

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

March 5, 2021

TO: Joint Commission on Public Ethics (JCOPE)
Legislative Ethics Commission (LEC)

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

RE: (1) Conflict-of-interest/ethics complaint vs Governor Cuomo, Lieutenant Governor Hochul, Attorney General James, Comptroller DiNapoli, and all 213 state legislators, starting with Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie, for their Public Officers Law §74 violations in perpetuating statutorily-violative, fraudulent, and unconstitutional pay raises for themselves and other self-serving violations of their offices, as particularized, with EVIDENCE, by 62 grand jury/public corruption complaints filed with New York's 62 district attorneys – most importantly with Albany County District Attorney P. David Soares;
(2) NOTICE OF INTENT to bring mandamus/Article 78 proceeding

THE COMPLAINT

At the direction/advice of Albany County District Attorney P. David Soares and former Montgomery County District Attorney Kelli McCoski, I hereby file for your investigation, the annexed sworn, fully-documented grand jury/public corruption complaints that I filed with them, on June 4, 2020 and June 13, 2020, respectively (Exhibits A, B), as to which the office of D.A. Soares responded on July 27, 2020 and D.A. McCoski identically responded on August 20, 2020, stating:

“We have received the information you submitted with regard to your corruption complaint pertaining to Legislative and Executive compensation. Due to the nature of that matter, the appropriate entities to investigate the allegations you raise are the New York State Joint Commission on Public Ethics and the Legislative Ethics Commission.” (Exhibits C-1, C-2).

As relevant to JCOPE and LEC, “the nature of that matter” is conflict of interest, proscribed by Public Officers Law §74. The complained-against public officers within JCOPE's jurisdiction pursuant to Executive Law §94.1 are Governor Andrew Cuomo, Lieutenant Governor Kathy Hochul, Attorney General Letitia James, Comptroller Thomas DiNapoli, and New York's 213 state legislators, beginning with Temporary Senate President Andrea Stewart-Cousins and Assembly Speaker Carl Heastie. All are beneficiaries of statutorily-violative, fraudulent, and unconstitutional pay raises that are the product of a “false instrument” December 10, 2018 report of the Committee

on Legislative and Executive Compensation¹, violating a succession of penal laws – as proven by CJA’s July 15, 2019 analysis of the report, furnished to them on that date and thereafter, with NOTICE of their duty to void the report, return the pay raise monies they had already received, and secure prosecutions of the four members of the Committee on Legislative and Executive Compensation – Comptroller DiNapoli, among them. This is recited by the identical “SUMMARY” that appears in the June 4, 2020 and June 13, 2020 grand jury/public corruption complaints – and in the 60 other materially-identical grand jury/public corruption complaints I filed with New York’s 60 other district attorneys, who are ALL “sitting on” them.²

The complained-against public officers within LEC’s jurisdiction pursuant to Legislative Law §80.1 are the 213 members of the Legislature who are the exclusive subjects of 61 of the grand jury/public corruption complaints – and the subjects, with other constitutional and public officers and staff, of the June 4, 2020 complaint to D.A. Soares (Exhibit A).

Both JCOPE and LEC also have jurisdiction over the new members of the Legislature, elected on November 3, 2020,³ virtually all of whom were informed of, and/or furnished with, the July 15, 2019 NOTICE with analysis and the grand jury/public corruption complaints while candidates running for election. Not only are these new members now themselves beneficiaries of the “false instrument” December 10, 2019 committee report, raising their salaries, but they are continuing ALL the self-serving, corrupt conduct of their predecessors, including with respect to the Legislature’s OWN budget. Once again, the legislators have held no budget hearing with respect to the Legislature’s budget and have not publicly questioned Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie as to why the Legislature’s budget for FY2021-22:

(1) is NOT certified by them, but instead merely signed;

(2) conceals (at pp. 7, 8) that legislative salaries are not governed by Legislative Law §5, which the December 10, 2018 report superseded;

¹ As a result of the December 10, 2018 report, the salaries of the attorney general and comptroller rose from \$151,500 to \$190,000, as of January 1, 2019, and to \$210,000, as of January 1, 2020. Legislative salaries rose from \$79,500 to \$110,000, as of January 1, 2019 (and no further because of the [June 7, 2019 Albany County Supreme Court decision in *Delgado v New York State*](#)). The salary of the governor and lieutenant governor (adjusted by a legislative resolution based on the December 10, 2018 report) rose from \$179,000 and \$151,500, respectively, to \$200,000 and \$190,000, respectively, as of January 1, 2019, and to \$225,000 and \$210, 000, respectively, as of January 1, 2020.

² Former Westchester County District Attorney Anthony Scarpino was the only district attorney to dismiss the complaint filed with him – which he did by a November 6, 2020 letter purporting “Based on the information provided, we have determined that there is insufficient basis for a criminal investigation.” On January 19, 2021, I refiled that same June 10, 2020 complaint with newly-elected Westchester District Attorney Mimi Rocah, who has been “sitting on” it ever since.

³ Pursuant to Executive Law §94.13(c), JCOPE has jurisdiction over former legislators, provided that within one year of their separation from public service it has furnished them with a 15 day notice of their alleged violation of the Public Officers Law. So, too, LEC, pursuant to Legislative Law §80.8.

(3) conceals (at pp. 7, 8) that the report eliminated all legislative stipends enumerated in Legislative Law §5-a other than for the 15 legislative leaders; and

(4) seeks \$6,496,500 (at pp. 7, 8) more in legislative salaries as a result of the report than legislators are entitled under Legislative Law §5, while also seeking (at pp. 7, 8) \$2,457,500 in Legislative Law §5-a stipends that the report eliminated.

Likewise, Governor Cuomo, once again, did not make any recommendation that the Legislature correct its salary and stipend figures and, in placing the Legislature's budget on the same budget bill as the Judiciary's budget, added, in an out-of-sequence, mistitled section at the back of the bill (#S.2501/A.2001, at pp. 30-62) 33 pages of supposed "reappropriations" for the Legislature – untallied, but seemingly many, many tens of millions of dollars. Among these, "reappropriations" of legislative salaries and stipends from past years.

As for Governor Cuomo's own salary and the salaries of Attorney General James and Comptroller DiNapoli, all in the State Operations Budget Bill (#S.2500/A.2000), where their amounts are concealed, and the salary of Lieutenant Governor Hochul, embodied in the Legislature's budget, they all continue, for 2021, the larcenous 2020 salary increase levels of the "false instrument" December 10, 2019 report.⁴

THE EVIDENCE

The EVIDENCE substantiating this complaint is posted on CJA's webpage for the complaint, here: <http://www.judgewatch.org/web-pages/searching-nys/jcope/3-5-21-complaint-to-jcope-lec.htm>. It consists of – and is here hyperlinked:

- (1) [ALL the EVIDENCE substantiating the June 4, 2020 and June 13, 2020 grand jury/public corruption complaints](#) – beginning with CJA's July 15, 2019 NOTICE and analysis of the "false instrument" December 10, 2018 report of the Committee on Legislative and Executive Compensation, raising legislative and executive salaries and eliminating all but 15 legislative stipends;
- (2) [CJA's 2020 correspondence with the legislators and legislative candidates](#), furnishing them with NOTICE of the grand jury/public corruption complaints;
- (3) [CJA's FOIL requests to the Governor and Legislature](#) pertaining to the FY2021-22 budget, the pay raises, and the operations of the Legislature;

⁴ These salaries did not increase further, pursuant to the December 10, 2018 report, because, in response to media criticism, arising from the fiscal crisis caused by the coronavirus pandemic, Governor Cuomo issued a December 28, 2020 executive order preventing the increases due to take effect on January 1, 2021 that would have raised his salary to \$250,000, and the salaries of the lieutenant governor, attorney general, and comptroller to \$220,000.

- (4) [the Legislature's uncertified budget for FY2021-22, the Judiciary's budget for FY2021-22, the Governor's budget bills for FY2021-22 – and the proceedings in the Legislature and by the Governor with respect to the budget bills;](#)
- (5) [CJA's public testimony at the Legislature's February 10, 2021 budget hearing on "public protection" and at the February 16, 2021 local forum on the state budget sponsored by Westchester County's Senate delegation](#) pertaining to the fraudulent legislative pay raises and the grand jury/public corruption complaints;
- (6) [CJA's February 11, 2021 conflict-of-interest/misconduct complaint filed with New York's court-controlled attorney grievance committees](#), particularizing the EVIDENCE of Attorney General James' litigation fraud in the citizen-taxpayer action *CJA v. Cuomo...Schneiderman...DiFiore* to prevent summary judgment to the plaintiffs on their ten causes of action for declarations of unconstitutionality and unlawfulness with respect to the budget, the "force of law" commission/committee pay raise scheme, and the pay raise reports – and further substantiated by [CJA's February 7, 2021 conflict-of-interest/misconduct complaint to the Commission on Judicial Conduct](#), accompanying it.

No one has denied or disputed the accuracy of this EVIDENCE – and it is indisputable, *prima facie*, and open-and-shut.

**CJA's PRIOR – & STILL-PENDING –
CONFLICT-OF-INTEREST/ETHICS COMPLAINTS,
FILED WITH JCOPE & LEC**

JCOPE is already familiar with most of the *prima facie*, open-and-shut EVIDENCE substantiating this conflict-of-interest/ethics complaint, as I filed three prior conflict-of-interest/ethics complaints resting on that same EVIDENCE:

- (1) [a sworn June 27, 2013 conflict-of-interest/ethics complaint](#) against Governor Cuomo, then Attorney General Schneiderman, Comptroller DiNapoli, all the Legislature's 213 members, and other complicit public officers and staff for "grand larceny of the public fisc" and other corrupt acts pertaining to the fraudulent, statutorily-violative, unconstitutional "force of law" August 29, 2011 report of the Commission on Judicial Compensation, giving pay raises to judges – and based thereon, to district attorneys – with the appropriations for the judges concealed in a slush-fund Judiciary budget, loaded, by the Governor, onto the same budget bill as the Legislature's budget – the particulars of which were furnished by an accompanying [April 15, 2013 public corruption complaint to the then U.S. Attorney for the Southern District of New York, Preet Bharara](#) – each resting, in the first instance, on CJA's October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report;

- (2) [a sworn December 11, 2014 conflict-of-interest/ethics complaint](#) against JCOPE's five appointing authorities – Governor Cuomo and the Legislature's four majority/minority leaders – and against JCOPE for violation of the Public Integrity Reform Act of 2011 pertaining to the JCOPE/LEC review commission statutorily-required to be appointed “no later than June 1, 2014”, pointing out that any legitimate review commission would have to “blow the whistle” on JCOPE's nonfeasance with respect to CJA's June 27, 2013 complaint – and detailing, by an appended [July 18, 2014 letter to JCOPE](#), that its nonfeasance with respect to the June 27, 2013 complaint and other complaints was concealed by its 2013 annual report, which, in violation of Executive Law §94.9(1)(i), omitted the required “listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint”;
- (3) [a sworn August 31, 2020 conflict-of-interest/ethics complaint](#) against SUNY's Board of Trustees and its other officers and staff, including SUNY Senior Vice Chancellor/Chief Operating Officer Robert Megna and Board of Trustees Chair Emeritus H. Carl McCall pertaining to the rigged appointment of Governor Cuomo's protégé James Malatras to be SUNY chancellor, covering up the involvement of all three in the statutorily-violative, fraudulent, unconstitutional “false instrument” reports that had raised judicial, executive, and legislative salaries: the August 29, 2011 report of the Commission on Judicial Compensation, the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, and the December 10, 2018 report of the Committee on Legislative and Executive Compensation– and SUNY's false, deficient, and non-existent scholarship on the New York State Constitution, the state budget, and New York state governance.⁵

ALL three complaints remain pending before JCOPE, there having been NO notification, as required by Executive Law §94.13(b), which states:

“If the commission determines at any stage that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason, it shall so advise the individual and the complainant, if any in writing within fifteen days of such decision.”

As to each of these three complaints, JCOPE wholly repudiated the mandatory time frames and statutory duties of Executive Law §94.13 and §94.14, which required it:

⁵ Footnote 3 of the August 31, 2020 conflict of interest/ethics complaint furnished links to CJA's July 15, 2019 NOTICE and analysis of the December 10, 2018 report of the Committee on Legislative and Executive Compensation – and to CJA's June 4, 2020 grand jury/public corruption complaint filed with D.A. Soares (Exhibit A). Erroneously, it stated that D.A. Soares was “sitting on” the June 4, 2020 complaint. In fact, the chief of his Public Integrity Unit had sent me the July 27, 2020 letter (Exhibit C-1).

- to give notice to the complained-against constitutional and public officers and employees of their violations of Public Officers Law §74, as alleged in the ethics complaint, and afford them 15 days within which to furnish their written responses [Executive Law §94.13(a)];
- to vote, within 45/60 calendar days⁶ after a complaint or a referral is received or an investigation initiated on its own initiative, to commence a “substantial basis investigation” as to the Public Officers Law §74 violations, with written notice to the complained-against constitutional and public officers and employees of their right to be heard within 30 days [Executive Law §94.13(a), §94.13(b)];
- to issue a “substantial basis investigation report” that violations of Public Officers Law §74 by the non-legislative 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];
- to assess civil penalties against the non-legislative constitutional and public officers and employees for their violations of Public Officers Law §74 and to refer their larcenous, corrupt conduct, violative of other law, “to the appropriate prosecutor for further investigation” [Executive Law §94.14];
- to deliver to LEC a “substantial basis investigation report” of the violations of Public Officers Law §74 by the legislators and legislative employees and to refer their larcenous, corrupt conduct, violative of other law, “to the appropriate prosecutor” – with LEC thereafter publicly releasing the report and, if not, JCOPE releasing it, with LEC also, within 90 days, assessing civil penalties against the legislators and legislative employees [Legislative Law §80.9-b, §80.10].

JCOPE’s repudiation of these non-discretionary statutory time frames and duties is all the more remarkable as it was brought to JCOPE’s attention in correspondence from me, beginning with my [July 11, 2014](#) and [July 18, 2014 letters](#), by the December 11, 2014 complaint, by [my written and oral advocacy to the belatedly-appointed JCOPE/LEC review commission](#), and by the August 31, 2020 complaint. Likewise brought to JCOPE’s attention was that the ONLY explanation for such conduct was conflicts of interest of its executive directors, staff, and/or members – as to which, additionally JCOPE was repudiating the very law and standards proscribing conflicts of interest that are its duty to enforce and which apply to it: Public Officer Law §74.2 and §§74.3(d), (f), and (h), as well as its own “[Code of Conduct for Members](#)” and its addendum “[Recusal Policy and Procedure](#)”, both posted on its website.

⁶ The 45-day window was expanded to 60 days in 2016, consistent with a recommendation made in the superficial, cover-up [November 1, 2015 report of the JCOPE/LEC review commission](#) (at pp. 11-21).

As for LEC, it is also familiar with a substantial portion of the EVIDENCE underlying this complaint, as [on December 12, 2014, I filed with it the same December 11, 2014 conflict-of-interest/ethics complaint](#) as I had filed with JCOPE against the Legislature's four majority/minority leaders for violation of the statutory requirement that the JCOPE/LEC review commission be appointed "no later than June 1, 2014". I received no acknowledgment or response from LEC – nor to [my June 22, 2015 letter](#) reiterating the significance of JCOPE's violation of Executive Law §94.9(1)(i) requiring that its annual report contain:

“a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint”,

namely, “to enable tracking of a given complaint and of referrals so that [the] ultimate disposition of each can be established for accountability purposes”.

Four months later, [by an October 22, 2015 FOIL request](#), I sought LEC's compliance with Legislative Law §80.7(1) pertaining to its own annual reports and its own Article VI of its By-Laws, requiring that they contain:

“a listing of each complaint and referral received by the Commission, the current status of each complaint, and the nature and date of any disposition and any sanction imposed.”

The October 22, 2015 FOIL request sought LEC's annual reports for 2013 and 2014, not posted on its website. The [only response I received, on October 26, 2015](#), stated a response would be forthcoming by the end of the next day. I received nothing – and LEC's website: <https://legethics.ny.gov/> posts no annual reports for 2013 and 2014 – or for any year prior or since.

Here, too, the ONLY explanation for LEC's repudiation of its duties, including the mandatory time-frames of Legislative Law §80.9(b) and §80.10, are the conflicts of interest of its executive director, staff, and/or members – as to which LEC has also repudiated the very law and standards proscribing conflicts of interest that are its duty to enforce and which apply to it: Public Officer Law §74.2, and §§74.3(d), (f), and (h).

As for JCOPE's annual reports, posted on its website at <https://jcope.ny.gov/reports-and-publications> and spanning to 2019, each and every one violates Executive Law §94.9(1)(i) in omitting the required:

“listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint”.

JCOPE and LEC's nonfeasance and misfeasance with respect to my prior complaints, their annual reports, and my series of FIVE October 2015 FOIL requests, whose express purpose was “assisting the JCOPE/LEC review commission with a methodologically-sound review”, have led directly to

this complaint. Indeed, JCOPE and LEC cannot confront this complaint without exposing their misconduct, born of conflicts of interest, as to the prior complaints, their annual reports, the FOIL requests – and the sham of the 2015 JCOPE/LEC review commission, whose superficial, cover-up November 1, 2015 report conceals, *in toto*, the dispositive EVIDENCE and “roadmap” I had furnished.

I incorporate by reference the records of those prior complaints, [my FOIL requests, and my advocacy before the JCOPE/LEC review commission](#). All are accessible from CJA’s webpage for this complaint: <http://www.judgwatch.org/web-pages/searching-nys/jcope/3-5-21-complaint-to-jcope-lec.htm>.

**NOTICE OF INTENT TO BRING MANDAMUS/
ARTICLE 78 PROCEEDING**

Please confirm, without delay, that JCOPE will be taking a vote on this complaint within 60 days, as required by Executive Law §94.13(a), and, belatedly, on CJA’s still-pending three prior complaints, so that I will know whether I must bring a mandamus proceeding to compel JCOPE’s compliance with its unequivocal, mandatory 60-day time frame – as Donald Trump successfully did, when the time-frame was 45 days,⁷ and as the New York Republican Party thereafter successfully did⁸.

⁷ Among my FOIL requests to JCOPE was that of October 21, 2015 enclosing a copy of the [February 11, 2015 Albany Supreme Court decision in *Trump v. JCOPE*](#) (Henry Zwack), 47 Misc. 3d 993, and highlighting that not only had it stated:

“The requirement that a vote be held within 45 days from receipt of a complaint is a purely ministerial act – which must be carried out in accordance with the clear statutory language.^{fn4}” (at p. 7),

but that its annotating footnote 4 had added that JCOPE had “outright[ly] ignore[d] the Legislature’s clear directive”, embodied in “statutory timelines”.

⁸ See, [December 18, 2018 Albany Supreme Court decision in *Cox v. JCOPE*](#) (Patrick McGrath), stating:

“This Court agrees with the decision in *Trump* in that the Commission’s duty to hold a vote on whether to commence a substantial basis investigation within 60 days of receiving a complaint is ministerial because holding a vote involves ‘direct adherence to a governing rule or standard with a compulsory result’... The act sought to be compelled ‘is premised upon specific statutory authority mandating performance in a specified manner.’ *Peirez v. Caso*, 72 AD2d 797 (3d Dept. 1979). The time frame in which to hold a vote is not left to the Commission’s expertise, judgment or discretion.

...this Court cannot turn a blind eye to the clear legislative mandate that requires a substantial investigation vote within 60 days receipt of a complaint. The language is clear, and has been specifically addressed as recently as 2016. As noted by the Court in *Trump*, ‘[p]rior to the enactment of the State Public Integrity Reform Act of 2011, Executive Law 94 contained no time limitation for the Commission to determine whether to investigate an

Should that be necessary, I will simultaneously do what should have been a first-order of business for the JCOPE/LEC review commission: compel compliance by JCOPE and LEC with the mandatory provisions of Executive Law §94.9(1)(i), Legislative Law §80.7(1), and Article VI of LEC's By-Laws for a listing, by assigned number, of each complaint/referral received alleging a possible violation within their jurisdiction and the current status of each. From this it will be readily apparent what has been going on, starting with the 15-day letters⁹ – and what must be done about it, including pursuant to the safeguarding removal provisions of Executive Law §94.9(a) and §94.7 and Legislative Law §80.7(a).

Needless to say, with respect to the penal law violations identified by CJA's June 4, 2020 and June 13, 2020 grand jury/public corruption complaints (Exhibits A, B) – and by CJA's July 15, 2019 NOTICE and analysis – I would expect JCOPE/LEC to make expeditious referrals back to Albany County D.A. Soares, to newly-elected Montgomery County D.A. Lorraine Diamond¹⁰ – and to New York's four U.S. Attorneys – pursuant to Executive Law §94.14 and Legislative Law §80.9(a).

* * *

In addition to JCOPE's "SWORN COMPLAINT" form, wherein I have sworn to the complaint's truth, I herewith additionally repeat the attestation that Albany D.A. Soares requires for complaints filed with his Public Integrity Unit, quoted on the last page of my June 4, 2020 grand jury/public corruption complaint to him (Exhibit A, at p. 9):

"I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law."

Thank you.

ethics complaint. A major change to the statute...was the legislative addition of a time line by which the Commission must make the determination whether to investigate a complaint or not.' The statute was amended in 2016, (ch 286, §§1, 2 (Part J), in 13(a)), extending the time from 45 days to 60. ..." (at pp. 5-6).

⁹ See my [October 27, 2015 FOIL request](#), seeking:

"all publicly-available written delegations of 'specific powers' that JCOPE has conferred on its executive director – particularly the power to determine whether a sworn complaint, received by JCOPE, alleges violations within its purview, for which **issuance of a 15-day letter is mandatory**." (bold in the original).

¹⁰ On January 19, 2021, having overlooked former Montgomery D.A. McCoski's August 20, 2020 letter that JCOPE and LEC were the "appropriate entities" to investigate the allegations of the June 13, 2020 grand jury/public corruption complaint "pertaining to Legislative and Executive compensation" (Exhibit C-2), I refiled the complaint with newly-elected Montgomery D.A. Diamond, who has been "sitting on" it.