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Testimony before the Commission on Ethics & Lobbying in Government **March 29, 2023 – New York Law School**

I am Elena Sassower, director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Our website is www.judgewatch.org, and from its left side panel "Testimony", you can find a link for this testimony¹ and to the open-and-shut, *prima facie* EVIDENCE substantiating it and the complaint I will be filing based thereon against you, to you, for your "substantial neglect of duty" and "misconduct in office"² from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of [Public Officers Law §74](#), proscribing conflicts of interest that is your duty to enforce as to others,³ and of [Executive Law §94.10\(b\)](#) explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.⁴

The very first complaints the Commission received, upon replacing JCOPE on July 8, 2022, were the eight I submitted on its Day 1 by a single [letter](#). All eight complaints involved the "false instrument" reports by which New York's executive and legislative electeds procured pay raises for themselves – and for judges and district attorneys – embedded in the state budget that they have run "OFF THE CONSTITUTIONAL RAILS" to steal more taxpayer monies and subvert constitutional, lawful governance through massive insertions of non-fiscal/non-revenue producing policy. Surely, no complaint the Commission thereafter received remotely approaches, in magnitude and breadth, any one of these eight complaints, let alone all of them.

The first seven of these complaints were a refiling of complaints I had filed with JCOPE, as to which JCOPE, in violation of its mandatory duty under the Executive Law that established it, had not sent out a single 15-day investigative letter. These seven complaints are the first seven exhibits in CJA's corruption-eradicating lawsuit, [CJA v. JCOPE, et al.](#), commenced by a [June 6, 2022 verified petition](#), whose sixth cause of action is to VOID this Commission as enacted unconstitutionally and through fraud, *via* the state budget, for the ulterior purpose of stripping complainants of rights enforceable by mandamus with respect to 15-day letters and, in so doing, to insulate from accountability the seven public officers who appoint the commission members. As for the eighth, completely new complaint, it was against one of those seven public officers, who, with the other six, is a respondent in *CJA v. JCOPE*, namely, Attorney General James, and its basis is her litigation fraud in *CJA v. JCOPE*, in furtherance of her own "false instrument" pay raises – and theirs.

The Commission's original seven commissioners are Cardozo, Groenwegen, James, Austin, Carni, Davie, and Edwards. Six of the seven, if not all seven, knew of these first eight complaints

since at least last August 4th. That is when I sent them an [e-mail](#), which as to now Vice-Chair Austin bounced back, attaching two letters to the 15 law school deans of the Independent Review Committee to which they were *cc*'d. These apprised the would-be commissioners of what the Independent Review Committee had known since my first [June 12th letter](#) to its deans, namely, that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, as a matter of law. It also alerted the would-be commissioners that the public officers who had appointed them had corrupted the vetting process and that the Independent Review Committee deans were collusive in this and were violating conflict-of-interest protocols, including as set forth by Executive Law §94.3(j).⁵

[The second of my two August 4th letters](#) detailed the conflicts of interest, requiring disclosure and disqualification that the would-be commissioners would face, with respect to the eight complaints:

- (1) would-be Commissioners Cardozo, Groenwegen, and James had colluded in the public corruption involving the pay raises, the budget, and the AG's *modus operandi* of litigation fraud that are the gravamen of the complaints – and I had furnished their appointing public officers with written comment opposing their proposed nominations, without response from the appointing public officers;
- (2) would-be Commissioners Austin and Carni, as former judges, have HUGE financial interests in the complaints because, as beneficiaries of the judicial pay raises that the complaints establish to be fraudulent, they face “clawbacks” of approximately three quarters of a million dollars each;
- (3) would-be Commissioners Davie and Edwards are also financially interested in the complaints because Executive Law §94.4(f) ties commissioners' *per diem* allowances to “a salary of a justice of the supreme court” – and the complaints establish the fraudulence of \$80,000 of that salary.

And what did the seven original commissioners do in face of this August 4th e-mail – and my subsequent e-mails to them on [August 22nd](#) and [October 6th](#) as to AG's James' unremitting litigation fraud in *CJA v. JCOPE* ⁶ and the importance of its verified petition to understanding that JCOPE's corruption in its handling of complaints, rested with its personnel, who remained at the Commission, such as JCOPE Executive Director Berland, a former judge with HUGE financial interests in CJA's complaints. They voted unanimously to make Berland interim executive director at their [first September 12th meeting](#) and then permanently at their [fifth December 16th meeting](#), both times by fraud about his performance of his duties and other deceits.⁷ Between these two meetings, at the [October 25th third meeting](#), the eight complaints in which they and Berland are all interested were allegedly dumped, but I was not informed of this until three weeks later – the day after I sent the Commission staff a [November 16th e-mail](#) inquiring as to when it would be responding to my [July 26th FOIL request](#) for the Commission's “written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints”. I was thereupon e-mailed

an unsigned [November 17th letter](#), on a letterhead listing the names of the seven original commissioners and Berland, bearing but a single complaint number and stating: “following a review of your complaint, the Commission voted to close the matter.”

Yet, pursuant to Executive Law §94.10(f),⁸ the only time the Commission votes to close a matter is AFTER investigation that includes 15-day letters, where the staff has recommended same in a report to the Commission for the reason that the complaint is “unfounded or unsubstantiated” – by no stretch the case at bar with respect to any of the eight complaints.

Time does not permit me to testify about the odyssey of my July 26th FOIL request, reiterated and expanded by my [December 27th FOIL request](#) pertaining to the November 17th letter, such as for records of your compliance with disclosure/recusal mandates of Executive Law §94.10(b), of compliance by Executive Director Berland and Commission staff with comparable conflict of interest protocols, and of the specific provision of Executive Law §94 pursuant to which the Commission is alleged to have “voted to close the matter” – and the basis for the supposed “vote”.

Suffice to say that on [February 7th, I cc'd my FOIL appeal](#) to the seven original commissioners, excepting Vice-Chair Austin whose e-mail address I do not have, plus to the two new commissioners, Whittingham and Carabello. Assumedly they all would have concerned themselves as to the response. It came on [February 17th](#) from your FOIL appeals officer St. John – a high-ranking JCOPE holdover that Berland would days later elevate as [the Commission's general counsel](#). According to St. John, the records I had requested “simply do not exist and, therefore, cannot be provided”. As to the only record he furnished, it was the [conflict-of-interest protocol for Commission staff](#) that Berland, St. John, and other staff had flagrantly violated from the Commission's July 8, 2022 Day 1 to conceal JCOPE's corruption in handling complaints of which they were part.⁹

I conclude with a procedural suggestion with respect to your letters “closing” complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.¹⁰ Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.

Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your “Investigations Division”.

ENDNOTES

¹ The direct link to CJA’s webpage for this testimony is <https://www.judgewatch.org/web-pages/searching-nys/celg/march-29-23-testimony.htm>, with EVIDENTIARY links under the heading “‘PAPER TRAIL’ of Correspondence: What the Commissioners Knew, & When”.

² Executive Law §94.4(c) identifies “substantial neglect of duty” and “misconduct in office” as grounds upon which “Members of the commission may be removed by majority vote of the commission.”

³ This Commission, with three members appointed by the governor, is a “state agency”, pursuant to Public Officers Law §74, and the commissioners are, presumably, its “officers” – and reinforcing this is Executive Law §94.3(l) in specifying that “The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law.” No parallel provision appears in Executive Law §94.4 as to commissioners. Certainly, the Commission’s paid staff is within the purview of Public Officers Law §74 – and this complaint is also against them, starting with Executive Director Berland and General Counsel St. John.

⁴ Executive Law §94.10(b) reads:

“Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse himself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse himself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission.”

⁵ Executive Law §94.3(j) reads:

“Upon the receipt of the selection members’ appointments, members of the independent review committee shall disclose to the independent review committee any personal, professional, financial, or other direct or indirect relationships a member of the independent review committee may have with an appointee. If the independent review committee determines a conflict of interest exists, such independent review committee member shall, in writing, notify the other members of the independent review committee of the possible conflict. The member may recuse himself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse himself from the matter, the independent review committee, by majority vote finding the disclosed information creates a substantial conflict of interest, may remove the conflicted member from further consideration of and action upon the appointment.”

⁶ The AG’s litigation fraud included a perjurious affidavit of JCOPE’s Director of Investigations and Enforcement Emily Logue, who remained in that position for this Commission at least until August 18, 2022 – the date on which it was notarized by St. John ([NYSCEF #81](#)). The particulars of this perjury are set forth by my September 3, 2022 CPLR §2214 notice of papers to be furnished the Court ([NYSCEF #85](#), at pp. 2-5) and its last item, “Pertaining to the whole of her affidavit”, was for:

“any written document reflecting who assisted her in its drafting, reviewed it for truthfulness and accuracy, and determined she should not respond to the particularized allegations in the petition pertaining to JCOPE, most importantly, ¶¶6, 16-26, 27-41, 42-47 – such persons reasonably including JCOPE’s last executive director, Sanford Berland, Esq., currently occupying that position at [the Commission].” (at pp. 4-5, underlining added).

See, additionally, my “legal autopsy”/analysis of AG James’ fraudulent August 18, 2022 cross-motion ([NYSCEF # 88](#), at pp. 5-7).

Prior to serving as a notary to Ms. Logue, St. John had received from me, *in hand*, the *CJA v. JCOPE* verified petition, etc. on June 23, 2022 – and unlike representatives for all nine other *CJA v. JCOPE* respondents, who I had already served, he refused to furnish me with a signature, on behalf of JCOPE, to prove my service. Fearful that JCOPE would challenge service on grounds of my being a party, I returned with a non-party to effectuate the service upon St. John – and even then he would not give me a signature to acknowledge service. This is reflected by the affidavits of service I was then burdened with making, as to him and him alone ([NYSCEF #49](#), [NYSCEF #48](#)).

⁷ Although Chair Davie stated at the September 12th first meeting that “the Commission is committed to doing a full search for a permanent executive director” (at 11 mins.), it does not appear that ANY search was done, not even including it in posting for other staff positions ([Oct. 6 meeting-posting](#); [Oct 25 meeting-posting-update](#)). At the [December 16th meeting](#), no reference was made to any candidates having been considered for the position when, following an executive session (3 hrs, 48 mins.), Commissioner Cardozo, purporting that the Commission had “carefully considered the question of who should the new executive director of the Commission be... and after a great deal of investigation”, he wanted to make “the following proposal and motion”:

“WHEREAS the Commission was created to provide much needed ethics oversight for the New York State government and ensure that New Yorkers have the responsible and ethical government they need and deserve; and

WHEREAS the work of the Commission is both time-sensitive and significant with many outstanding matters needing immediate attention due to a delay resulting from the transition from the previous entity, the Joint Commission on Public Ethics, and the appointment process for the members of this Commission; and

WHEREAS, the Commission requires a permanent executive director in order to properly move forward with its important work, including hiring additional staff; and

WHEREAS, the Commission considered the possibility of a national search for an executive director, but were highly cognizant of the fact that it took two nation-wide searches conducted over a period of nearly two years to find an individual capable of leading the state’s previous ethics and lobbying agency, Judge Berland; and,

WHEREAS, based on a thorough review of Mr. Berland, which included examining his background, reviewing his financial disclosures, interviewing Mr. Berland at length and speaking with numerous others who worked with him in his role under the previous

Commission; and

WHEREAS, Mr. Berland has thus far successfully managed the transition from the previous Commission to this Commission; and

WHEREAS based on its dealings with Mr. Berland the Commission has been more than satisfied with his performance; and

WHEREAS the governing statute that created the Commission provides the executive director should be appointed by the Commission to serve a four-year term; and

WHEREAS the Commission needs an executive director immediately given the substantial number of issues with which it must deal and the number of staff vacancies,

IT IS HEREBY RESOLVED, the Commission appoints Sandy Berland as executive director to a term appointment of four years in accordance with Executive Law §94 at a salary of \$220,000”.

This was seconded by Vice-Chair Austin, with Chair Davie then stating, before the unanimous vote:

“Let me thank all the Commissioners for their very thorough and diligent review and engagement around the hiring of our Interim Director Berland as the executive director of the Commission, of the agency. Let me reinforce what Commissioner Cardozo’s resolution has stated and that is the very competent way in which Mr. Berland has conducted the work of this Commission, at least since my joining it in September and from what we can assess in the very thorough review we did before reaching this decision.”

Among the successive lies and deceptions by the above is that Berland’s hire as JCOPE’s executive director resulted from “two nation-wide searches conducted over a period of nearly two years”. This is not consistent with his testimony at the August 25, 2021 hearing on “New York State’s System of Ethics Oversight and Enforcement” by the Senate Committee on Ethics and Internal Governance:

Senator Salazar: “Would you mind telling us, just to go back to when you sought the position, when you applied, do you remember how you found out that the position was open in the first place? Did you learn this from someone you know? Do you remember the circumstances?”

Berland: “Probably the conversation with the former chair, who’s someone I’ve known in various capacities over the years.” ([Transcript](#), at pp. 53-54, see also pp. 83-84; [VIDEO](#))

I cited to and substantially quoted Berland’s testimony at that August 25, 2021 hearing in my November 2, 2021 complaint against JCOPE and him to the New York State Inspector General (at pp. 10-16) – and it is Exhibit I to the *CJA v. JCOPE* verified petition ([NYSCEF #17](#)). This November 2, 2021 complaint is cited and linked in my December 17, 2021 complaint to JCOPE “against legislators and legislative employees for subverting the Legislative Ethics Commission to insulate themselves from complaints” – Exhibit B to the *CJA v. JCOPE* verified petition ([NYSCEF #8](#)), whose recitation at pp. 4-6 thereof, under the title “BACKGROUND”, begins: “JCOPE is already familiar with the essential underlying facts – or at least JCOPE Executive Director Sanford Berland is.”

8 Executive Law §94.10(f) reads, in pertinent part:

“If, following a preliminary review of any complaint...the commission or commission staff decides to elevate such preliminary review into an investigation, written notice shall be provided to the respondent setting forth, to the extent the commission is able to, the possible or alleged violation or violations of such law and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations... The respondent shall have fifteen days from receipt of the written notice to provide any preliminary response or information the respondent determines may benefit the commission or commission staff in its work. After the review and investigation, the staff shall prepare a report to the commission setting forth the allegation or allegations made, the evidence gathered in the review and investigation tending to support and disprove, if any, the allegation or allegations, the relevant law, and a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing. The commission shall, by majority vote, return the matter to the staff for further investigation or accept or reject the staff recommendation.”

9 Pursuant to Executive Law §94.6(a), the executive director may be removed for “substantial neglect of duty” and “misconduct in office”, by “a majority vote of the commission.”

10 [Appellate Division Rules of Procedure 1240.7\(e\)\(3\)](#) reads:

“Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney’s decision declining to investigate a complaint, or of a Committee’s dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate.”