

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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February 23 2017

TO: Ethics and Internal Governance Committee/New York State Senate  
Chair: Senator Elaine Phillips  
Ranking Member: Senator Michael Gianaris  
Rank & File Members: Senators David Carlucci, Thomas Croci,  
Andrew Lanza, Roxanne Persaud,  
Gustavo Rivera, Diane Savino, David Valesky  
Secretary of the Senate Francis Patience

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

RE: FIRST TEST of the Ethics and Internal Governance Committee:  
Senate Rules for 2017-2018:  
FOIL/records request & misconduct/fraud complaint

At the opening session of the Senate, on January 4, 2017, the Senate voted on a resolution – “Senate Resolution Number 4, by Senators Flanagan and Klein, to adopt the rules of the Senate for the years 2017-2018” (transcript, p. 23). Six days later, on January 10, 2017, the Senate voted on a further resolution – “by Senators Flanagan, Klein, and Stewart-Cousins, amending Rule 8 of the Senate Rules in relation to the Ethics and Internal Governance Committee” (transcript, p. 158).<sup>1</sup>

Germane are the following Senate rules for 2017-2018 – unchanged from the Senate rules for 2015-2016:

Senate Rule VII, §9, entitled “Resolution”:

“a. All original resolutions shall be in quadruplicate, and no original resolution may be introduced unless copies thereof first shall have been furnished, to the extent practicable, forty-eight hours prior to the time for acting on such resolution to respective conference leaders. All resolutions, upon introduction, shall be referred to a standing or select committee by the Majority Coalition Leaders or an officer designated by the Majority Coalition Leaders and shall at all times remain within the exclusive control of the introducer...”

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<sup>1</sup> The transcripts and videos of the January 4, 2017 and January 10, 2017 Senate floor proceedings are posted on the webpage for this letter on CJA’s website, [www.judgewatch.org](http://www.judgewatch.org) – accessible via the prominent homepage link “2017 Legislative Session”. It leads to a menu page containing a link “What’s happening with rules reform?”, leading to a further menu page for “The Senate”.

Senate Rule VIII §6, entitled “Reports”:

“a. No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member’s vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair. ...”

Senate Rule XII, §1, entitled “Resolution to amend the Senate Rules”:

“No amendment to the Senate Rules shall be considered by the Senate unless a resolution for such amendment, together with a memorandum specifying the purpose of the proposed amendment, suspension, or rescission, shall be introduced to the Committee on Rules and reported therefrom to the Senate floor. Passing of any such rules change shall require an affirmative vote of three-fifths of all Senators elected.”

Based thereon, and pursuant to Senate Rule XV “Freedom of Information”, this is to request from Secretary of the Senate Francis Patience the following:

- I. With respect to Resolution #4 to adopt Senate rules for 2017-2018:
  - (1) a copy of the original resolution – and records reflecting the date it was introduced;
  - (2) records reflecting the date the resolution was furnished to “the respective conference leaders” – who, other than the sponsors, Republican Conference Leader Flanagan and Independent Democratic Conference Leader Klein, was Democratic Conference Leader Stewart-Cousins;
  - (3) records reflecting the date the resolution was furnished to “a standing or select committee” designated by the Majority Coalition Leaders, *to wit* by Majority Coalition Leaders Flanagan and Klein – or by an officer designated by them – and which committee that was;
  - (4) a copy of any memorandum accompanying the resolution, setting forth the differences between the proposed Senate rules and the Senate rules for 2015-2016;

- (5) records reflecting the date the designated committee met to discuss the resolution – including with respects to any amendments offered – and the vote of each committee member thereon;
  - (6) records reflecting the Senate floor vote on the resolution on January 4, 2017 – and the vote of each Senator;
- II. With respect to the resolution “amending Rule 8 of the Senate Rules in relation to the Ethics and Internal Governance Committee” – Resolution #226:
- (1) a copy of the amending resolution;
  - (2) a copy of the “memorandum specifying the purpose of the proposed amendment”;
  - (3) records reflecting the date the resolution and supporting memorandum were introduced to the Committee on Rules;
  - (4) records reflecting the date the Committee on Rules met thereon – and its discussion, amendments, and vote;
  - (5) The Senate floor vote, on January 10, 2017, recording the “affirmative vote of three-fifths of all Senators elected” – including the vote of each Senator.

Senate Rule VIII, §3, entitled “Ethics and Internal Governance Committee”, specifically charges the Committee with “evaluat[ing] and, if necessary, mak[ing] recommendations regarding compliance with Rule[] XV” – “Freedom on Information”. It is my position that all or most of the above list of records should be “available through a searchable and sortable database on the Senate website”, pursuant to Senate Rule XV, §1a. What is the Committee’s view? And are the Committee’s nine members each able to locate such records *via* the Senate website? I am unable to locate them.

Of course, Senate Rule VIII, §3 gives the Committee far broader jurisdiction – stating, in the first instance:

“The Ethics and Internal Governance Committee may sit at any time...The committee shall review any matter deemed appropriate by the majority of members appointed to the committee.”

Pursuant thereto, I request that the above FOIL/records request be deemed support of a complaint of misconduct and fraud against the three Senate conference leaders – Republican Conference Leader

Flanagan, Independent Democratic Conference Leader Klein, and Democratic Conference Leader Stewart-Cousins – and against the many senators present in the Senate chamber on January 4, 2017 and January 10, 2017 who had reason to know:

- (1) that Resolution #4 and Resolution #226 were not properly brought to the Senate floor for votes, because they violated safeguarding Senate rules being enacted – identical to those they were replacing – and which, on January 4, 2017, were enacted;
- (2) that Resolution #4 perpetuates the most egregious dysfunctions recognized in 2009 by the Senate’s Temporary Committee on Rules and Administration Reform, to which Independent Democratic Conference Leader Klein and Democratic Conference Leader Stewart-Cousins were EACH members – including with respect to sham, rubber-stamp standing committees, even more numerous today than in 2009 and as to which, pursuant to Senate Rule VIII §a, senators may be appointed to up to seven.

Inasmuch as Senator Valesky – a member of this Ethics and Internal Governance Committee – was co-chair of the Temporary Committee on Rules and Administration Reform, I respectfully request that he take the lead in itemizing for this Committee the many material respects in which Resolution #4, enacted without legislative due process, including the complete absence of committee discussion, deliberation, amendment, and vote, betrays and undermines the critical rule reforms which he and his eight fellow senators on the Temporary Committee on Rules and Administration Reform publicly discussed and agreed were essential to a properly functioning Senate.

Tellingly, the groundbreaking hearings, meetings, and reports of the Temporary Committee on Rules and Administration are NOT “available through a searchable and sortable database on the Senate website” – in violation of Senate Rule XV, §1, over which this Committee has jurisdiction. Can Senator Valesky – or any other member of this Committee – find the April 2009 majority and minority reports of the Temporary Committee on Rules and Administration Reform and the videos and transcripts of its four public hearings and four public meetings<sup>2</sup> – let alone its research materials

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<sup>2</sup> Because of their importance, I collected ALL the videos and transcripts of the hearings and meetings of the Temporary Committee on Rules and Administration Reform and its April 2009 majority and minority reports, years ago, on a single webpage of CJA’s website. The webpage is entitled “Senate Rules Reform Resource Page” and the link is posted beneath this letter on CJA’s website. (see fn. 1, *supra*). I urge, in particular, the viewing/reading of the testimony of former Senator Franz Leichter and former Senator Seymour Lachman, followed by the three Brennan Center’s witnesses whose testimony was focused on the significance of functioning committees to a functioning Legislature – Eric Lane, Lawrence Norden, and Jeremy Creelan – Eric Lane having been, among his many credentials, counsel to the Senate minority for six years. All testified at the outset of the Temporary Committee’s third hearing, in Manhattan, on February 26, 2009. Senator Klein was among the Temporary Committee’s members present. Senator Krueger, though not a member of the Temporary Committee, was also present.

Incredibly, the Senate’s website posts as the most recent “News” for the Rules Committee, four entries

and written submissions from witnesses and other members of the public? And can Committee members easily find records pertaining to the extraordinary continuation in the Senate of the push for rules reform – the Senate coup on June 8, 2009 and the efforts thereafter, reflected in the Senate floor proceedings on July 15, 2009, presided over by Senator Valesky, enacting – by an overwhelming affirmative vote of senators who today are at higher leadership levels – a rules resolution reading:

“SENATE RESOLUTION providing for the continuation of the Temporary Committee on Rules and Administration Reform and directing it to develop and submit to the Senate a proposal for consolidation of Standing Committees and guidelines for committee reports no later than December 1, 2009

WHEREAS, The Senate restates its commitment to the continued improvement of the rules of the Senate and to creating a more participatory, effective and transparent legislative process; and

WHEREAS, The effort to reform the legislative process is intended to result in more deliberative committees, which would serve as the locus of legislative activity; and

WHEREAS, The Senate finds there is a need to reform the outdated structure and procedures of its standing committees, as recommended by the report of the Temporary Committee on Rules and Administration Reform on April 21, 2009; and

WHEREAS, The Senate is committed to reducing the total number of standing committees, creating subcommittees in areas of relatively narrow jurisdiction, limiting the number of standing committees on which members serve, and requiring members to be physically present to vote in committee; and

WHEREAS, The public should have access to budgets of committee staffs; now, therefore, be it

RESOLVED, That the Temporary Senate Committee on Rules and Administration Reform, as established in Senate Resolution 8 of 2009 is hereby continued; and be it further

RESOLVED, That the Temporary Committee is hereby directed to make specific recommendations for revising the Senate Rules and the Legislative Law with respect to the consolidation of Senate Standing committees, including reducing committee assignments to enable Senators to participate fully in the legislative process, no later than December 1, 2009; and be it further

RESOLVED, That the Temporary Committee is also directed to make specific recommendations to create an amendment process in committee, no later than December 1, 2009; and be it further

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pertaining to rules reform and the Temporary Committee on Rules and Administration Reform. The first of these “*Senate Unveils Historic Rules Reform Report*”, dated April 21, 2009, does not include the report – which, upon doing a “search”, does not come up – or at least not by my “search”. Screenshots and printout posted with this letter (see fn. 1, *supra*).

RESOLVED, That the Temporary Committee is also directed to make specific recommendations for guidelines for committee reports under Section 5 (a) of Rule VII of the Senate Rules, no later than December 1, 2009.” [Resolution #2843].

The hearings, meetings, and reports of the Temporary Committee on Rules and Administration Reform – and the July 15, 2009 rules resolution, never actualized – expose the self-interested, trivial, and deceitful objections put forward by Senators Gianaris, Hoylman, and Krueger on January 4, 2017 on the floor of the Senate to the rules proposed by Resolution #4.<sup>3</sup> Certainly, too, their colloquy with Senators Croci and DeFrancisco should have been had, prior thereto, and on a broader, more substantive level, at a meeting of the Rules Committee, with amendments offered by any of its 25 members, and there voted upon so as to produce Senate rules consistent with the majority and minority reports of the Temporary Committee on Rules and Administration Reform – and the unfulfilled July 15, 2009 rules resolution.

Oddly, Resolution #4 was not referred to the Rules Committee by Majority Leaders Flanagan and Klein, as, logically, would have been expected. Rather, according to the Senate’s website<sup>4</sup>, on “04/Jan/2017” it was “referred” to the Finance Committee – and went from there to the Senate, also on “04/Jan/2017”. Yet, the Senate’s website shows no meeting of the Finance Committee on January 4, 2017—and that its only prior meeting was 6-1/2 months earlier, on June 17, 2016. Consequently, Resolution #4 appears to have skipped even rubber-stamp committee action and, if “referred” to the Finance Committee, was never “reported”.

This FOIL/records request will enable the Ethics and Governance Committee to speedily verify the facts – if members do not already know them of their own personal knowledge: Senators Gianaris, Valesky, Carlucci, and Lanza being members of the Finance Committee that never met on January 4, 2017.

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<sup>3</sup> Senator Krueger’s feeble opposition to the proposed Senate rules on January 4, 2017 – consistent with her pattern of giving “lip service” to her stated convictions – was very much in my mind when I testified before her at the Legislature’s January 30, 2017 budget hearing on “Local Government Officials/State Government”, stating that although she had been “a champion of rules reform, going way back”, she had “essentially abandoned that issue” and was “simply waving the flag now and then” (at 8:57 hours – 8:58 hours). The MUST-SEE video of my testimony identifying that the Legislature’s dysfunction has nothing to do with whether legislators are full-time or not, have outside income, or not, but directly results from its rules – and its budget -- is posted with this letter. Likewise, Senator Krueger’s 2002 report “*Waking Up the State Senate: 34 Proposals for Reinvigorating Democracy in Albany Through Rules Reform*”. (See fn. 1, *supra*).

<sup>4</sup> The Senate’s webpage posting Resolution #4 and “Actions” thereon is <https://www.nysenate.gov/legislation/resolutions/2017/r4>. A screenshot of the “Actions” is posted with this letter. (See fn. 1, *supra*).

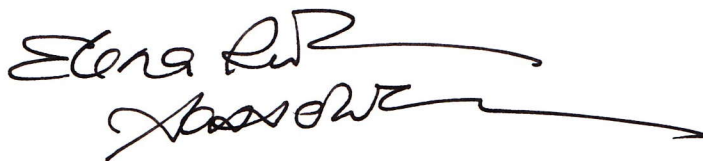
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Likewise, with respect to Resolution #226 – which, pursuant to Senate Rule XII, §1, was required to have been introduced to the Rules Committee, with a memorandum, and “reported therefrom”. The Senate’s website shows that the Rules Committee’s first meeting of the year was on January 9, 2017 – and Resolution #226 was not on its agenda, as verifiable – thanks to Senate Rule VIII, §2(4) – by a video of the meeting. The Committee’s next meeting was not until January 17, 2017 – a full week after the Senate vote on Resolution #226.

Here, too, this FOIL/records request will furnish answers – although, of course, members of this Committee – Senators Gianaris, Carlucci, Lanza, and Savino, as members of the Rules Committee, already know the answers, of their own personal knowledge.

Needless to say the nine members of the Ethics and Internal Governance Committee have multitudinous conflicts of interest – including because they are among the complained-against senators and/or have relationships with, and dependencies on, such senators – none more powerful than the three conference leaders who are the subject of this misconduct/fraud complaint in the first instance. If, by reason thereof, the Committee is unable to discharge its duty to take steps to secure the recall/voiding of Resolution #4 and its replacement by a resolution consistent with the majority and minority reports of the Temporary Committee on Rules and Administration Reform and the July 15, 2009 rules reform resolution, following legislative due-process, most logically *via* the Rules Committee, at meetings open to public view pursuant to Senate Rule VIII, §§2(3) and (4), then it must refer this complaint to other appropriate authorities.

Thank you.

Two handwritten signatures in black ink. The top signature is 'Elena Ruiz' and the bottom signature is 'Xavier'.

cc: See next page

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cc: Senator John Flanagan/Republican Conference Leader/Temporary Senate President  
Senator Jeffrey Klein/Independent Democratic Conference Leader  
Senator Andrea Stewart-Cousins/Democratic Conference Leader  
Senator John DeFrancisco/Vice-Chair of the Rules Committee  
Senator Liz Krueger, Ranking Member of the Senate Finance Committee  
Senator Brad Hoylman, Ranking Member of the Senate Committee on Investigations  
and Government Operations AND of the Senate Judiciary Committee  
Members of the 2009 Temporary Committee on Rules and Administration Reform:  
Co-Chairs: Senators David Valesky and John Bonacic  
Rank & File Members: Senators Jeffrey Klein, Andrea Stewart-Cousins,  
Joseph Griffo, Kevin Parker, Jose Serrano, Daniel Squadron, George Winner<sup>5</sup>

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<sup>5</sup> Senator Winner is the sole member of the nine-member 2009 Temporary Committee on Rules and Administration Reform no longer in the Senate. A copy of this FOIL/records request & misconduct/fraud complaint is being furnished him in recognition of his contribution not only to rules reform – but to reinforcing constitutional requirements with respect to the budget. His important lawsuit, *George Winner, et al. v. Mario Cuomo*, 176 A.D.2d 60 (1992), is cited and relied upon in the sixth cause of action of the citizen-taxpayer action (at ¶67 – by its incorporated ¶412 (fn. 24)) to which I referred in testifying at the Legislature’s January 30, 2017 budget hearing – and, the following day, in testifying at the Legislature’s January 31, 2017 budget hearing on “Public Protection”. A link to the citizen-taxpayer action – whose record establishes plaintiffs’ entitlement to SUMMARY JUDGMENT on all ten of its causes of action – appears with this letter (See fn. 1, *supra*).