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November 18, 2024

TO: New York State Commission on Prosecutorial Conduct  
Administrative Regulations Review Commission/New York State Legislature

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

RE: PUBLIC COMMENT to the Statutorily-Violative, Intentionally Obfuscating, and Deficient Revised Operating Rules and Procedures of the Commission on Prosecutorial Conduct – REQUIRING A HEARING

The proposed undated [Revised Operating Rules and Procedures](#) of the Commission on Prosecutorial Conduct [hereinafter “Commission”] replicate the statutory violations, obfuscations, and deficiencies that [CJA’s June 24, 2024 Comment](#) particularized with respect to its originally proposed April 10, 2024 [Operating Rules and Procedures](#).

So, too, the Commission’s entry in the [October 2, 2024 State Register](#) (at pp. 14-17) is **fraudulent** in purporting (at p. 15) that its “proposed rules are consistent with the above statutory authority”, *to wit*, “sections 499-a through 499-j of the Judiciary Law” and are “transparent with the public about the Commission’s procedures” – replicating the identical **fraud** highlighted by CJA’s June 24, 2024 Comment with respect to the Commission’s entry in the [April 24, 2024 State Register](#).

Tellingly, the [Commission’s website](#) has removed the original April 10, 2024 proposed rules and April 24, 2024 Register and furnishes no link to the October 2, 2024 Register. [What it posts, instead](#), is its “[Assessment of Public Comments](#)” to its April 10, 2024 proposed rules and its undated proposed revised rules for a comment period it misleadingly states “will close on November 16, 2024”, notwithstanding the Register identifies, at the outset, in two places, that when a closing date is a Saturday or Sunday, it kicks over to Monday.

That the posted “[Assessment of Public Comments](#)” is not a proper “Assessment” – and cannot be deemed compliant with legal requirements for rule-making or anything else – is obvious, *on its face*. It is not on any letterhead, not signed, not attributed to any person, and contains no legal citation as to why it is being rendered, let alone a prefatory or explanatory statement. It is devoid of any information as to how the Commission went about reviewing the public comments it received, whether it held meetings, in person or electronically, when they were held, whether they were recorded or minutes taken, whether all the commissioners were present and voted on the 72 listed comments, what the votes were, and the reasons for dissents, if any.

It does not disclose the number of commentors who cumulatively furnished the 72 comments, nor anything about who they are, either generically or specifically. It also does not explain why their

actual comments are not appended to the “Assessment” or posted on the Commission’s website, nor reveal that they might be obtained through FOIL – and had already been so-obtained by at least one commentator, CJA, whose [July 11, 2024 FOIL request](#), thereafter reiterated by an [August 1, 2024 e-mail](#), resulted in the Commission’s production of [12 comments attached to an August 29, 2024 e-mail](#). Obviously, the legitimacy of the Commission’s “Assessment of Public Comments”, on which its revised rules are based, requires comparison to the actual comments.

The 72 comments listed by the “Assessment” are not in any stated order, such as by commentator, or by sections of the proposed rules, or by other subject matter. That the listing is largely haphazard – and the comments sheared of their relevant substantiating facts, law, and argument so as to justify responses that baldly state: “The comment was reviewed by the commission and no amendment was determined to be necessary” – or which are otherwise INDEFENSIBLE – is illustrated by the eight comments the Commission extracted from CJA’s June 24 2024 Comment. These are the listed “Comment 7”, Comment “22”, “Comment 28”, “Comment 29”, “Comment 30”, “Comment 38”, “Comment 39”, and “Comment 66” – and they, with the Commission’s “Responses” to them and the Commission’s corresponding summary of both, as printed in the October 2, 2024 Register, are annexed hereto as Exhibit A – together with a brief rebuttal based on CJA’s June 24, 2024 Comment.

As OBVIOUS from [CJA’s June 24, 2024 Comment](#), no honest, properly functioning Commission, faithful to its statutory charge, could have failed, as this Commission has, to adopt each and every change proposed by CJA’s June 24, 2024 Comment in support of its opening assertion:

“the proposed rules subvert [Judiciary Law Article 15-A](#) pertaining to the Commission’s statutory duty with respect to investigation of complaints, set forth in [Judiciary Law §499-f\(1\)](#), and do so by obscuring its clarity, indeed its very existence.

In clear, unequivocal language, [Judiciary Law §499-f\(1\)](#) states:

‘Upon receipt of a complaint

(a) the commission shall conduct an investigation of the complaint; or

(b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.”

(hyperlinking and underlining in CJA’s June 24, 2024 Comment, at p. 1)

Nor could an honest, properly functioning Commission, intent on being honest and properly functioning, have ignored the other aspects of its operations that CJA’s June 24, 2024 Comment identified (at p. 9) as requiring rules:

“pertaining to disqualification of Commission members, other than in the limited circumstances of [Judiciary Law §499-c\(4\)](#), and also staff disqualification, and the availability to complainants of supervisory/reconsideration procedures to review the without investigation dismissal of their complaint – or Article 78 review, available to them. These, however, are not included – nor any rules of procedure for addressing conflict-of-interest of members and staff, either internally, by the Commission, or by recourse to the Commission on Ethics and Lobbying in Government – the latter involving, perhaps, clarification of [Judiciary Law §499-c\(2\)](#) with respect to all Commission members:

‘Membership on the commission by a prosecutor shall not constitute the holding of a public office and no prosecutor shall be required to take and file an oath of office before serving on the commission....’”

Indeed, even the Commission’s omission of rules for FOIL, identified by CJA’s June 24, 2024 Comment (at pp. 6-7) as required, but missing from the Commission’s April 10, 2024 proposed rules, is not rectified by its proposed revised rules – and there is nothing on the Commission’s website indicating that same were separately promulgated and adopted.

[CJA’s June 24, 2024 Comment](#) spans 15 single-spaced pages and contains essential legislative and legal history not only of [Judiciary Law Article 15-A](#), establishing the Commission on Prosecutorial Conduct, but of the statute on which it is modelled, [Judiciary Law Article 2-A](#), establishing the Commission on Judicial Conduct, and of the Commission on Judicial Conduct’s promulgated rules, 22 NYCRR §§7000, *et seq.* As it is **vital** to anyone wanting to preserve and ensure the proper functioning of the new commission, the Comment, therefore, closed with the paragraph:

“I am eager to testify in opposition to the proposed rules at any hearing to be held. Please advise as to what [State Administrative Procedure Act Law, Article 2](#) requires, as I am unable to interpret its provisions with respect thereto and gauge the meaning at p. 13 of the [New York State Register](#): ‘No hearing(s) scheduled’ on the Commission’s ‘proposed rule making’.”

This was echoed by my [June 24, 2024 e-mail](#), transmitting the Comment, stating:

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

The only response to this, a [June 25, 2024 e-mail from Commission Chair Michael Simons](#), made no mention of State Administrative Law Article 2 or a public hearing. It read:

“Thank you [for] submitting comments on behalf of the Center for Judicial Accountability in response to the Commission on Prosecutorial Conduct’s notice of proposed rule making. The Commission has received detailed comments from a wide variety of constituents. In the coming weeks, the Commission will be reviewing and resolving each of those comments. Additional information about adoption or modification of the rules will be posted on the Commission’s website.

Thank you for your interest in the Commission. Comments from the public are an important part of the process of ensuring that our operating rules and procedures appropriately facilitate the Commission's important work.”

2-1/2 weeks later, I sent a [July 11, 2024 FOIL request](#), with the subject line:

“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**” (bold added),

whose message further reiterated my request, from my June 24, 2024 e-mail, to be advised as to “next steps in the rule-making process, particularly with respect to a public hearing.”

Commission Administrator Susan Friedman’s response to this, by [August 2, 2024](#) and [August 29, 2024](#) e-mails, addressed only the FOIL request.

Thereafter, by [a September 20, 2024 e-mail](#), Administrator Friedman stated:

“The Commission on Prosecutorial Conduct has completed its review of the public comments received in response to its proposed operating rules and procedures that were published on April 24, 2024. Based on the public comments, the Commission has made material changes to the rules. The Commission's assessment of the public comments and revised operating rules and procedures will be posted to its website on October 2, 2024 (summaries will be posted to the State Register). The comment period will close on November 16, 2024. Any additional public comments should be sent to [Regulations@cpc.ny.gov](mailto:Regulations@cpc.ny.gov).

Thank you for your interest in the Commission and your previous submission.”

Twelve days later, the October 2, 2024 State Register’s section on the Commission (at pp. 14-17) began with the capitalized and enlarged words:

**“REVISED RULE MAKING  
NO HEARING(S) SCHEDULED”.**

Why is this? Who made the decision not to schedule hearings? And on what basis? The Register does not say. Instead, it regurgitates (at p. 15) the **fraud**, above-recited, that the “proposed rules are consistent with the above statutory authority”, *to wit*, “sections 499-a through 499-j of the Judiciary Law” and are “transparent with the public about the Commission’s procedures” – and the **further frauds**, also regurgitated from its April 24, 2024 Register (at p. 14):

- that they “establish a uniform procedure for the review and investigation of complaints of prosecutorial conduct”;

- that “The benefits of these rules include strengthening oversight of New York’s prosecutors and holding them to the highest ethical standards in the exercise of their duties...and increase public confidence in the criminal justice system”;
- that “Although the Commission on Prosecutorial Conduct is not required to promulgate rules, it was important to do so to ensure there are uniform rules on how complaints would be reviewed and investigated” – and that this was achieved or further achieved by “reviewing the public comments” and “adopt[ing] several of the recommendations”.

These LIES, readily discerned from CJA’s June 24, 2024 Comment and the comments of the ten other non-D.A. contributors, are presumably the justification for “NO HEARING(S) SCHEDULED”.

To enable the ten other non-D.A. contributors to weigh in – and, specifically, as to whether they will join in calling for a hearing – I will be forwarding this Comment to them for their response. So, too, will I forward it to the two D.A. contributors who are, in actuality, all 62 D.A.s by the comment of Richmond County D.A. Michael McMahon, as president of their organizational entity, the District Attorneys Association of the State of New York (DAASNY).

Finally, as [the Commission’s website now posts](#) a [complaint form that lists the 62 counties of the D.A.s’ jurisdiction](#), it is a perfect opportunity to further TEST how the Commission is operating, without codified rules, by filing a facially-meritorious, fully-documented, signed and attested-to-be-true complaint against all 62 D.A.s for investigation by the Commission pursuant to [Judiciary Law Article 15-A](#), and, specifically, its [§499-f\(1\)](#). It is annexed hereto as Exhibit B.

Thank you.

s/Elena Sassower

## **EXHIBIT A**

**#1**

### **The Commission’s “Assessment of Public Comment” that is CJA’s**

“**Comment 7:** A commentator requested that if a complaint is dismissed, the notification should include whether it was dismissed without an investigation, the number of commission members who made such a determination, their identities, and the names of the commission members who recused themselves. The commentator also requested that the complainant be permitted to file a request for reconsideration by the full commission within 30 days of the notification.”

“**Response 7:** The comment was reviewed by the commission and no amendment was determined to be necessary. Quorum is required when considering whether to dismiss a complaint and at least six commissioners is required authorize an investigation; therefore, a vote by the full commission would not change the outcome of the vote.”

### **State Register (at p. 15)**

“**C7:** Commentor requested that notification about dismissed complaints include whether there was an investigation and information about the commissioners who voted.”

“**R7:** No change necessary.”

### **CJA’s Rebuttal, Based on its June 24, 2024 Comment**

In purporting that “no amendment was determined to be necessary”, the Commission’s “Response 7” does not identify the proposed rule to which [CJA’s June 24, 2024 Comment](#) was addressed. It was [proposed 10400.3\(a\) “Dismissal of Complaint”](#):

“If the commission dismisses a complaint, the commission shall so notify the complainant. If the commission notified the prosecutor of the complaint prior to its dismissal, the commission shall also notify the prosecutor of the determination to dismiss the complaint.”

CJA’s Comment (at pp. 4-5) pointed out that this was “simply a repetition of [Judiciary Law §499-f\(1\)\(b\)](#)”:

“...If the complaint is dismissed, the commission shall so notify the complainant. If the commission shall have notified the prosecutor of the complaint, the commission shall also notify the prosecutor of such dismissal. ...”

and asked:

“What is the content of the notification? Will it advise if the dismissal was without investigation based on the Commission having determined that the complaint ‘on its face lacks merit’, explaining this term as failing to state a cause for complaint? And will it furnish the number and names of the Commission members who dismissed the complaint, without investigation – which, pursuant to [Judiciary Law §499-c\(6\)](#) and [Judiciary Law §499-e](#), can have been as few as two members of a three-member panel. Will the notification identify if Commission members recused themselves? How about of procedures for reconsideration by the full Commission?”

The suggested amendment to [10400.3\(a\)](#) was “the addition of two paragraphs, as follows:

1. The notification shall state whether the commission dismissed the complaint, without investigation, based on its determination that the complaint on its face lacked merit or did not state a cause of complaint, the number of commission members who made such determination, their identities, and the names of commission members who recused themselves.
2. The complainant shall also be advised that within 30 days of the notification date he/she may make a written request for reconsideration of the complaint by the full commission.”

The Commission’s “Response 7” also conceals that it disposed of the issue of what its notification to a complainant should include by eliminating the [proposed 10400.3\(a\) “Dismissal of Complaint”](#) from its [revised proposed rules](#). It is now gone, entirely.

Additionally, the Commission’s “Response 7” is FALSE in purporting:

“Quorum is required when considering whether to dismiss a complaint and at least six commissioners is required authorize an investigation; therefore, a vote by the full commission would not change the outcome of the vote.”

As expressly stated by CJA’s June 24, 2024 Comment (at pp. 4-5) – but removed by the Commission, in its “Comment 7” paraphrase – a two-member vote of a three-member panel can dismiss a complaint, without investigation, pursuant to [Judiciary Law §499-c\(6\)](#) and [§499-e](#). Obviously then – and contrary to its “Response 7” – a requested “vote by the full commission would...change the outcome”.

The Commission’s “Comment 7” and “Response 7” should be compared with “Comment 31”, from another contributor<sup>1</sup>:

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<sup>1</sup> This other contributor is [Desiree Yagan, whose comment dated June 24, 2024](#), stated:

“First. Administrator should Not be the Gatekeeper on deciding whether complaint has merit. All complaints received should be presented to All members to review prior to each meeting. Members should have sufficient time to reach each complaint. All Members...to Vote to proceed and investigate the complaint. Ensures No Complaint is Rejected based on the Administrator’s initial review. Screening of complaints against Prosecutors should be



“A commentor stated that the administrator should not be the ‘gatekeeper’ for whether a complaint has merit; that all the commissioners should vote on whether to investigate a complaint; that a complaint is not dismissed based on a ‘few members initial review.’”

and its “Response 31”:

“The comment was reviewed by the commission and no amendment was determined to be necessary. The statute states that only commissioners can authorize an investigation and a quorum is required for commission activity (three-member panels will not be used for authorizing investigations).”

This is sleight of hand, as the commentor’s concern was dismissals of complaints without investigation – and the Commission’s “Response 31” does not say that such would not be by three-member panels. Clearly, too, if “three-member panels will not be used for authorizing investigations”, notwithstanding [Judiciary Law §499-c\(6\)](#), [§499-e\(1\)](#), and [§§499-f\(1\)-\(3\)](#), the Commission should be embodying it in a rule. Tellingly, the Commission offers no reason for not doing so.

Finally, and also deceitful, is “Comment 6”, as to which the Commission states:

“Several commentors requested that a complainant be permitted to file a motion for reconsideration if their complaint is dismissed.”

The Commission’s “Response 6” is:

“The comment was reviewed by the commission and no amendment was determined to be necessary. If a complainant learns of new information after they are notified the complaint was dismissed, they may file a new complaint.”

Although “several commentors” did suggest “reconsideration”,<sup>2</sup> it was not by being “permitted to file a motion”. To the contrary, by an identical chart, they proposed amending [10400.5\(a\)](#) to insert the sentence:

“The complainant shall have the right to submit a written request for reconsideration to the Administrator of the Commission. The Administrator shall have the discretion to grant or deny reconsideration or refer the request to the full Commission, or a subcommittee thereof, for whatever action it deems appropriate.”<sup>fn11</sup>”

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restricted to Clerical – NOT MERIT.

...

Third. All Members will meet to discuss and vote whether to investigate each complaint.

Fourth. Complaints cannot be dismissed based on few members initial review.”

<sup>2</sup> These are the largely *verbatim* identical comments of: (1) [It Could Happen to You, dated June 6, 2024](#); (2) [The Jeffrey Deskovic Foundation for Justice, dated June 14, 2024](#); and (3) a [collective](#) that included them, the New York State Defenders Association, the Law Office of Kian D. Khatibi, PLLC, and various individuals, dated June 24, 2024.



Their chart’s annotating footnote 11 was “N.Y. Comp. Codes R. & Regs. Tit. 22, 1240.7”, as to which they furnished elaborating explanations in identical sections entitled “**5. Complainants Have No Right to Appeal**”, which read:

“The proposed rules grant the Commission the power to dismiss a complaint (Section 10400.3) but do not contain any remedy for a complainant when their complaint has been dismissed in this manner. This complete lack of any appellate remedy is in direct contrast with the state’s Rules for Attorney Disciplinary Matters, which provides that if the Grievance Committee’s Chief Attorney dismisses a complaint, the complainant has 30 days to ‘submit a written request for reconsideration to the chair of the Committee . . . 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.’<sup>fn4</sup> This is far from unusual: a quick review reveals that complainants have a similar right to a limited appeal with attorney ethics complaints in Massachusetts,<sup>fn5</sup> Pennsylvania,<sup>fn6</sup> and California.<sup>fn7</sup> The Proposed Rules must add that a complainant has the right to request reconsideration if their complaint is dismissed.”

The respective footnotes were:

“<sup>fn4</sup> N.Y. Comp. Codes R. & Regs. tit. 22, §1240.7”

“<sup>fn5</sup> <https://www.massbbo.org/s/complaints>

“<sup>fn6</sup> <https://www.padisciplinaryboard.org/for-attorneys/rules/rule/7/disciplinary-board-rules-and-procedures>

“<sup>fn7</sup> <https://www.calbar.ca.gov/Public/Complaints-Claims/Complaint-Review-Process>

As for the Commission’s stating, by its “Response 6”, that “If a complainant learns of new information after they are notified the complaint was dismissed, they may file a new complaint”, this is a deceit. “[N]ew information” is not grounds for “reargument”, but for “renewal” – so, of course, “a complainant may file a new complaint”. In any event, by purporting that “no amendment was determined to be necessary”, the Commission is stating that it has rejected rules alerting a complainant to either reargument or renewal.

## #2

### The Commission's "Assessment of Public Comment" that is CJA's

**“Comment 22:** A commentor requested that the Commission add: ‘Complaint which lacks merit on its face is a complaint which, even assuming the truth of its allegations, does not state a basis for complaint relating to the ‘conduct or performance of official duties of any prosecutor,’ as Judiciary Law Sec. 499-f requires.’”

**“Response 22:** The comment was reviewed by the Commission and no amendment was determined to be necessary.”

### State Register (at p. 16)

**“C22:** Commentor requested that ‘lacks merit on its face’ be defined.”

**“R22:** No change necessary.”

### CJA's Rebuttal, Based on its June 24, 2024 Comment

The Commission's rejection, without reasons, that it define “lacks merit on its face” in its rules is because NO reasons can justify not defining it – and this is OBVIOUS from [CJA's June 24, 2024 Comment](#), highlighting, throughout, that, pursuant to [Judiciary Law §499-f\(1\)](#), the ONLY basis for the Commission's dismissal of a complaint, without investigation, is its determination that “the complaint on its face lacks merit” – a term not appearing anywhere in the Commission's [original proposed rules](#) or now in its [proposed revised rules](#).

### #3

#### The Commission’s “Assessment of Public Comment” that is CJA’s

“**Comment 28:** A commentor requested the rule for ‘initial review and inquiry’ and recommending investigations be amended to: ‘The commission staff shall engage in an initial review and inquiry of the complaint, and based thereon, provide a recommendation to the commission as to whether the complaint is facially-meritorious.’ The commentor also requested that the rule related to the commission’s authorization of a complaint be changed to: ‘Upon receipt of a recommendation from commission staff as to whether a complaint is facially meritorious, the commission shall (1) authorize an investigation of the complaint; or (2) dismiss the complaint upon determining that it lacks merit on its face.’”

“**Response 28:** The comment was reviewed by the commission and no amendment was determined to be necessary.”

#### State Register (at p. 16)

“**C28:** Commentor requested that the rule for ‘initial review and inquiry’ and authorizing investigations be amended.”

“**R28:** No change necessary.”

#### CJA’s Rebuttal, Based on its June 24, 2024 Comment

Here, too, the Commission give no reasons in its “Response 28” because NO reasons can justify its rejection of the requested amending of [10400.2\(c\) and 10400.2\(d\)](#) – and this is OBVIOUS from [CJA’s June 24, 2024 Comment](#), with its reinforcing pages of historical and legal background pertaining to the Commission on Judicial Conduct’s [22 NYCRR §§7000.3\(a\) and \(b\)](#), on which [10400.2\(c\) and 10400.2\(d\)](#) are based. As CJA’s Comment makes clear, leaving [10400.2\(c\) and 10400.2\(d\)](#) unamended enables the Commission to convert its mandatory investigative duty pursuant to [Judiciary Law §499-f\(1\)](#) into a discretionary option, unbounded by any standard.

Indeed, the confusion the Commission created by its 10400.2(c) and 10400.2(d) is illustrated by its “Comment 33” of another contributor<sup>3</sup>:

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<sup>3</sup> This other contributor is the [New York State Defenders Association, Inc., whose comment is dated June 24, 2024](#). Under a first section heading “**1. Rules Should Establish a Standard for Dismissal of Complaints**”, it stated:

“Section 10400.2 of the proposed rules indicates that the Commission can dismiss a complaint unilaterally without completing an investigation but does not discuss how or when that would be acceptable or feasible to do so. The rules need to establish a standard for dismissal, both before and after an investigation. Not every complaint may need to be investigated -- surely there will be some complaints that do not, on their face, allege misconduct. But under the proposed rules, the Commission would have the power to unilaterally dismiss complaints with no clear guidelines, rationale, or reporting requirements,

“A commentor requested that the commission establish a standard for dismissing a complaint before and after an investigation” (underlining added).

The Commission’s “Response 33” was:

“The comment was reviewed by the commission and no amendment was determined to be necessary.”

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which could fundamentally cripple the stated purposes of the Commission.”

## #4

### The Commission's "Assessment of Public Comment" that is CJA's

**"Comment 29:** A commentor stated that the use of the word 'may' in 10400.2(c) gives commission staff the discretion as to whether an initial review and inquiry is necessary and whether to provide a recommendation; however, 10400.2(d) states the commission will decide whether to dismiss a complaint or authorize an investigation upon receipt of a recommendation."

**"Response 29:** The comment was reviewed by the commission and 'shall' was added to 10400.2(c): 'The commission staff may engage in an initial review and inquiry of the complaint and shall provide a recommendation to the commission about the disposition of a complaint.'"

### State Register (at p. 16)

**"C29:** Commentor stated that the word 'may' in 10400.2(c) gives commission staff discretion as to whether an initial review is necessary and whether to provide a recommendation; however, 10400.2(d) states the commission will decide whether to authorize an investigation upon receipt of a recommendation."

**"R29:** The word 'shall' will be added to 10400.2(c)."

### CJA's Rebuttal, Based on its June 24, 2024 Comment

The addition of "shall" does nothing to ensure the Commission's fidelity or that of staff to the mandate of [Judiciary Law §499-f\(1\)](#), requiring investigation of complaints not determined to be facially lacking in merit. CJA's proposed changes to [10400.2\(c\) and \(d\)](#) to achieve that fidelity are quoted in the Commission's separate "Comment 28" – to which its "Response 28" gives no reason for why they were not determined to be "necessary". As OBVIOUS from [CJA's June 24, 2024 Comment](#), NO reason can justify not adopting them.

## #5

### The Commission's "Assessment of Public Comment" that is CJA's

**"Comment 30:** A commentor requested that 'lacks merit' be defined and commented that 10400.2(d) uses 'lacks merit' instead of 'lacks merit on its face.'"

**"Response 30:** The comment was reviewed by the commission and no amendment was determined to be necessary."

### State Register (at p. 16)

**"C30:** Commentor stated that 'lacks merit' is used instead of 'lacks merit on its face'."

**"R30:** No change necessary."

### CJA's Rebuttal, Based on its June 24, 2024 Comment

Here, again, the Commission gives no reasons, because, as highlighted by [CJA's June 24, 2024 Comment](#), NO reasons can justify that the Commission rules do not define "lacks merit on its face" and for [10400.2\(d\) under the section title "Processing of Complaints"](#) to "replace[] the 'on its face lacks merit' determination that is required to be made by the commission if it dismisses the complaint without investigation, pursuant to Judiciary Law §499-f(1)", by the phrase "lacks merit" because, these two terms are:

"NOT the same. A complaint that 'lacks merit' can mean one that, on its face, is meritorious, but is not factually substantiated. Yet, the question of factual substantiation requires investigation – [which 10400.2(d)] dispense(s) with by dismissal."

## #6

### The Commission’s “Assessment of Public Comment” that is CJA’s

“**Comment 38:** A commentor requested the definition of ‘investigation’ be amended to: ‘Investigation is only initiated at the direction of the commission and shall mean the collection and analysis of relevant evidence – starting with requiring a written response to the complaint from the complained-against prosecutor and furnishing it to the complainant for reply, and thereafter, as needed, testimony under oath or affirmation, and obtaining documents, including by subpoena.’”

“**Response 38:** The comment was reviewed by the commission and no amendment was determined to be necessary. The rules provide the prosecutor with an opportunity to submit information at the investigation stage.”

### State Register (at p. 16)

“**C38:** Commentor requested that the definition of ‘investigation’ be amended.”

“**R38:** No change necessary.”

### CJA’s Rebuttal, Based on its June 24, 2024 Comment

As highlighted by [CJA’s June 24, 2024 Comment](#) (at pp. 2-4), it is not just the Commission’s definition of “investigation” that requires amending, but the definition of its rule-created “initial review and inquiry”, so that their substantive differences are not obscured, as by the Commission’s [original proposed 10400.1\(k\) and \(l\)](#) – now, identically, [10400.1\(l\) and \(m\) of the proposed revised rules](#):

“*Initial review and inquiry* shall mean the first stage of the commission’s process, in which the commission staff may engage in preliminary analysis and fact-finding to aid the commission in determining whether to authorize an investigation.”

“*Investigation* shall mean an examination of a specific complaint and/or the prosecutor’s conduct, including the collection and analysis of relevant evidence, testimony under oath or affirmation, and documentation, conducted by the commission or its staff. An investigation shall only be initiated at the direction of the commission.”

CJA’s definitions – explicated by its June 24, 2024 Comment and plainly clearer – are:

“*Initial review and inquiry* is the first stage of the commission’s process in which the commission staff reads the complaint and, if requiring further clarity, contacts the complainant, so as to aid the commission with a recommendation as to whether, as Judiciary Law §499-f requires, the complaint is to be investigated, or, if not, dismissed based on a commission determination that on its face it lacks merit.”



*Investigation* is only initiated at the direction of the commission and shall mean the collection and analysis of relevant evidence – starting with requiring a written response to the complaint from the complained-against prosecutor and furnishing it to the complainant for reply, and, thereafter, as needed, testimony under oath or affirmation, and obtaining documents, including by subpoena.”

The Commission’s ONLY explanation for not amending its “Definitions” section for “Investigation”, namely, that “the rules provide the prosecutor with an opportunity to submit information at the investigation stage”, is fraud.

As pointed out by CJA’s June 24, 2024 Comment (at p. 3), the Commission’s “Notice of Investigation” – then [10400.5\(b\)](#) and [now, identically, 10400.3\(b\)](#) under a section title “Investigation Procedures” – states:

“The prosecutor shall be notified in writing of the commencement of the investigation and provided with a copy of the complaint.”

Does the Commission contend that this Notice will not request the prosecutor’s response to the complaint – and within a given number of days? If so, why should this not be stated in Commission rules whose purpose is to assure “uniformity” and “transparency” in procedure? What will be the content of the referred-to “Notice of Investigation”? And what has its content during the current period of the Commission’s operations without formal rules?

Assuming the reasonable – that the Commission’s notice, required by Judiciary Law [§499-f\(1\)\(b\)](#) – does request a response to the complaint from the complained-against prosecutor, isn’t the next step furnishing the prosecutor’s response to the complainant for reply? Isn’t this the protocol of the Appellate Division Attorney Grievance Committees, with respect to complaints – furnishing cognizable complaints to the complained-against attorneys for response and then furnishing their responses to the complainants, for reply. Isn’t this the most efficient way to determine whether a facially-meritorious complaint is substantively meritorious?

Suffice to note that the [New York State Commission on Ethics and Lobbying in Government Executive Law §§94\(f\) and \(h\)](#) (COELIG) – like the [New York State Joint Commission on Public Ethics Executive Law §94](#) (JCOPE) before it – signifies investigation as commenced by a “15-day letter” sent to the subject of a complaint who then has 15 days within which to respond.

## #7

### The Commission's "Assessment of Public Comment" that is CJA's

**"Comment 39:** A commentor requested that after an investigation is authorized that the rules require the prosecutor receive the complaint and they provide a response within 20 days."

**"Response 39:** The comment was reviewed by the commission and no amendment was determined to be necessary. The rules already state that the prosecutor will receive a copy of the complaint. The commission will not require a prosecutor to respond at the investigation stage, but they may provide any relevant information. A response is only required if a formal complaint is filed."

### State Register (at p. 16)

**"C38:** Commentor requested that after an investigation is authorized that the prosecutor respond within 20 days."

**"R38:** No change necessary."

### CJA's Rebuttal, Based on its June 24, 2024 Comment

The Commission does not identify that the requested amendment was to its [original proposed 10400.5\(b\) in the section titled "Investigation Procedures"](#) – and that CJA's June 24, 2024 Comment (at pp. 2-4) demonstrated that such was part of the Commission's "complete subversion of Judiciary Law 499-f(1)", stating:

"Proposed Section 10400.5(b), entitled 'Notice of Investigation', further confuses the situation by a superfluous first sentence which, having no pertinence to the timing and content of the 'Notice', puts the final nail into [Judiciary Law §499-f\(1\)](#). It reads:

'(b) Notice of Investigation. Upon receipt of a complaint or after an initial review and inquiry, the commission may initiate an investigation into the prosecutor's conduct. The prosecutor shall be notified in writing of the commencement of the investigation and provided with a copy of the complaint.' (underlining added).

Dropped is the requirement of proposed Section 10400.2(d) of the Commission's 'receipt of a recommendation from commission staff' based on its 'initial review and inquiry' – or, indeed, of 'initial review and inquiry', as the Commission can here go directly from 'receipt of a complaint' to exercising 'may' discretion to 'initiate an investigation'. Gone entirely is the 'shall' mandate of Judiciary Law §499-f(1) that 'Upon receipt of a complaint (a) the commission shall investigate it, absent the commission's determination that 'the complaint on its face lacks merit'.

Consequently, the four above-quoted sections MUST be revised consistent with Judiciary Law §499-f(1), to be preceded by a section defining ‘on its face lacks merit’ (at p. 3, hyperlinking, underlining, and capitalization in the original).

CJA’s proposed revision to the then 10400.5(b) was:

“(b) Notice of Investigation. Upon the commission’s authorizing investigation of a complaint, the prosecutor shall be notified in writing and provided with a copy of the complaint for his written response within 20 days”,

further explaining it as:

“add[ing] what proposed Section 10400.5, notwithstanding entitled ‘Investigation Procedures’, totally omits, namely, requiring a written response to the complaint from the complained-against prosecutor. **This basic – indeed the obvious starting point of investigation** – is also missing from the definition of investigation in proposed Section 10400.1(1), ...” (bold added).

Tellingly, the Commission’s “Response 38”, though purporting:

“the commission will not require a prosecutor to respond at the investigation stage [to the complaint], but they may provide any relevant information. A response is only required if a formal complaint is filed”,

has NOT embodied this in its [“Investigation Procedures” section of its revised rules – now 10400.3](#). Why not? Is it because it is a LIE? Is it not clear from the balance of 10400.3 and [Judiciary Law §499-f\(4\)](#) that the consequence of a prosecutor not refuting the complaint “at the investigation stage” – which can only be done by responding to it – is that, pursuant to the now proposed [10400.3\(h\) and \(i\)](#), the Commission’s administrator or designee, rather than making findings of fact and conclusions of law to support a recommendation that the Commission dismiss the complaint, will be making findings of fact and conclusions of law to support a recommendation for authorization of “a formal complaint” or other action deleterious to the prosecutor – with the Commission’s votes thereon being by the full Commission, pursuant to [Judiciary Law §499-e\(1\)](#), [§499-c\(6\)](#), and the now [proposed 20400.8](#).

## #8

### The Commission's "Assessment of Public Comment" that is CJA's

**"Comment 66:** A commentor requested a rule about how three-member panels will be configured."

**Response 66:** The comment was reviewed by the commission and no amendment was determined to be necessary. Additional information will be provided in guidance documents."

### State Register (at p. 17)

**"C66:** Commentor requested a rule about how three-member panels will be configured."

**"R66:** Additional information will be provided in guidance documents."

### CJA's Rebuttal, Based on its June 24, 2024 Comment

This is a deceit, covering up that just as [CJA's June 24, 2024 Comment](#) (at p. 9) had no answer, so, too, the Commission has none to the serious problem it identified concerning the Commission's [originally proposed 20400.10 "Quorum Voting](#), now, [identically, its proposed 20400.8](#), which is:

"simply a replication of Judiciary Law §499-c(6) and §499-e – and does not identify how panels consisting of three members are to be designated and can achieve the equal balancing of prosecutorial and defense attorneys that is the hallmark of Judiciary Law §499-c(1), absent the participation, on each panel, of the chief judge's appointee who is 'a full time law professor or dean at an accredited law school with significant criminal law experience' – and to prevent a situation where the two-member quorum of a three-member panel are both prosecutorial attorneys or both defense attorneys, or where all three panel members are prosecutorial attorneys or defense attorneys."

As for "guidance documents", they are supposed to be these rules.

## EXHIBIT B

# Commission on Prosecutorial Conduct Complaint Form

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Fill out the required fields to file a complaint with the New York State Commission on Prosecutorial Conduct.

\*indicates a required field

### Contact Information

First Name: Elena  
Last Name: Sassower  
Email Address: elena@judgewatch.org  
Phone Number: 914-421-1200  
Street Address: 10 Stewart Place, Apt 2DE  
City: White Plains  
State: New York  
Zip: 10603

---

### Complaint Information

Prosecutor's Name\*

see attached

Prosecutor's County\*

- Albany County
- Allegany County
- Bronx County
- Broome County
- Cattaraugus County
- Cayuga County
- Chautauqua County
- Chemung County

- Chenango County
- Clinton County
- Columbia County
- Cortland County
- Delaware County
- Dutchess County
- Erie County
- Essex County
- Franklin County
- Fulton County
- Genesee County
- Greene County
- Hamilton County
- Herkimer County
- Jefferson County
- Kings County (Brooklyn)
- Lewis County
- Livingston County
- Madison County
- Monroe County
- Montgomery County
- Nassau County
- New York County (Manhattan)
- Niagara County
- Oneida County
- Onondaga County
- Ontario County
- Orange County
- Orleans County
- Oswego County
- Otsego County
- Putnam County
- Queens County

- Rensselaer County
- Richmond County (Staten Island)
- Rockland County
- Saint Lawrence County
- Saratoga County
- Schenectady County
- Schoharie County
- Schuyler County
- Seneca County
- Steuben County
- Suffolk County
- Sullivan County
- Tioga County
- Tompkins County
- Ulster County
- Warren County
- Washington County
- Wayne County
- Westchester County
- Wyoming County
- Yates County

**Does the alleged misconduct relate to a criminal case?\* (If no, please skip to Summary of Complaint section.)**

- Yes
- No

**Are you the defendant in this matter?\***

- Yes
- No

**What is the date(s) of charged crime(s)?\***

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**What are the charges?\***

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**What is the case number?\***

---

**Is this case still pending?\*** (If no, please skip to “What was the outcome?”)

Yes

No

**Is the trial scheduled?\***

Yes

No

**What is the date?\***

---

**When is the next court appearance?\***

---

**What was the outcome?\***

Found guilty after trial

Found not guilty after trial

Guilty Plea

Dismissed

**Is there an appeal pending?\***

Yes

No

**Is there any other case related litigation (e.g. civil lawsuit)?\***

Yes

No

**Do you/did you have an attorney in this matter?\***

Yes

No

**If yes, Attorney information:**

First Name\*: \_\_\_\_\_

Last Name\*: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

---

**Summary of Complaint\***

**Please describe the alleged misconduct. Please provide as much detail as possible, including, but not limited to (summary of complaint may be submitted as an attachment):** ✓

- What happened
- When the alleged misconduct happened
- Any individuals who have personal knowledge of what occurred

see attached

**Have you reported the alleged misconduct to an Attorney Grievance Committee?\* (If no, please skip to "Have you reported the alleged misconduct to any other State agency?")**

- Yes
- No

*See attached*

**What is the date of reporting?\***

---

**Did you receive a response?\***

- Yes
- No

**What was the response?\***

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**Have you reported the alleged misconduct to any other State agency?\***

- Yes
- No

*See attached*

**What is the date of reporting?\***

---

**Did you receive a response?\***

- Yes
- No

**What was the response?\***


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**Please provide any materials that are relevant to your complaint and submit with the completed form.**

**Judiciary Law 499-f requires that complaints be signed and in writing.\***

Signature:  Date: November 18, 2024

**Mail to:** Commission on Prosecutorial Conduct, Attn: Susan Friedman, P.O. Box 90398,  
Brooklyn, NY 11209

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

November 18, 2024

TO: New York State Commission on Prosecutorial Conduct

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

RE: Complaint against New York State's 62 District Attorneys for public corruption, born of conflicts of interest pertaining to their D.A. salaries & their relationships with state executive, legislative, and judicial officers within their geographic jurisdictions, whose flagrant violations of penal laws the D.A.s are NOT investigating and prosecuting by reason thereof

Pursuant to [Judiciary Law Article 15-A](#) and, specifically, its [§499-f\(1\)](#), CJA files this facially-meritorious, fully-documented, signed, and attest-to-be-true complaint against New York's 62 district attorneys for willfully violating the duties of their office to enrich themselves by D.A. salary increases they know to be the product of "false instrument" commission reports – and, in furtherance thereof, for "protecting" from investigation and grand jury indictment the high-ranking public officers within their geographic jurisdictions who are beneficiaries of the same or comparable "false instrument" commission/committee reports and/or complicit therein, in flagrant violation of penal laws including:

[Penal Law §175.35](#): "Offering a false instrument for filing in the first degree";

[Penal Law §195.20](#): "Defrauding the government";

[Penal Law §190.65](#): "Scheme to defraud in the first degree";

[Penal Law §496.05 \("Public Trust Act"\)](#): "Corrupting the government in the first degree";

[Penal Law §496.06 \("Public Trust Act"\)](#): "Public corruption";

[Penal Law §155.42](#): "Grand larceny in the first degree";

[Penal Law §460.20](#): "Enterprise corruption";

[Penal Law §195](#): "Official misconduct";

[Penal Law §105.15](#): "Conspiracy in the second degree";

[Penal Law §20.00](#): "Criminal liability for conduct of another".

This warrants the governor removing the D.A.s from office, pursuant to [Article XIII, §13\(b\) of the New York State Constitution](#), which this Commission is empowered to effectuate – and their disbarment as attorneys by New York's Attorney Grievance Committees, to which this Commission is empowered to make referral with respect to their violations of [New York's Code of Professional Conduct](#), proscribing, *inter alia*, conflicts of interest, such as embodied in the [National Prosecution Standards of the National District Attorneys Association](#) (§1-3.3(d) "Specific Conflicts", §1-3.4 "Special Prosecutors", §1-3.5 "Handling Conflicts"), and requiring reporting of attorney misconduct "to a tribunal or other authority empowered to investigate or act upon such violation" (NY Code of Professional Conduct, §8.3).

The facts and evidence substantiating this complaint are furnished by [CJA's July 18, 2024 NOTICE & grand jury/public corruption complaint](#) to all 62 D.A.s and to their organizational entity, the District Attorneys Association of the State of New York (DAASNY), entitled:

“Your D.A. salary increases, the judicial salary increases on which they are based, and the violations of New York’s penal laws by state legislators and others within your geographic jurisdictions, established by CJA’s February 23, 2024 grand jury/public corruption complaint to Albany County D.A. Soares that he has been ‘sitting on’”.

It began, as follows:

“This is to give you NOTICE that the district attorney salary increases that took effect on April 1, 2024 as a result of the statutory link between D.A. salaries and judicial salaries did so because of Albany County D.A. Soares’ willful nonfeasance with respect to [CJA’s February 23, 2024 grand jury/public corruption complaint](#) to him, proving, by an enclosed [January 18, 2024 Opposition Report](#), that the December 4, 2023 Report of the (3<sup>rd</sup>) Commission on Legislative, Judicial and Executive Compensation, raising judicial salaries, is a ‘false instrument’, violative of penal laws...

The facts pertaining to D.A. Soares’ nonfeasance, born of financial interests expressly proscribed by the Albany County Code of Ethics, are set forth by [CJA’s July 17, 2024 complaint against him to the Albany County Ethics Commission](#), sent to him with an [accompanying letter](#).”

Seven single-spaced pages later, it concluded, stating:

“...please confirm that by reason of your financial and other conflicts of interests pertaining to this July 18, 2024 grand jury/public corruption complaint, involving your D.A. salaries and state legislators and others with whom you have relationships, you will be recusing yourselves – and advise as to the protocol you will be employing for securing a ‘special prosecutor’ or whether you will be referring the matter to an ‘appropriate governmental authority’, as indicated by Section 1-3.5 of the National Prosecution Standards of the National District Attorneys Association,<sup>fn3</sup> hereinabove quoted from CJA’s June 29, 2020 grand jury/public corruption complaint to D.A. Fitzpatrick, replicated in all the 61 other 2020 grand jury/public complaints to you and your predecessors – and quoted, as well, at page six of CJA’s February 23, 2024 grand jury/public corruption complaint to D.A. Soares, quoting from [CJA’s June 4, 2020 grand jury/public corruption complaint](#) to him.

So that I may be guided accordingly, please let me hear from each of you by no later than two weeks from today, August 1, 2024, with respect to both the NOTICE and July 18, 2024 grand jury/public corruption complaint, herewith filed with you.”

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<sup>fn3</sup> This is now Section 1-3.6 of the [2023 National Prosecution Standards \(4<sup>th</sup> edition\)](#).”

It was e-mailed to the D.A.s [on July 18, 2024](#) and thereafter – and there was no response from a single one. This includes DAASNY President/Richmond County D.A. Michael McMahon, who submitted [June 11, 2024 comment](#) to your proposed rules, and Nassau County D.A. Anne Donnelly, who also submitted [June 11, 2024 comment](#).

For your convenience, here is [CJA's webpage for the July 18, 2024 NOTICE & grand jury/public corruption complaint](#), on which the transmitting e-mails are posted, including the many successive e-mails to the D.A.s and Acting D.A.s on 2024 election ballots.

The complaint form posted on the Commission's website asks whether the complained-of misconduct was reported "to an Attorney Grievance Committee". The answer to that question, with respect to the July 18, 2024 NOTICE & grand jury/public corruption complaint, is no. However, as reflected therein (at pp. 5-6), I did file an [October 14, 2016 complaint against the 62 then D.A.s and against former D.A.s. who had been members of the Commission to Investigate Public Corruption](#) for their conflict-of-interest-driven corruption involving their D.A. salaries and relationships. CJA's webpage on which the October 14, 2016 complaint is posted – and the responses of the Attorney Grievance Committees of all four judicial departments dumping it – is [here](#).

Similarly with regard to the further question on the form as to whether the complained-of misconduct was reported "to any other State agency", the answer with respect to the July 18, 2024 NOTICE & grand jury/public corruption complaint is no. However, as also reflected therein (at pp. 4-5), in 2013-14, during the life span of the D.A.-stacked Commission to Investigate Public Corruption, I reported to it what was going on, simultaneously complaining about its conflicts of interest. It never addressed its conflicts of interest and dumped the [July 19, 2013 complaint](#) and [January 7, 2014 supplement](#) I had filed with it by a [February 7, 2014 letter](#) falsely purporting that they were "outside our mandate". This is particularized by my [April 23, 2014 verified complaint](#) in support of an order to show cause to intervene in the Legislature's declaratory judgment action against the Commission to Investigate Public Corruption. CJA's evidentiary webpage for it is [here](#).

The names of the here complained-against 62 D.A.s are, as follows:

Albany County D.A. P. David Soares  
Allegany County D.A. Ian M. Jones  
Bronx County D.A. Darcel D. Clark  
Broome County D.A. F. Paul Battisti  
Cattaraugus County D.A. Lori Rieman  
Cayuga County D.A. Brittany Antonacci  
Chautauqua County D.A. Jason L. Schmidt  
Chemung County D.A. Weeden A. Wetmore  
Chenango County D.A. Michael D. Ferrarese  
Clinton County D.A. Andrew J. Wylie  
Columbia County D.A. Christopher A. Liberati-Conant  
Cortland County D.A. Patrick A. Perfetti  
Delaware County D.A. Shawn Smith  
Dutchess County D.A. Anthony P. Parisi  
Acting Erie County D.A. Michael Keane



Essex County D.A. Kristy Sprague  
Franklin County D.A. Elizabeth M. Crawford  
Fulton County D.A. Michael J. Poulin  
Genessee County D.A. Kevin Finnell  
Greene County D.A. Joseph Stanzione  
Hamilton County D.A. Marsha King Purdue  
Herkimer County D.A. Jeffrey Carpenter  
Jefferson County D.A. Kristyna S. Mills  
Kings County D.A. Eric Gonzalez  
Lewis County D.A. Jeffrey G. Tompkins  
Livingston County D.A. Gregory J. McCaffrey  
Madison County D.A. William Gabor  
Monroe County D.A. Sandra Doorley  
Montgomery County D.A. Lorraine C. Diamond  
Nassau County D.A. Anne T. Donnelly  
New York County D.A. Alvin Bragg  
Niagara County D.A. Brian D. Seaman  
Oneida County D.A. Todd C. Carville  
Onondaga County D.A. William J. Fitzpatrick  
Ontario County D.A. James B. Ritts  
Orange County D.A. David Hoovler  
Orleans County D.A. Joseph V. Cardone  
Oswego County D.A. Anthony J. DiMartino, Jr.  
Otsego County D.A. John M. Muehl  
Putnam County D.A. Robert V. Tendy  
Queens County D.A. Melinda Katz  
Rensselaer County D.A. Mary Pat Donnelly  
Richmond County D.A. Michael E. McMahon  
Rockland County D.A. Thomas E. Walsh  
Saint Lawrence County D.A. Gary M. Pasqua  
Saratoga County D.A. Karen A. Heggen  
Schenectady County D.A. Robert M. Carney  
Schoharie County D.A. Susan Mallery  
Schuyler County D.A. Joseph G. Fazzary  
Seneca County D.A. John J. Nabinger  
Steuben County D.A. Brooks Baker  
Suffolk County D.A. Raymond A. Tierney  
Sullivan County D.A. Brian Conaty  
Tioga County D.A. Kirk Martin  
Tompkins County D.A. Matthew Van Houten  
Ulster County D.A. Emmanuel Nneji  
Warren County D.A. Jason Carusone  
Washington County D.A. J. Anthony Jordan  
Acting Wayne County D.A. Christin Callanan  
Westchester County D.A. Miriam E. Rocah

Acting Wyoming County D.A. Vincent A. Hemming  
Yates County D.A. Todd J. Casella

In further compliance with the Commission's complaint form stating "Judiciary Law 499-f requires that complaints be signed and in writing", the form, attaching this complaint, is – and I here additionally attest that the complaint is true, under penalties of perjury, pursuant to CPLR §2106.

Thank you.