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### BY E-MAIL

October 26, 2015

TO: Joint Commission on Public Ethics (JCOPE)  
Records Access Officer/Director for External Affairs Walter McClure

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

RE: FOIL/Records Request III - Assisting the JCOPE/LEC Review Commission with a methodologically-sound review: JCOPE's legislative recommendations

Further continuing my public-spirited, volunteer assistance to the JCOPE/LEC Review Commission—

Executive Law §94(9)(l) is the all-important provision of accountability requiring that JCOPE:

“Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section, provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision nineteen of this section” (underlining added).

JCOPE's 2012 Annual Report, released March 28, 2013, contains a section entitled “Legislative Recommendations” (at p. 49), whose prefatory paragraph reads:

“Pursuant to Executive Law §94(9)(l), staff proposes the following changes to the ‘laws governing the conduct of persons subject to the jurisdiction of the [C]ommission,’ which arise out of the day-to-day administration and enforcement of the Public Officers Law and the Lobbying Act. Staff will continue to develop additional appropriate and effective legislative proposals, including recommendations with respect to the procedures governing the Commission as set forth in Executive Law §94.” (underlining added).

The 2012 Annual Report then follows this prefatory paragraph with two subheadings. The first, “Proposed Amendment to the Public Officers Law”, begins:

“The Legislature should consider amending...Public Officers Law 73(1)(m)”.

The second, “Proposed Amendments to the Lobbying Act”, begins: “The Legislature should also give consideration to the following recommendations” and enumerates five:

- (a) “Create a code of ethics for lobbyists, violation of which would be punishable by a civil penalty, or other sanction...”
- (b) Modify section §1-0(c)(iii) of the Lobbying Act...
- (c) Extend the requirement in Lobbying Act §§1-e(c), 1-h(b)(v), & 1-o(b)(vi)...
- (d) [Modify]...Lobbying Act §1-d(b);
- (e) Expand the conditions in section §1-o(b)(iv) of the Lobbying Act...” (at p. 49-50).

What became of these recommendations and proposed amendments? JCOPE’s 2013 Annual Report, released April 3, 2014, does not furnish any information about their status<sup>1</sup> – and, like its 2012 Annual Report, make no mention of the legislative committees having oversight over JCOPE and whose responsibility it would be to consider, debate, and vote on such recommendations and amendments – including by holding hearings with respect thereto.<sup>2</sup>

Indeed, JCOPE’s 2013 Annual Report differs in format from the 2012 Annual Report, as it contains no section of “Legislative Recommendations”, makes no legislative recommendations, and, in fact, conceals that JCOPE has any such function, let alone one explicitly imposed by Executive Law

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<sup>1</sup> This even where the 2013 Annual Report (at p. 33) discusses the very provision which was the subject of a recommendation – Lobbying Act §1-d(b).

<sup>2</sup> These legislative committees would appear to be:

**IN THE SENATE:**

- (1) the six-member Senate Committee on Ethics – <http://www.nysenate.gov/committees/ethics>;
- (2) the nine-member Senate Committee on Investigations and Government Operations – <http://www.nysenate.gov/committees/investigations-and-government-operations>;

**IN THE ASSEMBLY:**

- (1) the eight-member Assembly Committee on Ethics and Guidance – <http://assembly.state.ny.us/comm/?sec=mem&id=16>;
- (2) the fourteen-member Assembly Committee on Governmental Operations – <http://assembly.state.ny.us/comm/?sec=mem&id=18>;
- (3) the seven-member Assembly Committee on Oversight, Analysis, and Investigation – <http://assembly.state.ny.us/comm/?sec=mem&id=18>.



§94.9(l) with respect to its annual report, *to wit*, “recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct”.

As for JCOPE's 2014 Annual Report, released on April 29, 2015, it also contains no section of “Legislative Recommendations” – and explains (at p. 7) that because of “the large scope” of its February 2015 Report”, including “propos[als of] several areas for legislative reforms”, the 2014 Annual Report is “limited to information concerning lobbying activity, investigations, and training programs conducted in 2014”. In so doing, JCOPE conceals which of the numerous statutory recommendations set forth in its February 2015 Report are being presented for the first time – rather than at any time during the preceding three years. Thus, for example, under the heading “Lobbying – Improving Compliance and Enforcement” (at pp. 31-32), JCOPE's February 2015 Report seems to repeat three of the five legislative recommendations from the 2012 Annual Report without acknowledging this. Indeed, the February 2015 Report does not disclose the status of the six statutory recommendations the 2012 Annual Report had made.<sup>3</sup>

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<sup>3</sup> As for JCOPE's February 2015 Report, it limits the scope of the legislative recommendations it makes by concealing and misrepresenting its mandate under Executive Law §94(1). Rather than quoting, in full, what Executive Law §94(1) says with regard to the review and report, the February 2015 Report gives only a snippet, stating:

“Under PIRA, JCOPE is required to ‘undertake a comprehensive review’ of regulations and Advisory Opinions issued by its predecessor agencies, evaluate the effectiveness of the current regulations, and submit a report of its findings and recommendations to the Governor and Legislature by February 1, 2015. (Executive Law §94(1)).” (at p. 5)

This enables it to then justify not presenting more sweeping recommendations, which it explains as follows:

“It should be noted that certain issues are not addressed in this report. JCOPE is well aware that questions have been raised over several aspects of its structure and statutorily mandated procedures and practices. Among the statutory areas that have generated public discussion are the special voting requirements to initiate a full investigation of certain public officials, the total number of commissioners serving on JCOPE, and the independence of commissioners from their appointing authorities. These, and other questions concerning JCOPE as an institution that implicate separation of powers, are the prerogative of the Executive and Legislative Branches of government, and are not within the purview of JCOPE.” (at p. 12, underlining added).

In fact, Executive Law §94(1) expressly required JCOPE, in tandem with LEC, to propose “any...statutory changes” with respect “the effectiveness of the existing laws, regulations, guidance and ethics enforcement structure” (underlining added). The language of Executive Law §94(1) pertaining to JCOPE's review and report reads:

“The commission shall undertake a comprehensive review of all such regulations and opinions [of prior ethics commissions], which will address the consistency of such

Consequently, pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], this is to request all publicly-available records pertaining to:

- (1) which legislative recommendations in JCOPE's February 2015 Report are made for the first time;
- (2) the date and status of previously-made recommendations and their Senate and Assembly bills numbers, if any;
- (3) why JCOPE's 2013 Annual Report contains no section of "Legislative Recommendations" and makes no legislative recommendations;

Public Officers Law §89.3 requires your response "within five business days" of receipt of this request – and I would appreciate if you e-mailed it to me at [elena@judgewatch.org](mailto:elena@judgewatch.org).

For your convenience, this letter and links to Executive Law §94, JCOPE's above-cited reports, and the pertinent legislative committees are posted on CJA's webpage for JCOPE and the JCOPE/LEC Review Commission, accessible from our homepage, [www.judgewatch.org](http://www.judgewatch.org), via the prominent link: "Exposing the Fraud of the Commission to Investigate Public Corruption".

Thank you.



cc: JCOPE/LEC Review Commission  
Committee on Open Government  
The Public

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regulations and opinions among each other and with the new statutory language, and of the effectiveness of the existing laws, regulations, guidance and ethics enforcement structure to address the ethics of covered public officials and related parties. Such review shall be conducted with the legislative ethics commission and, to the extent possible, the report's findings shall reflect the full input and deliberations of both commissions after joint consultation. The commission shall, before February first, two thousand fifteen, report to the governor and legislature regarding such review and shall propose any regulatory or statutory changes and issue any advisory opinions necessitated by such review." (underlining added).