

**MINUTES OF THE PUBLIC SESSION OF THE  
SEPTEMBER 12, 2018  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Chair:** Michael K. Rozen (NYC)

**Members:** Robert Cohen (NYC)  
James E. Dering (ALB)  
Colleen C. DiPirro (ALB)  
Julie A. Garcia (ALB)  
Marvin Jacob (WebEx)  
Gary J. Lavine (NYC)  
David J. McNamara (ALB)  
Barry C. Sample (ALB)  
Dawn L. Smalls (NYC)  
George H. Weissman (WebEx)

**Members**

**Absent:** J. Gerard McAuliffe, Jr.  
James A. Yates

**Staff:** Seth H. Agata, Executive Director  
Monica J. Stamm, General Counsel  
Martin L. Levine, Deputy General Counsel  
Stephen J. Boland, Director of Administration  
Keith C. St. John, Director of Ethics  
Walter J. McClure, Director of Communications and Public Information Officer  
Carol Quinn, Deputy Director of Lobbying Guidance  
Emily A. Logue, Deputy Director of Investigations and Enforcement  
Stephanie Blattmachr, Deputy Director of FDS  
Michael Sande, Deputy Director of Ethics Guidance  
Meghann Hennigan-Cohen, Deputy Director of Education  
Erin Lynch, Associate Counsel  
Kavita Bhatt, Associate Counsel  
Patrick E. Coultry, Chief Investigator  
Peter J. Smith, Investigator  
Richard Coraggio, Investigator  
Lori Donadio, Principal Investigative Analyst  
Katherine Santandrea, Secretary to the Commission

**I. CALL TO ORDER**

Chair Rozen called the September 12, 2018 meeting to order and welcomed new commissioner Julie Garcia. He announced that effective September 13, Commissioner Smalls would be leaving the Commission, and thanked her for her service on the Commission. Commissioner Smalls thanked staff and the Commission.

**II. APPROVAL OF MINUTES – PUBLIC SESSION**

**July 31, 2018**

A motion was made by Commissioner Sample, seconded by Commissioner Lavine, to approve the minutes from the Public Session of the July 31, 2018 Commission Meeting. The motion was approved by a vote of 10-0-1. Commissioner Garcia abstained from voting.

**III. REPORT FROM STAFF**

**Outreach Update**

Executive Director Seth Agata stated that JCOPE will be holding an overview training on the new lobbying regulations on September 20. Over 515 individuals have registered or attempted to register for the training. In response to the volume of attendees, arrangements have been made to live stream the training, opening the participation to an unlimited number of attendees. The deadline to register is Friday, September 14.

On October 25, in conjunction with New York Law School, JCOPE will be holding a CLE program. Keynote addresses will be given by Richard Briffault of Columbia Law School and by Maggie McKinley of the University of Pennsylvania Law School, who has written extensively on the constitutionality of lobbying statutes. The topic of the CLE will be lobbying, including the First Amendment and lobbying regulation.

Executive Director Agata stated that special trainings will continue for specific agencies, such as the DMV, in line with the Commission's desire that staff gear the trainings to the

issues that are confronted at specific agencies, as well as offer specialized trainings for per diem members of boards.

### **Update on FDS Filing Compliance**

Deputy Director of FDS Stephanie Blattmachr stated that staff has been sending notices to non-compliant FDS filers pursuant to Executive Law § 94(12):

- State officers and employees:

Approximately 2,800 Failure to File (FTF) notices were sent to individuals across 231 agencies (June 4, 2018). After outreach efforts, 55 Notices of Delinquencies (NOD) were sent to certain filers across 27 agencies who remained delinquent, with copies of NODs to applicable appointing authorities (August 27, 2018). From that group 19 delinquent filers are still outstanding. Pursuant to Executive Law § 94(19)(a)(2), staff posted the names of these filers on the JCOPE website. In August, staff sent a new round of 508 confidential FTF notices to filers across 136 agencies. Approximately 54 filers remain outstanding from that group.

- Candidates for Governor, Lieutenant Governor, Comptroller, and Attorney General:

Staff sent seven FTFs and two NODs to candidates. Two statewide elected official candidates remain delinquent.

- Candidates for legislative office:

- Staff sent 207 FTF notices and 63 NODs. These names are posted on the JCOPE website, and 29 are outstanding from that group. To date, 233 candidates have filed, and 16 declined or had invalid petitions. In total, approximately 37 candidates remain delinquent.

### **Proposed Advisory Opinion on Post-Employment Restrictions**

Executive Director Agata stated that staff is currently drafting an Advisory Opinion on post-employment restrictions. The majority of questions that legal staff handle each day are from State employees, State officials, Public Officers, and former Public Officers on what they can and cannot do in post-employment situations. The JCOPE website lists

hundreds of opinions that deal with this issue. Given the accumulation of jurisprudence in this area, staff thought it would be helpful to address both the two-year bar and lifetime bar in one robust opinion that addresses how work situations have changed since predecessor agency opinions started being issued in 1987. Staff plan to bring a draft for discussion to the Commission at the October meeting.

Deputy Director for Ethics Guidance Michael Sande detailed the proposed Advisory Opinion. Deputy Director Sande stated that over time, some of the applicable precedent, much of which pre-dates JCOPE, often was unclear and at times produced results that unduly restrict an individual's ability to engage in their occupation without correspondingly protecting the integrity of the State government. The Advisory Opinion that staff will be proposing does not change or modify the law, but rather clarifies the application of the existing precedent. The Advisory Opinion will discuss the history and development of the precedent concerning the post-employment restrictions and clarify their application going forward.

Executive Director Agata stated that staff will strengthen the meaning of the law through this Advisory Opinion while examining how situations have changed over time. He stated that the Advisory Opinion draft will be circulated to the Commission before the October meeting.

#### **IV. PROPOSED LEGISLATIVE AMENDMENT**

Executive Director Agata stated that in the previous meeting, Commissioner Yates asked staff to draft a proposed legislative amendment to authorize the Commission to disclose the status of a pending matter under certain circumstances. Executive Director Agata referred to the 2015 Commission Report, as well as staff legislative proposals on the JCOPE website, which included recommendations for modifying the confidentiality provisions of Executive Law § 94(9-a). Staff have drafted a proposed legislative amendment, as presented in the meeting book materials, which would authorize the Commission to allow the Chair or staff to disclose if a matter is pending before the Commission, if the matter is closed, or if the Commission has deferred action per a request

to stand down while a criminal (or other) investigation goes forward. The amendment would provide for prior notification to the subject of the investigation, and would give the individual the opportunity to be heard before the Commission makes a decision regarding disclosure.

Commissioner McNamara suggested: (1) amending the proposal to authorize the release of the status of the complaint only if “in the public interest”; and (2) considering whether providing a party the opportunity to be heard on disclosure is necessary.

Commissioner Jacob asked that rather than limiting the scope of disclosure to the existence of a complaint, it should be expanded to include other items that the Commission sees fit to disclose. Executive Director Agata stated that such proposal would go beyond the limited scope that Commissioner Yates had suggested; nullify the confidentiality provisions, and risk selective release of information. Earlier in the year, staff did propose an amendment that would give the Commission broader authority to make disclosures.

Executive Director Agata suggested that staff include on the JCOPE website the comments from Commissioners Jacob and McNamara, and open the proposal to the public for written comments. Staff will present to the Commission in October.

**V. NEW AND OTHER BUSINESS**

Executive Director Agata stated that a proposed schedule for the January through June 2019 meeting dates is included in the meeting book materials for Commissioners to review.

**VI. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW § 94(19)(B)**

A motion was made by Commissioner Lavine, seconded by Commissioner Sample, to enter into Executive Session Pursuant to Executive Law § 94(19)(b). The motion was approved by unanimous vote.

**VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

General Counsel Stamm stated that in Executive Session, the Commission discussed litigation matters, approved an exemption for post-employment restrictions under Public Officers Law § 73(8-b), commenced two investigations, approved two settlements, authorized steps in several investigative matters, and discussed several other investigative matters.

**VIII. MOTION TO ADJOURN THE PUBLIC MEETING**

Upon motion made by Commissioner Sample, seconded by Commissioner Garcia, the Public Session was adjourned by unanimous vote. Chair Rozen was not present for the vote.