

**MINUTES OF THE PUBLIC SESSION OF THE  
DECEMBER 15, 2020  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
VIA WEBEX**

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

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

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

**I. CALL TO ORDER**

Chair Rozen called the December 15, 2020 meeting to order and noted that the meeting was being held using video conference technology, and that the public session is accessible on JCOPE's website to watch via livestream. He also noted that all votes would be taken via a modified roll call.

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

**December 15, 2020**

A motion was made by Commissioner Dering, seconded by Commissioner Weissman, to approve the minutes from the Public Session of the November 17, 2020 Commission Meeting. The motion was approved by unanimous vote of those present. Commissioner McCarthy was not present for the vote.

**III. REPORT FROM STAFF**

**Outreach Update**

General Counsel Monica Stamm stated that staff issued an ethics reminder about holiday gifts and that the fall/winter newsletter will be published soon. The Ethics Officer forum on contractors was postponed until next year but staff will hold an Ethics Officer forum on financial disclosure statements on Thursday, January 14, 2021.

**NYC Office Update**

General Counsel Stamm provided the Commission with an update on the construction in the New York City Office. As many people in the New York City office building have been working remotely since March, the building management has taken advantage of the time to move construction along and has reopened the lobby. To expedite the rest of the renovation, JCOPE has agreed that the New York City office can be relocated temporarily, starting in early 2021 until the new space on the 5th floor is ready, which is expected to be in the fall of 2021. The space will not have as many individual offices but will have space to store confidential records and will have access to at least one or two offices and a conference room for confidential purposes.

**Lobbying Filing Deadline**

General Counsel Stamm stated that in light of the pending changes to the online lobbying filing system, staff would like to allow lobbyists and clients to submit their filings by January 29. Unless the Commission objects, staff will communicate the additional time to file via e-blast and post on the Commission's website. Staff will also be sending instructional documents to filers to guide them through the changes in the regulations and JCOPE's new filing system. A motion was made by Commissioner Weissman, seconded

by Commissioner Dering, to allow lobbyists and clients to file reports through January 29 without late fees. The motion was approved by unanimous vote.

#### IV. REGULATIONS GUIDELINES

##### Proposed Amended Regulations for Access to Publicly Available Records

Deputy General Counsel Martin Levine presented the Proposed Amended Regulations for Access to Publicly Available Records. He explained that if the Commission approves the regulations the 60-day notice and comment period will begin. The proposed changes reflect the deliberations of the confidentiality and records access committee and were discussed in concept with the full Commission.

The proposed changes to Part 937 deal almost exclusively with information related to financial disclosure statements. Under current law and regulation, only an actual Financial Disclosure Statement (FDS) is available to the public. The proposed changes, with one exception, make additional information related to the FDS public, including the date of the filing, the status, whether an extension or exemption was granted, and if the filer is a policy or threshold filer. The regulations would also make public the filers of an agency, a list of titles that have been exempted from filing and would entitle the filer to ascertain information as to whether their filing has been requested. Lastly, the names, titles and salaries of Commission staff would be made publicly available. These changes reflect an attempt to add transparency within the bounds of the Executive and Legislative Law.

Commissioner Weissman asked how exemptions and deletions would be delineated on a filing. Deputy General Counsel Levine stated that the proposal would be to affirmatively identify where information was redacted or exempted, but staff would get back to him with additional clarification. Commissioner Lavine asked staff for clarification on the current practice with respect to records access requests, namely whether he is entitled to know whether his FDS has been requested by the Executive Chamber or the Onondaga County District Attorney. His understanding is that the current policy does not entitle him to that information but that the Commission had never formally adopted that practice. Deputy General Counsel explained that the regulations were previously adopted to match

Executive Law 94(19), which does not deem the information he described public. Commissioner Lavine stated that under FOIL, even though not applicable to JCOPE, a request can be made for a log of all of the requests made. Commissioner Lavine discussed how the question might be treated under FOIL, with General Counsel Stamm noting FOIL exemptions that might protect the identities of individuals requesting information.

Commissioner Lavine made a motion to amend the proposed regulations to include providing filers the ability to request whether an inquiry had been made and by whom, with the exception of a law enforcement agency who certifies that the disclosure would interfere with an investigation.

Deputy General Counsel Levine stated that Committee reached a policy conclusion that making that information public would have a marked chilling effect on requests for public information, and agreed that only the fact of a request would subsequently be made public, not the identity of the requestor. Commissioner Horwitz also asked if there were potential first amendment concerns. Deputy General Counsel Levine stated the ability to request public information could be viewed like speech. Thus, to publicize their request for public information could arguably have a chilling effect. Commissioner Lavine stated that if the legislature wanted to prohibit the Commission from divulging that information it would have been included in the Executive Law. Commissioner Horwitz and Deputy General Counsel Levine discussed the importance of protecting media activities, specifically noting that when the Commission adopted Advisory Opinion 16-01, the Legislature swiftly responded by codifying certain exclusions from the Lobbying Act for media activities.

Commissioner Weissman stated that the first amendment argument was a “red herring” and suggested that staff review how FOIL treats the requests for access to public records and report back. Commissioner Lavine agreed to defer his motion until January.

V. **NEW AND OTHER BUSINESS**

**Proposed Resolution (Amending the Delegation of Authority to Staff in Resolution 02 of 2012)**

Commissioner Fisher stated that after the November meeting he had discussions with Deputy General Counsel Levine and asked that a draft resolution be prepared. Commissioner Fisher did not support Commissioner Yate's proposal as written, but believes they can find common ground to move forward. He thanked Commissioner Yates for his engagement on the issue. However, with certain related issues before the Confidentiality and Records Access committee, he requested that the matter be adjourned until January. Commissioner Yates thanked Commission Fisher for his work on this and agreed that the Commission should continue to discuss it.

### **Executive Order 202.6**

A discussion was held between Commissioner Lavine and General Counsel Stamm relating to Executive Orders 202.6 and .7 regarding volunteers and contractors who would be exempted from the Public Officer's Law, the status of staff's previous request for information from the Executive Chamber, as well as the Chamber's previous response requesting the legal basis for the Commission's inquiry. Commissioner Jacob stated that if an individual was granted an exemption it would not preclude the Commission from investigating. General Counsel Stamm stated that if the Commission received allegations concerning a volunteer or a contractor the Commission can make inquiries and investigate to determine if the Executive Order applied to the individual. Commissioner Horwitz inquired whether the legislature would provide similar information to the Commission regarding guidance to its members absent a specific allegation.

A motion was made by Commissioner Lavine seconded by Commissioner Yates to direct staff to communicate in writing to the Counsel to the Governor regarding Executive Order 202.6 to inquire about how the order is being implemented, if there is a recusal policy and to ask if partial exemptions are granted for current FDS filers. Commissioner Yates requested that the motion be amended to include 202.7 and to find out if conflicts, gifts and the confidential information provisions in §74 are also exempted. Commissioner Lavine accepted the amendment. Commissioners Lavine, McCarthy, McNamara, Jacob, Weissman and Yates voted in favor of the motion. Commissioners Cohen, Dering, DiPirro,

Fisher, Horwitz and Rozen opposed the motion. The motion did not carry with a vote of 6-6-0.

**VI. 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.

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

[Chair Rozen left the meeting during Executive Session. Commissioner Dering served as Chair for the remainder of the meeting.]

General Counsel Stamm stated that in Executive Session, the Commission discussed several litigation and personnel matters, approved one settlement agreement and authorized steps in several investigative matters, closed one matter, and discussed several other investigative matters.

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

Upon motion made by Commissioner DiPirro, seconded by Commissioner Weissman the Public Session was adjourned by unanimous vote. Commissioner McCarthy was not present for the vote.