

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, October 5, 2016 1:36 PM
To: 'corralesc@assembly.state.ny.us'
Subject: Proposed Commission on Prosecutorial Conduct

TO: Christian Corrales, Legislative Director to Assemblyman Nick Perry

Following up our extensive phone conversation this morning regarding the June 8, 2016 public forum on the bill to establish a commission on prosecutorial conduct – modeled on the statute establishing the Commission on Judicial Conduct – the video of the forum is NOT posted on any committee website, but only on Senator DeFrancisco's website – and without any transcript of the proceeding – or any of the supporting documents furnished by witnesses or referred to by Senator DeFrancisco or anyone else.

I believe you stated that the June 8, 2016 public forum had been transcribed. If so, I would appreciate if you furnished me a copy electronically, as likewise any witness statements and other supporting documents. This, until they are posted, at very least, on Assemblyman Perry's own website.

As discussed, although I favor establishment of a commission on prosecutorial conduct, it must NOT be modeled on the statute establishing the Commission on Judicial Conduct, as that Commission is a corrupt façade. This Senator DeFrancisco well knows from the evidentiary proof I supplied him, repeatedly, during the years of his tenure as chairman of the Senate Judiciary Committee and, thereafter, during his years as chairman of the Senate Finance Committee. None of this proof was more important and decisive than the October 15, 2002 and October 24, 2002 final two motions before the Court of Appeals in the Center for Judicial Accountability's public interest lawsuit against the Commission on Judicial Conduct – *Elena Ruth Sassower v. Commission* – with SIX causes of action challenging the Commission statute, *as written and as applied*. Senator DeFrancisco received hard copies of these from me, directly, twice. The first time was at the face-to-face, sit-down March 17, 2003 meeting I had with him and Malcolm Smith, who was then the Senate Judiciary Committee's ranking member – and my March 5, 2003 letter reflecting the scheduling of that meeting is posted here: <http://www.judgewatch.org/web-pages/judicial-discipline/nys/judicial-discipline-nys.htm>. On that webpage you can also access Comptroller Regan's 1989 report about the Commission "*Not Accountable to the Public*" – about the need to amend the Commission statute to include a provision to allow for auditing of Commission records pertaining to the complaints it receives. The second time I furnished these two dispositive motions to Senator DeFrancisco, directly, was when, as chairman of the Senate Finance Committee, I testified before him at the Legislature's February 6, 2013 budget hearing on "public protection", in opposition to the judicial salary increases recommended by the August 29, 2011 report of the Commission on Judicial Compensation. Here's the link to the video of my February 6, 2013 testimony before Senator DeFrancisco: http://nystateassembly.granicus.com/MediaPlayer.php?view_id=2&clip_id=327 (last speaker: at 7:21:50 hrs).

Notwithstanding the proof I had furnished Senator DeFrancisco, repeatedly, that the Commission on Judicial Conduct dumps judicial misconduct complaints that are not only facially-meritorious (in violation of Judiciary Law 44.1), but fully documented – and that it survived successive lawsuits suing it for corruption only because its attorney, the NYS Attorney General corrupted the judicial process and was rewarded with fraudulent judicial decisions – he refused, as Senate Judiciary Committee chairman, my repeated requests for hearings on the Commission – or on the court-controlled attorney disciplinary system. It was only in 2009, under the

chairmanship of then Senator John Sampson, that hearings were held, albeit aborted after the second, *without* investigation, *without* findings and *without* any committee report being thereafter rendered. The above link contains a link to CJA's webpage for the 2009 Senate Judiciary Committee hearings under Senator Sampson – and includes my comprehensive written testimony that I had prepared for the December 16, 2009 hearing that was aborted. Here is that webpage directly: <http://www.judgewatch.org/web-pages/judicial-discipline/nys/nys-sjc-hearing.htm>. Particularly devastating is the testimony of two lawyer witnesses about the Commission's dumping of complaints they had filed: court attorney James Montagnino, at the June 8, 2009 hearing (video at 0:10:07 - 0:22:22) and of attorney Regina Felton at the September 24, 2009 hearing (video at 2:00:01 - 2:27:09).

As to the alternative to a commission on prosecutorial conduct – New York's attorney disciplinary committees – touted by New York's district attorneys as sufficient to address district attorney misconduct -- I gave relevant testimony about how the attorney disciplinary committees dump legitimate complaints against attorneys – and handed up substantiating proof -- last year before the sham Commission on Statewide Attorney Discipline, established by then Chief Judge Jonathan Lippman. Here's the video of my August 11, 2015 testimony: <https://www.youtube.com/watch?v=1OV2woYeZ9Q&feature=youtu.be> and CJA's webpage of the documentation I handed up, including its budgetary requests for LESS funding for attorney discipline: <http://www.judgewatch.org/web-pages/searching-nys/2015-commission-on-attorney-discipline/public-testimony-hearings/ers-testimony.htm>. Its subsequent September 24, 2015 report concealed this opposition testimony in a cover-up report that nonetheless did identify the need for additional funding for attorney discipline. Yet, less than two months later, when the Judiciary submitted its proposed budget on December 1, 2015, it did NOT ask for any additional funding for attorney discipline. I pointed this out in a January 28, 2016 letter to the Senate and Assembly Judiciary Committees – and to the Senate Finance Committee and the Assembly Ways and Means Committee. Here is CJA's webpage posting the letter and its substantiating documentation: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/jan-28-ltr-fiscal-jud-committees.htm>.

You may be sure that I would have given live testimony to the Legislature about this, had I been permitted to testify at its 2016 budget hearings. However, following my February 6, 2013 testimony before Senator DeFrancisco, I have not been permitted to testify at legislative budget hearings. This is particularized, with substantiating proof, by the verified complaint in the citizen-taxpayer action that CJA commenced on March 28, 2014 and then supplemented on March 31, 2015 with a verified supplemental complaint, and then again by a March 23, 2016 verified second supplemental complaint. As Assemblyman Perry is a member of the Assembly Ways and Means Committee, he should read each of these three pleadings in that citizen-taxpayer action – as well as the September 2, 2016 verified complaint in our current citizen-taxpayer action so that he can better understand what has been going on, including with the knowledge of Assemblyman Lentol, who, in addition to chairing the Assembly Codes Committee, is long-time Assembly co-chair of the Legislature's "public protection" budget conference subcommittee. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/menu-budget-reform.htm>.

I would add that following this year's rigged legislative "public protection" budget hearing at which Commission on Judicial Conduct Administrator Bob Tembeckjian pleaded for a mere \$160,000 additional for the Commission's budget, I wrote a February 18, 2016 letter to the Senate Finance Committee and the Assembly Ways and Means Committee pointing out (at fn. 7) his significant testimony: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/feb-18-16-ltr-to-fiscal-committees.htm>.

To no avail. The Legislature did not furnish additional monies for either the Commission on Judicial Conduct or for attorney discipline in the budget for this fiscal year.

There is much more to say, but I must turn to other matters now – including finishing the drafting of an attorney disciplinary complaint against New York’s district attorneys that will furnish an empirical TEST of the efficacy of the attorney disciplinary committees in enforcing standards of ethical and professional conduct upon district attorneys. Suffice to herein supply you with yet one further link – to my June 29, 2016 letter to the District Attorneys Association of the State of New York, which was addressed to the attention of its then president Rockland County District Attorney Zugibe, with a copy to its incoming president, Oneida County District Attorney McNamara. It summarized (at pp. 6-7) significant facts pertaining to the June 8th public forum and the participation therein of Albany County District Attorney Soares. Here’s the link: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/6-29-16-ltr-daasny.htm>.

I am available to answer questions, including under oath – and would consider it a privilege to do so to assist Assemblyman Perry in discharging the duties of his office.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org