SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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ANDREW M. CUOMO,

Plaintiff-Respondent,

-against-

NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT,

Defendant-Appellant.

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AD Docket #: CV-23-1778

January 12, 2024

NOTICE OF MOTION for Appeals to be Heard Together, or for Leave to File *Amicus Curiae* Submission to Prevent Fraud

PLEASE TAKE NOTICE that upon the accompanying affidavit of Elena Ruth Sassower, individual petitioner-appellant in *Center for Judicial Accountability, et al. v. JCOPE, et al.* (CV-23-0115), sworn to on January 12, 2024, Elena Ruth Sassower will make a motion before this Court at the Robert Abrams Building for Law and Justice on State Street, Albany, New York 12223, on Monday, January 22, 2024, or as soon thereafter as the parties or their counsel can be heard, for an order:

(1) granting a preference to the appeal in *Center for Judicial Accountability, et al. v. JCOPE, et al.* (CV-23-0115) so that it can be heard together with the appeal herein, by the same appellate panel, as both appeals pertain to the constitutionality of Chapter 56, Part QQ, of the Laws of 2022: "the ethics commission reform act of 2022" – and to prevent fraud; and, if denied:

(2) granting Elena Ruth Sassower leave to file her moving affidavit, with exhibits, as an *amicus curiae* submission for the same reasons as mandate granting the preference;

(3) granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on Elena Ruth Sassower on January 19, 2024.

ELENA RUTH SASSOWER, unrepresented petitioner-appellant in *CJA v. JCOPE, et al.*, individually & as Director of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York & the Public Interest

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TO: Attorney for Defendant-Appellant COELIG:
Attorney General Letitia James
ATT: Assistant Solicitor General Dustin Brockner
Attorneys for Plaintiff-Respondent Cuomo:
Howell, Shuster & Goldberg, LLP
Rita M. Glavin, Esq.

Dated: White Plains, New York
January 12, 2024

SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

---------- x

ANDREW M. CUOMO,

Plaintiff-Respondent,

-against-

NEW YORK STATE JOINT COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT
PUBLIC ETHICS,

Defendant-Appellant.

----------x

AD Docket #: CV-23-1778

January 12, 2024

Moving Affidavit in Support of Motion for Appeals to be Heard Together or for Leave to File *Amicus Curiae* Submission

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the unrepresented individual petitioner-appellant in *Center for Judicial Accountability, et al., v. New York State Joint Commission on Public Ethics, et al.* (CV-23-0115) – a hybrid Article 78 proceeding, declaratory judgment action, and citizen-taxpayer action expressly brought "on behalf of the People of the State of New York & the Public Interest" against ten respondent-respondents that also include the Legislative Ethics Commission (LEC), the State Inspector General, Governor Hochul, the Senate and Assembly, Attorney General James, and the Comptroller. CJA's appeal was perfected on August 15, 2023 (#9), was fully submitted on January 8, 2024, by the filing of appellants' Reply Brief (#25), and is presently scheduled for the Court's April term (#24).

2. I am fully familiar with all the facts, papers, and proceedings of *CJA v. JCOPE, et al.*, below and before this Court, and sufficiently familiar, for purposes of this motion, with the facts,

papers and proceedings in the above-captioned appeal (CV-23-1778) by the Commission on Ethics and Lobbying in Government (COELIG) – the ethics entity that replaced the Joint Commission on Public Ethics (JCOPE) pursuant to the "ethics commission reform act of 2022" [ECRA]. I submit this affidavit in support of the relief sought by my accompanying notice of motion.

3. For the convenience of all, a Table of Contents follows:

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* * *

The Sole Issue on this Appeal, the Constitutionality of ECRA *as Written*, is Mooted by the Appeal in *CJA v. JCOPE, et al.*, Establishing ECRA to be Unconstitutional *by its Enactment through the Budget and by Fraud* – & it is the FIRST REASON Why these Appeals Must be Heard Together

4. The sole issue on COELIG's appeal is the constitutionality, *as written*, of the "ethics commission reform act of 2024" – Chapter 56, Part QQ, of the Laws of 2022 – which former Governor Cuomo challenged by his April 25, 2023 verified complaint [R.39-358] and his July 24, 2023 amended verified complaint [R.615-936] and which, on September 11, 2023, the lower court struck down [R.5-30].

5. The sole issue on the *CJA v. JCOPE, et al.* appeal – aside from the threshold issues pertaining to the integrity of the judicial process below and before this Court involving Attorney General James – is CJA's[1] entitlement to summary judgment on each of the ten causes of action of its June 6, 2022 verified petition [R.50-421] and September 1, 2022 verified amendment [R.651-654], "starting with [the] sixth cause of action, as to which [CJA was] entitled to a TRO/preliminary injunction to prevent the 'ethics commission reform act of 2022' from taking effect on July 8, 2022" (CJA Appellants' Brief, "Conclusion", p. 36).

6. Obviously, if the "ethics commission reform act of 2022" must be struck down because, as stated in the title of the sixth cause of action [R.81-84], it is "Unconstitutional, Unlawful and Void" because it was "Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes and Legislative Rules, and Caselaw", the question of the statute's constitutionality, *as written*, becomes academic.

7. The *CJA v. JCOPE, et al.* record is dispositive that ECRA must be declared unconstitutional, *by its enactment* – and its examination is made easy by CJA's Appellants' Brief

[1] To avoid confusion between the appellants in *CJA v. JCOPE, et al.* and the appellant in *Cuomo v. COELIG*, the appellants in *CJA v. JCOPE, et al.* are here referred to as CJA.

(#9) and Reply Brief (#25), *via* the "legal autopsy"[2]/analyses on which they rest, establishing that Attorney General James, a respondent representing herself and her fellow respondents, had no legitimate defense to CJA's sixth cause of action, or to the other nine, corrupted the judicial process below, with great success, and has continued to do the same before this Court, with great success.

8. These "legal autopsy"/analyses provide a roadmap of the record of the sixth cause of action [R.81-84]. In chronological order, they are:

(1) [R.671-699] – CJA's September 15, 2022 "legal autopsy"/analysis of AG James' August 18, 2022 cross-motion in opposition to CJA's July 6, 2022 order to show cause for a TRO/preliminary injunction to prevent ECRA from taking effect on July 8, 2022, based on the sixth cause of action, and to dismiss the petition's ten causes of action – quoting, in full, AG James' cross-motion/dismissal response to the sixth cause of action and eviscerating it, totally [at R.693-696]. This "legal autopsy"/analysis was Exhibit A to CJA's September 15, 2022 motion for sanctions and other relief against AG James and for summary judgment to CJA on its ten causes of action, starting with the sixth [R.741-744];

(2) [R.856-886] – CJA's December 16, 2022 "legal autopsy"/analysis of the lower court's November 23, 2022 decision granting AG James' August 18, 2022 supposed "motion" and denying CJA's September 15, 2022 supposed "cross-motion" – quoting, in full, the lower court's dismissal of the sixth cause of action and eviscerating it, totally [at R.882-884]. This "legal autopsy"/analysis was Exhibit 1 to CJA's December 16, 2022 motion for reargument/vacatur and for other relief [R.849-851] and is additionally annexed to CJA's December 16, 2022 notice of appeal of the November 23, 2022 decision to this Court [R.1-43];

(3) [R.48-49] – CJA's February 23, 2023 "legal autopsy"/analysis of the lower court's February 15, 2023 decision denying CJA's December 16, 2022 reargument/vacatur motion, eviscerating it, totally. It is annexed to CJA's February 23, 2023 notice of appeal of the February 23, 2023 decision to this Court [R.44-49];

(4) (#15) – CJA's November 25, 2023 "legal autopsy"/analysis of AG James' November 15, 2023 Respondents' Brief, eviscerating it, totally – including its single sentence for affirmance of the lower court's dismissal of CJA's sixth, seventh, eighth and ninth causes of action, annotated by a footnote stating:

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[2] The term "legal autopsy" is taken from the law review article "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ('…Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like…' (p. 53)).

> "Unlike *Cuomo v. New York State Commission on Ethics & Lobbying in Government*, currently on appeal in this Court (A.D. No. CV-23-1778), this appeal presents no separation-of-powers issue."

To this, CJA's "legal autopsy"/analysis (at p. 16) was:

> "This, too, is fraud. Appellants' sixth and seventh causes of action [R.81-84; R-84-87] involve a multitude of 'separation of powers issue[s]' pertaining to the duties of, and limitations on, the Governor and Legislature in fashioning and enacting the state budget, prescribed by Article VII of the New York State Constitution, ALL eviscerated by their collusion with each other – and with the Judiciary – so-alleged by those two causes of action, without contest from AG James by her Brief, or below.
>
> As to the purpose of this fraudulent footnote, it presumably is to perpetrate further fraud, namely:
>
> > (1) to mislead the Court into believing that Appellants' sixth and seventh causes of action do not – as they do – moot *Cuomo v. COELIG*; and
> >
> > (2) to mislead the Court into believing that the two appeals should not be heard together, as they plainly should.[fn1]"

9. CJA's "legal autopsy"/analysis of AG James' Respondents' Brief (#15) was Exhibit A to CJA's November 25, 2023 motion to strike it as a "fraud on the court" and for other relief (#13). AG James' scant December 11, 2023 opposition (#18) did not deny or dispute the above-quoted assertion as to the purpose of the footnote – and was so "frivolous" that CJA's December 13, 2023 reply affidavit (#19) sought additional maximum sanctions and costs against her pursuant to 22 NYCRR §130-1.1. *et seq*.

10. On December 28, 2023, without reasons, this Court, by an order unsigned by any of the four justices constituting the purported motion panel (#22), denied CJA's November 25, 2023 motion. Three of these justices – this Court's Presiding Justice Garry, Associate Justice Clark, and Associate Justice Pritzker – were on the purported motion panel that issued the October 10, 2023 scheduling order for this appeal (#8), unsigned by any of them.

11. Later that day, in this appeal, Assistant Solicitor General Dustin Brockner made a motion (#23) for a two-week extension to file COELIG's reply brief to former Governor Cuomo's December 27, 2023 Respondent's Brief (#22), stating, in pertinent part:

> "a short extension will ensure there is enough time to prepare a brief that is sufficiently comprehensive and has been reviewed by office supervisors as well as the client." (¶8, underlining added).

12. On January 2, 2024, I telephoned the Clerk's Office to verify that CJA had until January 8, 2024 to file its reply brief and inquired whether the fully submitted appeal would then be assigned to the same panel as this appeal, noting that pursuant to the Court's October 10, 2023 order herein, COELIG's reply brief was also due on January 8, 2024, but that AG James' office had made a motion for a two-week extension.[3] I was told that it would not be so-assigned because the October 10, 2023 order gave this appeal an accelerated schedule, including in setting it down for the February term, that appeals are otherwise not heard for two or three months after they are fully submitted, that CJA's appeal would not be heard until probably the April term,[4] and that if I wanted it heard together with this appeal I needed to make a motion for such relief, setting forth the reasons.

13. This I here do and, simultaneously, in *CJA v. JCOPE, et al*. (##26-33), resting on this affidavit and its below four exhibits.

14. The FIRST REASON these appeals must be heard together is, as above-recited, because the record before this Court on the sixth and seventh causes of action of the *CJA v. JCOPE, et al.* appeal [R.81-84; R-84-87], separately and together, are dispositive that ECRA must be

[3] ASG Brockner's motion for an extension was essentially denied by this Court's order by "Egan Jr., J.P., Aarons, Reynold Fitgerald and Fisher, JJ., concur", though purporting to be granting same. Though also purporting to be "Decided and Entered: January 4, 2024", it was not posted on NYSCEF until 4:26 pm on January 10, 2024 (#28). It also disposed of the two motions made by would-be *amici*: granting the December 15, 2023 motion of the New York City Bar Association, *et al*., to file an *amicus curiae* brief (#17, #18) and denying the November 30, 2023 motion of Gary Lavine, Esq. to file an *amicus curiae* brief (#15).

[4] Indeed, on January 8, 2024, even before I filed Appellants' Reply Brief (#25), the Court had issued a "Scheduling Memorandum" (#24) that "This appeal has now been fully perfected and the matter has been scheduled for the **April 2024** Term."

declared unconstitutional, *by its enactment through the budget and by fraud*. This moots AG James' appeal as to ECRA's constitutionality, *as written*, absent invocation of exceptions to mootness.

The SECOND REASON these Appeals Must be Heard Together:
***CJA v. JCOPE, et al.* Exposes Material Frauds by COELIG & AG James – & Such is Further Proven by CJA's Subsequent Interaction with COELIG Based Thereon**

15. The SECOND REASON these appeals must be heard together is that the *CJA v. JCOPE, et al.* appeal enables this Court to discern the material frauds of AG James' November 27, 2023 Appellant's Brief (#12), largely exported from her September 21, 2023 order to show cause, signed by Associate Justice Clark on September 22, 2023 (#3). Thus:

- both make it appear that the there is nothing noteworthy about the ECRA statute's enactment through the budget[en1] and, in fact that it was "Duly enacted", thereby boosting its constitutionality. As stated by the very first sentence of the Brief's "Argument" (at p. 18):

  > "Duly enacted statutes enjoy an exceedingly strong presumption of constitutionality and must be upheld unless shown to be unconstitutional beyond a reasonable doubt, *White v. Cuomo*, 38 N.Y.3d 209, 216-17 (2022)" – repeating, but more emphatically, the same from ASG Brockner's OSC/aff: ¶33: "The Commission is also likely to prevail on appeal. Duly enacted statutes enjoy an 'exceedingly strong presumption of constitutionality' and should be upheld unless shown to be unconstitutional beyond a reasonable doubt. *White v. Cuomo*, 38 N.Y.3d 209, 216-17 (2022) (internal quotation marks omitted)".

  Yet, as above stated, the record before this Court on the sixth and seventh causes of action of *CJA v. JCOPE, et al.* [R.81-84; R-84-87] establish that ECRA was not "Duly enacted" and must be declared unconstitutional, *by its enactment through the budget and by fraud*.

- both purport that the ECRA statute arose from the highest motives grounded in "New York State['s]…compelling interest in the fair and impartial enforcement of its ethics and lobbying laws" and the "State's public policy to 'prevent even the appearance of the slightest taint of impropriety from infecting the decision-making process in our government"[en2], lending to its constitutionality. As stated by the very first sentence of the Brief's "Argument", at its Point A (at p. 23):

  > "When analyzing a separation-of-powers claim, courts consider the 'motive behind the legislation.' *Cohen v. State*, 94 N.Y.2d 1, 14 (1999)" – repeating, but more emphatically, the same from ASG Brockner's OSC/aff: ¶37

> "…courts may consider the 'motive[s] behind the legislation' when analyzing a separation-of-powers claim. 94 N.Y.2d 1."

Yet, the "motives" behind ECRA are directly challenged by the *CJA v. JCOPE, et al.* verified petition, expressly asserting that its motive was to insulate complained-against public officers from accountability by removing key provisions of the JCOPE statute, stripping complainants of rights available through mandamus (¶¶6(a)(b)(c), 17, 80), and stripping the Inspector General of jurisdiction.

- both purport that the ECRA statute "was carefully tailored to remedy JCOPE's perceived flaws"[en3]– hedging that these, in fact, were JCOPE's actual problems, while, at the same time giving them credence by referencing a "December 2021 New York Senate Report" of a Senate Ethics Committee hearing at which witnesses testified against JCOPE's "special voting requirement" and how its commissioners were appointed,[en4] thereafter changed by ECRA.

  Yet, the *CJA v. JCOPE, et al.* verified petition expressly asserts that JCOPE's actual problem was not a deficiency in its statute, but in its enforcement (¶¶5, 100) – and that the Senate Ethics Committee's two hearings in 2021 were rigged to prevent an evidentiary presentation on the subject (¶104, & its Exhibits L-1, L-2, L-3, L-4, L-5, L-6) and, on top of this, that:

  > "[the Committee's December 17, 2021 report on the first hearing, thus far its only report, omitted petitioners' written statement in support of testimony (Exhibit L-1) and written testimony (Exhibit L-2), because, as evident therefrom, they were dispositive and devastating."

Additionally, and requiring expansion of the record for purposes of factual rebuttal:

- both give the appearance that ECRA, *as applied*, has been successful,[en5] most importantly, the procedure for appointing commissioners, utilizing an Independent Review Committee (IRC) of law school deans,[en6] and COELIG's investigations and enforcement functions.[en7] This appearance, which is false, is buttressed by Exhibit C to ASG Brockner's affirmation in support of COELIG's September 21, 2023 order to show cause, which is the affirmation of COELIG Executive Director Sanford Berland. Its ¶10 concludes with the sentence:

  > "In 2022, 155 tips, complaints, referrals and reports were received and processed by the Commission; 128 investigative matters were closed; and the year ended with 156 open or pending investigative matters, including matters carried over from the predecessor agency",

  and its final two paragraphs, ¶13 and ¶14, read:

  > "13. Exhaustive detail with respect to all aspects of the Commission's operations and activity can be found in the Commission's first Annual Report, which can be accessed at https://ethics.ny.gov/2022-annual-report.

14. It is vital to the public interest that the Commission be able to continue to perform all of its statutorily mandated functions, which are essential to the integrity of state government, during the pendency of the Commission's appeal. Accordingly, I request that the Commission's application to stay the order of the Supreme Court, which profoundly, and to the public's detriment, impairs the Commission's ability to perform those functions, be granted in all respects, and that the Commission be granted such other, further and additional relief as may be deemed necessary and appropriate." (hyperlink made live, underlining added).

The perjury of these – enabling the false inferences of ASG Brockner's OSC/affirmation and Appellant's Brief that ECRA is a success – is proven by CJA's explicit TESTING of the COELIG statute, *as applied*, from its Day 1, July 8, 2022, established by the following primary-source, documentary evidence, annexed as exhibits:

EXHIBIT A: CJA's July 8, 2022 complaint to COELIG – entitled: "TESTING the 'ethics commission reform act' Commission on its DAY 1: Re-filing the seven complaints previously filed with JCOPE, plus a new eighth complaint against Attorney General Letitia James for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unredressed by JCOPE".

The referred-to previously-filed seven complaints to JCOPE are the first seven exhibits of the *CJA v. JCOPE, et al.* verified petition [R.101-345];

EXHIBIT B: CJA's October 6, 2022 supplement/letter to COELIG – entitled:
"(1) SUPPLEMENT to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in CJA, et al. v. JCOPE, et al (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE…"

This furnished COELIG with CJA's September 15, 2022 sanctions/summary judgment motion, including its Exhibit A "legal autopsy"/analysis that [R.671-699] – and the record thereon – the same as would be recited by CJA's "legal autopsy"/analysis of the lower court's November 23, 2022 decision [R.856-886].

EXHIBIT C: CJA's testimony at COELIG's March 29, 2023 hearing, identifying to the commissioners that I would be filing a complaint:

> "against you, to you, for your "substantial neglect of duty" and "misconduct in office"[en] 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,[en] 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.[en] (underlining and hyperlinks in the original).

The testimony summarized, with evidence,[5] COELIG's corruption by its unsigned November 17, 2022 letter that the Commission had "voted to close" CJA's July 8, 2022 complaint, its corruption with respect to FOIL, the commissioners' corrupt retention of JCOPE Executive Director Berland who, without any search, they had made COELIG's executive director, retaining other corrupt top JCOPE staff, all of this enabled by a corrupt IRC, whose 15 law school deans had known, since CJA's June 12, 2022 letter to them [R.565-568] ,"that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, *as a matter of law*", and who, thereafter, in tandem with ECRA's "selection members", corrupted the appointments process for commissioners – with the full knowledge of the then prospective commissioners who I had *cc*'d on CJA's August 4, 2022 and August 22, 2022 e-mails to the IRC's law school deans.

The testimony concluded, as follows:

> "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 procedures.[en] 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'."

EXHIBIT D: CJA's October 2, 2023 complaint/TEST to COELIG – entitled:

"(1) Updating & Now Filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff, for 'substantial neglect of duty' and 'misconduct in office', born of flagrant violations of mandatory conflict-of-interest protocols;

(2) Officially TESTING the Commission's unofficial reconsideration/ renewal remedy by resubmitting CJA's July 8, 2022 complaint and October 6, 2022 supplement".

The complaint stated that this was the complaint that my March 29, 2023 testimony identified I would be filing, but explained:

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[5] This included – and so-identified by its first endnote – a dedicated webpage on CJA's website "with EVIDENTIARY links under the heading 'PAPER TRAIL' of Correspondence: What the Commissioners Knew, & When".

"I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my March 29, 2023 testimony summarized and evidentiarily-established. This you have not done and the final straw, prior to your September meetings, was your issuance on August 28, 2023 of your misnomered 2022 Annual Report, which is largely a first-year report, and whose material fraudulence is proven, resoundingly, by my testimony.

Had you made findings of fact and conclusions of law with respect to my testimony, as was your duty to have done – and *pronto* – you could not have rendered your 'false instrument' Annual Report, constituting a Penal Law §175.35 violation by you, nor have stolen from the taxpayers scores of thousands of dollars in *per diems* to which you knew yourselves to be not entitled, violating further Penal Laws, such as:

Penal Law §195 ('official misconduct');
Penal Law §496 ('corrupting the government') –
part of the 'Public Trust Act';
Penal Law §20.00 ('criminal liability for conduct of another').
Penal Law §195.20 ('defrauding the government');
Penal Law §155.40 ('grand larceny in the second degree');
Penal Law §190.65 ('scheme to defraud in the first degree');

Indeed, with respect to *per diems*, you went way beyond availing yourselves of the fraud of its rate, which Executive Law §94.4(f) ties to the salary of a Supreme Court justice. What you did was to *sub silentio* convert Executive Law §94.4(f) into an hourly compensation provision by falsely purporting that this is what the statute provides, without securing an independent legal opinion because, as you knew, such would not sustain your self-serving interpretation.

I, therefore, now update and herewith file the complaint indicated by my March 29, 2023 testimony to span to the present date and to include the below 'specific and credible evidence'. Pursuant to Executive Law §§94.10(d) and (f), 'specific and credible evidence' is the predicate for investigation, signified and commenced by 15-day letters. Such are here required to be sent to each of you, to Executive Director Berland, to General Counsel St. John, and to other high-level complicit staff, so that each of you may respond to the evidence of your conflict-driven, fraudulent, and larcenous conduct." (hyperlinks in the original).

The indicated "below 'specific and credible evidence'" included a devastating critique of COELIG's Annual Report – the same as Executive Director Berland had cited at ¶13 of his September 21, 2022 affirmation in support of COELIG's order to show cause to this Court. The false and misleading nature of the "155 tips, complaints, referrals and reports…received and processed" – to which Berland's

affirmation cited (¶10) and, based thereon, ASG Brockner's affirmation, twice (at ¶¶5, 27) is particularized at pp. 11-14.[6]

The THIRD REASON these Appeals Must be Heard Together:
CJA v. JCOPE, et al.* Exposes Material Frauds by *Amici Curiae
New York City Bar Association & the "Good Government" Groups --
& Such is Further Proven by CJA's Subsequent Interaction with COELIG, Known to Them

16. The third reason these appeals must be heard together is that the *CJA v. JCOPE, et al.* record and the above Exhibits A, B, C, and D enable the Court to discern the material frauds of the December 15, 2023 motion (#17) and *Amicus Curiae* Brief (#18) of the New York City Bar Association, the Committee to Reform the State Constitution, Common Cause-NY, Citizens Union, New York Public Interest Research Group, Reinvent Albany, and the Sexual Harassment Working Group, starting with their purported *bona fides*, which they use, in lieu of evidence, to factually assert that COELIG is "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'", because:

> "the statute eliminated the 'minority veto,' had the Commission appoint its own Chair, included appointees from the Comptroller and Attorney General, had the Commission determine whether the criteria for removal of a Commissioner was satisfied, [] added the protection of the Law School Dean screening process…[a]nd…has the necessary power to impose penalties." (at p. 14).

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[6] The status of the October 2, 2023 complaint/TEST is, as follows: After two months, in the absence of any acknowledgment or response from COELIG, I sent a December 5, 2023 e-mail so-stating and additionally requesting, pursuant to FOIL:

> "the Commission's written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration."

The only response I received was to the FOIL request – a December 6, 2023 e-mail acknowledging receipt and that "The Commission expects to respond to your request on or before January 5, 2024." The response came on January 9, 2024, stating, in pertinent part:

> "Written procedures that align with the Ethics Commission Reform Act are in preparation but, at this time, are not yet final. …As such, the Commission is withholding non-final intra-agency drafts of its written procedures concerning the topics referenced in your request at this time."

17. These three factual assertions: "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'" – on which the *amici* would have the Court rely – are in the last paragraph of their "Statement of the Case" (pp. 6-14), whose two subsections are titled:

> "A. New York Has a Serious Corruption Problem" (pp. 6-9); and
>
> "B. The Failure of Prior Efforts to Deter Corruption and Enforce Ethics Laws, and Hold Bad Actors Accountable" (9-14).

These two subsection are themselves deceits, as is the section that precedes it "Summary of the Argument" by its operative sentence (at p. 4):

> "…the entity responsible for deterring and policing ethics and corruption – JCOPE – was <u>widely perceived</u> to be a failure both because of deficiencies in the underlying statute and the ways in which former Governor Cuomo sought to influence its decisions". (underlining added).

In other words, the City Bar and "good government" groups – notwithstanding they purport, as part of their credentials, to "have studied how JCOPE had performed its responsibilities" (at p. 1) are unable to assert, based on empirical evidence, that JCOPE's "underlying statute" is the cause of JCOPE's shortcomings, which, in fact, these sections and subsections do not present. They make no showing, indeed do not even claim, that the officials who resigned and/or were indicted – to which they refer at the outset of their "Summary of the Argument" (at p. 4), with a listing of presumably their best particulars in their subsection A (at pp. 6-8) – were the subject of complaints mishandled by JCOPE. Their subsection B then leans on "appearance"; "concerns"; and "questions about independence", rather than facts – with such few specifics as they offer up not being deficiencies in the JCOPE statute, *to wit*, "JCOPE's first three Executive Directors had previously served in senior positions working for Governor Cuomo"; "An incident in 2019" involving the leak and "JCOPE's approval of the book deal at issue in this case" (all at p. 11).

18. As to the reference, in subsection B, to "the Moreland Act Commission" (pp. 11-12) – whose proper name is Commission to Investigate Public Corruption – it is not for purposes of making any connection to JCOPE, which was within the Commission's purview, and which it falsely infers was a legitimate entity, but for the former Governor's interference with it.

19. In fact, the Commission to Investigate Public Corruption, to which, from its outset, the "good-government" groups had an inside-track and which they hijacked to advance their own agenda of campaign finance reform, abetted JCOPE's corruption[7] – as did federal prosecutors, who subsections A and B falsely portray as if honest players on the anti-corruption front.

20. The *CJA v. JCOPE, et al.* verified petition, by its exhibits, furnishes the true facts – and the *amici*'s knowledge of them. Among these exhibits, CJA's December 11, 2014 complaint to JCOPE against JCOPE and the five appointing authorities of the JCOPE/LEC Review Commission that was required to be established "No later than June 1, 2014" [R.305-322] – to which the City Bar, Common Cause, and NYPIRG were indicated recipients – a complaint which rested on CJA's June 27, 2013 complaint to JCOPE, with its physically-incorporated April 15, 2013 complaint to U.S. Southern District of New York Attorney Preet Bharara [R.323-346], that I had furnished to the Commission to Investigate Public Corruption at its September 17, 2013 public hearing.

21. Tellingly, subsection B omits any mention of the never-established 2014 JCOPE/LEC Review Commission, as to which the City Bar and the "good government" groups could have, but did not, bring a mandamus proceeding – as CJA's December 11, 2014 complaint suggested be done [R.309]. It also omits any mention of the 2015 JCOPE/LEC Review Commission, before which I testified at its October 14, 2015 hearing, at which, also testifying, was, *inter alia*, the City Bar and

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[7] The chapter-and-verse details are set forth, with evidence, by CJA's April 23, 2014 order to show cause to intervene in the Legislature's declaratory judgment action against the Commission to Investigate Public Corruption (Supreme Court/NY Co. #16094/2013), and March 28, 2014 verified complaint in CJA's 1st citizen-taxpayer action, *CJA v. Cuomo…et al.* (Supreme Court/Albany Co. #1788-14), each identified at fn. 7 of CJA's December 11, 2014 complaint to JCOPE [R.305-322], *infra*.

Citizens Union, with a written submission by NYPIRG. Nor does subsection B identify the November 1, 2015 Report the JCOPE/LEC Review Commission rendered, as to which they could have, but did not, do any analysis, as such would have established it to be a fraudulent cover-up. The particulars of this the *amici* would have been reminded of by my #1 August 4, 2022 letter to the IRC law school deans, with its recitation of the absolute disqualification, for interest, of IRC chair/New York Law School Dean Anthony Crowell, based on his corruption as member, if not as *de facto* chair, of the 2015 JCOPE/LEC Review Commission and its fraudulent November 1, 2015 Report,[8] are ALSO recited by exhibits to the *CJA v. JCOPE, et al.* verified petition:

- CJA's November 2, 2021 complaint to the State Inspector General, against, *inter alia*, the State Inspector General, JCOPE, and the Commission to Investigate Public Corruption [R.361-385];

- CJA's December 17, 2021 complaint to JCOPE particularizing the LEC's abetting role in subverting its JCOPE statutory partner, covered up by the 2015 JCOPE/LEC Review Commission and its November 1, 2015 Report [R.162-184].

22. Also omitted from their "Statement of the Case", with its contextual background for the statute, is anything about the statute's enactment, other than, cryptically, in subsection B, substituting the word "process" for "enactment" (at pp. 12-14):

> " the new Governor and the Legislature sought to create a new entity to replace JCOPE. The Amici were actively involved in providing input into this process.
>
> Both before and during this process, some of the Amici proposed…
>
> In a letter sent on their behalf late in the process, a majority of the Amici proposed…[fn11]" (underlining added).

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[8] This letter to the IRC law school deans entitled "Your Undisclosed Conflicts of Interest – and the Direct Interests of your Chair, New York Law School Dean Crowell, and Hofstra Law School Dean Prudenti in *CJA v. JCOPE, et al.*, Mandating that They IMMEDIATELY Disqualify Themselves from the Independent Review Committee – or that You Disqualify Them IMMEDIATELY" and its accompanying #2 August 4, 2022 letter to them entitled "Violation of Vetting Rules & Investigative Protocols by Selection Members & the Independent Review Committee – Born of Conflicts of Interest" may be presumed to have been read by the *amici* based on my March 29, 2023 testimony (Exhibit C).

Not revealed is that the "process" by which substantive policy legislation was being enacted was taking place entirely behind-closed-doors, *via* the budget – and, indeed, that these *amici* were urging JCOPE's replacement *via* the budget, and that, in doing so, they knew – and had known, for years by CJA's advocacy and interface with them – that the state budget is completely "OFF THE CONSTITUTIONAL RAILS", including by the inclusion of non-fiscal, non-revenue-producing policy.[9]

23. Indeed, only by the link in the annotating footnote reading:

> "*See* March 23, 2022 letter. (available at https://reinventalbany.org/wp-content/uploads/2022/03/Memo-to-Legislature-on-Ethics-Commission-Appointment-March-23-2022.pdf)."

is a bit of the critical truth about ECRA's enactment revealed, reading, in pertinent part:

> "We urge our elected leaders to create a new, independent New York State ethics commission in this year's budget.
>
> We have read the one-house budget bills and we implore you not to pass a budget that keeps the Joint Commission on Public Ethics in place. … JCOPE must be replaced by a new agency and new agencies are best created and funded in the budget.
> …
> We ask you to create in the budget a new ethics commission…"

24. To further conceal that COELIG was enacted *via* the budget, the *Amicus* Brief nowhere even identifies the statute from which this might be gleaned, Part QQ of Chapter 56 of the Laws of 2022, or that this is Part QQ of the Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C. In fact, their *Amicus* Brief does not even mention the high-sounding name "ethics commission reform act" or the acronym ECRA.[10]

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[9] As illustrative, *see* CJA's outreach to them pertaining to the *CJA v. Cuomo…DiFiore citizen-taxpayer action*: 2017, 2018, and 2019.

[10] Notably, their "Table of Authorities" also does not include Executive Law §94, presumably because it is not anywhere in the *Amicus* Brief.

25. Why would these *amici* conceal that the "ethics commission reform act of 2022" was enacted *via* the budget – or, for that matter, the statute? *CJA v. JCOPE, et al.* has the answer, again by exhibits to the verified petition, revealing that a month before *CJA v. JCOPE, et al*. was commenced I furnished them with what would be Exhibit A to the verified petition: CJA's April 13, 2022 complaint to JCOPE [R.104-120] pertaining to the budget and the "ethics commission reform act of 2022":

- Exhibit J [R.386-389] consisting of two e-mails to which they were *cc*'d: my May 6, 2023 e-mail to JCOPE, and my May 5, 2022 e-mail to the Albany Times Union, it forwarded which, quoting page 11 of the April 13, 2022 complaint:

> "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",

  stated:

> "To that end, I am *cc*'ing the so-called 'good government groups', on which, over all these years, the Times Union has uncritically relied, to the public's detriment – with a request that they assist you by their responses to the complaint – and, in particular, to the analysis appearing at pages 10-14. What, if anything, do they deny or dispute?"

- Exhibit K [R.390-396], to which they were *cc*'d, which was CJA's May 16, 2022 letter to the State Inspector General reciting facts pertaining to the IG's corruption and that under the new ECRA statute, the IG would have no jurisdiction over COELIG, in contrast to the jurisdiction it had had over JCOPE.

26. This is not the end of what the *CJA v. JCOPE, et al.* record reveals about what these *amici* know, but have not disclosed by their *Amicus* Brief. It also includes two of the several e-mails I directly sent to the amicus, not as *cc*'s, following commencement of *CJA v. JCOPE, et al.*, seeking

their expert opinion and assistance – and, most importantly, with respect to the sixth cause of action upon which I was seeking to secure a TRO/preliminary injunction to prevent ECRA from taking effect on July 8, 2022:

- CJA's July 2, 2022 e-mail to the *amici* [R.569-574],identifying and linking to two e-mails I sent them on June 9, 2022 and June 16, 2022 – to which I had received no responses. This now further e-mail forwarded to them my July 2, 2022 e-mail to the 15 law school deans of the IRC [R.560-564] and attached the June 12, 2022 letter I had sent the deans [R.565-568] requesting, "on behalf of the People of the State of New York", for whom the lawsuit had been brought, that they furnish the lower court with their "expert opinion as to the constitutionality and lawfulness of the enactment of the 'ethics commission reform act of 2022' *via* the budget";

- CJA's July 3, 2022 e-mail to the New York City Bar Association [R.575-581], identifying and linking to two e-mails I sent them on June 14, 2022 and June 16th e-mail. … and further stating:

> I have also received no responses to my June 15th e-mail to your general counsel…, entitled 'CLARIFICATION…', to which, *inter alia*, your Governmental Ethics and State Affairs Committee Chair…and its presumed member former City Bar President Evan Davis were *cc*'d, just as, likewise, they were *cc*'d on my June 13th e-mail to her entitled 'Request that the NYC Bar Association discharge [] its ethical, professional, & civic responsibilities: Lawsuit to VOID the 'ethics commission reform act of 2022' and for TRO…'.
>
> What are your responses?"
>
> Below, with the above-attached, is my self-explanatory July 2nd e-mail to the 15 law school deans comprising the 'independent review committee' of the 'ethics commission reform act of 2022', to which you are *cc*'d so that you can also 'discharge some ethical and professional responsibility and civic duty and…come forward with findings of fact and conclusions of law as to the verified petition's sixth cause of action as to the unconstitutionality and unlawfulness of the enactment of the 'ethics commission reform act of 2022''. (links, capitalization, underlining in the original).

27. I *cc*'d the lower court on these July 2-3, 2022 e-mails, and on my corresponding e-mails to the IRC law school deans [R.560-564], and the New York State Bar Association [R.882-883] – all bearing, in the RE: clause, "TIME IS OF THE ESSENCE" – hoping that this might help

prompt their responses, and, thereafter annexed all the e-mails to my July 6, 2022 affidavit in support of CJA's order to show cause for a TRO/preliminary injunction [R.547-588], stating:

> "I have received no responses from any of the recipients of these e-mails – and it should be obvious that if they could deny or dispute the accuracy of the content of my e-mails – or of my June 12th letter to the law school deans it annexed – beginning with the flagrant unconstitutionality and unlawfulness of the enactment of the 'ethics commission reform act of 2022' – the basis of petitioners' *matter of law* entitlement to the TRO/preliminary injunction – they would have done so.[fn]" [R.558].

The annotating footnote read:

> "Although not parties, the relevant principles, applicable to summary judgment, are certainly known to the mostly lawyer recipients: 'failing to respond to a fact attested in the moving papers... will be deemed to admit it', Siegel, New York Practice §281 (1999 ed., p. 442) – citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing Siegel, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B, CPLR 3212:16, p 437): 'If key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it' id. Undenied allegations will be deemed to be admitted, *Whitmore v. J Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911)."

28. On March 29, 2023, the *amici* testified at COELIG's public hearing at which I testified (Exhibit C) and were, by my testimony, which COELIG posted on its website with theirs, fully updated as to *CJA v. JCOPE, et al*. and how corruptly COELIG had operated, from its inception – as, likewise, the corruption of the appointment/vetting process by the appointing authorities and the IRC, on which they had placed such stock.

29. On September 7, 2023, COELIG held a public meeting whose purpose was to publicly discuss and vote on recommendations from the March 29, 2023 hearing. Based upon my March 29, 2023 testimony, the *amici* would have had no difficulty discerning how corruptly COELIG disposed of two of the three recommendations that it identified as mine. The first of these, transmogrified into something it was not, was disposed of by COELIG's vice-chair, as follows: without dissent from his fellow commissioners:

> "Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along

> that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am going to mark that one as rejected." (VIDEO, at 50mins).

30. Needless to say, none of the *amici* concerned themselves that COELIG's November 1, 2023 "roundtable", whose purpose was to further discuss the recommendations that would be part of its legislative agenda, to which they were all invited, did not include me – nor reflect my March 29, 2023 testimony (Exhibit C).

31. And, of course, in offering up their *Amicus* Brief that COELG is "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'", none of them did so based on any analysis of COELIG's misnomered 2022 Annual Report – which, just as CJA did (Exhibit D), they could have easily done, exposing the truth of such frauds as had been three times cited-to by AG James' September 21, 2023 order to show cause pertaining to what is COELIG's most important function: handling complaints.

32. The foregoing unethical conduct by a preeminent New York bar association and supposed "good government" groups is consistent with what I have documented about these *amici* for decades by interactions memorialized by a "paper trail" of correspondence with them about the true causes of New York's corruption problem and the ease with which it could be rectified. Always they have not only refused to confront my presentments of evidence to them, refused to engage in any dialogue about it, and excluded CJA from any of their coalitions, but have engaged in knowingly false and deceitful advocacy, subverting every opportunity to achieve the kind of "transparent" "accountable" government they purport to champion [11] This includes as to JCOPE, spanning back to 2013 and the Commission to Investigate Public Corruption.

[11] For more than two decades, this "paper trail" of correspondence, has been contemporaneously posted on CJA's website, www.judgewatch.org, including on specially dedicated webpages, accessible from the left side panel "Search for Champions (Correspondence). Here linked are the webpages for the City Bar, including, as well, the so-called Committee to Reform the State Constitution (which is another name for

The FOURTH REASON These Appeals Must be Heard Together:
***CJA v. JCOPE, et al.* Exposes Material Fraud by Former Governor Cuomo & his Attorneys, by their Respondent's Brief and Initiating and Amended Complaints, Verified by Attorney James McGuire, Esq.**

33. The fourth reason the appeals must be heard together is that the *CJA v. JCOPE, et al.* record exposes material fraud of former Governor Cuomo's December 27, 2023 Respondent's Brief (#22), his April 25, 2023 verified complaint [R.39-358], July 24, 2023 amended verified complaint [ ], and his litigation thereon, predicated on great concern with constitutional separation of powers, while concealing the constitutional separation of powers violations pertaining to the state budget by omitting that that is how the "ethics commission reform act of 2022" was enacted.

34. Here are the first two paragraphs of the "Background" section of the Respondent's Brief (at pp. 5-6):

> "BACKGROUND[fn2]
>
> A 2022 act (the 'Act') of the New York Legislature created COELIG, and conferred on it broad powers to enforce numerous ethics and other laws. R.615 (¶1), 661 (Ex. A). COELIG replaced the Joint Commission on Public Ethics ('JCOPE'), which a Senate committee, after hearing calls for a more independent agency, determined should be 'replace[d] ... with a truly independent body' though the committee thought it 'clear' a 'comprehensive constitutional amendment' was required to do so. R.627 (¶¶36–37), 682 (Ex. B), 764 (Ex. C). Other advocates shared the belief that a constitutional amendment was necessary. R.637 (¶37), 682 (Ex. B), 770 (Ex. D).
>
> The constitutional amendment never even made it out of committee. R.628 (¶39). Nonetheless, on January 5, 2022, Governor Hochul announced a plan to replace JCOPE with a 'truly independent agency'—solely through legislation. *Id*. & 774 (Ex. E). That legislation, the Act, was enacted on April 8, 2022 and signed into law by Governor Hochul the next day. *Id.*"

The referred-to "2022 act" – Part QQ of Chapter 56 of the Laws of 2022 – appears nowhere in the Brief's "Table of Authorities". As for footnote 2 annotating the "BACKGROUND" title, it states:

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former City Bar President Evan Davis); Common Cause-NY; Citizens Union; NYPIRG; and Reinvent Albany.

"Respondent refers to the Complaint for further background. R.615".

This "R.615" is the first page of Respondent's July 24, 2023 amended complaint, which identically to Respondent's April 25, 2023 complaint [R.39], reads, by its first sentence:

> "1. The Ethics Commission Reform Act of 2022 (the 'Act') of the New York Legislature created the Commission on Ethics and Lobbying in Government ('COELIG') and conferred on it broad powers to enforce numerous ethics, lobbying, and other laws.[fn1]".

However, although the annotating footnote 1 states:

> "A copy of the legislation is attached as Exhibit A to this Amended Complaint".

Exhibit A is not the "Ethics Commission Reform Act of 2022", with its §§1 and 2 reading:

> "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:…"

Instead, it is the Executive Law §94, which omits these §§1 and 2 [R.661-681]; [R.83-103].

35. The complaint does cite, but only once, to "(L. 2022, c. 56, Part QQ)", but not identifying that it is a budget bill or that it is Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C. The citation is contained in the complaint's "FACTUAL ALLEGATIONS", in its section A entitled "Calls for a More 'Independent' Ethics Agency" [R.627-629]. In full, this section A reads:

> "36. On August 25, 2021, the New York State Senate Standing Committee on Ethics and Internal Governance held a public hearing on the state's system of ethics oversight and enforcement, focusing on concerns about COELIG's predecessor, the Joint Commission on Public Ethics ('JCOPE').[fn2] Specifically, the Committee was concerned about JCOPE's 'neutrality and ability to function as an independent body.' Ex. B at 2. The consensus among those who testified was that JCOPE had failed as an ethics watchdog because it was insufficiently 'independent' of those in power, particularly of the Governor. As described by the Senate committee in its December 17, 2021 report, 'JCOPE's structure and function are set

"[fn2] The committee's report from that hearing, dated December 17, 2021, is attached to this Amended Complaint as Exhibit B ('Ex. B')."

up to avoid holding those in power accountable.' *Id*. The Senate committee concluded that 'immediate change and structural reform' was needed—the stated goal being to 'replace JCOPE with a truly independent body.' *Id.*

37. The Senate committee thought it 'clear' that such a goal could be achieved only through a 'comprehensive constitutional amendment,' such as the bill introduced by Senator Krueger (S855), which would replace JCOPE with an ethics agency modeled on the New York State Commission on Judicial Conduct established in Article VI, §22. *Id*.[fn3] The structure of the proposed agency would have 13 members: 7 members jointly appointed by the chief judge of the court of appeals and the presiding justices of each of the appellate divisions; 1 member appointed by each of the four legislative leaders; and 2 members appointed by the Governor. Ex. C at §2(c).

38. Support for Senator Krueger's amendment was shared by so-called good government groups and advocates at the hearing. According to written testimony submitted by the New York City Bar Association Committee on Government Ethics and State Affairs, the necessary reforms 'can only be realized by abolishing JCOPE and replacing it with an entity to be established by constitutional amendment.' Ex. B. The city bar committee further explained why, in its view, a constitutional amendment was necessary: 'The Constitution must be amended to achieve that goal so that the ability of the judicial branch to participate in making appointments and the creation of a single entity with jurisdiction over the legislative and executive branches is beyond constitutional question.' Ex. D at 3 (emphasis added).[fn4] Another advocacy group expressly supported a constitutional amendment 'to limit the Governor's policy-making authority.' Ex. B.

39. Senator Krueger's amendment never made it out of committee, and no other constitutional amendment was passed. Undaunted by the want of an amendment designed to legitimize a body much like COELIG, on January 5, 2022, Governor Hochul announced her own plan to replace JCOPE with a 'truly independent agency"[fn5] —but through the Act, not a constitutional amendment. *See* Ethics Commission Reform Act of 2022 (L. 2022, c. 56, Part QQ). On April 8, 2022, the Legislature passed the Act, and Governor Hochul signed it into law the next day." (underlining added).

"[fn3] A copy of the Krueger Amendment (S855) is attached to this Amended Complaint as Exhibit C ('Ex. C')."

"[fn4] The New York City Bar Association Report on Legislation by the Committee on Government Ethics and State Affairs, reissued on March 2021, is attached to this Amended Complaint as Exhibit D ('Ex. D')."

[fn5] Press Release, 'Governor Hochul Announces Plan to Replace JCOPE with New Independent Ethics Agency,' dated January 5, 2022. A copy of the press release is attached to this Amended Complaint as Exhibit E ('Ex. E').

36. This is the sum total of what the complaint says about the enactment of the "ethics commission reform act of 2022", no mention of the budget.

37. Although I have no proof that former Governor Cuomo's concealment of ECRA's enactment *via* the budget by his April 25, 2023 complaint, repeated in his July 24, 2023 complaint, was with knowledge of *CJA v. JCOPE, et al.*, I believe it unlikely that his legal team was unaware of the lawsuit. The New York Law Journal published a front-page, above-the-fold, article about *CJA v. JCOPE et al.* in its June 13, 2022 print edition and, assumedly, the Cuomo lawyers were aware of and watched COELIG's March 29, 2023 annual hearing, either as live-streamed or recorded, at which I testified.

38. In any event, Cuomo attorney James McGuire, with whom I interacted in 1996 when he was first assistant counsel to then Governor Pataki[12] and then, more than 20 years later, in 2017, knew, from that second interaction,[13] of the monumental *CJA v. Cuomo…DiFiore* citizen taxpayer action, then in Supreme Court/Albany County, challenging the constitutionality of the New York state budget and that I was searching for:

> "(1) scholarship on the Court of Appeals' 2004 *Silver v. Pataki/Pataki v. Assembly and Senate* decision – and the constitutional provisions relating to the New York State budget;
>
> (2) scholars to whom I might furnish the 'on-the-ground' empirical evidence that the New York State budget is so flagrantly 'OFF the constitutional rails' and violative of the *Silver v. Pataki/Pataki v Assembly and Senate* 2004 Court of Appeals decision and Article VII, §§4, 5, 6 and Article III, §10 of the New York State Constitution as to mandate SUMMARY JUDGMENT declarations…[in *CJA v. Cuomo…DiFiore*]".

39. Five years later, Mr. McGuire would have seen from the *CJA v. JCOPE, et al.* verified petition exactly what had happened in *CJA v. Cuomo…DiFiore*, as it journeyed through

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[12] This is reflected by my May 6, 1996 letter to Mr. McGuire, transmitting to him a copy of the record of CJA's first lawsuit against the Commission on Judicial Conduct.

[13] This is reflected by my four e-mails to Mr. McGuire: April 18, 2017, which, following his rather immediate response, I answered back "What are you talking about?...", on July 20, 2017, and on October 6, 2017. The webpage on which it is posted is here.

Supreme Court, through this Court, and through the Court of Appeals – because it was chronicled by my complaints to the Commission on Judicial Conduct and Attorney Grievance Committees, annexed as exhibits [R.251-286; R.241-250]. And he would have seen that a month after the case ended, I had done my own scholarship of the Court of Appeals' 2004 *Silver v. Pataki* decision and had presented it to then Governor Cuomo by a March 18, 2020 letter entitled:

> "Your January 21, 2020 address on the Executive Budget – Part III:
> GOOD NEWS DURING THIS CORONAVIRUS EMERGENCY – You Can Chuck Six of Your Seven 'Article VII Bills' Because They are Unconstitutional. Here's why based on the Court of Appeals' 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 N.Y.3d 75",

which the June 6, 2022 verified petition also annexed as an exhibit [R-132-154], stating, at ¶82 of its sixth cause of action:

> "The March 18, 2020 letter (Exhibit A-5) is the starting point for the declaration that Part QQ was unconstitutionally enacted…" [R.82],

and that three weeks later, on June 28, 2022, I had reinforced CJA's entitlement to summary judgment on the sixth, seventh, eighth causes of action by a CPLR §2214(c) notice to respondents to furnish Supreme Court with records pertaining to the FY2022-23 budget bills [R.518-527] – Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C, among them – and also, as a first item:

> "all records of **findings of fact and conclusions of law** made with respect to petitioners' March 18, 2020 letter to then Governor Cuomo (Ex A-5 to petition), simultaneously furnished to the Legislature and Budget Director Mujica – identified at ¶82 of the June 6, 2022 verified petition as 'the starting point for the declaration that Part QQ [of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022'] was unconstitutionally enacted'." [R.519, bold in the original].

40. It was Mr. McGuire who both signed and verified Respondent's April 25, 2023 complaint [R.81-82] and who verified the July 24, 2023 complaint [R.660], making no mention of the budget.

The Reasons Warranting These Appeals Being Heard Together Also Warrant The Granting of Leave to File an *Amicus Curiae* Submission

41. The same reasons as warrant these appeals being heard together also warrant the granting of leave to file an *amicus curiae* submission, in the event the appeals are not heard together. In the interest of expedition and economy, and so that the Court may be protected from fraud, I ask that this affidavit be deemed that *amicus curiae* submission.

Elena Ruth Sassower, Unrepresented Petitioner-Appellant
Center for Judicial Accountability, et al. v. JCOPE, et al.
(CV-23-0115)

Sworn to before me this
12th day of January 2024

Notary

CHARLES B. RODMAN
Notary Public, State of New York
No. 4620811
Qualified in Westchester County
Commission Expires 12/31/2025

ENDNOTES

en1

Brief: p. 1: "…Governor Kathy Hochul…included in the 2022-2023 budget a law that replaced the prior ethics commission with the Commission on Ethics and Lobbying in Government"; p. 8: "included in the 2022-2023 budget. L. 2022, ch. 56, pt. QQ, §§1-2 (codified, in part, as Executive Law §94)."

OSC/ASG Brockner's aff: ¶3:"The Ethics Commission Reform Act of 2022 was enacted as part of the 2022-2023 budget bill. L. 2022, ch. 56. pt. QQ §§1-2"; "; ¶40: "The Governor… included Executive Law §94 in her budget bill, which the Legislature passed into law. *See supra* at 3".

en2 Respectively quoting, Brief: p. 1, first sentence; and OSC/ASC Brockner aff: ¶26, quoting "*Nicholas v. Kahn*, 47 N.Y.2d 24, 32 (1979)"

en3 Brief, p.1 : "…the State has long struggled to create an ethics commission that is seen as able to fulfil this vital goal...[JCOPE] was widely perceived as unduly influenced by the officials whom it was supposed to monitor." p.23: "the Commission's structure was a response to the perceived failings of the prior ethics commission, JCOPE"; "JCOPE was widely seen as unduly beholden to the officials it was charged with overseeing. This perceived lack of independence…"; p. 24

OSC/Brockner aff: "36. …As Governor Hochul explained, JCOPE's perceived lack of independence from the Governor undermined its ability to maintain the public's trust and confidence in government by ensuring compliance with the State's ethics and lobbying laws…."

en4 Brief: pp. 6-7:

> "Over time, concerns grew over JCOPE's 'ability to function as an independent body.' (Record on Appeal 'R.'] 107 [December 2021 New York Senate Report].) During a 2021 hearing before the Senate's ethics committee, legislators and witnesses explained that JCOPE's structure impaired it from fulfilling its statutory mission. Speakers expressed concerns about JCOPE's appointment process and the independence of those who were appointed. (See R.107, 113-114, 118.) As witnesses explained, JCOPE's members were appointed based more on their connections to the official who appointed them than on their ability to administer the State's ethics and lobbying laws fairly. (R.113-114, 118-119.)
>
> Those at the hearing also criticized JCOPE's 'special voting' requirement. (R.114, 119, 123.)"

en5 Brief: p. 1: "The Commission's structure was carefully designed to ensure that it possessed the actual and perceived independence that would allow it to carry out its mission and restore the public's trust in government."; p. 3: "…the Commission's structure is designed to meet a uniquely compelling need for the Commission to be sufficiently independent, both in fact and in appearance, from the political branches it monitors."; pp. 22-23: "New York's flexible separation-of-powers doctrine…allows…where there is a particularly compelling need for a commission with both the reality and the appearance of independence"; p. 31: "The Commission's structure is valid because of the coexistence of the several factors detailed above: the compelling need for the Commission's actual and perceived independence from the political branches it monitors…"

OSC/Brockner aff:

> "35. The separation-of-powers doctrine is sufficiently flexible so as to permit the Governor to agree with the Legislature and sign into law an ethics commission where members are nominated by the political branches and which may act independently from the Executive, in an area – ethics and lobbying requirements – where the appearance and reality of independence is vital to maintaining the public's trust."

en6 Brief: p. 10-12:

> "the Commission's structure was carefully designed to enhance its ability to impartially administer and enforce the State's ethics and lobbying requirements. …Each candidate is reviewed by the Independent Review Committee ('IRC'). Id. §94(3)(b). The IRC is a non-partisan body composed of the deans, or associate deans if so designated, of New York's 15 accredited law schools. Id. §94(2)(c).
>
> … The law provides that upon the receipt of the elected officials' 'appointments,' the IRC's members must disclose whether they have a conflict of interest with respect to that 'appointee' and, if appropriate, recuse themselves from 'involvement in the consideration of and action upon the appointment.' *Id*. §94(3)(j).

pp. 24-25:

> "…to address concerns over the independence and qualifications of JCOPE's appointees, Executive Law §94 created a non-partisan body—the IRC—to ensure those appointed to the Commission are, in fact, qualified to fairly enforce the State's ethics and lobbying requirements. *See id*. §94(3)(b)-(d). As detailed *infra* at 39-54, there is 'no constitutional bar' to creating a body that consists of the heads of private organizations, and that can limit who an elected official may appoint to a state board, where such a body can 'reasonably be expected' to help ensure the appointment of qualified individuals, *Lanza v. Wagner*, 11 N.Y.2d 317, 333-334 (1962). The IRC, which is composed of law school deans, serves just that role. The IRC's members lack a personal interest in the Commission's composition. And they bring an informed perspective as leaders of institutions charged with training professionals for whom adhering to a legal code of ethics is central to their trade."

OSC/Brockner aff: "11. Each candidate is reviewed by the Independent Review Committee ('IRC'). *Id.* §94(3)(b). The IRC is a non-partisan body composed of the deans, or associate deans, of New York's 15 accredited law schools. *Id*. §94(2)(c)…." "47. …the IRC, a non-partisan body of law school deans…"

en7 Brief: pp. 8-9:

> "Like JCOPE, the Commission is responsible for investigating and enforcing violations of the State's ethics and lobbying requirements. Executive Law §94(10), (14). Unlike JCOPE, the Commission functions solely by majority vote. *See id.* §94(10(f)(h).
>
> When the Commission receives a complaint, its staff is responsible for investigating and recommending whether to pursue the matter to disposition. *See id.* §94(10)(d)-(f). If, after considering the staff's recommendation, the Commission finds credible evidence of a violation, the person under investigation is entitled to a due process hearing before an independent arbiter. *See* §94(10)(h)-(i)."

OSC/Brockner aff:

> "5. The Commission is also responsible for investigating and enforcing violations of the State's ethics and lobbying requirements. *See* Executive Law §94(10), (14). In its first year of operation, the Commission received over 150 complaints, tips, and referrals alleging violations of the ethics and lobbying laws. (Ex. C ¶ 10.)
>
> 6. The Commission staff is responsible for investigating complaints and recommending to the Commission whether to pursue the matter to disposition. *See* Executive Law §94(1)(d)-(f). If, after considering the staff's recommendations, the Commission finds credible evidence of violation, the person under investigation is entitled to a due process hearing before an independent arbitrator. *Id.* §94(10)(h)-(i). …"
>
> "27. The injunction prohibits the Commission from performing myriad tasks that are essential to maintaining the public's trust and confidence in government. To start, the injunction flatly bars the Commission from engaging in all investigative and enforcement activities. (Ex. A at 24-25.) The Commission receives over 150 complaints, tips, and referrals annually that allege violations of the State's ethics and lobbying laws. (Ex. C ¶ 10.) The injunction renders the Commission powerless to take any steps to even begin to investigate such complaints. And, unless stayed, the injunction could impede either the Commission or any other entity from ever substantiating those complaints…"

The referred to "(Ex. C ¶ 10.)" is COELIG Executive Director Berland's Sept. 21, 2023 affidavit, stating, in pertinent part:

> "10. The Commission's Investigations and Enforcement Division in the first instance carries out the Commission's duties, under Executive Law §94(10), to investigate possible violations of the laws administered by the Commission and, when appropriate, to pursue enforcement proceedings. Executive Law §94(10)(d) provides that:
>
> > The commission staff shall review and investigate, as appropriate, any information in the nature of a complaint or referral received by the commission or initiated by the commission, including through its review of media reports and other information, where there is specific and credible evidence that a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for members of the legislature.
>
> Following such a preliminary review, the Commission or staff may 'elevate' the preliminary review into an 'investigation,' affording the subject a 15-day period within which to respond to a written notice of 'the possible or alleged violations of...law...and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations....' (Executive Law §94(10)(f).) If the investigation proceeds beyond that point, then at its conclusion, staff prepares a report to the Commission 'setting forth' the allegations and the evidence tending support or disprove them, 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.' (*Id.*) Thereafter, depending upon the recommendation of staff and how the Commission acts upon it, the matter may be closed or settled, further investigated, or,

if the Commission finds that there is credible evidence of a violation (*id.*, §94(10)(h)), finally determined through the adjudicatory process… In 2022, 155 tips, complaints, referrals and reports were received and processed by the Commission; 128 investigative matters were closed; and the year ended with 156 open or pending investigative matters, including matters carried over from the predecessor agency." (underlining added).

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101 *Tel: 914-421-1200* *E-Mail: mail@judgewatch.org*
White Plains, New York 10602 *Website: www.judgewatch.org*

July 8, 2022

TO: Commission on Ethics and Lobbying in Government (CELG)

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

RE: TESTING the "ethics commission reform act" Commission on its DAY 1:
Re-filing the seven complaints previously filed with JCOPE,
plus a new eighth complaint against Attorney General Letitia James
for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) –
arising from the same conflict of interest Public Officers Law §74 violations
as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE

Pursuant to the "ethics commission reform act of 2022" which establishes the Commission on Ethics and Lobbying in Government *via* a new Executive Law §94, I hereby file with you, based on that new Executive Law §94, my seven sworn complaints of Public Officers Law §74 conflict of interest violations, previously filed with JCOPE. These are the same seven complaints that are Exhibits A through G to the June 6, 2022 verified petition/complaint in the Center for Judicial Accountability's lawsuit against JCOPE, *et al.* (Albany Co. #904235-22). The seven complaints, with the latest first – and linked to the NYSCEF docket – are:

Exhibit A-1: my April 13, 2022 complaint;
Exhibit B: my December 17, 2021 complaint;
Exhibit C: my November 24, 2021 complaint;
Exhibit D-1: my March 5, 2021 complaint;
Exhibit E: my August 31, 2020 complaint;
Exhibit F: my December 11, 2014 complaint;
Exhibit G: my June 27, 2013 complaint.

Additionally, in light of what has thus far occurred in *CJA v. JCOPE*, where Attorney General James, a respondent, representing herself and all nine of her co-respondents, is engaging in litigation fraud in the absence of ANY legitimate defense, I herewith file a further complaint against her beyond the March 5, 2021 complaint I filed with JCOPE, whose evidentiary proof as to Attorney

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization working to ensure that mechanisms are in place to prevent judges from "throwing" cases by decisions that are judicial perjuries, obliterating and falsifying fact and law – and that processes of judicial selection and discipline are effective and meaningful.

General James' litigation fraud in related lawsuits, in collusion with state judges, was furnished by my incorporated February 11, 2021 attorney misconduct complaint against her to the Appellate Division attorney grievance committees, itself incorporating my February 7, 2021 judicial misconduct complaint to the Commission on Judicial Conduct. These are, respectively, Exhibit D-2 and Exhibit D-3 to the petition.

As recited by ¶37 of the petition:

> "JCOPE acknowledged [the March 5, 2021 complaint] by a March 16, 2021 e-mail as #21-033 – but never thereafter advised, in writing or otherwise, that its members had voted and determined that there was 'no violation' or that it had been 'rectified', or that JCOPE's investigation had been 'closed for any other reason'."

JCOPE's corrupt nonfeasance with respect to my March 5, 2021 complaint has led to Attorney General James' repeat of Public Officers Law §74 conflict of interest violations in *CJA v. JCOPE, et al.* and her litigation fraud arising therefrom that is this eighth complaint. Thus far, her litigation fraud in *CJA v. JCOPE, et al.*, has been, as follows:

I.
June 27, 2022

On June 27, 2022, in the complete absence of ANY defense to the June 6, 2022 petition (##1-30) and the June 23, 2022 notice of petition (#46) with which it was served, Assistant Attorney General Gregory Rodriguez, appearing "of Counsel" to Attorney General James, filed a frivolous and fraudulent motion to dismiss (##50-59). I demonstrated this, resoundingly, by a June 28, 2022 affidavit in opposition and in further support of the notice of petition (#61), stating:

> "…Mr. Rodriguez's motion is not merely insufficient, but a fraud upon the Court. Its sole value is to demonstrate that Attorney General James must be disqualified for interest from representing her co-respondents – and from even determining the 'interest of the state' pursuant to Executive Law §63.1, which Mr. Rodriguez's motion does not purport as having been done and which, were it done, would mandate the Attorney General's representation of petitioners, not respondents, *via* independent, outside counsel, retained for such purpose." (at ¶4).

It concluded, as follows:

> "As I stated to Mr. Rodriguez in our extensive phone conversation, his motion must be withdrawn – and his obligation is to refer this case 'upstairs', to his superiors, for review and determination of the 'interest of the state' pursuant to Executive Law §63.1 and the Attorney General James' duty to secure independent, outside counsel, as she is a respondent, directly interested, financially and otherwise. No one examining my March 5, 2021 complaint to JCOPE (Exhibit D-1), resting on – with

> respect to Attorney General James – the February 11, 2021 attorney misconduct complaint I filed against her with the Appellate Division attorney grievance committees (Exhibit D-2) and its included February 7, 2021 judicial misconduct complaint to the Commission on Judicial Conduct (Exhibit D-3) – could come to any other conclusion – and a sworn statement from Attorney General James, personally, is here mandated." (¶26).

I received no subsequent communication from Mr. Rodriguez or anyone else at the Attorney General's office – and the motion was not withdrawn.

II.
July 7, 2022

Yesterday, July 7th, newly-assigned Ulster County Supreme Court Justice David Gandin held oral argument at the courthouse in Kingston on my July 6th order to show cause (##66-72) for determination of petitioners' *matter of law* entitlement to the granting of a TRO/preliminary injunction to stay the "ethics commission reform act of 2022" from taking effect today.

Mr. Rodriguez did not appear for the argument, but, rather, another assistant attorney general, Stacey Hamilton, whose virtually every word was a flagrant lie. Any fair and impartial judge, as Judge Gandin is not, who is not afflicted by a $80,000 yearly salary interest, as Judge Gandin is, would have swiftly rebuked Ms. Hamilton and, if not granting the TRO/preliminary injunction IMMEDIATELY, gotten on the phone, from the bench, to supervisory attorneys in the Attorney General's office, if not to Attorney General James herself, to give them a final, undeserved opportunity to address what was before him, *as a matter of law* – the law being the evidentiary burden of the parties on a preliminary injunction and his duty with respect thereto, set forth by CPLR §§6312(a) & (c) – and, additionally, to inquire as to who, if anyone, had determined the "interest of the state", as Executive Law §63.1 requires, and Attorney General James' glaring conflict of interest disqualification.

I objected, heartily, to Ms. Hamilton's fraudulent, fairy-land argument – and, to no avail, reiterated petitioners' entitlement to determination of the "interest of the state" and to Attorney General James' disqualification, threshold.

Upon receipt of the transcript of the July 7th argument, which I am having transcribed, I will supply it in substantiation of this complaint. Meantime, attached is my memorializing e-mail to Judge Gandin's law clerk, sent earlier today – to which I *cc*'d both Ms. Hamilton and Mr. Rodriguez.

* * *

This morning, July 8th, at promptly 9:00 a.m., I called CELG for information about filing this complaint. The call was answered electronically and after a wait of about six minutes, I was told to record a message. About an hour and a half later Investigator Peter Smith returned the call – and I discussed this complaint with him, extensively, and the fact that CELG's website, supplanting JCOPE's, seems to have no link for materials that had been posted on JCOPE's website, as for instance, its annual reports – including the annual report for 2021, posted, I believe, only yesterday and now gone.

Fortunately, before JCOPE's website evaporated, at about 9:00 a.m. today, I downloaded the 2021 annual report, it being extremely valuable and illuminating – and the only one of its ten annual reports to be compliant with Executive Law §94.9(l)(i) in "listing by assigned number…each complaint and referral received which alleged a possible violation within [JCOPE's] jurisdiction, including the current status of each complaint." – the subject of the petition's second cause of action (¶¶42-47).

I reviewed with Mr. Smith the listings, by assigned number, for my three complaints filed in 2021 – the first being for the March 5, 2021 complaint: #21-033.[1] The listing, at page 63 of the annual report, correctly identifies the complaint as against "Executive Chamber, Assembly, Senate, Office of the Attorney General, Office of the State Comptroller", but does NOT cite the violated "Law" to be "Public Officers Law", but, rather, "Other", does NOT identify the "Nature of Allegation" to be "Conflict of Interest", but, rather, "General" – and, surprisingly, gives, as its "Status", "Closed (Insufficient Allegation)", with a "Closed Date" of "04/27/2021".

I told Mr. Smith that I had repeatedly complained in communications to JCOPE throughout 2021 and 2022 that it was "sitting on" the March 5, 2021 complaint – and had never been contradicted by any e-mail or letter stating that the complaint had been "Closed", let alone for "Insufficient Allegation" – and that this was so-reflected by the petition (at ¶17, quoting from my April 13, 2022 complaint to JCOPE (at p. 2), and at ¶37). Mr. Smith was going to check on that.

Mr. Smith was, additionally, going to check on the listing pertaining to the third of my 2021 complaints, the December 17, 2021 complaint, #21-244, which is at page 79 of the annual report. Although the complaint is against the Senate, Assembly, and the Legislative Ethics Commission, it is identified as being only against "Assembly" and though correctly identifying the "Law" violated as "Public Officers Law" and that the "Nature of Allegation" is "Conflict of Interest", it surprisingly gives, as the "Status" of the complaint, "Pending". This directly contradicts JCOPE Investigations and Enforcement Director Emily Logue's February 28, 2022 e-mail to me, with its attached letter purporting "the Commission considered the allegations raised in the complaint and voted to close the matter on January 25, 2022" – a disposition whose legitimacy and lawfulness I had challenged by

[1] Here linked to the record, as posted on CJA's website. Likewise, my two subsequent 2021 complaints are hereinafter linked to the records, as posted on CJA's website. These links are the same as appear at ¶4(b) of the petition.

my March 4, 2022 e-mail, without response from JCOPE. This is recited by the petition, at ¶17, quoting from my April 13, 2022 complaint to JCOPE (at p. 2), and at ¶39.

The second of my three 2021 complaints, the November 24, 2021 complaint, #21-226, is, as I told Mr. Smith, the complaint arising from the Commission on Judicial Conduct's purported dismissal of my February 7, 2022 complaint against judges participating, with Attorney General James, in corrupting the judicial process – part of my March 5, 2021 complaint, which is complaint #21-033. This second complaint to JCOPE from 2021 appears at page 78 of the annual report. It correctly identifies the complaint to be against "Commission on Judicial Conduct", the "Law" violated as "Public Officers Law", the "Nature of Allegation" to be "Conflict of Interest" – and that its "Status" is "Closed by Commission Vote" with a "Closed Date" of "12/20/2021". No mention of my rebuttal to the legitimacy and lawfulness of such purported Commission vote by my December 21, 2021 letter, to which JCOPE did not respond, or to my subsequent e-mails pertaining thereto. This is recited by the petition, at ¶17, quoting from my April 13, 2022 complaint to JCOPE (at p. 2), and at ¶38.

Although it is now nearly midnight, your website has not yet replaced JCOPE's complaint form with your own. As I discussed with Mr. Smith, a new form will, presumably, no longer indicate a notary for a sworn complaint – and, indeed, there is no longer the need for a complainant to even swear to a complaint, as the new Executive Law §94 no longer confers any added value or mandatory responsive action for sworn complaints.

I nonetheless willingly, proudly, and with full respect for its meaning and significance, swear to the truth of this complaint – using 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), physically appended to my March 5, 2021 complaint to JCOPE:

> "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

New York State Commission on
Ethics and Lobbying in Government
540 Broadway
Albany, New York 12207

COMPLAINT

The Commission on Ethics and Lobbying in Government has jurisdiction to investigate potential violations of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, and Legislative Law article 1-A as they apply to State legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch employees, certain political party chairs, and lobbyists and their clients.

COMPLAINANT NAME Director Center for Judicial Accountability, Inc. Elena Ruth Sassower

ADDRESS BX 8101

CITY, STATE, ZIP White Plains, New York 10602

TELEPHONE 914-421-1200

EMAIL elena@judgewatch.org

Please provide a statement or description of the alleged violation of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

See accompanying October 6, 2022 letter — constituting a supplement to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in CJA, et al. v VCOPE, et al. (Albany Co #904235-22) - arising from the same conflict of interest Public Officers Law 74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by VCOPE

Has this matter been referred to any other agency? ☑ Yes ☐ No

If yes, which agency? 1st Dept Attorney Grievance Committee

Is there pending legal action you are aware of? ☑ Yes ☐ No

If yes, where? CJA, et al. v VCOPE, et al (Albany Co # 904235-22)

New York State Commission on Ethics
and Lobbying in Government
540 Broadway
Albany, New York 12207

OPTIONAL

If you want to submit a sworn complaint for the purposes of Executive Law § 94, among other requirements, you must complete the following oath. The Commission also will accept and review complaints that do not include the oath.

I, Elena Ruth Sassower, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sworn to before me this 6th **day of**

October, 2022
MONTH

Elena Ruth Sassower
SIGNATURE

John Pelose
NOTARY PUBLIC

JOHN PELOSE
Notary Public, State of New York
No. 04PE6147380
Qualified in Westchester County
Commission Expires June 5, ~~2010~~ 2026

INITIALS EJS

(supplement) (complaint) Oct 6th letter - 4 pages
July 8th letter - 5 pages

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10602 ***Website: www.judgewatch.org***

October 6, 2022

TO: Commission on Ethics and Lobbying in Government (CELG)

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

RE: (1) SUPPLEMENT to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE;
(2) INCLUSION OF THIS LETTER IN DISCUSSIONS AT TODAY'S MEETING OF THE COMMISSIONERS AS DIRECTLY RELEVANT TO AGENDA ITEMS.

By a July 8, 2022 letter, I initiated a complaint against Attorney General Letitia James for her Public Officers Law §74 conflict-of-interest violations in *CJA v. JCOPE, et al*., evidenced by her litigation fraud therein, in the absence of ANY legitimate defense.

The complaint recited the then-two instances of AG James' litigation fraud, furnishing links to the NYSCEF docket:

> (1) her June 27, 2022 motion to dismiss the verified petition (##50-59), made by her "of Counsel" Assistant Attorney General Gregory Rodriguez, for which I provided, in substantiation, my July 28, 2022 opposing affidavit (##61-64); and
>
> (2) her July 7, 2022 oral opposition to petitioners' July 6, 2022 order to show cause for a TRO/preliminary injunction to enjoin the "ethics commission reform act of 2022" from taking effect on July 8, 2022, made by Assistant Attorney General Stacey Hamilton, for which I provided, in substantiation, my memorializing July 8, 2022 e-mail to the Court and AAG Rodriguez and stating that the transcript of the July 7, 2022 oral argument would be forthcoming.

By a July 26, 2022 e-mail to CELG, I stated that I had received no acknowledgment of the complaint and inquired as to the complaint numbers assigned to it. Within a minute, I received an automated e-mail acknowledgment of the complaint. However, it contained not even a single complaint number for the eight complaints indicated by the letter – and I have received no written or oral communication from CELG since.

As for the FOIL request that was part of that July 26, 2022 e-mail for "CELG's written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" and which I additionally sent by a July 26, 2022 e-mail to CELG's records access officer, I received, by e-mail, an August 2, 2022 letter stating:

> "it is anticipated that the Commission will be able to respond to your request, providing or denying access, in whole or in part, within forty-five (45) business days, or by Wednesday, September 28, 2022. We will notify you in writing if the Commission requires additional time to be responsive to your request." (underlining added).

September 28, 2022 came and went and I received nothing.

Although the new Executive Law §§94.10(d) and (f) authorized CELG staff to send out a "15-day letter" to AG James with respect to my newly-initiated July 8, 2022 complaint against her, no "15-day letter" was sent, as evidenced by the staff's "Operations Report" that is Attachment B to the agenda for today's meeting of the CELG commissioners. As a consequence, AG James continued her Public Officers Law §74-violating litigation fraud in the *CJA v. JCOPE* case by:

> (3) AAG Rodriguez' August 18, 2022 cross-motion to dismiss the verified petition (##79-83) which, *inter alia*, relied on a perjurious August 18, 2022 affidavit of Emily Logue, JCOPE's director of investigations and enforcement, who now holds that position at CELG, at least on an interim basis (#81);
>
> (4) AAG Rodriguez' September 29, 2022 reply to petitioners' September 15, 2022 opposition to his August 18, 2022 cross-motion (##101-103); and
>
> (5) AAG Rodriguez' September 29, 2022 opposition to petitioners' September 15, 2022 motion for sanctions, to disqualify AG James, summary judgment, and other relief (##98-100).

The fraudulence of these further submissions is meticulously detailed by:

- petitioners' September 3, 2022 CPLR §2214(c) notice of papers to be furnished to the Court (#85), requesting documentary substantiation for Ms. Logue's perjurious affidavit and for the comparably perjurious August 18, 2022 affirmation of Leslie Arp, Chief of the State Inspector General's Case Management Unit (#82), also relied upon by AAG Rodriguez for his August 18, 2022 cross-motion;

- petitioners' September 15, 2022 opposition to AAG Rodriguez' August 18, 2022 cross-motion, which petitioners filed in tandem with a September 15, 2022 motion for sanctions, to disqualify AG James, summary judgment, & other relief (##87-94); and

- petitioners' October 4, 2022 reply to AAG Rodriguez' September 29, 2022 opposition to petitioners' September 15, 2022 motion (##104-110).

Inasmuch as Ms. Logue has actively participated in AG James' litigation fraud – doubtless with the approval of (interim) Executive Director Sanford Berland – both of whose corruption is exposed by the *CJA v. JCOPE* verified petition (##1-30) – the determination to send out "15 day letters" for my July 8, 2022 complaint and this supplement cannot be made by staff. It must be made by the CELG commissioners themselves – and I request confirmation that this will be done.[1]

Because this letter is, in so many respects, relevant to today's meeting of the CELG commissioners, whose agenda includes:

"**III. REPORT FROM STAFF**
- Operations Update Attachment B
- Job Postings Attachment C";

"**IV. PROPOSED POLICY FOR HANDLING INQUIRIES AND MATTERS PURSUANT TO EXECUTIVE LAW §94(1)(C) – GENERAL DISCUSSION**";

"**V. PROPOSED REGULATION AUTHORIZING ISSUANCE OF SUBPOENAS AND OTHER PROCESS BY THE EXECUTIVE DIRECTOR AS DELEGATED BY THE COMMISSION** Attachment E
- Proposed Regulation amending Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941) and the Emergency Adoption thereof [*ACTION ITEM]"

"VI. FORMATION OF PROPOSED COMMITTEES
…
- Staffing and recruitment
- Regulations and procedures

...
- Litigation"

"**IX. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO PUBLIC OFFICERS LAW §105 AND EXECUTIVE LAW §94(11) TO ADDRESS MATTERS CONCERNING EMPLOYMENT OF PERSONNEL, PENDING LITIGATION, AND INVESTIGATIVE AND ENFORCEMENT MATTER THAT IS CONFIDENTIAL PURSUANT**

[1] The new Executive Law §94.10(b) contains no provision regarding conflicts of interest/recusal by staff, as opposed to commissioners – and CELG's website has no link for its "Code of Conduct and Recusal Policy".

TO SECTION 94 OF THE EXECUTIVE LAW",

I am e-mailing the letter directly to the six of the seven commissioners whose e-mail addresses I have, with a request that (interim) Chair Frederick Davie furnish same to (interim) Vice-Chair/former Judge Leonard Austin, whose e-mail address I do not have – both elected to those positions at CELG's first meeting on September 12, 2022.

As with the July 8, 2022 complaint, I herewith conclude with the same attestation of truthfulness as Albany County District Attorney P. David Soares uses for public corruption complaints filed with his Public Integrity Unit:

> "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."

Later today, after I have appeared before a notary to execute the optional attestation included on the CELG complaint form posted on your website, I will send you the notarized complaint form for both this supplement and the July 8, 2022 complaint.

Thank you.

s/ ELENA RUTH SASSOWER

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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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 testimony[1] 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 themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself 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 themself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse themself 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 deceits 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."

New York State Commission on Ethics and Lobbying in Government
540 Broadway
Albany, New York 12207

COMPLAINT

The Commission on Ethics and Lobbying in Government has jurisdiction to investigate potential violations of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, and Legislative Law article 1-A as they apply to State legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch employees, certain political party chairs, and lobbyists and their clients.

COMPLAINANT NAME Elena Ruth Sassower — Director, Center for Judicial Accountability, Inc.

ADDRESS BOX 8101

CITY, STATE, ZIP White Plains, New York 10602

TELEPHONE 914-421-1200

EMAIL elena@judgewatch.org

Please provide a statement or description of the alleged violation of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

See accompanying October 2, 2023 complaint — (1) updating + now filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel + other high-ranking staff for "substantial neglect of duty" + "misconduct in office" born of flagrant violations of mandatory conflict of interest protocols (2) officially TESTING the Commission's unofficial reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint + October 6, 2022 supplement

Has this matter been referred to any other agency? ☑ Yes ☐ No

If yes, which agency? 1st Dept Attorney Grievance Committee + Commission on Judicial Conduct

Is there pending legal action you are aware of? ☑ Yes ☐ No

If yes, where? CJA, et al. v. COPE, et al. (Appellate Division — Third Dept #CV-23-0115)

New York State Commission on Ethics
and Lobbying in Government
540 Broadway
Albany, New York 12207

OPTIONAL

If you want to submit a sworn complaint for the purposes of Executive Law § 94, among other requirements, you must complete the following oath. The Commission also will accept and review complaints that do not include the oath.

I, Elena Ruth Sassower, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sworn to before me this 2nd **day of**

October, 2023
MONTH

Elena Ruth Sassower
SIGNATURE

Nandhini Sundaram
NOTARY PUBLIC

NANDHINI SUNDARAM
NOTARY PUBLIC STATE OF NEW YORK
ROCKLAND COUNTY
LIC. # 01SU6192640
COMM. EXP. 09/2/24

INITIALS ECS

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10602 *Website: www.judgewatch.org*

October 2, 2023

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

TO: Commissioners/Commission on Ethics and Lobbying in Government (COELIG)

RE: (1) Updating & Now Filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff, for "substantial neglect of duty" and "misconduct in office", born of flagrant violations of mandatory conflict-of-interest protocols;
(2) Officially TESTING the Commission's unofficial reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint and October 6, 2022 supplement based on the within evidence that the November 17, 2022 staff letter that the Commission "voted to close" it is indefensible.

On March 29, 2023, in testifying at your first annual hearing, I stated to you that I would be filing a complaint

> "against you, to you, for your 'substantial neglect of duty' and 'misconduct in office'[fn2] 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,[fn3] 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.[fn4]" (underlining and hyperlinking in the original).

I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my March 29, 2023 testimony summarized and evidentiarily-established. This you have not done and the final straw, prior to your September meetings, was your issuance on August 28, 2023 of your misnomered 2022 Annual Report, which is largely a first-year report, and whose material fraudulence is proven, resoundingly, by my testimony.

Had you made findings of fact and conclusions of law with respect to my testimony, as was your duty to have done – and *pronto* – you could not have rendered your "false instrument" Annual Report, constituting a Penal Law §175.35 violation by you, nor have stolen from the taxpayers scores of thousands of dollars in *per diems* to which you knew yourselves to be not entitled,

violating further Penal Laws, such as:

Penal Law §195 ("official misconduct");
Penal Law §496 ("corrupting the government") – part of the "Public Trust Act";
Penal Law §20.00 ("criminal liability for conduct of another").
Penal Law §195.20 ("defrauding the government");
Penal Law §155.40 ("grand larceny in the second degree");
Penal Law §190.65 ("scheme to defraud in the first degree");

Indeed, with respect to *per diems*, you went way beyond availing yourselves of the fraud of its rate, which Executive Law §94.4(f) ties to the salary of a Supreme Court justice. What you did was to *sub silentio* convert Executive Law §94.4(f) into an hourly compensation provision by falsely purporting that this is what the statute provides, without securing an independent legal opinion because, as you knew, such would not sustain your self-serving interpretation.

I, therefore, now update and herewith file the complaint indicated by my March 29, 2023 testimony to span to the present date and to include the below "specific and credible evidence". Pursuant to Executive Law §§94.10(d) and (f), "specific and credible evidence" is the predicate for investigation, signified and commenced by 15-day letters. Such are here required to be sent to each of you, to Executive Director Berland, to General Counsel St. John, and to other high-level complicit staff, so that each of you may respond to the evidence of your conflict-driven, fraudulent, and larcenous conduct.

To facilitate verification, this presentation extensively hyperlinks to the evidence and is, additionally, posted on CJA's website, here. A table of contents follows, formatted as charges against you.

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* * *

CHARGE 1
Your Conflict-of-Interest-Driven Official Misconduct in Failing to Discharge Your Duty to Make Findings of Fact and Conclusions of Law with Respect to CJA's March 29, 2023 Testimony -- & Your Self-Interested Fraudulent Disposition of that Testimony

One does not have to be a commissioner on an ethics tribunal purporting to exemplify the highest ethics standards, or lawyers, as eight of you are, two being also former Appellate Division justices[1] – or high-ranking administrative, investigative, and ethics staff, among them lawyers, whose head is a former judge – to know that my March 29, 2023 testimony and its substantiating EVIDENTIARY webpage had to be confronted, immediately, and with findings of fact and conclusions of law. These would have been, at minimum:

(1) that the *CJA v. JCOPE, et al* verified petition establishes JCOPE's corruption with respect to the seven complaints that CJA filed with it, each of which mandated 15-day letters pursuant to then Executive Law §94.13(a) – and that

[1] Former Appellate Division Justice Carni apparently resigned from the Commission as some point between the August 28, 2023 Annual Report, which includes him, and the September 2023 meetings, but is criminally liable for his corruption with you, prior thereto – and the fraudulent, larcenous hourly *per diems* he collected and allowed you to collect.

the "ethics commission reform act of 2022" replacing JCOPE with COELIG was unconstitutionally enacted *via* the budget and by fraud, as set forth by its sixth cause of action;

(2) that CJA's July 8, 2022 "DAY 1" complaint to COELIG, consisting of a refiling of CJA's seven complaints to JCOPE, plus a new eighth complaint against Attorney General James for litigation fraud in *CJA v. JCOPE, et al.*, to which CJA filed an October 6, 2022 supplement and which an unsigned November 17, 2022 letter of your "Investigations Division" purported you had "voted to close", establishes COELIG's corruption with respect to those complaints and its violation of Executive Law §§94.10(d) and (f), including with respect to 15-day letters;

(3) that you have financial and other interests in *CJA v. JCOPE, et al.* and in the July 8, 2022 complaint which, pursuant to Public Officers Law §74 and Executive Law §94.10(b), mandated disclosure and recusals by you – and that I gave you notice of this and of the financial and other interests of JCOPE Executive Director Berland, including simultaneously with notifying the Independent Review Committee (IRC) when it was screening you[2];

(4) that the 15 IRC law school deans corrupted the duties imposed upon them by Executive Law §94.3 – including as to their own disclosure and recusal obligations, mandated by Executive Law §94.3(j) – in screening and approving you as commissioners, and in concealing the corrupting of the nominations process by the selection members;

(5) that you actualized your financial and other interests in *CJA v. JCOPE, et al.* and in CJA's July 8, 2022 complaint arising therefrom by retaining JCOPE Executive Director Berland to be COELIG's interim executive director – thereafter compounding same, on December 16, 2022, by making him COELIG's executive director, without the search you had publicly promised at your first meeting, on September 12, 2022, and, possibly without even posting the position,[3] because any competent candidate for the job would have easily discerned that JCOPE and now COELIG were subverting statutory mandates with respect to complaints and 15-day letters;

(6) that Berland and other JCOPE high-ranking staff, such as JCOPE Ethics Director St. John, who Berland would promote to COELIG's general counsel, violated disclosure/recusal mandates with respect to CJA's July 26, 2022 and December 27, 2022 FOIL requests, purporting that records that necessarily exist, do not exist, which was and is an outright lie.

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[2] August 4, 2022 e-mail; August 22, 2022 e-mail; December 27, 2022 e-mail; February 7, 2023 e-mail.

[3] *See* endnote 6 of my March 29, 2023 testimony.

Because such findings of fact and conclusions of law, compelled by my testimony, precluded issuance of an annual report that would – as yours has – conceal, totally, the corruption of COELIG and JCOPE with respect to complaints and 15-day letters and the IRC's corruption, about which I testified, you and your staff headed by Executive Director Berland and General Counsel St. John made no findings of fact and conclusions of law, whatever. Rather, you and staff embarked on a calculated course to avoid and obliterate my testimony. This started at the March 29, 2023 hearing itself when, notwithstanding I was, at my request, your last witness so that I might have an extra 3-1/2 minutes to complete my testimony, you cut the live-stream of those extra 3-1/2 minutes and, with more than 2-1/2 hours remaining for the hearing, asked me not a single question.

Two weeks later, at your April 10, 2023 "special meeting" (at 1hr/59 mins), you allowed General Counsel St. John, whose conflict-of-interest-driven fraud with respect to my FOIL appeal I testified about, to reduce my testimony to a single recommendation: that COELIG's closing letters contain a provision for reconsideration similar to those of the Appellate Division attorney grievance committees. To this, only Commissioner Whittingham took modest exception, stating:

> "From the Center for Judicial Accountability, I think she also had some concerns about the closing letters and the lack of information. In addition to giving the opportunity for reconsideration, whether or not we should have more information in those letters and whether or not the Commissioners did vote on it or it's only saying that the Commissioners voted and to make that clear. I think I got that from her comments, as well, if I'm not mistaken, those were the other concerns that she had." (VIDEO, at 2hrs).

This was apparently too damning to be included in the draft minutes of the April 10, 2023 meeting, as at the May 23, 2023 meeting at which the minutes were being approved, she stated:

> "On page 11, where we also have the last sentence of the first paragraph, noting what Ms. Sassower recommended. I think, in addition to noting what was recommended, I made the suggestion that we look into that and, if I am not mistaken, I was told that was going to be looked into in terms of the way we do the closing letters. I wanted to just add that, the suggestion to look into it, that the Commission and staff will look into it." (VIDEO, at 4mins).

This was accepted as a friendly amendment – and the April 10, 2023 draft minutes were approved, as amended. In violation of the Open Meetings Law (Public Officers Law, §103(e)), the draft minutes were not posted on your webpage of the agenda for the May 23, 2023 meeting – and the approved minutes were not thereafter posted.

The following month, your agenda webpage for the June 27, 2023 meeting attached a "March 29, 2023 Annual Public Hearing Recommendations and Comments Digest", which, though adding two further items pertaining to my testimony (at p. 12), did not include what Commissioner Whittingham had noted. The three items, designated for consideration by the Legal Committee, were:

"• Letters 'closing' complaints by vote of the Commission should indicate 30 days in which a complainant may seek reconsideration of the closing of a matter, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.

• The statute creating the Commission should be voided

• Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving per diem allowances that are measured according to the unlawfully raised salaries of Supreme Court justices." (underlining added)

Counsel St. John presented the "Digest" at your June 27, 2023 meeting (VIDEO, at 37mins), without any of you taking exception to its distillation of my testimony, even to the limited extent of:

- adding to the first item that my testimony had challenged the legitimacy of closing letters purporting the Commission had "voted" when, pursuant to Executive Law §94.10(f), the Commission does not "vote" until after an investigative process commenced by a 15-day letter;

- modifying the second item to reflect that my testimony asserted that the sixth cause of action of *CJA v. JCOPE, et al* was dispositive that the statute creating COELIG had to be voided, *as a matter of law* – and that Attorney General James, a respondent, representing herself and the other respondents, was corrupting the judicial process with litigation fraud because she had no legitimate defense – and that CJA's July 8, 2022 complaint to COELIG against Attorney General James based thereon had been fraudulently closed by an unsigned November 17, 2022 letter of COELIG's "Investigations Division", purporting the Commission had "voted" to do so;

- modifying the third item to reflect that, by then, you had already received or would be receiving, within days, your first *per diem* payments, cumulatively totaling $83,946.

On September 6, 2023, you disposed of the three items from the "Digest" pertaining to my testimony. Two were disposed of at your "special meeting", chaired not by Chair Davie, but by Vice Chair Austin, as chair of the Legal Committee.

The first item that Vice Chair Austin announced, he simultaneously disposed of, as follows:

"Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am

going to mark that one as rejected." (VIDEO, at 50mins).

No one objected that my testimony[4] had NOT "ask[ed]" that you "void the statute creating the Commission", but had asked for reconsideration of the unsigned staff letter purporting the Commission "voted to close" CJA's July 8, 2022 complaint against Attorney General James for corrupting the judicial process in *CJA v. JCOPE, et al.*, which the Attorney General had done to prevent a declaration voiding the "ethics commission reform act of 2022", to which CJA has a summary judgment/*matter of law* entitlement – mooting *Cuomo v. COELIG*.

18 minutes later, Vice Chair Austin announced:

> "Number 16 is from Elena Sassower, asking that letters closing complaints be by vote of the Commission and indicate 30 days in which a complainant may seek reconsideration closing the matter, similar to what the Appellate Division does and various rules of civil procedure.
>
> Staff responds that that would require an amendment of the Executive Law 94.10 for rehearing, reconsideration. There are other procedural alternatives to an aggrieved party from a decision that we make, and that's through the court in an Article 78. So parties are not without their remedy, beyond an appeal before us. So, with that in mind, is there any discussion with regard to number 16?" (VIDEO, at 1hr/8mins).

No one objected that my testimony had NOT "ask[ed] that letters closing complaints be by vote of the Commission". Rather, I had identified that:

> "pursuant to Executive Law §94.10(f),[fn8] 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." (p. 3, capitalization and underlining in the original).

There was, however, push-back from Commissioner Ayres and Chair Davies to the staff response that amending Executive Law §94 would be necessary in order to institute a reconsideration procedure, albeit this push-back did not identify what they and you are presumed to know, namely, that staff was outrightly lying because Executive Law §94.5, entitled "Powers", expressly states:

> "(a) The commission has the authority to:… (ii) adopt, amend, and rescind any procedures of the commission, including but not limited to, procedures

[4] Consistent with your favoring of the misnomered "good government groups", whose recommendations at the March 29, 2023 hearing you identified at the September 6, 2023 meeting by their specific organizational affiliations, you did not identify my testimony by organizational affiliation, *to wit*, the Center for Judicial Accountability – just as, likewise, you used my name, instead of CJA's in your Annual Report's listing of "Litigated Matters". (*see* fn. 5, *infra.*).

for…investigations, enforcement…"

Though ultimately my suggestion of a reconsideration procedure was tabled, deceit pervaded the discussion preceding the vote (Exhibit A), exemplified by:

- the failure of any of you to acknowledge that there might be anything wrong with how even a single complaint had been closed, for which reconsideration would be warranted, let alone with respect to CJA's July 8, 2022 complaint and the unsigned November 17, 2022 staff letter stating you had "voted to close" it. Exemplifying this was Commissioner Ayres' twice-stated assertion, as to whether COELIG's rules should provide for reconsideration, "I'm not saying it's a good idea" and "I'm not saying I support doing it", and Commissioner Whittingham's "I am not persuaded that, you know, this is the route we should take";

- the failure of any of you to ask Executive Director Berland as to the provision of Executive Law §94 to which he was referring when he purported it contemplated an Article 78 remedy to complainants whose complaints had been closed;

- Commissioner Caraballo's obvious knowledge that there was an issue about whether complainants whose complaints had been closed would have an Article 78 remedy, and which, when she questioned Executive Director Berland about it, he laughed and replied: "There are jurisdictional questions" and "It's an interesting question that has been litigated and really it does depend on the circumstances and how you interpret the statute with respect to complaints" – to which there was no follow-up by her or anyone else.

It would appear that some of you were willing to entertain a reconsideration procedure for complainants whose complaints are disposed of by closing letters. Presumably this is because you are confident that, as with other rule provisions you have put in place and the provisions of Executive Law §94 that you have violated, you will be able to render it sham, window-dressing.

The third item from my testimony, though also designated by the "Digest" as for the Legal Committee, was, apparently, shifted to the Ethics Committee. This was improper, as the original designation was correct. The issue in the first instance is a legal one: whether – as I identified by my testimony – $80,000 of the salary of Supreme Court justices is fraudulent, as established by CJA's complaints to JCOPE that are Exhibits A through G to the June 6, 2022 verified petition in *CJA v. JCOPE, et al.*, all seven of these complaints refiled with COELIG by the July 8, 2022 complaint. The ethics issues kick in only after confirmation, by findings of fact and conclusions of law, that the Supreme Court salary level, to which Executive Law §94.4(f) ties COELIG commissioner *per diems*, is fraudulent.

This third item was disposed of at the Ethics Committee's September 6, 2023 meeting that commenced immediately following your nearly 5-1/2 hour special meeting, whose last three hours were about adopting a commissioner code of ethics, disclosure, and recusal policy that would set a

higher standard than that of Public Officers Law §74 and Executive Law §94.10(b). Below is my transcription of how Ethics Committee Chair James, and members Caraballo and Austin disposed of the item.

VIDEO, at 13mins

James: (*rapidly read*) The Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving *per diem* allowances that are measured according to the unlawfully raised salaries of Supreme Court justices. Umm.

Caraballo: I, yeah, I move to accept the staff recommendation.

James: Denied.

Caraballo: Denied, however you want to say it.

Austin: The Commissioners are conflicted one?

Caraballo: Yea.

Austin: What'd you move?

Caraballo: I moved to deny that, to accept the staff's recommendation.

James: Alright. All in favor?

Austin: Aye.

Caraballo: Aye.

No mention of the basis for the staff's recommendation or inquiry as to how, if at all, staff addressed its conflicts of interest with respect to same – and how, in accepting the staff recommendation, the Ethics Committee members were confronting their financial interests in the issue, which, as to former judges Austin and the not present Commissioner Carni, were, as stated by my testimony (at p. 2), "HUGE", on the order of "approximately three quarters of a million dollars each".

CHARGE 2
Your Conflict-of-Interest-Driven "False Instrument"
August 28, 2023 Annual Report for 2022, in Essence a First-Year Report

Your Annual Report begins with an Executive Summary (at pp. 7-11), whose first paragraph states "Governor Kathy Hochul signed ECRA into law on April 9, 2022, and it took effect 90 days later, on July 8, 2022." Omitted, as likewise from the Annual Report, is that ECRA – the "ethics commission reform act of 2022" – was enacted through the budget – and that *CJA v. JCOPE, et al.*, challenged the unconstitutionality of this and other frauds pertaining to ECRA's enactment.

The Annual Report acknowledges *CJA v. JCOPE, et al* in its section entitled "Litigation Matters" (at pp. 58-60),[5] misidentifying its title, misidentifying the date of the Supreme Court decision that dismissed it, and giving a two-sentence summary, as follows:

> "In this hybrid Article 78/declaratory judgment action, petitioners sought, among other things, to challenge the Ethics Commission Reform Act of 2022 (ECRA), the statute that created COELIG, and moved for a preliminary injunction to stop the implementation of ECRA. The Court dismissed the action, finding that petitioners failed to state a cause of action, and upheld the constitutionality of ECRA." (at p. 60)

Apart from concealing that the basis for the lawsuit's challenge to ECRA, by its sixth cause of action, is its enactment, through the budget and by fraud – the same as entitled petitioners to a preliminary injunction to stop ECRA's implementation – you conceal that the first and second causes of action pertain to JCOPE's corruption with respect to its handling of complaints and specifically 15-day letters – and that the record of the lawsuit, whose NYSCEF link my written testimony furnished, establishes the Supreme Court decision to be a judicial fraud by a judge disqualified for actual bias born of financial interest, as to which I noticed an appeal on December 16, 2022. Yet, the Annual Report does not reflect that fact – or that, on August 15, 2023, almost two full weeks before you issued your Annual Report, the appeal to the Appellate Division, Third Department was perfected.

The Executive Summary's second paragraph then purports that COELIG's creation by Governor Hochul and the Legislature was "to restore public trust in state government by ensuring transparent, consistent, and vigorous application and enforcement of New York's ethics and lobbying laws and regulations" – not mentioning that this, too, was challenged by the *CJA v. JCOPE* verified petition (at ¶6), which expressly asserted that COELIG's enactment was motivated by the ulterior purpose of stripping the public of rights under the JCOPE statute enforceable by mandamus pertaining to complaints – and that among the respects in which the ECRA statute was inferior is that COELIG,

[5] The opening sentence of this "Litigated Matters" section reads: "The Commission and its predecessor agency were involved in four litigation matters in 2022". It then lists five litigations. The first two decisions, of the Appellate Division, Third Department, are listed chronologically. Inconsistently, the next three decisions, of Albany County, are not listed chronologically – which is why the case purported to be "*Elena Sassower, et al. v. Joint Commission on Public Ethics*…" is last.

unlike JCOPE, would not be a "covered agency" under the jurisdiction of the state inspector general.

The Executive Summary continues with a full page chart (at p. 8) entitled "The New Ethics Commission Reform Act of 2022 (ECRA) "What News Under ECRA" – falsely inferring that what is "new" in the ECRA statute are improvements, so-conceived and by their operation.

A graphic follows (at p. 9) entitled "NYS Commission on Ethics and Lobbying Government 2022 Activities Snapshot", focused on numbers – and the title "The Numbers" is how the Annual Report's Table of Contents separately lists it.

From the public's standpoint, the most important number is: "155 tips, complaints, and reports received and processed by the Commission" – and it is explicated (at p. 11) under the heading "Investigations and Enforcement" as follows:

> "After July 8, 2022, Investigations and Enforcement Division staff continued to process complaints and conduct preliminary reviews of matters while awaiting the appointment of COELIG Commissioners and thereafter in 2022 processed 155 investigative matters…. COELIG has continued all pending matters carried over from JCOPE…."

This is utter fraud, as:

- under the ECRA statute, Executive Law §94.10(f), COELIG staff was empowered not just to "conduct preliminary reviews" of complaints but to "elevate" them to "investigation", signified and commenced by 15-day letters;

- it conceals the number of "tips complaints, and reports" that COELIG received "while awaiting the appointment of COELIG Commissioners" – notwithstanding that number was stated to be **30** in the staff operations reports furnished with the agendas of your October 6 and October 25, 2022 meetings – such staff reports also identifying that CEOLIG had sent out **0** 15-day letters and had commenced **0** investigations;

- it falsely implies, by the phrase "155 investigative matters", that these 155 were investigated when, as the Annual Report's chart at page 78 reflects, of the "155 tips, complaints, and reports" that were collectively received by JCOPE and COELIG in 2022, only **3** 15-day letters were sent and **2** investigations commenced.

The Executive Summary ends (at p. 11) with an immediately following single sentence:

> "Detailed information on the matters handled and the work performed by the units of the Commission can be found in the relevant sections of this report that follow."

The "relevant sections", with respect to complaints, are the Annual Report's "Investigations and Enforcement" section (pp. 52-75), plus the final page of the section immediately following it, this being page 78 of "Commission Activities by the Numbers".

The "Investigations and Enforcement" section (pp. 52-75) begins (p. 52) with three highlights, on three panels. The first panel states: "Tips, Complaints, & Reports: The agency received and processed 155 tips, complaints, referrals, and reports in 2022."

The referred-to "agency" was, until July 7, 2022, JCOPE and then, from July 8, 2022 onward, COELIG. The 155 figure corresponds to the reference numbers 22-001 to 22-155 on the chart entitled "2022 Enforcement Activity" (at pp. 64-75), with no indication as to the reference number at which the receiving "agency" changed from JCOPE to COELIG. Nor is there any indication as to which of the reference numbers are "tips", which are "complaints", which are "referrals", and which are "reports".

The second panel states: "The Commission closed 128 investigative matters in 2022."

The "Commission", prior to July 8, 2022, was JCOPE and, from that date onward, was COELIG. The inference, by the phrase "128 investigative matters", is that 128 matters were "investigated". This would have required, at minimum, the sending of 128 15-day letters because 15-day letters are the starting point for "investigation" under both the JCOPE and COELIG statutes.

The third panel states: "Open Investigations: As of December, the Commission had 32 open and 124 pending investigations".

There is no definition of what an "open investigation" is as opposed to a "pending investigation". Presumably the 32 "open investigations" refer to investigations opened by COELIG and the 124 "pending investigations" refer to investigations that JCOPE opened. As to all these "investigations", they were improper and violated the JCOPE and COELIG statutes unless, as to each, 15-day letters were sent.

In any event, the numbers from the staff operations reports that Executive Director Berland furnished you for your meetings are starkly different, revealing that in 2022 COELIG sent out **0** 15-day letters and opened **0** investigation in response to **70** "tips, complaints, and reports received".[6]

These same staff operations reports reveal that in 2022, JCOPE had sent out **3** 15-day letters and opened **2** investigations.

The next subsection is **"The Investigation and Enforcement Process"** (pp. 53-56), depicting COELIG as a properly functioning investigative body, operating consistent with its statutory mandate. This is false. Cloaked by the true sentence (at p. 53):

[6] See staff operations reports for your October 6, 2022, October 25, 2022, November 15, 2022, December 16, 2022, and January 31, 2023 meetings.

> "The Commission will investigate all matters where there is specific and credible evidence that a violation has occurred of Section 73, 73-a, or 74 of the Public Officers Law, Section 107 of the Civil Service Law, or article 1-A of the Legislative Law, by a person or entity subject to the jurisdiction of the Commission." (underlining added),

which is what Executive Law §94.10(d) and §94.10(m) require – and what your website also purports – the next paragraph engages in sleight of hand by changing the definition of "investigation". It does this by replacing the statutory phrase "preliminary review", which Executive Law §94.10(f) expressly identifies as NOT "investigation", with the phrase "preliminary collection and review of information", inferring this to be informal "investigation" and then calling 15-day letters "formal investigation". Thus it states:

> "If the preliminary collection and review of information warrants elevating the matter to a formal investigation, the subject of the investigation will receive written notice of the alleged violations of law and be given 15 days to respond. This written notice is often referred to as the 15-day letter…" (underlining added).

By similar sleight of hand, this subsection purports (at p. 54) that "after staff's presentation", the standard for the Commission's vote as to whether to proceed to a due process hearing is "credible evidence", when "credible evidence" is the standard for the "investigation", commenced by a 15-day letter. The page 55 flow chart then repeats these two deceits.

The subsection "2022 Review and Disposition of Investigative Matters" (pp. 56-57) follows consisting of three short paragraphs. The first two paragraphs repeat what the Annual Report had previously sent forth, most significantly that:

> "Investigations staff continued to process complaints and conduct preliminary reviews of matters while awaiting the formation of COELIG and processed 155 investigative matters in 2022."

As hereinabove stated, this is false. Although Executive Law §94.10(f) empowered COELIG staff to "elevate" "preliminary review" to "investigation" by 15-day letters, the staff operations reports presented to you at your October 6, 2022 and October 25, 2022 meetings show that of the 30 "tips, complaints, and reports" COELIG received before you were seated as commissioners, staff sent out **0** 15-day letters.

The three-sentence third paragraph then concludes:

> "To date in 2023, COELIG elevated eight matters and sent notices of allegation, referred to as 15-day letters, to the affected parties. These 15-day letters included those sent to former Executive Branch officials and employees. COELIG continued

> pending matters carried over from JCOPE, including two matters that have proceeded to the due process hearing stage." (underlining added).

Obvious from the first four words, "To date in 2023", is that another sleight of hand is being employed. The number of "elevated" matters and 15-letters that are relevant to the 2022 Annual Report do NOT span "To date in 2023" – and such are offered up to avoid having to report what the 2022 numbers are for COELIG: **0** matters "elevated" by 15-day letters.

Following the **subsection "Litigation Matters"** (pp. 58-60), misidentifying *CJA v. JCOPE, et al*, the Supreme Court decision, and concealing the relevant facts, including the status of the lawsuit – the subject of a perfected appeal filed 13 days before the Annual Report – is a **final subsection "2022 Enforcement Activity"** (pp. 61-75). This 14-page-chart contains the information required by JCOPE Executive Law §94.9(l) mandated for its annual report: "a listing by assigned number of each complaint and referral received which alleged a possible violation within [JCOPE's] jurisdiction, including the current status of each complaint" – and which none of JCOPE's annual reports had included, excepting the last for 2021, issued on July 7, 2022, the day before JCOPE when out of existence – and doubtless in response to the second cause of action of *CJA v. JCOPE et al*, to compel same. Although no such list is required by COELIG's Executive Law §94.12 for its annual report, you have included it presumably because, in and of itself – and without access to the complaints, tips, and referrals identified only by numbers – it permits no qualitative assessment of the accuracy or legitimacy of what is being represented – failing even to identify the reference numbers that elicited 15 day letters.

The first 3-1/2 pages (pp. 61-64) list, by assigned number, the closing, in 2022, of "tips, complaints, and reports" received by JCOPE in 2018 through 2021. The next 11-1/2 pages (pp. 64-75) are a list, by assigned number, of the status of "tips, complaints, and reports" received in 2022, without indicating at which assigned number the receiving commission became COELIG, not JCOPE. Upon information and belief, number 22-099 is the first complaint that COELIG received – CJA's July 8, 2022 complaint, incorrectly listed as being against "Commission on Ethics and Lobbying in Government", with a "status" of having been "Closed by Commission Vote" – the date being "11/17/22".

Plainly if #22-099 was against the "Commission on Ethics and Lobbying in Government", you could not have voted to close it without having first confronted your self-interest in it, proscribed by Public Officers Law §74, and the disclosure/recusal protocol mandated by COELIG Executive Law §94.10(b). The complaint, which was NOT against COELIG, except inferentially by its October 6, 2022 supplement, did present you with profound conflicts of interest, individually and collectively – and I highlighted some of these at the March 29, 2023 annual hearing.

My testimony (at p. 3) also highlighted that you could NOT have lawfully "voted to close" the complaint, because COELIG Executive Law §94.10(f) requires that BEFORE such a vote, there be a 15-day letter initiating an investigation, followed by a staff report to the Commission based thereon setting forth the evidence, supporting or disproving the alleged violation(s), with a recommendation which, if it is to close, is because the matter is "unfounded or unsubstantiated". Since COELIG sent

out no 15-day letters in 2022, #22-099 could not have been "Closed by Commission Vote" without violating Executive Law §94.10(f).

For the same reason, six matters subsequent to #22-099 could not have been lawfully "Closed by Commission Vote", *to wit*:

#22-104 against "NYS Insurance Fund", on "12/16/2022";
#22-109 against "United Nations Development Corporation", on "12/16/2022";
#22-125 against "NYS Office for People with Developmental Disabilities", on "2/28/2022";
#22-128 against "Department of Corrections & Community Supervision, Board of Parole", on "12/16/2022";
#22-136 against "Assembly", on "12/16/2022";
#22-147 against ? for "Failure to File", on "1/31/2023".

As for 2022 matters prior to #22-099 "Closed by Commission Vote", the chart lists five. Of these, one was "closed" on "5/24/2022" – in other words, by JCOPE. It is #22-052 against "Executive Chamber and Legislature", identified as "Closed by Decision (Commission Vote)". The other four you had "closed":

#22-024 against "SUNY-Stonybrook" on "2/28/2023";
#22-064 against "Office of Parks & Recreation" on "12/16/22";
#22-089 against ? for violation of the Lobbying Act on "12/16/22";
#22-094 against "NYS Insurance Fund" on "12/16/22".

Inasmuch as you had resolved, at your October 6, 2022 meeting, to apply COELIG's Executive Law to all pending matters, you could not close these four by "Commission Vote" unless prior thereto, you had followed the procedural protocol specified by COELIG's Executive Law §94.10(f), starting with 15-day letters. However even applying JCOPE Executive Law §94.13(a), the procedural protocol of 15-day letters was required before a Commission vote.

The same is true with respect to the ten matters from before 2022, that in 2022 were "Closed by Commission Vote". One of these was by COELIG: #21-147 against "SUNY – Binghamton" on "12/16/2022". The other nine, by JCOPE, are:

#18-014 against "Department of Health" on "4/29/2022";
#18-038 against "Executive Chamber" on "4/27/2022";
#20-012 against "Metropolitan Transportation Authority (Headquarters)" on "6/28/22";
#20-017 against "New York City Transit Authority" on "2/10/2022";
#20-197 against "Assembly" on "2/17/2022";
#21-074 against "Public Service Commission" on "3/29/2022";
#21-108 against "New York City Transit Authority" on "2/9/2022";
#21-233 against ? for a "Gift" on "2/28/22";
#21-244 against "Assembly" on "2/28/2022".

Suffice to note that:

- #22-052, the SOLE 2022 matter that JCOPE closed by a "Commission Vote", identified as being against "Executive Chamber and Legislature", is CJA's April 13, 2022 complaint to JCOPE – the same as is Exhibit A to the June 6, 2022 verified petition in *CJA v. JCOPE, et al* (##2-7);

- #21-244 that JCOPE closed by a "Commission Vote" is CJA's December 17, 2021 complaint against Senate and Assembly legislators and legislative employees for subverting the Legislative Ethics Commission – the same as is Exhibit B to the verified petition in *CJA v. JCOPE, et al* (#8). The chart misidentifies it as being against "Assembly".

These two entries are materially discrepant as to their recorded "closed" dates:

- For #22-052, the "closed" date is recorded as "5/24/22" – which is the date the "Commission voted", specified by JCOPE's June 6, 2022 closing letter.

- For #21-244, the "closed" date is recorded as"2/28/22" – which is the date of JCOPE's February 28, 2022 closing letter, not the date the "Commission voted", specified by the letter to be "January 25, 2022".

As for #22-099, CJA's July 8, 2022 complaint, the "closed" date of "11/17/22" is the date of your November 17, 2022 closing letter, not the date the "Commission voted", specified by the letter to be "October 25, 2022". Thereby concealed is that #22-099 is the FIRST complaint you "closed" – and the one to which Executive Director Berland was referring when, on October 25, 2022, upon your return from executive session, he announced, in the public session, that you had closed a single complaint.

As the accuracy and propriety of the chart's listings can only to assessed by examining the records of JCOPE and COELIG pertaining to each entry, the necessity of an independent examination is established by complaints #21-244, #22-052, and #22-099, as the Commission "vote to close" them cannot be justified, procedurally or substantively.

That being said, some further observations are possible about the chart's entries, as for example:

- Most of the dispositions are without reasons or explication, such as "Closed", "Closed by Commission Vote"; "Pending";

- The disposition "Closed (Insufficient Allegations)" appears on a great many of JCOPE's dispositions, but not on a single one of COELIG's dispositions.

Notably, your Annual Report is devoid of any information about your "oversight" over COELIG's handling of complaints – or of litigations pertaining thereto and involving JCOPE – as to which my testimony could not have been more explicit in furnishing you with notice and evidence as to the exigency of "oversight".

CHARGE 3
Your Conflict-of-Interest-Driven Subversion of Executive Law §94.4(f) Pertaining to Your *Per Diems*

Illustrative of the Annual Report's deceit, spinning your unethical, self-serving conduct into an accolade of your virtue, is its sole reference to your *per diems* (at p. 29), where, under the heading "Accomplishments", it states:

> "Posting Commissioner Per Diem Allowances: In 2022, the Commission made a commitment to post the amount of per diem allowances paid to Commissioners for their Commission work, with the first posting made for FY 2023 in May 2023."

The facts are as follows:

Before the IRC had approved a single commissioner as qualified, I alerted the IRC by an August 4, 2022 letter (at p. 7), which I simultaneously e-mailed to the then prospective commissioners, that because ECRA Executive Law §94.4(f) ties commissioner *per diem* allowances to "the salary of a justice of the supreme court divided by two hundred twenty" for a 7-1/2 hour day or pro-rated day, ALL commissioners would have a financial interest in CJA's eight-in-one July 8, 2022 "DAY 1" complaint to COELIG, which they would have to confront, threshold.

Three and a half months later, at your November 15, 2023 meeting, *per diems*, which had not been on the meeting's agenda, were raised by then interim Executive Director Berland as new and other business (VIDEO, at 1hr/16mins). He deemed this, as likewise COELIG's retention of a public relations firm, also not placed on the meeting's agenda, as too sensitive for open discussion and moved them to executive session. Although Chair Davie reiterated that when you came back from executive session, you would report as to these, there was "a small audio outage" preventing audio of what the result of that behind-closed-doors discussion had been. According to the minutes, "The Commission discussed legal questions arising with respect to the proposed Commissioner per diem policy". The "legal questions" were not identified.

Per diems next came up – and now as "VII. EXECUTIVE LAW §94(4)(F) PER DIEM POLICY" – on the agenda of your January 31, 2023 meeting. However, at the meeting (VIDEO, at 1hr/8 mins), Chair Davie announced that because there were "some legal issues surrounding this" it would first be taken up in executive session, with a public report thereafter of the discussion about it. This was recited in the subsequent January 31, 2023 minutes (at p. 6) as:

> "Interim Chair Davie advised that the Per Diem Policy should be discussed in Executive Session to obtain the advice of counsel with respect to the provision, with a report-out to be provided in open session."

Yet, upon your return from executive session, there was no "report-out". There was only a statement by Executive Director Berland that "the Commission discussed legal matter concerning Executive Law Section 94, sub(4), sub (f), the *per diem* policy" (VIDEO, at 1hr/10 mins). The January 31, 2023 minutes comparably recited this (at p. 7).

At your next meeting, on February 28, 2023, you discussed *per diems* for over an hour (VIDEO, at 1 hr/55mins – to 3hrs). Yet there was no mention of legal issues pertaining thereto, let alone what they were, how they had been resolved, and how the manner of their resolution had eliminated, or at least mitigated, your direct financial and other interests in monies you would be receiving.

There were, at minimum, two legal issues:

- The first was the one to which I had alerted you by my August 4, 2022 e-mailed letter (at p. 7), namely, the unlawfulness of the Supreme Court justice salary to which Executive Law §94.4(f) links commissioner *per diems*.

- The second arose from your self-interest in converting the statutory *per diem* provided for by Executive Law §94.4(f) to a "per diem hourly allowance" to cover all work relating to the Commission. This second "legal issue" was reflected by Attachment J to the February 28, 2023 meeting agenda entitled "Resolution on the Payment of a Per Diem Allowance and Expenses to Members of the Commission". It had been revised shortly before the meeting. However, in violation of the Open Meetings Law, the revised resolution was not posted. Nor was there any posting of Commissioner Groenwegen's amending resolution.

The only challenge to the notion that Executive Law §94(4)(f) authorizes an hourly *per diem* allowance was the statement of Commissioner Ayres:

> "I have some discomfort with this whole discussion because I think that our decisions on our own pay I would feel more comfortable if we were looking at an independent analysis. I know the statute may seem clear, on its face, but as a professor of statutory interpretation I know that nothing is actually clear on its face. And I think these questions are difficult for me to opine on, I'm not saying that we should have gone to outside counsel, necessarily, although I certainly would appreciate a comparison of what other agencies do with similar language, how other folks handle this." (VIDEO, at 2hrs/53 mins).

That a "professor of statutory interpretation" should purport, as Commissioner Ayres, did, that it was "difficult for [her] to opine on" how Executive Law §94.4(f) was being interpreted was utter deceit. There was nothing "difficult" in her guiding you to the starting point of "statutory interpretation",

namely the text of the statute, reading:

> "Members of the commission shall receive a per diem allowance equal to the salary of a justice of the supreme court divided by two hundred twenty for each day or each pro-rated day actually spent in the performance of the member's duties under this section, and, in addition thereto, shall be reimbursed all reasonable expenses actually and necessarily incurred by the member in the performance of the member's duties under this section. For the purposes of this subdivision, a day shall consist of at least seven and one-half hours spent in the performance of the member's duties under this section."

As the current Supreme Court salary is $210,900, the *per diem* rate, obtained by dividing by 220, is $958.64. This is more than three times the $300 *per diem* allowance under JCOPE's Executive Law §94.8 which read:

> "The members of the joint commission shall receive a per diem allowance in the sum of three hundred dollars for each day actually spent in the performance of his or her duties under this article, and, in addition thereto, shall be reimbursed for all reasonable expenses actually and necessarily incurred by him or her in the performance of his or her duties under this article."

Indeed, recognizing that the COELIG *per diem* was so significantly higher than the JCOPE *per diem* makes plain why COELIG's Executive Law §94.4(f) specified that "a day shall consist of at least seven and one-half hours" and provided for a "pro-rated day" when the hours fell below that number. It also would explain why the immediately following Executive Law §94.4(g) contemplates that the commissioners might only meet "quarterly".

Other than that, the two *per diem* statutes are identical.

Nevertheless, excepting Commissioner Cardozo, who stated, at the outset of the discussion:

> "the law that JCOPE was operating under, in terms of the wording, that says preparing for meetings and doing your work, was really no different from the law today and notwithstanding that, the JCOPE commissioners voted not to give *per diem* reimbursement for anything other than the public meeting and the commission meetings" (VIDEO, at 2hrs/6mins),

commissioner, after commissioner thereafter misrepresented the statute – and, without the slightest concern as to whether there was the slightest precedent for *per diems* being converted into hourly compensation – voted for the resolution that Chair Davie worded to give commissioners hourly *per diems* to cover all work pertaining to their "duties", without any cap – and retroactive to July 8, 2022. All commissioners so-voted, except the abstaining Commissioner Ayres and Commissioners Groenwegen and Cardozo, who, though making sound arguments against the parameters of the resolution, did NOT blow the whistle on the conversion of *per diems* to hourly compensation. To

the contrary, Commissioner Groenwegen, who identified that months earlier she had been tasked with taking the lead on the *per diem* issue, opened discussion of the resolution by identifying it as for "payment of an hourly *per diem*, as authorized by the statute".

Here are some excerpts of what was subsequently said:

> Davie: "The legislation does lay out an hourly rate, it was specific about that for essentially all our activity for carrying out our activity as commissioners."
>
> * * *
>
> Austin: …is taking time to converse with fellow commissioners on time that would be otherwise spent on other things, is that something for which the legislature, in your opinion, thought we should be compensated?
>
> Groenwegen: No disrespect for the legislature, but I haven't a clue. I haven't a clue. I don't know. I think they used language that is very common in compensation statutes for, you know, the performance of actual duties, but I don't.
>
> Austin: Very different than JCOPE, if I may interrupt.
>
> Groenwegen: But I don't know any body that compensates members for prep time. I just don't.
>
> * * *
>
> Whittingham: "The legislature has said you are supposed to get paid for work related to this. Let's get paid for it or go back to them and say we don't want pay, change the legislation… it was public record what we would be compensated. … I am to get paid, as the legislators said. Go back to them, and say we don't need the money, but until that has changed, I will not vote for a proposal like [Commissioner Groenwegen's]";
>
> * * *
>
> Austin: "the statute doesn't say for time actually spent on this, this, this, and this. All it says is actually spent in the performance of the members' duties under the section… bottom line is that the legislature gave us actually spent in performance of the duties, without limitation."
>
> * * *
>
> Carballo: "This is not a common statute at all. This is the first time this has ever happened. There is a significant difference between what JCOPE was entitled to be paid, on simply a *per diem* basis, not hourly, and what the legislature has set out for us to be paid. …The legislature did not want us to take…JCOPE's compensation structure…

* * *

James: "I think when the legislature established the Commission there was an intent to have different model than existed with JCOPE and I believe that is why they actually specified that there would be an hourly rate, as opposed to a *per diem*";

* * *

Davie: "I move that commissioners be compensated at an hourly rate as outlined in the statute, defined in the statute, for all activities related to their responsibilities on this Commission.

* * *

On March 24, 2023, at your next regular meeting, *per diems* were concealed, first by your agenda by its euphemistically-titled "IX. EFFECTUATING EXECUTIVE LAW §94(4)(F) • Submission forms and process" – and then, at the meeting, when, upon Chair Davie reaching item IX, he did not identify it as pertaining to *per diems* in stating: "On the question of our forms and submissions, we are going to move this to executive session because we have some legal issues that we need to talk through, particularly the review as opposed to approve issue"[7] (VIDEO, at 1 hr/30 mins). He offered no hint of the "legal issues" that might exist with respect to "Submission forms and process". Upon the return from executive session (VIDEO, 2hrs/11mins), no mention was made of "legal issues", or of *per diems*, Executive Law §94.4(f), or "Submission forms and process" – and there were no "questions, comments, or remarks" about this.[8]

"Commissioner per diem payments" were on the May 23, 2023 meeting agenda as part of its "III. REPORT FROM STAFF". Discussion preceded the announced payments (VIDEO, at 34mins) as to what you had agreed would be announced – which is understandable based on the VIDEO of the February 28, 2023 meeting (at 2hrs/51mins), not reflected by the minutes (at p.10). The payments that Executive Director Berland then announced were for the eight months from COELIG's inception in July 2022 to the end of March – though he noted that for at least two commissioners there would be further payments for time sheets not yet fully submitted:

"The aggregate total for everyone in that period of time is $83,946.11. By Commissioner: Chair $12,110.98; Vice Chair Austin: $10,097.84; Commissioner

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[7] The referred-to "review as opposed to approve issue" concerned approval of the February 28, 2023 minutes, to which Commissioner Carballo had stated, at the outset of the March 24, 2023 meeting, that they were not correct with regard to "the motion that was made regarding the 94.4(f) compensation of the commissioners". By a March 20, 2023 FOIL request, I requested the February 28 2023 minutes. Although I received a March 28, 2023 response that they would be posted, they were not.

[8] The minutes of the March 24, 2023 meeting were approved at the April 25, 2023 meeting, without objection, but, in fact, are not accurate, as the reference in the minutes to "payment of a per diem allowance and reimbursement of expenses to members of the Commission" (at p. 2) and "Executive Law §94(4)(f)" (at p. 10) are contextual clarifications not stated at the meeting to explain what was taking place.

> Ayers: $4,218.07; Commissioner Caraballo: $6,199.30; Commissioner Cardozo: $9,171.12; Commissioner Carni: $8,851.57; Commissioner Edwards: $15,689.94; Commissioner Groenwegen: $6,295.17; Commissioner James: $7,637.28; Commissioner Whittingham: $3,674.84."

"Commissioner per diem payments" as part of the "III. REPORT FROM STAFF" would appear on the agendas of each of your subsequent regular meetings.

At the June 27, 2023 meeting, Chair Davie stated "I just actually signed off on a whole set" (VIDEO, 19mins), but they were not yet ready for report.

At the July 19, 2023 meeting, Executive Director Berland announced the not yet final sums for April through June, expected to be paid within the next two weeks:

> "The total, by commissioner, is, for Chair Davie, the total is $3,834.30; for Vice Chair Austin, the total is $2,811.82; for Commissioner Ayers: $4,377.49; for Commissioner Caraballo: $3,291.11; for Commissioner Cardozo: $7,828.36; for Commissioner Carni: $3,418.98; for Commissioner Edwards: $7,796.41; for Commissioner Groenwegen; $2,108.87; for Commissioner James: $3,355.01; and for Commissioner Whittingham: $3,482.82. That's a total of $42,305.11…"

The *per diem* payments would cumulatively be about $3,500 higher, *to wit*, $45,982.09, largely due to the increased *per diem* payment of $7,093.85 to Commissioner Whittingham – and, at the September 27, 2023 meeting the updated figures were announced, along with the further figures, presumably for July and August, totaling another $18,340.76:

> Chair Davie: $2,172.78; Vice-Chair Austin: $990.53; Commissioner Ayers $2,204.73; Commissioner Caraballo: $1,405.91; Commissioner Cardozo: $3,738.44; Commissioner Carni $1,693.48; Commissioner Edwards $3,482.82; Commissioner Groenwegen: $734.91; Commissioner James: $1,214.20; Commissioner Whittingham: $702.96. The total is $18,340.76 (VIDEO, at 20mins).

No one examining the fashion in which you have conducted yourselves with respect to Executive Law §94, whose starting point is reading the statute and understanding it, including in the context of JCOPE's Executive Law §94, could come to any conclusion but that you have been bumbling and incompetent, quite apart from self-interested and dissembling – and that the *per diem* payments and separate expenses that you have received have been a flagrant waste and misappropriation of taxpayer dollars.

CHARGE 4
Your Conflict-of-Interest-Driven Subversion of Executive Law §94.10 by Your 19 NYCRR §§941.2 and 941.3

"Reviewing Regulations" is another one of COELIG's "Accomplishments" touted by the Annual Report (at p. 30):

> "Reviewing Regulations: In 2022, the Commission began making preliminary revisions to regulations to conform to the new ECRA requirements, which has resulted in the adoption of amendments to almost the entire body of the state's applicable ethics and lobbying regulations, including Parts 930 through 938 and 941 through 943 of Title 19, Chapter XX of the New York Code of Rules & Regulations. In particular, these include conforming amendments to the Commission's Adjudicatory Proceedings and Appeals Process regulations, 19 NYCRR Part 941, that, among other things, track ECRA in authorizing Commission staff to elevate a preliminary review to an investigation where there is specific and credible evidence of a violation of a law enforced by COELIG by a person within the Commission's jurisdiction. With those preliminary revisions now in place, the Commission, as required by ECRA, is proceeding to undertake a comprehensive review of all regulations and advisory opinions for consistency with one another and with the goals, objectives, and requirements of ECRA, as well as of the effectiveness of those rules, regulations, existing guidance, and the ethics enforcement structure."

In fact, the best that can be said about your "preliminary revisions" to Part 941, which Executive Director Berland presented to you at your meetings and which you adopted virtually without change, in reliance on him, is that they are incompetent. They conceal and distort the clarity of the ECRA statute with respect to complaints – Executive Law §§94.10(d) and (f) – enabling you and staff to subvert these statutory provisions, on a wholesale basis, as discernible from your own statistics pertaining to 15-day letters and investigations.

The plain meaning of Executive Law §§94.10(d) and (f) is that:

(1) if a complaint within your jurisdiction presents "specific and credible evidence", it will be "elevated" from "preliminary review" to "investigation" by a 15-day letter to the complained-against person or entity to respond to the alleged violation(s) and the evidence in support; and

(2) "After review and investigation" of the response to the 15-day letter, staff will present you with a report setting forth the violation(s) alleged, the evidence, for and against, and a recommendation for your majority vote, which, if it is to "close" the complaint, it is because the complaint has been determined to be "unfounded or unsubstantiated" – with your "vote to close" being your agreement that such staff recommendation is correct.

The provisions of Part 941 relevant to this are §941.2 entitled "Definitions" and §941.3 entitled "Notices". The balance of Part 941 is **not** germane because, as a result of COELIG's readily-discerned violation of Executive Law §§94.10(d) and (f), virtually no complaint progresses to a hearing or subsequent adjudication, which is the content of its balance.

Of course, prefatory §941.1 entitled "Intent and purpose" also has relevance. This should be to clarify and elaborate on Executive Law §§94.10. Your §941.1 claims no such salutary purpose.

Although the linchpin and key terms of Executive Law §94.10(f) are "initial review" and "investigation", your §941.2 defines neither.[9] Reasonably, the definitions would be something like this –

> Preliminary review is the initial facial examination of a complaint or referral to ascertain whether it presents "specific and credible evidence" that a person or entity within the Commission's jurisdiction has violated a law within its jurisdiction. It also includes telephoning the complainant or referring body to clarify, if necessary, the "specific and credible evidence" of the alleged violation(s), without which a complaint or referral will not be investigated.
>
> Investigation is the elevation of the complaint or referral, upon its passing preliminary review, and is signified by sending a written notice to the complained-against person or entity of the alleged violation(s) and "the evidence, if any, already gathered", and requesting a response within 15 days of receipt of the notice, which is then reviewed and investigated by staff.

Nor is there any definition of the term "vote to close" which, pursuant to Executive Law §94(10)(f), reinforced by Executive Law §94(10)(h) and §94(10)(m), would be:

> Vote to close is the vote of the Commission members to accept a staff recommendation, following investigation commenced by a 15-day notice that a complaint is "unfounded or unsubstantiated" – such recommendation having been made by staff in a report setting forth the evidence supporting and disproving the alleged violation(s).

Your §941.3 "Notices", although citing in each of its three subsections to Executive Law §94(10)(f), omit its procedural and standard-identifying content – the same as any proper "Definitions" section would reveal.

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[9] By contrast, the Commission on Judicial Conduct's promulgated rules – 22 NYCRR Part 7000 – include in its definitions section, its terms "initial review and inquiry" and "investigation". It defines "initial review and inquiry" to be "the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint." (underlining added). In other words, and like ECRA's "preliminary review", it is not itself "investigation".

Thus, §941.3(a) entitled "Notice of Allegations ('15-Day Letter')" states:

> "If following a preliminary review, the Commission or Commission staff decides to elevate such preliminary review into an investigation pursuant to Executive Law §94(10)(f) the Commission shall provide written notice to the respondent individual or entity…"

The false inference is that you and staff have unfettered discretion in deciding to elevate "preliminary review" to "investigation", contravening Executive Law §94(10)(d) and §94(10)(m) mandating investigation when there is "specific and credible evidence".

§941.3(b) entitled "Notice of Hearing" states:

> "If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission has determined by majority vote to proceed to a hearing, having found that there is credible evidence of a violation under the Commission's jurisdiction, notice shall be provided to the Respondent to inform Respondent of their right to be heard and appear…at a confidential hearing and to give sworn testimony, present evidence, and cross examine witnesses…".

Omitted is that pursuant to Executive Law §94(10)(f) there is NO "presentation of the matter to the Commission" until the "matter" is investigated by a 15-day letter – and that the "presentation" is a staff report setting forth the evidence both supporting and disproving the alleged violation(s), with "a recommendation…for moving the matter to a confidential due process hearing". Only then – based on such explicit procedure, reinforced by Executive Law §94(10)(h) – do you vote that you have found "credible evidence".

§941.3(c) entitled "Notice of Closure, Continued Investigations or Guidance" states:

> "If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission decides, by majority vote, to return the matter to the staff for further investigation, close the matter, or authorizes the resolution of the matter by guidance to the subject, or if the Commission's vote to proceed to a due process hearing does not carry, the Commission shall, within 60 days of such determination, provide written notice of its decision…"

Omitted is that pursuant to Executive Law §94(10)(f) there is NO "presentation of the matter to the Commission" until the "matter" is investigated by a 15-day letter and that the "presentation" is a staff report setting forth the evidence both supporting and disproving the alleged violation(s), with "a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential hearing." Only then does the Commission vote to "return the matter to the staff for further investigation or accept or reject the staff recommendation".

In other words, the staff recommendation to close is NOT – as here implied – unbounded by any standard. Nor is the Commission's "vote to close" for any other reason than its agreement with staff that "the matter [is] unfounded or unsubstantiated".

As for subdivision (1)(i) of §941.3(a), stating:

> "While any response submitted will be reviewed by the Commission and/or Commission staff, Commission staff is not precluded from recommending and the Commission is not precluded from voting to close or settle the matter, to advance it to a confidential due process hearing or to return it to staff for further investigation prior to receiving a Respondent's written response."

This is contrary to Executive Law §94.10(f),[10] expressly requiring that staff's recommendation to you and your vote be after a 15-day letter and "review and investigation" thereon, with such recommendation embodied in a report, setting forth the evidence, both supporting and disproving the alleged violation(s). It also falsely infers that you can "vote to close" a matter for no specified reason, contrary to Executive Law §94.10(f) expressly restricting the basis of your "vote to close" to being because you have accepted staff's recommendation, in a report to you, that the alleged violation(s) are "unfounded or unsubstantiated".

As for subdivision (4) of §941.3(c), stating:

> "At the discretion of the Commission, written notice shall be provided to a Subject who has not been previously notified of the allegations against them…".

How is this scenario possible when Executive Law §94.10(f) requires that the subject of a complaint or referral that is elevated from "preliminary review" to "investigation" be furnished with a 15-day notice/letter – and no "presentation to the Commission" can be made by staff for your vote unless there is a 15-day letter and a report, based thereon.

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[10] With no apparent recognition of Executive Law §94.10(f) Commissioner Caraballo inquired about §941.3(a)(1)(i) at the May 23, 2023 meeting (VIDEO, at 2hrs/27mins):

> "I was just wondering, why would we be allowed to elevate a matter before we even got a response. What is the –…Why would you pursue, but I am wondering why you would pursue without getting a response. I understand that you could look at it and say I don't even need a response from the respondent but, because we are going to close it, but I don't understand why we would advance a matter without first getting a response" --

and accepted, with the other commissioners, Executive Director Berland's deceitful response – a pattern that occurred again and again pertaining to COELIG's Executive Law §94, JCOPE's Executive Law §94, and the regs.

You first approved the above obfuscating and misleading three-section §941.3 on October 25, 2022 (VIDEO, at 29 mins – 42 mins) (Attachment D to the agenda) – and it was after having approved it that, in executive session, you "closed one matter" – so announced by Executive Director Berland when you came back into public session. That this "matter" was CJA's July 8, 2022 complaint seems apparent from the unsigned November 17, 2022 letter from your "Investigations Division" identifying October 25, 2022 as the date of your having "voted to close".

You never modified §941.3 thereafter, though it was before you repeatedly[11] and you approved it, repeatedly, not based on your own independent examination of Executive Law §94.10, but in reliance on Executive Director Berland,[12] whose misrepresentations of it – and of JCOPE's Executive Law §94.13(a) – should have been apparent to you, but which you never challenged. At the same time, indeed, each month, you were confronting the statistics of your procedure-concealing §941.3 by the staff operations reports, attached to the meeting agendas of each of your regular monthly meetings – statistics to which you were contributing by your dispositions of "matters" in executive session, thereupon announced in the public sessions.

The first staff operations report you received was Attachment B to the agenda of your October 6, 2022 meeting. From the topmost entries on its first page, you could see that from July 8, 2022, the day COELIG replaced JCOPE, to September 23, 2022, COELIG had received **30 "tips, complaints, and reports", yet staff had not sent out a single 15-day letter and conducted no investigations**. This, notwithstanding Executive Law §94.10(f) expressly empowered staff to send 15-day letters, thereby initiating investigations.

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[11] See, in addition to October 25, 2022 meeting (VIDEO, at 29 mins – 42 mins) (Attachment D to agenda): December 16, 2022 meeting (VIDEO, at 1hr/5mins-6mins) (Attachment F to agenda); January 31, 2023 meeting (VIDEO, at 56 mins – 1hr/3mins) (Attachment G to agenda); February 28, 2023 meeting (VIDEO, at 54mins-1hr/32mins) (Attachment G to agenda); May 23, 2023 meeting (VIDEO, at 2hrs/21mins – 2hrs/30mins) (Attachment G to agenda – stating in the first sentence of its prefatory note: "Key changes in the law, as set forth in these amendments, provide that a Commission vote is no longer required to initiate an investigation." This is false. JCOPE Executive Law §94 did NOT require a Commission vote to initiate an "investigation" – as no vote was required to send out 15-day notice/letters, which, under COELIG Executive Law §94, is what signifies, if not constitutes, "investigation".

[12] As illustrative, at the October 25, 2023 meeting (VIDEO, at 34mins), Commissioner Cardozo stated:

> "Very difficult to see if there is any issues in what you've done and I appreciate the conforming amendments, but were there any substantive provisions that might have been changed in a different way. It's very hard to focus on, you know, what was the policy issue as distinct from the technical changes. You know, were there anything that say, hey, reasonable people could differ and we could change something one way or another. I don't know how to review, it looks fine as I read it, but I don't know how, where were the real hard decisions made from where a good lawyer looking and making the conforming amendments."

2-1/2 weeks later, the staff operations report that was Attachment B to the agenda of your October 25, 2022 meeting still showed **no 15-day letters and no investigations.** Yet, you did not inquire about this – nor thereafter when you were presented with comparable monthly operations reports, except, at the March 24, 2023 meeting, when Commissioner Cardozo asked whether the decline in COELIG's investigations from those of JCOPE was attributable to staffing issues (VIDEO, at 6mins).

Here are the COELIG statistics from the staff operations reports:

SEPT. 24 – OCT 31, 2022 staff operations report (Nov. 15, 2022 meeting) –
13 "tips, complaints, and reports received"; **0** 15-day letters, **0** investigations opened

NOVEMBER 2022 staff operations report (Dec. 16, 2022 meeting) –
11 "tips, complaints, and reports received"; **0** 15-day letters, 0 investigations opened

DECEMBER 2023 staff operations report (Jan. 31, 2023 meeting) –
16 "tips, complaints, and reports received"; **0** 15-day letters; **0** investigations opened

JANUARY 2023 staff operations report (Feb. 28, 2023 meeting) –
16 "tips, complaints, and reports received"; **0** 15-day letters; **0** investigations opened

FEBRUARY 2023 staff operations report (March 24, 2023 meeting) –
16 "tips, complaints, and reports received"; **1** 15-day letter; **1** investigation opened

MARCH 2023 staff operations report (April 25, 2023 meeting) –
17 "tips, complaints, and reports received"; **0** 15-day letters, **0** investigations opened

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APRIL 2023 staff operations report (May 23, 2023 meeting) –
12 "tips, complaints, and reports received"; **1** 15-day letter; **1** investigation opened

MAY 2023 staff operations report (June 27, 2023 meeting) –
18 "tips, complaints, and reports received"; **0** 15-day letters; **0** investigations opened

JUNE 2023 staff operations report (July 19, 2023 meeting) –
21 "tips, complaints, and reports received"; **2** 15-day letters; **2** investigations opened[13]

[13] JULY 2023 staff operations report (Sept 27, 2023 meeting)
12 "tips, complaints, and reports received"; **2** 15-day letters; **2** investigations opened

AUG 2023 staff operations report (Sept 27, 2023 meeting)
11 "tips, complaints, and reports received"; **1** 15-day letters; **1** investigations opened

Indeed, you failed to ask ANY of the most obvious questions which, starting with the first staff operations report, at your October 6, 2022 meeting, should have been, at minimum –

(1) As to the first category "Number of tips, complaints, and reports received":

- why were these not separately listed: "tips", "complaints", "reports received";
- are "reports received" the same as "referrals" – the term used by Executive Law §94.10 and, if so, why is the word "referrals" not used?;
- are the "tips" being used to provide staff with "information" so that, pursuant to Executive Law §94.10, it can evaluate whether to initiate a complaint of its own?

(2) As to the second category, "Number of 15-day letters sent":

- Why were **0** 15-day letters sent in response to these 30 "tips, complaints, and reports", when Executive Law §94(10)(f) expressly gave COELIG staff authority to send them.

(3) As to the third category, "Number of investigations opened":

- Why was this a separate category when pursuant to Executive Law §94(10)(f) the opening of an investigation is synonymous with the sending of a 15-day letter.

(4) As to the fourth category, "Number of matters closed":

- Why were **0** "matters closed"? Was it staff's interpretation of Executive Law §94(10)(f) and (m) that, following preliminary review, it has no authority to close matters that it has decided not to "elevate" to investigation?

(5) As to the fifth category, "Number of guidance letters sent":

- Were **0** "guidance letters sent" because, pursuant to Executive Law §94(10)(f), such requires a Commission vote, based on a recommendation in a staff report that follows upon an investigation commenced by a 15-day letter?

Suffice to note that immediately prior to your October 6, 2022 meeting and again before it concluded, I e-mailed you an October 6, 2022 letter – this being the supplement to CJA's July 8, 2022 complaint – expressly identifying it for inclusion in your meeting discussions as directly relevant to multiple items featured on your agenda, starting with the staff operations report – and pointing out, in the context of CJA's July 8, 2022 complaint, the significance of the operations report's admission that staff had not sent out any 15-day letters, though, pursuant to Executive Law §94.10(f), it was expressly authorized to do so. Did none of you read my two October 6, 2022 e-mails (& here)?

CHARGE 5
Your Conflict-of-Interest-Driven Violations of FOIL & the Open Meetings Law

Another "Accomplishment" featured by your Annual Report (at pp. 28-29) – and duplicatively so – is transparency, FOIL, & the Open Meetings Law.

With respect to FOIL, the Annual Report purports that COELIG "promptly appointed a Records Access Officer and began following FOIL requirements in 2022" and that "In 2022, the Commission fulfilled 183 FOIL and Financial Disclosure Statement (FDS) access requests."

The referred-to Commission in 2022 was JCOPE and then COELIG and the number **183** is the number of records requests appearing on the Annual Report's chart, at page 78, for the period Jan 1 – Dec 31, 2022, as having been provided out of a total of **184** records request. This differs from the staff operations report, included with the agenda for your January 31, 2023 meeting, showing (at p. 7) **127** records requests provided. This HUGE discrepancy is concealed.

Apart from the complete lack of definition as to what the meaning of "provided" is, numbers do not permit any qualitative assessment of what was furnished. For that, the FOIL requests and the Commission responses would have to be compared.

CJA filed two FOIL requests in 2022, both with COELIG. The first, on July 26, 2022, to which I alerted you by CJA's October 6, 2022 letter, requested COELIG's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" – which, pursuant to Executive Law §94.1(e), would have been the same as JCOPE's. The second, on December 27, 2022, reiterated the July 26, 2022 request and expanded it to include:

- records as to why the "written procedures" requested by CJA's July 26, 2022 request had not been furnished – and months earlier;

- records pertaining to the unsigned November 17, 2022 letter of your "Investigations Division" that the "Commission voted to close" CJA's July 8, 2022 complaint on October 25, 2022, *to wit*:

(i) records reflecting the identity of the person in the "Investigations Division" responsible for the November 17, 2022 letter;

(ii) records reflecting compliance by the commissioners with Executive Law §94.10(b) pertaining to disclosure of conflict of interest and recusal;

(iii) records reflecting compliance by the Commission's executive director and staff with comparable disclosure rules pertaining to conflicts of interest – and a copy of such rules;

(iv) records reflecting the specific provision of Executive Law §94 pursuant to which "the Commission voted to close the matter" – and the basis for its supposed "vote" to "close";

(v) records reflecting that the Commission's supposed "vote" was by the Commission's members themselves and after they themselves had "review[ed]" the July 8, 2022 complaint and its October 6, 2022 supplement.

I testified about these two requests at the March 29, 2023 hearing, alerting you that then FOIL Appeals Officer St. John had purported, in response to my February 7, 2023 FOIL appeal, that the requested records "simply do not exist and, therefore, cannot be provided" – and that the only record he had provided, the conflict-of-interest protocol for Commission staff, established that Berland, he, and other staff had flagrantly violated it from COELIG's July 8, 2022 Day 1 to conceal JCOPE's corruption in handling complaints of which they were part.

Despite my testimony, no production was thereafter made in response to the July 26, 2022 and December 27, 2022 FOIL requests.[14]

With respect to the Open Meetings Law, with which the Annual Report purports COELIG has been complying", compliance requires that records and "any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion…during an open meeting" be made publicly-available and posted on the website (Public Officers Law, §103(e)).[15]

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[14] I did receive production in response to my March 27, 2023 FOIL request for records pertaining to the invitations sent to "more than 200 people" about the March 27, 2023 annual meeting – and it established that I was not among them. CJA's webpage for that April 27, 2023 response is here.

[15] Consistent therewith is Section III(d) of the Commission's proposed "Meeting Guidelines", on the agenda of the Commission's April 25, 2023, May 23, 2023, September 6, 2023, and September 27, 2023 meetings, identically reading:

> "Any materials presented to the Commission during the public session of a meeting or proceeding for consideration by the Commission as a body shall be posted on the Commission's website prior to the meeting to the extent practicable and in accordance with applicable law."

This was not uniformly done and, for some meetings where it was most crucial, flagrantly violated.

As illustrative,

- Beginning with your second regular meeting, on October 6, 2022, all meeting agendas, although indicating that the minutes of the prior meeting(s) whose approval was on the agenda were attached, did NOT furnish these attachments on the webpages posting the meetings and agendas;

- Although the agenda for your February 28, 2023 meeting indicates Attachments A-I, the webpage for the meeting did not post Attachments B, D, F, G, H, I – and, with respect to Attachment J, the proposed "Resolution on the Payment of a Per Diem Allowance and Expenses to Members of the Commission", it had been revised prior to the meeting, but the revision was not posted – nor Commissioner Groenwegen's amending resolution.

- No agendas or other materials to be discussed were posted for the March 14, 2023 "Inaugural Committee Day", either for the Commission's meeting or the six committee meetings immediately thereafter of the Administration Committee, the Education-Training Committee, the Legal Committee, the Ethics Committee, and the Lobbying Committee – nor were they thereafter posted.

CHARGE 6
Your Worthless, Conflict-of-Interest-Driven Legal Committee -- & Your Other Ineffectual, Time-Wasting Committees

Your Annual Report also identifies (at p. 28), among your supposed "Accomplishments":

> "Established Committees: In 2022, the Commission began the process of establishing Committees to assess, oversee, and ensure the timely, complete, and effective performance of the Commission's many duties and responsibilities. The first Committee Day was held in March 2023."

The Annual Report does not explicate the meaning of "Committee Day". It was the day on which the six committees listed at page 30, but not the so-called "Special Sub-Committee on Guidance Procedures and Delegation", met for the first time, preceded, on the same day, by a "special" Commission meeting to discuss the role and purpose of committees.[16]

[16] There is no "Special Sub-Committee on Guidance Procedures and Delegation". Rather, on May 23, 2023, a "Special Committee on Guidance Procedures" met for the first time, which, at the June 27, 2023 Commission meeting (VIDEO, at 3hrs/13 mins) was renamed, and so-reflected by the minutes (at p. 11), approved at the July 19, 2023 meeting:

By then, 4-1/2 months had elapsed since the October 25, 2022 Commission meeting at which you had passed a resolution establishing committees, reading, in pertinent part:

> "**WHEREAS**, the Commission finds that in order to efficiently and effectively meet its mandate and its perform its statutory duty to oversee its operations and procedures of the Commission as well as those of its various divisions, promulgate rules and regulations for lobbying, establish education and training programs, fully and fairly investigate and enforce alleged violations of the law and its rules and regulations, and interface with the Commission staff, the creation of various committees is necessary and appropriate.
>
> **NOW THEREFORE, BE IT RESOLVED**, the following committees and subcommittees, designated by an asterisk be created under the terms, conditions and areas of responsibilities herein set forth:
>
> …
>
> 4. Legal
>
> a. Investigation and Enforcement*
>
> b. Litigation (pending and anticipated)*
>
> **RESOLVED**, that the creation and implementation of the foregoing committees and subcommittees shall be accomplished in accordance with the following guidelines:
>
> …
>
> 6. Reports of each committee, including subcommittees, if any, shall be made at each meeting of the Commission.
>
> …
>
> 8. In accordance with Executive Law §94(1)(d), and in consultation with the appropriate division heads, each committee is charged with the duty, on a priority and ongoing basis, to review the rules and regulations and advisory opinions of prior commissions falling within that Committee's jurisdiction. Not only should the committee review the regulations and advisory opinions of prior commissions but also, any new regulations that may be adopted by this commission."

This last sentence of paragraph 8 about reviewing "any new regulations that may be adopted by this commission" was Commissioner Cardozo's friendly amendment to the resolution, occasioned by your approval of regulations, including of §941 *et seq.* for the first time at the October 25, 2022 meeting.

> "A motion was made by Commissioner Whittingham, seconded by Commissioner Caraballo, to recognize the official name of the Commission's special committee as the 'Special Committee on Delegation,' and that it will have two responsibilities: delegation and guidance, with a report on guidance to be presented at the July Commission meeting. The motion carried unanimously."

Nevertheless, the Legal Committee, designated by the October 25, 2022 resolution to have a subcommittee for "Investigations and Enforcement", whose members, announced at your December 16, 2022 meeting, were Commissioner Austin, as its chair, and Commissioners James, Cardozo, Carni, and Groenwegen, undertook NO review, let alone on a "priority and ongoing basis", of new §941 *et seq.* Indeed, at the Legal Committee's March 14, 2023 first meeting (3hrs/4mins – 3hrs/53mins), there was ZERO mention of what it had done over the previous months by way of educating itself and the other commissioners about "Investigations and Enforcement" and "Litigation (pending and anticipated)"[17] – and ZERO mention of any subcommittees with respect thereto or any oversight that had been done. This was because, in fact, the Legal Committee had NOT established an "Investigations" subcommittee or engaged in oversight – and this was apparent from what Legal Committee member Cardozo said during the March 14, 2023 first meeting of the Administrations Committee, of which he was a member:

> "I did have one other thought, I'm not sure it is this committee. One of the subjects that is not dealt with, I don't think, by any other committee at the moment, is any oversight or committee that deals with investigations. And obviously, in some respects, that is the guts of what we're doing and yet it's not specifically listed as a separate committee or I don't, haven't seen it as the specific responsibilities for any committee. I raise it as an issue, I'm not sure how it should be solved." (VIDEO, at 1hr/57mins).

No one corrected Commissioner Cardozo by citing to the Commission's October 25, 2022 resolution establishing an "Investigations and Enforcement" subcommittee within the Legal Committee. The extent of correction was Executive Director Berland saying: "I think there was a proposal", which he did not thereafter elaborate.

Nor did anyone cite to the October 25, 2022 resolution when Chair Davie responded to Commissioner Cardozo's comment by stating that it was his thinking – though he was not sure that he had communicated it – that investigative issues relating to lobbying would go to the Lobbying Committee, but everything else would go to the Ethics Committee – to which Executive Director Berland piped in that this was in terms of substance, as opposed to procedural aspects. As for

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[17] This educational purpose of the committees was recognized in the minutes of the October 25, 2022 meeting:

> "Vice-Chair Austin reported the committee structure is designed to help with the learning curve for the new Commissioners and to help them understand the substantive rules and regulations governing the Commission. Commissioner Edwards added the committee structure would provide better oversight to becoming better educated on the laws and regulations without interfering in the day-to-day operations of staff; rather it would provide oversight. Commissioner Groenwegen asked for clarification that the legal committee and the subcommittee for investigations and enforcement would focus on process rather than the particular cases with which the agency is involved and that the committees would be structured as a species of an administrative function rather than policy making."

Commissioner Edwards' question about handling "policy issues [that] bubble up out of that" – presumably encompassing regulations and litigations – there was a long silence by all when Chair Davie responded that "as to general policy issues related to investigations, we will have to address those, and I am not sure yet".

No minutes were taken of the Administrative Committee's remarkable first and only March 14, 2023 meeting (VIDEO, at 1hr/9mins – 2hrs/5mins)– or of the five other committee meetings held immediately thereafter, in succession. This, in face of Chair Davie's announcement at the immediately preceding Commission meeting of "high-level guardrails" for the committees – among them: "committees will keep accurate minutes and those minutes will be public. That should be a fundamental" (VIDEO, at 1hr).[18]

As for minutes of that March 14, 2023 Commission meeting, you have not posted them – and none were ever on the agenda of any Commission meeting for approval. Presumably, they – like the minutes of the March 14, 2023 committee meetings – were deemed too revealing as to what had been going on, or not going on, over the preceding months with respect to committees – and of what would be an intended future course of malfeasance by you, Executive Director Berland, and staff, with respect to committees – including their foundational "charters" and lists of priorities.[19]

Whether denominated "charter", "charge", "priorities", "action plan", "to do list", no Commission purporting to have committees could rationally and appropriately operate without defining and coordinating committee responsibilities and the specific work each was doing. Such was recognized at your March 14, 2023 Commission meeting – and there was not the slightest reason why each of the six committees meeting that day could not have produced "charters" and lists of their priorities, for discussion and approval ten days later at the Commission's March 24, 2023 meeting. Commissioner pretenses, culminating at the July 19, 2023 meeting, and led by Chair Davie, that putting together committee "charters" and priorities represented a massive amount of work and effort that could not even be accomplished for the September 2023 meetings were utter fraud, enabling the further fraud, endlessly repeated, that confronting issues of Commission delegation of responsibilities to staff was something vast and complicated, which it was not – or that it required a "special committee", which it did not – and that more important than these was for the Commission

[18] Nine weeks later, at the May 23, 2023 meeting, Commissioner Edwards would ask "Should we take minutes? Some committees take minutes, some committees don't. And I think it was recommended by the person who did the FOIL that we not take minutes. I personally like minutes, but I'd like to get your thoughts as to whether or not we should do it. And if we do it, it should be across the board for all committees." (VIDEO, at 2hrs/41mins). "With regard to minutes…I see the value of not keeping them. The question is should we keep minutes…?" (VIDEO, at 2hrs/51 mins). Chair Davie's response: "…I think the committees need to report their actions, at a minimum. I'm agnostic on whether or not committees should keep their minutes", thereupon answering, in response to Commissioner Edwards' further question, that he didn't know "the difference between reporting and minutes".

[19] This "something to hide" is also manifested by the fact that COELIG's webpage for meetings does NOT post the combined single VIDEO of the March 14, 2023 Commission meeting and the March 14, 2023 committee meetings, which can only be found *via* the archives.

to address, as its #1 priority, the suggestions that came out of the March 29, 2023 public hearing, including by legislative recommendations, which is preposterous.

Already by your May 23, 2023 meeting (VIDEO, at 2hrs/30mins – 3hrs/4mins),[20] you were voicing frustration, confusion, and anger about the committees, including your "special" so-called "delegation committee" that was sometimes called the "guidance (procedures) committee" – and which had popped up from what had been a straight-forward assignment to the Legal Committee of the recommendations of the Hogan, Lovells report, made by Chair Davie at your December 16, 2022 meeting (VIDEO, at 1hr/16mins); minutes (at p. 7). These sentiments continued, unabated, at your June 27, 2023 meeting (2hrs/47 mins – 3hrs/20mins) and at your July 19, 2023 meeting, (1hr/47mins - 2hrs/48mins), during which Chair Davie made the understatement: "There is dissatisfaction with the committee structure" (VIDEO, at 1hr/59mins), also declaring "charters are off the table" (2hrs/34mins).

In short, the VIDEOS of the Commission's meetings do not support the Annual Report's pretense that the committees are an "accomplishment". To the contrary, they establish the correctness of Commissioner Groenwegen's view that committees were a cumbersome, time-wasting, way to proceed,[21] which she repeatedly articulated, including, focally, in discussing commissioner *per diems* at the February 28, 2023 meeting – a meeting whose immediately-preceding agenda item was "XI. ROLE AND FUNCTION OF COMMISSION COMMITTEES" that Chair Davie deferred to "March 14th, all day" on the pretext "there is a desire on the part of some commissioners to just have that high-level discussion about committees and this Commission." (VIDEO, 1 hr/54 mins) – which 50 minutes later became the subject of a noteworthy exchange:

VIDEO, at 2hrs/40 mins – 44mins

Groenwegen: …Going into this discussion [about *per diems*], the chair knew of my concerns about committees. I was under the understanding that, until the meeting this morning, that this discussion was going to be preceded by a discussion of committees.

Davie: Um, I never gave you that impression. We clearly have a date set, of March 14th, for committees, for discussion on committees.

Groenwegen: Then I misspoke. I understood that we were going to have on this calendar under item, whatever it was prior to this, a discussion of committees. That's what I thought. And, and, so be it, if I misunderstood or I misread that, so be

[20] The May 23, 2023 minutes, though approved by you at the June 27, 2023 meeting, are not posted.

[21] Without explanation, Commissioner Groenwegen, whose committee assignments, announced at the December 16, 2022 meeting and reflected by the minutes (at p. 7), had been the Administration Committee, the Legal Committee, and the Education-Training Committee and who, at some point before March 14, 2023, replaced Chair Davie as chair of the Administration Committee, is not listed as a member of any committee by the Annual Report's page 30 committee page.

> it. But I do think I am put at a real disadvantage in explaining my concern about this because it all ties together in that we go back to the language of the statute that talks about being compensated for time spent for the performance of the member's duties. That requires a definition of what the member's duties are and one of the things that I have always stated about the committees is my concern that the members start to take on the role of the staff or they supplement the role of the staff. And I think that, that basic conversation about understanding our role as members, *vis a vis* the role of the executive director and the role of the staff, we've never had that conversation. It's another one I've suggested to both the chair and the executive director we have because it all comes back to that. Understanding what we as members are expected to do. I agree with Commissioner Whittingham, I don't see my role as just being a titular role of a commissioner. But nor do I see my role as running this organization on a day-to-day basis. I see it very much the responsibility that we look to the staff who are experts in ways we are not, that we, in the first instance, we rely on them. But, if I could just finish, Commissioner Edwards, it doesn't mean we stop there. Our role is an oversight role, it's to ask the right questions, it's to ask hard questions, but I think we ask those questions in public. We ask the questions and if we don't get good answers or complete answers then we ask them again or we do whatever we need to do to satisfy ourselves that that our vision as the commission members, the policy makers, that we know that's being executed. And there may be times where the chair appropriately says to a group of us or one of us, look into this, look into this, I'm making this part of your duties. Perhaps someday we'll have committees that have charges, that we all agreed to, we know what they are doing and why they exist, and what their work-product is, but we don't have that now. And I think this, this, this role confusion goes to the heart of what the members do and we can't decide what we get compensated for, in fulfilment of the members' duties, until we've, we've discerned that.

As evident from the March 14, 2023 committee meetings, your commissioner responsibilities are limited, discrete, manageable – and readily accomplished. Notably, in contrast to Commissioner Groenwegen's adept chairing of the Administration Committee's March 14, 2023 meeting (VIDEO, at 1hr/9mins – 2hrs/5mins), focused on her drafted committee charter/charge and priorities that she had circulated, in advance of the meeting (VIDEO, 3hrs/5mins - 53mins),[22] Vice Chair Austin

[22] These were essentially finalized at the meeting. Yet, surprisingly, Commissioner Groenwegen did not present these at the March 24, 2023 meeting for Commission approval, or at any subsequent meeting, even though, at her instance, Commission approval of the charters was to be the express protocol, going forward. As reflected by the minutes:

> "Commissioner Groenwegen stated that it was her understanding that the entire Commission would be approving each committee's charter and that there is value in having the commission as a whole consider and approve each committee's charter. After a discussion of

handed over the Legal Committee's meeting to General Counsel St. John and Deputy General Counsel Bhatt, who conspicuously did not orient the members to the operations of the Investigations and Enforcement Division and the policy and litigation issues arising therefrom that would be within their purview (VIDEO, 3hrs/4mins – 3hrs/53mins), sharply contrasting to the nuts-and-bolts orientation about the Ethics Unit and about the Hogan, Lovells report that Ethics Director Sande would give to Ethics Committee members at their meeting (VIDEO, 3hrs/54mins – 4hrs/35mins). Instead, and to soak up time, General Counsel St. John made a nearly half-hour substantive presentation about a commissioner code of ethics and recusal policy – purporting these to be the Legal Committee's "high priority" – when such were properly matters for all commissioners, and, if assigned to a committee, belonged to the Ethics Committee, and, in any event, was the most brazen fraud by him, other staff, and you, considering the purported Commission "vote to close" CJA's July 8, 2022 complaint – and his February 17, 2023 response (& here) to my February 7, 2023 FOIL appeal pertaining thereto.

Your September 6, 2023 special meeting merged the Legal Committee into the full Commission, prefiguring the end of the committees, manifest at your September 27, 2023 meeting (VIDEO, 1hr/12mins – 37mins), with no resistance from anyone, including from Commissioners Edwards, Caraballo, and Wittingham, who – notwithstanding their previously-stated views – gave but feeble complaint to being in the dark and out-of-the-loop about Chair Davie's appointment of "working groups" that were to be the *modus operandi* for the foreseeable future, essentially the concept championed by the absent Commissioner Groenwegen.

Officially TESTING the Commission's Unofficial Reconsideration/Renewal Remedy by Resubmitting CJA's July 8, 2022 Complaint and October 6, 2022 Supplement Based on the Within Evidence that the November 17, 2022 Staff Letter that the Commission "Voted to Close" It is Indefensible

At your September 6, 2023 special meeting (VIDEO, at 1hr/18mins), Deputy Counsel Bhatt endorsed Commissioner Caraballo's speculation that "unofficially" reconsideration/renewal is available to complainants whose complaints are "closed":

> Caraballo: So, so the complainant will get a letter that would say why it was closed. And, I guess, if they have a basis, they could write a letter, saying, you know, you overlooked this important issue that I did bring to your attention previously, or to renew, I didn't give you this, and I should have. So, we do have that, we do have that mechanism, unofficially.

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the role of the committees, Interim Chair Davie stated that as each committee decides on its charter of responsibilities, it will bring it back to the Commission for approval by the full commission."

Not included in the minutes, but stated by Commissioner Groenwegen (VIDEO, at 33 mins), was that she would be furnishing the Administration Committee's "formal charge" to the Commission for its approval.

Bhatt: Unofficially, right. And also complainants can bring in another complaint. They can say, okay, you didn't look at this, I'm going to give you. They can just bring in another complaint.

Caraballo: I see.

Bhatt: So if their complaint was closed, um, you know, then and they feel that it was closed wrongly, they can submit another complaint with more information and it will be opened and investigated, just like any other complaint.

Caraballo: So that's enough of, that's a sufficient remedy.

Bhatt: I'm sorry what?

Edwards: And that's articulated in the decision, the letter?

Bhatt: Um, I don't know what would be articulated in the letter. The letter is just a general closing letter that the matter was closed, but, you know, in the same manner that they want to bring any other complaint, they would just bring, they can bring, there is nothing precluding them from bringing the same complaint to us.

Obviously, if this "unofficial" reargument/renewal remedy existed, my March 29, 2023 testimony should have sufficed to trigger it, by its final sentence, which, with the paragraph preceding it, read:

> "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.[fn8] 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'" (at p. 3).

In any event, I now officially test the efficacy of your "unofficial" reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint and its October 6, 2022 supplement, which I do based on the "specific and credible evidence" presented by my March 29, 2023 testimony and the further elaboration of that evidence by the above, establishing that your unsigned November 17, 2022 closing letter is procedurally and substantively indefensible.

* * *

As with the July 8, 2022 complaint and October 6, 2022 supplement, I conclude with the same attestation of truthfulness as Albany County District Attorney P. David Soares uses for public corruption complaints filed with his Public Integrity Unit:

> "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."

In further support of the truth of all the foregoing – and giving it further evidentiary value – my accompanying complaint form is notarized.

Thank you.

s/Elena Ruth Sassower

EXHIBIT A

Transcription by Elena Sassower from the VIDEO of COELIG's September 6, 2023 Special Meeting

VIDEO, at 50mins

Austin: Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am going to mark that one as rejected.

VIDEO, at 1hr/8mins-1hr/22mins

Austin: Number 16 is from Elena Sassower, asking that letters closing complaints be by vote of the Commission and indicate 30 days in which a complainant may seek reconsideration closing the matter, similar to what the Appellate Division does and various rules of civil procedure.

Staff responds that that would require an amendment of the Executive Law 94.10 for rehearing, reconsideration. There are other procedural alternatives to an aggrieved party from a decision that we make, and that's through the court in an Article 78. So parties are not without their remedy, beyond an appeal before us. So, with that in mind, is there any discussion with regard to number 16?

Ayres: Yeah, Mr. Vice Chair, I don't agree that we would need an amendment to the Executive Law to create a rehearing right. I think an agency can do that by regulation. I'm not saying it's a good idea, but I don't agree that that we couldn't create it. And I think that since we already have an issue that's been raised for this Committee to consider, which is what sort of notice is given to a complainant when we close a case, I believe this was raised a couple of months ago and we have it on our list, our to-do list for this Committee, I think we should take up this suggestion, along with the broader question as to what sort of information is provided to a complainant when we close a case. So, I hesitate to say this because I feel like it's going to cut off debate, but I may be making a motion to table here. But I don't want to stop anybody else from commenting, especially staff.

Austin: Is there a second? The motion to table for consideration is not under discussion. Is there any other discussion with regard to number 16?

Davie: I'd just like to hear more about the point that Commissioner Ayres was making.

Austin: Commissioner Ayes, do you want to elaborate? And then Commissioner James.

Ayres: Sure. So, my view is that if we send somebody a letter that says we're closing your case, I don't think we need and they send something back saying, hey you've overlooked something, I don't think we need an explicit statutory permission to correct a mistake. The staff recommendation is phrased in terms of a rehearing or reconsideration right. And it may be strictly speaking true that a complainant doesn't have a formal right that is an entitlement to force us to reconsider a decision if we're wrong, but I do think that an agency has the power if it wants to revisit its decision and to give itself, for example, 30 days in which to hear from somebody before deciding whether it wants to reconsider its decision. In other words, I don't think the Executive Law forbids us from reconsidering a decision at the end or anyway, that's my view. I know Commissioner Groenwegen seems to have a direct response and I know Commissioner James.

Groenwegen: All I would say is that I agree we could do that, but we'd have to do it by regulation so as to ensure uniformity, that's the only thing.

Ayres: Yeah. And I'm not saying I support doing it, but I disagree with the idea that we would need a statute to do it.

Austin: We lost sound.

Ayres: No. We were done.

Austin: Commissioner James.

James: I think the closing [unintelligible] considerable consideration, that we should be obliged to reopen it, if they make a request within 30 days. They do have an alternative to file an Article 78. I would, I would reject this.

Austin: You wouldn't

[*Inaudible*]

Austin: Okay. Commissioner Whittingham.

Whittingham: Okay, I didn't quite hear what Commissioner James said, but I wanted to hear further from staff if, why they think it's not a good idea to have this period, this wait period because I am aware that sometime reconsideration has resulted in a change in decision because something might be expanded upon, clarified in some way, so I just wanted to hear from staff why it is they believe it's not a good idea.

Austin: Staff?

Berland: Yeah, the principle reason is that we don't have a mechanism internally to make

independent determinations if, what we're looking at in effect is an appellate procedure. We do have instances in which the executive director is empowered to make certain determinations, certain exemptions from, with respect to FDS filings, for example. We do have a procedure, and the statute contemplates a procedure where the applicant can then go to the Commission, in effect appealing that, that ruling. But with respect to procedures like the handling, the closing, in particular, of complaints, where the Commission has already passed on them, absent the circumstance that Commissioner Ayres refers to where perhaps we, whether staff or the Commission has overlooked a point or maybe the applicant hasn't properly presented something or hasn't artfully presented something, and there is an error to correct. To have a routine procedure where every determination we make is subject to eternal reconsideration before it becomes final, before there's an Article 78, seems to me to be inconsistent with the plan of the statute. The statute does indicate where Article78s are appropriate and where there are internal procedures for, you know, and that's why it's our first blush view that a statutory change would be required to have an appellate mechanism of some kind internally.

Austin: Commissioner Edwards?

Edwards: Is it possible if we were in touch with the complainant, with the person whose complaint is being reviewed, prior to making our decision, to say this is where this is going, do you have anything else you want to give us or to reconsider?

Austin: I would think that's a burden on the staff.

Edwards: So then there is no method of appealing this? Our decision is final?

Berland: No, no. I'm sorry. As the vice chair has pointed out, the statute contemplates and, in fact, it is a feature of law in New York. is that if someone is aggrieved by an administrative determination, a determination of our agency, they can go to court and commence a so-called Article 78 proceeding, calling it into question. I don't disagree that it isn't useful to have a mechanism where, if we have erred in some way, just missed a point, we've applied the wrong principle of law, or misunderstood a complaint and dismissed it, it does make sense for the applicant, for the complainant, to be able to come back and point out, you know I think you, you missed the fact that [*inaudible*] misapprehension, on your part, whatever the basis for the determination was and maybe a separate mechanism for that. Certainly that, that can take place on an *ad hoc* basis. But, but I don't disagree with Commissioner Groenwegen that you should try to have a formalized approach so it's not totally *sui generis* every time something like that occurs.

Edwards: So then you think you agree with me?

Berland: Oh, I agree with you, yes. There are instances where there is an egregious mistake

made. That exists in civil practice in the courts, where you can go back to a judge and seek reargument, reconsideration in a very narrow group of circumstances, not where you disagree with the outcome, but where you think the court has misapprehended or overlooked something.

Caraballo: So, a complainant will get a letter saying that their complaint was dismissed or closed and that complainant does have a right to bring an Article 78?

Berland: [*Laughing*] There are jurisdictional questions.

Caraballo: Yeah, I mean it seems to me that the person who's the target of, if there's a finding that there was a substantial basis, they would have an Article 78 –

Berland: Absolutely.

Caraballo: – but the complainant probably would not have an Article 78, is that right?

Bhatt (?): I don't think, um.

Edwards: Right.

Caraballo: I don't think they would be a person aggrieved, I think it's an interesting question, I guess.

Berland: It's an interesting question that has been litigated and really it does depend on the circumstances and how you interpret the statute with respect to complaints. Complaints are only one way in which matters are initiated by the agency.

Caraballo: So, so the complainant will get a letter that would say why it was closed. And, I guess, if they have a basis, they could write a letter, saying, you know, you overlooked this important issue that I did bring to your attention previously, or to renew, I didn't give you this, and I should have. So, we do have that, we do have that mechanism, unofficially.

Bhatt: Unofficially, right. And also complainants can bring in another complaint. They can say, okay, you didn't look at this, I'm going to give you. They can just bring in another complaint.

Caraballo: I see.

Bhatt: So if their complaint was closed, um, you know, then and they feel that it was closed wrongly, they can submit another complaint with more information and it will be opened and investigated, just like any other complaint.

Caraballo: So that's enough of, that's a sufficient remedy.

Bhatt: I'm sorry what?

Edwards: And that's articulated in the decision, the letter?

Bhatt: Um, I don't know what would be articulated in the letter. The letter is just a general closing letter that the matter was closed, but, you know, in the same manner that they want to bring any other complaint, they would just bring, they can bring, there is nothing precluding them from bringing the same complaint to us.

Edwards: Would it make sense to include that in the letter though?

Caraballo: No, because we don't want to keep –

Austin: In other words, then we'll just have serial, serial complaints and I don't think that's what we want.

Cardozo: Right.

Austin: Commissioner Whittingham and then Commissioner Cardozo.

Whittingham: Yeah, I would just ask to table and go back to what Commissioner Ayres said. Based on the response that I receive, I am not persuaded that, you know, this is the route we should take, but we can table it and ask for further comments by staff. We have raised a couple of issues that say under these circumstances, it might be a good idea to have reconsideration. It's not unheard of. It's more, it's pretty typical, we even have it in, I think, yes, we do have an Article 78, but that's a lot more burdensome I would think for the average person, for the public to go to court. So if we have this mechanism, it might be helpful.

Austin: Alright. I hear a motion to table. Is there a second?

Edwards: Second.

Ayres: Um, second – and strongly agree with what Commissioner Whittingham said. Article 78 – asking a whistle-blower to file an Article 78 is not a great approach.

Austin: You have been second. All in favor of tabling.

Davis: Aye.

Austin: Put your hands up. In favor of tabling? Six in favor. All opposed? Six to three, motion to table is carried. The matter is tabled for addition to a subsequent,

subsequent meeting of the Commission.

Davie: Mr. Chair, maybe tabled with a note that we're asking staff to come back with more of an opinion on this, particularly on Commissioner Ayres' suggestion that agency can change a procedure, perhaps, if I understood it correctly, without necessarily a legislative change.

Austin: All in agreement with that? Okay, that is part of the decision then. It's tabled and referred to staff.

Transcription by Elena Sassower from the VIDEO of COELIG's September 6, 2023 Ethics Committee Meeting

VIDEO, at 13mins

James: (*rapidly read*) The Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving *per diem* allowances that are measured according to the unlawfully raised salaries of Supreme Court justices. Umm.

Caraballo: I, yeah, I move to accept the staff recommendation.

James: Denied.

Caraballo: Denied, however you want to say it.

Austin: The Commissioners are conflicted one?

Caraballo: Yeah.

Austin: What'd you move?

Caraballo: I moved to deny that, to accept the staff's recommendation.

James: Alright. All in favor?

Austin: Aye.

Caraballo: Aye.