

Honorable Thomas P. DiNapoli
Office of the State Comptroller
110 State Street
Albany, NY 12236

February 11, 2025

Dear Comptroller DiNapoli:

We write to bring an urgent matter to your attention. We believe that the facts require that you immediately pause taxpayer funding for Andrew Cuomo's legal defense in *Trooper 1 v. Cuomo et al.* (22-cv-893 (LDH) (TAM)). A thorough audit of all payments in that case thus far and those made to his attorneys in *Bennett v. Cuomo et al.* (22-cv-7846 (VSB) (SLC)) should be conducted promptly. An audit will confirm our conclusion that the current pattern of unrestricted reimbursements violates New York State law, specifically Public Officers Law §17. More so, the lack of sufficient oversight of reimbursements has enabled Mr. Cuomo to perpetuate the harassment of women he was already found to have harassed by multiple investigations, now through the legal system and at taxpayer expense.

Public Officers Law §17 and its implementing regulations establish clear parameters for the defense and indemnification of state officers and employees. While the law provides for representation by private counsel when the Attorney General determines such representation is appropriate, it explicitly requires that attorneys and litigation fees be "reasonably incurred" (2 CRR NY 20.5(a)). Moreover, 2 CRR NY 20.6(d) mandates that attorneys affirm their activities were "necessary and reasonable" for the defense when submitting payment vouchers.

Based on recent FOIL information, your office has already demonstrated concerning leniency in managing these expenses. When Mr. Cuomo's private attorneys hired under Public Officers Law Section 17 requested payment rates above your official fee schedule, your office agreed to pay a blended rate of \$750 an hour, \$200 an hour for paralegals, and 50% of those rates for travel time – albeit not to the full amount requested. While granting this increase, you instructed defense counsel to "exercise billing judgment," submit detailed time records, and conduct litigation as efficiently as possible. The available evidence suggests these instructions have been largely ignored.

The magnitude of spending alone raises serious concerns about compliance with these requirements. In just 23 months, Mr. Cuomo and his former staff have consumed \$16.5 million in taxpayer funds across just the two cases referenced above, with Mr. Cuomo alone receiving \$10.3 million. This extraordinary sum becomes even more troubling when examining how these funds are deployed.

Mr. Cuomo has consistently used taxpayer dollars to fund legal tactics that go far beyond any definition of reasonable and necessary defense activities, including subpoenaing more than 30 non-parties. A few additional examples:

1. In *Bennett v. Cuomo*, Mr. Cuomo's attorneys sought records from Ms. Bennett's gynecologist and family therapist. These deeply personal medical records have no reasonable connection to the underlying harassment allegations and serve only to intimidate and humiliate Ms. Bennett while driving up litigation costs.
(<https://www.nytimes.com/2024/09/12/nyregion/andrew-cuomo-legal-fees-ny-taxpayers.html>)
2. In *Trooper 1 v. Cuomo*, after the plaintiff voluntarily agreed to expand depositions from the standard ten to eighteen witnesses, Mr. Cuomo's team demanded nineteen additional depositions. This attempt to nearly double an already expanded witness list demonstrates a clear strategy to exhaust resources and delay proceedings rather than pursue necessary evidence. (*Trooper 1 v. NYSP et al.*, 22-cv-893 (LDH) (TAM) ECF No. 295)
3. In a particularly egregious example, Mr. Cuomo used public funds to attempt to expose the full name of a non-party witness in *Trooper 1 v. Cuomo*, while simultaneously serving a subpoena on Verizon for all of this individual's phone records without any notice. The targeted nature of this action is evident in that Mr. Cuomo made no similar attempt to expose Trooper 1's identity - the actual plaintiff in the case. This selective targeting of a non-party witness represents clear retaliation rather than reasonable and necessary litigation. (*Trooper 1 v. NYSP et al.*, 22-cv-893 (LDH) (TAM) ECF No. 128)
4. The unnecessary breadth of Mr. Cuomo's discovery demands forced five non-parties in *Trooper 1 v. Cuomo* to submit their own proposal to the Judge to narrow the discovery scope. These individuals were compelled to incur significant personal legal expenses because Mr. Cuomo refused to propose any reasonable limitations. Even more telling, Mr. Cuomo indicated his intent to file a motion to strike all allegations concerning these non-parties from the complaint - which would render all of this expensive discovery moot. His refusal to file this motion before pursuing costly discovery reveals a strategy designed to harass rather than defend and is, therefore, unnecessary and unreasonable. (*Trooper 1 v. NYSP et al.*, 22-cv-893 (LDH) (TAM) ECF No. 179)
5. This pattern of abuse has become so severe that the federal magistrate in the *Trooper 1 v. Cuomo* case had to implement an extremely detailed discovery process after multiple conferences failed to reign in Mr. Cuomo's demands. The magistrate specifically noted in a March 2024 order that "this case is proving to be extremely costly, including for witnesses from whom Defendant Cuomo has sought extensive discovery who are not parties to this litigation." When a federal magistrate must repeatedly intervene to control discovery expenses, it is clear that these legal fees cannot be considered "reasonable" under any standard interpretation of Public Officers Law Section 17. (*Trooper 1 v. NYSP et al.*, 22-cv-893 (LDH) (TAM) ECF No. 220)

While every defendant deserves a robust defense, New York law does not entitle them to unlimited taxpayer funds for unreasonable litigation expenses. Mr. Cuomo's pattern of using public funds to harass his victims through the legal system clearly violates both the letter and spirit of Public Officers Law Section 17.

Therefore, we believe the law requires that you:

1. Immediately suspend all further taxpayer-funded payments for Mr. Cuomo's legal defense.
2. Conduct a rigorous audit of all past payments to ensure compliance with the "necessary and reasonable" standard required by law. The audit should include reviewing and comparing taxpayer payment amounts for Mr. Cuomo's defense to payments made for the defense of other elected officials in harassment and/or retaliation lawsuits.
3. Implement stronger oversight measures to prevent future abuse of taxpayer funds.

Your office has a fiduciary duty to protect New York's taxpayers. The current situation clearly fails to meet that responsibility and requires immediate corrective action.

Sincerely,

Erica Vladimer, Director, Harassment Free New York
Susan Lerner, Executive Director, Common Cause New York