

**MINUTES OF THE PUBLIC SESSION OF THE
SEPTEMBER 10, 2019
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)
William P. Fisher (ALB)
Julie A. Garcia (ALB)
Marvin E. Jacob (WebEx)
James W. McCarthy (WebEx)
David J. McNamara (BUF)
George H. Weissman (ALB)
James A. Yates (NYC)

Members

Absent: Daniel J. Horwitz
Gary J. Lavine

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
Emily Logue, Deputy Director of Investigations and Enforcement
Melinda Funk, Deputy Director of FDS
Michael Sande, Deputy Director of Ethics Guidance
Meghann Hennigan-Cohen, Deputy Director of Education
Erin Lynch, Special Counsel for Lobbying
Kavita Bhatt, Associate Counsel
Kristin Abreu, Associate Counsel
Patrick E. Coultry, Chief Investigator
Carolina Rivera, Investigator
Lori Donadio, Principal Investigative Analyst
Katherine Santandrea, Secretary to the Commission

[Commissioner Yates was not present]

I. CALL TO ORDER

Chair Rozen called the September 10, 2019 meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

July 23, 2019

A motion was made by Commissioner Weissman, seconded by Commissioner Dering, to approve the minutes from the Public Session of the July 23, 2019 Commission Meeting. The motion was approved by a vote of 9-0-1. Commissioner Garcia abstained from voting.

III. REPORT FROM STAFF

2020/21 Budget Request

General Counsel Monica Stamm stated that it is the time of the year when the Commission is preparing to submit its budget request. The Commission has not yet received the call letter from the Division of Budget but expects to receive it soon, and since it is usually a tight turnaround, it may be due before the next meeting. If anyone wants additional information, they should contact General Counsel Stamm or Deputy General Counsel Martin Levine.

Outreach Update

General Counsel Stamm stated that the Commission will be holding a CLE in conjunction with the Center for New York City Law at New York Law School on September 26. There will be two panels for this CLE: the purpose and use of Financial Disclosure Statements and best practices to comply with the State's ethics laws.

Additionally, the latest edition of the Commission's Ethics & Lobbying in New York State is now available.

The same week in September, staff will be holding a special ethics training for CUNY counsel and ethics officers.

This year, the Commission has decided not to publish a mid-year lobbying report. With the new Lobbying Application being finalized, staff believes it is prudent to wait and release data with the annual report next spring.

Update on Lobbying Application

Deputy General Counsel Levine stated that staff is continuing to roll out new features in the new Lobbying Application. Over the past month, the Application's search module was released, which is an upgrade in how the public can search for and view lobbying information. Staff is still working with ITS to iron out the inevitable kinks that have been identified. Staff hope to present the new public search features at a future meeting. The next features to roll out will be terminations and extensions for filings, and the auto-generated client semi-annual reports for those who lobby on their own behalf.

IV. APPLICATION FOR EXEMPTION FROM SOURCE OF FUNDING DISCLOSURE REQUIREMENTS

[Commissioner Yates joined the meeting at the 25 Beaver Street location]

Commissioner Dering recused himself and was not present for the discussion.

Deputy General Counsel Levine stated that the Lobbying Act and the Commission's regulations provide a process by which a lobbying organization can seek an exemption from disclosing its sources of funding. Deputy General Counsel Levine briefly summarized the law and process: there are two types of applications, one for an individual specific source, or an application for a blanket exemption from reporting all sources. In the case at hand, there is a blanket exemption application. Under the Lobbying Act, blanket exemptions are available for certain 501(c)(4) organizations whose "primary activities concern areas of public concern" (and those are defined to include civil rights and civil liberties) that are determined by the Commission to "create a substantial likelihood that disclosure would lead to harm, threats, reprisals, or harassment to a source, or individuals or property affiliated with a source." The standard of review is whether there is a

substantial likelihood that disclosure would lead to harm, threats, harassment, or reprisal. The regulations also provide that the Commission must consider certain non-exclusive factors when making this determination: (1) specific evidence of past or present harm, threats, harassment, or reprisals to the source or the client filer;

- (2) the severity, number of incidents, or duration of past or present harm, threats, harassment, or reprisals;
- (3) a pattern of threats or manifestation of public hostility against the source or client filer;
- (4) evidence of harm, threats, harassment, or reprisal directed against organizations or individuals holding views similar to that of the source or the client filer; and,
- (5) the impact of disclosure on the ability of the source or client filer to maintain ordinary business operations and resulting economic harm.

It is important to remember that in making this decision the Commission must establish a record of its findings and conclusions to support its determination. Once that is done, a letter will be sent to the applicant. If the applicant is dissatisfied with the Commission's action, the applicant's recourse is to file an action under Article 78 of the CPLR.

Deputy General Counsel Levine summarized the evidence that was submitted with the application. The applicant is SAM Action, a 501(c)4 organization with a mission to "educate citizens on the science of marijuana and promote policies that decrease marijuana use." SAM is an acronym for "Smart Approaches to Marijuana." The application presents evidence that it contends supports a determination on the factor of the impact on the ability to maintain ordinary business operations and resulting economic harm. The group has asserted that it is the subject of harassment and opinion pieces, podcasts, and social media; and that its staff receive harassing phone calls and communications at their offices. SAM Action included specific email examples and maintained that these types of email are indicative of what donors could expect if their identities were made public. Deputy General Counsel Levine noted that the application states that the group receives most of its support through individual donors, and thus is only requesting an exemption from identifying individual donors as opposed to any entities that donate.

Commissioner Weissman stated that on its face, the application does not come close to meeting the statutory or regulatory requirements or criteria to grant an exemption. The information that was submitted does not include actual threats and in fact the specific email included seems to focus more on a particular political party as opposed to the applicant or its sources of funding.

Commissioner Fisher asked about prior source of finding exemption requests and if there were any applications that met the standard. Deputy General Counsel Levine stated that the Commission has approved applications in the past. The initial exemptions granted in 2013 from NARAL, Planned Parenthood, Family Planning Advocates, and the New York Civil Liberties Union (NYCLU) expired after a period of one year. The regulations have been through a series of iterations since 2013, and no other applications have been approved since that point. The application presented in 2013 cited specific threats or harm to individuals, some of whom were in New York, and included threats to abortion providers, and a long inclusion of postcards, letters, and other harassing correspondence directed to the organization and against those who provided those services. General Counsel Stamm stated that the most recent exemption application was received in 2018 from the NYCLU, which was not granted.

A motion was made by Commissioner Cohen, seconded by Commissioner Weissman, to deny the application for exemption in the matter of SAM Action. Chair Rozen, Commissioners Cohen, DiPirro, Fisher, Garcia, Jacob, McNamara, Weissman, and Yates voted in favor of the motion. Commissioner McCarthy opposed the motion. The motion carried by a vote of 9-1-0.

Commissioner Dering returned to the meeting.

V. NEW AND OTHER BUSINESS

General Counsel Stamm stated that a proposed meeting schedule for the first half of 2020 was included in the book for Commission review and asked Commissioners to contact staff if they anticipate scheduling conflicts.

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

A motion was made by Commissioner McNamara, seconded by Commissioner Dering, to enter into Executive Session. The motion was approved by unanimous vote.

After further discussion, a motion was made by Commissioner McNamara, seconded by Commissioner Weissman, 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

[Commissioner Jacob left the meeting during Executive Session]

Chair Rozen stated that in Executive Session, the Commission discussed compliance matters related to Financial Disclosure Statements, approved one settlement agreement, commenced two investigations, authorized steps in several other investigative matters and discussed several others, and discussed matters related to ethics guidance. Additionally, the Executive Director search subcommittee has received and reviewed over 150 resumes, and the subcommittee will begin interviewing candidates shortly and expects that phase to continue for several more weeks. The subcommittee also continues to accept and review applications from qualified candidates.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Yates, seconded by Commissioner Dering, the Public Session was adjourned by unanimous vote.