CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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April 13, 2022

TO: Joint Commission on Public Ethics (JCOPE)

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

RE: (1) Conflict-of-interest/ethics complaint vs Governor Hochul, Temporary Senate President Stewart-Cousins, Assembly Speaker Heastie, the 211 other state legislators – and their culpable staff, including Division of the Budget Director Mujica – for their Public Officers Law §74 violations pertaining to the FY2022-23 state budget, and, in particular, pertaining to their repeal and elimination of JCOPE by Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C and their larceny of taxpayer monies by Legislative/Judiciary Budget Bill S.8001-A/A.9001-A;

(2) Supplement to CJA's December 17, 2021 conflict-of-interest/ethics complaint vs legislators and legislative employees pertaining to the Legislative Ethics Commission (JCOPE #21-244).

THE COMPLAINT

This is a complaint against Governor Hochul, Temporary Senate President Stewart-Cousins, Assembly Speaker Heastie, the 213 other state legislators, and culpable staff, including Division of the Budget Director Mujica. All share a direct, self-interest in an ethics entity NOT bound – as JCOPE is – by the salutary mandatory provisions, enforceable by Article 78/mandamus:

- of Executive Law §94.13(a), requiring that "If 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…the commission shall notify the individual in writing…and provide the person with a fifteen day period in which to submit a written response…and…shall, within sixty calendar days after a complaint is received…vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred"; and

- of Executive Law §94.9(l)(i), requiring that its annual reports "shall" include "a listing by assigned number of each complaint…received which alleged a possible violation within its jurisdiction, including the current status of each complaint".

All acted on their self-interest, in violation of Public Officers Law §74, by their so-called "ethics commission reform act of 2022", which – *for no reason other than self-interest* – removed those mandatory, integrity requirements from the new Executive Law §94 that replaces JCOPE with a Commission on Ethics and Lobbying in Government – and which they enacted as Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C (at pp. 151-201) by the same flagrant fraud and constitutional, statutory, and legislative rule violations as they always commit with respect to the budget and as to which I have sought redress by my six prior complaints to JCOPE.

In violation of Executive Law §94.13(a), JCOPE has been "sitting on" the first four of these complaints, the most comprehensive of which is the fourth: my March 5, 2021 complaint – which (at pp. 1, 8-9) expressly gave JCOPE "NOTICE OF [my] INTENT to bring [a] mandamus/Article 78 proceeding" to secure its compliance with Executive Law §94.13(a), with respect to those four complaints, and with Executive Law §94.9(l)(i), with respect to its annual reports.

As for my last two complaints – my November 24, 2021 complaint and my December 17, 2021 complaint – your director of investigations and enforcement purported you had voted "to close" each – and I challenged this, based on Executive Law §94.13(a), by my February 28, 2022 e-mail and March 4, 2022 e-mail. Both those e-mails were addressed to Chair Nieves, cc'd the JCOPE members whose e-mail addresses I had, Gerstman, Jacob, Lavine, and McNamara, and expressly requested forwarding to the other JCOPE members. I received no responses to either e-mail, nor to my March 17, 2022 e-mail, summarizing subsequent developments germane to these last two complaints.

This, then, is my seventh complaint to JCOPE pertaining to the state budget – the FY2022-23 state budget, as to which I gave you a "heads up" by my February 28, 2022 e-mail, stating:

> "**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." (capitalization, bold, hyperlinking in the original).

Apart from the direct, self-interest of the legislators and legislative staff in getting rid of an ethics entity, such as JCOPE, whose operating statute gives the public rights that are enforceable through mandamus, their most direct and financial interest in the FY2022-23 budget was in the Legislature's own December 1, 2021 proposed budget – and the legislative portions of Governor Hochul's combined Legislative/Judiciary Budget Bill S.8001/A.9001.

THE EVIDENCE

The EVIDENCE substantiating this complaint pertaining to the FY2023-24 state budget is posted on CJA's webpage for the complaint, here: https://www.judgewatch.org/web-pages/searching-nys/jcope/april-13-2022-complaint-fy22-23-budget.htm. It includes:

(1) the EVIDENCE summarized and particularized by my January 22, 2022 written statement in support of oral testimony and my January 25, 2022 written three-minute oral testimony, which I presented to the Legislature for its January 25, 2022 "public protection" budget hearing – the accuracy of which was not denied or disputed by anyone;

(2) the EVIDENCE summarized and particularized by my March 25, 2022 e-mail entitled "NYS BUDGET: What findings of fact & conclusions of law did you make regarding my testimony at the Jan. 25, 2022 'public protection' budget hearing?" – sent to the 25 legislators who had been present, by zoom, when I testified, plus 16 more, thereby including ALL members of the Legislature's General Budget Conference Committee, ALL members of its "Public Protection/Criminal Justice/Judiciary Budget Conference Subcommittee, and ALL 15 legislative "leaders" whose stipends were preserved by the "false instrument" December 10, 2018 report of the Committee on Legislative and Executive Compensation – and highlighting a cascade of flagrant constitutional, statutory, and legislative rule violations pertaining to the budget that had transpired in the two months since my testimony – the accuracy of which was not denied or disputed by anyone;

(3) the EVIDENCE of continued and further violations, subsequent to my March 25, 2022 e-mail:

- no subsequent meetings of the Legislature's General Budget Conference Committee or of its ten budget conference subcommittees;
- unabated behind-closed-doors, "three people in a room" budget deal-making between Temporary Senate President Stewart Cousins, Assembly Speaker Heastie, and Governor Hochul;
- the emergence, on April 8, 2022, of nine Senate-Assembly budget bills, "amended" by the "three people in the room" Among these, the budget bill for education, labor, health, and family assistance, S.8006-C/A.9006-C, to which they had inserted Part QQ, the so-called "ethics commission reform act of 2022";
- the rushing of the nine "three people in the room"-"amended" budget bills to immediate legislative passage, *via* messages of necessity.

(4) the enacted budget bills.

Hereinafter are some particulars pertaining to the two enacted "amended" bills focal to this complaint.

Legislative/Judiciary Budget Bill S.8001-A/A.9001-A

In violation of black-letter law whose purpose is to protect the public and its money, the changes made by the "three people in a room"-"amended" Legislative/Judiciary Budget Bill S.8001-A/A.9001-A were not indicated by the face of the bill, nor any accompanying report, memorandum, or itemization sheet (*see, inter alia*, Legislative Law §54(2), Senate Rule VI, §4(b), Assembly Rule III, §1(f) and §6). To find them, it was necessary to go line-by-line, comparing the "amended" bill to the original.

The result of such laborious comparison is as follows: No changes were made to the Judiciary portions of the bill, these being its §2 appropriations and its §3 re-appropriations (pp. 12-31). Nor were any changes made to the Legislature's §4 "reappropriations" (pp. 32-66). Rather, all changes were to the bill's §1 (pp. 1-11), which are appropriations for the Legislature.

These changes were NOT to eliminate the fraud and larceny of the first two "Personal Service" items for the Senate (p. 2):

> "For payment of salaries to members, 63,
> pursuant to section five of the legislative law……6,930,000
>
> For payment of allowances to members
> designated by the temporary president,
> pursuant to the schedule of such allowances
> set forth in section 5-a of the legislative law……..…1,289,500"

Nor were they to eliminate the fraud and larceny of the first two "Personal Service" items for the Assembly (p. 3):

> "Members, 150, payment of salaries
> pursuant to section five of the legislative law…….16,500,000
>
> For payment of allowances to members
> designated by the speaker pursuant to the provisions
> of section 5-a of the legislative law..……..…..1,592,500"

This, notwithstanding I had pointed out, repeatedly, and for years:[1]

[1] This includes by my March 5, 2021 complaint (at pp. 2-3), referred-to and linked by my January 22, 2022 written statement for the Legislature's January 25, 2022 "public protection" budget hearing.

- that Legislative Law §5 and §5-a were both superseded by the December 10, 2018 report of the Committee on Legislative and Executive Compensation;

- that even were the December 10, 2018 report not the criminal fraud it was proven to be by CJA's July 15, 2019 analysis, the report eliminated all but 15 of the 160 Legislative Law §5-a allowances, making the $1,289,500 appropriation for Senate allowances, instead of the $185,000 it should have been, a $1,104,500 larceny, and making the $1,592,500 appropriation for Assembly allowances, instead of the $239,500 it should have been, a $1,353,000 larceny.[2]

The "three people in the room" left intact this $2,457,500 larceny in §1[3] – "amending" §1 for purposes of stealing more money. Thus, they increased, by $2,467,286, appropriations for "Personal service-regular" and added a $2,000,000 appropriation for a "COMMISSION ON LONG ISLAND POWER AUTHORITY", "pursuant to section 83-n of the legislative law". The specifics are as follows:

OFFICE OF THE LIEUTENANT GOVERNOR (pp. 1-2)

The appropriation that had been $315,379 became $318,424 – an increase of $3,045. This was entirely for "Personal service-regular", which went from $300,744 to $303,789.

THE SENATE (pp. 2-3)

The appropriation that had been $107,752,670 became $108,793,225 – an increase of $1,040,555. This was entirely for "Personal service-regular", as follows:

> "For personal service of employees and for temporary and expert services of members' offices and of standing committees".

This went from $37,691,630 to $38,211,908.

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[2] These are the six allowances in the Senate, whose total cost is $185,000: (1) for the Temporary Senate President ($41,500); (2) for the Deputy Majority Leader ($34,000); (3) for the Minority Leader ($34,500); (4) for the Deputy Minority Leader ($20,500); (5) for the Finance Committee Chair ($34,000); and (6) for the Finance Committee Ranking Member ($20,500). And the nine allowances in the Assembly, whose total cost is $239,500: (1) for the Assembly Speaker ($41,500); (2) for the Assembly Majority Leader ($34,500); (3) for the Speaker *Pro Tempore* ($25,000); (4) for the Minority Leader ($34,500); (5) for the Minority Leader *Pro Tempore* ($20,500); (6) for the Ways & Means Committee Chair ($34,000); (7) for the Ways & Means Committee Ranking Member ($20,500); (8) for the Codes Committee Chair ($18,000); (9) for the Codes Committee Ranking Member ($11,000).

[3] Likewise, they left intact the comparable larceny in §4, "reappropriating" such allowances from 2021, 2020, and 2019 (at pp. 32-33, 35-36).

> "For personal service of employees and for temporary and expert services for senate operations".

This went from $35,878,333 to $36,398,610.

Together they resulted in an increase in the Senate's total "Personal Service" from $82,651,712 to $83,692,267.

THE ASSEMBLY (pp. 3-4)

The appropriation that had been $122,745,977 was now $123,995,977 – an increase of $1,250,000. This was entirely for "personal service", which went from $97,045,977 to $98,295,977 – and, specifically, in the category:

> "For personal service of employees and for temporary and expert services for administrative and program support operations".

Its "Personal service-regular" went from $43,318,477 to $44,533,477 and its "Temporary service" went from $315,000 to $350,000.

SENATE AND ASSEMBLY JOINT ENTITIES (pp. 4-11)

LEGISLATIVE ETHICS COMMISSION
The appropriation that had been $432,869 was now $437,049 – an increase of $4,180. This was entirely for "Personal service-regular", which went from $417,202 to $421,382.

LEGISLATIVE HEALTH SERVICE
The appropriation that had been $242,607 was now $244,950 – an increase of $2,343. This was entirely for "Personal service-regular", which went from $214,907 to $217,250.

LEGISLATIVE LIBRARY
The appropriation that had been $916,639 was now $925,491 – an increase of $8,852. This was entirely for "Personal service-regular", which went from $537,639 to $546,491.

LEGISLATIVE MESSENGER SERVICE
The appropriation that had been $1,042,508 was now $1,052,576 – an increase of $10,068. This was entirely for "Personal service-regular", which went from $1,040,508 to $1,050,576.

LEGISLATIVE BILL DRAFTING COMMISSION
The appropriation that had been $14,939,467 was now $15,083,736 – an increase of $144,269. This was entirely for "Personal service-regular", which went from

$12,687,913 to $12,832,182 – and, exclusively, for "Personal servicer-regular", which had gone from $12,518,673 to $12,662,942.

LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT
The appropriation that had been $411,483 was now $415,457 – an increase of $3,974. This was entirely for "Personal service-regular", which went from $401,081 to $405,055.

COMMISSION ON LONG ISLAND POWER AUTHORITY
"pursuant to section 83-n of the legislative law", for which $2,000,000 was appropriated.

At present, I am unable to locate any Legislative Law §83-n pertaining to the Commission on Long Island Power Authority (Legislative Law Article 5-A "Commissions").

As for the unmarked $2,467,286 increases in §1 for Senate and Assembly "personal service", they are outright larcenies – not the least reason because §4 of the original bill already gave the Legislature scores of millions of dollars of supposed "reappropriations". With the exception of the "amended" bill's increase of $3,045 for the Office of Lieutenant Governor and the appropriation of $2,000,000 for an apparently new Commission on Long Island Power Authority, ALL the other §1 increases in the "amended" bill are to units within the Legislature to which §4 of the original bill "reappropriated" a huge stockpile of "personal service" monies – all retained in the "amended" bill.

Illustrative is the increase of $4,180 in appropriations for "personal service-regular" for the Legislative Ethics Commission, notwithstanding the original bill listed the following "reappropriations" for it (pp. 37-41):

"By chapter 51, section 1, of the laws of 2021….
Personal service-regular…….(re. $302,223)
…
By chapter 51, section 1, of the laws of 2020…
Personal service-regular…….(re. $119,077)
…
By chapter 51, section 1, of the laws of 2019…
Personal service-regular…….(re. $73,821)
…
By chapter 51, section 1, of the laws of 2018…
Personal service-regular…….(re. $78,299)
…
By chapter 51, section 1 of the laws of 2017…
Personal service-regular…….(re. $64,070)
…
By chapter 51, section 1 of the laws of 2016…
Personal service-regular…….(re. $11,110)

…
By chapter 51, section 1, of the laws of 2014…
Personal service-regular…….(re. $91,422)
…
By chapter 51, section 1, of the laws of 2010…
Personal service-regular…….(re. $173,118)
…
By chapter 51, section 1, of the laws of 2009…
Personal service-regular…….(re. $237,388)"

Nor was this the extent of "Personal service-regular" "reappropriations" for the Legislative Ethics Commission in §4 of the original bill. Also there "reappropriated" for the Legislative Ethics Commission (at pp. 40-41) – and retained by §4 of the "amended" bill – were millions of dollars from its predecessor, the Legislative Ethics Committee, spanning back from 2006 to 1989, most of which are for "personal" service, though undifferentiated in the listings. These are the amounts:

"By chapter 51, section 1, of the laws of 2006… …….(re. $138,068)
By chapter 51, section 1, of the laws of 2005… …….(re. $39,224)
By chapter 51, section 1, of the laws of 2004… …….(re. $176,455)
By chapter 51, section 1, of the laws of 2003… …….(re. $160,441)
By chapter 51, section 1, of the laws of 2002… …….(re. $171,793)
By chapter 51, section 1, of the laws of 2001… …….(re. $179,853)
By chapter 51, section 1, of the laws of 2000… …….(re. $259,141)
By chapter 51, section 1, of the laws of 1999… …….(re. $226,467)
By chapter 51, section 1, of the laws of 1998… …….(re. $257,387)
By chapter 51, section 1, of the laws of 1997… …….(re. $223,096)
By chapter 51, section 1, of the laws of 1996… …….(re. $121,736)
By chapter 51, section 1, of the laws of 1995… …….(re. $126,518)
By chapter 51, section 1, of the laws of 1994… …….(re. $7,895)
By chapter 51, section 1, of the laws of 1993… …….(re. $257,753)
By chapter 51, section 1, of the laws of 1992… …….(re. $339,513)
By chapter 51, section 1, of the laws of 1991… …….(re. $112,640)
By chapter 51, section 1, of the laws of 1990… …….(re. $190,724)
By chapter 51, section 1, of the laws of 1989… …….(re. $176,562)"

My December 17, 2021 complaint against legislators and legislative employees pertaining to the Legislative Ethics Commission identified (at p. 4) that:

> "LEC is one of the vehicles through which, year after year, the Legislature steals taxpayer monies *via* legislative 'reappropriations', contained in an out-of-sequence mistitled section at the back of the legislative/judiciary bills".

The complaint's IV (at pp. 12-13) set forth the particulars of past years, both as to appropriations for the Legislative Ethics Commission and its "reappropriations", under the title heading: "Legislators and Legislative Employees Have Permitted LEC's Annual Reports to Omit all Information about the

LEC Budget, thereby Concealing that It is Rigged and a Vehicle for Legislative Larceny".[4]

Not until January 18, 2022 did Governor Hochul introduce the FY2022-23 legislative/judiciary budget bill – and my March 17, 2022 e-mail updated you about it, stating that it contained, in addition to the LEC's uncertified budget, "scores of thousands of dollars in fraudulent supposed LEC 'reappropriations' (at pp. 37-41)", which the March 14, 2022 one-house Senate and Assembly budget resolutions had maintained intact.

I now hereby formally supplement my December 17, 2021 complaint to so-include – and to encompass the further larceny and fraud committed by the April 8, 2022 "amended" Legislative/Judiciary Budget Bill S.8001-A/A.9001-A – the handiwork of the "three people in the room".

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[4] Discussed therein, with links, are CJA's two citizen-taxpayer actions, challenging the Legislature's uncertified budget requests and the legislative "reappropriations" that pop into the Governor's legislative/judiciary budget bills. As relates ONLY to the legislative "reappropriations", the specifics are as follows:

In the first citizen-taxpayer action:

- the third cause of action of the March 28, 2014 verified complaint (at p. 38), pertaining to the FY2014-15 legislative/judiciary budget bill;

- the seventh cause of action of the March 31, 2015 verified supplemental complaint (at pp. 28-30) pertaining to the FY2015-16 legislative/judiciary budget bill; and

- the eleventh cause of action of the March 23, 2016 verified second supplemental complaint (at pp. 34-35), pertaining to the FY2016-17 legislative/judiciary budget bill.

In the second citizen-taxpayer action:

- the third cause of action of the September 2, 2016 verified complaint (at pp. 18-20) also pertaining to the FY2016-17 legislative/judiciary budget bill; and

- the reiterated third cause of action of the March 29, 2017 verified supplemental complaint (at pp. 61-62, 64-65) pertaining to the FY2017-18 Legislative/Judiciary budget bill.

As established by the litigation record of each lawsuit – posted, in full, on CJA's website – the defendants had no legitimate defense, corrupted the judicial fraud by their defendant-attorney, the state Attorney General, and were rewarded by fraudulent judicial decisions of New York judges, whose financial interests not just disqualified them, but divested them of jurisdiction under Judiciary Law §14. My March 5, 2021 complaint – which you have been "sitting on" – furnished you with my fully-documented February 7, 2021 complaint to the Commission on Judicial Conduct and my accompanying fully-documented February 11, 2021 complaint to the Judiciary's attorney grievance committees to further assist you in verifying the double-whammy of fraud by the Attorney General and New York's judges that torpedoed these two monumental lawsuits.

Part QQ of Education, Labor, Health, and Family Assistance
Budget Bill S.8006-C/A.9006-C -- "ethics commission reform act of 2022"

Unlike the legislative/judiciary budget bill – which is an appropriation bill – the education, labor, health, and family assistance budget bill is not. It makes substantive policy that Governor Hochul could not constitutionally introduce pursuant to Article VII – and which, in fact, she had furnished only as proposed legislation. It became an introduced budget bill by fraud of the Legislature. I identified this in the three-minute testimony I read at the Legislature's January 25, 2022 "public protection" budget hearing – and the written copy I submitted gave the specifics in its footnote 1, stating:

> "The mechanics of this fraud – and the unconstitutionality of the insertion of non-fiscal policy into the budget – were dissected by my March 18, 2020 letter to then Governor Cuomo, which I simultaneously furnished to the Legislature – and identified in the 62 grand jury/public corruption complaints I filed with New York's 62 district attorneys pertaining to the FY2020-21 budget. …"

My March 25, 2022 e-mail to the legislators further underscored the importance of this March 18, 2020 letter, as likewise the unconstitutionality of "three people in a room" budget deal-making – which is how Part QQ thereafter came to be inserted into S.8006-C/A.9006-C.

Apart from the fraud of its insertion into a budget bill purporting (at p. 7) to enact "major components of legislation necessary to implement the state education, labor, housing, and family assistance budget for the 2022-2023 state fiscal year" – to which it has NO tie – Part QQ (pp.151-201), begins as follows:

> "Section 1. This act shall be known and may be cited as the 'ethics commission reform act of 2022'.
> §2. Section 94 of the executive law is REPEALED and a new section 94 is added to read as follows:"

This is itself a deceit, in purporting, as "reform", that the Executive Law §94 it is repealing was so flawed that it could not be amended.

More accurately, the statute was repealed in order to wipe out – in a covert fashion – the exemplary provisions of §94.13(a), (b), and §94.9(l)(i), whose removal could not have been justified if the statute were amended.

Thus, Senate Rule VI, §4(b) and Assembly Rule III, §1(c)(1) each require that when a bill amends existing law, all new matter added is to be "underscored" and all matter eliminated from existing law is to be "printed in its proper place in the bill enclosed in black-faced brackets". This is what is reflected at the bottom of the first page of every bill – and of S.8006-C/A.9006-C, which reads:

> "EXPLANATION – Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted."

In other words, had Part QQ, §2 amended, rather than repealed, Executive Law §94, it would have had to bracket those portions that were being eliminated – enabling them to be seen and evaluated next to the underscored new text, as is possible with the balance of Part QQ, spanning from §3 to §18 (pp. 151 – 201), which amends Legislative Law §80 pertaining to the Legislative Ethics Commission and other germane statutory provisions.

No competent person, unafflicted by conflict of interest, could regard the new Executive Law §94 governing what the Commission on Ethics and Lobbying in Government is to do upon receipt of complaints or what it must include in its annual reports as anything but inferior to the corresponding Executive Law governing JCOPE. Certainly, Governor Hochul, as an attorney, and the many legislators who are attorneys may be presumed to know that removing from Executive Law §94 non-discretionary, mandatory provisions – as they did – would prevent the public from being able to secure its rights by mandamus/Article 78 proceedings, as was done in *Trump v. JCOPE* and *Cox v. JCOPE*, cited and quoted by my March 5, 2021 complaint (at fn. 8, pp. 8-9) in the context of giving NOTICE of my intent to do likewise.

With respect to complaints, the new Executive Law §94.10 (pp. 160-164), entitled "Investigation and enforcement" states, in pertinent part:

> "(a) The commission shall receive complaints…alleging violations of section…seventy-four of the public officers law…
> …
> (d) The commission staff shall review and investigate, <u>as appropriate</u>, any information in the nature of a complaint…received by the commission…<u>where there is specific and credible evidence</u> that a violation of section…seventy-four of the public officers law…by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees….
>
> (e) The commission shall notify the complainant, if any, that the commission has received their complaint." (underlining added).

In other words, the complaint comes in – and it is reviewed by "commission staff", which "as appropriate" may or may not "investigate" it – such seemingly determined on a standard of "specific and credible evidence" of the violation. It is only upon meeting such potentially subjective evidentiary standard that the complaint may, but not necessarily, be advanced to "investigation", consisting of sending 15-day letters to the complained-against parties for their responses:

> "(f) If, <u>following a preliminary review</u> of any complaint…, the commission or commission staff <u>decides to elevate</u> such preliminary review into an investigation, written notice shall be provided to the respondent … 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." (underlining added)

Thus, if the commission staff "decides [not] to elevate" its "preliminary review into an investigation", it does not send out 15-day letters and that is the end of the complaint, no investigation had.

Is the complainant notified of this? It's hard to tell. Of three paragraphs about giving "written notice" to "the complainant, if any" – (h), (l), and (m) – the answer would appear to be yes, based on (m) – but maybe not as it speaks of a determination made by "the commission" – not "commission staff", which "decides to elevate":

> "(h) Upon the conclusion of an investigation, if the commission, after consideration of a staff report, determines by majority vote that there is credible evidence of a violation of the laws under its jurisdiction, it shall provide the respondent timely notice for a due process hearing. … If after a hearing the complaint is unsubstantiated or unfounded, the commission shall provide written notice to the respondent, complainant, if any, and victim, if any…
> …
> (l) If the commission's vote to proceed to a due process hearing after the completion of an investigation does not carry, the commission shall provide written notice of the decision to the respondent, complainant, if any, and victim, if any…
>
> (m) If the commission determines a complaint or referral lacks specific and credible evidence of a violation of the laws under its jurisdiction, or a matter is closed due to the allegations being unsubstantiated prior to a vote by the commission, such records and all related material shall be exempt from public disclosure under article six of the public officers law, except the commission's vote shall be publicly disclosed in accordance with articles six and seven of the public officers law. The commission shall provide written notice of such closure to the respondent, complainant, if any, or victim, if any…

Compare this to what is supposed to happen when JCOPE receives a complaint, set forth in its Executive Law §94.13(a), entitled "Investigations":

> "If 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 members of the legislature and legislative employees…, the commission shall notify the individual in writing… and provide the

> person with a fifteen day period in which to submit a written response…. The commission shall, within sixty calendar days after a complaint…is received…, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred. The staff of the joint commission shall provide to the members prior to such vote information regarding the likely scope and content of the investigation, and a subpoena plan, to the extent such information is available. …" (underlining added).

Here, JCOPE is NOT vested with any discretion in commencing an investigation. As long as it receives a "sworn complaint", "alleging a violation" of Public Officers law §74 by a person or entity within its jurisdiction – and this is a low bar – the complaint must be investigated by a 15-day letter, with a vote taken by JCOPE thereafter, but within 60 days of the complaint's receipt, as to "whether to commence a full investigation…". There being no discretion vested in JCOPE, it is enforceable by mandamus.

Is JCOPE required to notify the complainant of the disposition of his complaint? The answer is not in doubt – albeit buried at the end of Executive Law §94.13(b), entitled "Substantial basis investigation", stating:

> "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."

It is obvious which are the superior provisions – and obvious, too, how easy it was to have transposed them into the new Executive Law §94. Indeed, the ONLY change to §94.13(a) that was necessary – if, in fact, the problem was with JCOPE's voting scheme, was removing that voting protocol. Nothing could have been simpler.[5]

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[5] The voting protocol, appearing at the end of §94.13(a), making it easy to snip off, reads:

> "Such investigation shall be conducted if at least eight members of the commission vote to authorize it. Where the subject of such investigation is a member of the legislature or a legislative employee or a candidate for member of the legislature, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by a legislative leader or leaders from the major political party in which the subject of the proposed investigation is enrolled if such person is enrolled in a major political party. Where the subject of such investigation is a state officer or state employee, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by the governor and lieutenant governor. Where the subject of such investigation is a statewide elected official or a direct appointee of such an official, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by the governor and lieutenant governor and be enrolled in the major political party in which the subject of the proposed investigation is enrolled, if such person is enrolled in a major political party."

With respect to the annual reports of the Commission on Ethics and Lobbying in Government, the new Executive Law §94.12 (p. 164), entitled "Annual report", states, in pertinent part:

> "(a)…Such report shall include, but is not limited to: (i) information on the number and type of complaints received by the commission and the status of such complaints; (ii) information on the number of investigations pending and nature of such investigations; (iii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed; provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to this section or other laws…"

Standing by itself, it would appear to provide valuable information. It is only when compared with Executive Law §94.9(l) governing JCOPE's annual reports that a truer picture emerges, as it states:

> "Such report shall include: (i) 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, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section, provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision nineteen of this section;

In other words, the Governor and legislators have removed from accountability and oversight the ability to track, "by assigned number", "each complaint" and "the current status of each complaint" – which, in the context of specific complaints filed against them, they have a self-interest in preventing and which is the ONLY explanation for their removing it as a requirement for the new ethics commission's annual reports.

* * *

The last section of Part QQ, §19, states: "This act shall take effect on the ninetieth day after it shall have become a law." That gives JCOPE more than enough time to discharge its mandatory, non-discretionary duty with respect to this complaint pursuant to the still in-force-Executive Law §94.13(a) binding upon it.

Although I have sworn to this complaint's truth by the accompanying JCOPE "SWORN COMPLAINT" form, I herewith additionally repeat the attestation that Albany District Attorney 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 (at p. 9), underlying my March 5, 2021 complaint to you:

> "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.

s/ ELENA RUTH SASSOWER