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September 6, 2012

VIA FACSIMILE & FEDERAL EXPRESS

Ellen N. Biben, Esq.
Executive Director
New York State Joint Commission on Public Ethics
540 Broadway
Albany, New York 11207

JCOPE - 127

Dear Ms. Biben:

We write as counsel to New York State Assembly Member Vito Lopez in response to your letter dated August 30, 2012, and as a follow-up on the conversation yesterday.

As we discussed, the matters you list as being the subject of the JCOPE inquiry are largely if not entirely the same subjects we understand to have been referred to the Kings County District Attorney for investigation. (That matter has been transferred to the Richmond County District Attorney because of a conflict.) Mr. Lopez cannot be expected to cooperate with your investigation when a criminal investigation is underway.

It is unfortunate that the matter was referred to the District Attorney rather than allowing JCOPE to pursue its inquiry. While Mr. Lopez is very anxious to supply information to the Joint Commission in order to demonstrate to the Commission that no charges should be pursued, he is unable to do so without relinquishing his Fifth Amendment rights. It would seem to us that, since the Richmond County District Attorney is undertaking an investigation of these very matters, it would be appropriate for the Commission to move forward on the others matters we understand are being considered for investigation, but await the outcome of the criminal investigation with respect to Mr. Lopez before considering whether to move to a formal investigation of his actions.

Given not only your own tenure as a prosecutor but that of a number of members of the Commission, as well as the experience of those commissioners who are or have been judges, we

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would expect a heightened desire to assure that any decision to authorize an investigation and if so, any recommendation that may be determined to be warranted, is based on the facts and not on a partial story which cannot be rebutted without forcing the waiver of constitutional rights. Moreover, to the extent the Commission seeks to find the facts and not merely echo the claims leaked to the media, it should take the reasonable steps necessary to get those facts. And that means waiting until Mr. Lopez can cooperate.

Additionally, were we to be expected to provide a substantive response at this time, certainly we would need far more specificity of the claims being considered for investigation before we could provide any meaningful response. Put another way, if the Commission wishes to get detailed answers from Mr. Lopez, it needs to provide details for response.

In particular, the first allegation asserts that over the course of a seventeen month period, Mr. Lopez "engaged in an unethical course of conduct. . .through inappropriate actions and offensive comments of a sexual nature with certain female legislative staff members under [his] supervision. . .". You should assume that Mr. Lopez denies that that occurred. Therefore, without knowing the identities of the female legislative staff members to which you refer, other than assuming they are Misses [REDACTED] and without knowing what is alleged, other than the claims each has made in the past (to the extent he is aware of them), he cannot respond. To do so, please advise us of what he is alleged to have said or done, to whom, and when. Without that, he cannot respond effectively and the opportunity you have provided to convince you that no investigation should be initiated is rather hollow.

Similar detail is requested with respect to second allegation, which makes the same claim but substitutes "unwanted physical contact" for "inappropriate actions and offensive comments".

With respect to the third allegation, that he attempted to secure unwarranted privileges by offering, *inter alia*, raises, promotions and bonuses, we would need to know the employees with respect to whom the claim is made, and what offers, *other than* raises, promotions and bonuses, are alleged to have been made.

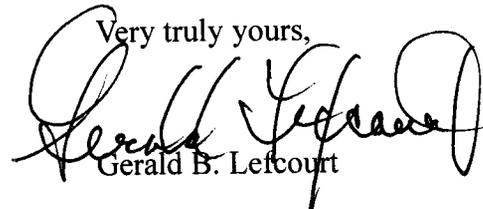
With respect to the fourth allegation, we would need to know what *other* occasions it is alleged Mr. Lopez misappropriated legislative time and resources beyond the Atlantic City trip, allegations concerning which we are aware of.

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Thank you for your cooperation in this matter. Kindly let us know whether we ought to be addressing this request directly to the members of the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald B. Lefcourt". The signature is fluid and cursive, with a large initial "G" and "L".

Gerald B. Lefcourt