

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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-

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.

AFFIRMATION

Index No. 1788-14

July 8, 2014

Adrienne J. Kerwin, an attorney licensed to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Dean Skelos, Sheldon Silver, Eric T. Schneiderman and Thomas DiNapoli in the above-captioned action.

2. I submit this affirmation in response to plaintiffs' order to show cause dated June 16, 2014 seeking an order

[e]njoining defendants from destroying the documents that Plaintiff SASSOWER handed up to the Legislature at its February 6, 2013 joint budget hearing on “public protection” in substantiation of her oral testimony on that date in opposition to the Judiciary’s proposed budget and the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation,

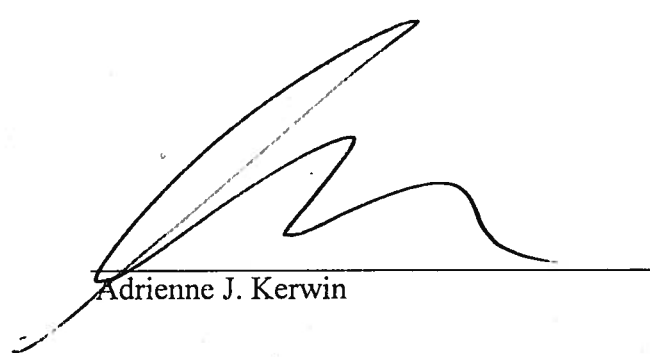
and “[d]irecting defendants to furnish al such documents to the Court.” See Order to Show Cause.

3. While defendants contend that any such documents are irrelevant to the underlying action, a copy of the only documents that are in the possession of the defendants, that may arguably be those described in the order to show cause, are annexed hereto.

4. The defendants consent to maintaining the original version of the attached until the completion of the underlying action.

WHEREFORE, the defendants respectfully request that the court issue an order consistent with the above and grant the defendants any further relief that the court deems just, proper and equitable.

Dated: Albany, New York
July 2, 2014



Adrienne J. Kerwin

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

Election Day, November 8, 2011

EXECUTIVE SUMMARY

OPPOSITION REPORT TO THE “FINAL REPORT OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION”

On August 29, 2011, the Special Commission on Judicial Compensation rendered a “Final Report” to Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman recommending a 27% salary increase for New York State judges over the next three years.

These salary recommendations will automatically become law and cost New York taxpayers hundreds of millions of dollars – unless overridden by the Legislature by April 1, 2012. Nevertheless, NONE of New York’s bar associations, scholars, funded “good government” organizations, or media have critically examined the Commission, its Report, or the Court of Appeals’ February 23, 2010 decision in the judiciary’s judicial compensation lawsuits against the Governor and Legislature that propelled enactment of the statute creating the Commission.

Such critical examination has been done, however, by the unfunded, non-partisan, non-profit citizens’ organization, Center for Judicial Accountability, Inc. (CJA). Embodied in an October 27, 2011 Opposition Report, it demonstrates that the Commission’s Report is “statutorily non-conforming, constitutionally violative, and the product of a tribunal disqualified for interest and actual bias”. Indeed, it demonstrates that the Commission’s Report is a “fraud upon the public”, achieved by concealing the citizen opposition to any judicial pay raises, championed by CJA, and all the facts, law, and legal argument presented in support.

Based thereon, CJA’s Opposition Report calls upon the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge – to whom it is addressed – to secure:

- (1) legislative override of the Commission’s judicial pay recommendations;
- (2) repeal of the statute creating the Commission;
- (3) referral of the Commissioners to criminal authorities for prosecution; and
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, which the Commission unlawfully and unconstitutionally ignored,

* 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.

without findings, in order to recommend judicial pay raises.

CJA's constitutional challenge to the Commission's pay raise recommendations is based on CJA's analysis of Article VI of the New York State Constitution, as drawn from the Court of Appeals' February 23, 2010 decision – an analysis which CJA placed before the Commission three weeks before its August 29, 2011 Report. It demonstrated that any increase in judicial compensation is unconstitutional, absent predicate findings that New York state judges are discharging their duties to render fair and impartial justice and that mechanisms are in place and functioning to remove corrupt judges. The Commission's Report makes no such findings and conceals the analysis, whose accuracy it does not dispute (at pp. 1, 3, 10-13).

CJA raises a ***further constitutional challenge*** in questioning whether, without a constitutional amendment, it was constitutional for the legislature and executive branches to delegate judicial compensation to an appointed commission whose recommendations do not require affirmative legislative and executive action to become law – which is what they did by the statute creating the Commission (at fn. 2).

The Commission's statutory violations, particularized by CJA's Opposition Report, are:

- (1) ***In violation of the Commission statute***, the Commission's judicial pay raise recommendations are unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges are inadequate (at pp. 1, 16, 31);
- (2) ***In violation of the Commission statute***, the Commission examines only judicial salary, not "compensation and non-salary benefits" (at pp. 18-21, 25-31);
- (3) ***In violation of the Commission statute***, the Commission does not consider "all appropriate factors" – a violation it attempts to conceal by transmogrifying the statutory language "all appropriate factors" to "a variety of factors" (at pp. 4-5, 21);
- (4) ***In violation of the Commission statute***, the Commission makes no findings as to five of the six statutorily-listed "appropriate factors" it is required to consider (at pp. 21, 23-24);
- (5) ***In violation of the Commission statute***, the Commission does not consider and makes no findings as to "appropriate factors" presented by CJA's citizen opposition as disentitling New York's judges from any pay raise – whose appropriateness is uncontested by the Commission and judicial pay raise advocates. Among these:
 - (a) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay (at pp. 10-13); and
 - (b) the fraudulence of claims put forward to support judicial pay raises by judicial pay advocates (at pp. 13-15), including their concealment of pertinent facts, *inter alia*:

- (i) that New York's state-paid judges are not civil-service government employees, but "constitutional officers" of New York's judicial branch;
- (ii) that the salaries of all New York's "constitutional officers" have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the "constitutional officers" of our executive branch – and the 62 Senators and 150 Assembly members who are the "constitutional officers" of our legislative branch;
- (iii) that the compensation of New York's judicial "constitutional officers" is comparable, if not superior, to the compensation of New York's executive and legislative "constitutional officers", with the judges enjoying incomparably superior job security;
- (iv) that New York's executive and legislative "constitutional officers" have also suffered the ravages of inflation, could also be earning exponentially more in the private sector, and also are earning less than some of their government-paid staff and the government employees reporting to them;
- (v) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
- (vi) that outside the metropolitan New York City area, salaries drop, often markedly – as reflected by the county-by-county statistics of what New York lawyers earn – and there is no basis for judges in most of New York's 62 counties to be complaining as if they have suffered metropolitan New York City cost-of-living increases, when they have not, or to receive higher salaries, as if they have;
- (vii) that New York judges enjoy significant "non-salary benefits";
- (viii) that throughout the past 12 years of "stagnant" pay, New York judges have overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there is no shortage of qualified lawyers eager to fill vacancies;
- (ix) that the median household income of New York's 19+ million people is \$45,343 – less than one-third the salary of New York Supreme Court justices.

These concealments – hallmarks of the judicial compensation lawsuits and of the Court of Appeals February 23, 2010 decision purporting a judicial pay raise “crisis” and separation of powers violation by the Legislature and Governor in “linking” judicial salaries to legislative salaries – are all replicated by the Commission’s Report. In so doing, it simultaneously covers up the fraudulence of the lawsuits and that decision.

As set forth by the Opposition Report:

- judges have NO constitutional entitlement to cost of living increases (at pp. 34-35);
- there is NO separation of powers constitutional violation by “linkage” (at fn. 9); and
- the Commission’s recommended judicial pay raise distorts and skews the appropriate symmetry in pay of the “constitutional officers” of New York’s co-equal government branches (at pp. 36-37).

Beyond the actual bias of the Commissioners, proven by their constitutionally, statutorily, and evidentially-violative Report, the Opposition Report also identifies (at pp. 15-17) the disqualifying interest of several Commissioners – beginning with Chairman William C. Thompson, Jr. As highlighted (at pp. 2, 10, 13, 15), Chairman Thompson was the subject of a written application for his disqualification for interest, presented by CJA promptly upon his appointment to the Commission, which neither he nor the Commission determined in face of notice that the Commission could not lawfully proceed until that threshold issue was ruled upon. Such is itself grounds for voiding the Commission’s judicial pay raise recommendations.

So that the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge may have the assistance of the Commissioners and of judicial pay advocates in discharging their mandatory duties to protect the People of New York, CJA’s Opposition Report identifies, in its “Conclusion” (at p. 37), that it is being furnished to the Commissioners, as well as to judicial pay raise advocates, so that they may have the opportunity to rebut it, if they can.

The “Conclusion” (at p. 37) also looks ahead to the 2012 elections, when every member of New York’s Senate and Assembly is up for re-election, and lays out an agenda of citizen action to “vindicate the public’s rights by making judicial pay raises and judicial accountability the decisive election issues they rightfully are”, in the event the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge fail to act. As stated:

“Voters will find it easy to embrace so self-evident a proposition [‘NO PAY RAISES FOR NYS JUDGES WHO CORRUPT JUSTICE – THE MONEY BELONGS TO THE VICTIMS!’], as likewise CJA’s further position that the money be used to rehire the hundreds of court employees terminated to save money and to staff new judgeships whose creation is warranted by caseload levels far exceeding capacity.”