

Center for Judicial Accountability, Inc. (CJA)

From: Brodie, Frederick <Frederick.Brodie@ag.ny.gov>
Sent: Monday, March 11, 2019 11:53 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: CJA v. Cuomo Citizen-Taxpayer -- Court of Appeals March 4, 2019 letter -- extension request, etc.

Dear Ms. Sassower,

Thank you for your email. As indicated in previous emails, I am the Assistant Solicitor General assigned to handle this appeal. Therefore, please address your correspondence concerning this case to me, with a copy to Victor Paladino – not to Solicitor General Underwood.

I will respond to the points you raise in the order they appear.

First, I consent to a one-week extension of your time to respond to the Court of Appeals' letter of March 4, 2019, on the condition that the extension will also apply to respondents.

Second, as a courtesy, I will provide the respondents' brief and supplemental record to the Court of Appeals.

Third, the Delgado case has not been assigned to me. If you have questions concerning that case, please deal directly with the counsel to whom it was assigned.

Very truly yours,

Frederick A. Brodie
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, March 11, 2019 11:12 AM
To: Underwood, Barbara <Barbara.Underwood@ag.ny.gov>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>; Brodie, Frederick <Frederick.Brodie@ag.ny.gov>
Subject: CJA v. Cuomo Citizen-Taxpayer -- Court of Appeals March 4, 2019 letter -- extension request, etc.

TO: Solicitor General Barbara Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

On Thursday, March 7th, I received the above-attached March 4th letter from Court of Appeals Deputy Clerk Heather Davis, addressed to me – with a cc to Assistant Solicitor General Brodie – stating, in pertinent part:

“You should file within ten days after this letter’s date your comments in letter format justifying the retention of subject matter jurisdiction, a copy of each brief filed by each

party in the Appellate Division and a copy of the record on appeal or appendix filed in that court. By copy of this letter, your adversary is likewise afforded the opportunity to comment in letter format on the Court's subject matter jurisdiction within the same ten-day period after this letter's date. All letters shall be filed with proof of service of one copy of the letter on each party."

On Friday, March 8th, I called Court of Appeals Attorney Susan Dautel (518-455-7701) with questions about the meaning of the letter, particularly its reference to "whether the Appellate Division, Third Department, orders of December 19, 2018; November 13, 2018; October 23, 2018; and August 7, 2018, finally determine the action within the meaning of the Constitution" – as if they were not subsumed, and brought up for review, by the Appellate Division's December 27, 2018 Memorandum and Order, as I believe I was told they would be when I had previously called the Court in connection with these orders.

Ms. Dautel suggested I do research, which I told her I would do, further stating that her suggestion reinforced that I needed an extension of time for the filing of my comments letter, otherwise due, with the requisite briefs and records, on March 14th. In response to my extension request, Ms. Dautel advised that the procedure was for me to contact my adversary – you – requesting your consent. She stated that if you refused, I could apply to the Court.

I, therefore, request your consent to a week's extension – which, of course, would give you an extra week for filing your own "comment in letter format on the Court's subject matter jurisdiction". Surely, this would be beneficial to your evaluation of your professional and ethical responsibilities, based on the litigation record in Supreme Court/Albany County and at the Appellate Division, Third Department, of which you became fully knowledgeable during your half-year tenure as Attorney General.

By the way, new Attorney General James is herself fully knowledgeable of the record in Supreme Court/Albany County. On July 16, 2018, at a debate among candidates for the Democratic nomination for Attorney General, I publicly asked whether the candidates were aware of the Attorney General's *modus operandi* of litigation fraud to defeat lawsuits against the state and its public officers, to which it had NO legitimate defense – and whether they would be willing to examine the EVIDENCE. To her credit, then-candidate James was the only candidate who publicly stated she would examine the EVIDENCE – and, at the end of the program, I gave her, *in hand*, a copy of appellants' July 4, 2018 appeal brief and three-volume record on appeal, as well as a copy of my above-attached May 16, 2018 letter/corruption complaint addressed to you and its May 18, 2018 coverletter to candidates for interim appointment as Attorney General, to which you were a cc. A month later, on August 15, 2018, at the conclusion of another debate among Democratic A.G. candidates, I gave candidate James, *in hand*, a second copy of the May 16-May 18 correspondence, apprising her then – and, thereafter, by e-mails preceding other debates and until just shortly before her election on November 6, 2018 – as to what was taking place, on appeal, at the Appellate Division, Third Department.

Attorney General James presumably still has the copy of the July 4, 2018 appeal brief and three-volume record on appeal that I gave her eight months ago – as I never received them, in return, and it is hard to imagine that something of that magnitude and consequence, in a live case, would have been discarded by her or by anyone to whom she would have furnished them.

Finally, am I correct that the Attorney General's office either has – or can easily obtain – an extra copy of your September 21, 2018 respondents' brief and supplemental record on appeal that you filed in the Appellate Division? If so, would you be willing to furnish same to the Court of Appeals – as I gave my extra copy to the Compensation Committee at its November 30, 2018 public hearing, in support of my oral and written testimony, which it did not return to me.

Alternatively, and since the Attorney General is defending the Compensation Committee in *Delgado, et al. v. State of New York and Thomas P. DiNapoli, as Comptroller of the State of New York* (Albany Co. #907537-18), would you find out what the answer is to the December 28, 2018 e-mail I sent it, without response, by the below entitled "Where Will the Records of the Compensation Committee be Maintained Upon Expiration & Repeal of the Committee Statute on

December 31, 2018?" Such is additionally appropriate as the Attorney General's defense of the constitutionality of the statute establishing the Compensation Committee (Part HHH, Chapter 59 of the Laws of 2018) is predicated on the Appellate Division's December 27, 2018 Memorandum and Order upholding the constitutionality of the statute establishing the Commission on Legislative, Judicial and Executive Compensation (Part E, Chapter 60 of the Laws of 2015).

Thank you.

Elena Sassower, unrepresented plaintiff-appellant
on her own behalf, on behalf of the Center for Judicial Accountability, Inc.,
& on behalf of the People of the State of New York & the Public Interest

914-421-1200

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