CITIZENS UNION OF THE CITY OF NEW YORK

Testimony Before the New York State Commission on Ethics and Lobbying in Government, Annual Public Hearing
November 13, 2024

Good afternoon, members of the Commission on Ethics and Lobbying in Government. My name is Ben Weinberg, and I am the Director of Public Policy at Citizens Union. Thank you for inviting us to speak at COELIG's annual public hearing and to comment on your proposed legislative agenda for next year.

At the start, we wish to address the court decisions in Cuomo v. COELIG, which challenged the constitutionality of the ethics commission. When COELIG was being created, Citizens Union expressed concern that the appointment mechanism still left the responsibility directly with the officials the Commission must regulate. Now, lower courts found that the Commission is, in fact, "too independent" of elected officials, and specifically the governor. Clearly, we believe these decisions were wrong. Together with other good government and civic groups, we submitted two amicus briefs on the matter, which supported the constitutionality of the Commission's appointment process, the role of the law school deans, and the governor's removal powers. The case is now before the Court of Appeals. New York State should not go back to the days of JCOPE and its flawed structure, which was simply incapable of providing the necessary ethics oversight to promote public confidence in state government.

We appreciate the Commission's public engagement work over the past year, including a stakeholder roundtable, a lobbying survey, and more effective announcements on meetings and actions.

We also applaud the administrative changes COELIG has implemented since the March 2023 public hearing in response to recommendations made by advocates and good government groups.

The recommendations made by Citizens Union and adopted by COELIG include:

- Banning ex parte communication between Commission members and those who appoint the Commission, or their representatives, with limited exceptions: COELIG's Code of Conduct, adopted in Resolution 2024-01, barred commissioners from directly or indirectly communicating, without prior authorization by the Commission, with their appointing authority or someone who reports to them, on matters that is or may come before the Commission.

- Reexamining the procedure for providing advice to elected officials and high-ranking executive and legislative officials, without leaving such decisions solely to the staff: Resolution 2023-02 required guidance for statewide elected officials and heads of agencies, commissions, boards, or authorities to be approved by commissioners.
- Developing clear rules on disclosing the status of investigations: The regulations adopted by COELIG (Part 941.16) established criteria for disclosing such information if, it is in the public interest, and defined how a complaint and its status could be acknowledged in public.

COELIG Tentative 2025 Legislative Agenda

Citizens Union appreciates COELIG's 2025 legislative proposals to improve transparency and enforcement, specifically as it relates to accessorial liability, new penalties for certain violations, and electronic filing of financial disclosure statements and lobbying reports. We support S9011 (Skoufis)/A10382 (Cruz) and S9009 (Skoufis)/A10302 (McDonald), which would require electronic filings.

Deferred Legislative Priorities

Allowing COELIG to respond if a requester makes public statements about informal guidance

At last year's roundtable event, Citizens Union recommended allowing COELIG to respond publicly in cases when an official misstates, in public, the informal advice they received. As the Commission's legislative agenda states, Executive Law §94(7)(b) already allows it to correct misstatements, but only if such action is needed to prevent a crime or fraud, a substantial threat to public health, or by a court order. We appreciate the Commission's plans to publish a formal advisory opinion addressing this matter and the proposal to issue general ethics guidance. However, we note that issuing only general guidance and clarifications without referring to the case that prompted it or the public official who misrepresented the advice might not deter individuals from misusing the confidentiality of advice. If the Commission believes it is constrained by state law, we recommend it be amended, especially in cases when high-level officials misrepresent guidance in response to media inquiries.

Proposal to disclose lobbyists' fundraising

Citizens Union recommended that lobbyists be required to disclose their fundraising or political consulting activities in semi-annual lobbying reports. We appreciate COELIG's view that broadening the reporting of lobbyists' campaign contributions would serve the interests of transparency, and your support for expanding campaign finance reporting. However, we believe a reporting requirement in lobbying filings is needed. Requiring donors to report whether they are registered lobbyists sheds light on the works of a single campaign or candidate. A different purpose is served by requiring lobbyists to report the candidates or elected officials to whom they provide fundraising services and the amount of money raised in fundraising events they organize. Those disclosures shed light on the activities of lobbying firms, who often leverage the bonds made when serving campaigns to advance their clients and the business they seek before government.

In New York City, lobbyists and lobbying firms are required to disclose information about their political consulting and fundraising activities to the City Clerk in a periodic report that details the individuals providing these services, the candidates receiving such services, the charges for the services, and the amount of money raised for each candidate (Admin. Code § 3-216.1). Reporters and watchdog groups use that information to inform the public about potential conflicts of interest or campaign finance misconduct.[1]

Requiring that lobbying filings clarify whether lobbyists support, oppose, or take some other position on bills

Citizens Union reiterates its support for this policy, which would provide a better idea to the public of how lobbyists and lobbying resources are being used to promote or oppose legislation or other government decisions covered by the law. Although we understand the concerns COELIG raised concerning taking nuanced positions on bills, we believe there are effective ways to define types of positions and lobbying activities. Several such models exist; Reinvent Albany's review of the law in other states provides an excellent starting point to address that question.

Expressly adding discrimination claims (in addition to sexual harassment) to the Commission's jurisdiction

We were glad to see that COELIG supports adding sexual harassment to the state Code of Ethics. However, we respectfully urge the Commission to support legislation that explicitly prohibits harassment and discrimination. Citizens Union supports S7137A (Gounardes)/A9279 (Kelles), which would reflect compliance with the state Human Rights Law and require those in supervisory positions to take action against acts of discrimination and harassment. We support the necessary funding to allow these increased powers.

Legislative priorities not in the COELIG agenda

Finally, we reiterate our support for two legislative changes to the lobbying law:

- Include among reportable matters lobbying regarding nomination or confirmation of a nominee that requires Senate confirmation. Legislation achieving this reform passed the Legislature in 2023 but was vetoed by Governor Hochul. A new bill that addresses the governor's concerns on the lookback provision in this bill passed the senate this year. Support from COELIG would help raise awareness to this important issue.
- For organizations that spend $5,000 to $10,000 on lobbying in a year, reduce reporting requirements from every 2 months to every 6 months. This would assist smaller filers and reduce administrative burden.

[1] For a recent example: Lobbyists fundraise for Adams 2021 campaign, NY1, May 24, 2023 https://ny1.com/nyc/all-boroughs/politics/2023/05/24/exclusive--lobbyists-fundraise-for-adams-2021-campaign

To the New York State Commission of Lobbying and Ethics,

My name is Marina DeLuca. I am a 26-year-old resident of New York, and I have had the privilege of working for a regional environmental advocacy and education organization that carries out its mission under the regulations set by this commission. I am representing myself as a resident today based on my experiences, and I am not acting as a representative of my organization at this time.

While I believe this commission's work is extraordinarily important, it is imperative that the commission reconsider current procedures and regulatory requirements so that organizations can more effectively utilize taxpayer money in the pursuit of ethical lobbying.

My organization comprises only 6 full-time staff and 4 part-time staff, and to speak candidly does not have the resources to engage in lobbying efforts that are not above board. Instead of using our time to achieve the mission of our organization, our staff burns time engaging in the admin necessary to meet the requirements set forth by this commission. Not only are these bi-monthly reports a strain for small organizations whose most valuable resource is staff time but there is a significant loophole that decreases the commission's efficacy. When organizations were first required to enroll with the commission many above-board organizations continued to follow the rules. Bad actors, on the other hand, could avoid any oversight by never signing up to be reviewed by the commission. It seems exceptionally likely that unscrupulous actors remain outside of oversight by having never participated in the required enrollment in the first place.

This critical flaw severely negates the commission's efficacy and must be addressed. Continually reviewing the practices of small organizations, many of which are founded on integrity or lack the means to engage in unethical practices, is a severe misuse of the commission's time and taxpayer money.

To address these concerns, the commission must create a more rigorous licensing policy to ensure that all lobbying organizations (most importantly for-profit lobbying groups) are accounted for. The commission may also want to consider releasing organizations that operate below a determined budget or staff size - or are chartered public interest 501 c3 organizations from such intense reporting procedures. I believe these changes could help remove the burden from organizations that already operate ethically and track down unethical organizations that have not received appropriate oversight by merely avoiding enrollment.

I hope the commission will consider these concerns and adjust accordingly. Thank you for your time and consideration of these comments.

Sincerely,
Marina C. DeLuca

Written Testimony of Evan A. Davis

Commission on Ethics and Lobbying in Government Annual Hearing

November 13, 2024

Dear Commissioners,

Unfortunately I am not able to attend your annual hearing in person. I would however like to make two points in writing.

Mandatory Review of Financial Disclosure Should Be Increased

Currently the law mandates mandatory review by the Commission's staff of the financial disclosures of statewide elected officials and members of the legislature. Others are subject to review on a random basis.

This mode of proceeding is inadequate because it fails adequately to account for the variable importance of financial disclosure review across the State workforce. In particular, disclosure made by senior staff whose work is significantly impacted by ethical considerations is worthy of mandatory view.

Along with training and guidance, procedures that create the reality and perception that someone is watching are critical. The law requires that review of financial disclosure be accompanied by inquiry into ethical issues that appear and engagement with the filer about ways to avoid or manage any potential problems revealed by the disclosure. Those engagements help establish the reality and perception that someone is watching. That is the case even if the inquiry establishes the lack of reason for concern.

Such engagements with senior staff who are critical from an ethics perspective are particularly helpful to the cause of ethical government. Such senior staff play an important role in supporting the importance of ethical conduct in the State workforce. The reality and appearance that they are being watched create a good reason for them to have high expectations of the workforce for which they are responsible.

Review of financial disclosure also serves the important purpose of nipping problems in the bud. One purpose of ethics regulation is to avoid scandals that undermine public confidence. Misconduct by senior staff creates a real risk of such scandal.

Jospeh Percoco is a case in point. His financial disclosure revealed potential conflicts which had they been investigated would have disclosed improper activity both in Percoco's supposed consulting work and his wife employment in an essentially no-show job in return for her husband's expected influence of governmental action.

My specific suggestion is that the Commission's legislatively agenda include a modest proposal to require mandatory review of the financial disclosure of the heads of departments and their three to five most critical senior staff from an ethics perspective ("critical staff") , the 10 to 15 most critical staff in the executive chamber and the division of the budget, the 10 to 15 most critical staff of each house of the legislature, the Office of the Attorney Gneral and the Office of the Comptroller, all as determined by the Commission. The Commission does not need legislation to review the financial disclosure of its members and critical staff. If it has not done so, it should.

Plan for the Possible Need for a Constitutional Amendment in Light of the Court of Appeals Decision in the Cuomo Litigation

I believe that there I a high probability the COELIG statute will be sustained in its entirety. However, it is good to prepare for the worst.

The Commission should ask the Court of Appels to stay the issuance of it mandate unless the statute is sustained in all respects. The initial stay would be for two months to allow for consideration of whether a constitutional amendment is necessary to secure the independence of the Commission from political influence.

If the Commission determines that such an amendment is needed, it would request that the stay be extended until June 1, 2026 to allow a reasonable amount of time to secure first passage of the amendment. If first passage occurs, the stay would be extended until June 1, 2027 to allow for second passage following the 2026 legislative elections as required by the Constitution. If second passage occurs the stay would be extended until January 1, 2028 to allow time for an amendment approved by the people to become effective.

Stays that preserve the status quo are favored if there is good reason for delay. Such reason may exist here if there would otherwise have to be a considerable period of time where the Commission would lack needed independence from political influence due to the terms of the Court's decision. Moreover if a

constitutional amendment is needed, an inadequate legislative “fix” could well provide an excuse for not moving forward on constitutional change.

Thank you for this opportunity to share my views.

Respectfully submitted,

Evan A. Davis

From: M A JUNAID
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Hello,

I am in support of ethics guidelines for public employees. It increases accountability and builds trust of taxpayers.

I do have some concerns regarding the language of the questions that NYS employees file every year. The language is way too complicated for most employees to understand. In my opinion, this should be made simple for employees to quickly understand and answer.

Regards,

Mohammed Junaid
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NYPIRG NEW YORK PUBLIC INTEREST RESEARCH GROUP

TESTIMONY
OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE
NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT
REGARDING
NEW YORK STATE'S SYSTEM OF ETHICS OVERSIGHT AND ENFORCEMENT
November 13, 2024
New York, N.Y.

Good afternoon. My name is Blair Horner and I am Executive Director of the New York Public Interest Research Group (NYPIRG). NYPIRG is a non-partisan, not-for-profit, research and advocacy organization. Consumer protection, environmental preservation, health care, higher education, mass transit, voting rights and governmental reforms are our principal areas of concern. We appreciate the opportunity to testify to the need for reforming and strengthening oversight of New York State's ethics laws.

As we testified last year, NYPIRG did not support the legislation that created the Commission on Ethics and Lobbying in Government (COELIG). Our perspective was based on our belief that the legislation more or less followed a well-trod path that would ultimately lead to the failure of it as an institution. Instead of establishing independence through its commission structure, it relied on direct appointments by those whose ethics are subject to its jurisdiction, but with a twist: tapping the state's law school deans to vet prospective commissioners. Our critique was not a judgment on the *individuals* who were involved, the members of the Commission as well as the law school deans. However, it is our experience that effective ethics enforcement cannot rely simply on the honest intentions of individuals appointed to fatally flawed institutions. Instead, we believe that the institutions must be built upon an independent system of commission appointments. (Our criticism applies to the Legislative Ethics Commission and the appointment of the Election Law Counsel, as well.)

From the public point of view, ethics watchdogs must be independent of all public officials subject to their jurisdiction, or else its actions will always be suspect, undermining a key purpose of the ethics law: to promote the reality and perception of integrity in government. The touchstones of independence may be found in commission members of high integrity; who hold no other government positions; are parties to no government contracts; engage in no lobbying of the government and do not appear before the government in a representative capacity; and whose close relationships are free of even the appearance of conflict of interest.

Our concerns over the independence of the Commission have not changed. However, the lawsuit brought by former Governor Cuomo challenging the constitutionality of the current law has undermined ethics enforcement.

Thus, we recommend that the Commission work with the Executive and the Legislature to fashion an amendment to the state Constitution to establish a code of ethics enforced by an independent commission. As we recommended last year, one such model is New York State's Commission on Judicial Conduct. The Commission is established in the state Constitution, which helps limit political pressures on decision making. Under this model, most of the appointments to this new Ethics Commission would be made by the courts, thus granting it sufficient independence. It is essential that the law protects the budget of the

new ethics watchdog, perhaps as a percentage of the net total expense budget of the state or as a fixed amount with an inflation adjustment.

In terms of the specific draft recommendations advanced by the Commission, NYPIRG's reactions are as follows:

Lobbyists' ethics trainings: NYPIRG agrees with the recommendation that ethics training for lobbyists be tied to the biannual registration; from once every three years to once every two. Moreover, we agree that clients should participate in such trainings and that late fees be assessed for failure to take part in such trainings as required.

Ethics filings: NYPIRG agrees that filings be submitted electronically and that ethics filings by electoral challengers be posted on the Commission's website.

COELIG response to public statements about informal guidance: NYPIRG urges that you recommend this change. Too often, the mischaracterization or false description of COELIG's (or for that matter the Legislative Ethics Commission's) guidance is used as a shield against public accountability. It is not only confusing to the public, but also undermines trust in ethics oversight if such guidance seems to be simply wrongheaded. If an individual subject to the jurisdiction of COELIG characterizes COELIG's guidance, the Commission should have the ability to validate such statements.

Requiring lobbyists to require that their filings clarify whether they advocate in support opposition, or take some other position on bills. NYPIRG supports this measure, although we urge that positions other than "support" or "oppose" be specific.

Require reporting of misconduct to COELIG. NYPIRG supports.

Boost lobbyist reporting of other attempts to influence. NYPIRG supports requiring lobbyists to disclose contributions to the campaigns of elected officials; their existing business relationships or associations with public officials; and any compensation in excess of $500 they or their clients had paid to family members of public officials in the preceding calendar year and to whom such compensation had been paid.

COELIG shares jurisdiction with the New York City Office of the City Clerk over individuals and entities that lobby New York City officials and agencies. Although there are many similarities, New York City imposes some disclosure obligations that are not required under State law. Specifically, New York City requires that its lobbyists disclose their participation in political fundraising and consulting activities. NYPIRG recommends that lobbyists should disclose their campaign activities and recommends the adoption of a requirement consistent with the New York City law.[1] NYPIRG has additional recommendations that appear later in our testimony.

Outside payment for official travel. NYPIRG supports a strict limitation on outside payment for official travel. As seen with the former Governor's book deal, anything short of a strict limit could be exploited. Thus, we urge that *any* such travel be approved by the Commission and that such action be publicly reported.

[1] New York City Admin. Code Title 3, §3-216.1(a). Fundraising activities include the solicitation or collection of contributions for candidates for mayor, public advocate, comptroller, borough president, or member of the city council. The solicitation and collection of contributions for any public servant who is a candidate for any elective office are also covered fundraising activities.

Additional recommendations

Expand the definition of lobbying: New York's lobbying law currently does not require public disclosure of efforts to influence the nomination or confirmation process for positions requiring Senate approval. This loophole allows lobbying to go unreported, and thus allows efforts to influence the appointment of important state positions occur out of the public's view.

NYPIRG urges the Commission to support S.7883/A8618 (2024), which addresses the lack of transparency around this type of lobbying, which has recently been highlighted by the nomination of a new Chief Justice of the New York State Court of Appeals. The Albany *Times Union* revealed that tens of thousands of dollars were spent to influence this most recent appointment.[2] However, due to the lack of disclosure of such lobbying, the public would have been completely unaware of this effort, if not for the *Times Union*.

The possibility of lobbying to influence nominations for public offices does not apply solely to the Court. The current loophole would hypothetically allow utility companies to lobby for nominees to the Public Service Commission and be able to do so outside of public view.

Lobbying on efforts to influence nominations should be publicly reported. State agency heads set the regulatory agenda for government agencies and the Court interprets state law. Influencing which individuals are appointed is a clear example of lobbying to impact the policies of New York State. As such, those activities should *at least* be publicly disclosed.

It is crucial for the public accountability of New York's government that efforts to advance or oppose a nomination be regularly and publicly disclosed. NYPIRG urges your support for expanding the definition.

Raise the reporting threshold: The minimum reporting requirement has always existed in New York State law and has been periodically increased due to inflation. In 1977, the reporting requirement kicked in at $1,000. Since that time the reporting minimum has been increased, but other changes to the law have been enacted as well. For example, in the early years the law covered efforts to "influence legislators, the Governor, and State agencies on certain rules and regulations and the outcome of any rate making proceeding by a state agency."[3]

Current law has been expanded to include "the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;" and "the outcome of any rate making proceeding by a state agency; any determination: (A) by a public official, or by a person or entity working in cooperation with a public official related to a governmental procurement, or (B) by an officer or employee of the unified court system, or by a person or entity working in cooperation with an officer or employee of the unified court system related to a governmental procurement; (vi) the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any other state actions related to Class III gaming as provided in 25 U.S.C. § 2701, except to the extent designation of such activities as "lobbying" is barred by the federal Indian Gaming Regulatory Act, by a public official or by a person or entity working in cooperation with a public official in relation to such approval, disapproval, implementation or administration; (vii) the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof; (viii) the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a

[2] *Lobbying on LaSalle Nomination Shows Apparent Gap in Reporting Requirements, Times Union, 1/30/23* https://www.timesunion.com/state/article/lasalle-nomination-shows-apparent-gap-lobbying-law-17747192.php

[3] New York Temporary State Commission on the Regulation of Lobbying, "Annual Report 1979," p. 1.

municipality; (ix) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation; or (x) the outcome of any rate making proceeding by any municipality or subdivision thereof."[4]

In the early years, the reporting of lobbying was confined to quarterly reports, with, as mentioned earlier, less detailed information being required to be disclosed.[5] Under current law, lobbyists must report every two months and report on far more advocacy and in greater detail than in years past.[6]

Also in the early years, while enforcement existed, it was triggered by failures to report or media coverage. Current law now subjects lobbyists to a random auditing process, significant penalties, and a public reporting system that is accessible and searchable on the Internet. Those penalties include a bar on lobbying.[7]

This more sophisticated enforcement structure, coupled with a more expansive definition of lobbying and reporting requirements, has an impact of smaller entities seeking to impact policymaking. As a result, nonprofits today spend more time and resources producing lobby reports. Commenting on the current system, the organization "Nonprofit New York" said: "This effectively takes the voices of organizations often closest to communities out of the legislative process in New York."[8] *Thus, New York's system can have a chilling effect on these entities' constitutional right to petition the government.*

NYPIRG urges you to recommend legislation (S.5499-A/A.5100-A, 2024) that *narrowly focuses* on the impacts on the not-for-profit community. An even more targeted approach would focus on charities,[9] which are already heavily regulated by the Internal Revenue Service and the state Attorney General's office, ensuring that adequate oversight is continued. Given the complexity of New York's current law and the impact it has having on smaller nonprofits, NYPIRG recommends your support of this legislation.

Recommend limits on lobbyists' involvement in campaign fundraising. Special interests attempt to influence legislation and policy primarily through lobbying and campaign donations. Disclosing lobbying activity alone does not give the public a full picture of who is trying to influence decisions and how they are trying to do it. And New York's lax rules make it easy for those two types of spending to occur simultaneously by allowing campaign fundraisers to occur in Albany during the nights of the legislative session. Half the country puts restrictions on that type of activity.[10] New York could beef up the laws by limiting the size of campaign donations that lobbyists make; it could curtail fundraising during the legislative session days; and it could require more information about who is making and delivering campaign donations.

Recommend stricter limits on outside income of members of the Executive. Former Governor Cuomo's ongoing efforts to protect his $5 million payment for a book written during the Covid pandemic underscores the need for strong legislation.

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[4] New York State Legislative Law, section 1-c.
[5] New York Temporary State Commission on the Regulation of Lobbying, "Annual Report 1979," p. 1.
[6] New York State Legislative Law, section 1-h.
[7] New York State Legislative Law, section 1-o.
[8] Nonprofit New York, "A Place at the Table Policy Brief: New York State's Lobbying Act," May 9, 2022.
[9] IRS 501 (c)(3)
[10] National Conference of State Legislatures, "States that Prohibit Campaign Contributions During Legislative Sessions," https://www.ilga.gov/joint/Documents/Articles%20from%20the%20National%20Conference%20of%20State%20Legislatures%20-%20States%20that%20Prohibit%20Campaign%20Contributions%20During%20Legislative%20Sessions.pdf.

As you know, COELIG had begun an investigation into whether Cuomo had violated the law in the use of his staff to research and write the book for which the former governor was so handsomely rewarded. When Cuomo was still governor, his staff had persuaded the ethics agency at that time (then known as the Joint Commission on Public Ethics or JCOPE) to allow the former governor to write a book on his experiences in dealing with the Covid pandemic. The former governor needed that approval since as a full time employee of the state (the New York Governor has the highest salary of any governor[11]) he was not allowed to "moonlight" without ethics approval.[12] No future governor, nor any member of the Executive, should be allowed to obtain outside income without the expressed approval of the Commission and that any such decision must be made public.

Recommend that State and New York City ethics regulators work to harmonize their requirements. As noted, disclosure requirements by the state and city lobbying laws are similar, but different. Penalties for errors can be significant. This sophisticated enforcement structure, coupled with a more expansive definition of lobbying and reporting requirements, has an impact of smaller entities seeking to impact policymaking. As a result, nonprofits today spend more time and resources producing lobby reports. Thus, New York's system can have a *chilling effect* on these entities' constitutional right to petition the government. This cuts against the laudable City policies that encourage and invite constituents into the public decision making process.

NYPIRG urges that Commission initiate direct discussions with your City counterparts to review the state and city laws, develop materials to help the advocacy community meet compliance standards, and propose measures to "harmonize" those laws.

Both city and state regulators review each other filings to identify organizations that report lobbying on city issues and yet do not report to the state or vice versa. Of course, that situation can exist given the differences in lobbying definitions. However, not only would the development of a standard approach to lobbying help those currently involved in such advocacy, but it may bring "off the sidelines" entities that are too cautious and thus whose voices are currently not heard. That would be good for democracy.

Lobbying has the potential to contribute to the democratic process and provide decision makers directly with valuable insights and data. However, without transparency and integrity, it can be used to steer public policies away from the public interest – particularly if a small group of powerful interests use their wealth, power or advantages towards unfair advantages.

Citizens' trust in government provides the foundation for good governance and effective policymaking. This is especially true in the current post-crisis context in which structural reforms involve difficult choices, and where the confidence of citizens and markets is critical for fostering economic and social development. However, public opinion surveys suggest that trust in government is waning. This is at least partly due to the perception that policy decisions are driven by private interests at the expense of the public good.

We urge your support for the measures under consideration. We urge that you also take steps to get state and city lobbying requirements to match.

Thank you for the opportunity to testify.

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[11] Council on State Governments, " State Executive Salaries: Regional and State-level Comparisons," https://www.csg.org/2023/01/20/state-executive-salaries-regional-and-state-level-comparisons/#:~:text=The%20average%20annual%20gubernatorial%20salary,a%204.12%25%20increase%20from%202021.

[12] COELIG, "Outside Activities," https://ethics.ny.gov/outside-activities.

From: David Putney
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My recommendation is to reexamine the NY State employees annual financial disclosure as to who should be required to file. There are non-management staff (e.g., nurses) whose salaries are as much or more than other staff who are required to report, yet they may not be required to complete the financial discipline filing.

Thank you,
David Putney

Testimony to New York State Commission on Ethics and Lobbying in Government (COELIG)

Re: Restoring Public Trust Requires Bigger, Bolder COELIG

November 13, 2024

Good afternoon, members and staff of the Commission on Ethics and Lobbying in Government (COELIG). My name is Rachael Fauss, the Senior Policy Advisor for Reinvent Albany. We advocate for a more transparent and accountable New York government.

First, thank you for holding this hearing, as required by law. We support many of the administrative changes made since your last hearing to improve ethics and lobbying oversight, and appreciate you sharing your draft legislative agenda for comment.

Unfortunately, the progress made by COELIG has been undermined by former Governor Cuomo's lawsuit challenging its constitutionality. Ironically, we opposed COELIG's initial creation because we believed it was not independent enough to reign in unethical governors. That said, we are firmly convinced COELIG is constitutional and filed an amicus brief to that effect with other watchdogs to the Court of Appeals.

We believe the lower court's position that the NYS constitution requires oversight bodies be controlled by the governor is dangerous, illogical, and ahistorical. Essentially, the lower court interprets the state constitution as creating a governor who is an elected monarch who can break laws with impunity, checked only by the unlikely threat of impeachment – a power that has only been used once in over two centuries.

COELIG's legislative agenda includes a number of good proposals that would improve ethics and lobbying oversight. However, we once again urge you to aim much higher. Public trust and confidence in New York government has been badly eroded by an endless series of ethics, sexual harassment, and corruption scandals. COELIG has to be bold or it will fail to restore public trust.

Reinvent Albany's testimony makes recommendations in three areas:

- **Regulatory and administrative changes**, including actions to date and the need for transparency of the content of informal advisory opinions rendered to state officials;
- **Legislative changes** to improve the transparency of lobbying and financial disclosures, strengthen the code of ethics, amend the Open Meetings Law, and establish an independent budget for COELIG; and
- **Increasing the Commission's budget**, and conducting an independent review of IT and staffing needs.

Regulatory/Administrative Changes

Since the last hearing, COELIG has made a number of administrative changes we recommended in our March 2023 testimony, including:

- Publishing open data for lobbying reports. COELIG's predecessor JCOPE had stopped publishing lobbying data in an open data format.
- Requiring commissioners to approve guidances for statewide electeds, agencies, or authority heads.
- Barring communication with appointing authorities on commission matters, and requiring communications from appointing authorities be shared with all COELIG members.

We also support the Commission's intention to publish a formal advisory opinion on how COELIG can respond when public officials make misstatements about guidance they have received, which is noted in your 2025 draft legislative agenda. This is a step forward, though we strongly prefer a law requiring informal advisory opinions to senior officials be published so there is no doubt about what is permitted.

Recommended Changes to NY's Lobbying, Ethics, and Election Laws

While COELIG has drafted a number of worthwhile legislative proposals, we encourage you to get behind some bills already introduced by the Legislature, including those listed below.

Article 1-a of the Legislative Law – Lobbying

1. **Reporting of position on lobby reports** – We again urge COELIG to support legislation making lobbying reporting more specific, including whether lobbying activity supports or opposes a bill, budget measure, or other government action. In your draft 2025 legislative agenda, you deferred consideration until the Commission had more information about how this works in other states. To help this along, we have compiled information about other representative states.
    - **Idaho** requires reporting of information about the items within appropriation bills being lobbied on. (See their Lobbyist Manual and Chapter 66 of Title 67 of the Idaho Statutes).

- **Montana** requires reporting of whether the lobbying activity was in support, opposition, or modification of official actions. (See 44.12.102 of the Administrative Rules of Montana regarding reportable activities and Montana's Registry of Lobbying Activities, selecting "View All Lobbyists")
- **Colorado** requires reporting of whether such lobbyist clients are supporting, opposing, amending, or monitoring the legislation. (See Part 3 of Colorado's "Sunshine Law" as well as the Colorado Online Lobbyist Search portal.)
- **Nebraska** requires lobbyists to show on their statement of activity support or opposition to legislation (See Chapter 6, Rules and Regulations for Lobbying of Title 4, Nebraska Accountability and Disclosure Commission and the Nebraska State Legislature's Website).
- **Wisconsin** allows lobbyists the option to report their position on legislation, and also upload "supporting documentation" such as memos of support. (See their Lobbying Users Guide and lobbying portal.)

Reinvent Albany recommends the following based on other states' best practices on disclosing lobbying pro/con positions:

A. Use these categories for simplicity and clarity: "Support," "support with proposed amendments," "oppose," and "oppose absent proposed amendments."

B. Do NOT use: "neutral," "monitoring," or "no position." We note that simply keeping an eye on a bill is not lobbying or a reportable activity. See the Appendix for our draft bill language; we welcome COELIG's thoughts about this proposal.

2. **Consider requiring lobbyists and/or lobbying clients[1] to report payments made to community groups in an attempt to influence that group's position on a government action** – An emerging issue that has been covered by *The City* are payments being made by casino lobbyists to local community groups who would otherwise be speaking out against casinos at public hearings, with the media, or to local elected officials. We understand that this activity fits in the gray area of lobbying because the groups and individuals being paid may not be engaging in direct lobbying. We ask COELIG to consider what new reporting might be appropriate in this area, or to clarify what is already required to be reported, but not commonly understood to be reportable expenses or activity.

[1] Another take is that the lobbying clients – in this case casino investors – making the payments are engaged in grassroots lobbying and should be required to register as lobbyists. Either way, we are flagging this as an emerging problem.

3. **Disclose lobbying on nominations** – We support S7883 (Gianaris) / A8618 (McDonald), which would require reporting of lobbying on nominations subject to Senate confirmation. The bill was amended in 2024 to no longer be retroactive following a veto from Governor Hochul in 2023.

4. **Require lobbyists to report political contributions and fundraising activity (NYC model)** – We appreciate that COELIG considered S2130 (Krueger) / A1391 (Aubry) and its importance for transparency, though you deferred the item on your draft legislative agenda. We would note that one aspect of the NYS campaign finance system has dramatically changed since we initially recommended this proposal: Starting in 2024, lobbyists' contributions are not eligible under the new public matching system. Because of this new requirement, we believe lobbyists' contributions should be subject to greater transparency.

5. **Lessening the filing burden for smaller filers** – Lastly, we continue to support permitting filers who spend between $5-10K on lobbying each year to report only semi-annually, rather than bimonthly (authorized in NYC, but not currently in place under the City Clerk). This would ease the administrative burdens for both small filers and COELIG.

Section 73-A of the Public Officers Law – Financial Disclosure Statements
We appreciate COELIG's support for posting the financial disclosure statements of candidates for office, as well as electronic filing of all disclosure statements. We have issued memos of support for COELIG's bills to require electronic filing, and support additional bills to improve public access to disclosure statements:

1. **A1560 (McDonald) / S3544 (Breslin)** - Requires electronic filing of disclosure statements for legislators and legislative candidates

2. **A1609 (McDonald) / S2833 (Breslin)** - Requires legislators and candidates for legislature to post financial disclosures statements on campaign websites

3. **A2507 (Paulin) / S3574 (Skoufis)** - Requires disclosure statements from candidates for statewide office or the legislature be posted on COELIG's website

4. **S3507 (Skoufis)** - Requires members of REDCs to file disclosure statements

5. **S1883 (Skoufis)** - Requires members of REDCs to file disclosure statements, and subjects them to Freedom of Information and Open Meetings Laws.

Section 74 of the Public Officers Law – The NYS Code of Ethics
We appreciate that COELIG has continued to propose bills related to accessorial liability, as well as adding penalties to more sections of the NYS Code of Ethics. We are glad to see COELIG supports adding sexual harassment to the NYS Code of Ethics. However, we ask COELIG to support S7137-A/A9279 because it includes both sexual harassment and discrimination as ethics violations and is already supported by legislators and advocates.

1. **S7137-A (Gounardes) / A9279 (Kelles) - Amends the NYS Code of Ethics to explicitly prohibit harassment and discrimination.** This is the approach taken in the rules of ethics for lawyers, which makes discriminatory conduct a ground for disbarment. The legislation also requires those in supervisory positions to take action against acts of discrimination and harassment. We understand that inclusion of discrimination may drive more complaints to COELIG (sexual harassment has already been established as an ethical violation/abuse of power in prior enforcement actions), and accordingly support increased resources for COELIG.

Open Meetings Law
We agree with COELIG that the current Open Meetings Law provisions for remote participation can make it difficult for public officials to participate in meetings because a quorum of members must be present in a publicly accessible, physical location.

That's why we and 30 other groups support legislation that would change the quorum threshold for *all* non-elected public bodies – for all meetings, not just committee meetings: A10266 (Simone) / (Pending Senate introduction by Senator May). This bill would require that the presiding officer – or another designated member – be present in a physical location, while allowing other members of the body to participate remotely.

COELIG's proposal would set a standard that is different for "committee meetings of advisory-only bodies" rather than all boards and commissions. While we share the goal of making it easier for public officials to participate remotely in meetings, we strongly prefer to have the same rules for advisory bodies given the important role they play in the deliberative process for setting state policy.

Commission Budget
Lastly, we continue to support independent budgeting for all enforcement bodies. There are a number of models, including one used for the New York City Independent Budget Office which pegs its budget to the Office of Management and Budget. Your colleagues at the NYC Conflicts of Interest Board have long proposed their own independent budgeting process. We encourage COELIG to draft its own proposal.

We have pushed the Commission to do more investigations, increase outreach to state employees, and build a culture of state employees actively reporting misconduct. We know this takes sustained funding and adequate staffing. COELIG is currently funded at $8,066,000 for FY 2025 – allowing 68 full-time equivalent staff members – past budget increases have been modest given its expanded training mandate.

We think COELIG needs substantially more funding from the Governor and the Legislature to fulfill its expansive mission, which includes managing enormous lobbying and financial disclosure processes, ruling on complex policy issues, and enforcing ethics laws and regulations.

We also note that the uncertainty created by former Governor Cuomo's lawsuit is severely affecting the ability of COELIG to move investigations forward and seek justice for victims of abuse of power, as well as hire staff, who understandably want the certainty of knowing that their agency will still exist in a few months. Given this challenge, we continue to support an independent evaluation of the technological, staffing and other funding needs of COELIG. This evaluation could be conducted by a management consultant. The NYS Department of Motor Vehicles did something similar when they had a management and information technology (IT) consultant redesign their workflow and internal and public-facing IT.

Thank you for your consideration.

Appendix: Proposed Legislation on Reporting of Position Taken in Lobbying Activity

Section 1. Section 1-h of Article I-A of the Legislative Law is amended as follows:

§ 1-h. Bi-monthly reports of certain lobbyists. (a) Any lobbyist required to file a statement of registration pursuant to section one-e of this article who in any lobbying year reasonably anticipates that during the year such lobbyist will expend, incur or receive combined reportable compensation and expenses in an amount in excess of five thousand dollars, as provided in paragraph five of subdivision (b) of this section, for the purpose of lobbying, shall file with the commission a bi-monthly written report, on forms supplied by the commission, by the fifteenth day next succeeding the end of the reporting period in which the lobbyist was first required to file a statement of registration. Such reporting periods shall be the period of January first to the last day of February, March first to April thirtieth, May first to June thirtieth, July first to August thirty-first, September first to October thirty-first and November first to December thirty-first.

(b) Such bi-monthly report shall contain:

(1) the name, complete address including apartment or suite number, if any, and telephone number of the lobbyist;

(2) the name, complete address including apartment or suite number, if any, and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) the following information on which the lobbyist has lobbied: (i) a description of the general subject or subjects, (ii) the legislative bill numbers of any bills and, regarding an appropriation bill or any supplemental appropriation bill, the particular items within the appropriation bill lobbied on, (iii) the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality, (iv) the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. § 2701, (v) the rule, regulation, and ratemaking or municipal ordinance or resolution numbers of any rules, regulations, or rates or ordinance or proposed rules, regulations, or rates or municipal ordinances or resolutions, and (vi) the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body in connection with a governmental procurement;

(4) for each item listed with regard to paragraphs (i), (iii), (vii) and (ix) of section 1-c(c) of this law, whether the lobbying was in support, in support with proposed

amendments, in opposition, or in opposition absent proposed amendments to the item lobbied on;

(5) for each item listed with regard to paragraphs (ii) and (viii) of section 1-c(c) of this law, whether the lobbying was with regard to the adoption, issuance, rescission, modification or terms of a gubernatorial or local executive order;

(6) for each item listed with regard to paragraphs (vi) of section 1-c(c) of this law, whether the lobbying was with regard to the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding or any other tribal-state agreements and any other state actions related to Class III gaming;

(7)[(4)] the name of the person, organization, or legislative body before which the lobbyist has lobbied;

(8)[(5)] (i) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying.

(ii) expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where
such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist;

(B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written
communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars shall be paid by check or substantiated by receipts and such checks and receipts shall be kept on file by the lobbyist for a period of three years.

§ 2. Section 1-j of Article I-A of the Legislative Law is amended as follows:

§ 1-j. Semi-annual reports. (a) Semi-annual reports shall be filed by any client retaining, employing or designating a lobbyist or lobbyists, whether or not any such lobbyist was

required to file a bi-monthly report, if such client reasonably anticipates that during the year such client will expend or incur an amount in excess of five thousand dollars of combined reportable compensation and expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying.

(b) Such report shall be filed with the commission, on forms supplied by the commission, by the fifteenth day of July of the year and by the fifteenth day of January next following the year for which such report is made and shall contain:

(1) the name, complete address including apartment or suite number, if any, and telephone number of the client;

(2) the name, complete address including apartment or suite number, if any, and telephone number of each lobbyist retained, employed or designated by such client;

(3) the following information on which each lobbyist retained, employed or designated by such client has lobbied, and on which such client has lobbied: (i) a description of the general subject or subjects, (ii) the legislative bill numbers of any bills and, regarding an appropriation bill or any supplemental appropriation bill, the particular items within the appropriation bill lobbied on, (iii) the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality, (iv) the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. 2701, (v) the rule, regulation, and ratemaking or municipal resolution or ordinance numbers of any rules, regulations, or rates, or municipal resolutions or ordinances or proposed rules, regulations, or rates, or municipal ordinances or resolutions and (vi) the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system,
municipal agency or local legislative body in connection with a governmental procurement;

(4) for each item listed with regard to paragraphs (i), (iii), (vii) and (ix) of section 1-c(c) of this law, whether the lobbying was in support, in support with proposed amendments, in opposition, or in opposition absent proposed amendments to the item lobbied on;

(5) for each item listed with regard to paragraphs (ii) and (viii) of section 1-c(c) of this law, whether the lobbying was with regard to the adoption, issuance, rescission, modification or terms of a gubernatorial or local executive order;

(6) for each item listed with regard to paragraphs (vi) of section 1-c(c) of this law, whether the lobbying was with regard to the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding or any other tribal-state agreements and any other state actions related to Class III gaming;

(7)[(4)] the name of the person, organization, or legislative body before which such client has lobbied;

(8)[(5)] (i) the compensation paid or owed to each such lobbyist, and any other expenses paid or incurred by such client for the purpose of lobbying.

(ii) any expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expenses are more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist and client;

(B) expenses, not in excess of five hundred dollars, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars must be paid by check or substantiated by receipts and such checks and receipts shall be kept on file by such client for a period of three years.

(9)[(6)] (i) the name and public office address of any statewide elected official, state officer or employee, member of the legislature or legislative employee and entity with whom the client of a lobbyist has a reportable business relationship;

(ii) a description of the general subject or subjects of the transactions between the client of a lobbyist and the statewide elected official, state officer or employee, member of the legislature or legislative employee and entity; and

(iii) the compensation, including expenses, to be paid and paid by virtue of the business relationship.

§ 3. This act shall take effect in six months.

Sponsors Memo

BILL NUMBER: TBD

SPONSOR: TBD

TITLE OF BILL: And act to amend the legislative law, in relation to requiring additional information in reporting of lobbying activities

PURPOSE OR GENERAL IDEA OF BILL: To provide more meaningful information to the public about lobbying activities reported in current disclosures, including whether the activity is in support or opposition to a governmental action.

SUMMARY OF PROVISIONS:

Section 1 amends section 1-h of Article 1-A of the legislative law to require bi-monthly lobby reports include the following additional information:

- complete address information of lobbyists and clients;
- items within appropriation bills being lobbied on;
- for lobbying activity on state or local legislation or rules having the force of law, whether the lobbying was in support, in support with proposed amendments, in opposition, or in opposition with proposed amendments;
- for lobbying activity on state or local executive orders, whether the lobbying was with regard to the adoption, issuance, rescission, modification, or terms of an executive order; and
- For lobbying activity on tribal-state compacts, memoranda of understanding or any other tribal-state agreements and other state actions related to Class III gaming, whether the activity was with regard to approval, disapproval, implementation or administration.

Section 2 amends section 1-J of Article 1-A of the legislative law to require reporting of the same additional information in semi-annual reports as newly required for bi-monthly reports.

JUSTIFICATION: Lobbying disclosures filed by lobbyists currently only provided a limited view into the activity of lobbyists seeking to influence governmental action. While the disclosures are available via an online database maintained by the Commission on Ethics and Lobbying in Government (COELIG), and are also published as open data, the public does not know, just by viewing the data, what the ultimate goal of the lobbyist is, and often must view news reports to find out. This legislation would enable the public to answer the basic question of whether a lobbyist is supporting or opposing state legislation, and what outcome they are seeking for other governmental actions.

A number of other states currently provide additional information to the public about lobbying activities:

- Idaho requires reporting of information about the items within appropriation bills being lobbied on. (See their Lobbyist Manual and Chapter 66 of Title 67 of the Idaho Statutes).

- Montana requires reporting of whether the lobbying activity was in support, opposition, or modification of official actions. (See 44.12.102 of the Administrative Rules of Montana regarding reportable activities and Montana's Registry of Lobbying Activities)
- Colorado requires reporting of whether such lobbyist clients are supporting, opposing, amending, or monitoring the legislation. (See Part 3 of Colorado's "Sunshine Law" as well as the Colorado Online Lobbyist Search portal.)
- Nebraska requires lobbyists to show on their statement of activity support or opposition to legislation (See Chapter 6, Rules and Regulations for Lobbying of Title 4, Nebraska Accountability and Disclosure Commission and the Nebraska State Legislature's Website).
- Wisconsin's lobbying database allows lobbyists the option to report their position on legislation, and also upload "supporting documentation" such as memos of support. (See Wisconsin's Lobbying Users Guide and their lobbying portal.)

PRIOR LEGISLATIVE HISTORY: None

FISCAL IMPLICATIONS: Minimal new regulatory costs for COELIG implementation and education.

EFFECTIVE DATE: 6 months.

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10602 ***Website: www.judgewatch.org***

A Tale of Four Complaints – & Now Five

Testimony before the Commission on Ethics & Lobbying in Government (COELIG)
November 13, 2024 – New York City Bar Association

I am Elena Sassower, director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Our website is www.judgewatch.org, and from its left side panel "Testimony", you can find a link for this testimony[1] and to the open-and-shut, *prima facie* EVIDENCE substantiating it.

At last year's public hearing, on March 29, 2023, I stated that based on your first 6-1/2 months, I would be filing a complaint against you, to you, for your "substantial neglect of duty" and "misconduct in office"[2] arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[3] 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.[4]

I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my testimony summarized and evidentiarily-established pertaining to the eight complaints I filed with COELIG, by a single complaint-letter, on its "DAY 1" -- July 8, 2022. All involved the "false instrument" reports by which New York's 4 statewide-elected executive officers and all its 213 state legislators have procured unlawful and unconstitutional pay raises for themselves – and for judges and district attorneys – embedded in a state budget that they have driven "OFF THE CONSTITUTIONAL RAILS" to steal more taxpayer monies and subvert constitutional, lawful state governance through massive insertions of non-fiscal/non-revenue-producing policy.

As to this July 8, 2022 complaint, I stated:

> "Surely no complaint that the Commission thereafter received remotely approaches, in magnitude and breadth, any of these eight complaints, let alone all of them." (underlining in the original).

I identified your serious and substantial conflicts-of-interest pertaining thereto, the least being that your COELIG *per diems* are tied to Supreme Court justice salaries that the "false instrument" reports had inflated by $80,000 and that, by an unsigned November 17, 2022 letter, your Investigations Division purported, in violation of Executive Law §94.10(f), that you had "voted to close" the July 8, 2022 complaint and its October 6, 2022 supplement. I concluded with a procedural suggestion

that your letters disposing of complaints indicate 30 days in which a complainant could seek reconsideration, similar to what Appellate Division rules provide for its attorney grievance committees[5]. The last sentence of my testimony expressly requested such reconsideration of the July 8, 2022 complaint.

Instead of confronting my testimony with findings of fact and conclusions of law as to the legitimacy of your November 17, 2022 letter, and about your handling of my FOIL requests pertaining to the July 8, 2022 complaint, about which I testified, and about the corruption of the process by which you were appointed commissioners, involving the so-called Independent Review Committee of 15 law school deans, about which I also testified, you ignored it all. This enabled you to issue, on August 28, 2023, a fraudulent Annual Report for 2022 extolling the success of COELIG and the Independent Review Committee. A week and a half later, at September 6, 2023 special meetings of your then Legal Committee and Ethics Committee, you dumped two recommendations you purported I had made at the March 29, 2023 hearing. As for my recommendation for a reconsideration procedure for complaints – which, in fact, was my ONLY express recommendation – the deceits about it by COELIG staff, including that it would require an amendment to Executive Law §94, resulted in "push-back" from several Legal Committee members and a vote tabling the recommendation to a subsequent meeting so that staff could provide further guidance on the subject.

On October 2, 2023 – as an explicit TEST of the staff deceit that an unofficial reconsideration procedure exists inasmuch as a complainant can resubmit his/her complaint with additional information or file a new complaint – I did both. I filed a new complaint – the complaint against you, your executive director, your general counsel, and high-ranking staff that I had announced I would be filing at the March 29, 2023 hearing. It was now updated and supplemented by an analysis of your fraudulent 2022 Annual Report and of what had taken place at your September 6, 2023 meetings – and embodied separate relief, denominated as:

> "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."

Your response? You excluded me from your rigged November 1, 2023 "roundtable" discussion of recommendations from the March 29, 2023 hearing that you were adopting and embodying into your 2024 legislative agenda – and ignored, without acknowledgment, the October 2, 2023 complaint.

Executive Law §94.10(e) expressly states: "The commission shall notify the complainant…that the commission has received their complaint". I pointed this out by a December 5, 2023 e-mail to you, further asking:

> "What is the status of the October 2, 2023 complaint – and, additionally, the status of its request for reconsideration of CJA's July 8, 2022 sworn complaint and its October 6, 2022 sworn supplement?

> Please advise – and also furnish, pursuant to FOIL, the Commission's written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration."

You responded only to the FOIL request, by a January 9th e-mail stating that "written procedures…are in preparation but, at this time, are not yet final".

Twenty days later, on January 29, 2024, I filed with you a third complaint – this against the seven members of the (3rd) Commission on Legislative, Judicial and Executive Compensation for their "false instrument" report that would raise judicial salaries, effective April 1, 2024. In other words, it was a complaint that would directly impact raises to your *per diems*. Indeed, more than that, it would crack open the whole mass of conflict-of-interest-driven corruption involving "false instrument" report pay raises and the budget that was the subject of CJA's eight-in-one July 8, 2022 complaint.

Four months later, in the absence of your acknowledgment of this complaint, I sent you a May 30th e-mail, asking as to its status and the number you had assigned to it. I reiterated this, a week later, by a June 5th e-mail, further stating that I still had no acknowledgment of the October 2, 2023 complaint. I asked whether you had not, by then, finalized your "written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration."

Another four months later, I would ask this, yet again, by an October 7th e-mail, requesting the numbers you had assigned to these two complaints – and what their status was.

A full month elapsed before you responded, on November 7th. By then, I had filed with you a fourth complaint, on October 29, 2024, against the 4 statewide-elected executive officers and all 213 state legislators for benefitting themselves by colluding in the (3rd) Commission on Legislative, Judicial and Executive Compensation's "false instrument" report – the subject of CJA's January 29, 2024 complaint that you had been "sitting on". I had also, by then, sent you a November 4th e-mail for the number you had assigned to the October 29th complaint.[6]

As for your November 7th response, you asserted that the status of CJA's October 2, 2023 complaint is "closed" and that the number you had assigned to it was 22-099. As 22-099 is the number you assigned to the July 8, 2022 complaint, you clearly assigned NO number to the October 2, 2023 complaint against yourselves, which you did NOT determine.

As for the status of CJA's January 29, 2024 complaint, you asserted that it is "open" and that the number you had assigned to it was 24-141. Evident from this number is that it was NOT assigned until late October or early November – and possibly only in response to the October 29, 2024 complaint.

You also furnished a pdf entitled "Internal Controls and Procedures", identifying that it had been

updated on October 17, 2024, with a single footnote about JCOPE which is false.[7] Assuming comparable "Internal Controls and Procedures" existed, in whole or in part, over the past two-plus years of COELIG's existence – and this was the subject of my repeated FOIL requests, beginning July 26, 2022 and culminating with my February 7, 2023 FOIL appeal, identifying that they should be existing – COELIG staff, with your knowledge, flagrantly violated same with respect to CJA's complaints.

COELIG's most important function is appropriately addressing complaints – and, as chronicled by CJA's October 2, 2023 complaint, with its painstaking 46-page, single-spaced analysis of your 2022 Annual Report, of your monthly operations reports, of the videos of your meetings, and of Part 941.2 and 941.3 of your rules, obfuscating your duty under Executive Law §94, you have been failing in that function, flagrantly, from the outset, while, simultaneously, flagrantly violating conflict-of-interest mandates both with respect to yourselves and staff – and collecting unlawful hourly *per diems* that now total well over a quarter of a million dollars.

Indeed, as a result of your self-serving and deliberate nonfeasance and cover-up of the October 2, 2023 complaint against yourselves and COELIG staff, ALL the frauds of your 2022 Annual Report are essentially replicated by your 2023 Annual Report – and, with respect to your handling of complaints, even more brazenly. For instance, although the 2023 Annual Report, states (at p. 73) that COELIG "received and processed 156 tips, complaints, referrals, and reports in 2023", this 156 number is NOT reflected by the chart (at p. 82) purporting to list "all matters incepted in 2023". Rather, the chart ends at #23-118, thus signifying only 118 "matters incepted…in 2023" – and, if that discrepancy is not startling enough, 68 numbers are missing within the sequence leading up to #23-118!

As CJA's October 2, 2023 complaint is DISPOSITIVE of the situation then, now, and of what must happen, going forward – including with respect to the lawsuits *CJA v. JCOPE, et al.* and *Cuomo v. COELIG* (APL-2024-00076), now both at the Court of Appeals – my recommendation, in closing, is that you do your duty by confronting, with findings of facts and conclusions of law, its "specific and credible evidence" of your conflict-of-interest-driven "substantial neglect of duty" and "misconduct in office" – and its continuation to the present, as herein summarized. To assist you in doing so, I am embodying this testimony in now a second complaint against you, your executive director, your general counsel, and other high-ranking staff – to be processed consistent with your current "Internal Controls and Procedures". To further assist, my March 29, 2023 testimony will be annexed to the complaint.

Thank you.

ENDNOTES

[1] The direct link to CJA's webpage for this testimony is https://www.judgewatch.org/web-pages/searching-nys/celg/testimony-11-13-24.htm, hyperlinking to CJA's MENU webpage for COELIG, with hyperlinks to CJA's complaints to COELIG and FOIL requests.

[2] Executive Law §94.4(c) identifies "substantial neglect of duty" and "misconduct in office" as grounds upon which "Members of the commission may be removed by majority vote of the commission."

[3] This Commission, with three members appointed by the governor, is a "state agency", pursuant to Public Officers Law §74, and the commissioners are, presumably, its "officers" – and reinforcing this is Executive Law §94.3(l) in specifying that "The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law." No parallel provision appears in Executive Law §94.4 as to commissioners. Certainly, the Commission's paid staff is within the purview of Public Officers Law §74.

[4] Executive Law §94.10(b) reads:

> "Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission."

[5] Appellate Division Rules of Procedure 1240.7(e)(3) reads:

> "Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney's decision declining to investigate a complaint, or of a Committee's dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate."

[6] This was reiterated by my November 8, 2024 e-mail to you, to which, as with my November 4, 2024 e-mail, there has been no response.

[7] The footnote in "Internal Controls and Procedures" (at p. 4) annotates the definition of "Open" as "matters where a 15-day letter has been sent". It states:

> "For matters 'opened' under JCOPE, JCOPE voted to open formal investigations."

This is false – and replicates the falsehood that appeared in the proposed revisions to COELIG's rules – Part 941 – foisted on commissioners in 2022 and 2023 by then interim Executive Director Berland, and which the commissioners adopted, virtually without change. This is detailed at pages 23-30 of CJA's October 2, 2023 complaint, under the title heading "Your Conflict-of-Interest-Driven Subversion of Executive Law §94.10 by Your 19 NYCRR §§941.2 and 941.3". Footnote 11 thereto (at p. 27) gives the specifics – and states:

> "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'." (capitalization in the original).

The referred-to JCOPE Executive Law §94 is §94.13(a) entitled "Investigations".

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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A Tale of Four Complaints – & Now Five

DATE: November 15, 2024

TO: Commission on Ethics & Lobbying in Government

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

RE: Supplement in Further Substantiation of CJA's November 13, 2024 Testimony at the Commission's Second Annual Public Hearing, for Inclusion in the Record – & in Further Substantiation of CJA's November 13, 2024 Complaint

Attached, for inclusion in the record of the Commission's November 13, 2024 second annual public hearing, in further substantiation of my November 13, 2024 testimony and November 13, 2024 complaint, are the four FOIL requests e-mailed to you today:

FOIL Request #1 (at 4:11 pm)
"COELIG's 2023 Annual Report –
& its Chart of 'matters incepted...in 2023'"

FOIL Request #2 (at 4:16 pm)
"The 'Investigations & Enforcement' sections
of COELIG's 2022 & 2023 Annual Reports –
& Comparison to JCOPE's Annual Reports"

FOIL Request #3 (at 4:19 pm)
"JCOPE's 'internal procedures for intake and review
of all tips and complaints'& its 'case management system' –
& COELIG's revisions and updates thereto"

FOIL Request #4 (at 4:42 pm)
"Cumulative Hourly Per Diems Paid –
Including as Supplemented, Retroactively, to April 1, 2024,
as Voted by the Commissioners at their Oct 23, 2024 Meeting"

Thank you.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:11 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: COELIG's 2023 Annual Report -- & its Chart of "matters incepted...in 2023"**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

Your 2023 Annual Report, released on June 24, 2024, states (at p. 73), as its "Investigations and Enforcement Highlights":

> "Tips, Complaints, & Reports: The agency received and processed 156 tips, complaints, referrals, and reports in 2023."

Five pages later (at p. 78), under the heading: "2023 Review and Disposition of Investigative Matters", it repeats:

> "Investigations staff processed 156 investigative matters…in 2023. …
> In 2023, COELIG elevated 11 matters and issued notices of allegation, referred to as '15-day letters,' to the affected subjects."

However, four pages after that (at p. 82), under the heading "2023 Enforcement Activity", these "156 tips, complaints, referrals, and reports in 2023" are NOT reflected by the chart purporting to list "all matters incepted in 2023". Rather, the chart ends at #23-118. This signifies only 118 "matters incepted…in 2023". Moreover, of these 118, the following 68 numbers are missing:

> 23-001, 23-002, 23-003, 23-004, 23-009, 23-012, 23-014, 23-017, 23-018, 23-020, 23-022, 23-023, 23-024, 23-026, 23-027, 23-028, 23-032, 23-033, 23-034, 23-035, 23-036, 23-038, 23-039, 23-042, 23-044, 23-045, 23-047, 23-050, 23-051, 23-052, 23-053, 23-054, 23-056, 23-058, 23-059, 23-063, 23-064, 23-065, 23-066, 23-068, 23-069, 23-071, 23-074, 23-075, 23-077, 23-078, 23-079, 23-080, 23-081, 23-083, 23-084, 23-089, 23-092, 23-093, 23-095, 23-096, 23-097, 23-098, 23-099, 23-102, 23-104, 23-110, 23-111, 23-112, 23-114, 23-115, 23-116, 23-117.

Pursuant to FOIL, this is to request records as to:

(1) why the last entry on the chart is #23-118, not #23-156 – representing another 38 entries;

(2) why the above 68 numbers are missing from the chart;

(3) the information pertaining to the missing 106 entries, *to wit*, “Reference ID”, Agency”, “Law”, “Nature of Allegation”, “Status”, and “Closed Date”;

(4) which of the “156 tips, complaints, referrals, and reports” were the 11 “elevated” by “15-day letters”;

(5) why the chart does not identify which numbers are “tips”, which numbers are “complaints”, which numbers are “referrals”, and which numbers are “reports”;

(6) what is the difference between “referrals” and “reports”.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:16 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: The "Investigations & Enforcement" sections of COELIG's 2022 & 2023 Annual Reports -- & Comparison to JCOPE's Annual Reports**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

COELIG's website posts COELIG's two annual reports, for 2023 and 2022, and JCOPE's 10 annual reports. Below is a comparison of statistics extracted from the "Investigations and Enforcement" sections of these 12 annual reports.

COELIG's 2023 Annual Report *(June 24, 2024) Executive Director Sanford Berland/Chair Frederick Davie*
"Investigations and Enforcement": pp. 73-89

- "received and processed **156 tips, complaints, referrals, and reports**" (at p. 73); "processed **156 investigative matters in 2023**" (at p. 78);
- "elevated **11** matters and issued notices of allegation, referred to as '**15-day letters**'";
- no reference to settlements by COELIG or penalties and assessments – and none are reflected by its chart of "**2023 Enforcement Activity**" (at pp. 82-89);
- its "**2023 Enforcement Activity" chart**, whose title (at p. 82) is annotated by a footnote that it "lists all matters incepted or with other activity in 2023", lists entries by "Ref ID" and requires for each entry, "Agency", "Law", "Nature of Allegation", "Status", and "Closed Date". The entries, 25 of which identify "N/A" for "Agency", span NOT to #23-156, but only to #**23-118** – and from this span are entirely missing 68 numbers for 2023, *to wit*:

  23-001, 23-002, 23-003, 23-004, 23-009, 23-012, 23-014, 23-017, 23-018, 23-020, 23-022, 23-023, 23-024, 23-026, 23-027, 23-028, 23-032, 23-033, 23-034, 23-035, 23-036, 23-038, 23-039, 23-042, 23-044, 23-045, 23-047, 23-050, 23-051, 23-052, 23-053, 23-054, 23-056, 23-058, 23-059, 23-063, 23-064, 23-065, 23-066, 23-068, 23-069, 23-071, 23-074, 23-075, 23-077, 23-078, 23-079, 23-080, 23-081, 23-083, 23-084, 23-089, 23-092, 23-093, 23-095, 23-096, 23-097, 23-098, 23-099, 23-102, 23-104, 23-110, 23-111, 23-112, 23-114, 23-115, 23-116, 23-117.

COELIG's 2022 Annual Report *(August 28, 2023) Executive Director Sanford Berland/Chair Frederick Davie*
"Investigations and Enforcement": pp. 52-75

- "received and processed **155 tips, complaints, referrals, and reports**" (at p. 52); "processed **155 investigative matters** in 2022" (at p. 56);

- "elevated **eight** matters and sent notices of allegation, referred to as '**15-day letters**'" (at p. 57), yet states in a "Commission Activities by the Numbers" section (at pp. 76-78) that in 2022, from "Jan 1 – Dec 31", the "Number of **"15-day letters sent"** were "**3"** and the "Number of **investigations opened**" were "**2**";
- **no settlements by COELIG, but four by JCOPE,** reported in a section entitled **"Summary of Public Settlement Matters"** (at pp. 57-58)**, without cumulative total of penalties/assessments**, with a **chart entitled "2022 Public Settlement Matters**" summarizing the four settled matters and identifying: "paid over $97,000 to settle the violations"; "paid $8,000"; "$8,000 to settle the violations"; "$1,000 to settle the violation";
- **chart entitled "2022 Enforcement Activity"** (at pp. 61-75), annotated by a footnote (at p. 61) that it "lists all matters incepted or with other activity in 2022", with entries listed by "Ref ID" and requiring for each entry "Government Division or Agency of Subject or Subject (if public settlement)", "Law", "Nature of Allegation", "Status", and "Closed Date". The entries, which span to #**22-155**, list the four settled matters (#19-193, #20-067, #21-144, and #22-028), but for 21 entries are blank as to the identity of the complained-against "Government Division or Agency".

JCOPE's 2021 Annual Report *(July 7, 2022) Executive Director Sanford Berland/Chair Jose Nieves*
"Investigation and Enforcement": pp. 54-80

- "processed **246 investigative matters**";
- "issued **sixteen 15-day letters**";
- "commenced **eight investigations**";
- "**settled five matters**, two of which had been initiated or commenced in years prior to 2021", **"penalties totaling $21,100**";
- **chart entitled "2021 Enforcement Activity"** (at pp. 58-80) – for entries listed by "Ref ID", and requiring for each entry, "Government Division or Agency of Subject (if applicable) or Subject (if public settlement)", "Law", "Nature of Allegation", "Status", and "Closed Date" – a chart that impliedly concedes the second cause of action (¶¶42-47) of the June 6, 2022 verified petition/complaint in *CJA v. JCOPE, et al*. The entries, 56 of which are blank as to the identity of the complained-against "Government Division or Agency", identify 16 as against JCOPE (#21-117, #21-127, #21-158, #21-190, #21-209, #21-210, #21-211, #21-212, #21-213, #21-214, #21-215, #21-216, #21-217, #21-219, #21-220, #21-221) and identify 3 as against the State Inspector General (#21-135, #21-186, #21-187), which had jurisdiction over JCOPE, double #21-032 and #21-117 and skip #21-034, #21-074, #21-132, before concluding with a last entry of #**21-247**.

JCOPE's 2020 Annual Report *(July 8, 2021) Executive Director Sanford Berland/Chair Camille Joseph Varlack*
"Investigation and Enforcement": pp. 53-57

- "processed **209 investigative matters**";
- "issued **20 15-day letter**s";
- "commenced **12 investigations**";
- **"settled four matters**, two of which had been initiated or commenced in years prior to 2020", "**penalties totaling $25,000**" – with a summary in a section entitled **"Public Settlement Matters**" (pp. 56-57) whose **chart entitled "2020 Enforcement Actions"** lists 4 entries, each entry with "Name", "Violation Charged", "Amount Paid", "Outcome", and "Date".

JCOPE's 2019 Annual Report *(July 30, 2020) -- Chair Michael Rozen*
"Investigations and Enforcement": pp. 48-55

- "processed **209 matters**";
- "issued **17 fifteen-day letters**";
- "commenced **12 investigations**…5 of which were initiated by fifteen-day letters in 2018";
- "**settled 21 matters**…14 arose from matters initiated by a fifteen-day letter and/or commenced in years prior to 2019";
- "**penalties and settlement payments totaling $172,550**" – with a summary in a section entitled "**Public Settlement Matters**" (pp. 51-55), whose **chart entitled "2019 Enforcement Actions"** lists 21 entries, each entry with "Name", "Violation Charged", "Amount Paid", "Outcome", and "Date".

JCOPE's 2018 Annual Report *(April 11, 2019) -- Executive Director Seth Agata/Chair Michael Rozen*
"Investigation and Enforcement": pp. 49-54

- "processed **257 matters**";
- "issued **35 fifteen-day letters**";
- "commenced **27 investigations**";
- "**settled 10 matters**", "**penalties totaling $73,037**"— with **a chart entitled "2018 Enforcement Actions",** solely listing 10 settled matters, each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2017 Annual Report *(April 18, 2018) -- Executive Director Seth Agata/Chair Michael Rozen*
"Investigation and Enforcement": pp. 46-50

- "processed **nearly 170 matters**";
- "issued **22 fifteen-day letters**";
- "commenced **14 investigations**";
- "**referred one matter for criminal investigation** to the New York State Attorney General";
- "**settled eight matters**" ("48 settlement agreements to resolve eight matters"), **penalties totaling approximately $123,000**" – with **a chart entitled "2017 Enforcement Actions"**, solely listing 8 settled matters, each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2016 Annual Report *(June 8, 2017) -- Executive Director Seth Agata/Acting Chair Michael Rozen*
"Investigations and Enforcement": pp. 49-56

- "processed **more than 200 matters**";
- "issued **32 fifteen-day letters**";
- "commenced **25 investigations**";
- "For the first time, the Commission **referred two matters for criminal investigation**, one to the Albany County District Attorney and the other to New York State Attorney General";

- "**settlement agreements to resolve eight matters**", "**penalties totaling approximately $566,500**" – with **a chart entitled "2016 Enforcement Actions"**, with 9 entries, 8 "settled", plus 1 indicating "Hearing", each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date" (which do not tally to $566,500).

JCOPE's 2015 Annual Report *(April 7, 2016) -- Chair Daniel Horwitz*
"Investigations and Enforcement" pp. 43-48

- "processed **more than 200 matters**";
- "issued **17 fifteen-day letters**";
- "commenced **13 investigations**";
- "issued **one Substantial Basis Investigation Report**";
- "**settled 26 matters**", "**penalties totaling approximately $189,300**" – with **a chart entitled "2015 Enforcement Actions"**, with 12 entries, all "settled", each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2014 Annual Report *(April 29, 2015) -- Executive Director Letizia Tagliafierro/Chair Daniel Horwitz*
"Investigations and Enforcement": pp. 37-40

- "reviewed **over 200 potential matters**";
- "issued **52 fifteen-day letters**";
- "**settled 28 matters**", "**penalties totaling approximately $58,572**" – with **a chart entitled "2014 Enforcement Actions"** containing 14 entries, 12 of which were "settled" and 2 by "Decision & Civil Assessment", each entry by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2013 Annual Report *(April 3, 2014) -- Executive Director Letizia Tagliafierro/Chair Daniel Horwitz*
"Investigation and Enforcement": pp. 45-50

- "reviewed **nearly 200 potential matters**";
- "**penalties totaling approximately $450,000**" – and **a chart entitled "2013 Enforcement Actions"** containing 15 entries, 12 "settled", 1 by a "LEC Decision" and 2 by "Decision and Order", each entry by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2012 Annual Report *(March 28, 2013) -- Executive Director Ellen Biben/Chair Janet DiFiore*
"Investigation and Enforcement": pp. 45-48

- "reviewed **more than 300 potential matters,** including at least 60 investigative matters that were transferred to the Commission from the former Commission on Public Integrity";
- "commenced 48 substantial basis investigations";
- "resolved **27 enforcement actions that resulted in settlements and penalties totaling more than $52,000**" – and an **untitled chart** containing 27 entries, 22 "settled", 5 "assessed", each entry by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

It would appear that the phrase **"tips, complaints, referrals, and reports**", used by COELIG to describe what it had "received and processed" is the same as "potential matters" and "matters", used by JCOPE until its final two annual reports of 2021 and 2022, under Executive Director Burland, where the phrase "investigative matters" was substituted.

Pursuant to FOIL, this is to request any records reflecting:

(1) why the number of "tips, complaints, referrals, and reports" purported by COELIG's 2022 annual report as "155" and by its 2023 annual reports as "156", is so appreciably lower than the number of "potential matters", "matters", and "investigative matters" purported by JCOPE's 10 annual reports, from 2012 to 2021, as "more than 300"; "nearly 200", "over 200", "more than 200", "more than 200", "nearly 170", "257", "209", "209", and "246";

(2) any discussion about this by the Commissioners – or about the other statistics and content of the "Investigations and Enforcement" sections of their 2022 and 2023 annual reports.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:19 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: JCOPE's "internal procedures for intake and review of all tips and complaints" & its "case management system" -- & COELIG's revisions and updates thereto**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

In its 2012 "First Year Report", JCOPE stated (at p. 13)

> "…the Investigations Division also adopted internal procedures for intake and review of all tips and complaints and is in the process of creating a new case management system."

In JCOPE's 2012 Annual Report – its first – released March 28, 2013, it comparably stated (at p. 46)

> "…the Investigations Division also established internal procedures for intake and review of all tips and complaints and is in the process of creating a new case management system."

In its February 2015 "Third-Year Report", JCOPE stated (at p. 37)

> "Over the past three years, JCOPE has established internal procedures for intake and review of all tips and complaints and worked closely with the State Office of Information Technology Services to create an effective electronic case management system."

Pursuant to FOIL, this is to request:

(1) a copy of JCOPE's referred-to "adopted internal procedures for intake and review of all tips and complaints" – and any subsequently adopted revisions/updates to same by JCOPE and/or COELIG;

(2) a copy of specifications/procedures/protocols pertaining to JCOPE's referred-to "effective electronic case management system" – and any subsequently adopted revisions/updates to same by JCOPE and/or COELIG.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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914-421-1200
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:42 PM

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Subject: **FOIL Request: Cumulative Hourly Per Diems Paid -- Including as Supplemented, Retroactively, to April 1, 2024, as Voted by the Commissioners at their Oct 23, 2024 Meeting**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

Your 2023 Annual Report, released on June 24, 2024, states that among COELIG's "Accomplishments" and "significant milestones" is "Posting Commissioner Per Diem Allowances" (at p. 22). It does not provide any figures, but instead furnishes a link to where they are posted on COELIG's "Pressroom" website. From the nine entries currently posted, it is impossible to ascertain the cumulative figure either for hourly *per diem* payments made in 2023 or of work done in 2023, for which hourly *per diem* payments were made. These nine entries are: .

"Oct 2023-Mar 2024 Commissioner Per Diems" (Paid-May 22, 2024) $15,976.35

"Oct. 2023 – March 2024 Commissioner Per Diems" (Paid-May 22, 2024).....$15,976.61

"Jan – April 2024 Commissioner Per Diems" (Paid-April 10, 2024).....$36,240.20

"Nov 2023- March 2024 Commissioner Per Diems" (estimated).....$8,371.56

"Oct – Dec 2023 Commissioner Per Diems" (Paid-Dec 20, 2023).....$37,895.82

"Sept – Nov 2023 Commissioner Per Diems" (Paid-Nov 2023).....$23,612.95

"July – September 2023 Commissioner Per Diems".....$18,340.76

"Apr – June 2023 Commissioner Per Diems".....$45,982.09

"FY 2022-23 Commissioner Per Diems" (Paid-FY 2022-23).....$83,946.11

It appears from this tally – and omitting what appears to be a redundant entry (differing by 26 cents) and an estimated entry, that the amount is: $261,994.54.

Pursuant to FOIL, this is to request any cumulative tally of the hourly *per diems* paid to date to the Commissioners – including as supplemented, retroactively, to April 1, 2024, to reflect the increase in Supreme Court justice salary resulting from the December 4, 2023 Report of the Commission on

Legislative, Judicial and Executive Compensation – the subject of Resolution #2024-02, approved by the Commissioners at the October 23, 2024 meeting.

Thank you.

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Erica Vladimer, Co-Founder, Sexual Harassment Working Group
EricaVladimer@gmail.com

Good afternoon, and thank you to the Commission on Ethics and Lobbying in Government (COELIG) for this opportunity to testify. My name is Erica Vladimer, co-founder of the Sexual Harassment Working Group, a volunteer workers collective of former city and state legislative staff, all of whom experienced sexual harassment, abuse, and retaliation at the hands of elected and appointed officials. We advocate for stronger workplace protections against harassment and discrimination, more straightforward avenues for justice for workers who experience harassment and discrimination, and more robust accountability mechanisms for those who abuse their power. Although our work focuses on supporting public servants, we also advocate for legislative and policy changes to protect workers across all sectors.

It's frustrating to sit here, providing testimony, knowing that COELIG is currently being undermined by Andrew Cuomo's lawsuit challenging its constitutionality. I've had the pleasure of working with some incredible good-government groups, many of which are also testifying today, and together, we worked hard to help lawmakers create the truly independent ethics body New York badly needs. While the resulting COELIG could arguably be even more independent than it stands today, I join my colleagues in their belief that COELIG is constitutional and necessary. As stated in our joint amicus brief to the Court of Appeals, we believe the lower court misinterprets the state constitution – dismissing the shared executive power between the Governor, Attorney General, and State Comptroller and instead creating a monarch-like governor who can break laws with impunity.

The impact of this retribution-fueled lawsuit is significant, hindering COELIG's ability to hire staff and move investigations forward. It has also provided ammunition for other individuals under investigation by COELIG seeking to dismiss their cases. Former State Senator Jeff Klein, who shoved his tongue in my mouth while I worked for him as a policy analyst and counsel, has successfully delayed the COELIG hearing against him indefinitely. His arguments rely on Cuomo's arguments and lawsuit, claiming nothing should move forward until the Court of Appeals hears Cuomo's case and decides whether COELIG is constitutional or must be dismantled.

It's been almost seven years since a NYS ethics commission first opened their investigation into Klein. I've shared my story over and over and over and over again with investigators over that time. I've held my breath at every Capitol and Legislative Office Building elevator for the past seven years. For seven years, I've wondered if Klein's clients and the legislators he meets with know about the investigation and if they've taken steps to protect their staff.

I share all this to remind COELIG commissioners and staff that although much of your work centers on financial disclosures, transparency, and the like, a significant part of your work

focuses on helping real people like me and, perhaps even more importantly, current government staff, who deserve a safe working environment as they do the peoples' work.

That is why I urge **COELIG to expand its current legislative proposal to explicitly codify sexual harassment as conduct that violates the code of ethics so that ALL types of harassment and discrimination are codified as violations of the code of ethics.** Human experiences cannot and should not be segmented. While harassment and discrimination are severely underreported, studies show that women of color experience sexual harassment at higher rates than white women. Many also report experiencing racial discrimination AND sexual harassment.[1] By choosing to explicitly codify sexual harassment and no other forms in the NYS Code of Ethics, you are asking public servants to bifurcate their experience and trauma.

I understand the Commission's focus on sexual harassment; while its predecessor, JCOPE, took on sexual harassment investigations, the Commission also faced the legal argument that JCOPE (and now COELIG) does not have jurisdiction over sexual harassment claims. Jeff Klein avoided accountability for years with this argument before using Cuomo's lawsuit and a delay tactic, going so far as to file an Article 78 hearing in Albany Supreme Court. By codifying sexual harassment into the Code of Ethics, this ambiguity can be cleared up and help move ethics investigations and hearings along. I'm afraid, however, that explicitly codifying sexual harassment will also signal that COELIG does NOT have (or want) jurisdiction over other types of harassment and discrimination claims. By trying to clear up any confusion about jurisdiction over sexual harassment, COELIG may accidentally create confusion about its jurisdiction over other types of harassment and discrimination. Existing legislation also looks to address this: S7137A/A9279 amends the NYS Code of Ethics to prohibit harassment and discrimination explicitly.

I recognize that the commission hesitates to open its doors to harassment and discrimination claims as it could potentially increase its caseload. However, since it is already established that sexual harassment is an ethical violation/abuse of power in prior investigations and enforcement actions, it is hard to justify how one type of discrimination is a violation of the NYS Code of Ethics, but others are not.

In addition, including all types of harassment and discrimination in the NYS Code of Ethics would conform with your recommendation to add accessorial liability to the Executive Law, Civil Service Law Lobbying Act, and Public Officers Law; both policy changes ensure power abusers are held accountable for their actions. After all, harassers are often surrounded by enablers and protectors who will go so far as to violate the State's ethics laws to protect their boss. This happened with Klein when a senior staffer I confided in less than two hours after Jeff

[1] https://www.nbcnews.com/news/asian-america/74-asian-american-women-experienced-racism-year-new-report-says-rcna18626; https://www.gelawyer.com/blog/2018/05/women-of-color-face-barriers-in-sexual-harassment-claims/

harassed me gathered other senior staff together to plot out how to deal with the “accusation.” Andrew Cuomo’s senior staff gaslit and quietly moved the staffers he sexually harassed to different positions instead of following chamber protocol. None of these enablers have been held accountable for their role in hurting me and other staffers. The need for accountability in these situations cannot be overstated. Needless to say, I’m highly supportive of this proposal.

Lastly, I know what my colleagues and I ask of you will require adequate, sustained funding and staffing. It’s clear that COELIG’s current budget of $8M is insufficient and that the commission needs substantially more funding to meaningfully fulfill its obligations and responsibilities. I also support an independent budgeting model for COELIG (and all enforcement bodies); as my colleagues in the room have done, I encourage COELIG to draft its own independent budgeting proposal.

Thank you again for the opportunity to speak with you all at this public hearing. I’m happy to answer any questions you may have.