

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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March 28, 2013

TO: New York State Senate
Francis W. Patience, Secretary of the Senate

New York State Assembly
Katie Bender, Deputy Records Access Officer

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

RE: Request for Production & Posting on Senate and Assembly Websites:
(1) the Filed "Joint Certificate" Establishing the "Joint Budget Conference Committee" and its Subcommittees;
(2) Such Filed "Written Report(s)" as the Joint Budget Conference Committee and its Subcommittees Rendered

This follows up CJA's March 6, 2013 letter to you entitled "'Budget Consideration Schedule' and 'Joint Budget Conference Committee' and Subcommittees Thereto, Pursuant to Senate and Assembly Joint Rules".

In full, Senate and Assembly Joint Rule II, §1, entitled "Committee on Conference", reads:

"The Temporary President of the Senate and the Speaker of the Assembly may jointly convene a Joint Committee on Conference to consider and report upon substantially similar but not identical legislation that has passed each House of the Legislature. Such committee shall be constituted by the filing of a joint certificate by the Temporary President of the Senate and the Speaker of the Assembly with the Secretary of the Senate and the Clerk of the Assembly, and shall consist of the same number of members from each House. Unless otherwise provided in the certificate, there shall be five members on such committee from each House to be appointed by the Temporary President of the Senate who shall appoint the members from the Senate and the Speaker of the Assembly who shall appoint the members from the Assembly; provided, however, that of each House's delegation at least one member shall represent the minority in each House. The Temporary President of the Senate and the Speaker of the Assembly shall each appoint a co-chairperson of the committee and such co-chairpersons shall convene and recess meetings of the committee. Meetings jointly convened by the co-chairpersons shall be subject to the provisions of Article 7 of the Public Officers Law. The committee shall file a written report setting forth the joint recommendations of a majority of each House's delegation with the Secretary of the Senate and the Clerk of the Assembly or such

other committees or officers as may be set forth in the certificate and such report may include specific bill language that would implement the joint committee's recommendations. No report shall be filed except upon the affirmative vote of a majority of the members of each House's delegation on the committee. (underlining added).

In full, Senate and Assembly Joint Rule III, §1, entitled "Budget Consideration Schedule", states:

"In accordance with section 54-a of the Legislative Law, within ten days of the submission of the budget by the Governor pursuant to article VII of the Constitution, the Temporary President of the Senate and the Speaker of the Assembly shall promulgate a schedule of dates for considering and acting upon such submission. Such schedule shall include the dates for those actions required to be taken by the legislature pursuant to section 53 of the Legislative Law, dates for the convening of a joint budget conference committee or committees as provided herein, and a date by which such committee or committees shall issue a final report or reports." (underlining added).

This is followed by §2 of Joint Rule III, entitled "Joint Budget Conference Committee", stating:

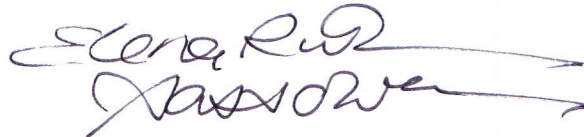
"In accordance with section 54-a of the Legislative Law, within ten days of the submission of the budget by the Governor pursuant to article VII of the Constitution, the Temporary President of the Senate and the Speaker of the Assembly shall jointly establish a Joint Budget Conference Committee and, as they deem necessary, any number of subcommittees subordinate to such Joint Budget Conference Committee, to consider and reconcile such budget resolutions or bills passed by, or as may be passed by, the Senate and Assembly. Such Joint Budget Conference Committee shall be constituted and conducted as prescribed in Joint Rule II and shall file its written report in accord with the schedule established pursuant to section 1 of this rule." (underlining added).

It would appear that "the joint certificate" that the Temporary Senate President and Assembly Speaker were required to file with the Secretary of the Senate and the Clerk of the Assembly to establish the Joint Budget Conference Committee has not been posted on either the Senate or Assembly website. Please furnish a copy forthwith – and if, in fact, this "joint certificate" has not been posted, explain why this is so.

Also not posted – or so it appears – is the "written report" that the Joint Budget Conference Committee was required to file with the Secretary of the Senate and the Clerk of the Assembly, "setting forth the joint recommendations of a majority of each House's delegation". Likewise, it appears that "written reports" of subcommittees of the Joint Budget Conference Committee have not been posted. Please forthwith furnish copies of such "written reports" – and, again, explain why they have not been posted, if, in fact, that is the case.

It is our position – and reflected by our March 6, 2013 letter – that all these should have been posted on the Senate and Assembly website, immediately, upon their being filed, consistent with the letter and spirit of their respective rules governing “Freedom of Information” and “Public Disclosure of Records”¹.

Thank you.

A handwritten signature in blue ink, appearing to read "Elena R. D. Nassow". The signature is written in a cursive style with long horizontal strokes extending to the right.

cc: Committee on Open Government
ATT: Robert Freeman, Executive Director

¹ Senate Rule XV, “Freedom of Information”:

§1.a. “Publication of records relating to Senate legislative and administrative records. Recognizing that legislative records available by request under the ‘freedom of information law’ are of important public interest, the Senate shall make available through a searchable and sortable database on the Senate website: records of committees, agendas, votes, minutes, reports, attendance, fiscal notes, and records of the chamber including, active lists, votes, transcripts, calendars, the Senate payroll report and expenditure reports.”

§b. “Furthermore all such records listed in subdivision a shall be available for public inspection and copying in accordance with the provisions of Article 6 of the Public Officers Law, “the freedom of information law.”

Assembly Rule VIII, “Public Access to Records”:

§1. “Intent. It is the intent of the Assembly that central administrative records maintained by the Assembly be governed by the same presumption of disclosure which governs access to executive agency records, with similar enumerated exceptions.”

§2. “Disclosure policy. a. In addition to any records required to be made available pursuant to the provisions of section eighty-eight of the public officers law and the rules and regulations promulgated thereunder, all other existing records maintained by the Assembly shall be available for public inspection and copying, except...”