

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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December 17, 2014

TO: Records Access Officer of NYS Attorney General Eric Schneiderman
Records Access Officer of NYS Comptroller Thomas DiNapoli

RE: FOIL REQUEST: Contract for outside counsel to represent JCOPE in the Article 78 Proceeding *Trump v. JCOPE* (Albany Co. #4134/14)

Enclosed is Capital New York's December 16, 2014 article "*JCOPE hires retired judge to fight Trump suit*", by Jimmy Vielkind.

Pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], request is made for all publicly-available records pertaining to the contract retaining the law firm Carter, Conboy, Case, Blackmore, Maloney, & Laird, P.C. &/or David R. Homer, Esq. to represent the Joint Commission on Public Ethics (JCOPE) in the Article 78 proceeding: *Trump v. JCOPE* (Albany Co. #4134/14). This includes all publicly-available records pertaining to the Attorney General's determination not to represent JCOPE – and JCOPE's determination not to represent itself.

Pursuant to Public Officers Law §89.3, your response is required "within five business days" of your receipt of this request. Please e-mail it to me at elena@judgewatch.org.

Thank you.

Enclosure

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

HOW ALBANY WORKS.

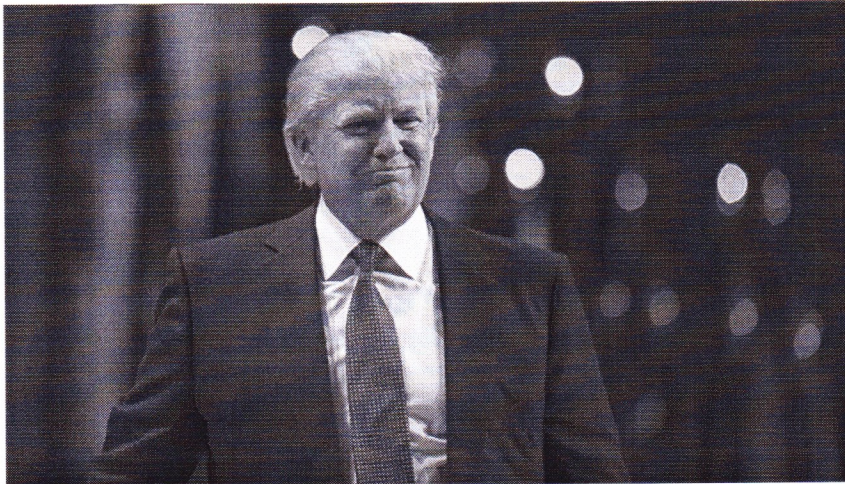
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JCOPE hires retired judge to fight Trump suit



Trump. (AP Photo/Cliff Owen)



By Jimmy Vielkind 6:00 a.m. | Dec. 16, 2014

ALBANY—The state's Joint Commission on Public Ethics has hired a former federal judge to defend it against a lawsuit brought by Donald Trump, court filings show.

JCOPE, which regulates lobbying in the state and is also responsible for investigating complaints of official misconduct, hired former U.S. Magistrate David Homer to fend off a complaint from Trump attempting to force a vote on a complaint he filed against Attorney General Eric Schneiderman.

In August, Trump claimed JCOPE was sitting on his complaint against the Democratic attorney general for “reckless” use of his twitter account in furtherance of a lawsuit Schneiderman filed against Trump related to the instruction program formerly known as Trump University. A judge threw out some of Schneiderman's claims because of the statute of limitations, but the underlying fraud case is ongoing.

In papers filed Friday, JCOPE again argued that Trump had no “clear legal right” to learn of the commission's decision on its complaint, and said Trump's suit was not properly brought under a statute of state law that applies to “ministerial” actions of agencies that could not be applied to votes.

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JCOPE's enabling statute requires it to hold a vote on whether to pursue an investigation within 45 days of receiving a complaint, but there is no specific statutory obligation to inform complainants of its decision. The commission



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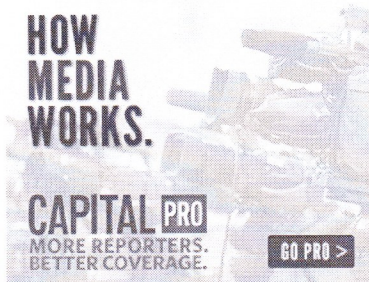
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does not usually disclose its investigations, but did confirm in 2012 that it had begun an investigation against former assemblyman Vito Lopez.

JCOPE's Friday filing says the commission is exempt from both the open meetings law and Freedom of Information Law.

"The assurance of confidentiality serves purposes critical to the Commission's mission, including preserving the integrity of the investigative process and protecting the subjects of complaints unless and until the Commission

finds a substantial basis to conclude there has been a violation of law," Homer wrote. "Contrary to the Trump Parties' position, the Commission does not have discretion to provide information concerning any vote it may or may not undertake."

In a late-November filing, Trump's lawyer argued that this policy was "unsupported by any statutory authority" and "flies in the face of the very purpose of the Commission, namely, to restore trust, integrity and transparency to New York State government."

"While such degree of secrecy may be appropriate for the CIA, FBI, Department of Homeland Security or other government agencies tasked with protecting the health and well-being of the public, it is not reasonable here," wrote Trump's lawyer, Alan Garten. "The Trump Parties are not interested in influencing JCOPE's investigation. Rather, as the complainant, all they seek is confirmation that JCOPE is abiding by its own statutory requirements—that it vote within 45 days—and have not buried this ethics complaint at the bottom of the pail as the public already suspects."

A Schneiderman spokesman declined to comment on why his office is not representing JCOPE in the matter. Homer did not return a call seeking information about how much his firm is being paid. There is no record of a contract filed with the state comptroller's office, but its pre-approval is only needed for contracts exceeding \$50,000. There is also no record in the commission's minutes of a vote to hire outside counsel, but the most recent meeting for which minutes are available is September 30.

JCOPE spokesman John Milgrim has been ignoring Capital's requests about the matter since November 24.

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Author: Jimmy Vielkind

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