

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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November 13, 2013

TO: Albany County District Attorney P. David Soares –
Member, Commission to Investigate Public Corruption

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

RE: What are Your Procedures for Handling Public Corruption Complaints? –
& Other Questions that an Unconflicted Commission to Investigate Public
Corruption Would Ask

You were absent from the Commission to Investigate Public Corruption's October 28, 2013 public hearing in Manhattan, at which the State Board of Elections was subjected to scathing interrogation about its procedures for handling complaints.

What are your procedures for handling complaints of public corruption? And how do they compare to your procedures for handling criminal referrals from the State Board of Elections, such as were featured in Ken Lovett's August 5, 2013 Daily News article "*Members of Cuomo's anti-corruption panel failed to pursue 1,500 criminal referrals by the Board of Elections*"?¹ Did these criminal referrals from the Board of Elections go to your Public Integrity Unit – and was there no timely communication from it to the Board as to why it was not following through with any of 1,382 referrals since 2007? If the issue was one of resources, did you not request increased budget allocations for your district attorney's office for such purpose?

As you know – including from our October 17, 2013 letter² – your Public Integrity Unit has been sitting on our July 19, 2013 corruption complaint against Governor Cuomo, Attorney General Schneiderman, and New York's other highest public officers for crimes including their grand larceny of the public fisc in connection with the judicial pay raises and the unitemized, slush fund judiciary and legislative budgets.

¹ The Daily News article was enclosed with our November 8, 2013 FOIL request to the State Board of Elections – a copy of which was sent to you and your "Public Integrity Unit" Bureau Chief Eric Galarneau on that date. A further copy is enclosed for your convenience.

² Our October 17, 2013 letter, entitled, in pertinent part, "CJA's Unresponded-to July 19, 2013 corruption complaint and intervention request to Commission Member Albany County District Attorney Soares", is posted on our website, including on the webpage of our July 19, 2013 corruption complaint. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/albany-da.htm> .

To date, nearly four full months after filing the July 19, 2013 complaint with your Public Integrity Unit Bureau Chief, Eric Galarneau – and more than 2-1/2 months after hand-delivering for him hard copies of the substantiating proof – we have yet to receive a written acknowledgment, let alone notification of any investigation. Is this normal and customary procedure where, with each passing month, the theft of taxpayer monies increases by many millions of dollars? Have you not examined the complaint and confirmed, as stated, that:

“it presents an open-and-shut, *prima facie* case of plunder of public monies, verification of which can be accomplished in minutes from comparison of the Commission on Judicial Compensation’s August 29, 2011 ‘Final’ Report and our October 27, 2011 Opposition Report – as to which the Executive Summary to our Opposition Report provides a handy guide.” (July 19, 2013 complaint, at p. 4, italics and underlining in the original).

What is taking you so long? Is there any explanation for your nonfeasance and misfeasance other than your financial, political, and personal conflicts of interest?

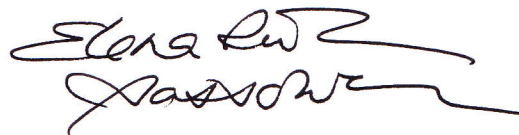
Please advise without further delay so that we – and the Commission to Investigate Public Corruption – may be guided accordingly.

Finally, inasmuch as the questions that the State Board of Elections was required to answer at the October 28, 2013 hearing are questions that an unconflicted Commission to Investigate Public Corruption would be requiring of all 62 of this state’s district attorneys, please furnish your answers to the following:

1. What is the budget of your district attorney’s office?
2. How does the budget compare with your requested budget?
3. How many people are employed by your district attorney’s office?
4. How are public corruption complaints handled? Does the district attorney’s office have a specifically designated public integrity unit to handle public corruption complaints – and is it identified by your district attorney’s website and informational brochure?
5. Are public corruption complaints required to be on a special form? Must they be signed and or notarized? How about anonymous complaints?
6. Does your district attorney’s office initiate public corruption complaints based on news reporting – if not, why not.

7. What is the intake procedure for public corruption complaints? Are all public corruption complaints logged? What kind of log is it? What kinds of information does it contain? Is it accessible to you and others in supervisory positions?
8. Are all public corruption complaints acknowledged? What is the length of time between receipt and acknowledgment and who does it?
9. Following acknowledgment, is there a preliminary review process preceding investigation? Who does it and what does it consist of?
10. Who decides whether a public corruption complaint is to be investigated and what is the criteria for investigation?
11. Who does the investigation and what does it consist of?
12. What system is in place to inform you and supervising staff of the status of corruption complaints?
13. Does your district attorney's office have a backlog of public corruption complaints? If so, what have you done to address it? Are public corruption complaints prioritized?
14. Do you inform complainants of the disposition of their public corruption complaints? Who does it and is it in writing?
15. How many public corruption complaints have been received in each of the past six years?
 - a. how many public corruption complaints have been investigated, including by issuance of subpoenas and subpoenas *duces tecum*?
 - b. How many public corruption complaints have resulted in criminal prosecutions? How many have been the subject of grand jury presentments? How many resulted in grant jury indictments?
 - c. How many public corruption complaints have ended in convictions or pleas?

Thank you.



Enclosure

cc: See next page

cc: Eric Galarneau, Bureau Chief, Public Integrity Unit/Albany County District Attorney Soares
New York State Board of Elections
 Co-Executive Director Todd Valentine
 Co-Executive Director Robert Brehm
 Deputy Enforcement Counsel William McCann
 Public Information Officer John Conklin
Commission to Investigate Public Corruption
 Co-Chair Onondaga County District Attorney William Fitzpatrick
 Co-Chair Nassau District Attorney Kathleen Rice
 Co-Chair Milton L. Williams, Jr.
Ken Lovett, Daily News
The Public & The Press

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November 8, 2013

New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, New York 12207-2729

ATT: John Conklin, FOIL/Records Access Officer

RE: FOIL REQUEST:

Documentarily-Establishing that the New York State Board of Elections is “Low-Hanging Fruit” for the Conflict-Ridden Commission to Investigate Public Corruption

Dear Mr. Conklin,

This follows up our phone conversation together on November 6, 2013, in which I briefly discussed with you that I consider the New York State Board of Elections – to which the Commission to Investigate Public Corruption has been giving such focus – to be “low hanging fruit”.

Indeed, the Commission’s focus on the Board of Elections is to give the appearance that it is being tough – when, in fact, it is covering up for the ten sitting district attorneys who are among its 25 Commissioners and for other public officers with whom it has personal, professional, and political relationships.

Enclosed is Ken Lovett’s August 5, 2013 Daily News article “*Members of Cuomo’s anti-corruption panel failed to pursue 1,500 criminal referrals from Board of Elections*”. Such would surely have been the subject of inquiry by the Commission at its October 28th hearing – were it not riddled with conflicts of interest. Instead, the Commission raised not a word about any criminal referrals having been made by the Board to district attorneys, let alone to the ten district attorney Commissioners.

The article states that it is based on “stats compiled by the Board of Elections at the request of the Daily News”.

Pursuant to FOIL, request is hereby made for a copy of the “stats” that the Board compiled for the Daily News as to its criminal referrals to the 10 district attorney Commissioners since 2006. For purposes of completeness, request is also made for “stats” as to the criminal referrals the Board made to New York’s 52 other district attorneys since 2006.

Additionally, please advise as to whether the quote attributed to you, responding to the statements of spokesmen for District Attorney Soares and District Attorney Rice, applies to the other eight district attorney Commissioners and other 52 district attorneys. The portion of the article in which your quote appears is as follows:

“Reps for Soares and Rice say the referrals from the Board of Elections weren’t thorough enough to pursue.

‘The Board’s referrals come years late and include no evidence of intent or even knowledge of the rule by the donor,’ said Rice spokesman John Byrne. ‘These form letters are legally useless to prosecutors and provide yet another example of why the Moreland Commission’s work to examine and propose reform to the Board of Elections are so important.’

Soares spokesman Cecilia Logue said the board referrals included minimal information that would have made it time-consuming and costly for the cash-strapped office to launch full-scale investigations.

‘We are not an investigative arm of the Board of Elections,’ Logue said. ‘Our office cannot bear the cost of 62 counties for investigating these filings.’

But Conklin responded that ‘if the referrals were insufficient, we wish they would have told us. They never said, ‘You need to do these things in a different way.’”
(underlining added).

Are you saying that since 2006 none of the 10 district attorney Commissioners – or New York’s other 52 district attorneys – alerted the Board to deficiencies in its criminal referrals, or ascertained the reasons therefor, as for instance a lack of resources mirroring their own, or took steps to facilitate their resolution?

Perhaps the written testimony that the Board prepared for the Commission’s October 28th hearing addressed the criminal referrals that the Board had made to New York’s 62 district attorneys, most importantly to Albany County District Attorney Soares – and their outcome.

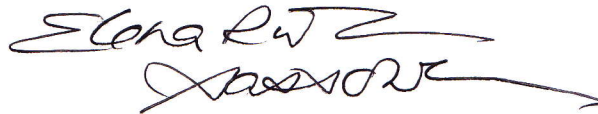
In any event, I reiterate my request for a copy of the written testimony, which, due to the Commission’s ten-minute time limitation on Board witnesses, Co-Executive Directors Valentine and Brehm and Deputy Enforcement Counsel McCann were precluded from fully reading at the October 28th hearing. Although you stated to me that you would promptly provide me with the Board’s written testimony when we spoke together on November 6th, I have still not received it.

Pursuant to FOIL – and also reflecting some of what we discussed on November 6th – this is to additionally request:

- (1) All records of budget requests and “side letters” for increased funding that the State Board of Elections made to the Division of the Budget, the Governor, and the Legislature over the past 25 years;
- (2) All annual reports of the State Board of Elections over the past 25 years;
- (3) All records pertaining to oversight hearings of the State Board of Elections by the Senate Elections Committee and the Assembly Elections Law Committee over the past 25 years, including transcripts of the hearings and copies of written testimony;
- (4) All records pertaining to testimony by the State Board of Elections about its budget at the Senate and Assembly joint budget hearings over the past 25 years, including transcripts of the testimony and questioning;
- (5) All records of support of the State Board of Elections’ increased budget requests over the past 25 years, as, for instance, from the New York State League of Women Voters, whose support you identified to me.

Please advise as to when and where these records can be inspected and copied. Pursuant to FOIL (Public Officers Law §89.3), your response is required “within five business days” of your receipt of this request. Kindly e-mail it to me at elena@judgewidth.org.

Thank you.



Enclosure

cc: New York State Board of Elections:
Co-Executive Director Todd Valentine
Co-Executive Director Robert Brehm
Deputy Enforcement Counsel William McCann
Commission to Investigate Public Corruption
Co-Chair Onondaga County District Attorney William Fitzpatrick
Co-Chair Nassau District Attorney Kathleen Rice
Co-Chair Milton Williams, Jr.
Commissioner Albany County District Attorney P. David Soares
& his Public Integrity Bureau Chief Eric Galarneau
Ken Lovett, Daily News
The Public & The Press

DAILY NEWS

POLITICS

Members of Cuomo's anti-corruption panel failed to pursue 1,500 criminal referrals from Board of Elections



The nine members of Gov. Cuomo's anti-corruption commission who are also sitting district attorneys did not pursue about 1,500 criminal referrals from the board since 2006, the bulk of which were related to campaign finance filings.

NEW YORK DAILY NEWS
MONDAY, AUGUST 5, 2013, 1:53 AM



PHILIP KAWRASS/ALBANY TIMES UNION

Albany County District Attorney David Soares' office did not prosecute 1,356 referrals from the board since 2007.

ALBANY — Even as they investigate the state Board of Elections, nine members of Gov. Cuomo's anti-corruption commission who are also sitting district attorneys did not pursue about 1,500 criminal referrals from the board since 2006, statistics show.

The bulk of the complaints involved candidates who did not make their required campaign finance filings. The rest were for contributions that exceeded the legal limit.

Most of the referrals went to Albany County District Attorney David Soares, one of 25 people appointed last month by Cuomo to his anti-corruption commission, according to stats compiled by the Board of Elections at the request of the Daily News.

Soares' office did not prosecute any of the 1,356 referrals from the board since 2007 regarding candidates who did not submit their required filings.

Even though the bulk of complaints involve candidates from outside his jurisdiction, Soares' office is the landing ground for all such referrals because the info is required to be filed in Albany, elections board spokesman John Conklin said.

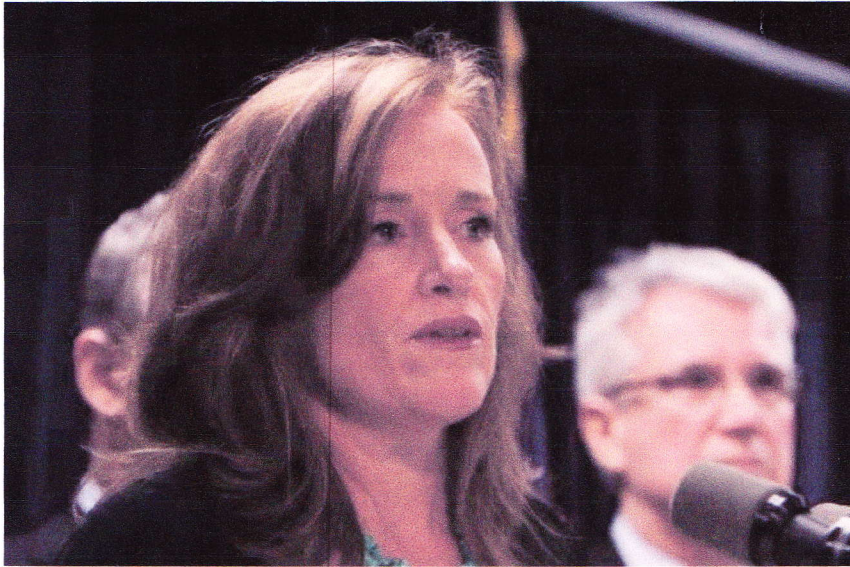
RELATED: CUOMO OKAYS FEWER ATM DISCLOSURES ON SIGNS

Soares also received 26 over-contribution referrals but did not pursue them, either.

Commission co-chairwoman Kathleen Rice, the Nassau County district attorney, received the next most complaints — 72 from the Board of Elections since 2006 about over-contributions. She also didn't prosecute any.

Cuomo's Moreland Act commission is set to focus on the influence of campaign contributions on government

and compliance with election and lobbying laws.



MARCUS SANTOS FOR THE NEW YORK DAILY NEWS/ FOR THE NEW YORK DAILY NEWS

Nassau County District Attorney Kathleen Rice received 72 complaints, but didn't prosecute any.

Reps for Soares and Rice say the referrals from the Board of Elections weren't thorough enough to pursue.

"The board's referrals come years late and include no evidence of intent or even knowledge of the rule by the donor," said Rice spokesman John Byrne. "These form letters are legally useless to prosecutors and provide yet another example of why the Moreland Commission's work to examine and propose reform to the Board of Elections is so important."

[RELATED: CUOMO OKAYS LAW PUNISHING ATTACKS ON DAS](#)

Soares spokeswoman Cecilia Logue said the board referrals included minimal information that would have made it time-consuming and costly for the cash-strapped office to launch full-scale investigations.

"We are not an investigative arm of the Board of Elections," Logue said. "Our office cannot bear the cost of 62 counties for investigating these filings."

But Conklin responded that "if the referrals were insufficient, we wish they would have told us. They never said, 'You need to do these things a different way.'"

The problem highlights the dysfunction within a system that critics say encourages candidates and donors to skirt the laws.

The Board of Elections currently has zero investigators and just four auditors — and no money in its budget to hire any.

Logue chastised the Legislature for rejecting Cuomo's call this year to create an independent investigative panel within the Board of Elections.