

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

LETITIA JAMES
ATTORNEY GENERAL

February 6, 2020

Via First Class Mail and Email

Joanne Barker

Counsel to the Majority for New York State Assembly

The Capitol

Room 448M

Albany, NY 12248

Re: SAM Party of New York v. Cuomo, et al., No. 20-CV-00323 (S.D.N.Y.)

Dear Ms. Barker:

This Office has received your request for representation on behalf of Speaker Carl E. Heastie, a Defendant named in his official capacity, in the above-referenced matter. Based on the facts and circumstances currently available to us, this Office has concluded that it would be inappropriate for the Attorney General to represent the Speaker in this matter.

We are, however, certifying to the State Comptroller that the Speaker is entitled to be represented by private counsel under Public Officers Law § 17. Upon this certification, the State will pay for reasonable attorneys' fees and litigation expenses, subject to (1) certification by the Assembly that the Speaker is entitled to representation under Public Officers Law § 17, and (2) the audit and warrant of the State Comptroller. We suggest that you share this letter with the attorney retained to represent the Speaker and notify him or her that the person to contact in the Comptroller's Office is Caitlin Heim, Senior Attorney, at (518) 408-3139.

Your attention is called to subdivision (3)(a) of the statute, which provides that the State may indemnify the Speaker in the amount of any judgment obtained against him in any Court, or in the amount of any settlement or any claim, if the act or omission from which the judgment or settlement arose occurred while he was acting within the scope of his public employment or duties and did not result from intentional wrongdoing on his part. Please note that any decision regarding indemnification is made only after a judgment is rendered against him or at the time that a settlement is proposed.

Your attention is also called to subdivision (3)(b), which requires a defendant represented by private counsel to submit any proposed settlement to the Attorney General's Office for review

and approval as to form and amount. Therefore, should the Speaker wish to consider settlement, he must contact this office prior to settling the case.

These and other provisions of Public Officers Law § 17 should be carefully studied, as it is important that all procedures be followed.

Further, if upon analysis of the case, the private counsel who will represent the Speaker under Public Officers Law § 17 determines that the Speaker has a compulsory counterclaim or a cross-claim, and believes that it would be legally appropriate and beneficial to his defense, and in the interest of the State of New York to interpose a counterclaim or cross-claim on his behalf for money damages against the plaintiffs, he or she may do so, but only under the following conditions:

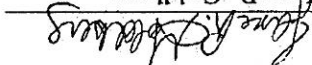
1) In order for the private counsel who will represent the Speaker under Public Officers Law § 17 to represent him on such a counterclaim or cross-claim, the Speaker must agree that if the plaintiffs present him with a proposed settlement of the action against him and he rejects the settlement, he waives his right to indemnification under Public Officers Law § 17 for the amount of any judgment, costs and attorneys' fees awarded against the Speaker in excess of the amount of the proposed settlement.

2) The Speaker must also assign to the State any damages awarded to him on the counterclaim or cross-claim up to an amount equal to any judgment, costs and attorneys' fees awarded to the plaintiffs against him. If there is an award in his favor in excess of any award, including costs and attorneys' fees, to the plaintiffs, that excess amount will belong to him. And in the event that the Speaker's Public Officers Law § 17 private counsel is successful on his counterclaim or cross-claim, and the plaintiffs are denied any recovery, the entire amount of the judgment will belong to the Speaker.

3) Finally, if the plaintiffs withdraw the action against the Speaker or if it is dismissed before trial, and only the counterclaim or cross-claim is pending, private counsel will no longer represent the Speaker at State expense on the counterclaim or cross-claim. Counsel must, however, take appropriate steps to protect the Speaker's position in the litigation until he has had an opportunity to retain other counsel, or counsel may agree to continue to represent the Speaker at his expense.

Should you or the attorney retained on behalf of the Speaker have any questions regarding the contents of this correspondence, please feel free to contact me at (212) 416-6133.

Very truly yours,


Jane R. Goldberg
Assistant Attorney General

RECEIVED

DIVISION OF LEGAL SERVICES

FEB 6 2020

OFFICE OF THE STATE COMPTROLLER
ALBANY

DIVISION OF STATE COUNSEL

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



LETITIA JAMES
ATTORNEY GENERAL

February 6, 2020

Caitlin Heim, Esq.

Associate Attorney

Office of State Comptroller

110 State Street

Albany, New York 12236

Re:

Public Officers Law §17 in connection with

SAM Party v. Cuomo et al., USDC/SDNY, 20 CV 323

Dear Ms. Heim:

Pursuant to Public Officers Law Section 17(2)(b), this office has reviewed the presently available facts and circumstances relating to the above matter. Based on this review, we have determined for the purposes of representation only, and without any determination as to the ultimate merits, that representation by the Attorney General of defendants NYS Board of Elections Co Chair Peter S. Kosiniski, NYS Board of Elections Co Chair Douglas Kellner, NYS Board of Elections Commissioner Andrew Spano, NYS Board of Elections Co-Executive Director Robert Brehm, Speaker of the Assembly Carl E. Heastie, Senate Minority Leader John J. Flanagan, Assembly Minority Leader William A. Barclay, Senate President and Majority Leader Andrea Stewart-Cousin, and Governor Andrew M. Cuomo would be inappropriate.

I, therefore, certify that NYS Board of Elections Co Chair Peter S. Kosiniski, NYS Board of Elections Co Chair Douglas Kellner, NYS Board of Elections Commissioner Andrew Spano, NYS Board of Elections Co-Executive Director Todd Valentine, NYS Board of Elections Co-Executive Director Robert Brehm, Speaker of the Assembly Carl E. Heastie, Senate Minority Leader John J. Flanagan, Assembly Minority Leader William A. Barclay, Senate President and Majority Leader Andrea Stewart-Cousin, and Governor Andrew M. Cuomo are entitled to be represented by private counsel in accordance with the provisions of Section 17 of the Public Officers Law.

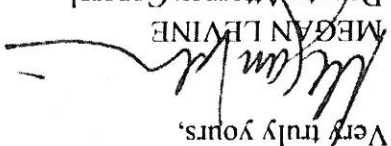
The same private counsel is authorized to be retained for the following defendants:

NYS Board of Elections Co Chair Peter S. Kosiniski, NYS Board of Elections Co Chair Douglas Kellner, NYS Board of Elections Commissioner Andrew Spano, NYS Board of Elections Co-Executive Director Todd Valentine, and NYS Board of Elections Co-Executive Director Robert Brehm.

Separate private counsel is authorized to be retained for the following defendants:

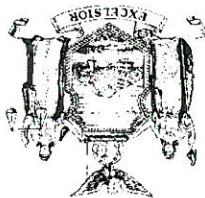
Speaker of the Assembly Carl E. Heastie, Senate Minority Leader John J. Flanagan,
Assembly Minority Leader William A. Barclay, Senate President and Majority Leader
Andrea Stewart-Cousin, and Governor Andrew M. Cuomo.

Very truly yours,


MEGAN LEVINE
Deputy Attorney General

cc: Christine Ryan

THOMAS P. DINAPOLI
STATE COMPTROLLER



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

DIVISION OF LEGAL SERVICES
110 State Street - 14th Floor
Albany, NY 12236
Tel: (518) 474-3444
Fax: (518) 473-9104

February 10, 2020

Via electronic mail only (cbucki@phillipslytle.com)

Craig R. Bucki
Phillips Lytle LLP
125 Main Street
Buffalo, New York 14203-2887

Re: SAM Party of New York v. Cuomo, et al.
USDC/SDNY, 20-cv-00323

Dear Mr. Bucki:

This is in response to your correspondence of February 6, 2020, requesting hourly rates in excess of the Comptroller's Schedule of Counsel Fees (Schedule) in connection with the representation of New York State Assembly Speaker Carl E. Heastie, a defendant in the above-captioned litigation.

In support of your request, you explain that this matter involves complex issues of constitutional law and concern an issue of statewide importance. You further explain that partner Kenneth A. Manning has over 40 years of experience, that you have over 10 years of experience, and that you both possess expertise in handling matters like these involving the intersection of constitutional and election law.

For the reasons you set forth in your request, this Office has approved hourly rates that exceed the Schedule. You will be compensated at a rate of \$375 per hour, partner Kenneth A. Manning will be compensated at a rate of \$465 per hour, associate Samuel Borbor-Sawyer will be compensated at a rate of \$230 per hour, and associate Samuel Williams will be compensated at a rate of \$210 per hour. These rates will be applied to all legal services rendered in this case. Travel time will be compensated at 50% of these rates. All other rates, terms and conditions set forth in the Schedule will apply.

It is expected Phillips Lytle LLP will exercise billing judgment, and conduct the litigation as efficiently as possible. In support of its billings, the firm will need to submit detailed time records to the General State Charges Unit, Bureau of Financial Administration, Office of the State Comptroller, 110 State Street, Albany, New York

RECEIVED

FEB 13 2020

Office of State Comptroller
Finance Office

Craig R. Bucki
February 10, 2020
Page 2

12236. Billing and payment inquiries should be directed to the General State Charges Unit at (518) 486-1286. I may be reached at (518) 408-3139 should you have other concerns regarding this case.

Very truly yours,

Caitlin D. Heim

Caitlin D. Heim
Associate Attorney

cc: Deputy Attorney General Megan Levine
General State Charges Unit

RECEIVED

MAY 12 2020

OFFICE OF THE STATE COMPTROLLER
BUREAU OF FINANCIAL ADMINISTRATION

Carl E. Heastie
The General State Charges Unit
Bureau of Financial Administration
Office of the State Comptroller
110 State Street
Albany, NY 12236

REFERENCE #:

Control # 812-1

Re: SAM PARTY OF N.Y. VS. CUOMO

FOR PROFESSIONAL SERVICES RENDERED THROUGH MARCH 31, 2020:

Date	Type		Hours
03/02/20	KAM	Review	0.1
03/02/20	CRB	Correspondence	0.1
03/02/20	CRB	Correspondence	0.1
03/03/20	CRB	Correspondence	0.2

Phillips Lytle LLP



Attorneys at Law
One Canalside
125 Main Street
Buffalo, NY 14203-2887
Telecopier # (716) 852-6100
(716) 847-8400
FED I.D. #16-0505790

Invoice Number 1007621
Invoice Date 04/25/20
Client Number 42273
Matter Number 00000
C R Bucki

Hours
1.1

Date	Tkpr	
03/04/20	CRB	Conference call [REDACTED]
03/04/20	CRB	Worked on report [REDACTED]
03/05/20	CRB	Worked on further correspondence [REDACTED]
03/05/20	CRB	Telephone call [REDACTED]
03/05/20	CRB	Correspondence [REDACTED]
03/06/20	CRB	Telephone call [REDACTED]
03/06/20	CRB	Correspondence [REDACTED]
03/06/20	CRB	Work on proposed answer to complaint in SAM Party action [REDACTED]
03/09/20	KAM	Receive [REDACTED]
03/09/20	KAM	Review [REDACTED]
03/09/20	KAM	Reviewed [REDACTED]
03/09/20	CRB	Worked on answer to complaint in SAM Party action [REDACTED]

Date	Tkpr		Hours
03/09/20	CRB	Telephone call	0.1
03/09/20	CRB	Correspondence	0.2
03/10/20	CRB	Conference call	0.8
03/10/20	CRB	Worked on report	1.5
03/10/20	CRB	Worked on client's answer to complaint	0.7
03/11/20	CRB	Worked on proposed answer in complaint in SAM Party action	2.6
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Received	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Review	0.1
03/12/20	KAM	Report	0.1

Date	Tkpr	Reviewed and revised answer to complaint in SAM Party action	Hours
03/12/20	CRB		1.9

03/12/20	CRB	Arranged	0.2
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03/12/20	CRB	Correspondence	0.2
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03/12/20	CRB	Telephone call	0.2
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03/13/20	CRB	Correspondence	0.1
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03/13/20	CRB	Communications	0.1
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03/16/20	CRB	Correspondence	0.1
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03/17/20	KAM	Review	0.1
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03/17/20	CRB	Correspondence	0.1
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03/17/20	CRB	Telephone call	0.2
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03/17/20	CRB	Correspondence	0.7
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Date	Tkpr		Hours
03/20/20	CRB	Correspondence	0.1
03/20/20	CRB	Correspondence	0.1
03/23/20	CRB	Correspondence	0.1
03/24/20	CRB	Reviewed documents	0.9
03/25/20	KAM	Review	0.1
03/25/20	KAM	Review	0.1
03/25/20	KAM	Review	0.1
03/25/20	CRB	Conference call	0.3
03/25/20	CRB	Correspondence	0.4
03/26/20	KAM	Review	0.1
03/26/20	CRB	Reviewed	0.2
03/26/20	CRB	Correspondence	0.1
03/27/20	KAM	Review	0.1

42273 Heastie, Carl E.
00000 SAM Party of N.Y. vs. Cuomo
April 25, 2020

Invoice Number 1007621
Page 6 of 6

Date	Tkpr		Hours
03/27/20	KAM	Review	0.1
03/27/20	KAM	Review	0.1
03/27/20	CRB	Correspondence	0.1

CURRENT FEES

\$8,092.50

TOTAL AMOUNT OF THIS INVOICE

\$8,092.50

Summary of Account Receivable:

DATE	INV#	LMS#	AMOUNT	PAYMENTS	BALANCE
03/17/20	1004717		2,189.00	0.00	2,189.00

PRIOR BALANCE DUE

2,189.00

TOTAL BALANCE DUE UPON RECEIPT

\$10,281.50

PAYMENT DUE UPON RECEIPT