

**MINUTES OF THE PUBLIC SESSION OF THE
JUNE 23, 2020
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
VIA WEBEX**

Chair: Michael K. Rozen (WebEx)

Members: Robert Cohen (WebEx)
James E. Dering (Albany)
Colleen C. DiPirro (Buffalo)
William P. Fisher (Albany)
Daniel J. Horwitz (WebEx)
Marvin E. Jacob (WebEx audio only)
Gary J. Lavine (WebEx audio only)
James W. McCarthy (WebEx)
George H. Weissman (Albany)
James A. Yates (WebEx)

Absent: David J. McNamara

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

I. CALL TO ORDER

Chair Rozen called the June 23, 2020 meeting to order, and gave the following statement:

Good morning everybody. Welcome to the June meeting of the New York State Joint Commission on Public Ethics. Before we get started, I want to thank you all for joining me today. I hope all of you and your families continue to be healthy and safe as the health crisis continues. This meeting is being held using video conferencing technology. The public session is accessible on JCOPE's website to watch via livestream. Thank you to

everyone who assisted with enabling this meeting. For the time being, JCOPE's physical offices continue to be closed, but we anticipate that the Albany office will open to the public in July to accept filings and other documents. Similarly, we expect that some of the JCOPE operations that were paused for the past few months will resume shortly after the Albany office reopens. Announcements will be made and distributed at the appropriate time. We will continue to evaluate the circumstances of the health crisis to determine whether further accommodations are still needed. Please contact the Commission staff if you need assistance. Although the majority of staff will continue to work from home, they continue to be available to provide ethics and lobbying guidance, aid with public disclosure filings, ethics trainings, and other mandated services. Finally, to conduct this meeting smoothly, I will be monitoring the video and will do my best to recognize anyone who wishes to speak. It is important that only one person speak at a time. In addition, I ask that when you speak, please identify yourselves, so that we have a clear record. We will need to, as we did at the last public meeting, take votes by roll call to ensure that everyone is counted. Otherwise, please mute your phone when you are not planning to speak.

II. APPROVAL OF MINUTES – PUBLIC SESSION

April 28, 2020

A motion was made by Commissioner Weissman, seconded by Commissioner Yates, to approve the minutes from the Public Session of the April 28, 2020 Commission Meeting. The motion was approved by unanimous vote of those present. Commissioners Cohen and McCarthy were not present for the vote.

III. REPORT FROM STAFF

Candidates' FDS Filings

General Counsel Monica Stamm updated the Commission on FDS compliance for candidates who are running in the primary. There are 317 candidates running for open seats in the primary for state legislative office. Staff has been working with the Legislative Ethics Commission on compliance with the FDS filing requirements. On May 11, staff sent 172 confidential Fail to File notices, which provide 15 days for the

candidates to file. On May 29, staff sent Notices of Delinquency to 72 candidates who still had not filed. That list of delinquent candidates was posted on JCOPE's website as required by law. To date, there are 43 outstanding. Commissioner DiPirro asked what would happen if a candidate won the primary but did not file their FDS. General Counsel Stamm explained that staff will pursue compliance and enforcement, if necessary.

Update – Annual Report

General Counsel Stamm updated the Commission on the annual report, explaining that as was reported at the last meeting, staff has been working to finalize a draft of the report. Staff expects to have a draft to the Commissioners next week. After the Commissioners have had an opportunity to review it, staff will publish it.

PROPOSED REGULATIONS

Proposed Revised Comprehensive Lobbying Regulations

Deputy General Counsel Martin Levine discussed the proposed revisions to the Commission's Comprehensive Lobbying Regulations and the Source of Funding regulations, Title 19, Part 943 and 938, respectively. The original lobbying regulations were promulgated from 2016 to 2018 and went into effect January 1, 2019. Those were the first set of comprehensive lobbying regulations ever adopted by this Commission or its predecessors. After a year of experience with the regulations, staff took the opportunity to address some technical cleanup issues, tweak regulated filing practices, and address some substantive policy questions. Staff posted its proposed revisions on the JCOPE website and solicited comments from the regulated community. Staff received some very helpful input from lobbying firms, trade associations, and good government groups. Based on those comments, staff made several changes to the proposed regulations. The goal is to have the Commission vote to start a rulemaking under the State Administrative Procedure Act in order to have the revisions in place for the lobbying registration period that begins on January 1, 2021. If the Commission votes to move forward, the proposal will be published in the State Register, followed by a 60-day notice and comment period. Any substantive revisions that result from that proposal would require an additional 45-day notice and comment period.

Deputy Director of Lobbying Guidance Carol Quinn provided an overview of the proposed changes to the prior draft. Deputy Director Quinn stated that the new revisions include the definition of designated lobbyist, issues related to lobby days, and the coalition provisions.

Comments were received about the definition of designated lobbyist, including concerns about volunteers, board members, and ad hoc committee members or task force members being considered lobbyists. The initial proposed change to the definition of designated lobbyist was intended only to clarify that a person can be their own designated lobbyist. It was not intended to change the Commission's position on board members. Based on the discussion at last meeting, staff added "on behalf of a client" to the definition in this draft, on page 5, section 943.3(g).

On page 20, the regulations make it clear that mere attendance at a lobby day does not make any person a lobbyist. Lobby days would need to be disclosed only for those employees or board members, officers, or directors who attend and speak a lobbying message to a public official. Staff addressed concerns raised about volunteers and members of organizations possibly being considered individual lobbyists by clarifying on page 23 in section 943.6(c)(5) that volunteers, or mere members of an organization, would not be listed as an individual lobbyist on the organization's filings. The definition of an individual lobbyist includes anyone who is employed, retained, or designated. Staff added the word "mere" to clarify that regular members of an organization would not be considered an individual lobbyist. Commissioner DiPirro asked if members of a chamber of commerce, which typically does not register, went to Albany on a lobby day to speak to public officials, would those members be considered lobbyists. General Counsel Stamm explained that it would depend on whether the organization met the \$5,000 threshold for reportable lobbying.

Commissioner Fisher asked about the "otherwise intended" language in the definition of designated lobbyist and expressed concern that it might broaden the definition. Deputy Director Quinn explained that the statutory definition of an individual lobbyist includes

anyone who is employed, designated, or retained. When an entity registers as a lobbyist and anticipates spending or incurring in compensation and expenses more than \$5,000, that entity would list the individual lobbyists on its filing. Those lobbyists could be an outside lobbyist or a designated lobbyist, and can include board members, officers, or directors. The individual lobbyists do not register themselves but are listed on an entity's filing. The otherwise intended language was used to include lobbyists listed on an entity's registration who may not meet the definition of employed or retained, but might be selected, appointed, named or otherwise intended to lobby. Judge Yates suggested using the term "at the behest of" instead of "otherwise intended" and asked what "otherwise intended" accomplishes. Deputy General Counsel Levine explained that the definition of designated lobbyist was added to the regulations because it had never been defined. Staff used the plain meaning definition of the term designate to mean to select, appoint or otherwise convey to a person to do something. Staff did not want to be too restrictive and inadvertently exclude individuals who should be covered by the statute. If the Commission believes that the definition is too broad, the Commission can narrow its definition. Commissioners Fisher and Yates suggested alternatives. Deputy Director of Lobbying Quinn suggested the word "chosen" to lobby. Both Commissioners Fisher and Yates agreed with that suggestion.

Deputy Director of Lobbying Quinn explained some of the comments received on the coalition provisions. Concerns were raised about how coalitions can track each member's contributions of money or resources. The regulations do not require a coalition to file as a coalition. It requires that the coalition activity be disclosed on either the coalition's filing, or by the members of the coalition who have met the \$5,000 threshold. Staff added language to the regulations to clarify that there are two filing options if the threshold is met. For members of a non-filing coalition, paper or otherwise, the members that spend over \$5,000 in compensation and expenses must disclose their lobbying activity. Staff also made some changes to the definition of a coalition by clarifying that coalitions are a group of otherwise unaffiliated entities that come together pooling funds or resources to lobby on a common interest. They are not incorporated or a limited liability entity. The idea was to promote transparency so that the public knows who is behind the lobbying effort without discouraging the formation of coalitions. Judge Yates asked if the regulations address

disagreement among the members on how a coalition should file, and if a member of a coalition is required to be listed if that member signs a letter but does not spend any money. Deputy Director Quinn explained that the coalition would determine how it should file and the regulations do not take a position on that. Further, if a coalition files as a coalition, only the members that spend more than \$5,000 would need to be listed as beneficial clients. Deputy General Counsel Levine stated that if the Commission would like to address that issue in the regulations, staff can draft language for the next round of revisions. Judge Yates stated that he would like to hear comments from the regulated community. Commissioner Dering asked whether it is possible that the activity would not have to be disclosed by either the coalition or the individual, e.g., where 10 people get together and each member contributes \$4,999 to a coalition, and the coalition does not elect to file as a single entity. Commissioner Jacob echoed this concern, noting that even when a coalition did file as such, there could be members that go unreported if they spend less than \$5,000. Deputy General Counsel Levine explained the question was given consideration during the initial promulgation of the regulations and while staff had initially proposed such a situation to require the disclosure of all coalition members, at the behest of Commissioner Jacob and others, it was determined that if a member spends less than \$5,000 in total on lobbying, the fact that the lobbying was carried out via a coalition does not increase or otherwise change the member's reporting obligations under the law. Commissioner Fisher stated that one of the comments received strongly encouraged the Commission to evaluate the relative cost of compliance and asked staff if the new provisions makes compliance less or more difficult and less or more expensive. Deputy General Counsel Levine explained that staff felt it reached a balance between the cost of compliance with the benefits of transparency and regulatory certainty (by addressing previously unanswered questions).

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

A motion was made by Commissioner McCarthy, seconded by Commissioner DiPirro, to commence a proposed rulemaking on the Lobbying Regulations under SAPA. Commissioner Fisher proposed a change to amend the definition of designated lobbyist by replacing the word "intended" with the word "chosen", and Commissioners McCarthy and

DiPirro accepted the amendment. The motion was approved by unanimous vote of those present. Commissioner Cohen was not present for the motion.

A motion was made by Commissioner Dering, seconded by Commissioner Weissman, to commence a proposed rulemaking on the Source of Funding Regulations under SAPA. The motion was approved by unanimous vote of those present. Commissioner Cohen was not present.

Additionally, Deputy General Counsel Levine solicited the regulated community for comments on the use of stock or equity as lobbying compensation.

IV. NEW AND OTHER BUSINESS

Report from the Confidentiality Committee

The Chair reported that the confidentiality committee convened earlier this month to consider staff's extensive analysis of the legal issues relating to the Commission's ability to release more information about its operations and investigations. The committee needs to continue its comprehensive review of the materials prepared by staff. The committee plans to reconvene in July and hopes to be able to present to the full commission at the next meeting a detailed plan including specific proposals to amend the Commission's records access regulations, meeting guidelines, and internal practices, so it can, among other things, provide more information to the public and improve communication with complainants, witnesses, and subjects of investigations.

Commissioner Lavine asked how many sworn complaints have been received where no action was taken by the Commission after the court decisions in Trump and Cox. General Counsel Stamm stated that she could report back at a future meeting but explained that the Commission changed its interpretation of sworn complaint after the Cox litigation, reconsidering the need for first-hand knowledge, and has since been voting on all notarized complaints that allege violations of the Public Officers Law against individuals subject to the Commission's jurisdiction (within 60 days, as required by the statute). General Counsel Stamm continued that neither of the cases cited created a protocol for the Commission to

follow; rather, the judge in each matter ordered the Commission to take a vote with respect to those particular allegations, if it had not already, and report back to the Court. Commissioner Lavine asked if the Commission votes not to commence, is the Commission required to notify the complainant. General Counsel Stamm explained that, under the statute, the Commission is not required to notify the complainant whether or how the Commission votes. The Commission has in certain circumstances authorized confidential communications consistent with the statute.

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

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

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

VI. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

[Chair Rozen and Commissioner McCarthy were not present for the remainder of Public Session. Commissioner Dering served as Chair for the remainder of the meeting.]

General Counsel Stamm stated that in Executive Session, the Commission discussed litigation matters, considered a request for an advisory opinion, granted an extension of an exemption from post-employment restrictions pursuant to Public Officers Law §73(8-b), commenced one substantial basis investigation, authorized steps in several investigative matters, closed one matter, and discussed several other investigative matters.

VII. MOTION TO ADJOURN THE PUBLIC MEETING

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