

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Friday, July 16, 2021 7:48 AM
To: 'biaggi@nysenate.gov'; 'reppy@nysenate.gov'; 'jonesjj@nysenate.gov';
'palumbo@nysenate.gov'; 'stazio@nysenate.gov'; 'centley@nysenate.gov';
'pboyle@nysenate.gov'; 'kiprilov@nysenate.gov'; 'breslin@nysenate.gov';
'barron@nysenate.gov'; 'kaminsky@nysenate.gov'; 'doughert@nysenate.gov';
'lanza@nysenate.gov'; 'jturoski@nysenate.gov'; 'stavisky@nysenate.gov';
'nstewart@nysenate.gov'; 'lamounta@nysenate.gov'
Subject: INVITE to ZOOM meeting, Etc. -- "New York State's System of Ethics Oversight and Enforcement"
Attachments: july-12-2021-written-testimony.pdf; july-9-2021-written-statement-in-support of testimony.pdf

TO: SENATE COMMITTEE ON ETHICS AND INTERNAL GOVERNANCE

Chair: Alessandra Biaggi, ESQ.

Ranking Member: Anthony Palumbo, ESQ.

Members: Phil Boyle, ESQ.; Neil Breslin, ESQ.; Todd Kaminsky, ESQ.; Andrew Lanza, ESQ.; Toby Ann Stavisky

On Monday, July 12th, shortly after announcement that the Committee's hearing on "New York State's System of Ethics Oversight and Enforcement" had been postponed, I e-mailed Chair Biaggi my above "Written Testimony in Lieu of Oral Testimony", with its accompanying July 9th "Written Statement in Support of Testimony", stating:

"I take this opportunity to invite you – and other members of the Committee – to ZOOM with me to discuss my serious and substantial testimony, so that we can constructively discuss what needs to happen, going forward, consistent with the duties you owe the People of the State of New York."

I received no response from Chair Biaggi – and no call backs to my two phone messages on Tuesday, July 13th to speak with her legislative director, Karen Reppy, and no response from Ms. Reppy to my July 13th e-mail – with a copy to Chair Biaggi and her chief of staff, Jordine Jones – stating:

"How about a quick conversation tomorrow? – even for a few minutes. If Senator Biaggi is sincere about achieving a functioning system of ethics oversight and enforcement – and not simply posturing – it is essential that we speak",

As a result, on Wednesday, July 14th, I phoned the office of Ranking Member Palumbo to ascertain whether Chair Biaggi had furnished him with my July 12th written testimony and my invitation for a ZOOM meeting – and to inquire as to what had taken place in the hearing room, on July 12th, since there had been no live-stream of how the hearing had been postponed, nor posting of video – and it was impossible to discern the situation from news reports. His constituent liaison/operations assistant Stephanie Stafford, with whom I had an extensive conversation, assured me she would transmit my message to chief of staff Chris Stazio and legislative aide Rosanne Centley. However, I received no call back from either of them – nor from Ranking Member Palumbo.

Consequently, I yesterday filed the below FOIL request with the Secretary of the Senate and the Committee on Open Government pertaining to the postponed July 12th hearing. The last of its twelve enumerated records requests reads:

"(12) records reflecting whether – following postponement of the July 12th hearing – Chair Biaggi forwarded to the Committee's six other members CJA's July 12th e-mail,

sent to her at 11:53 a.m., inviting her and the other Committee members to a ZOOM meeting concerning CJA's 'serious and substantial testimony, so that we can discuss what needs to happen, going forward, consistent with the duties you owe the People of the State of New York'."

Please advise whether, individually or collectively, you will meet with me, *via* ZOOM, for the above-stated purposes – and proposing a specific date and time.

Is there anything in my July 12th written testimony and in my July 9th written statement that you deny or dispute and, if so, that you are unwilling to discuss? EVIDENTIARY webpages for each are accessible from CJA's menu page for the Committee's July 12th hearing, which is here: <http://www.judgewidth.org/web-pages/searching-nys/2021-legislative-session/july-12-2021-ethics-oversight-enforcement.htm>. It is where this e-mail will also be posted.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Thursday, July 15, 2021 3:38 PM
To: 'foil@nysenate.gov' <foil@nysenate.gov>
Cc: 'coog@dos.ny.gov' <coog@dos.ny.gov>

Subject: FOIL -- The postponed July 12th Senate Ethics & Internal Governance Committee hearing on "New York State's System of Ethics Oversight and Enforcement"

**TO: Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, ESQ.
Committee on Open Government Executive Director Shoshanah Bewlay, ESQ.**

On Thursday, July 8th – sometime between 2 and 4 p.m. – an announcement was posted on the Senate's website entitled "[Senate to Host Hearing on Ethics Oversight and Enforcement](#)", stating that the Senate Ethics and Internal Governance Committee would be holding a hearing on Monday, July 12th, at 10 a.m., at which "registered speakers may participate" and furnishing an on-line link for "Individuals who would like to register to speak". The linked on-line registration webpage entitled "[New York State's System of Ethics Oversight and Enforcement Witness Request](#)" required registration and "written testimony" "no later than 72 hours prior to the scheduled time of the hearing" – in other words by 10 a.m. the next day, Friday, July 9th.

As reflected by photos and video clips accompanying July 12th press reports, Ranking Member Palumbo was present in the hearing room and, seemingly, a stenographer was also present. A large monitor showed other Senators present, electronically. Witnesses who were to testify were presumably either physically present or lined up electronically. Members of the public and the press were also either physically present or watching electronically. Nevertheless the hearing did not begin at 10 a.m. Instead, after about an hour, the hearing was postponed.

Contemporaneous reporting does not reveal how the postponement was announced. For those watching electronically, the fixed screen on which was written something to the effect that the hearing would shortly begin never changed. Only the accompanying music stopped, sometime after 11 a.m. It was necessary to refresh the webpage for notification that the hearing was postponed – with no information as to why, where, when, how, and by whom.

The Albany Times Union's July 12th article "[State ethics hearing delayed over transparency question](#)" (Chris Bragg) – seemingly the first to appear -- reported that Chair Biaggi furnished "a prepared statement" that:

"Out of an abundance of caution we are going to postpone today's ethics hearing to ensure we are fully complying with all state meetings laws. As the Senate Ethics Committee, and the first Senate Committee to hold a hearing since the end of the COVID-19 state of emergency, it is of the utmost importance we work with the highest level of integrity."

It is unclear whether this "prepared statement" was separate from Chair Biaggi's twitter at 11:05 a.m. <https://twitter.com/SenatorBiaggi/status/1414601940147769344>, reported by [The New York Post](#) (July 12th, "[NY state lawmakers cancel ethics hearing after rule mix-up](#)" (Bernadette Hogan)).

Obviously, if those reporters were in the hearing room, they would not have reported a "written statement" or "twitter", but what Chair Biaggi had said, in the hearing room. In any event, the implication in the "written statement" and "twitter", by their use of the pronoun "we", is that the decision was a Committee decision. Yet, as far as I can discern, not only is there no reporting that Chair Biaggi was actually herself in the hearing room, but also none that she invited the physically-present Ranking Member Palumbo and the electronically-present other Committee members to participate in any discussion of the Open Meetings Law issue – with a vote thereafter democratically taken as to what should be done. To the contrary, this is what is described:

"[Ranking Member Palumbo] waited for an hour in the hearing room before he was told of the cancellation. He said he believes the hearing, as it was structured, would not have violated the Open Meetings Law. ...Palumbo, from eastern Long Island, has one of the longest commutes to Albany. He said other Republican senators on the committee would have come in person if they were told that was the rule." (July 12th, "[New York Senate Ethics Hearing Delayed Due to Open Meeting Concerns](#)", Public Radio (Karen DeWitt)).

Indeed, Chair Biaggi apparently did not apprise Committee members of any Open Meetings Law concern – or at least not the members of the Republican minority – until her seemingly unilateral July 12th postponement of the hearing, at the hearing:

"Palumbo said Republicans were never alerted about the hearing being switched to partially in person and said more members would have showed up. Senate Democrats control the hearing since they are in the majority. 'We discovered this, our staff did, from the Senate website that it would now be in person about I think it was two days ago and I just, fortunately was able to scramble together and find suit pants, Palumbo said.'" (July 12th, "[Senators 'Zooming' from home causes ethics hearing to be postponed](#)", Spectrum News-NY1 (Morgan McKay)).

Suffice to add, with respect to Committee on Open Government Executive Director Bewlay's e-mail to [The Post](#):

"In my opinion, on or after June 25, 2021, a member of a public body wishing to form a part of the quorum for or cast a vote in a meeting subject to the law...held by videoconference (*i.e.*, Zoom) may do so only if the public is permitted to be physically present with the member at the member's location,"

[The Post](#) article does not state that Chair Biaggi had contacted the Committee on Open Government requesting an opinion, or that she had been furnished with an opinion – let alone one tailored to a hearing where witnesses had already arranged their schedules, prepared, and travelled to testify and the public interest would plainly be prejudiced by

delay. In fact, it would seem that Chair Biaggi's postponement of the hearing was for purposes of obtaining such opinion, presumably from the Committee on Open Government:

"Senator Biaggi, a Democrat, said she believes that the public hearing falls into a gray area of the rules, but did not want to taint the proceedings by any suggestion that they did something improper. 'Because there is no question that we will not even give the perception of violating the Open Meetings Law, we are postponing it until we have clarity around this issue,'" (July 12th, "[New York Senate Ethics Hearing Delayed Due to Open Meeting Concerns](#)", Public Radio (Karen DeWitt)).

That being said, it is somewhat contradictory that the above Public Radio reporting includes an audio of Chair Biaggi speaking -- not stated to be from the hearing room on July 12th -- wherein she asserts: "There was a concern that was brought to our attention from the Committee on Open Government as to whether or not the Open Meetings Law applies to hearings". Albany's News 10 likewise reported that the July 12th hearing "never launched because the Committee on Open Government raised concerns" (July 12th, "[NYS Senate ethics hearing postponed](#)", (Corina Cappabianca) and the above July 12th [Post](#) article reflects this, as well. Is this true? And what about the different spin for the genesis of the postponement, appearing in today's July 15th article "[Open Meetings Law concerns stalls ethics hearing](#)" (Johnson Newspapers (Kate Lisa)):

"A reporter in the Capitol's Legislative Correspondents Association was going to file a complaint with the Committee on Open Government, saying the hearing would violate the Open Meetings Law without an in-person quorum, a spokesman with the Senate Democratic Caucus said."

Consequently, pursuant to FOIL and Senate Rule XIV -- and in keeping with Chair Biaggi's assertions: "The most important thing we can do as a government is to be transparent in our actions because everything we do is in service of the public" (July 13th, "[New York Sen. Biaggi talks reforming Albany's ethics watchdog](#)", Spectrum News/Capital Tonight Interview (Nick Reisman) and "The public does deserve transparency, which is the point of the hearing" (July 12th, "[NYS Senate ethics hearing postponed](#)", Albany News 10 (Corina Cappabianca)) -- this is to request:

- (1) the video and/or transcription of the announcement in the hearing room on July 12th, postponing the Senate Ethics and Internal Governance Committee's hearing on "New York State's System of Ethics Oversight and Enforcement", including any discussion prior thereto by Committee members, any vote by them, and any statements thereupon put on the record;
- (2) records reflecting why the Committee proceedings of July 12th were not live-streamed, [why the video has not been posted](#), and why no statement has been posted explaining the postponement of the July 12th hearing;
- (3) the list of witnesses scheduled to testify at the July 12th hearing;
- (4) the written testimonies the witnesses had submitted;
- (5) records reflecting the date and time witnesses had registered and submitted their required written testimonies -- or reflecting their exemptions from same because they were invited to testify;
- (6) records reflecting the names of registrants whose requests to orally testify were not approved -- and the reasons therefor;
- (7) records reflecting when and in what fashion Chair Biaggi became aware of the Open Meetings Law issue and whether the change of the hearing format from ZOOM only to a

hybrid of ZOOM and in-person, reported by Politico's July 11th article "*How will government meetings adjust to a post-Zoom world?*" (Bill Mahoney), was the result of consultation with the Committee on Open Government;

- (8) records reflecting Chair Biaggi's communications with Ranking Member Palumbo and the Committee's five other members pertaining to the Open Meetings Law issue, including the need for a quorum of the Committee's members to be "physically present" for the July 12th hearing – so-highlighted by Politico's July 11th article;
- (9) records of communications from the Committee on Open Government to Chair Biaggi raising "concerns" about the July 12th hearing;
- (10) records reflecting that a "A reporter in the Capitol's Legislative Correspondents Association was going to file a complaint with the Committee on Open Government, saying the hearing would violate the Open Meetings Law without an in-person quorum";
- (11) records reflecting whether – prior to postponing the July 12th hearing – Chair Biaggi read CJA's July 12th "Written Testimony in Lieu of Oral Testimony", e-mailed to her at 9:46 a.m. – and whether it factored into her decision to postpone the hearing;
- (12) records reflecting whether – following postponement of the July 12th hearing – Chair Biaggi forwarded to the Committee's six other members CJA's July 12th e-mail, sent to her at 11:53 a.m., inviting her and the other Committee members to a ZOOM meeting concerning CJA's "serious and substantial testimony, so that we can discuss what needs to happen, going forward, consistent with the duties you owe the People of the State of New York".

Thank you.

Elena Sassower, Director
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