

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, August 1, 2024 2:14 PM
To: 'contact@independent.org'
Subject: **UPDATE & LEAD: "Failure to Launch: NY's Prosecutorial Misconduct Commission Is Going Nowhere Fast" (Independent, Jan 31, 2024, Theodore Hamm)**
Attachments: [6-24-24-rules-comment-superseding.pdf](#)

TO: Independent

Following up my voice mail message (917-426-4856), below is the e-mail I sent this morning to the roster of New York's Legislative Correspondents Association reporters. Kindly forward it to Theodore Hamm, whose excellent January 31, 2024 article "[Failure to Launch: NY's Prosecutorial Misconduct Commission Is Going Nowhere Fast](#)" stated that the Independent would "track the commission's moves throughout the year".

I invite Mr. Hamm to call me, as soon as possible, so that I can give him the lead on what is happening in the 14 D.A. races throughout the state, the most important being for Albany County D.A., and the most proximate to NYC being for Westchester County.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, August 1, 2024 11:24 AM
To: 'susan.arbetter@charter.com' <susan.arbetter@charter.com>; 'grace.ashford@nytimes.com' <grace.ashford@nytimes.com>; 'jbeeferman@politico.com' <jbeeferman@politico.com>; 'editor@nyfocus.com' <editor@nyfocus.com>; 'molly.burke@hearst.com' <molly.burke@hearst.com>; 'jcampbell@nypublicradio.org' <jcampbell@nypublicradio.org>; 'Dan.Clark@timesunion.com' <Dan.Clark@timesunion.com>; 'Keshia.clukey@newsday.com' <Keshia.clukey@newsday.com>; 'gwen@adironackexplorer.org'; 'jdeline@news10.com' <jdeline@news10.com>; 'SDestra@wmht.com' <SDestra@wmht.com>; 'kdewitt@wxxi.org' <kdewitt@wxxi.org>; 'mfrench@politico.com' <mfrench@politico.com>; 'agault@wdt.net' <agault@wdt.net>; 'rgavin@timesunion.com' <rgavin@timesunion.com>; 'vgolden@nypost.com' <vgolden@nypost.com>; 'michael.gormley@newsday.com' <michael.gormley@newsday.com>; 'kevin@statewatch.com' <kevin@statewatch.com>; 'Kyle Hughes' <khughes@nysnys.com>; 'aizaguirre@ap.org' <aizaguirre@ap.org>; 'Ajefferson@cityandstateny.com' <Ajefferson@cityandstateny.com>; 'RKarlin@TimesUnion.com' <RKarlin@TimesUnion.com>; 'shaneaking@statewatch.com'

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Cc: 'complaints@accountabilityny.org' <complaints@accountabilityny.org>

Subject: HEADS UP! -- The Commission on Prosecutorial Conduct was Caught Attempting to Subvert its Statutory Mandate by Violative Rules -- & the Legislature & its Sham Administrative Regulations Review Commission Have Been Abetting It

TO: [Roster of Legislative Correspondents Association Reporters](#)

As evidenced by the below e-mail chain that began on June 20th, our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), caught the Commission on Prosecutorial Conduct subverting its statutory mandate by violative proposed rules – the particulars of which we elaborated upon by the above-attached formal comment, sent to it and the Legislature's sham Administrative Regulations Review Commission.

What's next in the "rule-making process?" – and will there be a public hearing? That's what our today's below e-mail to the Commission on Prosecutorial Conduct seeks to find out, reiterating what we asked by our below June 24th and July 11th e-mails – the latter also a FOIL request addressed to the Senate and Assembly.

CJA's webpage for the Commission on Prosecutorial Conduct – also posting the Senate and Assembly responses to the FOIL request – and CJA's replies of today's date to each – is here: <https://www.judgewatch.org/web-pages/searching-nys/commission-prosecutorial-conduct/prosecutorial-conduct-commission.htm>.

I am available to answer questions and assist you in investigating and reporting this major story – of which this is the first installment.

Thank you.

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

Sent: Thursday, August 1, 2024 9:11 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>

Cc: 'coog@dos.ny.gov' <coog@dos.ny.gov>; 'rulemaking@nysenate.gov' <rulemaking@nysenate.gov>; 'rulemaking@nyassembly.gov' <rulemaking@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>; 'foil@nysenate.gov' <foil@nysenate.gov>; 'Fern Whyland' <whylandfm@nyassembly.gov>; 'littellj@nyassembly.gov' <littellj@nyassembly.gov>

Subject: AGAIN -- CJA's July 11th FOIL Request for all comment received to the Commission on Prosecutorial Conduct's April 10th "Proposed Operating Rules and Procedures", PLUS info as to next steps in rule-making process, including public hearing

TO: Commission on Prosecutorial Conduct

I have received no response to my below July 11th FOIL request, with the above-attached. Is this because you sent me none – and, if so, why is that?

Please advise without further delay.

Thank you.

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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.

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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.

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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
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Cc: 'dos.dl.inetcounsel@dos.ny.gov' <dos.dl.inetcounsel@dos.ny.gov>; 'shance.helena@dos.ny.gov' <shance.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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