

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, August 1, 2024 9:24 AM
To: 'Fern Whyland'
Cc: 'coog@dos.ny.gov'; 'sterns@nyassembly.gov'; 'goodella@nyassembly.gov'; 'rulemaking@nyassembly.gov'; 'littellj@nyassembly.gov'; 'foil@nysenate.gov'; 'felder@nysenate.gov'; 'skoufis@nysenate.gov'; 'Jacob Ashby'; 'rulemaking@nysenate.gov'; 'Regulations@cpc.ny.gov'; 'Michael.Simons@cpc.ny.gov'; 'info@cpc.ny.gov'
Subject: Request for Clarification of your July 18th response to CJA's July 11th FOIL Request -- PLUS further FOIL Request
Attachments: [6-24-24-rules-comment-superseding.pdf](#)

TO: Assembly Records Access Officer Fern Whyland

This follows up the phone message I left with Barbara yesterday (518-455-4218) regarding my below July 11, 2024 FOIL request, with the above-attached, that you denied, by a [July 18, 2024 letter](#), stating:

“Please be advised that [Public Officers Law \(POL\) §88](#) enumerates those records that are required to be made available by the state legislature pursuant to the Freedom of Information Law (FOIL). In addition to POL §88, the Assembly has adopted a policy which provides that the central administrative records of the Assembly are governed by a similar presumption of disclosure as governs access to executive agency records. This policy has been adopted as [Rule VIII of the Assembly Rules](#). However, since the records you seek would not be central administrative records, this rule is not applicable to your request.” (hyperlinking to your accompanying §88 and Rule VIII).

Are you saying that the Administrative Regulations Review Commission, established by [Legislative Law Article 5-B](#), handles its own FOIL requests? If so, please furnish me with the name of its Assembly records access officer and his/her phone number and e-mail.

In any event, pursuant to [FOIL](#) and [Assembly Rule VIII](#), I request records as to the number of staff the Administrative Regulations Review Commission employs and their compensation, as provided for by [Legislative Law §87\(2\)](#) – and the amount that has been appropriated for the Commission for FY2024-25, not itemized by [the Legislature’s December 1, 2023 proposed budget](#), nor by [the Governor’s Legislative/Judiciary Budget Bill #S.8301/A.8801](#), nor by [the enacted “three-person-in-a-room”-amended Legislative/Judiciary Budget Bill #S.8301-A/A.8801-A](#).

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Thursday, July 11, 2024 8:59 AM

To: 'Regulations@cpc.ny.gov' <Regulations@cpc.ny.gov>; 'Michael.Simons@cpc.ny.gov' <Michael.Simons@cpc.ny.gov>; 'info@cpc.ny.gov' <info@cpc.ny.gov>; 'foil@nysenate.gov' <foil@nysenate.gov>; 'Fern Whyland' <whylandfm@nyassembly.gov>; 'felder@nysenate.gov' <felder@nysenate.gov>; 'sterns@nyassembly.gov' <sterns@nyassembly.gov>; 'skoufis@nysenate.gov' <skoufis@nysenate.gov>; 'Jacob Ashby' <ashby@nysenate.gov>; 'goodella@nyassembly.gov' <goodella@nyassembly.gov>; 'rulemaking@nysenate.gov' <rulemaking@nysenate.gov>; 'rulemaking@nyassembly.gov' <rulemaking@nyassembly.gov>; 'littellj@nyassembly.gov' <littellj@nyassembly.gov>

Subject: FOIL for all comment received to the Commission on Prosecutorial Conduct's April 10, 2024 "Proposed Operating Rules and Procedures", PLUS info as to next steps in rule-making process, including public hearing

TO: Commission on Prosecutorial Conduct
Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, Esq.
Assembly Records Access Officer Fern Whyland

Pursuant to FOIL [Public Officers Law VI], Senate Rule XIV ["Freedom of Information"], and Assembly Rule VIII ["Public Access to Records"], this is to request all comment received pertaining to the Commission on Prosecutorial Conduct's [April 10, 2024 "Proposed Operating Rules and Procedures" \(Sections 10400.1 – 10400.12\)](#), noticed in the Department of State's April 24, 2024 [New York State Register](#), for which the comment period ended on Monday, June 24, 2024.

Please also advise, as requested by my below June 24th e-mail, as to "next steps in the rule-making process, particularly with respect to a public hearing".

Thank you.

Elena Sassower, Director
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, June 25, 2024 4:49 PM

To: 'Regulations@cpc.ny.gov' <Regulations@cpc.ny.gov>; 'Michael.Simons@cpc.ny.gov' <Michael.Simons@cpc.ny.gov>; 'info@cpc.ny.gov' <info@cpc.ny.gov>; 'felder@nysenate.gov' <felder@nysenate.gov>; 'sterns@nyassembly.gov' <sterns@nyassembly.gov>; 'skoufis@nysenate.gov' <skoufis@nysenate.gov>; 'Jacob Ashby' <ashby@nysenate.gov>; 'goodella@nyassembly.gov' <goodella@nyassembly.gov>; 'rulemaking@nysenate.gov' <rulemaking@nysenate.gov>; 'rulemaking@nyassembly.gov' <rulemaking@nyassembly.gov>; 'littellj@nyassembly.gov' <littellj@nyassembly.gov>

Subject: SUPERSEDING Formal Comment -- Commission on Prosecutorial Conduct's April 10, 2024 "Proposed Operating Rules and Procedures"

**TO: Commission on Prosecutorial Conduct
Administrative Regulations Review Commission**

Kindly supersede, with the above-attached, the formal comment I sent yesterday by the below e-mail. The superseding comment corrects typographic errors and adds:

- at page 9, a last paragraph;
- at page 10, hyperlinking and bill numbers for the sponsors' memos for Judiciary Law Article 15-A; and,
- footnotes 3 and 4.

Apologies for any inconvenience.

Thank you.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Monday, June 24, 2024 4:58 PM

To: 'Regulations@cpc.ny.gov' <Regulations@cpc.ny.gov>; 'Michael.Simons@cpc.ny.gov' <Michael.Simons@cpc.ny.gov>; 'info@cpc.ny.gov' <info@cpc.ny.gov>; 'felder@nysenate.gov' <felder@nysenate.gov>; 'sterns@nyassembly.gov' <sterns@nyassembly.gov>; 'skoufis@nysenate.gov' <skoufis@nysenate.gov>; 'Jacob Ashby' <ashby@nysenate.gov>; 'goodella@nyassembly.gov' <goodella@nyassembly.gov>; 'rulemaking@nysenate.gov' <rulemaking@nysenate.gov>; 'rulemaking@nyassembly.gov' <rulemaking@nyassembly.gov>; 'littellj@nyassembly.gov' <littellj@nyassembly.gov>

Subject: Formal Comment -- Commission on Prosecutorial Conduct's April 10, 2024 "Proposed Operating Rules and Procedures"

**TO: Commission on Prosecutorial Conduct
Administrative Regulations Review Commission**

Attached is my timely-filed formal comment to the Commission's on Prosecutorial Conduct's April 10, 2024 "Proposed Operating Rules and Procedures", of which I gave notice by the below.

Please advise as to next steps in the rule-making process, particularly with respect to a public hearing.

Thank you.

Elena Sassower, Director
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, June 21, 2024 3:00 PM
To: 'felder@nysenate.gov' <felder@nysenate.gov>; 'sterns@nyassembly.gov' <sterns@nyassembly.gov>; 'skoufis@nysenate.gov' <skoufis@nysenate.gov>; 'ashby@nysenate.gov' <ashby@nysenate.gov>; 'goodella@nyassembly.gov' <goodella@nyassembly.gov>
Cc: 'rulemaking@nysenate.gov' <rulemaking@nysenate.gov>; 'rulemaking@nyassembly.gov' <rulemaking@nyassembly.gov>; 'Michael.Simons@cpc.ny.gov' <Michael.Simons@cpc.ny.gov>; 'Regulations@cpc.ny.gov' <Regulations@cpc.ny.gov>; 'info@cpc.ny.gov' <info@cpc.ny.gov>; 'littellj@nyassembly.gov' <littellj@nyassembly.gov>

Subject: The Commission on Prosecutorial Conduct's April 10, 2024 "Proposed Operating Rules and Procedures", the April 24, 2024 NYS Register -- & FOIL

TO: Administrative Regulations Review Commission

Senate Co-Chair Felder, Senator Skoufis and Senator Ashby
Assembly Co-Chair Stern, Assemblyman Goodell, & ?

Following up my phone messages and conversations with your staff earlier today – including conversations with the legislative directors of Senate Co-Chair Felder, Assembly Co-Chair Stern, and Senator Ashby – advising that there is a problem with the Administrative Regulations Review Commission’s Senate and Assembly offices, whose e-mail addresses are not indicated by the [New York State Register](#) and whose staff does not pick up calls to their indicated phone numbers, 518-455-5091, 518-455-2731, during normal business hours, nor, apparently, return voice messages indicating urgency, below is my above-entitled yesterday’s e-mail to Commission on Prosecutorial Conduct Chair Michael Simons, to which the only response I received was from the Department of State.

I will have more to say in my formal comment to the Commission on Prosecutorial Conduct’s proposed “Operating Rules and Procedures”, to be e-mailed prior to expiration of the comment period, which, because it falls on June 23th, a Sunday, kicks over to Monday, June 24th, as indicated by the [NYS Register](#) and reflected by the [Commission on Prosecutorial Conduct’s website](#).

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, June 20, 2024 2:06 PM
To: 'Michael.Simons@cpc.ny.gov' <Michael.Simons@cpc.ny.gov>; 'Regulations@cpc.ny.gov' <Regulations@cpc.ny.gov>; 'info@cpc.ny.gov' <info@cpc.ny.gov>
Cc: 'dos.dl.inetcounsel@dos.ny.gov' <dos.dl.inetcounsel@dos.ny.gov>; 'shanice.helena@dos.ny.gov' <shanice.helena@dos.ny.gov>

Subject: The Commission on Prosecutorial Conduct's April 10, 2024 "Proposed Operating Rules and Procedures", the April 24, 2024 NYS Register -- & FOIL

TO: Michael A. Simons, Chair, New York State Commission on Prosecutorial Conduct

The [April 24, 2024 New York State Register](#) states (at p. 14), in bold and italicized (at p. 14), with respect to the Commission's proposed "Operating Rules and Procedures", "***Text of proposed rule and any required statements and analyses may be obtained from: Michael A. Simons, Chair, New York State Commission on Prosecutorial Conduct...***".

Are there "***any required statements and analyses***" beyond what is printed in the [New York State Register](#) at pp. 13-14 – and, if so, I request same.

Also, who wrote what is printed at pp. 13-14 about the Commission's proposed rules – and, specifically, the "Regulatory Impact Statement" purporting that "The proposed rules are consistent with the above statutory authority", *to wit*, "sections 499-a through 499-j of the Judiciary Law" ([Judiciary Law Article 15-A](#)).

Additionally, who drafted the [April 10, 2024 "Proposed Operating Rules and Procedures", Sections 10400.1 - 10400.12](#), posted on the [Commission's website](#)? Were the Commission on Judicial Conduct's "[Operating Procedures and Rules](#)" (22 NYCRR Part 7000) used as a model, in particular:

- [its §7000.1\(k\)](#) – "*Initial review and inquiry*", part of its section entitled "Definitions";
- [its §7000.1\(l\)](#) – "*Investigation*", part of its section entitled "Definitions";
- [its §§7000.3 \(a\) and \(b\)](#), part of its section entitled "Investigations and dispositions".

The Commission on Prosecutorial Conduct's comparable proposed rules are:

- [Section 10400.1\(k\)](#) – "*Initial review and inquiry*", part of its section entitled "Definitions";
- [Section 10400.1\(l\)](#) – "*Investigation*", part of its section entitled "Definitions";
- [Sections 10400.2\(c\) and \(d\)](#), part of its section entitled "Processing of complaints";
- [Sections 10400.5\(b\)](#), part of its section entitled "Investigation Procedures".

Did the Commission members approve the final draft at any meeting by a vote preceded by discussion? If so, was it recorded or were minutes taken – and may I obtain same? Was the vote unanimous?

By the way, I have confirmed today with Senior Attorney Christen Smith of the Committee on Open Government (518-474-2518) that, pursuant to [Public Officers Law §87.1\(b\)](#), accessible from its [website](#), the Commission on Prosecutorial Conduct is required to promulgate rules for public access to records (FOIL). The Commission on Judicial Conduct's website posts its rules for public access to records (22

NYCRR Part 7001) on the same webpage as its 22 NYCRR Part 7000 “Operating Procedures and Rules”, [here](#).

The statute establishing the Commission on Judicial Conduct is [Judiciary Law Article 2-A](#).

Thank you.

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