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July 20, 2021

TO: Sanford N. Berland, Executive Director
Joint Commission on Public Ethics (JCOPE)

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

RE: JCOPE's violations of Executive Law §94.9(1)(i) by its July 8, 2021 annual report for 2020 – and by ALL its prior annual reports – and DEMAND that it rectify same

On July 8, 2021, as JCOPE's new executive director, you signed a letter addressed to Governor Cuomo and New York's four legislative leaders: Senate Majority Leader Andrea Stewart-Cousins, Senate Minority Leader Robert Ort, Assembly Speaker Carl Heastie, and Assembly Speaker William Barclay, stating:

“On behalf of the Commissioners and staff of the New York State Joint Commission on Public Ethics, I am pleased to present you with the enclosed 2020 Annual Report.”

[This one-sentence letter, appearing at the outset JCOPE's 2020 annual report](#), gives the impression that you are presenting JCOPE's annual report as a courtesy to them, rather than because you are statutorily-required to do so by Executive Law §94.9(1), which, in mandatory terms, states:

“The commission shall...

Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section, provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision nineteen of this section”. (underlining added).

I trust you would agree that the reason the statute requires that JCOPE's annual report be furnished to the Governor and Legislature – and that it contain specific information – is so that they can discharge appropriate oversight over JCOPE's functioning.

As for your transmitted 2020 annual report, although its first sentence (at p. 1) does identify that the report is “mandate[d]” by Executive Law §94.9(1), its second sentence falsely purports compliance therewith, stating: “In accordance with the law, the Commission issues this report for the calendar year 2020...” Indeed, that the report is NOT “In accordance with the law” is facially apparent from simple comparison of the report to Executive Law §94.9(1), whose text is part of the report’s Appendix A (at pp. 58-79), which is Executive Law §94 in full.

Apart from the failure of the report to contain a section “recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission’s conduct” – in other words apprising the Governor and Legislature of statutory changes to improve JCOPE’s functioning – there is no section of the report containing, as subdivision (i) requires:

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

Rather, in the section entitled “Investigation and Enforcement”, which is the last section (at pp. 52-57), directly in front of its Appendix A, is the following (at pp. 55-56):

“The Commission processed 209 investigative matters in 2020. In general, allegations covered a broad range of potential violations of the Public Officers Law.... In addition, some matters involved alleged violations of the Lobbying Act....

In 2020, the Commission issued 20 15-day letters, commenced 12 investigations and settled four matters, two of which had been initiated or commenced in years prior to 2020.

Of the 20 15-day letters sent in 2020, two were sent to candidates for the Legislature, and the remaining 18 went to current and former Executive Branch officials/employees.

A total of 12 investigations were commenced in 2020. Of those, 10 involved current and former Executive Branch officials/employees and two involved candidates for the Legislature. Of the 12 investigations commenced by the Commission, 10 were commenced by a unanimous vote. At the end of 2020, the Commission had 37 open investigations (19 relating to current and former Executive Branch officials/employees, 12 relating to lobbying entities and six relating to members/employees of or candidates for the Legislature) and 62 matters pending further review. ...”

This utterly violates Executive Law §94.9(1)(i) – and so completely that:

- (1) it does not even mention “complaints” and “referrals”, let alone how many of each JCOPE received “which alleged a possible violation within its jurisdiction” – the code phrase for its mandate to issue 15-day letters pursuant to Executive Law §94.13(a);
- (2) it does not furnish the tracking numbers that JCOPE assigned to each “complaint” and “referral”;
- (3) it does not furnish the status of each numbered “complaint” and “referral”.

Were you unaware of this? And were you unaware that such violations in the 2020 annual report repeat comparable violations in each of JCOPE’s prior annual reports, since its first, for 2012? Indeed, even assuming “investigative matters” to be “complaints” and “referrals”, wouldn’t you agree that “20 15-day letters” from supposed “209 investigative matters” – in other words less than 10% – is statistically impossible based on the low bar for “15-day letters” set forth in Executive Law §94.13(a)?

Suffice to say that the ONLY way you could be unaware of the Executive Law §94.9(1)(i) violations in JCOPE’s prior annual reports – to which CJA repeatedly and strenuously objected, beginning more than seven years ago – is if you are unaware of [CJA’s March 5, 2021 sworn complaint to JCOPE and the Legislative Ethics Commission \(LEC\)](#), which stated (at p. 7):

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

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

Are you unaware of CJA’s March 5, 2021 complaint? JCOPE acknowledged it by a [March 16, 2021 e-mail](#), identifying its assigned number as “Complaint # 21-033”. Pursuant to Executive Law §94.13(a), JCOPE was required to send out 15-day letters to the complained-against public officers and thereafter, but within 60 days of receipt of the complaint, to vote on whether to commence a “substantial basis investigation”. 60 days from March 5, 2021 was May 4, 2021 – the week following JCOPE’s [April 28, 2021 announcement](#) of your appointment as its new executive director.

The March 5, 2021 complaint detailed (at pp. 4-5) that the facts and EVIDENCE giving rise to the complaint were largely known to JCOPE, as they were furnished by three prior sworn complaints that CJA had filed with JCOPE:

- [CJA’s June 27, 2013 complaint](#) – which JCOPE acknowledged by a [June 28, 2013 letter](#), identifying no assigned complaint number;

- [CJA's December 11, 2014 complaint](#), also filed with LEC – which JCOPE acknowledged by a [December 16, 2014 e-mail](#), identifying it as “COMPLAINT # 14-229”;
- [CJA's August 31, 2020 complaint](#) – which JCOPE acknowledged by a [September 2, 2020 e-mail](#), identifying it as “Complaint # 20-143”.

The March 5, 2021 complaint particularized (at pp. 5-6) that notwithstanding “the mandatory time frames and statutory duties of Executive Law §94.13 and §94.14”, these three prior complaints remained pending before JCOPE – no notification having even been given to the contrary, as required by Executive Law §94.13(b), which states:

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

It is to further prevent complaints from “disappearing” into a black hole that Executive Law §94.9(1)(i) pertaining to JCOPE’s annual reports exists.

Pursuant thereto, JCOPE’s 2020 annual report was required to have listed CJA’s August 31, 2020 complaint as “complaint #20-143” and its “current status”. Inferentially, too, the 2020 annual report was required to list the status of complaints that JCOPE had received in prior years and resolved in 2020 or, as with CJA’s June 27, 2013 complaint and December 11, 2014 complaint, that remained open. And, of course, as to these two older complaints JCOPE was required to have listed them, by their assigned numbers, in prior annual reports, beginning with those for 2013 and 2014, respectively.

As CJA has repeatedly pointed out, beginning with my [July 18, 2014 letter to JCOPE \(at p. 4\)](#) – which was Exhibit B to CJA’s December 11, 2014 complaint – reiterated by my [June 22, 2015 letter \(at p. 2\)](#), in my advocacy to [the sham 2015 JCOPE/LEC Review Commission](#), including at its [October 14, 2015 hearing \(at pp. 4-5\)](#), and by the summarizing presentation in CJA’s March 5, 2021 complaint (at pp. 5, 7-9), the salutary purpose of Executive Law §94.9(1)(i) in requiring:

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

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

As there is nothing discretionary about Executive Law §94.9(1)(i), CJA again DEMANDS, as previously, that JCOPE rectify its violations of that mandatory statutory provision in each of its annual reports since 2012. And it should start with its 2020 annual report, for which you, as JCOPE's executive director, are immediately responsible.

LEC is also being copied on this letter with a DEMAND that since it statutorily operates in tandem with JCOPE on which it relies for investigation of complaints against legislators and legislative staff, directing complainants to file such complaints directly with JCOPE – and so-facilitating by its website – that it take appropriate action to ensure that JCOPE's handling of those complaints comports with Executive Law §94, including the mandate of Executive Law §94.9(1)(i) pertaining to JCOPE's annual reports.¹ Likewise, that it take appropriate action to rectify its own violative annual reports. As identified by the March 5, 2021 complaint (at p. 7), Legislative Law §80.7(1) comparably requires that LEC's annual reports to the Governor and Legislature contain “a listing of each complaint and referral received by the Commission, the current status of each complaint, and the nature and date of any disposition and any sanction imposed” – a requirement reiterated by LEC's own Article VI of its By-Laws.²

¹ Unlike CJA's December 11, 2014 complaint, filed with LEC, to which I received no response or acknowledgment from LEC, its executive director and counsel, Lisa Reid, responded to CJA's March 5, 2021 complaint by a March 25, 2021 letter, stating:

“We are in receipt of the complaint that you sent to our office on March 5, 2021. Please note that pursuant to the Public Integrity Reform Act of 2011, the jurisdiction to investigate members of the legislature for violations of the Public Officers Law was transferred from the Legislative Ethics Commission to the Joint Commission on Public Ethics (‘JCOPE’). *See* 2011 N.Y. Laws 399; *see also* N.Y. Exec. Law §94, N.Y. Leg. Law §80. JCOPE is therefore the appropriate entity that ethics complaints should be submitted to and we note that you have also sent a copy of the complaint to JCOPE.”

The letter contained no number that LEC had assigned to the complaint.

² On March 8, 2021, I filed a FOIL request with the Governor, Senate, and Assembly for LEC's annual reports, from 2012 to date. Only the Assembly made production, on March 22, 2021 – furnishing LEC's annual reports from 2012 to 2019. None listed complaints “received”. This includes its 2014 annual report, which instead of listing CJA's December 11, 2014 complaint, filed with it, falsely claimed: “In 2014, the Legislative Ethics Commission referred all parties who wished to file a complaint to JCOPE.”

Suffice to add that LEC, like JCOPE, has statutory referral obligations – and the December 11, 2014 complaint (at p. 4) quoted same in expressly requesting that:

“LEC refer this complaint to all relevant authorities, including investigative and prosecutorial officers able to bring an Article 78 proceeding for mandamus to compel the Governor and Legislators to appoint the [JCOPE/LEC] review commission.”^{fn67} (underlining in the original).

Among the relevant authorities to which LEC might reasonably have referred the December 11, 2014 complaint – in addition to the five criminal authorities specified by the complaint – were pertinent legislative committees, as, for instance: (1) the Senate Ethics Committee; (2) the Assembly Committee on Ethics and

Please advise, without delay, whether you will be rectifying JCOPE's Executive Law §94.9(1)(i) violations, starting with the 2020 annual report – and additionally as to how you will be addressing your direct financial interest and other conflicts arising from the fact that all four of CJA's still-pending complaints involve the statutorily-violative, fraudulent, and unconstitutional commission reports by which New York's judges, since 2012, have gotten pay raises – and you were one of those judges during the [nearly four years until your appointment as JCOPE's executive director](#).³

For your convenience, in addition to the above-hyperlinking, I have created a webpage for this letter from which the referred-to EVIDENCE is also accessible. It is here: <http://www.judgewatch.org/web-pages/searching-nys/jcope/july-20-2019-ltr-to-berland.htm>.

Thank you.

cc: Lisa P. Reid/Executive Director and Counsel
Legislative Ethics Commission (LEC)

Guidance; (3) the Senate Committee on Investigations and Government Operations; (4) the Assembly Committee on Governmental Operations; (5) the Assembly Committee on Oversight, Analysis and Investigation; (6) the Senate Committee on Corporations, Authorities, and Commissions; (7) the Assembly Committee on Corporations, Authorities, and Commissions; (8) the Legislative Commission on Government Administration.

³ Three JCOPE commissioners also have direct financial interests, as they, too, were formerly judges whose salaries were boosted by the fraudulent pay raises. These are Commissioners Richard Braun, James McCarthy, and Juanita Bing Newton. Their financial interests are in addition to other conflicts of interest which, as to ALL the commissioners, are substantial. This includes JCOPE Chair Camille Varlack, a member of SUNY's Board of Trustees, who should have been sent, by JCOPE, a 15-day letter in response to CJA's August 31, 2020 complaint against the then 17 members of SUNY's Board of Trustees ([see fn. 1 therein](#)). Her February 2021 appointment to JCOPE by Governor Cuomo – and as its chair, no less – would not have been possible but for JCOPE's wilful nonfeasance with respect to that still-pending complaint, which, pursuant to Executive Law §94.9(1)(i), JCOPE's 2020 annual report was required to have listed as “complaint #20-143”, with its status.