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October 2, 2023

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

TO: Commissioners/Commission on Ethics and Lobbying in Government (COELIG)

RE: (1) Updating & Now Filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff, for "substantial neglect of duty" and "misconduct in office", born of flagrant violations of mandatory conflict-of-interest protocols;
(2) Officially TESTING the Commission's unofficial reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint and October 6, 2022 supplement based on the within evidence that the November 17, 2022 staff letter that the Commission "voted to close" it is indefensible.

On March 29, 2023, in testifying at your first annual hearing, I stated to you that I would be filing a complaint

"against you, to you, for your 'substantial neglect of duty' and 'misconduct in office'^{fn2} from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,^{fn3} and of Executive Law §94.10(b) explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.^{fn4}" (underlining and hyperlinking in the original).

I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my March 29, 2023 testimony summarized and evidentially-established. This you have not done and the final straw, prior to your September meetings, was your issuance on August 28, 2023 of your misnomered 2022 Annual Report, which is largely a first-year report, and whose material fraudulence is proven, resoundingly, by my testimony.

Had you made findings of fact and conclusions of law with respect to my testimony, as was your duty to have done – and *pronto* – you could not have rendered your "false instrument" Annual Report, constituting a Penal Law §175.35 violation by you, nor have stolen from the taxpayers scores of thousands of dollars in *per diems* to which you knew yourselves to be not entitled,

violating further Penal Laws, such as:

- [Penal Law §195](#) (“official misconduct”);
- [Penal Law §496](#) (“corrupting the government”) – part of the “Public Trust Act”;
- [Penal Law §20.00](#) (“criminal liability for conduct of another”).
- [Penal Law §195.20](#) (“defrauding the government”);
- [Penal Law §155.40](#) (“grand larceny in the second degree”);
- [Penal Law §190.65](#) (“scheme to defraud in the first degree”);

Indeed, with respect to *per diems*, you went way beyond availing yourselves of the fraud of its rate, which [Executive Law §94.4\(f\)](#) ties to the salary of a Supreme Court justice. What you did was to *sub silentio* convert Executive Law §94.4(f) into an hourly compensation provision by falsely purporting that this is what the statute provides, without securing an independent legal opinion because, as you knew, such would not sustain your self-serving interpretation.

I, therefore, now update and herewith file the complaint indicated by my March 29, 2023 testimony to span to the present date and to include the below “specific and credible evidence”. Pursuant to [Executive Law §§94.10\(d\) and \(f\)](#), “specific and credible evidence” is the predicate for investigation, signified and commenced by 15-day letters. Such are here required to be sent to each of you, to Executive Director Berland, to General Counsel St. John, and to other high-level complicit staff, so that each of you may respond to the evidence of your conflict-driven, fraudulent, and larcenous conduct.

To facilitate verification, this presentation extensively hyperlinks to the evidence and is, additionally, posted on CJA’s website, [here](#). A table of contents follows, formatted as charges against you.

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* * *

CHARGE 1
**Your Conflict-of-Interest-Driven Official Misconduct
in Failing to Discharge Your Duty to Make Findings of Fact
and Conclusions of Law with Respect to CJA’s March 29, 2023 Testimony --
& Your Self-Interested Fraudulent Disposition of that Testimony**

One does not have to be a commissioner on an ethics tribunal purporting to exemplify the highest ethics standards, or lawyers, as eight of you are, two being also former Appellate Division justices¹ – or high-ranking administrative, investigative, and ethics staff, among them lawyers, whose head is a former judge – to know that my [March 29, 2023 testimony](#) and its [substantiating EVIDENTIARY webpage](#) had to be confronted, immediately, and with findings of fact and conclusions of law. These would have been, at minimum:

- (1) that the [CJA v. JCOPE, et al verified petition](#) establishes JCOPE’s corruption with respect to the seven complaints that CJA filed with it, each of which mandated 15-day letters pursuant to [then Executive Law §94.13\(a\)](#) – and that

¹ Former Appellate Division Justice Carni apparently resigned from the Commission as some point between the August 28, 2023 Annual Report, which includes him, and the September 2023 meetings, but is criminally liable for his corruption with you, prior thereto – and the fraudulent, larcenous hourly *per diems* he collected and allowed you to collect.

the “ethics commission reform act of 2022” replacing JCOPE with COELIG was unconstitutionally enacted *via* the budget and by fraud, as set forth by its sixth cause of action;

- (2) that [CJA’s July 8, 2022 “DAY 1” complaint to COELIG](#), consisting of a refiling of CJA’s seven complaints to JCOPE, plus a new eighth complaint against Attorney General James for litigation fraud in [CJA v. JCOPE, et al.](#), to which CJA filed an [October 6, 2022 supplement](#) and which an [unsigned November 17, 2022 letter of your “Investigations Division”](#) purported you had “voted to close”, establishes COELIG’s corruption with respect to those complaints and its violation of [Executive Law §§94.10\(d\) and \(f\)](#), including with respect to 15-day letters;
- (3) that you have financial and other interests in *CJA v. JCOPE, et al.* and in the July 8, 2022 complaint which, pursuant to [Public Officers Law §74](#) and [Executive Law §94.10\(b\)](#), mandated disclosure and recusals by you – and that I gave you notice of this and of the financial and other interests of JCOPE Executive Director Berland, including simultaneously with notifying the Independent Review Committee (IRC) when it was screening you²;
- (4) that the 15 IRC law school deans corrupted the duties imposed upon them by [Executive Law §94.3](#) – including as to their own disclosure and recusal obligations, mandated by Executive Law §94.3(j) – in [screening and approving you as commissioners, and in concealing the corrupting of the nominations process by the selection members](#);
- (5) that you actualized your financial and other interests in *CJA v. JCOPE, et al.* and in CJA’s July 8, 2022 complaint arising therefrom by retaining JCOPE Executive Director Berland to be COELIG’s interim executive director – thereafter compounding same, on December 16, 2022, by making him COELIG’s executive director, without the search you had publicly promised at your first meeting, on September 12, 2022, and, possibly without even posting the position,³ because any competent candidate for the job would have easily discerned that JCOPE and now COELIG were subverting statutory mandates with respect to complaints and 15-day letters;
- (6) that Berland and other JCOPE high-ranking staff, such as JCOPE Ethics Director St. John, who Berland would promote to COELIG’s general counsel, violated disclosure/recusal mandates with respect to [CJA’s July 26, 2022 and December 27, 2022 FOIL requests](#), purporting that records that necessarily exist, do not exist, which was and is an outright lie.

² [August 4, 2022 e-mail](#); [August 22, 2022 e-mail](#); [December 27, 2022 e-mail](#); [February 7, 2023 e-mail](#).

³ See [endnote 6](#) of my March 29, 2023 testimony.

Because such findings of fact and conclusions of law, compelled by my testimony, precluded issuance of an annual report that would – as yours has – conceal, totally, the corruption of COELIG and JCOPE with respect to complaints and 15-day letters and the IRC’s corruption, about which I testified, you and your staff headed by Executive Director Berland and General Counsel St. John made no findings of fact and conclusions of law, whatever. Rather, you and staff embarked on a calculated course to avoid and obliterate my testimony. This started at the [March 29, 2023 hearing itself](#) when, notwithstanding I was, at my request, your last witness so that I might have an extra 3-1/2 minutes to complete my testimony, you cut the live-stream of those extra 3-1/2 minutes and, with more than 2-1/2 hours remaining for the hearing, asked me not a single question.

Two weeks later, at your [April 10, 2023 “special meeting” \(at 1hr/59 mins\)](#), you allowed General Counsel St. John, whose conflict-of-interest-driven fraud with respect to my FOIL appeal I testified about, to reduce my testimony to a single recommendation: that COELIG’s closing letters contain a provision for reconsideration similar to those of the Appellate Division attorney grievance committees. To this, only Commissioner Whittingham took modest exception, stating:

“From the Center for Judicial Accountability, I think she also had some concerns about the closing letters and the lack of information. In addition to giving the opportunity for reconsideration, whether or not we should have more information in those letters and whether or not the Commissioners did vote on it or it’s only saying that the Commissioners voted and to make that clear. I think I got that from her comments, as well, if I’m not mistaken, those were the other concerns that she had.” ([VIDEO, at 2hrs](#)).

This was apparently too damning to be included in the draft minutes of the April 10, 2023 meeting, as at the May 23, 2023 meeting at which the minutes were being approved, she stated:

“On page 11, where we also have the last sentence of the first paragraph, noting what Ms. Sassower recommended. I think, in addition to noting what was recommended, I made the suggestion that we look into that and, if I am not mistaken, I was told that was going to be looked into in terms of the way we do the closing letters. I wanted to just add that, the suggestion to look into it, that the Commission and staff will look into it.” ([VIDEO, at 4mins](#)).

This was accepted as a friendly amendment – and the April 10, 2023 draft minutes were approved, as amended. In violation of the Open Meetings Law ([Public Officers Law, §103\(e\)](#)), the draft minutes were not posted on [your webpage of the agenda for the May 23, 2023 meeting](#) – and the approved minutes were not thereafter posted.

The following month, [your agenda webpage for the June 27, 2023 meeting](#) attached a “[March 29, 2023 Annual Public Hearing Recommendations and Comments Digest](#)”, which, though adding two further items pertaining to my testimony (at p. 12), did not include what Commissioner Whittingham had noted. The three items, designated for consideration by the Legal Committee, were:

“• Letters ‘closing’ complaints by vote of the Commission should indicate 30 days in which a complainant may seek reconsideration of the closing of a matter, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.

- The statute creating the Commission should be voided
- Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving per diem allowances that are measured according to the unlawfully raised salaries of Supreme Court justices.” (underlining added)

Counsel St. John presented the “Digest” at your June 27, 2023 meeting ([VIDEO, at 37mins](#)), without any of you taking exception to its distillation of my testimony, even to the limited extent of:

- adding to the first item that my testimony had challenged the legitimacy of closing letters purporting the Commission had “voted” when, pursuant to Executive Law §94.10(f), the Commission does not “vote” until after an investigative process commenced by a 15-day letter;
- modifying the second item to reflect that my testimony asserted that the sixth cause of action of *CJA v. JCOPE, et al* was dispositive that the statute creating COELIG had to be voided, *as a matter of law* – and that Attorney General James, a respondent, representing herself and the other respondents, was corrupting the judicial process with litigation fraud because she had no legitimate defense – and that CJA’s July 8, 2022 complaint to COELIG against Attorney General James based thereon had been fraudulently closed by an unsigned November 17, 2022 letter of COELIG’s “Investigations Division”, purporting the Commission had “voted” to do so;
- modifying the third item to reflect that, by then, you had already received or would be receiving, within days, your first *per diem* payments, cumulatively totaling [\\$83,946](#).

On September 6, 2023, you disposed of the three items from the “Digest” pertaining to my testimony. Two were disposed of at your [“special meeting”](#), chaired not by Chair Davie, but by Vice Chair Austin, as chair of the Legal Committee.

The first item that Vice Chair Austin announced, he simultaneously disposed of, as follows:

“Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along that, her along that way. Anyway, we’re waiting for a decision, so I don’t think there is anything we can do with that, on so many different levels. So, with your kind permission, I am

going to mark that one as rejected.” ([VIDEO, at 50mins](#)).

No one objected that my testimony⁴ had NOT “ask[ed]” that you “void the statute creating the Commission”, but had asked for reconsideration of the unsigned staff letter purporting the Commission “voted to close” CJA’s July 8, 2022 complaint against Attorney General James for corrupting the judicial process in [CJA v. JCOPE, et al.](#), which the Attorney General had done to prevent a declaration voiding the “ethics commission reform act of 2022”, to which CJA has a summary judgment/*matter of law* entitlement – mooted [Cuomo v. COELIG](#).

18 minutes later, Vice Chair Austin announced:

“Number 16 is from Elena Sassower, asking that letters closing complaints be by vote of the Commission and indicate 30 days in which a complainant may seek reconsideration closing the matter, similar to what the Appellate Division does and various rules of civil procedure.

Staff responds that that would require an amendment of the Executive Law 94.10 for rehearing, reconsideration. There are other procedural alternatives to an aggrieved party from a decision that we make, and that’s through the court in an Article 78. So parties are not without their remedy, beyond an appeal before us. So, with that in mind, is there any discussion with regard to number 16?” ([VIDEO, at 1hr/8mins](#)).

No one objected that my testimony had NOT “ask[ed] that letters closing complaints be by vote of the Commission”. Rather, I had identified that:

“pursuant to Executive Law §94.10(f),^{fn8} the only time the Commission votes to close a matter is AFTER investigation that includes 15-day letters, where the staff has recommended same in a report to the Commission for the reason that the complaint is ‘unfounded or unsubstantiated’ – by no stretch the case at bar with respect to any of the eight complaints.” (p. 3, capitalization and underlining in the original).

There was, however, push-back from Commissioner Ayres and Chair Davies to the staff response that amending Executive Law §94 would be necessary in order to institute a reconsideration procedure, albeit this push-back did not identify what they and you are presumed to know, namely, that staff was outrightly lying because [Executive Law §94.5](#), entitled “Powers”, expressly states:

“(a) The commission has the authority to:… (ii) adopt, amend, and rescind any procedures of the commission, including but not limited to, procedures

⁴ Consistent with your favoring of the misnomered “good government groups”, whose recommendations at the March 29, 2023 hearing you identified at the September 6, 2023 meeting by their specific organizational affiliations, you did not identify my testimony by organizational affiliation, *to wit*, the Center for Judicial Accountability – just as, likewise, you used my name, instead of CJA’s in your Annual Report’s listing of “Litigated Matters”. (*see* fn. 5, *infra*).

for...investigations, enforcement...”

Though ultimately my suggestion of a reconsideration procedure was tabled, deceit pervaded the discussion preceding the vote (Exhibit A), exemplified by:

- the failure of any of you to acknowledge that there might be anything wrong with how even a single complaint had been closed, for which reconsideration would be warranted, let alone with respect to CJA’s July 8, 2022 complaint and the unsigned November 17, 2022 staff letter stating you had “voted to close” it. Exemplifying this was Commissioner Ayres’ twice-stated assertion, as to whether COELIG’s rules should provide for reconsideration, “I’m not saying it’s a good idea” and “I’m not saying I support doing it”, and Commissioner Whittingham’s “I am not persuaded that, you know, this is the route we should take”;
- the failure of any of you to ask Executive Director Berland as to the provision of Executive Law §94 to which he was referring when he purported it contemplated an Article 78 remedy to complainants whose complaints had been closed;
- Commissioner Caraballo’s obvious knowledge that there was an issue about whether complainants whose complaints had been closed would have an Article 78 remedy, and which, when she questioned Executive Director Berland about it, he laughed and replied: “There are jurisdictional questions” and “It’s an interesting question that has been litigated and really it does depend on the circumstances and how you interpret the statute with respect to complaints” – to which there was no follow-up by her or anyone else.

It would appear that some of you were willing to entertain a reconsideration procedure for complainants whose complaints are disposed of by closing letters. Presumably this is because you are confident that, as with other rule provisions you have put in place and the provisions of Executive Law §94 that you have violated, you will be able to render it sham, window-dressing.

The third item from my testimony, though also designated by the “Digest” as for the Legal Committee, was, apparently, shifted to the Ethics Committee. This was improper, as the original designation was correct. The issue in the first instance is a legal one: whether – as I identified by my testimony – \$80,000 of the salary of Supreme Court justices is fraudulent, as established by CJA’s complaints to JCOPE that are Exhibits A through G to the June 6, 2022 verified petition in *CJA v. JCOPE, et al.*, all seven of these complaints refiled with COELIG by the July 8, 2022 complaint. The ethics issues kick in only after confirmation, by findings of fact and conclusions of law, that the Supreme Court salary level, to which Executive Law §94.4(f) ties COELIG commissioner *per diems*, is fraudulent.

This third item was disposed of at the Ethics Committee’s September 6, 2023 meeting that commenced immediately following your nearly 5-1/2 hour special meeting, whose last three hours were about adopting [a commissioner code of ethics, disclosure, and recusal policy](#) that would set a

higher standard than that of [Public Officers Law §74](#) and [Executive Law §94.10\(b\)](#). Below is my transcription of how Ethics Committee Chair James, and members Caraballo and Austin disposed of the item.

[VIDEO, at 13mins](#)

James: *(rapidly read)* The Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving *per diem* allowances that are measured according to the unlawfully raised salaries of Supreme Court justices. Umm.

Caraballo: I, yeah, I move to accept the staff recommendation.

James: Denied.

Caraballo: Denied, however you want to say it.

Austin: The Commissioners are conflicted one?

Caraballo: Yea.

Austin: What'd you move?

Caraballo: I moved to deny that, to accept the staff's recommendation.

James: Alright. All in favor?

Austin: Aye.

Caraballo: Aye.

No mention of the basis for the staff's recommendation or inquiry as to how, if at all, staff addressed its conflicts of interest with respect to same – and how, in accepting the staff recommendation, the Ethics Committee members were confronting their financial interests in the issue, which, as to former judges Austin and the not present Commissioner Carni, were, as stated by my testimony ([at p. 2](#)), “HUGE”, on the order of “approximately three quarters of a million dollars each”.

CHARGE 2
Your Conflict-of-Interest-Driven “False Instrument”
August 28, 2023 Annual Report for 2022, in Essence a First-Year Report

Your [Annual Report](#) begins with an Executive Summary ([at pp. 7-11](#)), whose first paragraph states “Governor Kathy Hochul signed ECRA into law on April 9, 2022, and it took effect 90 days later, on July 8, 2022.” Omitted, as likewise from the Annual Report, is that ECRA – the “ethics commission reform act of 2022” – was enacted through the budget – and that *CJA v. JCOPE, et al.*, challenged the unconstitutionality of this and other frauds pertaining to ECRA’s enactment.

The Annual Report acknowledges *CJA v. JCOPE, et al* in its section entitled “[Litigation Matters](#)” ([at pp. 58-60](#)),⁵ misidentifying its title, misidentifying the date of the Supreme Court decision that dismissed it, and giving a two-sentence summary, as follows:

“In this hybrid Article 78/declaratory judgment action, petitioners sought, among other things, to challenge the Ethics Commission Reform Act of 2022 (ECRA), the statute that created COELIG, and moved for a preliminary injunction to stop the implementation of ECRA. The Court dismissed the action, finding that petitioners failed to state a cause of action, and upheld the constitutionality of ECRA.” ([at p. 60](#))

Apart from concealing that the basis for the lawsuit’s challenge to ECRA, by its sixth cause of action, is its enactment, through the budget and by fraud – the same as entitled petitioners to a preliminary injunction to stop ECRA’s implementation – you conceal that the first and second causes of action pertain to JCOPE’s corruption with respect to its handling of complaints and specifically 15-day letters – and that the record of the lawsuit, whose [NYSCEF link](#) my written testimony furnished, establishes the Supreme Court decision to be a judicial fraud by a judge disqualified for actual bias born of financial interest, as to which [I noticed an appeal on December 16, 2022](#). Yet, the Annual Report does not reflect that fact – or that, on August 15, 2023, almost two full weeks before you issued your Annual Report, [the appeal to the Appellate Division, Third Department was perfected](#).

The Executive Summary’s second paragraph then purports that COELIG’s creation by Governor Hochul and the Legislature was “to restore public trust in state government by ensuring transparent, consistent, and vigorous application and enforcement of New York’s ethics and lobbying laws and regulations” – not mentioning that this, too, was challenged by the *CJA v. JCOPE* verified petition (at ¶6), which expressly asserted that COELIG’s enactment was motivated by the ulterior purpose of stripping the public of rights under the JCOPE statute enforceable by mandamus pertaining to complaints – and that among the respects in which the ECRA statute was inferior is that COELIG,

⁵ The opening sentence of this “Litigated Matters” section reads: “The Commission and its predecessor agency were involved in four litigation matters in 2022”. It then lists five litigations. The first two decisions, of the Appellate Division, Third Department, are listed chronologically. Inconsistently, the next three decisions, of Albany County, are not listed chronologically – which is why the case purported to be “*Elena Sassower, et al. v. Joint Commission on Public Ethics...*” is last.

unlike JCOPE, would not be a “covered agency” under the jurisdiction of the state inspector general.

The Executive Summary continues with a full page chart ([at p. 8](#)) entitled “The New Ethics Commission Reform Act of 2022 (ECRA) “What News Under ECRA” – falsely inferring that what is “new” in the ECRA statute are improvements, so-conceived and by their operation.

A graphic follows ([at p. 9](#)) entitled “NYS Commission on Ethics and Lobbying Government 2022 Activities Snapshot”, focused on numbers – and the title “The Numbers” is how the Annual Report’s [Table of Contents](#) separately lists it.

From the public’s standpoint, the most important number is: “155 tips, complaints, and reports received and processed by the Commission” – and it is explicated ([at p. 11](#)) under the heading “Investigations and Enforcement” as follows:

“After July 8, 2022, Investigations and Enforcement Division staff continued to process complaints and conduct preliminary reviews of matters while awaiting the appointment of COELIG Commissioners and thereafter in 2022 processed 155 investigative matters.... COELIG has continued all pending matters carried over from JCOPE....”

This is utter fraud, as:

- under the ECRA statute, [Executive Law §94.10\(f\)](#), COELIG staff was empowered not just to “conduct preliminary reviews” of complaints but to “elevate” them to “investigation”, signified and commenced by 15-day letters;
- it conceals the number of “tips complaints, and reports” that COELIG received “while awaiting the appointment of COELIG Commissioners” – notwithstanding that number was stated to be **30** in the staff operations reports furnished with the agendas of your [October 6](#) and [October 25, 2022](#) meetings – such staff reports also identifying that CEOLIG had sent out **0** 15-day letters and had commenced **0** investigations;
- it falsely implies, by the phrase “155 investigative matters”, that these 155 were investigated when, as the Annual Report’s [chart at page 78](#) reflects, of the “155 tips, complaints, and reports” that were collectively received by JCOPE and COELIG in 2022, only **3** 15-day letters were sent and **2** investigations commenced.

The Executive Summary ends ([at p. 11](#)) with an immediately following single sentence:

“Detailed information on the matters handled and the work performed by the units of the Commission can be found in the relevant sections of this report that follow.”

The “relevant sections”, with respect to complaints, are the Annual Report’s “Investigations and Enforcement” section (pp. 52-75), plus the final page of the section immediately following it, this being page 78 of “Commission Activities by the Numbers”.

The “Investigations and Enforcement” section (pp. 52-75) begins ([p. 52](#)) with three highlights, on three panels. The first panel states: “Tips, Complaints, & Reports: The agency received and processed 155 tips, complaints, referrals, and reports in 2022.”

The referred-to “agency” was, until July 7, 2022, JCOPE and then, from July 8, 2022 onward, COELIG. The 155 figure corresponds to the reference numbers 22-001 to 22-155 on the chart entitled “2022 Enforcement Activity” ([at pp. 64-75](#)), with no indication as to the reference number at which the receiving “agency” changed from JCOPE to COELIG. Nor is there any indication as to which of the reference numbers are “tips”, which are “complaints”, which are “referrals”, and which are “reports”.

The second panel states: “The Commission closed 128 investigative matters in 2022.”

The “Commission”, prior to July 8, 2022, was JCOPE and, from that date onward, was COELIG. The inference, by the phrase “128 investigative matters”, is that 128 matters were “investigated”. This would have required, at minimum, the sending of 128 15-day letters because 15-day letters are the starting point for “investigation” under both the JCOPE and COELIG statutes.

The third panel states: “Open Investigations: As of December, the Commission had 32 open and 124 pending investigations”.

There is no definition of what an “open investigation” is as opposed to a “pending investigation”. Presumably the 32 “open investigations” refer to investigations opened by COELIG and the 124 “pending investigations” refer to investigations that JCOPE opened. As to all these “investigations”, they were improper and violated the JCOPE and COELIG statutes unless, as to each, 15-day letters were sent.

In any event, the numbers from the staff operations reports that Executive Director Berland furnished you for your meetings are starkly different, revealing that in 2022 COELIG sent out **0** 15-day letters and opened **0** investigation in response to **70** “tips, complaints, and reports received”.⁶

These same staff operations reports reveal that in 2022, JCOPE had sent out **3** 15-day letters and opened **2** investigations.

The next subsection is **“The Investigation and Enforcement Process”** ([pp. 53-56](#)), depicting COELIG as a properly functioning investigative body, operating consistent with its statutory mandate. This is false. Cloaked by the true sentence ([at p. 53](#)):

⁶ See staff operations reports for your [October 6, 2022](#), [October 25, 2022](#), [November 15, 2022](#), [December 16, 2022](#), and [January 31, 2023](#) meetings.

“The Commission will investigate all matters where there is specific and credible evidence that a violation has occurred of Section 73, 73-a, or 74 of the Public Officers Law, Section 107 of the Civil Service Law, or article 1-A of the Legislative Law, by a person or entity subject to the jurisdiction of the Commission.” (underlining added),

which is what Executive Law [§94.10\(d\)](#) and [§94.10\(m\)](#) require – and what [your website](#) also purports – the next paragraph engages in sleight of hand by changing the definition of “investigation”. It does this by replacing the statutory phrase “preliminary review”, which Executive [Law §94.10\(f\)](#) expressly identifies as NOT “investigation”, with the phrase “preliminary collection and review of information”, inferring this to be informal “investigation” and then calling 15-day letters “formal investigation”. Thus it states:

“If the preliminary collection and review of information warrants elevating the matter to a formal investigation, the subject of the investigation will receive written notice of the alleged violations of law and be given 15 days to respond. This written notice is often referred to as the 15-day letter...” (underlining added).

By similar sleight of hand, this subsection purports ([at p. 54](#)) that “after staff’s presentation”, the standard for the Commission’s vote as to whether to proceed to a due process hearing is “credible evidence”, when “credible evidence” is the standard for the “investigation”, commenced by a 15-day letter. The [page 55 flow chart](#) then repeats these two deceits.

The subsection “2022 Review and Disposition of Investigative Matters” ([pp. 56-57](#)) follows consisting of three short paragraphs. The first two paragraphs repeat what the Annual Report had previously sent forth, most significantly that:

“Investigations staff continued to process complaints and conduct preliminary reviews of matters while awaiting the formation of COELIG and processed 155 investigative matters in 2022.”

As hereinabove stated, this is false. Although Executive Law §94.10(f) empowered COELIG staff to “elevate” “preliminary review” to “investigation” by 15-day letters, the staff operations reports presented to you at your [October 6, 2022](#) and [October 25, 2022](#) meetings show that of the 30 “tips, complaints, and reports” COELIG received before you were seated as commissioners, staff sent out **0** 15-day letters.

The three-sentence third paragraph then concludes:

“To date in 2023, COELIG elevated eight matters and sent notices of allegation, referred to as 15-day letters, to the affected parties. These 15-day letters included those sent to former Executive Branch officials and employees. COELIG continued

pending matters carried over from JCOPE, including two matters that have proceeded to the due process hearing stage.” (underlining added).

Obvious from the first four words, “To date in 2023”, is that another sleight of hand is being employed. The number of “elevated” matters and 15-letters that are relevant to the 2022 Annual Report do NOT span “To date in 2023” – and such are offered up to avoid having to report what the 2022 numbers are for COELIG: **0** matters “elevated” by 15-day letters.

Following the **subsection “Litigation Matters”** ([pp. 58-60](#)), misidentifying *CJA v. JCOPE, et al*, the Supreme Court decision, and concealing the relevant facts, including the status of the lawsuit – the subject of a perfected appeal filed 13 days before the Annual Report – is a **final subsection “2022 Enforcement Activity”** ([pp. 61-75](#)). This 14-page-chart contains the information required by [JCOPE Executive Law §94.9\(1\)](#) mandated for its annual report: “a listing by assigned number of each complaint and referral received which alleged a possible violation within [JCOPE’s] jurisdiction, including the current status of each complaint” – and which none of JCOPE’s annual reports had included, excepting the last for 2021, issued on July 7, 2022, the day before JCOPE when out of existence – and doubtless in response to the second cause of action of *CJA v. JCOPE et al*, to compel same. Although no such list is required by [COELIG’s Executive Law §94.12](#) for its annual report, you have included it presumably because, in and of itself – and without access to the complaints, tips, and referrals identified only by numbers – it permits no qualitative assessment of the accuracy or legitimacy of what is being represented – failing even to identify the reference numbers that elicited 15 day letters.

The first 3-1/2 pages (pp. 61-64) list, by assigned number, the closing, in 2022, of “tips, complaints, and reports” received by JCOPE in 2018 through 2021. The next 11-1/2 pages (pp. 64-75) are a list, by assigned number, of the status of “tips, complaints, and reports” received in 2022, without indicating at which assigned number the receiving commission became COELIG, not JCOPE. Upon information and belief, number [22-099](#) is the first complaint that COELIG received – CJA’s July 8, 2022 complaint, incorrectly listed as being against “Commission on Ethics and Lobbying in Government”, with a “status” of having been “Closed by Commission Vote” – the date being “11/17/22”.

Plainly if #22-099 was against the “Commission on Ethics and Lobbying in Government”, you could not have voted to close it without having first confronted your self-interest in it, proscribed by [Public Officers Law §74](#), and the disclosure/recusal protocol mandated by [COELIG Executive Law §94.10\(b\)](#). The complaint, which was NOT against COELIG, except inferentially by its [October 6, 2022 supplement](#), did present you with profound conflicts of interest, individually and collectively – and I highlighted some of these at the March 29, 2023 annual hearing.

My testimony (at p. 3) also highlighted that you could NOT have lawfully “voted to close” the complaint, because COELIG Executive Law §94.10(f) requires that BEFORE such a vote, there be a 15-day letter initiating an investigation, followed by a staff report to the Commission based thereon setting forth the evidence, supporting or disproving the alleged violation(s), with a recommendation which, if it is to close, is because the matter is “unfounded or unsubstantiated”. Since COELIG sent

out no 15-day letters in 2022, #22-099 could not have been “Closed by Commission Vote” without violating Executive Law §94.10(f).

For the same reason, six matters subsequent to #22-099 could not have been lawfully “Closed by Commission Vote”, to wit:

- #22-104 against “NYS Insurance Fund”, on “12/16/2022”;
- #22-109 against “United Nations Development Corporation”, on “12/16/2022”;
- #22-125 against “NYS Office for People with Developmental Disabilities”,
on “2/28/2022”;
- #22-128 against “Department of Corrections & Community Supervision,
Board of Parole”, on “12/16/2022”;
- #22-136 against “Assembly”, on “12/16/2022”;
- #22-147 against ? for “Failure to File”, on “1/31/2023”.

As for 2022 matters prior to #22-099 “Closed by Commission Vote”, the chart lists five. Of these, one was “closed” on “5/24/2022” – in other words, by JCOPE. It is #22-052 against “Executive Chamber and Legislature”, identified as “Closed by Decision (Commission Vote)”. The other four you had “closed”:

- #22-024 against “SUNY-Stonybrook” on “2/28/2023”;
- #22-064 against “Office of Parks & Recreation” on “12/16/22”;
- #22-089 against ? for violation of the Lobbying Act on “12/16/22”;
- #22-094 against “NYS Insurance Fund” on “12/16/22”.

Inasmuch as you had [resolved, at your October 6, 2022 meeting, to apply COELIG’s Executive Law to all pending matters](#), you could not close these four by “Commission Vote” unless prior thereto, you had followed the procedural protocol specified by COELIG’s Executive Law §94.10(f), starting with 15-day letters. However even applying [JCOPE Executive Law §94.13\(a\)](#), the procedural protocol of 15-day letters was required before a Commission vote.

The same is true with respect to the ten matters from before 2022, that in 2022 were “Closed by Commission Vote”. One of these was by COELIG: #21-147 against “SUNY – Binghamton” on “12/16/2022”. The other nine, by JCOPE, are:

- #18-014 against “Department of Health” on “4/29/2022”;
- #18-038 against “Executive Chamber” on “4/27/2022”;
- #20-012 against “Metropolitan Transportation Authority (Headquarters)” on “6/28/22”;
- #20-017 against “New York City Transit Authority” on “2/10/2022”;
- #20-197 against “Assembly” on “2/17/2022”;
- #21-074 against “Public Service Commission” on “3/29/2022”;
- #21-108 against “New York City Transit Authority” on “2/9/2022”;
- #21-233 against ? for a “Gift” on “2/28/22”;
- #21-244 against “Assembly” on “2/28/2022”.

Suffice to note that:

- [#22-052](#), the SOLE 2022 matter that JCOPE closed by a “Commission Vote”, identified as being against “Executive Chamber and Legislature”, is [CJA’s April 13, 2022 complaint to JCOPE](#) – the same as is Exhibit A to the June 6, 2022 verified petition in [CJA v. JCOPE, et al](#) (##2-7);
- [#21-244](#) that JCOPE closed by a “Commission Vote” is [CJA’s December 17, 2021 complaint against Senate and Assembly legislators and legislative employees](#) for subverting the Legislative Ethics Commission – the same as is Exhibit B to the verified petition in [CJA v. JCOPE, et al](#) (#8). The chart misidentifies it as being against “Assembly”.

These two entries are materially discrepant as to their recorded “closed” dates:

- For [#22-052](#), the “closed” date is recorded as “5/24/22” – which is the date the “Commission voted”, specified by [JCOPE’s June 6, 2022 closing letter](#).
- For [#21-244](#), the “closed” date is recorded as “2/28/22” – which is the [date of JCOPE’s February 28, 2022 closing letter](#), not the date the “Commission voted”, specified by the letter to be “January 25, 2022”.

As for [#22-099](#), CJA’s July 8, 2022 complaint, the “closed” date of “11/17/22” is the [date of your November 17, 2022 closing letter](#), not the date the “Commission voted”, specified by the letter to be “October 25, 2022”. Thereby concealed is that [#22-099](#) is the FIRST complaint you “closed” – and the one to which Executive Director Berland was referring when, on October 25, 2022, upon your return from executive session, he announced, in the public session, that you had closed a single complaint.

As the accuracy and propriety of the chart’s listings can only to assessed by examining the records of JCOPE and COELIG pertaining to each entry, the necessity of an independent examination is established by complaints [#21-244](#), [#22-052](#), and [#22-099](#), as the Commission “vote to close” them cannot be justified, procedurally or substantively.

That being said, some further observations are possible about the chart’s entries, as for example:

- Most of the dispositions are without reasons or explication, such as “Closed”, “Closed by Commission Vote”; “Pending”;
- The disposition “Closed (Insufficient Allegations)” appears on a great many of JCOPE’s dispositions, but not on a single one of COELIG’s dispositions.

Notably, your Annual Report is devoid of any information about your “oversight” over COELIG’s handling of complaints – or of litigations pertaining thereto and involving JCOPE – as to which my testimony could not have been more explicit in furnishing you with notice and evidence as to the exigency of “oversight”.

CHARGE 3
Your Conflict-of-Interest-Driven Subversion
of Executive Law §94.4(f) Pertaining to Your *Per Diems*

Illustrative of the Annual Report’s deceit, spinning your unethical, self-serving conduct into an accolade of your virtue, is its sole reference to your *per diems* ([at p. 29](#)), where, under the heading “Accomplishments”, it states:

“Posting Commissioner Per Diem Allowances: In 2022, the Commission made a commitment to post the amount of per diem allowances paid to Commissioners for their Commission work, with the first posting made for FY 2023 in May 2023.”

The facts are as follows:

Before the IRC had approved a single commissioner as qualified, I alerted the IRC by an [August 4, 2022 letter \(at p. 7\)](#), which I simultaneously [e-mailed](#) to the then prospective commissioners, that because ECRA Executive Law §94.4(f) ties commissioner *per diem* allowances to “the salary of a justice of the supreme court divided by two hundred twenty” for a 7-1/2 hour day or pro-rated day, ALL commissioners would have a financial interest in CJA’s eight-in-one July 8, 2022 “DAY 1” complaint to COELIG, which they would have to confront, threshold.

Three and a half months later, at your November 15, 2023 meeting, *per diems*, which had not been on the [meeting’s agenda](#), were raised by then interim Executive Director Berland as new and other business ([VIDEO, at 1hr/16mins](#)). He deemed this, as likewise COELIG’s retention of a public relations firm, also not placed on the meeting’s agenda, as too sensitive for open discussion and moved them to executive session. Although Chair Davie reiterated that when you came back from executive session, you would report as to these, there was “a small audio outage” preventing audio of what the result of that behind-closed-doors discussion had been. According to [the minutes](#), “The Commission discussed legal questions arising with respect to the proposed Commissioner per diem policy”. The “legal questions” were not identified.

Per diems next came up – and now as “VII. EXECUTIVE LAW §94(4)(F) PER DIEM POLICY” – [on the agenda of your January 31, 2023 meeting](#). However, at the meeting ([VIDEO, at 1hr/8 mins](#)), Chair Davie announced that because there were “some legal issues surrounding this” it would first be taken up in executive session, with a public report thereafter of the discussion about it. This was recited in the subsequent [January 31, 2023 minutes \(at p. 6\)](#) as:

“Interim Chair Davie advised that the Per Diem Policy should be discussed in Executive Session to obtain the advice of counsel with respect to the provision, with a report-out to be provided in open session.”

Yet, upon your return from executive session, there was no “report-out”. There was only a statement by Executive Director Berland that “the Commission discussed legal matter concerning Executive Law Section 94, sub(4), sub (f), the *per diem* policy” ([VIDEO, at 1hr/10 mins](#)). The [January 31, 2023 minutes comparably recited this \(at p. 7\)](#).

At your next meeting, on February 28, 2023, you discussed *per diems* for over an hour ([VIDEO, at 1 hr/55mins – to 3hrs](#)). Yet there was no mention of legal issues pertaining thereto, let alone what they were, how they had been resolved, and how the manner of their resolution had eliminated, or at least mitigated, your direct financial and other interests in monies you would be receiving.

There were, at minimum, two legal issues:

- The first was the one to which I had alerted you by [my August 4, 2022 e-mailed letter \(at p. 7\)](#), namely, the unlawfulness of the Supreme Court justice salary to which Executive Law §94.4(f) links commissioner *per diems*.
- The second arose from your self-interest in converting the statutory *per diem* provided for by Executive Law §94.4(f) to a “per diem hourly allowance” to cover all work relating to the Commission. This second “legal issue” was reflected by Attachment J to the [February 28, 2023 meeting agenda](#) entitled “[Resolution on the Payment of a Per Diem Allowance and Expenses to Members of the Commission](#)”. It had been revised shortly before the meeting. However, in violation of the Open Meetings Law, the revised resolution was not posted. Nor was there any posting of Commissioner Groenwegen’s amending resolution.

The only challenge to the notion that Executive Law §94(4)(f) authorizes an hourly *per diem* allowance was the statement of Commissioner Ayres:

“I have some discomfort with this whole discussion because I think that our decisions on our own pay I would feel more comfortable if we were looking at an independent analysis. I know the statute may seem clear, on its face, but as a professor of statutory interpretation I know that nothing is actually clear on its face. And I think these questions are difficult for me to opine on, I’m not saying that we should have gone to outside counsel, necessarily, although I certainly would appreciate a comparison of what other agencies do with similar language, how other folks handle this.” ([VIDEO, at 2hrs/53 mins](#)).

That a “professor of statutory interpretation” should purport, as Commissioner Ayres, did, that it was “difficult for [her] to opine on” how [Executive Law §94.4\(f\)](#) was being interpreted was utter deceit. There was nothing “difficult” in her guiding you to the starting point of “statutory interpretation”,

namely the text of the statute, reading:

“Members of the commission shall receive a per diem allowance equal to the salary of a justice of the supreme court divided by two hundred twenty for each day or each pro-rated day actually spent in the performance of the member’s duties under this section, and, in addition thereto, shall be reimbursed all reasonable expenses actually and necessarily incurred by the member in the performance of the member’s duties under this section. For the purposes of this subdivision, a day shall consist of at least seven and one-half hours spent in the performance of the member’s duties under this section.”

As the current Supreme Court salary is \$210,900, the *per diem* rate, obtained by dividing by 220, is \$958.64. This is more than three times the \$300 *per diem* allowance under [JCOPE’s Executive Law §94.8](#) which read:

“The members of the joint commission shall receive a per diem allowance in the sum of three hundred dollars for each day actually spent in the performance of his or her duties under this article, and, in addition thereto, shall be reimbursed for all reasonable expenses actually and necessarily incurred by him or her in the performance of his or her duties under this article.”

Indeed, recognizing that the COELIG *per diem* was so significantly higher than the JCOPE *per diem* makes plain why COELIG’s Executive Law §94.4(f) specified that “a day shall consist of at least seven and one-half hours” and provided for a “pro-rated day” when the hours fell below that number. It also would explain why the immediately following [Executive Law §94.4\(g\)](#) contemplates that the commissioners might only meet “quarterly”.

Other than that, the two *per diem* statutes are identical.

Nevertheless, excepting Commissioner Cardozo, who stated, at the outset of the discussion:

“the law that JCOPE was operating under, in terms of the wording, that says preparing for meetings and doing your work, was really no different from the law today and notwithstanding that, the JCOPE commissioners voted not to give *per diem* reimbursement for anything other than the public meeting and the commission meetings” ([VIDEO, at 2hrs/6mins](#)),

commissioner, after commissioner thereafter misrepresented the statute – and, without the slightest concern as to whether there was the slightest precedent for *per diems* being converted into hourly compensation – voted for [the resolution](#) that Chair Davie worded to give commissioners hourly *per diems* to cover all work pertaining to their “duties”, without any cap – and retroactive to July 8, 2022. All commissioners so-voted, except the abstaining Commissioner Ayres and Commissioners Groenwegen and Cardozo, who, though making sound arguments against the parameters of the resolution, did NOT blow the whistle on the conversion of *per diems* to hourly compensation. To

the contrary, Commissioner Groenwegen, who identified that months earlier she had been tasked with taking the lead on the *per diem* issue, opened discussion of the resolution by identifying it as for “payment of an hourly *per diem*, as authorized by the statute”.

Here are some excerpts of what was subsequently said:

Davie: “The legislation does lay out an hourly rate, it was specific about that for essentially all our activity for carrying out our activity as commissioners.”

* * *

Austin: ...is taking time to converse with fellow commissioners on time that would be otherwise spent on other things, is that something for which the legislature, in your opinion, thought we should be compensated?

Groenwegen: No disrespect for the legislature, but I haven’t a clue. I haven’t a clue. I don’t know. I think they used language that is very common in compensation statutes for, you know, the performance of actual duties, but I don’t.

Austin: Very different than JCOPE, if I may interrupt.

Groenwegen: But I don’t know any body that compensates members for prep time. I just don’t.

* * *

Whittingham: “The legislature has said you are supposed to get paid for work related to this. Let’s get paid for it or go back to them and say we don’t want pay, change the legislation... it was public record what we would be compensated. ... I am to get paid, as the legislators said. Go back to them, and say we don’t need the money, but until that has changed, I will not vote for a proposal like [Commissioner Groenwegen’s]”;

* * *

Austin: “the statute doesn’t say for time actually spent on this, this, this, and this. All it says is actually spent in the performance of the members’ duties under the section... bottom line is that the legislature gave us actually spent in performance of the duties, without limitation.”

* * *

Carballo: “This is not a common statute at all. This is the first time this has ever happened. There is a significant difference between what JCOPE was entitled to be paid, on simply a *per diem* basis, not hourly, and what the legislature has set out for us to be paid. ...The legislature did not want us to take...JCOPE’s compensation structure...

* * *

James: “I think when the legislature established the Commission there was an intent to have different model than existed with JCOPE and I believe that is why they actually specified that there would be an hourly rate, as opposed to a *per diem*”;

* * *

Davie: “I move that commissioners be compensated at an hourly rate as outlined in the statute, defined in the statute, for all activities related to their responsibilities on this Commission.

* * *

On March 24, 2023, at your next regular meeting, *per diems* were concealed, first by your [agenda](#) by its euphemistically-titled “IX. EFFECTUATING EXECUTIVE LAW §94(4)(F) • Submission forms and process” – and then, at the meeting, when, upon Chair Davie reaching item IX, he did not identify it as pertaining to *per diems* in stating: “On the question of our forms and submissions, we are going to move this to executive session because we have some legal issues that we need to talk through, particularly the review as opposed to approve issue”⁷ ([VIDEO, at 1 hr/30 mins](#)). He offered no hint of the “legal issues” that might exist with respect to “Submission forms and process”. Upon the return from executive session ([VIDEO, 2hrs/11mins](#)), no mention was made of “legal issues”, or of *per diems*, Executive Law §94.4(f), or “Submission forms and process” – and there were no “questions, comments, or remarks” about this.⁸

“Commissioner per diem payments” were on the [May 23, 2023 meeting agenda](#) as part of its “III. REPORT FROM STAFF”. Discussion preceded the announced payments ([VIDEO, at 34mins](#)) as to what you had agreed would be announced – which is understandable based on the VIDEO of the February 28, 2023 meeting ([at 2hrs/51mins](#)), not reflected by [the minutes \(at p.10\)](#). The payments that Executive Director Berland then announced were for the eight months from COELIG’s inception in July 2022 to the end of March – though he noted that for at least two commissioners there would be further payments for time sheets not yet fully submitted:

“The aggregate total for everyone in that period of time is \$83,946.11. By Commissioner: Chair \$12,110.98; Vice Chair Austin: \$10,097.84; Commissioner

⁷ The referred-to “review as opposed to approve issue” concerned approval of the February 28, 2023 minutes, to which Commissioner Carballo had stated, at the outset of the March 24, 2023 meeting, that they were not correct with regard to “the motion that was made regarding the 94.4(f) compensation of the commissioners”. By a [March 20, 2023 FOIL request](#), I requested the February 28 2023 minutes. Although I received a [March 28, 2023 response](#) that they would be posted, they were not.

⁸ [The minutes of the March 24, 2023 meeting](#) were approved at the April 25, 2023 meeting, without objection, but, in fact, are not accurate, as the reference in the minutes to “payment of a per diem allowance and reimbursement of expenses to members of the Commission” (at p. 2) and “Executive Law §94(4)(f)” (at p. 10) are contextual clarifications not stated at the meeting to explain what was taking place.

Ayers: \$4,218.07; Commissioner Caraballo: \$6,199.30; Commissioner Cardozo: \$9,171.12; Commissioner Carni: \$8,851.57; Commissioner Edwards: \$15,689.94; Commissioner Groenwegen: \$6,295.17; Commissioner James: \$7,637.28; Commissioner Whittingham: \$3,674.84.”

“Commissioner per diem payments” as part of the “III. REPORT FROM STAFF” would appear on the agendas of each of your subsequent regular meetings.

At the June 27, 2023 meeting, Chair Davie stated “I just actually signed off on a whole set” ([VIDEO, 19mins](#)), but they were not yet ready for report.

At the July 19, 2023 meeting, Executive Director Berland announced the not yet final sums for April through June, expected to be paid within the next two weeks:

“The total, by commissioner, is, for Chair Davie, the total is \$3,834.30; for Vice Chair Austin, the total is \$2,811.82; for Commissioner Ayers: \$4,377.49; for Commissioner Caraballo: \$3,291.11; for Commissioner Cardozo: \$7,828.36; for Commissioner Carni: \$3,418.98; for Commissioner Edwards: \$7,796.41; for Commissioner Groenwegen; \$2,108.87; for Commissioner James: \$3,355.01; and for Commissioner Whittingham: \$3,482.82. That’s a total of \$42,305.11…”

The per diem payments would cumulatively be about \$3,500 higher, to wit, \$45,982.09, largely due to the increased per diem payment of \$7,093.85 to Commissioner Whittingham – and, at the September 27, 2023 meeting the updated figures were announced, along with the further figures, presumably for July and August, totaling another \$18,340.76:

Chair Davie: \$2,172.78; Vice-Chair Austin: \$990.53; Commissioner Ayers \$2,204.73; Commissioner Caraballo: \$1,405.91; Commissioner Cardozo: \$3,738.44; Commissioner Carni \$1,693.48; Commissioner Edwards \$3,482.82; Commissioner Groenwegen: \$734.91; Commissioner James: \$1,214.20; Commissioner Whittingham: \$702.96. The total is \$18,340.76 ([VIDEO, at 20mins](#)).

No one examining the fashion in which you have conducted yourselves with respect to [Executive Law §94](#), whose starting point is reading the statute and understanding it, including in the context of [JCOPE’s Executive Law §94](#), could come to any conclusion but that you have been bumbling and incompetent, quite apart from self-interested and dissembling – and that the per diem payments and separate expenses that you have received have been a flagrant waste and misappropriation of taxpayer dollars.

CHARGE 4
**Your Conflict-of-Interest-Driven Subversion
of Executive Law §94.10 by Your 19 NYCRR §§941.2 and 941.3**

“Reviewing Regulations” is another one of COELIG’s “Accomplishments” touted by the Annual Report (at p. 30):

“Reviewing Regulations: In 2022, the Commission began making preliminary revisions to regulations to conform to the new ECRA requirements, which has resulted in the adoption of amendments to almost the entire body of the state’s applicable ethics and lobbying regulations, including Parts 930 through 938 and 941 through 943 of Title 19, Chapter XX of the New York Code of Rules & Regulations. In particular, these include conforming amendments to the Commission’s Adjudicatory Proceedings and Appeals Process regulations, 19 NYCRR Part 941, that, among other things, track ECRA in authorizing Commission staff to elevate a preliminary review to an investigation where there is specific and credible evidence of a violation of a law enforced by COELIG by a person within the Commission’s jurisdiction. With those preliminary revisions now in place, the Commission, as required by ECRA, is proceeding to undertake a comprehensive review of all regulations and advisory opinions for consistency with one another and with the goals, objectives, and requirements of ECRA, as well as of the effectiveness of those rules, regulations, existing guidance, and the ethics enforcement structure.”

In fact, the best that can be said about your [“preliminary revisions” to Part 941](#), which Executive Director Berland presented to you at your meetings and which you adopted virtually without change, in reliance on him, is that they are incompetent. They conceal and distort the clarity of the ECRA statute with respect to complaints – Executive Law §§94.10(d) and (f) – enabling you and staff to subvert these statutory provisions, on a wholesale basis, as discernible from your own statistics pertaining to 15-day letters and investigations.

The plain meaning of Executive Law §§94.10(d) and (f) is that:

- (1) if a complaint within your jurisdiction presents “specific and credible evidence”, it will be “elevated” from “preliminary review” to “investigation” by a 15-day letter to the complained-against person or entity to respond to the alleged violation(s) and the evidence in support; and
- (2) “After review and investigation” of the response to the 15-day letter, staff will present you with a report setting forth the violation(s) alleged, the evidence, for and against, and a recommendation for your majority vote, which, if it is to “close” the complaint, it is because the complaint has been determined to be “unfounded or unsubstantiated” – with your “vote to close” being your agreement that such staff recommendation is correct.

The provisions of Part 941 relevant to this are [§941.2 entitled “Definitions”](#) and [§941.3 entitled “Notices”](#). The balance of Part 941 is **not** germane because, as a result of COELIG’s readily-discerned violation of Executive Law §§94.10(d) and (f), virtually no complaint progresses to a hearing or subsequent adjudication, which is the content of its balance.

Of course, [prefatory §941.1 entitled “Intent and purpose”](#) also has relevance. This should be to clarify and elaborate on Executive Law §§94.10. Your §941.1 claims no such salutary purpose.

Although the linchpin and key terms of Executive Law §94.10(f) are “initial review” and “investigation”, your §941.2 defines neither.⁹ Reasonably, the definitions would be something like this –

Preliminary review is the initial facial examination of a complaint or referral to ascertain whether it presents “specific and credible evidence” that a person or entity within the Commission’s jurisdiction has violated a law within its jurisdiction. It also includes telephoning the complainant or referring body to clarify, if necessary, the “specific and credible evidence” of the alleged violation(s), without which a complaint or referral will not be investigated.

Investigation is the elevation of the complaint or referral, upon its passing preliminary review, and is signified by sending a written notice to the complained-against person or entity of the alleged violation(s) and “the evidence, if any, already gathered”, and requesting a response within 15 days of receipt of the notice, which is then reviewed and investigated by staff.

Nor is there any definition of the term “vote to close” which, pursuant to [Executive Law §94\(10\)\(f\)](#), reinforced by Executive Law [§94\(10\)\(h\)](#) and [§94\(10\)\(m\)](#), would be:

Vote to close is the vote of the Commission members to accept a staff recommendation, following investigation commenced by a 15-day notice that a complaint is “unfounded or unsubstantiated” – such recommendation having been made by staff in a report setting forth the evidence supporting and disproving the alleged violation(s).

Your §941.3 “Notices”, although citing in each of its three subsections to Executive Law §94(10)(f), omit its procedural and standard-identifying content – the same as any proper “Definitions” section would reveal.

⁹ By contrast, the Commission on Judicial Conduct’s promulgated rules – [22 NYCRR Part 7000](#) – include in its definitions section, its terms “initial review and inquiry” and “investigation”. It defines “initial review and inquiry” to be “the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint.” (underlining added). In other words, and like ECRA’s “preliminary review”, it is not itself “investigation”.

Thus, [§941.3\(a\) entitled “Notice of Allegations \(‘15-Day Letter’\)”](#) states:

“If following a preliminary review, the Commission or Commission staff decides to elevate such preliminary review into an investigation pursuant to Executive Law §94(10)(f) the Commission shall provide written notice to the respondent individual or entity...”

The false inference is that you and staff have unfettered discretion in deciding to elevate “preliminary review” to “investigation”, contravening Executive Law §94(10)(d) and §94(10)(m) mandating investigation when there is “specific and credible evidence”.

[§941.3\(b\) entitled “Notice of Hearing”](#) states:

“If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission has determined by majority vote to proceed to a hearing, having found that there is credible evidence of a violation under the Commission’s jurisdiction, notice shall be provided to the Respondent to inform Respondent of their right to be heard and appear...at a confidential hearing and to give sworn testimony, present evidence, and cross examine witnesses...”

Omitted is that pursuant to Executive Law §94(10)(f) there is NO “presentation of the matter to the Commission” until the “matter” is investigated by a 15-day letter – and that the “presentation” is a staff report setting forth the evidence both supporting and disproving the alleged violation(s), with “a recommendation...for moving the matter to a confidential due process hearing”. Only then – based on such explicit procedure, reinforced by Executive Law §94(10)(h) – do you vote that you have found “credible evidence”.

[§941.3\(c\) entitled “Notice of Closure, Continued Investigations or Guidance”](#) states:

“If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission decides, by majority vote, to return the matter to the staff for further investigation, close the matter, or authorizes the resolution of the matter by guidance to the subject, or if the Commission’s vote to proceed to a due process hearing does not carry, the Commission shall, within 60 days of such determination, provide written notice of its decision...”

Omitted is that pursuant to Executive Law §94(10)(f) there is NO “presentation of the matter to the Commission” until the “matter” is investigated by a 15-day letter and that the “presentation” is a staff report setting forth the evidence both supporting and disproving the alleged violation(s), with “a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential hearing.” Only then does the Commission vote to “return the matter to the staff for further investigation or accept or reject the staff recommendation”.

In other words, the staff recommendation to close is NOT – as here implied – unbounded by any standard. Nor is the Commission’s “vote to close” for any other reason than its agreement with staff that “the matter [is] unfounded or unsubstantiated”.

As for [subdivision \(1\)\(i\) of §941.3\(a\)](#), stating:

“While any response submitted will be reviewed by the Commission and/or Commission staff, Commission staff is not precluded from recommending and the Commission is not precluded from voting to close or settle the matter, to advance it to a confidential due process hearing or to return it to staff for further investigation prior to receiving a Respondent’s written response.”

This is contrary to Executive Law §94.10(f),¹⁰ expressly requiring that staff’s recommendation to you and your vote be after a 15-day letter and “review and investigation” thereon, with such recommendation embodied in a report, setting forth the evidence, both supporting and disproving the alleged violation(s). It also falsely infers that you can “vote to close” a matter for no specified reason, contrary to Executive Law §94.10(f) expressly restricting the basis of your “vote to close” to being because you have accepted staff’s recommendation, in a report to you, that the alleged violation(s) are “unfounded or unsubstantiated”.

As for [subdivision \(4\) of §941.3\(c\)](#), stating:

“At the discretion of the Commission, written notice shall be provided to a Subject who has not been previously notified of the allegations against them...”.

How is this scenario possible when Executive Law §94.10(f) requires that the subject of a complaint or referral that is elevated from “preliminary review” to “investigation” be furnished with a 15-day notice/letter – and no “presentation to the Commission” can be made by staff for your vote unless there is a 15-day letter and a report, based thereon.

¹⁰ With no apparent recognition of Executive Law §94.10(f) Commissioner Caraballo inquired about §941.3(a)(1)(i) at the May 23, 2023 meeting ([VIDEO, at 2hrs/27mins](#)):

“I was just wondering, why would we be allowed to elevate a matter before we even got a response. What is the –...Why would you pursue, but I am wondering why you would pursue without getting a response. I understand that you could look at it and say I don’t even need a response from the respondent but, because we are going to close it, but I don’t understand why we would advance a matter without first getting a response” --

and accepted, with the other commissioners, Executive Director Berland’s deceitful response – a pattern that occurred again and again pertaining to COELIG’s Executive Law §94, JCOPE’s Executive Law §94, and the regs.

You first approved the above obfuscating and misleading three-section §941.3 on October 25, 2022 ([VIDEO, at 29 mins – 42 mins](#)) ([Attachment D to the agenda](#)) – and it was after having approved it that, in executive session, you “closed one matter” – so announced by Executive Director Berland when you came back into public session. That this “matter” was CJA’s July 8, 2022 complaint seems apparent from the unsigned November 17, 2022 letter from your “Investigations Division” identifying October 25, 2022 as the date of your having “voted to close”.

You never modified §941.3 thereafter, though it was before you repeatedly¹¹ and you approved it, repeatedly, not based on your own independent examination of Executive Law §94.10, but in reliance on Executive Director Berland,¹² whose misrepresentations of it – and of JCOPE’s Executive Law §94.13(a) – should have been apparent to you, but which you never challenged. At the same time, indeed, each month, you were confronting the statistics of your procedure-concealing §941.3 by the staff operations reports, attached to the meeting agendas of each of your regular monthly meetings – statistics to which you were contributing by your dispositions of “matters” in executive session, thereupon announced in the public sessions.

The [first staff operations report](#) you received was Attachment B to the [agenda of your October 6, 2022 meeting](#). From the topmost entries on its first page, you could see that from July 8, 2022, the day COELIG replaced JCOPE, to September 23, 2022, COELIG had received **30 “tips, complaints, and reports”**, yet **staff had not sent out a single 15-day letter and conducted no investigations**. This, notwithstanding Executive Law §94.10(f) expressly empowered staff to send 15-day letters, thereby initiating investigations.

¹¹ See, in addition to October 25, 2022 meeting ([VIDEO, at 29 mins – 42 mins](#)) ([Attachment D to agenda](#)): December 16, 2022 meeting ([VIDEO, at 1hr/5mins-6mins](#)) ([Attachment F to agenda](#)); January 31, 2023 meeting ([VIDEO, at 56 mins – 1hr/3mins](#)) ([Attachment G to agenda](#)); February 28, 2023 meeting ([VIDEO, at 54mins-1hr/32mins](#)) ([Attachment G to agenda](#)); May 23, 2023 meeting ([VIDEO, at 2hrs/21mins – 2hrs/30mins](#)) ([Attachment G to agenda](#)) – stating in the first sentence of its prefatory note: “Key changes in the law, as set forth in these amendments, provide that a Commission vote is no longer required to initiate an investigation.” This is false. JCOPE Executive Law §94 did NOT require a Commission vote to initiate an “investigation” – as no vote was required to send out 15-day notice/letters, which, under COELIG Executive Law §94, is what signifies, if not constitutes, “investigation”.

¹² As illustrative, at the October 25, 2023 meeting ([VIDEO, at 34mins](#)), Commissioner Cardozo stated:

“Very difficult to see if there is any issues in what you’ve done and I appreciate the conforming amendments, but were there any substantive provisions that might have been changed in a different way. It’s very hard to focus on, you know, what was the policy issue as distinct from the technical changes. You know, were there anything that say, hey, reasonable people could differ and we could change something one way or another. I don’t know how to review, it looks fine as I read it, but I don’t know how, where were the real hard decisions made from where a good lawyer looking and making the conforming amendments.”

2-1/2 weeks later, the [staff operations report](#) that was Attachment B to the [agenda of your October 25, 2022 meeting](#) still showed **no 15-day letters and no investigations**. Yet, you did not inquire about this – nor thereafter when you were presented with comparable monthly operations reports, except, at the March 24, 2023 meeting, when Commissioner Cardozo asked whether the decline in COELIG’s investigations from those of JCOPE was attributable to staffing issues ([VIDEO, at 6mins](#)).

Here are the COELIG statistics from the staff operations reports:

[SEPT. 24 – OCT 31, 2022 staff operations report \(Nov. 15, 2022 meeting\)](#) –
13 “tips, complaints, and reports received”; **0** 15-day letters, **0** investigations opened

[NOVEMBER 2022 staff operations report \(Dec. 16, 2022 meeting\)](#) –
11 “tips, complaints, and reports received”; **0** 15-day letters, **0** investigations opened

[DECEMBER 2023 staff operations report \(Jan. 31, 2023 meeting\)](#) –
16 “tips, complaints, and reports received”; **0** 15-day letters; **0** investigations opened

[JANUARY 2023 staff operations report \(Feb. 28, 2023 meeting\)](#) –
16 “tips, complaints, and reports received”; **0** 15-day letters; **0** investigations opened

[FEBRUARY 2023 staff operations report \(March 24, 2023 meeting\)](#) –
16 “tips, complaints, and reports received”; **1** 15-day letter; **1** investigation opened

[MARCH 2023 staff operations report \(April 25, 2023 meeting\)](#) –
17 “tips, complaints, and reports received”; **0** 15-day letters, **0** investigations opened

[APRIL 2023 staff operations report \(May 23, 2023 meeting\)](#) –
12 “tips, complaints, and reports received”; **1** 15-day letter; **1** investigation opened

[MAY 2023 staff operations report \(June 27, 2023 meeting\)](#) –
18 “tips, complaints, and reports received”; **0** 15-day letters; **0** investigations opened

[JUNE 2023 staff operations report \(July 19, 2023 meeting\)](#) –
21 “tips, complaints, and reports received”; **2** 15-day letters; **2** investigations opened¹³

¹³ [JULY 2023 staff operations report \(Sept 27, 2023 meeting\)](#)
12 “tips, complaints, and reports received”; **2** 15-day letters; **2** investigations opened

[AUG 2023 staff operations report \(Sept 27, 2023 meeting\)](#)
11 “tips, complaints, and reports received”; **1** 15-day letters; **1** investigations opened

Indeed, you failed to ask ANY of the most obvious questions which, starting with the first staff operations report, at your October 6, 2022 meeting, should have been, at minimum –

(1) As to the first category “Number of tips, complaints, and reports received”:

- why were these not separately listed: “tips”, “complaints”, “reports received”;
- are “reports received” the same as “referrals” – the term used by Executive Law §94.10 and, if so, why is the word “referrals” not used?;
- are the “tips” being used to provide staff with “information” so that, pursuant to Executive Law §94.10, it can evaluate whether to initiate a complaint of its own?

(2) As to the second category, “Number of 15-day letters sent”:

- Why were **0** 15-day letters sent in response to these 30 “tips, complaints, and reports”, when Executive Law §94(10)(f) expressly gave COELIG staff authority to send them.

(3) As to the third category, “Number of investigations opened”:

- Why was this a separate category when pursuant to Executive Law §94(10)(f) the opening of an investigation is synonymous with the sending of a 15-day letter.

(4) As to the fourth category, “Number of matters closed”:

- Why were **0** “matters closed”? Was it staff’s interpretation of Executive Law §94(10)(f) and (m) that, following preliminary review, it has no authority to close matters that it has decided not to “elevate” to investigation?

(5) As to the fifth category, “Number of guidance letters sent”:

- Were **0** “guidance letters sent” because, pursuant to Executive Law §94(10)(f), such requires a Commission vote, based on a recommendation in a staff report that follows upon an investigation commenced by a 15-day letter?

Suffice to note that [immediately prior](#) to your October 6, 2022 meeting and again [before it concluded](#), I e-mailed you [an October 6, 2022 letter](#) – this being the supplement to CJA’s July 8, 2022 complaint – [expressly](#) identifying it for inclusion in your meeting discussions as directly relevant to multiple items featured on your agenda, starting with the staff operations report – and pointing out, in the context of CJA’s July 8, 2022 complaint, the significance of the operations report’s admission that staff had not sent out any 15-day letters, though, pursuant to Executive Law §94.10(f), it was expressly authorized to do so. Did none of you read my two [October 6, 2022 e-mails](#) (& [here](#))?

CHARGE 5
**Your Conflict-of-Interest-Driven Violations
of FOIL & the Open Meetings Law**

Another “Accomplishment” featured by your Annual Report ([at pp. 28-29](#)) – and duplicatively so – is transparency, FOIL, & the Open Meetings Law.

With respect to FOIL, the Annual Report purports that COELIG “promptly appointed a Records Access Officer and began following FOIL requirements in 2022” and that “In 2022, the Commission fulfilled 183 FOIL and Financial Disclosure Statement (FDS) access requests.”

The referred-to Commission in 2022 was JCOPE and then COELIG and the number **183** is the number of records requests appearing on the Annual Report’s [chart, at page 78, for the period Jan 1 – Dec 31, 2022](#), as having been provided out of a total of **184** records request. This differs from [the staff operations report, included with the agenda for your January 31, 2023 meeting](#), showing (at p. 7) **127** records requests provided. This HUGE discrepancy is concealed.

Apart from the complete lack of definition as to what the meaning of “provided” is, numbers do not permit any qualitative assessment of what was furnished. For that, the FOIL requests and the Commission responses would have to be compared.

CJA filed two FOIL requests in 2022, both with COELIG. The first, on [July 26, 2022](#), to which I alerted you by CJA’s October 6, 2022 letter, requested COELIG’s “written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints” – which, pursuant to [Executive Law §94.1\(e\)](#), would have been the same as JCOPE’s. The second, on [December 27, 2022](#), reiterated the July 26, 2022 request and expanded it to include:

- records as to why the “written procedures” requested by CJA’s July 26, 2022 request had not been furnished – and months earlier;
- records pertaining to the unsigned November 17, 2022 letter of your “Investigations Division” that the “Commission voted to close” CJA’s July 8, 2022 complaint on October 25, 2022, *to wit*:

- (i) records reflecting the identity of the person in the “Investigations Division” responsible for the November 17, 2022 letter;
- (ii) records reflecting compliance by the commissioners with Executive Law §94.10(b) pertaining to disclosure of conflict of interest and recusal;
- (iii) records reflecting compliance by the Commission’s executive director and staff with comparable disclosure rules pertaining to conflicts of interest – and a copy of such rules;
- (iv) records reflecting the specific provision of Executive Law §94 pursuant to which “the Commission voted to close the matter” – and the basis for its supposed “vote” to “close”;
- (v) records reflecting that the Commission’s supposed “vote” was by the Commission’s members themselves and after they themselves had “review[ed]” the July 8, 2022 complaint and its October 6, 2022 supplement.

I testified about these two requests at the March 29, 2023 hearing, alerting you that then FOIL Appeals Officer St. John had purported, in response to my [February 7, 2023 FOIL appeal](#), that the requested records “simply do not exist and, therefore, cannot be provided” – and that the only record he had provided, [the conflict-of-interest protocol for Commission staff](#), established that Berland, he, and other staff had flagrantly violated it from COELIG’s July 8, 2022 Day 1 to conceal JCOPE’s corruption in handling complaints of which they were part.

Despite my testimony, no production was thereafter made in response to the July 26, 2022 and December 27, 2022 FOIL requests.¹⁴

With respect to the Open Meetings Law, with which the Annual Report purports COELIG has been complying”, compliance requires that records and “any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion...during an open meeting” be made publicly-available and posted on the website ([Public Officers Law, §103\(e\)](#)).¹⁵

¹⁴ I did receive production in response to my [March 27, 2023 FOIL request](#) for records pertaining to the invitations sent to “more than 200 people” about the March 27, 2023 annual meeting – and it established that I was not among them. CJA’s webpage for that April 27, 2023 response is [here](#).

¹⁵ Consistent therewith is Section III(d) of the Commission’s proposed “Meeting Guidelines”, on the agenda of the Commission’s April 25, 2023, May 23, 2023, September 6, 2023, and [September 27, 2023 meetings](#), identically reading:

“Any materials presented to the Commission during the public session of a meeting or proceeding for consideration by the Commission as a body shall be posted on the Commission’s website prior to the meeting to the extent practicable and in accordance with applicable law.”

This was not uniformly done and, for some meetings where it was most crucial, flagrantly violated.

As illustrative,

- [Beginning with your second regular meeting, on October 6, 2022](#), all meeting agendas, although indicating that the minutes of the prior meeting(s) whose approval was on the agenda were attached, did NOT furnish these attachments on the webpages posting the meetings and agendas;
- Although [the agenda for your February 28, 2023 meeting](#) indicates Attachments A-I, the webpage for the meeting did not post Attachments B, D, F, G, H, I – and, with respect to Attachment J, the proposed “Resolution on the Payment of a Per Diem Allowance and Expenses to Members of the Commission”, it had been revised prior to the meeting, but the revision was not posted – nor Commissioner Groenwegen’s amending resolution.
- No agendas or other materials to be discussed were posted for the [March 14, 2023 “Inaugural Committee Day”](#), either for the Commission’s meeting or the six committee meetings immediately thereafter of the Administration Committee, the Education-Training Committee, the Legal Committee, the Ethics Committee, and the Lobbying Committee – nor were they thereafter posted.

CHARGE 6

Your Worthless, Conflict-of-Interest-Driven Legal Committee -- & Your Other Ineffectual, Time-Wasting Committees

Your Annual Report also identifies ([at p. 28](#)), among your supposed “Accomplishments”:

“Established Committees: In 2022, the Commission began the process of establishing Committees to assess, oversee, and ensure the timely, complete, and effective performance of the Commission’s many duties and responsibilities. The first Committee Day was held in March 2023.”

The Annual Report does not explicate the meaning of “Committee Day”. It was the day on which the six committees listed at [page 30](#), but not the so-called “Special Sub-Committee on Guidance Procedures and Delegation”, [met for the first time, preceded, on the same day, by a “special” Commission meeting to discuss the role and purpose of committees.](#)¹⁶

¹⁶ There is no “Special Sub-Committee on Guidance Procedures and Delegation”. Rather, on May 23, 2023, a “Special Committee on Guidance Procedures” met for the first time, which, at the June 27, 2023 Commission meeting ([VIDEO, at 3hrs/13 mins](#)) was renamed, and so-reflected by the [minutes \(at p. 11\)](#), approved at the July 19, 2023 meeting:

By then, 4-1/2 months had elapsed since the October 25, 2022 Commission meeting at which you had passed [a resolution establishing committees](#), reading, in pertinent part:

“**WHEREAS**, the Commission finds that in order to efficiently and effectively meet its mandate and its perform its statutory duty to oversee its operations and procedures of the Commission as well as those of its various divisions, promulgate rules and regulations for lobbying, establish education and training programs, fully and fairly investigate and enforce alleged violations of the law and its rules and regulations, and interface with the Commission staff, the creation of various committees is necessary and appropriate.

NOW THEREFORE, BE IT RESOLVED, the following committees and subcommittees, designated by an asterisk be created under the terms, conditions and areas of responsibilities herein set forth:

...

4. Legal
 - a. Investigation and Enforcement*
 - b. Litigation (pending and anticipated)*

RESOLVED, that the creation and implementation of the foregoing committees and subcommittees shall be accomplished in accordance with the following guidelines:

...

6. Reports of each committee, including subcommittees, if any, shall be made at each meeting of the Commission.

...

8. In accordance with Executive Law §94(1)(d), and in consultation with the appropriate division heads, each committee is charged with the duty, on a priority and ongoing basis, to review the rules and regulations and advisory opinions of prior commissions falling within that Committee’s jurisdiction. Not only should the committee review the regulations and advisory opinions of prior commissions but also, any new regulations that may be adopted by this commission.”

This last sentence of paragraph 8 about reviewing “any new regulations that may be adopted by this commission” was Commissioner Cardozo’s friendly amendment to the resolution, occasioned by your approval of regulations, including of §941 *et seq.* for the first time at the [October 25, 2022 meeting](#).

“A motion was made by Commissioner Whittingham, seconded by Commissioner Caraballo, to recognize the official name of the Commission’s special committee as the ‘Special Committee on Delegation,’ and that it will have two responsibilities: delegation and guidance, with a report on guidance to be presented at the July Commission meeting. The motion carried unanimously.”

Nevertheless, the Legal Committee, designated by the October 25, 2022 resolution to have a subcommittee for “Investigations and Enforcement”, whose members, announced at your December 16, 2022 meeting, were Commissioner Austin, as its chair, and Commissioners James, Cardozo, Carni, and Groenwegen, undertook NO review, let alone on a “priority and ongoing basis”, of new §941 *et seq.* Indeed, at the [Legal Committee’s March 14, 2023 first meeting \(3hrs/4mins – 3hrs/53mins\)](#), there was ZERO mention of what it had done over the previous months by way of educating itself and the other commissioners about “Investigations and Enforcement” and “Litigation (pending and anticipated)”¹⁷ – and ZERO mention of any subcommittees with respect thereto or any oversight that had been done. This was because, in fact, the Legal Committee had NOT established an “Investigations” subcommittee or engaged in oversight – and this was apparent from what Legal Committee member Cardozo said during the March 14, 2023 first meeting of the Administrations Committee, of which he was a member:

“I did have one other thought, I’m not sure it is this committee. One of the subjects that is not dealt with, I don’t think, by any other committee at the moment, is any oversight or committee that deals with investigations. And obviously, in some respects, that is the guts of what we’re doing and yet it’s not specifically listed as a separate committee or I don’t, haven’t seen it as the specific responsibilities for any committee. I raise it as an issue, I’m not sure how it should be solved.” ([VIDEO, at 1hr/57mins](#)).

No one corrected Commissioner Cardozo by citing to the Commission’s October 25, 2022 resolution establishing an “Investigations and Enforcement” subcommittee within the Legal Committee. The extent of correction was Executive Director Berland saying: “I think there was a proposal”, which he did not thereafter elaborate.

Nor did anyone cite to the October 25, 2022 resolution when Chair Davie responded to Commissioner Cardozo’s comment by stating that it was his thinking – though he was not sure that he had communicated it – that investigative issues relating to lobbying would go to the Lobbying Committee, but everything else would go to the Ethics Committee – to which Executive Director Berland piped in that this was in terms of substance, as opposed to procedural aspects. As for

¹⁷ This educational purpose of the committees was recognized in the minutes of the October 25, 2022 meeting:

“Vice-Chair Austin reported the committee structure is designed to help with the learning curve for the new Commissioners and to help them understand the substantive rules and regulations governing the Commission. Commissioner Edwards added the committee structure would provide better oversight to becoming better educated on the laws and regulations without interfering in the day-to-day operations of staff; rather it would provide oversight. Commissioner Groenwegen asked for clarification that the legal committee and the subcommittee for investigations and enforcement would focus on process rather than the particular cases with which the agency is involved and that the committees would be structured as a species of an administrative function rather than policy making.”

Commissioner Edwards' question about handling "policy issues [that] bubble up out of that" – presumably encompassing regulations and litigations – there was a long silence by all when Chair Davie responded that "as to general policy issues related to investigations, we will have to address those, and I am not sure yet".

No minutes were taken of the Administrative Committee's remarkable first and only March 14, 2023 meeting ([VIDEO, at 1hr/9mins – 2hrs/5mins](#))– or of the five other committee meetings held immediately thereafter, in succession. This, in face of Chair Davie's announcement at the immediately preceding Commission meeting of "high-level guardrails" for the committees – among them: "committees will keep accurate minutes and those minutes will be public. That should be a fundamental" ([VIDEO, at 1hr](#)).¹⁸

As for minutes of that March 14, 2023 Commission meeting, you have not posted them – and none were ever on the agenda of any Commission meeting for approval. Presumably, they – like the minutes of the March 14, 2023 committee meetings – were deemed too revealing as to what had been going on, or not going on, over the preceding months with respect to committees – and of what would be an intended future course of malfeasance by you, Executive Director Berland, and staff, with respect to committees – including their foundational "charters" and lists of priorities.¹⁹

Whether denominated "charter", "charge", "priorities", "action plan", "to do list", no Commission purporting to have committees could rationally and appropriately operate without defining and coordinating committee responsibilities and the specific work each was doing. Such was recognized at your March 14, 2023 Commission meeting – and there was not the slightest reason why each of the six committees meeting that day could not have produced "charters" and lists of their priorities, for discussion and approval ten days later at the Commission's March 24, 2023 meeting. Commissioner pretenses, culminating at the July 19, 2023 meeting, and led by Chair Davie, that putting together committee "charters" and priorities represented a massive amount of work and effort that could not even be accomplished for the September 2023 meetings were utter fraud, enabling the further fraud, endlessly repeated, that confronting issues of Commission delegation of responsibilities to staff was something vast and complicated, which it was not – or that it required a "special committee", which it did not – and that more important than these was for the Commission

¹⁸ Nine weeks later, at the May 23, 2023 meeting, Commissioner Edwards would ask "Should we take minutes? Some committees take minutes, some committees don't. And I think it was recommended by the person who did the FOIL that we not take minutes. I personally like minutes, but I'd like to get your thoughts as to whether or not we should do it. And if we do it, it should be across the board for all committees." ([VIDEO, at 2hrs/41mins](#)). "With regard to minutes...I see the value of not keeping them. The question is should we keep minutes...?" ([VIDEO, at 2hrs/51 mins](#)). Chair Davie's response: "...I think the committees need to report their actions, at a minimum. I'm agnostic on whether or not committees should keep their minutes", thereupon answering, in response to Commissioner Edwards' further question, that he didn't know "the difference between reporting and minutes".

¹⁹ This "something to hide" is also manifested by the fact that [COELIG's webpage for meetings](#) does NOT post the combined single VIDEO of the March 14, 2023 Commission meeting and the March 14, 2023 committee meetings, which can only be found *via* the [archives](#).

to address, as its #1 priority, the suggestions that came out of the March 29, 2023 public hearing, including by legislative recommendations, which is preposterous.

Already by your May 23, 2023 meeting ([VIDEO, at 2hrs/30mins – 3hrs/4mins](#)),²⁰ you were voicing frustration, confusion, and anger about the committees, including your “special” so-called “delegation committee” that was sometimes called the “guidance (procedures) committee” – and which had popped up from what had been a straight-forward assignment to the Legal Committee of the recommendations of the [Hogan, Lovells report](#), made by Chair Davie at your December 16, 2022 meeting ([VIDEO, at 1hr/16mins](#)); [minutes \(at p. 7\)](#). These sentiments continued, unabated, at your June 27, 2023 meeting ([2hrs/47 mins – 3hrs/20mins](#)) and at your July 19, 2023 meeting, ([1hr/47mins - 2hrs/48mins](#)), during which Chair Davie made the understatement: “There is dissatisfaction with the committee structure” ([VIDEO, at 1hr/59mins](#)), also declaring “charters are off the table” ([2hrs/34mins](#)).

In short, the VIDEOS of the Commission’s meetings do not support the Annual Report’s pretense that the committees are an “accomplishment”. To the contrary, they establish the correctness of Commissioner Groenwegen’s view that committees were a cumbersome, time-wasting, way to proceed,²¹ which she repeatedly articulated, including, focally, in discussing commissioner *per diems* at the February 28, 2023 meeting – a meeting whose immediately-preceding agenda item was “XI. ROLE AND FUNCTION OF COMMISSION COMMITTEES” that Chair Davie deferred to “March 14th, all day” on the pretext “there is a desire on the part of some commissioners to just have that high-level discussion about committees and this Commission.” ([VIDEO, 1 hr/54 mins](#)) – which 50 minutes later became the subject of a noteworthy exchange:

[VIDEO, at 2hrs/40 mins – 44mins](#)

Groenwegen: ...Going into this discussion [about *per diems*], the chair knew of my concerns about committees. I was under the understanding that, until the meeting this morning, that this discussion was going to be preceded by a discussion of committees.

Davie: Um, I never gave you that impression. We clearly have a date set, of March 14th, for committees, for discussion on committees.

Groenwegen: Then I misspoke. I understood that we were going to have on this calendar under item, whatever it was prior to this, a discussion of committees. That’s what I thought. And, and, so be it, if I misunderstood or I misread that, so be

²⁰ The May 23, 2023 minutes, though approved by you at the June 27, 2023 meeting, are not posted.

²¹ Without explanation, Commissioner Groenwegen, whose committee assignments, announced at the December 16, 2022 meeting and reflected by [the minutes \(at p. 7\)](#), had been the Administration Committee, the Legal Committee, and the Education-Training Committee and who, at some point before March 14, 2023, replaced Chair Davie as chair of the Administration Committee, is not listed as a member of any committee by the Annual Report’s [page 30](#) committee page.

it. But I do think I am put at a real disadvantage in explaining my concern about this because it all ties together in that we go back to the language of the statute that talks about being compensated for time spent for the performance of the member's duties. That requires a definition of what the member's duties are and one of the things that I have always stated about the committees is my concern that the members start to take on the role of the staff or they supplement the role of the staff. And I think that, that basic conversation about understanding our role as members, *vis a vis* the role of the executive director and the role of the staff, we've never had that conversation. It's another one I've suggested to both the chair and the executive director we have because it all comes back to that. Understanding what we as members are expected to do. I agree with Commissioner Whittingham, I don't see my role as just being a titular role of a commissioner. But nor do I see my role as running this organization on a day-to-day basis. I see it very much the responsibility that we look to the staff who are experts in ways we are not, that we, in the first instance, we rely on them. But, if I could just finish, Commissioner Edwards, it doesn't mean we stop there. Our role is an oversight role, it's to ask the right questions, it's to ask hard questions, but I think we ask those questions in public. We ask the questions and if we don't get good answers or complete answers then we ask them again or we do whatever we need to do to satisfy ourselves that that our vision as the commission members, the policy makers, that we know that's being executed. And there may be times where the chair appropriately says to a group of us or one of us, look into this, look into this, I'm making this part of your duties. Perhaps someday we'll have committees that have charges, that we all agreed to, we know what they are doing and why they exist, and what their work-product is, but we don't have that now. And I think this, this, this role confusion goes to the heart of what the members do and we can't decide what we get compensated for, in fulfillment of the members' duties, until we've, we've discerned that.

[As evident from the March 14, 2023 committee meetings](#), your commissioner responsibilities are limited, discrete, manageable – and readily accomplished. Notably, in contrast to Commissioner Groenwegen's adept chairing of the Administration Committee's March 14, 2023 meeting ([VIDEO, at 1hr/9mins – 2hrs/5mins](#)), focused on her drafted committee charter/charge and priorities that she had circulated, in advance of the meeting ([VIDEO, 3hrs/5mins - 53mins](#)),²² Vice Chair Austin

²² These were essentially finalized at the meeting. Yet, surprisingly, Commissioner Groenwegen did not present these at the March 24, 2023 meeting for Commission approval, or at any subsequent meeting, even though, at her instance, Commission approval of the charters was to be the express protocol, going forward. As reflected by the [minutes](#):

“Commissioner Groenwegen stated that it was her understanding that the entire Commission would be approving each committee's charter and that there is value in having the commission as a whole consider and approve each committee's charter. After a discussion of

handed over the Legal Committee’s meeting to General Counsel St. John and Deputy General Counsel Bhatt, who conspicuously did not orient the members to the operations of the Investigations and Enforcement Division and the policy and litigation issues arising therefrom that would be within their purview ([VIDEO, 3hrs/4mins – 3hrs/53mins](#)), sharply contrasting to the nuts-and-bolts orientation about the Ethics Unit and about the Hogan, Lovells report that Ethics Director Sande would give to Ethics Committee members at their meeting ([VIDEO, 3hrs/54mins – 4hrs/35mins](#)). Instead, and to soak up time, General Counsel St. John made a nearly half-hour substantive presentation about a commissioner code of ethics and recusal policy – purporting these to be the Legal Committee’s “high priority” – when such were properly matters for all commissioners, and, if assigned to a committee, belonged to the Ethics Committee, and, in any event, was the most brazen fraud by him, other staff, and you, considering the purported Commission “vote to close” CJA’s July 8, 2022 complaint – and his [February 17, 2023 response](#) (& [here](#)) to my [February 7, 2023 FOIL appeal](#) pertaining thereto.

Your [September 6, 2023 special meeting](#) merged the Legal Committee into the full Commission, prefiguring the end of the committees, manifest at your September 27, 2023 meeting ([VIDEO, 1hr/12mins – 37mins](#)), with no resistance from anyone, including from Commissioners Edwards, Caraballo, and Wittingham, who – notwithstanding their previously-stated views – gave but feeble complaint to being in the dark and out-of-the-loop about Chair Davie’s appointment of “working groups” that were to be the *modus operandi* for the foreseeable future, essentially the concept championed by the absent Commissioner Groenwegen.

**Officially TESTING the Commission’s Unofficial Reconsideration/Renewal Remedy
by Resubmitting CJA’s July 8, 2022 Complaint and October 6, 2022 Supplement
Based on the Within Evidence that the November 17, 2022 Staff Letter
that the Commission “Voted to Close” It is Indefensible**

At your September 6, 2023 special meeting ([VIDEO, at 1hr/18mins](#)), Deputy Counsel Bhatt endorsed Commissioner Caraballo’s speculation that “unofficially” reconsideration/renewal is available to complainants whose complaints are “closed”:

Caraballo: So, so the complainant will get a letter that would say why it was closed. And, I guess, if they have a basis, they could write a letter, saying, you know, you overlooked this important issue that I did bring to your attention previously, or to renew, I didn’t give you this, and I should have. So, we do have that, we do have that mechanism, unofficially.

the role of the committees, Interim Chair Davie stated that as each committee decides on its charter of responsibilities, it will bring it back to the Commission for approval by the full commission.”

Not included in the minutes, but stated by Commissioner Groenwegen ([VIDEO, at 33 mins](#)), was that she would be furnishing the Administration Committee’s “formal charge” to the Commission for its approval.

Bhatt: Unofficially, right. And also complainants can bring in another complaint. They can say, okay, you didn't look at this, I'm going to give you. They can just bring in another complaint.

Caraballo: I see.

Bhatt: So if their complaint was closed, um, you know, then and they feel that it was closed wrongly, they can submit another complaint with more information and it will be opened and investigated, just like any other complaint.

Caraballo: So that's enough of, that's a sufficient remedy.

Bhatt: I'm sorry what?

Edwards: And that's articulated in the decision, the letter?

Bhatt: Um, I don't know what would be articulated in the letter. The letter is just a general closing letter that the matter was closed, but, you know, in the same manner that they want to bring any other complaint, they would just bring, they can bring, there is nothing precluding them from bringing the same complaint to us.

Obviously, if this "unofficial" reargument/renewal remedy existed, my [March 29, 2023 testimony](#) should have sufficed to trigger it, by its final sentence, which, with the paragraph preceding it, read:

"I conclude with a procedural suggestion with respect to your letters 'closing' complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures^{fn8} Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.

Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your 'Investigations Division'" ([at p. 3](#)).

In any event, I now officially test the efficacy of your "unofficial" reconsideration/renewal remedy by resubmitting [CJA's July 8, 2022 complaint](#) and its [October 6, 2022 supplement](#), which I do based on the "specific and credible evidence" presented by my [March 29, 2023 testimony](#) and the further elaboration of that evidence by the above, establishing that your [unsigned November 17, 2022 closing letter](#) is procedurally and substantively indefensible.

* * *

As with the July 8, 2022 complaint and October 6, 2022 supplement, I conclude with the same attestation of truthfulness as Albany County District Attorney P. David Soares uses for public corruption complaints filed with his Public Integrity Unit:

“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.”

In further support of the truth of all the foregoing – and giving it further evidentiary value – my accompanying complaint form is notarized.

Thank you.

s/Elena Ruth Sassower