

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

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Commission Meeting of June 23, 2020
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Appearances: Michael K. Rozen, Chair

Commissioners:

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Daniel J. Horwitz
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
George H. Weissman
James A. Yates

Staff:

Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Walter J. McClure, Director of Communications and Public
Information Officer
Carol Quinn, Deputy Director of Lobbying Guidance
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Gage Hodgen, Intern
Lori A. Donadio, Principal Investigative Analyst
Kelly A. McCready, Confidential Clerk

IT Staff - Tanya Smith

OGS Media Services - Amaury Corniel

1 Chair Rozen: Good morning everybody. Welcome to the
2 June meeting of the New York State Joint Commission on Public
3 Ethics. Before we get started, I want to thank you all for
4 joining me today. I hope all of you and your families continue
5 to be healthy and safe as the health crisis continues. This
6 meeting is being held using video conferencing technology. The
7 public session is accessible on JCOPE's website to watch via
8 livestream. Thank you to everyone who assisted with enabling
9 this meeting. For the time being, JCOPE's physical offices
10 continue to be closed, but we anticipate that the Albany office
11 will open to the public in July to accept filings and other
12 documents. Similarly, we expect that some of the JCOPE
13 operations that were paused for the past few months will resume
14 shortly after the Albany office reopens. Announcements will be
15 made and distributed at the appropriate time. We will continue
16 to evaluate the circumstances of the health crisis to determine
17 whether further accommodations are still needed. Please
18 contact the Commission staff if you need assistance. Although
19 the majority of staff will continue to work from home, they
20 continue to be available to provide ethics and lobbying
21 guidance, aid with public disclosure filings, ethics
22 trainings, and other mandated services. Finally, to conduct
23 this meeting smoothly, I will be monitoring the video and will
24 do my best to recognize anyone who wishes to speak. It is
25 important that only one person speak at a time. In addition,

1 I ask that when you speak, please identify yourselves, so that
2 we have a clear record. We will need to, as we did at the last
3 public meeting, take votes by roll call to ensure that everyone
4 is counted. Otherwise, please mute your phone when you are not
5 planning to speak. Alright, let's move on approval of the
6 minutes behind attachment a, any questions or comments? For
7 clarity here Walt, I can only see very few people on my screen
8 so if someone is raising a hand, I can't see it so you will to
9 let me know.

10 Walter McClure: Okay I haven't seen anybody, does
11 anybody have a question or comment?

12 Chair Rozen: Okay, hearing none, can I have a motion
13 to approve?

14 Monica Stamm: Commissioner Weissman.

15 Chair Rozen: Thank you Commissioner. Second?

16 Monica Stamm: Commissioner Yates.

17 Chair Rozen: Okay who is taking the roll, is it
18 Martin?

19 Monica Stamm: Martin are you taking the roll?

20 Chair Rozen: We can't hear you if you are speaking.

21 Walter McClure: Go ahead Martin.

22 Martin Levine: Commissioner Dering, on the minutes?

23 Commissioner Dering: Yes approved.

24 Martin Levine: Commissioner DiPirro, Commissioner
25 DiPirro?

1 Commissioner DiPirro: Yes, if you can hear me.

2 Chair Rozen: Yes, everything.

3 Martin Levine: Commissioner Fisher?

4 Commissioner Fisher: Yes.

5 Martin Levine: Commissioner Horwitz?

6 Commissioner Horwitz: Yes.

7 Martin Levine: Commissioner Jacob?

8 Commissioner Jacob: Yes.

9 Martin Levine: Commissioner Lavine?

10 Commissioner Lavine: Yes.

11 Martin Levine: Commissioner Weissman?

12 Commissioner Weissman: Yes.

13 Martin Levine: Commissioner Yates, sorry Judge Yates?

14 Okay great, and Chair Rozen?

15 Chair Rozen: Yes.

16 Martin Levine: Just to be clear, I saw Judge Yate's
17 vote on the screen.

18 Judge Yates: Can I offer it now, yes.

19 Martin Levine: The motion carries.

20 Chair Rozen: Thank you. Okay, item 3 on the agenda,
21 report from staff.

22 Monica Stamm: Great so we just wanted to report to
23 the Commission with respect to the candidates FDS filings who
24 are running in the primary today. There are 317 candidates
25 running for open seats in the primary for state legislative

1 office. We have been working with the Legislative Ethics
2 Commission on compliance with the FDS filing requirements.
3 On May 11, we sent 172 confidential fail to file notices, which
4 provide 15 days for the candidate to file. On May 29, we sent
5 Notices of Delinquency to 72 candidates that still had not
6 filed. That list of delinquent candidates was posted on JCOPE's
7 website as required by law. To date, there are 43 still
8 outstanding. Does anyone have any questions?

9 Commissioner DiPirro: I do, sorry for my ignorance,
10 but if they win the primary, how does this impact if they fail
11 to file?

12 Monica Stamm: We will pursue compliance, and
13 enforcement if necessary.

14 Commissioner DiPirro: Okay, thank you.

15 Monica Stamm: With respect to the annual report, as
16 we reported at the last meeting, we have been working to finalize
17 a draft of the report. We expect to have that draft to the
18 Commissioners next week. After the Commissioners have had an
19 opportunity to review it, then we would expect to publish it in
20 early in July. Any questions about the annual report?

21 Chair Rozen: Okay, let's move on to item four,
22 attachment b, proposed lobbying regulations.

23 Martin Levine: I will start off, Mr. Chairman. As a
24 reminder, what you have before you is a set of proposed revisions
25 to the Commission's comprehensive lobbying regulations, as well

1 as the source of funding regulations, and those are at Parts
2 943 and 938, respectively, in Title 19. The original lobbying
3 regulations were promulgated over a very lengthy process running
4 from 2016 to 2018 and went into effect January 1, 2019. These
5 were the first set of comprehensive lobbying regulations ever
6 adopted by this commission or its predecessors. After a year of
7 experience with the regulations, staff took the opportunity to
8 address some technical cleanup issues, tweak regulated filing
9 practices, and address some substantive policy questions. We
10 posted the proposed revisions on the JCOPE website as an
11 informal proposal and solicited comments from the regulated
12 community. We did receive some very helpful input from some
13 lobbying firms, trade associations, and good government groups.
14 Based on these comments, we have made a number of changes from
15 the draft that you reviewed at the April meeting. Our goal
16 today is to have the Commission vote to start a rulemaking under
17 the State Administrative Procedure Act and have the revisions
18 in place for the lobbying registration period that begins on
19 January 1, 2021. Should the Commission elect to move forward,
20 the proposal will be posted, excuse me, published in the state
21 register, followed by a 60-day notice and comment period. Any
22 substantive revisions that result from that proposal would
23 require an additional 45-day notice and comment period before
24 any enactment can occur. With that, I am going to turn it over
25 to Carol Quinn, Deputy Director of Lobbying Guidance, and she

1 is going to go over the specific proposed changes. I also want
2 to say that we really appreciate the comments that came in from
3 the regulated community and we hope to continue the dialogue
4 with those who have shown interest, so, Carol?

5 Carol Quinn: Okay, I am making sure, can you hear me?

6 Chair Rozen: Yes.

7 Carol Quinn: Okay, so I am going to go through the
8 public comments, kind of by category, focusing on the definition
9 of designated lobbyist, some issues related to lobby days, and
10 also with the coalition provision. I will get into specific
11 changes we are proposing to the draft revisions presented at
12 the last meeting. These changes, these changes are highlighted
13 in yellow, to try to give you some indication of what we changed
14 from last commission meeting to this. Anyway, I will, after
15 each topic I will stop and ask if the Commissioners have any
16 questions. Moving to the first topic, designated lobbyist, that
17 is on page five, 943.3(g), the concerns, we received five
18 comments. In those comments some concerns were raised about
19 volunteers, board members, and ad hoc committee or task force
20 members being considered lobbyists. First, I am going to point
21 out that the new language in the definition was included to
22 clarify that a person can be their own designated lobbyist.
23 Based on the discussion at last meeting, we put back in the "on
24 behalf of a client" language in this draft that you have in
25 front of you. This draft now is very close to how the definition

1 reads with respect to Board Members in the existing regulations.
2 I'll point out, we actually never intended to change the
3 position on Board Members, like I said we only wanted to clarify
4 with these revisions, in general that a person can be their own
5 designated lobbyist. So, let me get through a couple more
6 things that relate to designated lobbyists and then I will take
7 some questions. We also have on page 20, the regulations also
8 make clear that mere attendance at a lobby day does not make
9 any person a lobbyist, because that does not constitute direct
10 contact unless they speak to a public official on behalf of an
11 organization or on behalf of their employer. So, to recap that,
12 at lobby days, only those employees or board members, officers,
13 or directors who attend and speak a lobbying message to a public
14 official at a lobby day get disclosed on lobbying filings. It
15 is not enough to just be in the room or at the rally during a
16 lobby day. In order to address concerns about volunteers and
17 members of organizations possibly being considered individual
18 lobbyists, we clarified on page 23, this is in section 943.6(c)
19 as in cat,(5) we clarified that volunteers, and we added the
20 word mere, the volunteers or mere members of an organization
21 would not be listed as an individual lobbyist of a lobbying
22 organization on the organization's filings. They are not listed
23 based on activity on the lobby day or really any other day. So,
24 the regs, try, we are seeking to make clear that volunteers or
25 mere members of an organization do not meet the definition of

1 an individual lobbyist. They would not be a designated lobbyist.
2 So, this relates back to the definition of course of individual
3 lobbyist which is a person who is an employed, retained or
4 designated. We add the word "mere" again just to clarify that
5 regular members of an organization would not be considered an
6 individual lobbyist. So, the bottom line, by making the
7 revisions to the definition of designated lobbyist, again we
8 were seeking to clarify that individual people, individual
9 persons, can be their own designated lobbyist, and if so, should
10 report lobbying activity if they meet the \$5000 threshold. We
11 also make clear again that volunteers or mere members of an
12 organization aren't individual lobbyists, and board members and
13 employees who attend a lobby day are also not individual
14 lobbyists, unless they speak to the public official at the lobby
15 day. Alright, that is it in a nutshell on designated lobbyists,
16 so I am ready to take any questions that any commissioners have.

17 Chair Rozen: Any questions?

18 Monica Stamm: It looks like Commissioner DiPirro has
19 her hand up.

20 Commissioner DiPirro: So a scenario that this would
21 impact, and I am not quite sure on the variables, for a chamber
22 of commerce or trade association, that does not have a PAC or a
23 registered lobbyist, but they take members to Albany and they
24 do lobby with specific public officials, and the executive

1 director or CEO and committee members who are not registered
2 lobbyists can speak on behalf of the organization.

3 Carol Quinn: I am sorry, can you repeat that
4 question, you are talking about board members, directors or
5 officers?

6 Commissioner DiPirro: If you are a chamber of
7 commerce or trade association and you do not have a PAC,
8 political action committee, nor do you have a registered
9 lobbyist on staff or as a consultant, and you as the executive,
10 the paid chief staff member, take members or committee members
11 to Albany and speak to a public official, have meetings in their
12 office, is that still okay?

13 Carol Quinn: You can take members, if this is a lobby
14 day, or you can take members to an office, if the organization
15 is registered as a lobbyist then any individual person, which
16 would be an employee or again a board member, director or
17 officer, who speaks a lobbying message, who lobbies basically,
18 would be considered a lobbyist.

19 Commissioner DiPirro: Well, what if they don't have a
20 registered lobbyist in the organization?

21 Monica Stamm: In other words, the issue would be
22 whether or not your organization spends more than \$5000 engaging
23 in lobbying activity. Based on your scenario, it is not clear
24 that it would meet the \$5000 threshold. The question that
25 Deputy Director Quinn is trying to ask is, is this organization

1 registering on its own behalf and I think, Commissioner DiPirro,
2 you are trying to clarify when you would have to, and if you
3 have this type of meeting, would you have to register on your
4 own behalf, and I think it depends on if you are spending more
5 than \$5000 on the lobbying activity, and it sounds like travel
6 expense is not part of that analysis, correct, Carol?

7 Commissioner DiPirro: Thank you.

8 Carol Quinn: Correct. So, it would really depend on
9 if you have already registered or if you have hit the \$5000
10 threshold.

11 Martin Levine: Commissioner Fisher has a question.

12 Commissioner Fisher: I have a question, if I
13 understand what Ms. Quinn said on designated lobbyists, and I
14 took notes as you were speaking Carol, an employed, retained,
15 or designated were the three verbs, I guess. The definition,
16 though, uses different words, selected, appointed, named, or
17 otherwise intended, so I think I understand what selected,
18 appointed, or named mean, but I am not sure what otherwise
19 intended means, and it seems to broaden things out and makes a
20 guessing game as to intentions. Whereas selected, the act of
21 selecting, appointing, or naming is going to be perhaps
22 reflected in the minutes or board action, by resolution. I
23 don't, I guess, it's like narrowing the definition down, but it
24 seems that it is otherwise intended it broadens it right back
25 out again. I am saying that as a lay person.

1 Carol Quinn: Right, so when I referred to employed,
2 designated, or retained, that is the definition of an individual
3 lobbyist, and just taking a step back, when an entity registers
4 as a lobbyist, the entity itself, has anticipated spending,
5 incurring, or expending both compensation and expenses more than
6 \$5000 in a year, and so then they register as the entity. And
7 then on that registration, they list individual lobbyists who
8 are people, who actually do the lobbying for the entity. So
9 then the definition of designated lobbyist comes into play
10 because that entity will list any employees that lobby for them,
11 if they have an outside lobbyist, they will list them, so, and
12 then the designated lobbyist could be a board member, officer,
13 or director, so then they get listed as an individual lobbyist
14 on a registration. The individual lobbyist, the individual
15 person, does not actually register themselves, they are just
16 listed on a filing. So then, but getting back really to your
17 point I think, which is more what does otherwise intended to
18 lobby, and I think it is more of a catch all, so it is, we are
19 trying to capture people who lobby on behalf of a client, who
20 do not meet the definition of employed or retained. And using
21 the term selected, appointed, named, or otherwise intended to
22 lobby is just a way of capturing persons or board members,
23 officers or directors who are lobbying, either for themselves,
24 or for the entity that they are a board member, director or
25 officer of. Does that answer your question?

1 Commissioner Fisher: I guess it does, but I am still
2 feeling a little uneasy about what the word intended does for
3 the definition.

4 Martin Levine: Judge Yates would like to comment, so
5 why don't we let him jump in.

6 Judge Yates: First of all, thank you for making the
7 change. It is better than the language I was complaining about
8 last time and I appreciate that. I still though, in other
9 places, and I can't put my finger on it, the old regulations
10 used the word, at the behest of, and in terms of Commissioner
11 Fisher's concern, wouldn't it be better if instead of saying
12 otherwise intended, to say at the behest of? You've already got
13 that language in the existing rules and people will know what
14 that means.

15 Carol Quinn: I think the words on behalf of, I guess,
16 on behalf of is similar.

17 Judge Yates: Yes, I appreciate that. I thank you for
18 putting back in on behalf, that was my concern last time. I'm
19 just addressing Commissioner Fisher's remarks.

20 Carol Quinn: Yeah, I believe Commissioner that is in
21 the definition of beneficial client, that is where you are
22 remembering about it, it says on whose behalf and at whose
23 request or behest.

24 Judge Yates: Yeah, so it is an existing term of art
25 that people understand, and I think it would more directly deal

1 with what you are trying to get at and Commissioner Fisher's
2 concern.

3 Monica Stamm: I think the issue would be, you
4 wouldn't have "on behest of, and on behalf of" for beneficial
5 client we use at the behest language and not behalf, right. You
6 wouldn't use both in the same definition.

7 Judge Yates: Well, then I am just saying then what
8 does otherwise intended accomplish.

9 Martin Levine: There is no hidden meaning there.
10 When we added designated lobbyist to the regulations, even
11 initially in 2018, it was because that term had never been
12 defined by this commission or any of its predecessor agencies.
13 It had simply been a term in the statute and basically
14 unaddressed from there, so we did the best we could using the
15 plain meaning definitions and say what is to designate, and it
16 is to select, to appoint, or otherwise conveyed an intent for
17 this person to do something, they've been designated. So if
18 the commission is concerned that that somehow conveys a quote,
19 designation, on someone that wasn't intended - you can see where
20 I am going with this- then we can narrow it, but at the same
21 time, we didn't want to be restrictive such that, you know,
22 there is a very specific path of events that have to occur for
23 someone to be identified as a lobbyist, and if you don't follow
24 those specific paths, then it is a way around it. That was
25 simply the use of the term, "or otherwise intended", and it was

1 meant that there could be another way to convey to someone that
2 they are designated as a lobbyist, and like I said, if the
3 Commission is concerned that it is too broad and carries too
4 much weight then we can consider changes, we can leave it to
5 see what the comments come in on it, we are open to ideas but
6 that is where it came from, there is nothing more than just an
7 attempt to give meaning to an otherwise undefined term.

8 Commissioner Fisher: What if we replaced intended
9 with designated?

10 Martin Levine: That would be circular though.

11 Commissioner Fisher: No, because we have made three
12 specific ways of designating, and then you are saying and
13 otherwise designated, so it isn't circular because it says here
14 is one, here is two, here is three, and we haven't thought of
15 four, five or six, but there might be other ways to so designate.

16 Carol Quinn: What about the word chosen, or otherwise
17 chosen to lobby?

18 Commissioner Fisher: Yup, that works for me.

19 Commissioner Yates: I am okay with it.

20 Martin Levine: When we go forward, if that is what
21 the commission wants, then it should be clear in the motion to
22 vote on that, it is really up to the commission and since nothing
23 is on the table yet, we'll n just kind of keep it tucked away
24 until that time.

1 Monica Stamm: Just keep in mind, the idea here is
2 that that this will, we are hoping that today we will approve
3 beginning the rulemaking so it will go out for public comment
4 and we expect entities to continue to comment on this definition
5 so that we can make it as clear as possible.

6 Carol Quinn: Are there any more questions?

7 Martin Levine: Carol, why don't you move on to the
8 next topic, unless anybody else has anything.

9 Chair Rozen: Martin does this take us to attachment
10 c?

11 Martin Levine: No, not yet sir, Carol is still going
12 through her summary, so Carol why don't you move on to the next
13 comment.

14 Chair Rozen: Thank you.

15 Carol Quinn: Okay, so now I am going to move on to
16 coalitions, we did receive some comments on the coalition
17 provision. Concerns were raised about the following: the impact
18 on paper coalitions, how a coalition, concerns about how a
19 coalition can track each member's contribution of money or
20 resources, can JCOPE actually require coalitions to disclose
21 its Lobbying Activity, and just an overall general concern that
22 the lobbying regulations will discourage the formation of
23 coalitions. First, I want to point out that it seems like there
24 might be a fundamental misunderstanding of the coalition
25 provision. The regulations do not require coalitions to file as

1 a coalition. They simply require that coalition activity be
2 disclosed somewhere. Again, our regulations, and the whole goal
3 with our regulations is transparency so we are trying to get
4 the coalition activity which does occur to be disclosed
5 somewhere to the public knows who is behind lobbying activity.
6 So, this disclosure could be either done by the coalition itself
7 if they actually choose to file as the coalition, or by the
8 members of the coalition who hit that \$5000 threshold and
9 thereby must report their own lobbying activity. We have made
10 a change to address that misunderstanding. At page 53, at
11 section 943.9(h)(i), we added in language, hopefully, to clarify
12 that this is an optional filing mechanism for groups that
13 qualify as a coalition. If the coalition chooses not to use it,
14 they choose not to file as the coalition, that is fine. The only
15 caveat is then then the members of the coalition must disclose
16 their coalition activity on their own filings, as applicable.
17 I can get into that more in a minute. Another concern raised
18 by commenters were just the burdens being placed on coalitions,
19 and again I am just going to point out that coalitions do not
20 have to file as the coalition, the regs don't require that, so
21 they don't actually have to try to track their members'
22 contributions, whether it be money or resources. Instead the
23 member can disclose that lobbying activity on their own filings
24 if the coalition opts not to file as the coalition. The paper
25 coalitions may not even hit the threshold, the \$5000 threshold

1 as the coalition triggering reporting, but if they do, then the
2 coalition again can choose whether it wants to file and disclose
3 that activity as a coalition or whether it does not want to.
4 So, for any members of a non-filing coalition, whether it is a
5 paper coalition or a regular coalition, any members that
6 actually spend over \$5000 in comp and expenses must disclose
7 all their lobbying activity anyway, regardless of how much or
8 how little each activity being reported costs. This would
9 include, we are just clarifying, this would include activities
10 related to coalitions. Another change in the draft was on page
11 53 again, in (ii), we made, we were hoping to make the
12 definition of coalition a little cleaner. So, we changed some
13 language in there, you can see with the highlights. Coalitions
14 are a group of otherwise unaffiliated entities that come
15 together pooling funds or resources to lobby on a common
16 interest. They are not incorporated, and they haven't otherwise
17 created a limited liability entity. We are trying to clarify
18 that definition. So, consistent with our overarching goals that
19 I mentioned of transparency, the whole idea behind the coalition
20 provisions really was to promote transparency. The public should
21 know who is behind the billboard that says, "paid for by X
22 coalition". Again giving an option, we are not telling
23 coalitions they have to file, because that can be cumbersome,
24 they might have a lot of members, it is difficult for them to
25 track, or they just don't have a responsible party that wants

1 to step up and do the filings for the coalition. We could have
2 had coalitions have to file but we really were sensitive to the
3 fact and we did not want to discourage the formation of
4 coalitions. That is why we provided this optional reporting
5 mechanism for coalitions and that is really what the provisions
6 provide. I guess that is where I will stop and see if you guys
7 have any questions on coalitions in general.

8 Martin Levine: Looks like Judge Yates has his hand
9 up.

10 Judge Yates: Just so I am clear then, if somebody,
11 an individual or small group does not spend \$5000 but they sign
12 onto a group as a member and then they group itself, in total
13 spends more than \$5000, and a majority of the members in that
14 group say yeah, file as a coalition, but the individual who
15 signed onto a letter, or maybe helped draft the letter, doesn't
16 agree. What's the status does that person get listed in the
17 coalition filing as a lobbyist, and would that include a
18 501(c)(3).

19 Carol Quinn: So, are you asking Commissioner if the
20 coalition decides to file or not whether the members have to
21 agree?

22 Judge Yates: Yeah, other people in an organization
23 sign a group a letter, and 52 out of those 100 say file as a
24 coalition, and the other 48, say no, don't I am just a poor

1 person who signed on, and you know and I don't spend any money
2 I just agree with your letter or your activity.

3 Carol Quinn: Well I would say I don't know if the
4 regulations get involved with whether a coalition decides to
5 file or not. I would think that is within the coalition. I would
6 also, the other thing that might get to your point is so if a
7 coalition does file as a coalition, they will list only those
8 members that meet the threshold as beneficial clients. So, if
9 that member that doesn't want to be or that doesn't want the
10 coalition to file, for whatever reason, doesn't want to be
11 listed on a filing as a beneficial client, remember they are
12 only listed as a beneficial client anyway if they either give
13 the coalition more than \$5000, because obviously that would
14 trigger it, as listed as the beneficial client of a filing
15 coalition, or if whatever they give to the coalition plus
16 whatever they do on the side adds up to more than \$5000. That
17 is what triggers a member being listed as a beneficial client
18 on a coalition filing, again, when that coalition opts to file
19 as a coalition.

20 Judge Yates: Again, so I had a two-part question and
21 I think I am clear on one of the two now. So, first of all,
22 individually, each person listed in the coalition would himself
23 or herself or by the group's or in the group, has spent \$5000,
24 otherwise they are not going to be listed as a coalition.

25 Martin Levine: That is correct.

1 Carol Quinn: As a beneficial client, correct.

2 Judge Yates: And then the other part of the question
3 is still fuzzy for me is when you have a disagreement about how
4 to file, there is really no guidance about how the coalition,
5 how the option is determined.

6 Martin Levine: You are correct. There is no provision
7 in the regs that address how that determination is made, we
8 didn't want to dictate to a group of entities how they should
9 be governing their own decisions, so if you and the commission
10 thinks that that should be addressed we will be happy to come
11 up with some language, maybe for the next round of revisions,
12 but there is nothing in there now that addresses that one way
13 or the other.

14 Judge Yates: Yeah, I would really like to hear
15 comments from the affected community on that because there is
16 so many times that there are group letters with 100 signatures
17 and it just seems unwieldy. I don't know how it would resolve.
18 Instead of suggesting something, I would rather highlight it
19 and hear from the community.

20 Martin Levine: That works for us too. We will make
21 sure to put that in the group of points where we are really
22 looking for input. Commissioner Dering is looking to speak.

23 Commissioner Dering: Carol, so if you have the
24 scenario where 10 people got together and each contributed
25 \$4999 to a coalition and the coalition spends that on lobbying

1 activity, could you have a scenario then where the coalition
2 doesn't file a report and then none of the individuals are
3 required to file a report?

4 Carol Quinn: Well, so to answer that question, first
5 of all, the first trigger is does the coalition spend more than
6 \$5000 on lobbying, and if so, then they have to decide whether
7 they want to file or not. They would not have to file as a
8 coalition, and no one has to file a lobbying report unless they
9 spend \$5000, so that would be the first thing I would say to
10 that. So I am assuming if each member is giving almost \$5000 to
11 the coalition that the coalition is probably hitting that
12 threshold and spending more than \$5000, so I would assume that
13 the coalition could file as a coalition and if they didn't,
14 then, and if they did, if the members are giving just under
15 \$5000 or even if they give \$5000 as a contribution, they would
16 not be listed as a beneficial client on the coalition filing
17 unless they also spend money on their own, so that is why that
18 questionnaire comes into play, so a coalition could send out
19 that questionnaire that asks each member what their other
20 lobbying activity is. For example, if you give under the
21 threshold to the coalition but you are also spending, you might
22 be a registered lobbyist or a client already, obviously you are
23 already spending \$5000 if that is the case, or you might have
24 spent, I don't know maybe \$2000 or something like that, on your
25 own, doing your own lobbying as an entity, that would get

1 combined and could put you over the threshold and get you listed
2 as a beneficial client on that coalition's filing.

3 Martin Levine: I am going to jump in here, Carol.
4 Commissioner Dering, we considered this question during the
5 initial promulgation of the regulations, I remember having a
6 dialogue with Commissioner Jacob about this because originally
7 the draft, you know back in 2016, whenever it was originally
8 drafted, said, any members who provide funds or services are
9 considered beneficial clients of the coalition. And during the
10 regulatory process we came to the agreement that if a group
11 wasn't going to otherwise have to file, this shouldn't draw them
12 in. So, if you do spend less than \$5000 truly, in total, on
13 everything you do, coalition or otherwise, then the regulations
14 do not now bring you in if the coalition files. It is a
15 legitimate policy discussion either way, but that is why we came
16 to that answer, and you're right, you do present the scenario
17 that could occur, but in the interest of ensuring disclosure
18 without overreaching beyond what the law requires initially,
19 without a coalition, even as an individual, that is where we
20 ended up.

21 Commissioner Dering: Okay, I am just trying to grab
22 an understanding, so say for argument's sake, a coalition spends
23 \$50,000, all of the contributions from individuals are below
24 \$5000, is there anything that would have to be filed by the
25 coalition?

1 Martin Levine: Potentially no.

2 Commissioner Dering: Okay.

3 Martin Levine: As Carol points out, you are in this
4 scenario, you've got a coalition that is made up of these groups
5 that each contribute under the threshold but in total you have
6 a large amount of spending. The coalition filing option is
7 precisely that, it is an option. So if the election is to not
8 do that, and everyone is under the threshold, that is where you
9 will end up, but again the idea was that if you were not
10 otherwise required to file as an individual we weren't going to
11 force the coalition into action. One thing I wanted to bring
12 to the Commission's attention and the regulated community is,
13 as you can see we have had a very complicated discussion now
14 over some small changes, we had a very complicated discussion
15 when drafting these, and as we go along our goal has always been
16 to simplify and clarify and provide an optional mechanism, but
17 if it is the opinion of the commission, if it is the opinion of
18 the regulated community that this doesn't work, or that it is
19 too complicated or it doesn't lead to transparency, or it
20 discourages formation of coalitions this is, we want better
21 regulation, whatever it takes, so we considered proposing a
22 version without any coalition provisions whatsoever but we
23 thought what was in there could be improved, so we proposed
24 these provisions, but you know, sort of everything is on the
25 table. Carol, do you want to go onto the last set of changes?

1 Carol Quinn: That was really it, the rest of the
2 changes are more of a technical nature. We did reach out to some
3 of the commenters to discuss their comments on the phone. To
4 the extent we could address some of those concerns in the
5 draft in front of you, but that was all I was planning on
6 presenting to the commission unless we have questions on other
7 topics, and I'd be happy to answer those.

8 Martin Levine: I don't see any more hands, I am
9 sorry, Commissioner Fisher.

10 Commissioner Fisher: I just want to ask a very
11 general question, so there was a comment in one letter, the one
12 from Zimmerman I guess, the draft regulations impose financial
13 hurdles, yada yada, strongly encourage the commission to
14 carefully evaluate the relative cost of compliance. And it goes
15 to what you were saying too, if we want more transparency we
16 need to make it easier, not harder. We need to make it less
17 expensive, not more expensive. So, does staff feel like we are
18 at least neutral in terms of cost of complying, or have we
19 actually made it a little easier, or have we made it more
20 expensive and more difficult?

21 Martin Levine: I wouldn't be able to say either way.
22 What I will say is, you had a statute that was originally drafted
23 in 1977 and amended three or four times over the last forty
24 years, and never at any point had a body said, let's answer all
25 the questions, and so when you set about doing that and you take

1 forty years of advisory opinions that were on the books and did
2 govern the filing practices under the Lobbying Act, putting them
3 in one place and then answering all of the open questions that
4 we felt we could answer at the time, certainly is going to
5 increase complexity, I am not going to say it doesn't, simply
6 because we answered questions that hadn't been answered before.
7 Like every rulemaking, there is the balance of whether there is
8 a cost or a benefit to impose the regulation, we felt initially,
9 and we continue to feel, that we are doing the best we can to
10 balance those two things, the cost of compliance with the
11 benefit of additional transparency and the benefit of questions
12 answered where they weren't otherwise. But today, we are
13 looking to start a SAPA rulemaking, and at any point in the
14 future we view this as a fluid dynamic body of rules that will,
15 not to be too esoteric, but will evolve, and they will ebb from
16 the complex to the simplified to attempt to keep that balance
17 in place. And so, are they more complicated than they were
18 before the regs, yes, but I think it gets balanced out by the
19 benefit to the public and the answers to the unanswered
20 questions.

21 Commissioner Fisher: And the other potential benefit
22 to consider is staff reduction in complexity. If it easier for
23 the staff to do its job because we have clarified things, then
24 that could reduce our costs.

1 Martin Levine: I would hope so. What I will say is
2 when we drafted these, we were in the process of writing a whole
3 new electronic filing system. So we were able to take the changes
4 that were proposed in the original regulations and incorporate
5 those into the filing system such that there are now features
6 available that weren't before, and there are now ways to file
7 certain things electronically where there weren't before, which
8 reduces the staff burden. But like anything, there is going to
9 be a curve where everybody has to get up to speed which we have
10 done over the last year before it becomes less work. Sort of
11 your inverse J-curve.

12 Commissioner Jacob: May I ask, this is Commissioner
13 Jacob, under what circumstances would a coalition be required
14 to file and under what circumstances would it be an optional?

15 Carol Quinn: It is never required.

16 Commissioner Jacob: Never required?

17 Martin Levine: Correct.

18 Carol Quinn: If they meet the definition of a
19 coalition.

20 Commissioner Jacob: Right, is that so even if the
21 coalition were a separate entity, legal entity, and it spent
22 more than \$5000 as a coalition, would it be required to file?

23 Martin Levine: Yes, sir, that is one of the changes
24 we put in place was that when, in this draft that you have
25 before you, when and if it does form, whether it is a legal

1 corporation, or a limited liability entity, that takes it out
2 of the coalition world and it is now its own entity that has
3 standard filing requirements like any other organization. So,
4 it no longer has that option, because it is required to file on
5 its own if it meets the threshold.

6 Marvin Jacob: I supposed that takes me back to that
7 old question I have that a coalition could conceivable consist
8 of many people who donate, as Commissioner Dering said, right
9 up to the limit of \$5000, and then the coalition lobbies and
10 is not required to file and, so we haven't addressed that,
11 actually, except to say that it is optional, they can if they
12 wish, if they do not incorporate, or do not become a legal
13 entity.

14 Martin Levine: Yeah, as you will recall, Commissioner,
15 you and I had a fairly spirited discussion about this this first
16 time around, and my position had been a little more expansive,
17 and as you and I discussed, this was a potential outcome, but
18 we agreed that in the interest of not imposing a burden where
19 there wouldn't be one absent the regulations, that this was the
20 balance to strike, but you are right that this still exists but,
21 as in every policy decision, there are causes and effects.

22 Commissioner Jacob: Thank you.

23 [Commissioner McCarthy was present for this portion of public
24 session]

1 Martin Levine: I don't see any more hands, so staff
2 would request a motion to begin a SAPA rulemaking, if that is
3 the Commission's decision, and I will also remind the Commission
4 that Commissioner Fisher had proposed a change to the language
5 in designated lobbyist, which could potentially be incorporated
6 into any motion.

7 Chair Rozen: Can I have a motion please?

8 Monica Stamm: Commissioner McCarthy.

9 Chair Rozen: Thank you. Second? Commissioner DiPirro.
10 All in favor? Martin we need a vote please.

11 Commissioner Fisher: I am going to introduce a motion
12 to amend the definition of designated lobbyist to replace the
13 word "intended" with the word "chosen".

14 Martin Levine: Commissioner McCarthy, would you
15 accept that as a friendly amendment?

16 Commissioner McCarthy: Yes, I would accept it.

17 Martin Levine: And Commissioner DiPirro, seconded as
18 amended?

19 Commissioner DiPirro: Yes.

20 Martin Levine: Thank you. Okay I will call the roll
21 on the motion to commence the SAPA rulemaking with regs as
22 proposed to you with the amendment Commissioner Fisher
23 identified. Commissioner Dering?

24 Commissioner Dering: Yes.

25 Martin Levine: Commissioner DiPirro?

1 Commissioner DiPirro: Yes.

2 Martin Levine: Commissioner Fisher?

3 Commissioner Fisher: Yes.

4 Martin Levine: Commissioner Horwitz?

5 Monica Stamm: That's a yes.

6 Martin Levine: Commissioner Jacob?

7 Commissioner Jacob: Yes.

8 Martin Levine: Commissioner Lavine?

9 Commissioner Lavine: Yes.

10 Martin Levine: Judge McCarthy?

11 Judge McCarthy: Yes.

12 Martin Levine: Commissioner Weissman?

13 Commissioner Weissman: Yes.

14 Martin Levine: Judge Yates?

15 Judge Yates: Yes.

16 Martin Levine: Chair Rozen?

17 Chair Rozen: Yes.

18 Martin Levine: Motion passes.

19 Chair Rozen: Thank you, alright, let's move on.

20 Martin Levine: Oh, I'm sorry, I apologize, the source

21 of funding regulations you have seen before there are no changes

22 since the last meeting but there are changes from the original

23 rulemaking. We do need a motion to send those out for SAPA as

24 well. We would need that as well. I apologize for not bringing

25 that up earlier.

1 Chair Rozen: No worries, can I have a motion please?

2 Commissioner Dering: I'll move.

3 Chair Rozen: Thank you. Second?

4 Martin Levine: Commissioner Weissman.

5 Chair Rozen: Thank you.

6 Martin Levine: On the source of funding regulations,
7 Commissioner Dering?

8 Commissioner Dering: Yes.

9 Martin Levine: Commissioner DiPirro?

10 Commissioner DiPirro: Yes.

11 Martin Levine: Commissioner Fisher?

12 Commissioner Fisher: Yes.

13 Martin Levine: Commissioner Horwitz?

14 Commissioner Horwitz: Yes.

15 Martin Levine: Commissioner Jacob?

16 Commissioner Jacob: Yes.

17 Martin Levine: Commissioner Lavine?

18 Commissioner Lavine: Yes.

19 Martin Levine: Judge McCarthy?

20 Judge McCarthy: Yes.

21 Martin Levine: Thank you. Commissioner Weissman?

22 Commissioner Weissman: Yes.

23 Martin Levine: Judge Yates?

24 Judge Yates: Yes.

25 Martin Levine: Chair Rozen?

1 Chair Rozen: Yes.

2 Martin Levine: Thank you very much. The last thing,
3 I will move very quickly, is if there is are any ideas from the
4 regulated community about the use of stock or equity as lobbying
5 compensation, staff is interested in hearing input on that
6 issue, and they can reach out to any of us offline. Thank you.

7 Chair Rozen: Alright, does this take us to item five
8 on our agenda?

9 Monica Stamm: Yes.

10 Chair Rozen: The committee convened earlier this
11 month, the confidentiality committee convened earlier this
12 month, to consider the staff's extensive analysis of the legal
13 issues relating to the Commission's ability to release more
14 information about its operations and investigations. The
15 committee needs to continue its comprehensive review of the
16 materials prepared by staff. The committee plans to reconvene
17 in July and hopes to be able to present to the full Commission
18 at the next meeting a detailed plan, including specific
19 proposals to amend the Commission's records access regulations,
20 meeting guidelines, and internal practices, so it can, among
21 other things, provide more information to the public and
22 improve communication with complainants, witnesses, and
23 subjects of investigations. At this time, we are concluded
24 with the public session of the June JCOPE meeting. Can I have
25 a motion?

1 Commissioner Lavine: Mr. Chairman, may I interrupt?

2 Chair Rozen: Sure Gary, go ahead.

3 Commissioner Lavine: I have a question for staff.
4 Could you indicate to us, without going into any
5 particularities, which would be confidential, the number of
6 sworn complaints that have been received, and upon which no
7 action has been taken by the Commission?

8 Monica Stamm: Commissioner Lavine, are you talking
9 about over the history of the commission, or is there a period
10 of time?

11 Commissioner Lavine: Since the decisions in Trump
12 and Cox.

13 Monica Stamm: I don't have a number for you at this
14 moment in time. We can report back at a future meeting.

15 Commissioner Lavine: Are there any?

16 Monica Stamm: We changed the definition of sworn
17 complaints, and what we determined to include in that, after
18 the Cox litigation, and so, again I would have to look back in
19 time, to see if before the Cox decision, and before we made
20 that change, if there were some that we did not take action on,
21 based on the current definition.

22 Commissioner Lavine: On the follow on, Mr. Chairman,
23 if I may, may we assume that there were at least several sworn
24 complaints about which the Commission has taken no action?

1 Monica Stamm: Commissioner, I would not say that that
2 is an accurate characterization. Again, for many years, this
3 Commission deemed a sworn complaint to be based on first-hand
4 knowledge, so any complaints that alleged violations of Public
5 Officer's Law that were based on first-hand knowledge were
6 acted on by the Commission. After the more recent litigation
7 and decision, we dropped the requirement that it be based on
8 first-hand knowledge and the Commission had been acting on all
9 notarized complaint that allege violations of the Public
10 Officer's Law. So, I think it would be inaccurate to say there
11 are several, but again I would need to go back, and we would
12 have to look at that.

13 Commissioner Lavine: Yes, well again on the follow
14 on, Mr. Chairman, on the premise that there are one or more
15 extant in which the complainant made a sworn statement to the
16 Commission, is it the position of staff and us, as the
17 Commission, to comply with the protocol enunciated in Trump and
18 Cox?

19 Monica Stamm: I'm sorry, I did not understand that
20 question, if it was directed to me.

21 Commissioner Lavine: Well, let me reiterate if I may,
22 on the premise that there is at least one extant complaint that
23 was sworn by the complainant that has been presented to the
24 Commission, in addressing that sworn complaint, does staff and

1 the Commission comply with the protocols annunciated in Trump
2 and Cox?

3 Monica Stamm: I'm not sure what the protocol
4 specifically you are referring to. As I mentioned, we have
5 revisited how we interrupt sworn complaints, and we have been
6 complying with the statute with respect to how we handle sworn
7 complaints. I don't believe either of the litigation cases
8 that you have talked about set up any other, or any protocol,
9 for the Commission to follow, other than with respect to the
10 specific facts of those cases, where we were ordered to take
11 specific action, which the Commission complied with in each
12 instance.

13 Commissioner Lavine: Well, then if you wouldn't mind
14 taking 30 seconds to synopsize what the requirement was in
15 Trump and what the requirement was in Cox in responding to the
16 complaint?

17 Monica Stamm: I don't have the specific orders and
18 decisions in front of me, but in each instance, the Commission
19 was ordered something along the lines of, to, if it had not
20 already done so, to take a vote on the specific complaint and
21 to notify the court that the Commission had done so.

22 Commissioner Lavine: Well, let's parse through this
23 and take the aspect with respect to taking the vote. Is it the
24 position of staff, that if a sworn complaint is pending, that
25 the Commission is not, under the rubric of either Cox or Trump,

1 which is to say that the commission has to take a vote within
2 a specified period of time?

3 Monica Stamm: Again, both of those decisions were
4 at different points of time before the Commission, so I am not
5 really following what your line of questioning is, but the
6 commission follows the statute and if it receives a sworn
7 complaint alleging violations of the Public Officers Law, it
8 votes on whether or not to commence an investigation within 60
9 days of receipt of that complaint.

10 Commissioner Lavine: Again, on the follow on, Mr.
11 Chairman, if a complaint, a sworn complaint, has been filed
12 with the Commission and no action has been taken within 60
13 days, is it the interpretation of staff that the complainant
14 is not entitled to be informed of that fact?

15 Monica Stamm: I'm sorry, if the Commission receives
16 what it considers to be a sworn complaint alleging a violation
17 of the Public Officers Law and the Commission votes not to
18 commence, you are asking, under the statute, is the Commission
19 required to notify the complainant of what the Commission did?

20 Commissioner Lavine: Yes, that is my first question.

21 Monica Stamm: The answer is that under the statute
22 the Commission is not required to notify the complainant of how
23 we voted, or that it voted, under the language of the statute.

1 Commissioner Lavine: Well, now may I ask you to
2 address the alternative. I didn't mean to interrupt you, go
3 ahead.

4 Monica Stamm: I was going to say that the Commission
5 can, in certain circumstances, authorize communications under
6 the statute, but as you know, and as the chair mentioned a few
7 moments ago, there is a committee of commissioners that are
8 evaluating all of these issues, looking at the law, and is
9 going to make recommendations relating to the record access
10 regulations and internal policies about communications with
11 complainants, witnesses, subjects, and determine if it wants
12 to disclose more information than is required under the
13 statute, but within the ambit of maintaining the
14 confidentiality of its investigations. So, this is a current
15 topic pending before the committee that is handling record
16 access issues.

17 Commissioner Lavine: Well, I appreciate everyone's
18 indulgence. Let me ask on the follow up further. Are there any
19 complaints, sworn or otherwise, that are before the Commission
20 in which no action has been taken by the Commission within 60
21 days?

22 Monica Stamm: I'm sorry, Commissioner, unless you
23 change how you phrased the question, and there was a subtlety
24 that I missed, I thought I said I would get back to you on
25 that, because again, we sort of changed our procedures in light

1 of litigation, and I would have to go back through the
2 Commission's records.

3 Commissioner Lavine: Alright, please do that. Let
4 me ask the question, on the hypothetical circumstance that
5 there was a sworn complaint presented to the Commission and the
6 Commission did not take action of any sort within 60 days, what
7 is the obligation of the Commission at that juncture, per Cox
8 and Trump holdings?

9 Monica Stamm: I'm sorry, if the Commission did not
10 take any action within 60 days?

11 Commissioner Lavine: Yes.

12 Monica Stamm: I don't think that the Cox or Trump
13 litigation is the issue here, it is what the statute says, and
14 again, it's how the Commission has interpreted sworn
15 complaints, but it is required to vote within 60 days if it
16 receives a sworn complaint alleging violations of the Public
17 Officers Law against people for whom it has jurisdiction.

18 Commissioner Lavine: Right, but in the circumstance
19 in which the Commission does not take a vote within 60 days on
20 a complaint filed subsequent to Trump and Cox, is it the staff's
21 position that Trump and Cox apply or do not apply?

22 Monica Stamm: Commissioner, I am really, I am not
23 going to opine on what those cases dictate to a future set of
24 hypothetical facts that I am telling you don't happen because
25 we read the statute and comply with the statute. So to the

1 extent that that happens, we will deal with that as a Commission
2 and how to proceed, and there may be questions and legal advice
3 that I may have to give under those circumstances.

4 Commissioner Lavine: I understand, thank you very
5 much. Mr. Chairman, I strongly urge that a report be made by
6 staff specifically indicating all sworn complaints that have
7 been presented since the holding in Cox, in which the
8 circumstances presented in which no action has been taken
9 within 60 days. And also, an indication from staff to us as
10 to why Trump and Cox do not apply in those circumstances in
11 those cases. Thank you.

12 [Commissioner Cohen was present for this portion of public
13 session]

14 Chair Rozen: I need a motion to enter into executive
15 session please.

16 Martin Levine: Commissioner Dering.

17 Chair Rozen: Thank you. Second?

18 Martin Levine: Commissioner Fisher.

19 Chair Rozen: Thank you, Martin, please call the roll.

20 Martin Levine: A motion to executive session.
21 Commissioner Dering?

22 Commissioner Deering: Yes.

23 Martin Levine: Commissioner DiPirro?

24 Commissioner DiPirro: Yes.

25 Martin Levine: Commissioner Fisher?

1 Commissioner Fisher: Yes.

2 Martin Levine: Commissioner Horwitz?

3 Commissioner Horwitz: Yes.

4 Martin Levine: Commissioner Jacob?

5 Commissioner Jacob: Yes.

6 Martin Levine: Commissioner Lavine?

7 Commissioner Lavine: Yes.

8 Martin Levine: Judge McCarthy?

9 Judge McCarthy: Yes.

10 Martin Levine: Commissioner Weissman?

11 Commissioner Weissman: Yes.

12 Martin Levine: Judge Yates?

13 Judge Yates: Yes.

14 Martin Levine: Commissioner Cohen?

15 Commissioner Cohen: Yes.

16 Martin Levine: Chair Rozen?

17 Chair Rozen: Yes.

18 Martin Levine: Motion passes. Thank you.

19 Chair Rozen: Okay, the public session is adjourned.

20 [Chair Rozen and Commissioner McCarthy were not present for
21 this portion of Public Session]

22 Walter McClure: We're back in public session.

23 Commissioner Dering: Monica, can you please report
24 on executive session?

1 Monica Stamm: Sure. We discussed litigation matters,
2 we considered a request for an advisory opinion on an ethics
3 matter, we granted an extension of an exemption from post-
4 employment restrictions pursuant to Public Officers Law 73(8-
5 b), we commenced one substantial basis investigation, we
6 authorized steps in several investigative matters, closed a
7 matter, and discussed several other investigative matters.

8 Commissioner Dering: Thank you, is there a motion to
9 close the meeting?

10 Martin Levine: Commissioner Weissman.

11 Commissioner Dering: Is there a second?

12 Commissioner Yates: Yes.

13 Martin Levine: Thank you, on the motion, Commissioner
14 Cohen?

15 Commissioner Cohen: Yes.

16 Martin Levine: Commissioner Dering?

17 Commissioner Dering: Yes.

18 Martin Levine: Commissioner DiPirro?

19 Commissioner DiPirro: Yes.

20 Martin Levine: Commissioner Fisher?

21 Commissioner Fisher: Yes.

22 Martin Levine: Commissioner Horwitz?

23 Commissioner Horwitz: Yes.

24 Martin Levine: Commissioner Jacob?

25 Commissioner Jacob: Yes.

1 Martin Levine: Commissioner Lavine?
2 Commissioner Lavine: Yes.
3 Martin Levine: Commissioner Weissman?
4 Commissioner Weissman: Yes.
5 Martin Levine: Judge Yates?
6 Judge Yates: Yes.
7 Monica Stamm: That's it. Carries.
8 Martin Levine: Motion carries.
9 Monica Stamm: Thank you.
10 Commissioner Dering: Great. Take care.
11
12