

TESTIMONY OF THE GOVERNMENT ETHICS AND STATE AFFAIRS COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION

Public Hearing on New York State's System of Ethics Oversight and Enforcement July 12, 2021

Good morning. My name is Edward Murray. I am an attorney testifying today on behalf of the New York City Bar Association's Government Ethics and State Affairs Committee.

Since JCOPE was created in 2011, the Committee has issued a series of reports on the commission's structure and the manner in which it hinders effective administration of the state's ethics laws. Most recently, the Committee issued a ten-year report on JCOPE, a copy of which is submitted with this testimony.¹ The report found that JCOPE's overall mission continues to be hampered by these structural flaws.

These flaws include JCOPE's appointment method that discourages independent action by the commission members and voting rules that allow enforcement actions supported by a super-majority of commission members to be blocked by no more than two members.

JCOPE is also subject to strict confidentiality provisions, which can serve to protect the integrity of investigations and the reputations of innocent public servants. However, these provisions have, at times, appeared to serve as a means to hide political interference rather than the purposes for which they are intended.

Finally, JCOPE shares oversight responsibilities with the Legislative Ethics Commission ("LEC"). Notably, JCOPE has the authority to issue advisory opinions interpreting the state's ethics laws for the executive branch and LEC has the authority to do the same for the legislative branch. A joint commission that has appointees from both the legislative and executive branches should be empowered to regulate both branches equally to avoid an inconsistent interpretation of the state's ethics laws and to make clear to the appointing authorities, the regulated parties, and the public where the responsibility for ethics oversight lies.

In recent months, the State Senate has taken significant steps to address some of these structural issues by passing S.6964-A, prime sponsored by Senator Biaggi. The bill, among other things, brings JCOPE's voting rules into line with agencies such as the Commission on Judicial Conduct and the New York City Conflicts of Interest Board, by requiring that JCOPE act, in all matters, by simple majority vote. The bill provides a needed short-term solution until broader, more permanent reforms can be adopted.

In this regard, the Committee supports the constitutional amendment proposed by Senator Krueger and Assemblyman Carroll to establish a Government Integrity Commission. The proposal includes many important improvements on the existing

¹ "Ten Years In, Is There Still Hope for JCOPE?", Report of the Government Ethics and State Affairs Committee of the New York City Bar Association, Feb. 16, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ten-years-in-is-there-still-hope-for-jcope>.

regime, including empowering the commission to sanction both elected and non-elected officials and separating out the power to remove commissioners from the power to appoint commissioners. But the appointment method for this new commission is critical for facilitating independent action. The Committee has supported an appointment method that mirrors the one used by state's Commission on Judicial Conduct, whereby the majority of commission members are appointed by someone other than the regulated parties. The Committee has also been discussing with other organizations alternative methods that we hope would achieve similar ends, including a method of joint appointments, in which the appointment power is shared by two or more parties. We hope to be able to report on these discussions soon.

The City Bar Association thanks the Senate for holding this oversight hearing and taking the lead on the difficult but important work of ethics reform. We encourage the Senate to continue this work with the Assembly so that concrete results can be achieved.