

**MINUTES OF THE PUBLIC SESSION OF THE
OCTOBER 30, 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 (BUF)
Julie A. Garcia (ALB)
Marvin Jacob (NYC)
Gary J. Lavine (ALB)
J. Gerard McAuliffe, Jr. (ALB)
David J. McNamara (ALB)
Barry C. Sample (ALB)
George H. Weissman (ALB)
James A. Yates (NYC)

Members

Absent: None

Staff: Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Stephen J. Boland, Director of Administration
Keith C. St. John, Director of Ethics
Pei Pei Cheng-de-Castro, Director of Investigations and Enforcement
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

*Executive Director Agata was not present for the October 30, 2018 meeting

I. CALL TO ORDER

Chair Rozen called the October 30, 2018 meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

September 12, 2018

A motion was made by Commissioner Weissman, seconded by Commissioner Sample, to approve the minutes from the Public Session of the September 12, 2018 Commission Meeting. The motion was approved by a vote of 8-0-4. Commissioners McAuliffe and Yates abstained from voting, and Commissioners DiPirro and Garcia were not present for the vote.

III. REPORT FROM STAFF

Second Quarter Financial Report

Director of Administration Stephen Boland stated that in the second quarter, the agency spent just over \$1,036,000 on personal services for a year to date total of \$2,250,000, or 48.7% of the cash allowance. For non-personal services during the second quarter, the agency spent just \$140,000, for a year to date total of \$289,000, or 31% of the cash allowance. Overall, during the second quarter, the agency spent \$1,176,000, for a year to date total of just over \$2,540,000, or 45.9% of the cash allowance. The agency is within budget for the first six months of the fiscal year.

Commissioner Weissman asked if staff planned to ramp up non-personal spending through the balance of the year. Director Boland replied that the agency does not intend to do so.

2019/20 Budget Request

General Counsel Stamm stated that JCOPE received the annual call letter from the Division of Budget (DOB) on October 5, 2018. The DOB requested that the Commission keep its budget request flat. Staff submitted a request for the same appropriation as the previous year. In addition to making this request, staff highlighted the need for funding for ongoing IT projects. Those projects include the FDS application, as well as the development of the new lobbying application, which JCOPE plans to roll out prior to the effective date of the

new regulations in January 2019. ITS needs financial resources to finish the lobbying application and to provide JCOPE support going forward. If the financial needs are not met, JCOPE may need to revisit its budget request.

Outreach Update

General Counsel Stamm stated that JCOPE has held several outreach events over the last month. On September 20, staff held a training on the new lobbying regulations in Albany. Approximately 200 people attended in person and more than 400 people attended via video conference. It was well received, and the agency received a lot of good feedback and questions. Because of the demand for training, additional training was incorporated into the second annual CLE conference hosted in conjunction with New York Law School on October 25, which approximately 180 people attended. The focus of the CLE was lobbying and the First Amendment. Professor Maggie McKinley from University of Pennsylvania Law School and Professor Richard Briffault from Columbia Law School spoke about the history and the nature of lobbying regulations. The second panel covered balancing regulation of lobbying and the First Amendment. This panel included Arthur Eisenberg from the NYCLU, Debbie Greenberger from Emery Celli Brinckerhoff & Abady LLP, and Jeremy Creelan from Jenner & Block, and was moderated by Executive Director Seth Agata. Deputy Director of Lobbying Guidance Carol Quinn provided a training highlighting significant changes in the new lobbying regulations.

General Counsel Stamm stated that JCOPE will be holding an Ethics Officer Forum on November 14, which will cover restrictions on State employees doing business with the State. On December 4, Executive Director Agata will be speaking at a New York State Bar Association event in Albany on the topic of lobbying and the new lobbying regulations, and other topics related to JCOPE.

Update on Lobbying Application

Deputy Director Quinn stated that the new lobbying application is scheduled to launch in conjunction with the new regulations on January 1, 2019. The rollout will begin with the 2019/2020 bi-annual statement of registration. All filings for activity prior to December

31, 2018 will continue to be filed in the old system. An e-blast went out the day before the meeting that explains the first steps for filers to get ready to use the new system, which included an FAQ section. Staff anticipates that users will be able to update or set up new profiles in the middle of November, which is the first step to get into the system, and that the statement of registrations for the next biannual will be available on December 3. In the meantime, staff will be creating how-to videos, WebEx trainings, step-by-step instructions, guidance documents, and an updated lobbying guide. Staff expects that these will be available by mid-November or December. Staff will likely provide additional small group trainings on request. Deputy Director Quinn highlighted several features of the new application, including more specificity on who is being targeted by lobbying efforts, including the names of specific officials and committees. The application will be easier for the filer to use and for the public to access information. By mid-2019 improved search functions should be available to allow the public to search who is being lobbied on specific bills.

Proposed Meeting Schedule – January through June 2019

General Counsel Stamm stated the staff has not received any objections to the meeting dates proposed for January through June 2019. This schedule will be finalized and posted to the JCOPE website.

IV. PROPOSED LEGISLATIVE AMENDMENT

General Counsel Stamm stated that the purpose of the proposed legislative amendment is to provide the Commission with more discretion to make public announcements about certain investigative matters, which was discussed in the September meeting. Some commissioners had comments, and staff posted the proposed legislative amendment to the JCOPE website after the last meeting for comment; no additional comments were received. If the Commission is interested in taking any additional action, Staff can re-present the amendment to the Commission at a future meeting for the 2019 legislative session.

V. **PROPOSED ADVISORY OPINION**

General Counsel Stamm stated that as discussed at the September meeting, staff distributed an Advisory Opinion that addresses issues stemming from the post-employment restrictions of the two-year bar and the lifetime bar.

Deputy Director of Ethics Guidance Michael Sande stated that the purpose of the proposed Advisory Opinion is to clarify the precedent that has developed from 1988 through the present regarding post-employment restrictions, and how the Commission will apply that precedent going forward. Two main objectives of the Advisory Opinion are: (1) to clarify that the appearance and practice clause concerns communication that is intended to influence an official action or decision, or to obtain information that would not be ordinarily available to the public; and (2) to clarify the analysis for determining if the lifetime bar applies to a particular transaction the former employee had been engaged in when working for the State. The Advisory Opinion remains true to the principles behind the post-employment restrictions while providing fairness to individuals seeking guidance on post-employment opportunities, as well as being beneficial to the State in finding qualified and experienced people to work on State projects. The proposed Advisory Opinion accomplishes the goals of the statute without any overbreadth of their application.

Commissioner Cohen commended staff for their work on the Advisory Opinion, and suggested that staff clarify certain parts of the Advisory Opinion, as well as add a summary at the end of the document. Commissioner Jacob asked about exemptions from the two-year and lifetime bar. General Counsel Stamm stated that existing exemptions were not covered in the Advisory Opinion; she stated that staff could add a reference to exemptions created by statute or precedent. Commissioner Yates stated that if the Advisory Opinion does not cover the post-employment restrictions that apply to legislators and legislative employees, it should be expressly stated to prevent any confusion. Commissioner McNamara raised questions about the phrase “attempting to substantively influence”. Deputy Director Sande stated that he would address it.

A motion was made by Commissioner Yates, seconded by Commissioner Jacob, to approve the proposed Advisory Opinion subject to the modifications that were discussed. The motion was approved by unanimous vote.

VI. NEW AND OTHER BUSINESS

N/A

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

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

VIII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Rozen stated that in Executive Session, the Commission discussed litigation matters, discussed compliance and enforcement and financial disclosure matters, commenced six substantial basis investigations, closed four matters, approved two settlement agreements, authorized steps in several investigative matters, and discussed several other investigative matters.

IX. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Weissman, seconded by Commissioner Jacob, the Public Session was adjourned by unanimous vote.