

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, March 4, 2022 4:50 PM
To: 'jose.nieveslaw@gmail.com'
Cc: 'sgerstman@magavern.com'; 'marvin.jacob@retired.weil.com';
'glavine@bhlawpllc.com'; 'dmcnamara@phillipslytle.com';
'investigations@jcope.ny.gov'; 'jcope@jcope.ny.gov';
'inspector.general@ig.ny.gov'; 'INTAKEUNIT'
Subject: UPDATE & further OVERSIGHT REQUIRED: The flagrant violations of Executive Law §94.13(a) & Public Officers Law §74 underlying the supposed "vote[] to close" the Dec. 17, 2021 and Nov. 24, 2021 complaints
Attachments: 12-17-21-complaint-vs-lec-corrected.pdf; 12-17-21-complaint-form.pdf

TO: JCOPE Chair Jose L. Nieves, ESQ.

Less than an hour and a half after sending you my below February 28, 2022 e-mail entitled "OVERSIGHT REQUIRED: JCOPE staff is refusing to acknowledge – & give a complaint # to – a filed, sworn Dec. 17, 2021 complaint", I received an [e-mail from JCOPE](#) entitled "Complaint No. 21-244", with an attached [letter](#) from JCOPE's Director of Investigations and Enforcement, Ms. Logue. Her two-sentence February 28, 2022 letter read:

"On December 17, 2021, the New York State Joint Commission on Public Ethics ('Commission') received a complaint submitted by you alleging certain conduct against against (sic) legislators and legislative employees asserted to be a violation of the Public Officers Law.

This letter is to inform you that the Commission considered the allegations raised in the complaint and voted to close the matter on January 25, 2022."

Tellingly, Ms. Logue's letter conceals any specifics of the "allegations raised in the complaint" – such as, in its first paragraph, that it was a:

"fully-documented, sworn conflict-of-interest/ethics complaint against legislators and legislative employees for acting on their self-interest, in violation of Public Officer Law §74, to subvert the Legislative Ethics Commission (LEC) and prevent its exposing the corruption of JCOPE, on which it statutorily depends for investigation of complaints against legislators and legislative employees"

Nor does she state that before the JCOPE commissioners "voted to close the matter" they had been furnished with this [December 17, 2021 complaint](#) so as to themselves examine its allegations. This is NOT surprising as NO competent commissioner, impartially discharging official duties, could do other than what [Executive Law §94.13\(a\)](#) mandates be done, **without a vote**, when "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 the members of the legislature and legislative employees", *to wit*, that it:

“shall notify the individual in writing, describe the possible or alleged violation of such laws, provide a description of the allegations against him or her and the evidence, if any, supporting such allegations...;...set forth the sections of law alleged to have been violated and provide the person with a fifteen day period in which to submit a written response, including any evidence, statements, and proposed witnesses, setting forth information relating to the activities cited as a possible or alleged violation of law.” (underlining added).

The December 17, 2021 complaint (at p. 21) specified the “individual[s]” to whom the “15-day letters” were required to be sent, most importantly, (1) the Legislature’s four leaders responsible for appointing the Legislative Ethics Commission’s nine members; (2) the four legislators appointed to the Legislative Ethics Commission; and (3) the Legislative Ethics Commission’s executive director/counsel and deputy director/counsel. Without such “15-day letters” – as to which JCOPE had NO discretion pursuant to Executive Law §94.13(a) – there could be NO “vote” by the JCOPE commissioners – such “vote” being for the statutory purpose of deciding “whether to commence a full investigation of the matter...” – the preliminary investigation having been, in the first instance, by the “15-day letters” and responses thereto. Moreover, pursuant to Executive Law §94.13(a), “prior to such vote”, JCOPE staff is required to “provide to the members... information regarding the likely scope and content of the investigation, and a subpoena plan...” – obviously developed from the responses to the “15-day letters”.

What I believe happened with respect to my [December 17, 2021 complaint](#) and my prior [November 24, 2021 complaint](#) is that JCOPE staff, such as Ms. Logue and Executive Director Berland, procured the so-called “votes” of JCOPE commissioners by including these complaints among the statistics of complaints in its staff “Operations Update”, reflecting the paucity of complaints that staff purports have met the threshold for “15-day letters”, which the JCOPE commissioners then “vote” to approve, in trusting reliance – never examining the complaints. [see [December 2021: “Monthly Operations Report”](#), presented as part of the [“January 25, 2022 meeting “Agenda”](#)]; [November 2021: “Monthly Operations Report”](#), presented as part of the [December 14, 2021 meeting “Agenda”](#)].

Alternatively, JCOPE commissioners, upon being furnished my December 17, 2021 and November 24, 2021 complaints, of which the majority would have recognized themselves to be directly interested, failed to disqualify themselves and, by their indefensible “votes”, acted on their interests, in violation of [Public Officers Law §74](#) and JCOPE’s own [Code of Conduct for Members](#) and [Addendum](#). This would include former judges Richard Braun and C. Randall Hindrichs, who – like former judge Executive Director Berland – are financial beneficiaries of the fraudulent judicial pay raises underlying these complaints. It also includes all long-time commissioners liable for, if not knowledgeable of, JCOPE’s nonfeasance with respect to my [four prior fully-documented complaints](#). Certainly knowledgeable is Gary Lavine, ESQ., to whom I spoke by phone and communicated by e-mail in October 2019, when he was [running for election to be Onondaga County district attorney against incumbent William Fitzpatrick](#), the former lead co-chair of the bogus Commission to Investigate Public Corruption.

Suffice to say that if JCOPE staff actually furnished the JCOPE commissioners with my December 17, 2021 and November 24, 2021 complaints – each reflecting by their “BACKGROUND” sections my four related prior complaints, still pending before JCOPE— the JCOPE commissioners would, logically, have also “voted to close” those complaints – the most recent of the four being the [March 5, 2021 complaint](#) I filed with JCOPE and the Legislative Ethics Commission, expressly at the direction of Albany County District Attorney P. David Soares.

By the way, as of this date – 2-1/2 months after filing with JCOPE my December 17, 2021 complaint – the [Legislative Ethics Commission](#) is still without its required ninth, non-legislative member and, once again, scores of thousands of dollars in fraudulent “reappropriations” for the Legislative Ethics Commission have been popped into the FY2022-23 legislative/judiciary budget bill ([#S.8001/A.9001](#) – at pp. 37-41).

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, February 28, 2022 12:24 PM
To: 'jose.nieveslaw@gmail.com' <jose.nieveslaw@gmail.com>
Cc: 'sgerstman@magavern.com' <sgerstman@magavern.com>; 'marvin.jacob@retired.weil.com' <marvin.jacob@retired.weil.com>; 'glavine@bhlawpllc.com' <glavine@bhlawpllc.com>; 'dmcnamara@phillipslytle.com' <dmcnamara@phillipslytle.com>; 'investigations@jcope.ny.gov' <investigations@jcope.ny.gov>; 'jcope@jcope.ny.gov' <jcope@jcope.ny.gov>; 'inspector.general@ig.ny.gov' <inspector.general@ig.ny.gov>; 'INTAKEUNIT' <emailreply@ig.ny.gov>

Subject: OVERSIGHT REQUIRED: JCOPE staff is refusing to acknowledge - & give a complaint # to - a filed, sworn Dec. 17, 2021 complaint vs legislators & legislative employees for subverting the Legislative Ethics Commission, ETC.

TO: JCOPE Chair Jose L. Nieves, ESQ.

I am writing you, directly, because I have received NO acknowledgment or response from JCOPE to my above-attached and here-linked [December 17, 2021 complaint](#) against legislators and legislative employees for subverting the Legislative Ethics Commission to insulate themselves from complaints – and have TWICE inquired about it, by [January 18, 2022](#) and [February 16, 2022](#) e-mails to JCOPE, requesting the complaint number assigned, without response.

Below is the chain with those two e-mails and my original e-mails transmitting the December 17, 2021 complaint to JCOPE, with [notarized, sworn complaint form](#).

Are you and JCOPE’s other 13 commissioners aware of this *unacknowledged* December 17, 2021 complaint, with its “BACKGROUND” section (at pp. 4-6) pertaining to [my July 20, 2021 letter to JCOPE Executive Director Sanford Berland](#), summarizing JCOPE’s corrupting of the mandatory safeguarding provisions of [Executive Law §94.9\(l\)\(i\) and §94.13\(a\)](#) and his **direct financial interest** in perpetuating these violations – to which he did NOT respond – and incorporating by reference [my November 2, 2021](#)

[complaint to NYS Inspector General Lucy Lang](#) against him and JCOPE -- JCOPE being a “covered agency” within the Inspector General’s jurisdiction.

And are you aware that three days after I filed my December 17, 2021 complaint, JCOPE Director of Investigations and Enforcement Emily Logue sent me a [December 20, 2021 letter](#) purporting, with respect to my immediately prior sworn [November 24, 2021 complaint](#) against the NYS Commission on Judicial Conduct’s salaried Administrator/Counsel Robert Tembeckjian, ESQ., its salaried Clerk Celia Zahner, ESQ., and its unsalaried 11 commissioners, that JCOPE’s commissioners “satisfied the statutory requirements of Executive Law §94(13)(a) by voting to close the matter on December 14, 2020 (sic)”.

Did JCOPE commissioners, in fact, “vot[e] to close” my sworn November 24, 2021 complaint on December 14 202[1]? If so, did Ms. Logue – [an attorney](#) – thereafter furnish you and the JCOPE commissioners with my rebutting [December 21, 2021 letter](#) entitled “FOUR QUESTIONS...”, detailing that “the statutory requirements of Executive Law §94(13)(a)” could NOT have been met by such an **indefensible** disposition. And did she tell you that she was unable to contest the accuracy of my letter and, for that reason, was NOT responding to it – or to my [February 16, 2022 e-mail](#) stating that I had received NO response. And did she apprise you and the JCOPE commissioners of subsequent facts reinforcing JCOPE’s duty with respect to my November 24, 2021 complaint – as to which I had alerted JCOPE by cc’ing it on a [January 18, 2022 e-mail](#) to the Commission on Judicial Conduct, reflecting that it was NOT acknowledging my November 24, 2021 complaint, also filed with it as a complaint against its 4-judge members, and NOT responding to the additional relief it seeks – for the obvious reason that the complaint is true and correct, with respect to the conflict-of-interest and other violations, mandating ALL requested relief.

ALL JCOPE commissioners are responsible for JCOPE’s proper functioning, not just you, as its chair. I, therefore, respectfully request that you forward this e-mail to JCOPE’s other commissioners so that ALL can discharge the shared duties of ensuring staff compliance with the **non-discretionary, mandatory provisions of Executive Law §94.13(a)** with respect to my sworn December 17, 2021 and November 24, 2021 complaints – and with respect to my prior sworn [June 27, 2013 complaint](#), [December 11, 2014 complaint](#), [August 31, 2020 complaint](#), and [March 5, 2021 complaint](#), to which the ONLY communications I have received from JCOPE are the acknowledgments identified by my below January 18, 2022 e-mail. As to each of these [six sworn complaints](#), particularizing violations of Public Officer Law §74 by persons subject to JCOPE’s jurisdiction, the staff was mandated by Executive Law §94(13)(a), on behalf of JCOPE, to send “15-day” letters. The ONLY reason JCOPE staff did not do this was because – as the EVIDENCE substantiating each complaint makes obvious – the Public Officer Law §74 violations are established, open-and-shut, *prima facie*, by each complaint, requiring not only ethics prosecutions by JCOPE, but referral to “the appropriate prosecutor” pursuant to Executive Law §94.14.

As I have e-mail addresses for JCOPE Commissioners Sharon Stern Gerstman, ESQ., Davis McNamara, ESQ., Gary Lavine, ESQ., and Marvin Jacob, ESQ., I am cc’ing them on this e-mail, with a request that IF, pursuant to Executive Law §94.4, you do not call an EMERGENCY meeting of JCOPE commissioners concerning the above – and concerning JCOPE’s 2021 annual report, presumably in preparation and presumably, as with JCOPE’s nine prior annual reports, violating Executive Law §94.9(l)(i) by omitting “a listing by assigned number of each complaint...including the current status of each complaint” – that they call an EMERGENCY meeting by securing the required “any eight members”. Alternatively, I request that this e-mail be placed on the agenda of [JCOPE’s next scheduled meeting, March 29, 2022](#) – likely its last before JCOPE is abolished, unconstitutionally, as part of the FY2022-23 state budget, to be replaced by an “Independent Commission on Ethics and Lobbying in Government” ([Part Z of so-called](#)

[“Article VII” Budget Bill #S.8005/A.9005, at pp. 60-88](#)); [S.8005-A/A.9005, at pp. 60-89](#)), notably stripped of the safeguarding mandates of current Executive Law §94.13(a) and §94.9(l)(i), enforceable through mandamus/Article 78 proceedings (See Part Z’s proposed new Executive Law §94.10 “Investigation and enforcement” and §94.12 “Annual report”).

TIME IS OF THE ESSENCE. ALL the constitutional, statutory, and legislative rule violations of the state budget and its massive larcenies of taxpayer monies – to which my above six complaints alerted JCOPE – have continued, unabated, in the FY2022-23 state budget – and the situation is reflected by [my January 22, 2022 written statement in support of oral testimony](#) and [my January 25, 2022 written three-minute oral testimony](#), presented at [the Legislature’s January 25, 2022 “public protection” budget hearing](#), to which, because of **the legislators’ direct financial and other conflicting interests**, there has been ZERO response.

I would be pleased to answer any questions you may have and to speak with you and JCOPE’s other commissioners, directly – including, under oath, at a JCOPE meeting, preferably publicly-held.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
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To: 'investigations@jcope.ny.gov' <investigations@jcope.ny.gov>; 'jcope@jcope.ny.gov' <jcope@jcope.ny.gov>
Cc: 'inspector.general@ig.ny.gov' <inspector.general@ig.ny.gov>; 'INTAKEUNIT' <emailreply@ig.ny.gov>

Subject: Again, STATUS --CJA's Dec. 17, 2021 conflict-of-interest/ethics complaint vs legislators & legislative employees for subverting the Legislative Ethics Commission (LEC) to insulate themselves from complaints

TO: JOINT COMMISSION ON PUBLIC ETHICS (JCOPE) -- cc: NYS Inspector General Lucy Lang

I have STILL received NO acknowledgment from you to my above-attached December 17, 2021 complaint against legislators & legislative employees for subverting the Legislative Ethics Commission (LEC) to insulate themselves from complaints – about which I alerted you by my below January 18, 2022 e-mail.

Please advise as to the status of my December 17, 2021 complaint – starting with the number you assigned to it.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, January 18, 2022 4:06 PM
To: 'investigations@jcope.ny.gov' <investigations@jcope.ny.gov>; 'jcope@jcope.ny.gov' <jcope@jcope.ny.gov>
Cc: 'inspector.general@ig.ny.gov' <inspector.general@ig.ny.gov>; 'INTAKEUNIT' <emailreply@ig.ny.gov>

Subject: STATUS --CJA's Dec. 17, 2021 conflict-of-interest/ethics complaint vs legislators & legislative employees for subverting the Legislative Ethics Commission (LEC) to insulate themselves from complaints

TO: JOINT COMMISSION ON PUBLIC ETHICS (JCOPE) -- cc: NYS Inspector General Lucy Lang

I have received no acknowledgment or other communication from you with respect to my above-attached December 17, 2021 conflict-of-interest/ethics complaint, sent to you by my below December 17, 2021 and December 20, 2021 e-mails.

JCOPE has acknowledge ALL my prior complaints fairly promptly upon my filing them:

- (1) my [June 27, 2013 complaint](#) was acknowledged by a [June 28, 2013 letter – furnishing no identifying complaint #](#);
- (2) my [December 11, 2014 complaint](#) was acknowledged by a [December 16, 2014 e-mail – identifying the complaint as #14-229](#);
- (3) my [August 31, 2020 complaint](#) & [here](#) was acknowledged by a [September 2, 2020 e-mail – identifying the complaint as #20-143](#);
- (4) my [March 5, 2021 complaint](#) & [here](#) was acknowledged by a [March 16, 2021 e-mail – identifying the complaint as #21-033](#);
- (5) my [November 24, 2021 complaint](#) & [here](#) was acknowledged by a [November 30, 2021 e-mail – identifying the complaint as #21-226](#).

Please forward me such acknowledgment as you sent me for the December 17, 2021 complaint – or advise me why – more than a month after I first e-mailed it to you – you have yet to acknowledge it.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Monday, December 20, 2021 4:52 PM

To: investigations@jcope.ny.gov; jcope@jcope.ny.gov

Cc: inspector.general@ig.ny.gov; 'INTAKEUNIT' <emailreply@ig.ny.gov>

Subject: Superseding --Conflict-of-interest/ethics complaint vs legislators & legislative employees for subverting the Legislative Ethics Commission (LEC) to insulate themselves from complaints

TO: JOINT COMMISSION ON PUBLIC ETHICS (JCOPE) -- cc: NYS Inspector General Lucy Lang

Please supersede my December 17, 2021 complaint pertaining to LEC, sent by my below e-mail, with the above corrected complaint. It makes NO substantive changes, but simply corrects a handful of typographical errors – and adds a missing substantiating hyperlink. My above-attached December 17, 2021 complaint form is unchanged.

Apologies for the inconvenience.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Friday, December 17, 2021 11:34 PM

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Cc: 'inspector.general@ig.ny.gov' <inspector.general@ig.ny.gov>; 'INTAKEUNIT' <emailreply@ig.ny.gov>

Subject: Conflict-of-interest/ethics complaint vs legislators & legislative employees for subverting the Legislative Ethics Commission (LEC) to insulate themselves from complaints

TO: JOINT COMMISSION ON PUBLIC ETHICS (JCOPE)

Attached is my December 17, 2021 complaint form and sworn conflict-of-interest ethics complaint against legislators & legislative employees for subverting the Legislative Ethics Commission (LEC) to insulate themselves from complaints.

The EVIDENTIARY webpage on which they are posted is here: <http://www.judgewatch.org/web-pages/searching-nys/jcope/dec-17-2021-complaint-re-lec.htm>

I am available to assist you, to the max – including by interviews, under oath.

Thank you.

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