

New York State Joint Commission on Public Ethics 540 Broadway Plaza Albany, New York 12207 www.jcope.ny.gov 518-408-3976

SWORN COMPLAINT

The Joint Commission on Public Ethics has jurisdiction to investigate potential violations of Public Officers Law §73, §73-a, §74, Civil Service Law §107 and Legislative Law article 1-A as they apply to state legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch state employees, certain political party chairs, and lobbyists and their clients.

5,1,0. **COMPLAINANT NAME** ADDRESS CITY, STATE, ZIP **TELEPHONE EMAIL**

Please provide a statement or description of the alleged violation of Public Officers Law §73, §73-a, §74, Civil Service Law §107 or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

Has this matter been referred to any other agency? Yes No If yes, which agency? No Is there a pending legal action you are aware of? Ves Co If yes, where? Suppose SIR

, being duly sworn, have read the foregoing complaint in its I, entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sworn to before me this 11th day of	Zang Cal FX Castors
December 20_14	SIGNATURE
NOTARY PUBLIC	PAGE_1_OF_78
Notary Public - NO. 01[Qualified in	IS DIAZ State of New York DI6311887 Bronx County xpires Sep 22, 2018

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CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 White Plains, New York 10602 Tel. (914)421-1200

E-Mail: <u>cja@judgewatch.org</u> Website: <u>www.judgewatch.org</u>

December 11, 2014

TO: Joint Commission on Public Ethics (JCOPE)

- FROM: Elena Sassower, Director Center for Judicial Accountability, Inc. (CJA)
- RE: <u>Conflict of Interest Ethics Complaint vs Governor Andrew Cuomo, Legislative</u> Leaders, & JCOPE for Violation of the Public Integrity Reform Act of 2011 Pertaining to the Review Commission Statutorily-Required to be Appointed "No later than June 1, 2014"

This is to initiate an ethics complaint against Governor Andrew Cuomo, Senate Majority Leader Dean Skelos, Assembly Speaker Sheldon Silver, Senate Minority Leader Andrea Stewart-Cousins, and Assembly Minority Leader Brian Kolb, as well as against the members and staff of the Joint Commission on Public Ethics (JCOPE). All have violated Public Officers Law §74 pertaining to conflict of interest with respect to the Public Integrity Reform Act of 2011, whose language could not be more mandatory and unequivocal:

"<u>No later than June 1, 2014</u>, the governor and the legislative leaders <u>shall</u> 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. <u>On or before March 1, 2015</u>, the review commission <u>shall</u> report to the governor and the legislature on its review and evaluation which report <u>shall</u> include any administrative and legislative recommendations on strengthening the administration and enforcement of the ethics law in New York state. The review commission <u>shall</u> be comprised of eight members and the governor and the legislative leaders <u>shall</u> 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, underlining added).

The facts and evidence, furnishing not only the "substantial basis" for this conflict-of-interest ethics complaint, but the *prima facie* proof, are laid out by CJA's July 11, 2014 and July 18, 2014 letters, sent to the Governor and the above-mentioned Legislative Leaders, <u>without response from them</u>, and sent to JCOPE, <u>without response from it</u>. Although the letters are posted on CJA's website, <u>www.judgewatch.org</u>, accessible *via* the prominent link "Exposing the Fraud of the Commission to Investigate Public Corruption",¹ copies are enclosed for your convenience (Exhibits A, B).

¹

That link brings up a menu with a link entitled: "Going Where the Commission to Investigate Public

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As of this date, nearly 6-1/2 months beyond June 1, 2014 – and notwithstanding a July 9, 2014 letter from the New York City Bar Association's Committee on Government Ethics to the Governor and Legislative Leaders urging them to make the statutorily-required appointments, stating "time is of the essence" (Exhibit C)² – the Governor and Legislative Leaders have still not appointed the eightmember review commission and JCOPE has still not publicly called upon them to do so. <u>Only their individual and collective self-interest that there be no review commission can account for this knowing and deliberate nonfeasance.</u>

As <u>expressly</u> stated by our July 11, 2014 letter (at p. 2), any legitimate review commission would have to "blow the whistle" on JCOPE and expose its corrupt protectionism of the Governor and Legislative Leaders – as proven, <u>resoundingly</u>, by CJA's June 27, 2013 ethics complaint against them and other constitutional and public officers and employees that JCOPE has been sitting on, now going on 18 months.

Our July 11, 2014 letter enclosed our June 27, 2013 ethics complaint against the Governor, Legislative Leaders, and other constitutional and public officers and employees for violation of Public Officers Law §74. It also enclosed our April 15, 2013 corruption complaint to U.S. Attorney Preet, which accompanied the June 27, 2013 ethics complaint and was part thereof, furnishing the particulars of their "grand larceny of the public fisc and other corrupt acts" pertaining to the statutorily-violative, fraudulent, and unconstitutional three-phase judicial salary increase recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation and the Judiciary's slush-fund budget for fiscal year 2013-2014 that the Governor joined with the Legislature's budget in Budget Bill #S.2601-A/A.3001-A.

The most cursory examination of this monumental, fully-documented two-in-one ethics/corruption complaint³ makes evident what an unconflicted JCOPE would have had to do pursuant to Executive Law §94.13 and §94.14:

• give notice to the Governor, Legislative Leaders and other constitutional and public officers and employees of their violations of Public Officers Law §74, as alleged in the June 27, 2013 ethics complaint, and afford them 15 days within which to furnish their written responses

Corruption Did NOT: Joint Commission on Public Ethics (JCOPE)", from which the webpages for CJA's July 11, 2014 and July 18, 2014 letters can be accessed, together with the underlying substantiating proof to which they refer. The webpage for this letter can also be accessed there.

The City Bar's letter, to which it received no response, was doubtlessly prompted by my several phone calls to the City Bar and its Committee on Government Ethics on July 11, 2014, inquiring as to their knowledge as to whether the review commission had been appointed – a fact the letter attempts to conceal by its July 9, 2014 date.

³ The volume of documentary proof substantiating the complaint may be seen from the video of my September 17, 2013 testimony before the Commission to Investigate Public Corruption, posted on CJA's webpage for this letter. The direct link is: <u>http://www.judgewatch.org/web-pages/searching-nys/commissionto-investigate-public-corruption/holding-to-account/jcope-dec-11-ltr.htm</u>.

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[Executive Law §94.13(a)];

- within 45 calendar-days vote to commence a "substantial basis investigation" as to their violations of Public Officers Law §74, with written notice to them of their right to be heard within 30 days [Executive Law §94.13(a), (b)];
- issue a "substantial basis investigation report" that violations of Public Officers Law §74 by the Governor and other executive branch constitutional and public officers and employees had been substantiated and send it to them with public release of the report within 45 days thereafter [Executive Law §94.14(b)];
- assess civil penalties against the Governor and other executive branch officers and employees for their violations of Public Officers Law §74 and refer their larcenous, corrupt conduct "to the appropriate prosecutor for further investigation" [Executive Law §94.14]
- deliver to the Legislative Ethics Commission (LEC) a report of the violations of Public Officers Law §74 by legislators and legislative employees and refer their larcenous, corrupt conduct "to the appropriate prosecutor for further investigation" with LEC thereafter publicly releasing the report and, if not, JCOPE releasing it [Executive Law §94.14(a)]; Executive Law §80.9(b)], with LEC also, within 90 days, assessing civil penalties against the legislators and legislative employees [Executive Law §80.10].

Nor is there any doubt what "the appropriate prosecutor" would be duty-bound to do, faced as he is with <u>rock-solid</u>, *prima facie* documentary proof of "grand larceny of the public fisc and other corruption" with respect to the judicial salary increases and the Governor's Judiciary/Legislative Budget Bill #S.2601-A/A.3001-A. His duty is to indict New York's highest constitutional officers – and not only in the executive and legislative branches, but also in the judicial branch. Indeed, because there is NO defense to the proof of their willful and deliberate official misconduct, the <u>only</u> discretion an "appropriate prosecutor" would have is whether to offer them plea deals so that they could avoid the certain and more dire consequences of an adverse court verdict.

As JCOPE's own Code of Conduct underscores the applicability of conflict of interest rules to its members,⁴ please advise, without delay, how JCOPE will be handling this evidentiarily-established ethics complaint against itself – and against the Governor and Legislative Leaders who have appointed JCOPE's 14 members [Executive Law §94.2] and with whom the members have political, professional, and personal relationships.⁵

⁴ See JCOPE's webpage for the Code of Conduct for its members: http://www.jcope.ny.gov/about/Ethical%20Code%20of%20Conduct%20and%20Recusal%20Policy.pdf.

⁵ JCOPE's staff is also afflicted by conflicts of interest, such as its Executive Director, Letizia Tagliafierro, who was formerly Governor Cuomo's director of intergovernmental affairs. See October 30, 2013 <u>Daily News</u> article "Former Gov. Cuomo aide Letizia Tagliafierro named executive director of Joint Commission on Public Ethics", which noted "Some critics had argued the appointment would give the

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By copy of this letter to the Legislative Ethics Commission (LEC), we also initiate an ethics complaint with it against the Legislative Leaders for their self-interested violation of their statutory duty to appoint the JCOPE/LEC review commission – and of their correlative duty to have taken appropriate action against the Governor, if the failure to appoint the review commission was attributable solely to him. In so doing, we request that LEC refer this complaint to all relevant authorities, including investigative and prosecutorial officers able to bring an Article 78 proceeding for mandamus to compel the Governor and Legislators to appoint the review commission.⁶ The jurisdictionally-proper public officers for this task are: Attorney General Eric Schneiderman, Albany County District Attorney P. David Soares, and U.S. Attorney for the Northern District of New York Richard Hartunian. Then, too, there are New York's purported corruption-fighting U.S. Attorneys for the Southern and Eastern Districts of New York, Preet Bharara and Loretta Lynch.

So that no time is wasted in bringing the necessary mandamus proceeding to uphold the rule of law and the public's rights, a copy of this letter will be directly furnished to these five investigative/prosecutorial officers, with a request that they rise above their own conflicts of interest, born of their own nonfeasance with respect to CJA's complaints to them of the "grand larceny of the public fisc and other corruption" that is the subject of our April 15, 2013 corruption complaint to U.S. Attorney Bharara on which our June 27, 2013 ethics complaint to JCOPE rests.⁷

governor too much influence over the panel."

According to JCOPE's October 29, 2013 press release announcing Ms. Tagliafierro's appointment, <u>http://www.jcope.ny.gov/public/2013/10.29.13%20press%20release.pdf</u>, she had been, since mid-2012, JCOPE's Director of Investigations and Enforcement – in which position she "oversaw all investigative and enforcement matters". This would have included CJA's June 27, 2013 ethics complaint.

Suffice to note that Ms. Tagliafierro has consistently failed to return phone messages I have left for her, including on December 3, 2014 and December 9, 2014 as to whether the JCOPE review commission had been appointed by the Governor and Legislative Leaders, the status of CJA's June 27, 2013 ethics complaint, and JCOPE's concealment of the status of it and other complaints by its annual reports.

⁶ Executive Law §80.11 states:

"If the commission has a reasonable basis to believe that any person subject to the jurisdiction of another state oversight body may have violated ...seventy-four of the public officers law, ...it shall refer such violation to such oversight body unless the commission determines that such a referral would compromise the prosecution or confidentiality of its proceedings and, if so, shall make such a referral as soon as practicable. The referral by the commission shall include any information relating thereto coming into the custody or under the control of the commission at any time prior or subsequent to the time of the referral."

⁷ The complicity of all these investigative/prosecutorial officers in the "grand larceny of the public fisc and other corrupt acts" by the Governor, Legislative Leaders, and other constitutional and public officers and employees – presented by our April 15, 2013 corruption complaint was attested to by me before the Commission to Investigate Public Corruption at its September 17, 2013 public hearing (see written testimony) and thereafter embodied in two lawsuits:

(a) an April 23, 2014 motion to intervene in the declaratory judgment action, New York State Senate,

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Inasmuch as Governor Cuomo, upon announcing his shut-down of the Commission to Investigate Public Corruption after his behind-closed-doors budget deal with Legislative Leaders, purported:

"We have plenty of enforcement mechanisms by and large...I don't believe we needed yet another bureaucracy for enforcement. We needed laws changed."",

to which the Commission to Investigate Public Corruption's Co-Chair William Fitzpatrick gave echo:

"The problem was not that the state lacked adequate prosecution capacity. After all, we have sixty-two District Attorneys, four U.S. Attorneys, and a statewide Attorney General. The problem was the weakness of laws addressing official misconduct...",⁸

there should be <u>ample</u> enforcers of the statutorily-mandated JCOPE/LEC review commission, discharging their duty under law.

Thank you.

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Enclosures & cc's: see next page

New York State Assembly, Dean G. Skelos and Jeffrey D. Klein, as members and Temporary Presidents of the New York State Senate, and Sheldon Silver, as member and as 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 to Investigate Public Corruption (Supreme Court/New York Co. #16094/2013), by Elena Sassower, individually and as Director of the Center for Judicial Accountability, Inc., acting on her own behalf and on behalf of the People of the State of New York & the Public Interest (see proposed verified complaint: ¶¶15-100, 118-126).

(b) a March 28, 2014 citizens-taxpayer action under State Finance Law, Article 7-A, Center for Judicial Accountability, Inc. and Elena Ruth Sassower, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest v. Andrew M. Cuomo, in his official capacity as Governor of the State of New York, Dean Skelos in his official capacity as Temporary Senate President, The New York State Senate, Sheldon Silver, in his official capacity as Assembly Speaker, The New York State Assembly, Eric T. Schneiderman, in his official capacity as Comptroller of the State of New York (Supreme Court/Albany Co. #1788-14: see verified complaint: ¶¶5(h), (i), 33-34, 48-49, 72-73).

The records of these two lawsuits – each constituting <u>a perfect paper trail of corruption for</u> <u>investigation and prosecution</u> – are accessible from the prominent links on CJA's homepage: "Exposing the Fraud of the Commission to Investigate Public Corruption" and "CJA's Citizen-Taxpayer Action to End NYS' Corrupt Budget 'Process' & 'Three Men in a Room' Governance".

⁸ These two quotes appear at ¶¶73-74 of my April 23, 2014 affidavit in support of intervention on behalf of the People of the State of New York & the Public Interest in the declaratory judgment action *New York State Senate v. Rice, supra* (fn. 7).

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Enclosures: Exhibit A: CJA's July 11, 2014 letter with its enclosed June 27, 2013 ethics complaint to JCOPE & April 15, 2013 corruption complaint to U.S. Attorney Bharara Exhibit B: CJA's July 18, 2014 letter Exhibit C: July 9, 2014 letter of the New York City Bar Association's Committee on Government Ethics

Governor Andrew M. Cuomo cc: Temporary Senate President Dean Skelos Assembly Speaker Sheldon Silver Senate Minority Leader Andrea Stewart-Cousins Assembly Minority Leader Brian Kolb Legislative Ethics Commission (ATT: Lisa Reid, Executive Director/Counsel) Attorney General Eric Schneiderman Albany County District Attorney P. David Soares U.S. Attorney for the Northern District of New York Richard Hartunian U.S. Attorney for the Southern District of New York Preet Bharara U.S. Attorney for the Eastern District of New York Loretta Lynch New York State Inspector General Catherine Leahy Scott The New York City Bar Association (ATT: Alan Rothstein, Counsel) & its Committee on Government Ethics (ATT: Benton Campbell, Chair) Common Cause/NY (ATT: Susan Lerner, Executive Director) NY Public Interest Research Group (NYPIRG) (ATT: Blair Horner, Legislative Director) The Public & The Press

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 White Plains, New York 10602 Tel. (914)421-1200

E-Mail: <u>cja@judgewatch.org</u> Website: <u>www.judgewatch.org</u>

July 11, 2014

TO:	" <u>The Three Men in the Room</u> " 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", <i>if any</i> , 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

ExA

¹ "Cuomo and Legislative Leaders Strike Deal on New Ethics Rules", <u>New York Times</u> (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, <u>www.judgewatch.org</u>, accessible *via* the homepage link: "Exposing the Fraud of the Commission to Investigate Public Corruption". Here's the direct link to the webpage: <u>http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/exposing-JCOPE.htm</u>".

"The Three Men in the Room"

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.

Or 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, <u>www.judgewatch.org</u>, on its own webpage with <u>all</u> 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", <u>New York Times</u> (Suzanne Craig), March 13, 2014; <u>Capitol Pressroom</u>-Susan Arbetter WCNY radio interview: "Attorney Evan Davis calls on JCOPE to stretch its muscles", March 17, 2014.

"The Three Men in the Room"

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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 <u>directly</u> from JCOPE.

In <u>mandatory</u> 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 <u>shall</u> 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 <u>dispositive</u> 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).*

"The Three Men in the Room"

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July 11, 2014

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 <u>little</u> to advance.

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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", <u>New York Times</u> (Suzanne Craig, William Rashbaum), April 30, 2014; "Feds widen crackdown on New York political corruption", <u>New York Post</u> (Carl Campanile, Pat Bailey), April 30, 2014; "Preet Bharara asks for all complaints filed with NYS ethics commission", <u>New York Daily News</u> (Ken Lovett), April 30, 2014.

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July 18, 2014

TO: Joint Commission on Public Ethics (JCOPE)

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

RE:

The Record of JCOPE's Handling of Complaints:

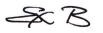
(1) Status of CJA's June 27, 2013 ethics complaint;

(2) Rectifying your violation of Executive Law §94.9(1)(i) ("The Public Integrity Reform Act of 2011") by supplementing your 2012 and 2013 annual reports with the statutorily-required list of assigned numbers for each complaint and referral, including the status of each complaint.

<u>As an aid to U.S. Attorney Bharara</u>, who has reportedly subpoenaed all complaints filed with you,¹ this is to recite facts and demand answers pertaining to the June 27, 2013 complaint I filed with you and pertaining to the complaints which other members of the public filed with you – whose status and dispositions you have unlawfully concealed from your annual reports.²

On June 27, 2013, I followed the instructions appearing on JCOPE's website for complaints. Using JCOPE's complaint form, I filed a <u>sworn</u> ethics complaint against public officers and employees over whom JCOPE has jurisdiction, setting forth particularized facts pertaining to their violations of Public Officers Law §74 relating to conflicts of interest and furnishing, in substantiation, documentary proof, accessible from the Center for Judicial Accountability's website, <u>www.judgewatch.org</u>.

² This letter, with all referred-to law and documentary proof, is posted on CJA's website, <u>www.judgewatch.org</u>, on its own webpage. It is accessible from the menu reached *via* the homepage link "Exposing the Fraud of the Commission to Investigate Public Corruption". The direct link is: <u>http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/jcope-july-18-ltr.htm</u>.



¹ "U.S. Attorney Seeks Records of Ethics Panel", <u>New York Times</u> (Suzanne Craig, William Rashbaum), April 30, 2014; "Feds widen crackdown on New York political corruption", <u>New York Post</u> (Carl Campanile, Pat Bailey), April 30, 2014; "Preet Bharara asks for all complaints filed with NYS ethics commission", <u>New York Daily News</u> (Ken Lovett), April 30, 2014; "Reports: U.S. Attorney goes after state's troubled ethics watchdog", <u>Gannett</u> (Joseph Spector), April 30, 2014; "Federal Prosecutor Subpoenas New York Ethics Enforcement Agency", <u>Wall Street Journal</u> (Erica Orden), April 30, 2014.

The next day, June 28, 2013, JCOPE's "Investigation Division" acknowledged receipt by a letter bearing neither the name nor signature of any person and listing no assigned number for the complaint. In pertinent part, it stated:

"You matter is currently under review. As a matter of law, Commission proceedings are confidential and thus you may not be notified of any Commission action regarding your complaint unless and until there is final action that can be publicly disclosed. We will contact you should the Commission need any additional information."

That was nearly 13 months ago – and in all this time I have received no request from JCOPE for additional information. Nor have I been advised as to the status of the June 27, 2013 complaint.

Is this your normal and customary practice for handling complaints – or only for complaints such as the June 27, 2013 complaint that are open-and-shut, presenting *prima facie* proof of corrupt, criminal conduct by New York's highest constitutional officers who are the authorities responsible for your appointments: the Governor, the Temporary Senate President, the Assembly Speaker the Senate Minority Leader, the Assembly Minority Leader?

<u>What is the status of CJA's June 27, 2013 ethics complaint?</u> On September 10, 2013, in advance of my September 17, 2013 testimony before the Commission to Investigate Public Corruption, I left a telephone message requesting a status update. I received no return call. Likewise, I received no return call to my November 12, 2013 telephone message requesting a status update. Prior to this, I received no responses to my July 2, 2013 and August 6, 2013 e-mails as to whether you had the voluminous documentary evidence I had supplied to JCOPE's predecessor State Ethics Commission – evidence not only further substantiating the June 27, 2013 complaint, but germane to the Commission to Investigate Public Corruption's express mandate pertaining to the State Board of Elections.

Executive Law §94.13(a) sets forth the procedure JCOPE is required to follow upon receipt of a complaint. Entitled "Investigations", it states, in pertinent part:

"...The commission shall, within forty-five calendar days after a complaint...is received...vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred..." (underlining added).

Subsection (b) entitled "Substantial basis investigation" further states:

"...If the commission determines at <u>any</u> stage that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the individual and <u>the complainant</u>, if any..." (underlining added).

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In other words, by August 11, 2013, you were required to have voted on CJA's June 27, 2013 complaint as to "whether to commence a full investigation...to determine whether a substantial basis exists to conclude that a violation of law has occurred."

Did you vote? Surely no vote could have been easier – as the complaint itself presented not only the "substantial basis", but the *prima facie* proof that "violation of law ha[d] occurred" – this being, in the first instance, CJA's October 27, 2011 Opposition Report to the August 29, 2011 Report of the Commission on Judicial Compensation. Such <u>dispositively</u> established a multitude of flagrant violations of Chapter 567 of the Laws of 2010 by the Commission on Judicial Compensation, requiring the complained-against public officers and employees to have taken steps to protect the public. Nothing can explain their wilful and deliberate failure to do so other than conflicts of interest proscribed by Public Officer Law §74 – and CJA's June 27, 2013 complaint both stated this (at p. 3) and particularized a succession of conflicts of interests, beginning with the financial interests of the Governor, Attorney General, Comptroller, and all Senate and Assembly members in the statutorily-violative judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report.

Nor did JCOPE's jurisdiction and obligations end with investigating and determining the violations of Public Officers Law §74 pertaining to conflicts of interest that were the subject of our June 27, 2013 complaint. Pursuant to Executive Law §94.14 and its subsection (a), you were required to make referrals to prosecutorial authorities of other violations of law – such as the violations of Chapter 567 of the Laws of 2010 established by CJA's October 27, 2011 Opposition Report.³ That these violations enabled a "grand larceny of the public fisc" by the complained-against public officers and employees, identified by the complaint (at p. 2) as costing New York taxpayers "well over \$100 million dollars at the end of next fiscal year – and, thereafter, approximately \$50 million in perpetuity" for statutorily-violative judicial pay raises – only reinforced your referral obligations.

In an effort to get some statistics about the number of complaints you receive and their dispositions, I turned to your 2013 annual report. This should have furnished meaningful information. After all, Executive Law §94.9(1) specifies that JCOPE's annual report:

Executive Law §94.14, pertaining to the complained-against executive branch public officers, states:

"...With respect to a violation of any law other than sections seventy-three, seventy-three-a, and seventy-four of the public officers law, where the commission finds sufficient cause by a vote ..., it shall refer such matter to the appropriate prosecutor for further investigation..."

Executive Law §94.14(a), pertaining to the complained against legislators and legislative employees, similarly states:

"...With respect to a violation of any law other than sections seventy-three, seventy-three-a, and seventy-four of the public officers law, where the joint commission finds sufficient cause by a vote..., it shall refer such matter to the appropriate prosecutor."

"<u>shall</u> include: (i) <u>a listing by assigned number of each complaint and referral</u> received which alleged a possible violation within its jurisdiction, including the <u>current status of each complaint</u>, 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).

Yet, lo and behold, your 2013 annual report utterly violates (i) in that it does <u>not</u> include "a listing by assigned number of each complaint and referral received...including the current status of each complaint".

Instead, your section entitled "Investigations and Enforcement" states:

"In 2013, the Commission reviewed nearly 200 potential matters...As of the date of this report, the Commission has 21 open investigations and 69 matters pending review..." (at p. 46).

Apparently, "potential matters" and "matters" are your euphemisms for complaints, as to which your 2013 annual report furnishes not a single "assigned number", nor definition of what "open investigations" or "pending review" means, or what has become of the balance of complaints filed with you.

Indeed, the minimal detail of your 2013 annual report is <u>even more minimal</u> than your 2012 annual report, which had identified the number of "substantial basis investigations" commenced that year:

"In 2012, the Commission reviewed more than 300 potential matters, including at least 60 investigative matters that were transferred to the Commission from the former Commission on Public Integrity. <u>The Commission commenced 48 substantial basis investigations in 2012</u>. As of the date of this report, the Commission has 47 open investigations and 61 matters pending review..." (at p. 46, underlining added).

Why does your 2013 annual report not identify the number of "substantial basis investigations" commenced – and how many were there?⁴

Obviously, the statutory requirement that JCOPE's annual report include "a listing by assigned number of each complaint and referral received... including the current status of each complaint" is to enable tracking of a given complaint and of referrals so that your ultimate disposition of each can be established for accountability purposes. No such accountability is possible from your 2012 and 2013 annual reports.

⁴ Further illustrative of the <u>even more minimal</u> nature of your 2013 annual report is that it does not identify the number of "enforcement actions" it lists (at pp. 49-50), which is 15. Presumably, this is to conceal the precipitous drop from the 27 "enforcement actions" identified by your 2012 report (at pp. 46-49).

Consequently, demand is made that you immediately rectify your violations of Executive Law $\S94.9(1)(i)$ by supplementing each of your two annual reports with the required "listing by assigned number of each complaint and referral received..., including the current status of each complaint".

As your 2012 and 2013 annual reports are addressed to the Governor and Legislative Leaders, a copy of this letter is being furnished to them so that they can <u>compel</u> your above-demanded compliance with Executive Law §94.9(1)(i), if necessary. Certainly, too, this letter reinforces their duty to appoint the review commission for JCOPE which they were statutorily required to appoint "[n]o later than June 1, 2014" – nearly seven weeks ago. Their failure to appoint the JCOPE review commission was the subject of CJA's July 11, 2013 letter to them – and a further copy of that letter, to which you were an indicated recipient and which was furnished to your staff last week, is enclosed.

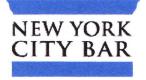
Clearly, your belated "listing by assigned number of each complaint" will be invaluable not only to the JCOPE review commission, but to U.S. Attorney Bharara, who will now have a "listing by assigned number" against which he can check your production of complaints in response to his subpoena.

Thank you.

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Enclosure: CJA's July 11, 2014 letter

cc: U.S. Attorney Preet Bharara Governor Andrew M. Cuomo Temporary Senate President Dean Skelos Assembly Speaker Sheldon Silver Senate Minority Leader Andrea Stewart-Cousins Assembly Minority Leader Brian Kolb



COMMITTEE ON GOVERNMENT ETHICS

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July 9, 2014

BY FIRST CLASS MAIL

Honorable Andrew Cuomo Governor State of New York Executive Chamber Capitol Building Albany, New York 12224

Honorable Brian Kolb Minority Leader New York State Assembly Legislative Office Building, Room 933 Albany, New York 12248

Honorable Dean Skelos Majority Coalition Leader New York State Senate Legislative Office Building, Room 909 Albany, New York 12247 Honorable Jeffrey Klein Majority Coalition Leader New York State Senate Legislative Office Building, Room 913 Albany, New York 12247

Honorable Sheldon Silver Speaker New York State Assembly Legislative Office Building, Room 932 Albany, New York 12248

Honorable Andrea Stewart-Cousins Democratic Conference Leader New York State Senate Legislative Office Building, Room 907 Albany, New York 12247

Re: JCOPE/LEC Review Panel – June 1, 2014 Deadline to Appoint

Dear Governor Cuomo, Senator Klein, Assembly Member Kolb, Speaker Silver, Senator Skelos and Senator Stewart-Cousins:

The New York City Bar Association, through its Committee on Government Ethics, takes an ongoing interest in ethical matters in state government. The Association is writing to inquire about the status of the appointment of a panel to review the work of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission

> THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 42 West 44th Street, New York, NY 10036-6689 www.nycbar.org

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(LEC). As you know, such review is required by Section 21 of Part A of Chapter 399 of the laws of 2011, which provides:

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 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.

There has been no public announcement of the appointment of the review commission. Informal inquiries by the Association have not yielded any information about the status.

Accordingly, we are writing to ask if each of you can advise as to your view of when these appointments will be announced. It is our sincere hope that the legislative intent and clear mandate of Section 21 will be fully carried out, and that the appointments will be made forthwith, certainly within the next 30 days, so that the work of the review commission can proceed in a meaningful way. We note that the statutory deadline of March 1, 2015 for the issuance of the review commission's report is less than seven months away; time is of the essence.

The Association looks forward to appearing before the review commission to discuss the important issues before it. Some of those issues are addressed in the Association's recent report, "Hope for JCOPE" (copy enclosed).

On behalf of the Association, we thank you in advance for your responses, and for your ongoing commitment to improving the State's public integrity safeguards.

Respectfully yours,

Jenny Fergeli

Jeremy Feigelson

cc: JCOPE, Attn: Daniel Horwitz, Esq., Chair

LEC, Attn: Senator Andrew Lanza and Assembly Member Charles Lavine, Co-Chairs; Lisa Reid, Esq., Executive Director/Counsel

New York City Bar Association, Attn: Evan Davis, Esq. and Dan Karson, Esq., Co-Chairs, Subcommittee on JCOPE/LEC, Committee on Government Ethics

Enclosure