

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY HAND & E-MAIL

January 8, 2018

TO: Westchester County District Attorney Anthony Scarpino

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

RE: (1) Criminal/Corruption Complaint against You & Complicit Public Officers and Others Over Whom You Have Jurisdiction for “Grand Larceny of the Public Fisc” Arising from the Two State Commission Reports on which Your Larcenous District Attorney Salary Rests;
(2) FOIL Request for Records Pertaining to Your Procedures for Handling Public Corruption Complaints in Which You Have Financial and Other Conflicts of Interest

It is now 2-1/2 months since I first put you on NOTICE and furnished you with *readily-verifiable* EVIDENCE that your current \$195,000 district attorney salary, paid from the Westchester County budget, contains nearly \$60,000 in increases that are not only the result of two state commission reports that violate the very commission statute pursuant to which they purport to be rendered, but are fraudulent and violate a succession of penal laws, including:

Penal Law §175.35 (“offering a false instrument for filing in the first degree”);
Penal Law §155.42 (“grand larceny in the first degree”);
Penal Law §190.65 (“scheme to defraud in the first degree”);
Penal Law §195.20 (“defrauding the government”);
Penal Law §195 (“official misconduct”);
Penal Law §105.15 (“conspiracy in the second degree”);
Penal Law §20.00 (“criminal liability for conduct of another”); and
Penal Law §496 (“corrupting the government”) – part of the “Public Trust Act”.

My first EVIDENCE-supported NOTICE to you was by an October 23, 2017 e-mail and was followed by a great many more e-mails, beginning on November 9, 2017.¹ All alerted you to your

¹ These subsequent e-mails were dated November 9, 2017; November 14, 2017; November 15, 2017; November 16, 2017; November 17, 2017 (2x); November 20, 2017; November 21, 2017; November 28, 2017; December 5, 2017; and January 4, 2018. As you know, all are posted on CJA’s website, www.judgewatch.org, accessible *via* the top panel “Latest News” by its link entitled “The Larcenous D.A. Salary Increases, The



duty to VERIFY the EVIDENCE and, absent your disavowing your district attorney salary increases based thereon, furnishing the Board of Legislators, county executive, and county attorney with your findings of fact and conclusions of law with respect thereto so that they could take appropriate steps to remove the increases from the county budget and/or void the commission reports.

Throughout the past 2-1/2 months, you have never denied or disputed the sufficiency of the EVIDENCE or of your duty with respect thereto. Instead, you have been completely silent about your district attorney salary and the commission reports on which it is based. This includes on November 28, 2017, when you appeared before the Board of Legislators' Committee on Budget and Appropriations to advocate with regard to the district attorney budget.

As you know, I was present at that meeting and, upon your exit, furnished you, in substantiation of your duty, with a "hard copy" of my November 9, 2017 e-mail and its enclosed July and September 2016 NOTICES to Westchester County – the same as had been distributed to the 17 members of the Board of Legislators on November 13, 2017. Additionally, I provided you with a "hard copy" of my December 31, 2015 letter to your district attorney predecessor – the then Westchester District Attorney/Chief Judge Nominee Janet DeFiore – and a "hard copy" of my January 15, 2016 letter to Senate Majority Leader John Flanagan and Assembly Speaker Carl Heastie, with its attached 12-page "Statement of Particulars in Further Support of Legislative Override, Repeal, Etc." – each letter, previously furnished to you and the 17 members of the Board of Legislators by e-mails, including on November 16, 2017, identifying them as:

"the easiest way for legislators – particularly non-lawyer legislators... – to understand the fraud, statutory violations, and penal law violations that have increased the salary of the Westchester D.A. nearly \$60,000 since April 1, 2012 and that will increase it another \$10,000 on April 1, 2018."

Last week, on January 3, 2018, I hand-delivered to your office a copy of a letter to County Executive Latimer, to which you were a recipient. It identified that the Westchester County Board of Ethics was, for all intents and purposes, non-existent, having been disabled by the Board of Legislators and former County Executive Astorino's administration – and that I had a serious and substantial conflict-of-interest misconduct complaint to file against you and the Board of Legislators, among others. In pertinent part, my January 3, 2018 letter stated:

"The Westchester Code of Ethics proscribes conflicts of interest, which it defines as 'a direct or indirect pecuniary or material benefit accruing to a county officer...whether as the result of a contract with the county or otherwise...'
(Westchester County Code §883.11(f)), stating:

Westchester County Budget, & The Westchester County Board of Legislators". The menu page it brings up now includes a link for a webpage for this criminal complaint.

'Disclosure of interest in legislation or county contracts. To the extent that they know thereof, any officer or employee of the County of Westchester...who has any interest in any legislation before the County Board or who gives any opinion to such board upon such legislation...shall publicly disclose on the official record and to an immediate supervisor, in writing, the nature and extent of such interest." (Westchester County Code §883.21(e)).

Obviously, you have a direct financial interest in a budget that pays your salary. Yet, in appearing before the Committee on Budget and Appropriations to request restoration of \$250,000 cut by the Astorino administration from the district attorney budget, which you identified would pay for hiring six employees to fill positions left vacant for lack of funding, you made no disclosure of what the budget itself neither itemized nor disclosed, but which my many e-mails had demanded you to address: that you would be drawing an added \$10,000 in salary, beginning April 1, 2018, based on commission reports that had boosted your January 1, 2017 starting salary by almost \$60,000 above where it otherwise would have been – and whose unlawfulness was the subject of EVIDENCE-based NOTICES.

What was the reason for your non-disclosure? Do you deny that it is because disclosure would have required you to acknowledge the truth of the NOTICES that the two commission reports, of which you are a beneficiary, are each statutorily-violative and fraudulent – if not also unconstitutional – mandating that the Board of Legislators remove your hefty salary increases based thereon from the county budget and/or take steps to void the commission reports.

One does not have to be a lawyer, as you are, or a former judge, as you are, or a district attorney, as you are, to know that such non-disclosure goes beyond an ethics breach, for which a functioning board of ethics would have ethics jurisdiction over you – or for which a functioning attorney grievance committee would have disciplinary jurisdiction over you. It is criminal, larcenous conduct, cognizable by the penal law – enforcement of which is the district attorney's function. Indeed, my July 2016 NOTICE to Westchester County – first e-mailed to you on October 23, 2017, then again on November 9, 2017, and additionally given to you, as a "hard copy", on November 28, 2017 – could not have been more explicit in stating that any district attorney who did not disavow the salary increases arising from the commission reports would be "complicit in the very penal law violations that are his/her duty to prosecute."

Consequently, in addition to filing this letter with the Westchester County Board of Ethics as an ethics complaint against you, and with the Grievance Committee for the Ninth Judicial District as a disciplinary complaint against you, I herewith file it with you as a criminal/corruption complaint against you – and against your accomplices, culpable with you under the penal law. These accomplices, known to you because they are indicated recipients on the SAME succession of e-mails and letters as were sent and furnished to you, spanning from October 23, 2017, are the public officers and others over whom your office has criminal jurisdiction and who, like you, having knowledge from EVIDENCE-supported NOTICE that your district attorney salary increases are "ill-gotten

gains, stolen from the taxpayers” permitted your theft. Among these:

- The 17 members of the Board of Legislators,² all duty-bound to protect Westchester county taxpayers from larceny and fraud within the county budget, who I publicly addressed on five separate occasions between November 13, 2017 and December 10, 2017, and to whom, during that period, I spoke with individually, either directly or through staff, and who not only received from me a mountain of e-mails and other written communications, but a “hard copy” of the pertinent EVIDENCE, the most material and sufficient portion of which they still have,³ yet all of whom not only failed to demand from you your findings of fact and conclusions of law with respect thereto, but ANY response whatever, as likewise to request findings of fact and conclusions of law, or even response, from their county attorney, or from Westchester’s Albany delegation of legislators whose responsibility it is to oversee the state commission reports;
- Former County Attorney Robert Meehan, whose duty it was to advise Westchester county officers, yourself among them, yet failed to counsel you, the Board of Legislators, the county executive, and the county budget director that you, they, and he were NOT free to ignore my EVIDENCE-supported

² These 17 – and positions they held – are: (1) Board of Legislators Chair Michael Kaplowitz, ESQ.; (2) Board of Legislators Vice-Chair James Maisano, ESQ.; (3) Board of Legislators Majority Leader Catherine Borgia; (4) Board of Legislators Minority Leader John Testa; (5) Committee on Budget and Appropriations Chair Sheila Marcotte; (6) Committee on Budget and Appropriations Vice-Chair Ben Boykin; (7) Litigation Committee Chair Lyndon Williams, ESQ.; (8) Litigation Committee Vice-Chair David Gelfarb, ESQ.; (9) Committee on Budget and Appropriations Member Ken Jenkins; (10) Committee on Budget and Appropriations Member Francis Corcoran; (11) Committee on Budget and Appropriations Member Margaret Cunzio; (12) Committee on Budget and Appropriations Member Catherine Parker; (13) Litigation Committee Member MaryJane Shimsky, ESQ.; (14) Litigation Committee Member Gordon Burrows, ESQ.; (15) Legislator Alfreda Williams; (16) Legislator David Tubiolo; (17) Legislator Virginia Perez.

³ This “hard copy” of EVIDENCE was furnished to Litigation Chair Williams on December 4, 2017 – and remained in his possession until December 10, 2017. It was the same EVIDENCE as I had furnished to County Attorney Meehan on November 27, 2017 and picked up from him on November 28, 2017, so that I could have it with me for the committee on budget and appropriation’s meeting at which you would be appearing. It is itemized by my November 28, 2017 e-mail.

The circumstances of Chair Williams’ December 10, 2017 return to me of the EVIDENCE was my request to his aide to copy the portions of which I had no copies. Upon the aide’s furnishing it to me, Chair Williams not only refused to authorize use of the Board of Legislators’ copier so that I might obtain a copy of the portions of which I had none, but refused to take back the portions of which I had copies. I thereupon deposited the portion of which I had copies with Board of Legislators Chair Kaplowitz, in whose possession it remains. It is the EVIDENCE identified by the November 28, 2017 e-mail inventory as enabling verification of “the statutory violations (& fraudulence)” of “the 1st Commission report” and “the 2nd Commission report”— and includes the same December 31, 2015 and January 15, 2016 letters as I gave you on November 28, 2017.

NOTICES that your district attorney salary increases in the county budget were the product of illegality and fraud – the accuracy of which he himself could have readily verified, upon his receipt of my July and September 2016 NOTICES to him and throughout the six-week span from October 23, 2017 to December 10, 2017, particularly upon my furnishing him with the “hard copy” of the pertinent EVIDENCE on November 27, 2017 and about which I personally spoke with him then and thereafter;

- The 14 legislators of Westchester’s Albany delegation,⁴ all duty-bound to discharge oversight over the state commission reports, and who, in face of NOTICE as to the consequences to the Westchester county budget resulting from their willful and deliberate failure to do so, which I gave them by a December 4, 2017 letter, failed to take any corrective steps, including providing the Board of Legislators with their own findings of fact and conclusions of law with respect to the EVIDENCE concerning the commission reports – such legislative delegation including then state senator, now county executive, George Latimer.

Obviously, fundamental conflict-of-interest protocols and procedures apply to a criminal/corruption complaint that is against you and public officers with whom you have personal, political, and professional relationships.

The National Prosecution Standards of the National District Attorneys Association state in its Section 1-3.3 “Specific Conflicts”, subdivision (d):

“The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor’s neutrality, judgment, or ability to administer the law in an objective manner may be compromised.”

Consistent therewith, Section 1-3.4 “Conflict Handling”, states:

“Each prosecutor’s office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

⁴ These 14 are: (1) Senate Minority Leader Andrea Stewart-Cousins; (2) Senate Majority Coalition Leader Jeffrey Klein, ESQ.; (3) Senator George Latimer; (4) Senator Terrence Murphy; (5) Senator David Carlucci; (6) Senator Jamaal Bailey, ESQ.; (7) Assemblyman David Buchwald, ESQ.; (8) Assemblyman Thomas Abinanti, ESQ.; (9) Assemblyman Steven Otis, ESQ.; (10) Assemblywoman Sandy Galef; (11) Assemblywoman Shelley Mayer, ESQ.; (12) Assemblywoman Amy Paulin; (13) Assemblyman Gary Pretlow; (14) Assemblyman Kevin Byrne.

a. The creation of firewalls and taint or filter teams to ensure that prosecutors with a conflict are not improperly exposed to information or improperly disclose information; and

b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor’s office.”

Its immediately-following Section 1-3.5 “Special Prosecutors” reads:

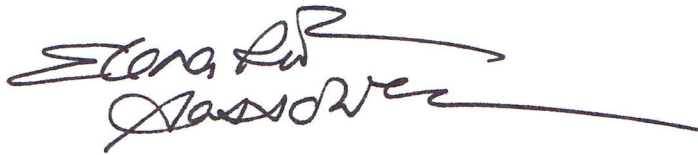
“Where an actual or potential conflict of interest exists that would prevent the prosecutor’s office from investigating or prosecuting a criminal matter, the prosecutor’s office should appoint, or seek the appointment of a ‘special prosecutor,’ or refer the matter to the appropriate governmental authority as required by law....”

Pursuant to FOIL, this is to request records reflecting such conflict-of-interest protocols and procedures as your Westchester district attorney’s office employs. Needless to say, if none have been adopted, please advise as to the conflict-of-interest protocols and procedures that will be employed for purposes of this complaint.

Finally, I note that your district attorney website indicates that you have a “public integrity bureau” within your Investigations Division, but does not provide any webpage for it: <http://www.westchesterda.net/about-the-office/office-organization>. Nor does the generic complaint form available from your website, <http://www.westchesterda.net/contact-us/complaint-form>, include any attestation for swearing to truth. Consequently, I herein repeat the attestation required by the complaint form of the “public integrity unit” of Albany County District Attorney P. David Soares:⁵

“I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.”

Thank you.



cc’s: next page

⁵ As known by your First Deputy District Attorney James McCarty and district attorneys throughout the state – including because it was the subject of an October 14, 2016 grievance complaint against them – Albany District Attorney Soares has, since 2013, been “sitting on” my FULLY-DOCUMENTED corruption complaints involving the larcenous commission reports on which his and their district attorney salary increases rest. The three complaints he has been “sitting on” – and the grievance complaint it engendered, still pending at the Third Judicial Department’s Attorney Grievance Committee – is here: <http://www.judgewatch.org/web-pages/searching-nys/oct-14-2016-district-attorney-complaint/menu-oct-14-2016-complaint.htm>.