

## CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA)

*A national, nonpartisan, nonprofit citizens' organization, working to protect the public interest in the integrity of our judicial selection and discipline processes and to depoliticize them so as to ensure that only the most qualified lawyers become, and remain, judges.*

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### **FOR IMMEDIATE RELEASE – White Plains NY, April 5, 2012**

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### **THE PEOPLE FIGHT BACK!**

### ***Groundbreaking Lawsuit by the Center for Judicial Accountability, Inc. (CJA) to Stop NY Judicial Pay Raises – & Secure Judicial Accountability***

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On Friday, March 30<sup>th</sup>, the non-partisan, non-profit Center for Judicial Accountability, Inc. (CJA), filed suit against New York's highest constitutional officers, challenging the pay raises for New York State judges that went into effect April 1, 2012, as unconstitutional, statutorily-violative, and fraudulent.

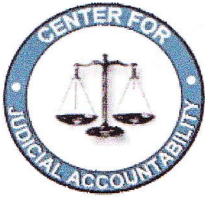
Among the contentions of the verified complaint is that it is unconstitutional to raise judicial salaries unless there are functioning mechanisms to discipline and remove judges who are not discharging their constitutional duty to render fair and impartial justice. It particularizes, with case file evidence, that existing appellate and supervisory mechanisms and the Commission on Judicial Conduct have been corrupted.

In further support, the verified complaint chronicles in detail the aborted 2009 Senate Judiciary Committee hearings at which a succession of witnesses testified about systemic corruption in New York's judiciary and supplied documentary evidence in substantiation. No investigation of their testimony or documents was ever undertaken, no findings were ever rendered, no committee report was ever issued.

The verified complaint asserts that the legislative and executive branches are colluding with the judiciary on the judicial pay raise issue so as to lay the groundwork for securing their own pay raises and particularizes facts culminating in a first cause of action entitled "Evisceration of the Separation of Powers: Collusion of the Three Government Branches against the People".

**"Monies obtained through collusion of the three government branches, earmarked for judicial pay raises, should be deposited into a superfund for restitution to the victims of judicial misconduct, not given to those perpetrating the injustice."**

Director, Elena Ruth Sassower



## CENTER FOR JUDICIAL ACCOUNTABILITY, INC.

In addition to declaratory relief, the verified complaint seeks to have the monies that have been earmarked for the judicial pay raises deposited into a superfund for restitution to the victims of judicial misconduct.

An order to show cause to stay the judicial pay raise pending determination of the verified complaint is returnable on Monday, April 16<sup>th</sup> – the day before New Yorkers are required to pay the taxes that will be used to pay for the judicial pay raises.

Both the verified complaint and the order to show cause, filed in Supreme Court/Bronx County, are posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), accessible via the top panel "Latest News". Direct link follows: <http://www.judgewatch.org/web-pages/cja/latest-news.htm>.

### **About CJA**

*Center for Judicial Accountability, Inc. (CJA) is a non-partisan, nonprofit citizens' organization WORKING IN THE PUBLIC INTEREST to improve the quality of the New York judiciary by removing political and personal interests from the judicial selection process and by ensuring that the process of disciplining and removing judges is effective and meaningful. CJA furthers these goals through education, oversight and documentation of abuses often occurring out of the public eye, networking with judicial activists and legal reform groups around the country to promote citizen involvement, concerted action, and protection for judicial "whistleblowers, tracking media coverage of issues of judicial selection and discipline, educating the media, providing expert testimony on abuses and best practices and initiating and supporting legal action in the public interest to advance the goal of a quality judiciary, free from bias and political influence.*

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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,

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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 evidentiarily-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.”