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July 18, 2014

TO: Joint Commission on Public Ethics (JCOPE)

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

RE: The Record of JCOPE's Handling of Complaints:
(1) Status of CJA's June 27, 2013 ethics complaint;
(2) Rectifying your violation of Executive Law §94.9(1)(i) ("The Public Integrity Reform Act of 2011") by supplementing your 2012 and 2013 annual reports with the statutorily-required list of assigned numbers for each complaint and referral, including the status of each complaint.

As an aid to U.S. Attorney Bharara, who has reportedly subpoenaed all complaints filed with you,¹ this is to recite facts and demand answers pertaining to the June 27, 2013 complaint I filed with you and pertaining to the complaints which other members of the public filed with you – whose status and dispositions you have unlawfully concealed from your annual reports.²

On June 27, 2013, I followed the instructions appearing on JCOPE's website for complaints. Using JCOPE's complaint form, I filed a sworn ethics complaint against public officers and employees over whom JCOPE has jurisdiction, setting forth particularized facts pertaining to their violations of Public Officers Law §74 relating to conflicts of interest and furnishing, in substantiation, documentary proof, accessible from the Center for Judicial Accountability's website, www.judgewatch.org.

¹ "U.S. Attorney Seeks Records of Ethics Panel", New York Times (Suzanne Craig, William Rashbaum), April 30, 2014; "Feds widen crackdown on New York political corruption", New York Post (Carl Campanile, Pat Bailey), April 30, 2014; "Preet Bharara asks for all complaints filed with NYS ethics commission", New York Daily News (Ken Lovett), April 30, 2014; "Reports: U.S. Attorney goes after state's troubled ethics watchdog", Gannett (Joseph Spector), April 30, 2014; "Federal Prosecutor Subpoenas New York Ethics Enforcement Agency", Wall Street Journal (Erica Orden), April 30, 2014.

² This letter, with all referred-to law and documentary proof, is posted on CJA's website, www.judgewatch.org, on its own webpage. It is accessible from the menu reached via the homepage link "Exposing the Fraud of the Commission to Investigate Public Corruption". The direct link is: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/jcope-july-18-ltr.htm>.

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The next day, June 28, 2013, JCOPE's "Investigation Division" acknowledged receipt by a letter bearing neither the name nor signature of any person and listing no assigned number for the complaint. In pertinent part, it stated:

"Your matter is currently under review. As a matter of law, Commission proceedings are confidential and thus you may not be notified of any Commission action regarding your complaint unless and until there is final action that can be publicly disclosed. We will contact you should the Commission need any additional information."

That was nearly 13 months ago – and in all this time I have received no request from JCOPE for additional information. Nor have I been advised as to the status of the June 27, 2013 complaint.

Is this your normal and customary practice for handling complaints – or only for complaints such as the June 27, 2013 complaint that are open-and-shut, presenting *prima facie* proof of corrupt, criminal conduct by New York's highest constitutional officers who are the authorities responsible for your appointments: the Governor, the Temporary Senate President, the Assembly Speaker the Senate Minority Leader, the Assembly Minority Leader?

What is the status of CJA's June 27, 2013 ethics complaint? On September 10, 2013, in advance of my September 17, 2013 testimony before the Commission to Investigate Public Corruption, I left a telephone message requesting a status update. I received no return call. Likewise, I received no return call to my November 12, 2013 telephone message requesting a status update. Prior to this, I received no responses to my July 2, 2013 and August 6, 2013 e-mails as to whether you had the voluminous documentary evidence I had supplied to JCOPE's predecessor State Ethics Commission – evidence not only further substantiating the June 27, 2013 complaint, but germane to the Commission to Investigate Public Corruption's express mandate pertaining to the State Board of Elections.

Executive Law §94.13(a) sets forth the procedure JCOPE is required to follow upon receipt of a complaint. Entitled "Investigations", it states, in pertinent part:

"...The commission shall, within forty-five 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..." (underlining added).

Subsection (b) entitled "Substantial basis investigation" further states:

"...If the commission determines at any stage that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the individual and the complainant, if any..." (underlining added).

In other words, by August 11, 2013, you were required to have voted on CJA's June 27, 2013 complaint as to "whether to commence a full investigation...to determine whether a substantial basis exists to conclude that a violation of law has occurred."

Did you vote? Surely no vote could have been easier – as the complaint itself presented not only the “substantial basis”, but the *prima facie* proof that “violation of law ha[d] occurred” – this being, in the first instance, CJA’s October 27, 2011 Opposition Report to the August 29, 2011 Report of the Commission on Judicial Compensation. Such dispositively established a multitude of flagrant violations of Chapter 567 of the Laws of 2010 by the Commission on Judicial Compensation, requiring the complained-against public officers and employees to have taken steps to protect the public. Nothing can explain their wilful and deliberate failure to do so other than conflicts of interest proscribed by Public Officer Law §74 – and CJA’s June 27, 2013 complaint both stated this (at p. 3) and particularized a succession of conflicts of interests, beginning with the financial interests of the Governor, Attorney General, Comptroller, and all Senate and Assembly members in the statutorily-violative judicial salary increases recommended by the Commission on Judicial Compensation’s August 29, 2011 Report.

Nor did JCOPE’s jurisdiction and obligations end with investigating and determining the violations of Public Officers Law §74 pertaining to conflicts of interest that were the subject of our June 27, 2013 complaint. Pursuant to Executive Law §94.14 and its subsection (a), you were required to make referrals to prosecutorial authorities of other violations of law – such as the violations of Chapter 567 of the Laws of 2010 established by CJA’s October 27, 2011 Opposition Report.³ That these violations enabled a “grand larceny of the public fisc” by the complained-against public officers and employees, identified by the complaint (at p. 2) as costing New York taxpayers “well over \$100 million dollars at the end of next fiscal year – and, thereafter, approximately \$50 million in perpetuity” for statutorily-violative judicial pay raises – only reinforced your referral obligations.

In an effort to get some statistics about the number of complaints you receive and their dispositions, I turned to your 2013 annual report. This should have furnished meaningful information. After all, Executive Law §94.9(l) specifies that JCOPE’s annual report:

³ Executive Law §94.14, pertaining to the complained-against executive branch public officers, states:

“... With respect to a violation of any law other than sections seventy-three, seventy-three-a, and seventy-four of the public officers law, where the commission finds sufficient cause by a vote ..., it shall refer such matter to the appropriate prosecutor for further investigation...”

Executive Law §94.14(a), pertaining to the complained against legislators and legislative employees, similarly states:

“... With respect to a violation of any law other than sections seventy-three, seventy-three-a, and seventy-four of the public officers law, where the joint commission finds sufficient cause by a vote..., it shall refer such matter to the appropriate prosecutor.”

“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.” (underlining added).

Yet, lo and behold, your 2013 annual report utterly violates (i) in that it does not include “a listing by assigned number of each complaint and referral received...including the current status of each complaint”.

Instead, your section entitled “Investigations and Enforcement” states:

“In 2013, the Commission reviewed nearly 200 potential matters...As of the date of this report, the Commission has 21 open investigations and 69 matters pending review...” (at p. 46).

Apparently, “potential matters” and “matters” are your euphemisms for complaints, as to which your 2013 annual report furnishes not a single “assigned number”, nor definition of what “open investigations” or “pending review” means, or what has become of the balance of complaints filed with you.

Indeed, the minimal detail of your 2013 annual report is even more minimal than your 2012 annual report, which had identified the number of “substantial basis investigations” commenced that year:

“In 2012, the Commission reviewed more than 300 potential matters, including at least 60 investigative matters that were transferred to the Commission from the former Commission on Public Integrity. The Commission commenced 48 substantial basis investigations in 2012. As of the date of this report, the Commission has 47 open investigations and 61 matters pending review...” (at p. 46, underlining added).

Why does your 2013 annual report not identify the number of “substantial basis investigations” commenced – and how many were there?⁴

Obviously, the statutory requirement that JCOPE’s annual report include “a listing by assigned number of each complaint and referral received... including the current status of each complaint” is to enable tracking of a given complaint and of referrals so that your ultimate disposition of each can be established for accountability purposes. No such accountability is possible from your 2012 and 2013 annual reports.

⁴ Further illustrative of the even more minimal nature of your 2013 annual report is that it does not identify the number of “enforcement actions” it lists (at pp. 49-50), which is 15. Presumably, this is to conceal the precipitous drop from the 27 “enforcement actions” identified by your 2012 report (at pp. 46-49).

Consequently, demand is made that you immediately rectify your violations of Executive Law §94.9(1)(i) by supplementing each of your two annual reports with the required “listing by assigned number of each complaint and referral received..., including the current status of each complaint”.

As your 2012 and 2013 annual reports are addressed to the Governor and Legislative Leaders, a copy of this letter is being furnished to them so that they can compel your above-demanded compliance with Executive Law §94.9(1)(i), if necessary. Certainly, too, this letter reinforces their duty to appoint the review commission for JCOPE which they were statutorily required to appoint “[n]o later than June 1, 2014” – nearly seven weeks ago. Their failure to appoint the JCOPE review commission was the subject of CJA’s July 11, 2013 letter to them – and a further copy of that letter, to which you were an indicated recipient and which was furnished to your staff last week, is enclosed.

Clearly, your belated “listing by assigned number of each complaint” will be invaluable not only to the JCOPE review commission, but to U.S. Attorney Bharara, who will now have a “listing by assigned number” against which he can check your production of complaints in response to his subpoena.

Thank you.

A handwritten signature in black ink, appearing to read "Preet Bharara", with a long horizontal flourish extending to the right.

Enclosure: CJA’s July 11, 2014 letter

cc: U.S. Attorney Preet Bharara
Governor Andrew M. Cuomo
Temporary Senate President Dean Skelos
Assembly Speaker Sheldon Silver
Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian Kolb