

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

July 11, 2014

TO: “The Three Men in the Room”
Governor Andrew M. Cuomo
Senate Majority Leader Dean Skelos
Assembly Speaker Sheldon Silver

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Getting to First Base in Achieving “the Dream of Honest Government”
(1) Rectifying your violation of “The Public Integrity Reform Act of 2011” by appointing the review committee to evaluate JCOPE that you were required to appoint “No later than June 1, 2014”;
(2) Making public your “written response”, *if any*, to CJA’s June 27, 2013 ethics complaint against you, filed with JCOPE

As you know, the Joint Commission on Public Ethics (JCOPE) was not the product of legitimate legislative process. It was not born of bills introduced and referred to legislative committees for hearings, debate, amendments, votes, with committee reports rendered, followed by floor debate, amendments, votes – and a reconciliation of different bills by the two houses. Rather, on June 3, 2011, after “months of tortuous negotiations conducted in secret”¹, you announced a deal. Only then was a bill introduced into the Legislature – the Public Integrity Reform Act of 2011, the Governor’s Program Bill #9, thereupon speeding through the Legislature in typical rubber-stamp fashion.

Among the important provisions of your Public Integrity Reform Act of 2011 – enacted as Chapter 399 of the Laws of 2011 – was its Part A, §21:

“No later than June 1, 2014, the governor and the legislative leaders shall jointly appoint a review commission to review and evaluate the activities and performance of the joint commission on public ethics and the legislative ethics commission in implementing the provisions of this act. On or before March 1, 2015, the review commission shall report to the governor and the legislature on its review and

¹ “Cuomo and Legislative Leaders Strike Deal on New Ethics Rules”, New York Times (Nicholas Confessore, Thomas Kaplan), June 3, 2011. The article and all documents hereinafter referred-to are posted on a webpage for this letter on CJA’s website, www.judgewatch.org, accessible via the homepage link: “Exposing the Fraud of the Commission to Investigate Public Corruption”. Here’s the direct link to the webpage: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/exposing-JCOPE.htm>”.

evaluation which report shall include any administrative and legislative recommendations on strengthening the administration and enforcement of the ethics law in New York state. The review commission shall be comprised of eight members and the governor and the legislative leaders shall jointly designate a chair from among the members.” (Part A, §21, Chapter 399 of the Laws of 2011- Senate Bill #5679-2011/Assembly Bill #8301-2011).

In the event you forgot about that statutory provision, it was identified at the outset of a media publicized March 14, 2014 report of the New York City Bar Association and Common Cause/New York entitled “*Hope for JCOPE*” – whose conclusion was that JCOPE had fallen short of its mission and needed to be more “aggressive in the cause of ethical government by following investigations wherever they may lead and by making full use of its statutory powers.” (at p. 4).²

Nevertheless, you and the Legislature’s minority leaders – Senate Minority Leader Andrea Stewart-Cousins and Assembly Minority Leader Brian Kolb – have not appointed the JCOPE review commission. This is a statutory violation you must immediately rectify.

Of course, it is understandable that you would be loathe to appoint the review commission. After all, any legitimate review commission would have to “blow the whistle” on JCOPE and expose that it has been protecting you and other high-ranking constitutional officers and employees of the executive and legislative branches from investigation and disciplinary action. The proof? JCOPE’s handling of our June 27, 2013 ethics complaint against you and them, detailing the multitudinous conflicts of interest that are the ONLY explanation for your wilful and deliberate failure to take steps to protect the public from the statutory violations, fraud, and unconstitutionality of the August 29, 2011 Report of the Commission on Judicial Compensation, demonstrated by our October 27, 2011 Opposition Report – whose ultimate cost is billions of taxpayer dollars and the perpetuation of the systemic judicial corruption it covered up.

Although our June 27, 2013 ethics complaint to JCOPE, with its enclosed April 15, 2013 corruption complaint to U.S. Attorney Preet Bharara, is readily-accessible because it is posted on CJA’s website, www.judgewatch.org, on its own webpage with all the substantiating evidence to which it refers – such as our October 27, 2011 Opposition Report – copies of the intertwined June 27, 2013 and April 15, 2013 complaints are annexed, for your convenience.

You may be presumed to be fully-knowledgeable of our June 27, 2013 ethics complaint. Apart from our public advocacy identifying the complaint, as, for instance, my September 17, 2013 live-streamed and videoed testimony before the Commission to Investigate Public Corruption and the inclusion of the complaint and my September 17, 2013 testimony as exhibits to my April 23, 2014

² “*City Bar and Common Cause/New York Find Joint Commission on Public Ethics Not Fulfilling its Mission*”: City Bar press release/blog, March 14, 2014; “*New York City Bar Association Urges Steps to Improve Ethics Panel*”, *New York Times* (Suzanne Craig), March 13, 2014; *Capitol Pressroom*-Susan Arbetter WCNY radio interview: “*Attorney Evan Davis calls on JCOPE to stretch its muscles*”, March 17, 2014.

order to show cause to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption³, you would have learned of the complaint directly from JCOPE.

In mandatory terms, Executive Law §94.13(a), which embodies Chapter 399 of the Laws of 2011, states:

“If the commission receives a sworn complaint alleging a violation of section...seventy-four of the public officers law...by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees..., the commission shall notify the individual in writing, describe the possible or alleged violation of such laws and provide the person with a fifteen day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law...” (underlining added).

As CJA’s June 27, 2013 ethics complaint against you was sworn and alleged that you and others under the Commission’s jurisdiction had violated Public Officers Law §74, JCOPE was statutorily-required to notify you that you had fifteen days to furnish “a written response”. Did each of you furnish “a written response”? – or did JCOPE so protect you as to not have even notified you, “in writing”, of the complaint?

As the essence of our June 27, 2013 ethics complaint was that our October 27, 2011 Opposition Report was dispositive of your duty to protect the public in the four specific ways specified by the Opposition Report and that only conflicts of interest could explain your inaction, your “written response” would have had to demonstrate that the Opposition Report was not the dispositive document we asserted it to be.

Just as nothing in Chapter 399 of the Laws of 2011 prevented us from publicly disclosing our June 27, 2013 ethics complaint, so nothing prevents each of you from publicly disclosing your “written response[s]”. We call upon you to do so – in keeping with your rhetoric about government accountability, transparency, and openness, which surely you will be reprising to woo voters in the upcoming elections.

³ The declaratory judgment action is *New York State Senate, New York State Assembly, Dean G. Skelos and Jeffrey D. Klein, as members and as Temporary Presidents of the New York State Senate, and Sheldon Silver, as member and Speaker of the New York State Assembly v. Kathleen Rice, William J. Fitzpatrick, and Milton L. Williams, Jr. in their official capacities as Co-Chairs of the Moreland Commission on Public Corruption and The Moreland Commission to Investigate Public Corruption* (NY Co. #160941/2013). CJA’s June 27, 2013 ethics complaint is Exhibit B-6 my proposed verified complaint. The transcript of my September 17, 2013 oral testimony before the Commission to Investigate Public Corruption, referring to this complaint to JCOPE, is part of Exhibit M (Tr. at p. 96). My written September 17, 2013 testimony identifying the complaint, more specifically, is Exhibit H-1 (at p. 4).

As it is unclear from press reporting whether the grand jury subpoena that U.S. Attorney Preet Bharara reportedly served upon JCOPE is limited to the complaints JCOPE has received, or includes the record of JCOPE’s handling of those complaints,⁴ he should be most interested in your “written response[s]” – and all the more so as it would necessarily be responsive to the underlying April 15, 2013 corruption complaint that we filed with him against you, whose title “Achieving ‘the Dream of Honest Government’”, he has done little to advance.



Enclosure: CJA’s June 27, 2013 ethics complaint to JCOPE,
with its enclosed April 15, 2013 corruption complaint to U.S. Attorney Bharara,
“Achieving ‘the Dream of Honest Government’”

cc: Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian Kolb
Joint Commission on Public Ethics
U.S. Attorney Preet Bharara
New York City Bar Association
Common Cause/New York
The Public & the Press

⁴ “U.S. Attorney Seeks Records of Ethics Panel”, New York Times (Suzanne Craig, William Rashbaum), April 30, 2014; “Feds widen crackdown on New York political corruption”, New York Post (Carl Campanile, Pat Bailey), April 30, 2014; “Preet Bharara asks for all complaints filed with NYS ethics commission”, New York Daily News (Ken Lovett), April 30, 2014.