, dated October 14, 2015), is engaging in an anticompetitive activity in regulating the market of legal services by having only bar associations who endorse the candidate for the position of chief regulator of that market to testify.

The way you invite witnesses, as you described, indicates a policy that shows pre-judgment by Senator Bonacic and the Judiciary Committee of the confirmation, and that the hearing is a mere formality.

As final points, I request the Senate to consider the following:

1) that, according to submissions of bar associations to the IRS, they are non-profit corporations organized as trade leagues, have foreign investments or engage in foreign grant activities, and are thus witnesses of questionable worth at the confirmation hearing of New York Chief Judge, especially when the Chief Judge is the maker of attorney disciplinary rules, and thus bar associations' ranking of judicial candidates is tainted by business interests; when the only witnesses invited to the confirmation hearing of a Chief Judge of the State of New York, and those are business interest groups funded by foreign capital, that's bad publicity at the very least; you can review tax filings with IRS of these bar associations, they are publicly available at guidestar.org;

2) recently, NYSBA paid for an expert to lobby for judicial pay raises (see testimony of David Miranda in front

of NYS Commission for judicial pay raises), which disqualifies NYSBA as a neutral ranking system for judicial nominees; NY City Bar Association also lobbied for judicial pay raises, transcripts of their testimony is also available at the Judicial Pay Raise Commission's website, and the Final report of the Commission, together with transcripts, I am sure, are provided to the Senate and to Sen. Bonacic' Committee for review; given that Senator Bonacic is aware of lobbying efforts of NYSBA and New York City bar association for judicial pay raises, his choice of only these two organizations to testify at the confirmation hearing of a potential top state judge Janet DiFiore, and on the issue of their "ranking" of Janet DeFiore as a nominee for the position of their own regulator, for whom they already ensured a raised salary by their testimony lobbying judicial pay raises, presents an appearance of impropriety, to say the least, or, in fact, an appearance of corruption;

3) Attorney Senators and Senators who have relatives to the 6th degree of consanguinity and affinity (New York standard for disqualification of juror fact-finders) and who have friends who are attorneys, should be disqualified by their business and personal interests from voting in the confirmation hearing or making any policies regarding who and how is going to testify at that hearing. That includes your employer, Senator Bonacic who is a licensed attorney and officer of the court.

4) I demand to have all written submissions (including my own) for the confirmation of Janet DiFiore be posted immediately on receipt, so that people are able to familiarize themselves with the issues before the confirmation hearing, and this demand includes this particular letter.

Circulation of written submissions among members of the Committee is not enough.

I am currently having a very hard time trying to obtain "public" written submissions to the NYS Committee for Statewide Attorney Discipline from the court system that Janet DiFiore is posed to lead. The Commission published its final report to Chief Judge Lippman and 3 transcripts of oral testimony-by-invitation, mostly, as here, by bar associations singing accolades to how good they are (despite the North Carolina Dental decision branding the way market-player-regulation of profession is conducted as a violation of federal antitrust laws, which did not change with new attorney disciplinary rules).

Yet, the Commission refused to post the written public submissions, as they did the transcripts, and is giving me grief about redaction and payment for such written public submissions. The new rules are already in, the transcripts upon which the rules were made are posted, but the written submissions upon which the rules were also supposed to be posted and upon which the final report supposedly relied, are not posted and I am given a run-around as to obtaining them, for months!

If somebody is chosen by a public body - by invitation based on questionable policies - to orally testify, and the rest of the public - illegally, in my view - is blocked from testifying and is relegated to written submissions, especially those who oppose preservation of business of the legal elite and who want to expose misconduct of judicial nominees, those written submissions should be made as public and as available to the public (free, readily available at the same time as the oral testimony) as the live-streamed testimony.

It is only fair.

I seek confirmation from your office a.s.a.p. as to disqualification policies as to voting on issues that involve private interests of Senators - members of the Committee, especially as related to Attorney-Senators and Senators with close familial connections to the legal profession and connections through close friends.

And - I request to ask Janet DiFiore a question, what does she intend to do, if anything, to bring the regulation of the legal profession in compliance with federal antitrust laws and the U.S. Constitution, and to allow consumers to have a say in that regulation that is declared to be done for purposes of consumer protection. At this time, new rules, same as old ones, provide for super-majority of attorneys on disciplinary boards, which

excludes a possibility of a veto power for consumers as to how they are being "protected" by attorney regulation.

You do not seek any consumers of legal services or "people from the street", consumers of services of our courts, to be invited to orally testify before the Senate on the confirmation of the market-player-and-chief-regulator of the legal profession, a nominee for the Chief Judge of the Court of Appeals.

I demand that people at least are allowed to hear, on live-streamed video, Janet DiFiore's response to a question as to what she plans, if anything, as a rule-maker and chief regulator of the market of legal services in New York to bring regulation of the legal profession in compliance with the federal statutory antitrust laws and the federal Constitution.

I demand that Janet DiFiore is asked a question, what does she plan to do to deal with judicial corruption in state courts that is a recurring topic in many public hearings, including the hearing for judicial pay raises and for statewide attorney discipline.

I demand that Janet DiFiore is asked a question, what does she plan to do with judicial retaliation, when litigants cannot find an attorney willing to make a motion to recuse a judge, for fear of retaliation from that judge. I am an attorney whose license was suspended for 2 years for the only reason that I made a motion to recuse a judge (Carl F. Becker) whom I previously sued, and the judge retaliated by imposing sanctions. Once again, in the "land of the free", the only basis for suspension of my law license was criticism of a judge on behalf of clients, one of them pro bono. We condemn political persecution of attorneys in China and Pakistan, but endorse the same by our silence here in the U.S. and in New York State.

I have a blog, <http://attorneyindependence.blogspot.com> where I regularly cover issues of judicial corruption and misconduct, in the State of New York and across the U.S. I have a lot of feedback from readers, including New Yorkers. Many of New York litigants who wrote to me and who called me, cannot find attorneys who would not be afraid to make motions to recuse, in view of the rampant judicial retaliation for such motions against attorneys that leads to attorneys losing their law licenses, like it happened to me.

Using attorney discipline as a tool of political suppression of the most eloquent and knowledgeable critics of judicial misconduct is a growing national problem and a threat to public safety, see the Kids of Cash scandal where attorneys knew of rampant judicial misconduct, selling children into juvenile jails for kickbacks, and said nothing, fearing for their licenses and livelihoods.

I have located close to 30 attorneys in many states of the United States, including several in the State of New York, who were disciplined on political grounds, in retaliation for their criticism of judicial misconduct.

I demand that Janet DiFiore is asked a question at the confirmation hearing, how is she planning to deal with the issue of judicial retaliation, and how does she plan to deal with the issue of allowing judges to continue to decide motions to recuse challenging their own misconduct, and how is she going to deal with court rules created by her predecessors that are currently used to punish attorneys for criticism of the judiciary in motions to recuse on behalf of and for the benefit of their clients, trying to assure their clients' federal constitutional right to impartial judicial review.

I demand that Janet DiFiore is asked a question how is she planning to deal with selective non-enforcement of attorney discipline against powerful attorneys, and attorneys working for the government, like prosecutors, attorneys of disciplinary committees who commit misconduct and refuse to prosecute themselves, and attorney-employees of disciplining courts, like Christina Ryba who was not disciplined after being fired for unethical conduct and using court system and prestige of her employment in her judicial campaign.

Senator DeFransisco currently promotes a bill, as far as I know, for a separate Commission to prosecute prosecutorial misconduct, because Janet DiFiore's predecessors failed to prosecute prosecutors, even those whose misconduct resulted in a number of wrongful convictions in New York.

I demand that Janet DiFiore is asked a question as to how is she planning to deal with rampant nepotism in employment in court system, especially employment of spouses and close relatives who have different last names and thus escape scrutiny of the public.

I demand that Janet DiFiore is asked a question as to how is she planning to deal with situations when law firms employing retired judges who are appointed as judicial hearing officers are practicing in those hearing officers' courts, and where the courts do not make appointments of retired judges as hearing officers public, preventing litigants and their attorneys from being able to readily verify the issues of disqualification. It is not fair to expect an attorney, as I had to do, to file FOIL requests with New York State Court Administration, then wait for months for NYS OCA to respond, mostly stalling those requests, and then become the victim of judicial retaliations from the subjects of the FOIL requests who were notified of such requests. Whether a private attorney who is a retired judge has been appointed a judicial hearing officer, with all duties and obligation of a judge of that court, should be information prominently posted on that court's website, same as names of judges. Then, the judicial hearing officers' law firms will not be able to practice in that court without a risk of massive motions to disqualify, at least from pro se litigants (if attorneys are afraid for their licenses to do their jobs). Rules of disqualification of judicial hearing officers prohibit their law firms to practice in judicial hearing officers' courts, but, with the lack of public information and routinely stalled access to such information through FOIL requests (as well as retaliation against those who seek such information, like it happened to me and another witness I know).

I demand that Janet DiFiore is asked a question, what, if anything, she is planning to do to change that situation.

I demand that Janet DiFiore is asked a question about the TASC drug-counseling program in Westchester County where criminal defendants, at requests of her office, are court-ordered, under the threat of punishment, such as bail revocation and being put in jail, to waive their right to remain silent and against self-incrimination, during the pendency of criminal proceedings while their court-mandated confessions are delivered to Janet DiFiore's office, as a routine occurrence, for further use in criminal proceedings.

I demand that Janet DiFiore is asked how is it that she is fit for the position of a chief judge when she is currently routinely violating constitutional rights of criminal defendants as a prosecutor. Members of Committee should only send undercover investigators to any of the justice courts and to Westchester County Court where Janet DiFiore prosecutes criminal cases to be assured of veracity of my statements, to look at all the "TASC" orders for the duration of Janet DiFiore's stay in office, how coerced confessions were delivered to Janet DiFiore's office, and what was the outcome of such cases (usually a wrongful conviction).

It is such investigations, answers to such questions and such evidence that I ask the Senate to obtain that will provide a true picture if Janet DiFiore is a good candidate for the Chief New York State Judge.

Sincerely,

Tatiana Neroni
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a New York property owner and taxpayer