

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

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Commission Meeting of February 23, 2021
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Appearances: Camille Joseph Varlack, Chair

Commissioners:

Richard F. Braun
Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
David J. McNamara
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
Keith St. John, Director of Ethics
Carol Quinn, Deputy Director of Lobbying
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst
Kelly McCready, Confidential Clerk

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Walter McClure: Okay, Madam chair. We are in public
2 session.

3 Chair Joseph Varlack: Okay. Thank you, Walt. Good
4 morning everyone. Welcome to the February 2021 meeting of the
5 Joint Commission on Public Ethics. The meeting is now called
6 to order. As with all JCOPE meetings being held during the
7 pandemic, we are using video conferencing technology. The
8 public session of this meeting is accessible on JCOPE's website
9 to watch via live stream. A couple of important reminders. It
10 is important that only one person speak at a time. In addition,
11 I ask that when you speak, please identify yourself so we have
12 a clear record. As has been our practice, we will take votes
13 via a modified roll call to ensure that everyone is properly
14 counted. Please also remember to mute your phone when you are
15 not speaking. Before we begin, I would like to thank immediate
16 past Chair Rozen for his service to the Commission and also
17 welcome Judge Richard Braun as our newest member. My name is
18 Camille Joseph Varlack and I will be presenting as the new
19 chair. Mr. Levine do we have a quorum?

20 Martin Levine: Yes, Chair, we have a quorum.

21 Chair Joseph Varlack: Thank you, let's get started.
22 The second item on the agenda behind attachment A is the
23 approval of the minutes from the public session of the last
24 meeting of the Commission held on January 26, 2021, are there
25 any corrections to the minutes?

1 Monica Stamm: Chair, I just wanted to point out a
2 typo. This is Monica Stamm speaking, I just want to point out
3 a typo on page four, Commissioner Lavine we spelled your name
4 wrong and so it's on the second paragraph in the middle its
5 spelled with an E, instead of an A, so we'll make that
6 correction.

7 Chair Joseph Varlack: Thank you, Ms. Stamm. Are
8 there any other corrections to the minutes? Okay, can I please,
9 can I please have a motion to approve the January 2021 minutes
10 of the Commission. As far as neither Braun or myself was
11 present at the time, we will not vote.

12 Commissioner Dering: Jim Dering, so moved.

13 Martin Levine: Commissioner Dering.

14 Chair Joseph Varlack: Can we have a second?

15 Martin Levine: I see Commissioner Weissman.

16 Chair Joseph Varlack: Thank you. All in favor please
17 raise your right hand. Mr. Levine, can you please take the
18 vote?

19 Martin Levine: Yeah, I'll call the roll.
20 Commissioner Cohen?

21 Commissioner Cohen: Yes.

22 Martin Levine: Thank you. Commissioner Dering?

23 Commissioner Dering: Yes.

1 Martin Levine: Thank you. Commissioner DiPirro?

2 Commissioner DiPirro: Yes.

3 Martin Levine: Commissioner Fisher, I see your hand.

4 Thank you. Commissioner Horwitz?

5 Commissioner Horwitz: Abstain. I wasn't at the
6 January 23rd meeting.

7 Martin Levine: Thank you. Commissioner Jacob?

8 Commissioner Jacob: Yes.

9 Martin Levine: Commissioner Lavine?

10 Commissioner Lavine: Yes.

11 Martin Levine: Judge McCarthy? I'll come back.

12 Commissioner McNamara?

13 Commissioner McNamara: Yes.

14 Martin Levine: Thank you, Commissioner Weissman?

15 Commissioner Weissman: Yes.

16 Martin Levine: Thank you. Judge Yates?

17 Commissioner Yates: Sorry, I'm muted, yes.

18 Martin Levine: Thank you. I'm just going to come
19 back. Judge McCarthy? Okay, I have 1, 2, 3, 4, 5, 6, 7, 8, 9.
20 The motion carries, Madam Chair.

21 Chair Joseph Varlack: Thank you. Let's move on to
22 item three on the agenda report from staff, Ms. Stamm.

1 Monica Stamm: Hi, this is General Counsel Stamm to
2 start with the outreach update. We scheduled an ethics officer
3 forum on advisory opinion 20-2, which relates to 3rd party
4 gifts. That's been scheduled for March 18th. Earlier in
5 February, we issued an ethics reminder on running for and
6 holding another public office while serving as a state
7 employee to remind people to seek ethics guidance about
8 potential conflicts. I participated in a bar panel hosted by
9 the New York City bar on February 16th looking at JCOPE nearly
10 10 years in. I was joined by Senator Krueger, Assembly Member
11 Simon, Professor Richard Briffault, and John Albert from
12 Bolton St. Johns, and that was really the outreach for this
13 month and going forward. If there are no questions, I'll
14 continue with the operations update. Attached behind tab B,
15 you'll find the monthly operations report for January 2021.
16 As we discussed at the last Commission meeting, this is a new
17 report that we are instituting this year coming out of the
18 work of the confidentiality and records access committee and
19 it reports statistics on a monthly basis. I'm happy to answer
20 any questions or so can other staff, but I just wanted to
21 point out one of the highlights from this is the, on page two,
22 the number of guidance inquiries that lobbying has been
23 receiving. They've received more than 5000 calls or emails
24 asking for assistance during the month of January, which is a
25 huge spike, and that relates in large part to the

1 implementation of the regulations and resulting changes in
2 the lobbying filing application. As you know, the Commission
3 adopted those regulations and they were published on February
4 10th and are now in effect and they replaced the emergency
5 regulations that had been in effect for the current biannual
6 period. There were only minor changes between those two
7 versions. We're hoping that the calls will begin to taper off
8 after the first bimonthlies are filed in March. But that's
9 the operations report. Does anyone have any questions? Okay,
10 if not, just we will segue right into the issue of the changes
11 that we just mentioned relating to the lobbying regulations
12 and application and the roll out of the new bimonthly form
13 had been delayed to implement some of those changes. And so,
14 JCOPE's announced that it would accept filings that are
15 normally due on March 15th, we will accept them as timely until
16 March 22nd, allowing lobbyists an extra week to submit their
17 bimonthly filings without penalties. The next big application
18 rollout relating to the new regulations will be adjustments
19 to the client semi-annual reports, which are not due until
20 July 15th. Okay, if there are no questions, Chair, back to
21 you.

22 Chair Joseph Varlack: Thank you, General Counsel
23 Stamm. Item four on the agenda relates to the proposed meeting
24 schedule for the Commission for July through December 2021. It
25 is behind your tab C. I would ask the Commissioners to please

1 review and advise Kelly McCready if there are any conflicts in
2 advance of the next meeting. Is there any other new business
3 to discuss at this time? Okay. Seeing no hands at this time,
4 can I please have a motion to move into Executive session
5 pursuant to Executive Law 94(19)?

6 Commissioner Dering: I'll move, Jim Dering.

7 Commissioner Horwitz: Motion.

8 Martin Levine: All right, I see, I heard
9 Commissioner Dering and I saw Commissioner Horwitz as a second.

10 Chair Joseph Varlack: All in favor please raise your
11 right hand.

12 Martin Levine: Okay, I'll go through the roll, Judge
13 Braun. Thank you I see that, Commissioner Cohen?

14 Commissioner Cohen: Yes.

15 Martin Levine: Commissioner Dering?

16 Commissioner Dering: Yes.

17 Martin Levine: Thank you, Commissioner DiPirro?

18 Commissioner DiPirro: Yes.

19 Martin Levine: Commissioner Fisher I see your hand.
20 Thank you. Commissioner Horowitz?

21 Commissioner Horwitz: Yes.

1 Martin Levine: Thank you, Commissioner Jacob? I'll
2 come back.

3 Martin Levine: Commissioner Lavine? I'll come back,
4 Judge McCarthy, Commissioner McNamara?

5 Commissioner McNamara: Yes

6 Martin Levine: Thank you, Commissioner Weissman?

7 Commissioner Weissman: Yes.

8 Martin Levine: Judge Yates?

9 Commissioner Yates: Yes.

10 Martin Levine: Thank you very much, just coming back
11 around Commissioner Jacob? Commissioner Lavine? Judge McCarthy?
12 And Chair Joseph Varlack.

13 Chair Joseph Varlack: Yes.

14 Martin Levine: Thank you very much. Motion carries.

15 Walter McClure: Alright, standby please.

16 [The Commission went into Executive Session]

17 [The Commission returned to Public Session]

18 Walter McClure: Madam chair, we are back in public
19 session.

20 Chair Joseph Varlack: Thank you very much. We had a
21 motion to move into executive session. That motion was flawed
22 because there were technical difficulties that prevented

1 certain Commissioners on the call from being heard. That motion
2 has been, and Deputy General Counsel Levine, please correct me
3 if I get this, if they get the order of this incorrect, that
4 motion has been vacated. We are back in public session. The
5 last item on the agenda before we moved into executive session
6 was new and other business. So, I will ask it this time, is
7 there any additional new business to discuss?

8 Commissioner Lavine: Madam Chair, this is Gary
9 Lavine, I have several motions to move in the public session.

10 Chair Joseph Varlack: Thank you, Commissioner Lavine,
11 and on what topics?

12 Commissioner Lavine: Well, the first addresses
13 delegation of authority by the Commission to the staff to
14 render informal opinions that bind the Commission and to
15 approve outside activity requests. This ground has been plowed
16 to a fare-thee-well, Madam Chair, but since we have two new
17 Commissioners, including yourself, I will first summarize the
18 furrowing without intending any criticism of staff. In 2012,
19 the Commission adopted a resolution which authorized the
20 executive director, that is to say executive director and the
21 staff, to take certain actions in between our meetings. The
22 staff has interpreted the 2012 resolution to have the import
23 that the staff can render informal advisory opinions to, and
24 I will concentrate my discussion, focus my discussion, on the

1 four statewide officers and department heads, and also to grant
2 applications for outside activity. Again, without inferring
3 any criticism of the staff, it's my view that that
4 interpretation is belied by the statutory history. The
5 predecessor Commission, the Commission on Public Integrity,
6 that had sweeping power to delegate broadly to its then
7 Executive Director. Under the prior statutes, the Commission
8 on Public Integrity had adopted a resolution in 2002 which
9 gave authority to the Executive Director to issue both advisory
10 opinions as well as issuing informal letter opinions.

11 Chair Joseph Varlack: Commissioner Lavine, can I ask
12 you a question?

13 Commissioner Lavine: When our enabling statute was
14 created in 2011...

15 Chair Joseph Varlack: Commissioner Lavine, I'm sorry,
16 can I ask a question?

17 Commissioner Lavine: Of course.

18 Chair Joseph Varlack: I understood, and thank you,
19 I understand it and I appreciate your acknowledgement that
20 both Judge Braun and myself are new to these issues. I
21 understand that some of these topics are pending before the
22 confidentiality and records access committee, and I would ask
23 if you would allow Judge Braun and I the opportunity to meet
24 and speak with that committee to get a fulsome understanding

1 of not only the issues but what the possible steps forward
2 would be.

3 Commissioner Lavine: Well, I'd like to propose the
4 resolution and then entertain your request. May I proceed?

5 Chair Joseph Varlack: It is...

6 Commissioner Lavine: Because I want to establish in
7 the public record what the particular circumstance is that
8 occasions my renewing this motion, which was previously made.

9 Chair Joseph Varlack: So, I'm sorry.

10 Commissioner Lavine: The point should be emphasized
11 that our enabling statute differs fundamentally from the prior
12 statute.

13 Commissioner Horwitz: Madam Chairman, may, may I
14 raise a point of order similar to the point that Judge Braun
15 raised before? Can we get an understanding under Robert's Rules
16 about whether, if the motion that Commissioner Lavine is going
17 to propose, has already been voted on and dispensed with,
18 whether a second motion to that effect is appropriate under,
19 as Judge Braun raised, Robert's rules of order?

20 Commissioner Yates: May I speak to that?

21 Commissioner Horwitz: Well, I'd like to get a ruling,
22 actually, Judge Yates, from our General Counsel, you know, or
23 the Chair since they're running the meeting. It is a point of

1 order, Judge Yates, and those are directed at Chair and Counsel,
2 as I'm sure you and the other judges on the Commission
3 recognize from your long experience as judges.

4 Commissioner Yates: All right, well, just I would
5 note for the record, for counsel's edification and also for
6 the new Chair, that I think I have two pertinent things to say
7 with regard to that point of order but I'll respect what you
8 said Commissioner Horowitz.

9 Chair Joseph Varlack: General Counsel Stamm?

10 Commissioner Horowitz: Thank you, Judge Yates.

11 Monica Stamm: I'm going to see if Martin wants to
12 take this one because he's our resident Robert's Rules expert.
13 I would just say, you know Commissioner Horowitz, in part, we've
14 definitely discussed the delegation and issues related to the
15 delegation have been assigned to the committee, but, and so
16 that may be the proper course, and again Martin will address
17 that, but we don't exactly know what the motion is that
18 Commissioner Lavine is going to make, and so, we would need to
19 know what that motion is to determine whether or not it's
20 already been voted on by the Commission. But Martin with that,
21 I'll kick it to you on the Robert's Rules.

22 Martin Levine: Monica, that's exactly where I was
23 going to go. Commissioner Horowitz, we, we do try to adhere to
24 Robert's Rules but the Commission has never formally adopted

1 that as our parliamentary procedure. What I would say is the
2 best course forward might be for Commissioner Lavine to tell
3 us his motion to determine whether it has been previously voted
4 on or not. And then we can establish whether you know, it's
5 appropriate to proceed in that way. If it, you know, brings
6 to light new facts or new underlying facts, or changes to a
7 previous motion, then I think it would be in order to consider,
8 but we don't know the answer to that so maybe he could tell us
9 that upfront and then we could, the Chair could determine
10 whether she would like to proceed.

11 Commissioner Horwitz: Thank you, Mr. Lavine, and
12 Madam Chairman. I was only responding to what Commissioner
13 Lavine said, which was that he'd had already made these motions
14 and they had been decided, but I will defer to the rulings by,
15 by the Chair and by counsel, so thank you.

16 Chair Joseph Varlack: Thank you.

17 Commissioner Lavine: Well, Madam Chair, if I may
18 weigh in, I certainly want to accommodate your request. May I
19 take the opportunity now then to pose some questions to the
20 staff with regard to delegation of authority, and then I will
21 defer my motion to the committee. But I'd like to ask some
22 questions now, if I may.

23 Chair Joseph Varlack: Commissioner Lavine, I think
24 what I'm understanding the advice has been from counsel's

1 office is that we should start with understanding, with you
2 making your motion, which would then, if properly seconded,
3 would allow us to, to have to have discussion. Would you make
4 your motion at this time?

5 Commissioner Lavine: Most certainly. I move that
6 the resolution of delegation of authority adopted in 2012 be
7 amended such that all requests for informal opinion, or
8 requests for outside activity proposed by the four statewide
9 elected officers or department heads, be subject to a
10 deliberation by the Commission and a vote by the Commissioners.

11 Chair Joseph Varlack: It has been, Deputy General
12 Counsel Levine, have you written down the motion?

13 Martin Levine: I'm in the process, ma'am, I just
14 want to make sure I get it. To modify the prior delegation to
15 require that informal advisory opinions and outside activity
16 requests for the four statewide officials be voted on by the
17 Commission.

18 Is that correct, Commissioner Lavine?

19 Commissioner Lavine: Yes.

20 Chair Joseph Varlack: Okay, Commissioners, you've
21 heard the motion by Commissioner Lavine is there a second?

22 Commissioner Yates: I'll second it.

1 Chair Joseph Varlack: Thank you, Commissioner Yates.
2 Is there any discussion?

3 Commissioner Horwitz: Can I re-raise my point of
4 order before we enter into a discussion? I could be wrong. I
5 thought that this motion has been raised several times over
6 the last several months. We've had very full public
7 discussions about the policy behind the motion. We've had
8 discussions about the history of this agency, and the other
9 agency, dealing with informal requests for ethics advice, and
10 Madam Chairman, I, I'd asked the staff to inform us about
11 whether there have been uh, motions, this motion has been made
12 before, and whether the Commission has voted on this motion or
13 disposed of it in some other way, as you suggested, by
14 referring it to the confidentiality committee, that's my point
15 of order. Thank you.

16 Chair Joseph Varlack: Thank you, Commissioner
17 Horowitz. I would ask General Counsel Stamm and/or Deputy
18 General Counsel Levine to indicate what the history has been
19 with respect to the proposed motion or the motion on the on
20 the floor.

21 Monica Stamm: Martin again, feel free to jump in. I
22 don't, I have to review prior minutes to confirm whether or
23 not this specific motion was voted on before, but certainly
24 Commissioner Lavine has raised this issue at multiple prior

1 meetings. And the prior decision was to have the
2 confidentiality committee review and consider issues relating
3 to the confidentiality of informal opinions before these types
4 of issues were voted on. And that we would come back to the
5 delegation of authority question after the confidentiality
6 committee considered the question of the confidentiality of
7 informal opinions and the, where that authority derived from.

8 Chair Joseph Varlack: Thank you, General Counsel
9 Stamm.

10 Commissioner Lavine: May I point out, Madam Chair,
11 that the meeting of the confidentiality committee was canceled.
12 It was an exigent circumstance created by the Governor's action,
13 not by any Commissioner. Now, I'm not aware that there's any
14 rule or protocol, either in Robert's Rules or that has been
15 adopted by the Commission with respect to its governance, that
16 precludes me from renewing a motion that I previously made,
17 and that has been voted upon. that, I believe, is
18 Commissioner's prerogative. If it's otherwise, I will await
19 counsel's ruling.

20 Chair Joseph Varlack: Thank you Commissioner Lavine.
21 Sorry we have we have two additional hands raised. I'm only
22 seeing the name Bill.

23 Monica Stamm: I think Commissioner Weissman wanted
24 to speak.

1 Commissioner Horwitz: Bill, you're on mute.

2 Monica Stamm: Oh, Commissioner Fisher. Okay. That's
3 Commissioner Fisher.

4 Chair Joseph Varlack: Thank you. I apologize. We
5 can't hear you, Commissioner Fisher.

6 Monica Stamm: Walt, do you have control over him
7 being muted?

8 Chair Joseph Varlack: He does not appear to be muted
9 from what I'm looking at, but maybe the microphone is not on.

10 Monica Stamm: It looks like he's muted. What I can
11 see is that Commissioner Fisher is muted. Walt can you...

12 Commissioner Fisher: If I move up to here and unmute
13 the computer, am I now audible?

14 Monica Stamm: We can hear you.

15 Commissioner Horwitz: We can hear you, Bill.

16 Walter McClure: You can go back to your seat now.

17 Commissioner Fisher: I can, okay.

18 Walter McClure: Yes.

19 Commissioner Fisher: Chair Joseph Varlack, what I'd
20 like to bring to your attention is that I had brought a motion
21 on a similar topic in December, and that was following a vote
22 on a motion that Commissioner Yates brought in November. And

1 my motion at the time was also referred to the confidentiality
2 committee. It had to do with the delegation of authority and,
3 very specifically, with the ability to publish information
4 about the informal opinions that Commissioner Lavine
5 referenced. And at the request of the Chair and others on the
6 Commission, I withdrew my motion in December, and it was
7 scheduled to go to the confidentiality committee for further
8 discussion, but my motion has not had an opportunity to be
9 reviewed and voted on by this Commission. So, at the same
10 time that Commissioner Lavine's motion gets referred, if that
11 is your decision, I would ask that my resolution from
12 originally in December, be moved to that Commission, committee
13 as well. And my understanding is that was the intention of the
14 committee meeting that we had scheduled last Wednesday that my
15 motion would also be considered. So that's my reason for
16 bringing that up at this time.

17

18 Chair Joseph Varlack: Thank you, Commissioner Fisher.
19 I believe Commissioner Weissman had his hands raised.

20 Commissioner Weissman: Thank you very much, Madam
21 chair. My point is very simple. I believe a motion to
22 reconsider under Robert's Rules is generally available, but
23 more importantly, I think we're dealing with public policy
24 matters that should be discussed. Now, whether this is timely,

1 given the fact that you and Judge Braun are new is a different
2 issue and I think it's a very valid issue, but I think the
3 public discussion regarding important public policy matters
4 should never be curtailed.

5 Chair Joseph Varlack: Thank you Commissioner Weissman.
6 Commissioner Yates?

7 Commissioner Yates: Just for the public, following
8 up on what Commissioner Weissman said, there are two separate
9 and distinct issues. One is, can an Executive Director issue
10 and informal opinion, can the Commission delegate that
11 authority to the Executive Director? And what is the
12 consequence? Is it the equivalent of approval or of a formal
13 opinion, and is it binding on the Commission? In other words,
14 it's a scope of delegation issue. There's a second issue and
15 that is the one that's built into that. And that is, are those
16 opinions public or not public? What we've always done is, in
17 the past, informal opinions of staff work were private, not
18 even known to the Commission, in most cases. But they don't
19 have the force of law, not binding the way a matter, a formal
20 opinion, advisory opinion that's voted on by the full
21 Commission, is binding. So, you have two separate issues. Can
22 the Executive Director issue opinions that have the weight of
23 an advisory opinion, that's number one, and then number two,
24 is it public or not public? I'm on the confidentiality
25 subcommittee and we do deal with the question of whether or

1 not and how the informal letter opinions can be disclosed. But
2 that really is separate and apart from whether or not the
3 Executive Director can actually issue an advisory opinion and
4 whether or not we can delegate that authority. They're two
5 separate issues. When Commissioner Fisher made his motion
6 back in December to hold off on the question of delegation
7 until we resolve the confidentiality issue, I concurred in
8 that. But the confidentiality committee hasn't met, and I
9 think Commissioner Lavine is raising a very good, valid point.
10 And that is, can we delegate, to the staff, the power to issue
11 advisory opinions, which have the force of law, without the
12 Commission having reviewed or thought about them or voted on
13 them? And I think that's worth public discussion, which is why
14 I have seconded Commissioner Lavine's motion. It has nothing
15 to do with confidentiality. It's just a question of empowerment.

16 Chair Joseph Varlack: Thank you, Commissioner Yates.
17 Commissioner Horwitz?

18 Commissioner Horwitz: Thank you, madam Chair. So, I
19 agree that these are important public policy issues that merit
20 discussion. I will add, and the public need not be consumed
21 with yet another extended discussion, because we've now had at
22 least four or five about the various legal and policy issues
23 that underlie this motion. What I would suggest is, and I will
24 point out two things quickly. One, just George, you know, I
25 love you, but, and I'm certainly no expert in Robert's rules,

1 but I remember Commissioner Batra many years ago raised this
2 issue, and I think we all learned that motion for
3 reconsideration has to be raised immediately after the vote.
4 So I just wanted to put that out there, but really the real
5 guts of what I wanted to say, Madam Chair, is that both you
6 and Commissioner Braun are new, and we did have a circumstance
7 where we were scheduled to meet, the confidentiality committee
8 that is, and I'm a member of that, and I'd like to meet again,
9 and we had all decided that this issue that Commissioner Lavine
10 was raising was really better suited for the confidentiality
11 committee for a variety of reasons, and I would just simply
12 ask, that because you and Commissioner Braun are new, you've
13 asked for an opportunity to hear from a confidentiality
14 committee about this issue that we defer this issue and
15 schedule a meeting of confidentiality committee. I fully
16 expect that you're going to ask us to meet. I'm looking forward
17 to that meeting. We have another, we have a number of other
18 outstanding, important issues that we've been working on. I
19 fully expect to see those completed and brought back to the
20 full Commission. I mean, we've been working on them for several
21 months, so I'd really suggest that we continue with the course
22 that we've selected and let's hear from the confidentiality
23 commission, committee on this issue. And so that we can take
24 up Commissioner Fisher's recommendation, which is really, in

1 my view and I think his suggestion, tied to what Commissioner
2 Lavine is talking about today. So thank you, Madam Chair.

3 Chair Joseph Varlack: Thank you, Commissioner
4 Horwitz.

5 Commissioner Dering: Oh Chair this is.

6 Chair Joseph Varlack: I'm sorry. Judge Braun had his
7 hands raised.

8 Commissioner Braun: Okay, I just wanted to say that
9 I'm new, I was just appointed on Friday, this past. I am aware
10 of this issue. I've actually done some study on this issue and
11 other matters since Friday. And so, I do welcome everybody's
12 input, opinions, information, and if it goes to the
13 confidentiality committee, whatever comes forth from there. I
14 just wanted to make it clear, though, and I thank you, Madam
15 Chairperson, for you indicating that I am new to the Commission,
16 and I just want to make it clear that I have looked at the
17 issue and I have studied it and we'll see if any new information
18 is forthcoming that's of use to all of us for decisions how to
19 proceed.

20 Chair Joseph Varlack: Thank you, Judge Braun.
21 Commissioner Dering.

22 Commissioner Dering: Thank you, Chair. I just want
23 to echo the comments of Commissioner Horwitz. I think that
24 there's been a course of action set on this and I think it

1 makes sense to continue with that course of action. And also,
2 from an efficiency standpoint, and that's what we already
3 decided. So those are my comments.

4 Chair Joseph Varlack: Thank you. I do have a comment,
5 but I want to make sure that everyone else who wanted an
6 opportunity to be heard has been heard. Okay.

7 Commissioner Jacob: May I, may I, Madam Chair?

8 Monica Stamm: That's Commissioner Jacob.

9 Chair Joseph Varlack: Yes, yes, Commissioner Jacob.

10 Commissioner Jacob: I have, I just have a question
11 of General Counsel or Deputy Counsel. Our votes in the past
12 have been split six and six. The composition of the Commission
13 has now changed such that there are two new Commissioners.
14 Does it make any difference when we consider the questions
15 that have been raised that there has been an alteration in the
16 composition of the Commission, especially if reconsideration
17 is sought or a motion is made again?

18 Martin Levine: Madam Chair, Madam Chair, the
19 Commissioner raises a very good point, and I'm not in a
20 position to answer definitively, whether under Robert's Rules
21 interpretation that would merit a motion to reconsider, but
22 like I've said previously, we're not formally bound in that
23 way, so, I don't think it would be out of order to discuss the
24 issue, but, like you've said, you had a request to defer it,

1 so I would just say that I don't think we're in a position to
2 rule that the discussion itself would be out of order.

3 Chair Joseph Varlack: Understood.

4 Commissioner Cohen: Madam Chair, this is, this is
5 Rob Cohen. If I could just speak briefly.

6 Chair Joseph Varlack: Yes, please proceed.

7 Commissioner Cohen: Yeah, and so I'm going to
8 reiterate the opinions that a couple other Commissioners have
9 stated, and maybe with a bit more frustration here. I don't
10 really think this discussion about Robert's Rules of Order and
11 what may or may not apply is particularly productive or really
12 applicable here. I think the key, the key issue that's been
13 said before is that this matter, in general, was delegated to
14 the confidentiality committee. The confidentiality committee
15 has not been abolished, Commissioner Lavine. It's been, a
16 meeting has been postponed, and the confidentiality committee,
17 as others said, should just go ahead and take this up. I don't
18 really understand why we are wasting our time, the public's
19 time, here discussing this. These are important matters. There
20 will be a public discussion of them at some point in time, but
21 we've decided to take this to the confidentiality committee.
22 Let's just move on.

23 Chair Joseph Varlack: Thank you.

1 Commissioner Cohen: And that's my, that's my two
2 cents.

3 Chair Joseph Varlack: Thank you very much. So.

4 Chair Joseph Varlack: At this time, I will say this,
5 and I think it is somewhat consistent with what Commissioner
6 Braun, Judge Braun, has indicated, and Commissioner Lavine
7 that you yourself have acknowledged, and I again appreciate
8 that. We certainly are in the process of getting up to speed
9 on the myriad matters that need to be considered by the
10 Commission. At minimum, the, the delegation that you were
11 referring to is not something that I have in front of me. It
12 is not something that I have had an opportunity to review. In
13 addition to that, I'm understanding from the discussion that
14 there are several sets of minutes of the, of the Commission,
15 where certainly these matters have been brought up and/or
16 discussed that we should certainly take a look at as part of
17 getting ourselves up to speed. So, what I would like to do is
18 table the motion and give us an opportunity to meet with the
19 confidentiality and records access committee as soon as
20 possible. I certainly will make myself available at its
21 earliest possible moment to have that discussion and I would
22 ask that you consider withdrawing your motion to give us the
23 opportunity to get up to speed, knowing that we intend to meet
24 with that committee as soon as possible, and we'll do the work

1 of bringing ourselves up to speed on all of this as quickly as
2 possible so that it can be picked up at the next meeting.

3 Commissioner DiPirro: If that's a motion, this is
4 Commissioner DiPirro, if that's a motion, Madam Chairwoman, I
5 would second that motion to table the discussion.

6 Chair Joseph Varlack: Okay, so.

7 Monica Stamm: I think what we need is for
8 Commissioner Lavine to agree to withdraw his motion, right,
9 Martin?

10 Martin Levine: That would be the easiest path
11 forward, yes.

12 Commissioner Lavine: Well, Madam chair, as a prequel
13 to endeavoring to accommodate your request, I have some
14 questions that I want to put to staff right now. May I proceed?

15 Chair Joseph Varlack: My concern about you
16 proceeding with those questions, Commissioner Lavine, is that
17 I will not, and I won't speak for Judge Braun, but because I
18 don't have the full information and have not had an opportunity
19 to review either the delegation that you've mentioned, nor
20 read the minutes of when this has previously been discussed,
21 it will be difficult to put these questions in context. And
22 so, I would like to bring myself up to speed, which would then
23 allow us to have a fulsome conversation on this topic, and
24 where certainly, of course, we would be able to ask these

1 questions that that seem to be related to the issue that I'm
2 asking to postpone.

3 Commissioner Lavine: Well again, in the interest of
4 accommodating your request, I am willing to defer the motion
5 to a further discussion in the confidentiality committee.
6 However, at this juncture, I believe it is the prerogative of
7 any Commissioner to ask questions in the public session. I
8 would like to proceed with some questions for the staff on
9 this subject.

10 Commissioner Yates: If I may, I have a point of
11 order. I think Mr. Braun, Commissioner Braun has been cut off
12 from audio for some reason. He texted me to tell me he doesn't
13 hear what's going on. I don't know if Walter can fix that.

14 Walter McClure: I, I don't know, I see that he's
15 still on there. I don't know why he.. Commissioner Braun, can
16 you hear us?

17 Commissioner Yates. No. He texted me to say he wasn't
18 able to hear what's going on.

19 Walter McClure: I don't know.

20 Monica Stamm: Walt?

21 Walter McClure: Yes.

22 Monica Stamm: Can you maybe call him and see if he
23 can...

1 Walt McClure: Yes, have him log off and back on...

2 Monica Stamm: see if he can log back on the Webex or
3 have WebEx call us phone if he's on his iPad.

4 Walter McClure: Okay.

5 Monica Stamm: Okay.

6 Chair Joseph Varlack: And let's hold until we
7 resolve that issue.

8 Commissioner Yates: Maybe Walter can just text him.

9 Chair Joseph Varlack: Mr. McClure, have you been
10 able to get through to Judge Braun?

11 Walter McClure: Yes, I'm just texting him. I was
12 trying to have him log off and then log back in.

13 Chair Joseph Varlack: Okay.

14 Walter McClure: I don't, I'm not sure what happened.
15 He obviously can see us, but I'm not sure why, what happened
16 with his audio.

17 Chair Joseph Varlack: Okay.

18 Walter McClure: He's still working on it. He wasn't
19 sure if it's a problem with his equipment or not.

20 Chair Joseph Varlack: Let's let's give it one more
21 minute.

22 Walter McClure: I'm going to call him now. Hello.

1 Chair Joseph Varlack: Mr. McClure, is he dialing
2 back in?

3 Walter McClure: He's getting back in now, yes.

4 Commissioner Braun: Computer issue, computer issue.
5 Okay, I had a computer issue so I switched to my iPad. I'm
6 back.

7 Walter McClure: Okay, um, looks like he's back. He,
8 he thinks he's muted himself.

9 Chair Joseph Varlack: Okay, great. Just to sort of,
10 Judge Braun, I'm not, I'm not sure what you last heard. I
11 believe that where we are, is that, Commissioner Lavine, please
12 let me know if I get anything wrong uh, that while you are
13 inclined to allow this discussion to continue with the
14 confidentiality and records access committee, you did have a
15 few questions that you wanted to ask the staff now on this
16 matter. Is that correct?

17 Commissioner Lavine: Yes.

18 Chair Joseph Varlack: Okay. So I will, I will
19 reiterate that, of course, it's, it's, it would be helpful for
20 us to have had sort of a full opportunity to hear about these
21 issues and read the relevant documents in advance of this, but
22 I think it's fine for you to proceed with a few questions
23 because I do understand that you have additional motions that

1 you would like to bring to the Commission. So please, please
2 proceed.

3 Commissioner Lavine: So thank you very much, madam
4 Chair. The specific motion I will defer to the next meeting of
5 the confidentiality committee. As a prelude to that meeting,
6 I have a few questions for our staff. I have asked before, and
7 would like to renew the question, within the last three years,
8 how many requests for outside activity have been received from
9 the four statewide officers?

10 Monica Stamm: Commissioner, I don't, I don't have
11 those numbers at my fingertips. If you have them from what
12 we've previously provided, I'm sure they're accurate. But I
13 don't have them.

14 Commissioner Lavine: I have no numbers. That's why
15 I'm asking the question.

16 Monica Stamm: Sure, I'm happy to provide you with
17 those numbers. I just don't have the last three years of
18 numbers handy right now.

19 Commissioner Lavine: Do I, do I understand correctly
20 that the staff's position is that the 2012 resolution which
21 was adopted devolves to the staff the power to issue informal
22 opinions which are binding on the Commission and to grant
23 outside activity requests?

1 Monica Stamm: So, to break down your question to
2 make sure I answered accurately, it has been the understanding
3 of staff, and the Commission since 2012 has been aware that
4 staff has been doing this, staff, and has understood the
5 delegation to include the power to issue informal guidance,
6 and it has understood informal guidance to include outside
7 activity approval, and to the extent that they are binding on
8 the Commission, this is something the Commission has been
9 discussing in terms of going forward, but it has been the
10 understanding that the individual who receives that guidance
11 from staff can rely on it, and could offer it as a defense if
12 they were charged with an ethics violation, to the extent that
13 they accurately conveyed the information to staff on which
14 staff relied.

15 Chair Joseph Varlack: General Counsel Stamm, I have
16 a follow-up question to what you just said, just to make sure
17 that I understand it. The practice of issuing the informal
18 opinions, as well as the staff's policy and procedure with
19 respect to outside activity, this has been ongoing since 2012
20 and has been openly discussed with the Commission since that
21 time? Is that correct?

22 Monica Stamm: Yes. On numerous occasions, the issue
23 has come up with Commission about outside activity requests
24 that have been received by staff and that staff was going to

1 give guidance on both informals and outside activities since
2 2012 and that both of these issues informal guidance and
3 outside activity requests, as Commissioner Lavine noted, have
4 been the practice and part of the understood delegation dating
5 back to the State Ethics Commission. So, this has been going
6 on for, I think, more than 30 years. And this isn't something
7 new that staff just took upon itself.

8 Commissioner Yates: If I may, Chair.

9 Commissioner Lavine: If I may, madam Chair? Isn't
10 it the case, madam General Counsel though, that the statute
11 that created JCOPE is fundamentally different than the statute
12 that created the Commission on Public Integrity and the statute
13 that created the predecessor to the predecessor, the State
14 Ethics Commission, and specifically that our statute
15 circumscribes the delegation ambit?

16 Monica Stamm: I don't agree with your
17 characterization, Commissioner. I do not think it is
18 fundamentally different with respect to this issue. I think
19 there are things about , Executive Law 94, that were changed,
20 including the composition of the Commission, and relating to
21 how investigations are initiated, but the powers were not
22 changed with respect to advisory opinions or informals in any,
23 any obvious way. That doesn't mean that the Commission doesn't
24 have complete discretion to reconsider the delegation, but I

1 do not see anything in the statute that changes the issue with
2 respect to informal opinions, including outside activity
3 approval. And so I think that answers your question.

4 Chair Joseph Varlack: Commissioner.

5 Commissioner Lavine: No, it doesn't.

6 Chair Joseph Varlack: One moment, Commissioner
7 Lavine. I'm sorry I see that Commissioner Yates has his hand
8 raised. I want to get to him.

9 Commissioner Lavine: Yes, go right ahead, thank you.

10 Commissioner Yates: As, as a person who was counsel
11 to the speaker at the time that the 2011-2012 statute was the
12 written and personally was very involved in the drafting, I
13 want to re-emphasize something that Commissioner Lavine just
14 said, and that is the old statute said that anything could be
15 delegated to the Executive Director. And the old resolution
16 said that all powers were delegated to the Executive Director.
17 As part of the reform, when we rewrote the statute in 2012, we
18 intentionally added new language, and the new language
19 specifically said that it restricted the power of delegation,
20 and there was a change in the law, and it said that any, any
21 matter that required a vote of the Commission, such as issuing
22 a formal advisory opinion or approval of activity.

23 Monica Stamm: It doesn't say that.

1 Commissioner Yates: If you let me finish, please,
2 Monica.

3 Monica Stamm: Sorry.

4 Commissioner Yates: I said, such as, you're right,
5 the statute says anything that requires, the new language of
6 the statute in 2012, said anything that requires a vote of the
7 Commission could not be delegated. Accordingly, the 2012
8 resolution that was passed to conform with the change in the
9 law took away specifically language that used to say in the
10 old resolution that the executive director could issue advisory
11 opinions. That language was stripped out and deleted in the
12 2012 resolution, so that even though there may have been a
13 practice prior to 2012, which was lawful, because the statute
14 allowed full delegation and the resolution allowed full
15 delegation, after 2012, the statute then was limited and the
16 resolution excised, took out, deleted, language that
17 authorized the staff to go ahead and issue advisory opinions.

18 Chair Joseph Varlack: Commissioner Horwitz.

19 Commissioner Horwitz: Thank you, madam Chair. Look,
20 I was hoping that we would avoid a regurgitation of a
21 discussion. I feel like I'm in the movie in Groundhog Day. We
22 have had this exact discussion, I don't know four or five times
23 now. Commissioner Lavine raises this issue, he asks the staff
24 questions about the history of the statute. Monica gives the

1 staff's view. Commissioner Yates then says I wrote the law and
2 you're not right And Monica then says, well I disagree with
3 your interpretation. We're having the same discussion we've
4 had before. Now, this is something, forget about the fact that
5 we have ethics professionals that staff our Commission, and
6 that have staffed our predecessors, who are professionals who
7 come to work every day, they are highly regarded in their field.
8 And the ultimate issue that we're being asked to discuss is
9 whether our judgment as Commissioners is more refined than the
10 ethics professionals on whom we rely. That's something that we
11 should have a discussion about and we have had a discussion
12 about, but it really should be in the confidentiality committee,
13 because that's where we said, we're going to have this
14 discussion, number one. Number two, I think that, just to
15 keep going over this again and again, either Gary's going to
16 continue to ask questions and he doesn't like the answers so
17 he keeps asking them again and again. And Jim doesn't like
18 Monica's interpretation so he's going to keep saying Monica,
19 I wrote the statute, I know better than you, you're not right.
20 Why do we have to keep going through this again and again? I'm
21 not suggesting, Jim and Gary, that you haven't raised issues
22 that you feel are important that needs to be addressed. I just
23 think that as a matter of efficiency, this part of the meeting
24 is new and other business. This is not new business,

1 respectfully, guys. So, let's kind of move it along. That's
2 all I'm asking.

3 Commissioner Yates: We never discussed the statutory
4 history before. Never.

5 Commissioner Horwitz: We did Jim. We did, we did
6 I've heard you; I've heard you several times on this issue,
7 and the minutes will speak for themselves. I've heard you
8 discuss this several times, we've been over it. We've been
9 over it. I'm not suggesting the public should be denied the
10 opportunity to hear us discuss it, but gosh, I mean, come on
11 this is the fourth meeting we've done this. We've got a process.
12 Let's follow the process.

13 Chair Joseph Varlack: Okay. Thank you. Commissioners.
14 I do believe Commissioner Lavine that you have indicated that
15 you will allow the confidentiality and records access committee
16 to bring Commissioner Braun, and myself, to speed, that we
17 will hold the meeting that has been postponed. It will give
18 us, again, an opportunity to take a look at all of the documents
19 and for minutes that are related to this issue. Since you
20 indicated that you were willing to allow the committee to take
21 up this issue, I believe, Deputy General Counsel Levine, if
22 you can confirm that the motion is still on the table and would
23 need to be withdrawn. Is that accurate?

1 Monica Stamm: I think Commissioner Lavine already
2 agreed to withdraw it.

3 Commissioner Lavine: Yes. If I may ask your
4 indulgence, madam Chair, I'd like to complete my line of
5 questions. I put to, I put to our General Counsel, this
6 question, the penultimate question. Given the current practice
7 as articulated by you, madam General Counsel, what is the
8 recourse of the Commission itself to reverse the determination
9 of staff with respect to a application for outside activity
10 that's already been granted?

11 Chair Joseph Varlack: Commissioner Lavine.

12 Commissioner Lavine: Stated another way, is an
13 application for outside activity already having been granted
14 now beyond the scrutiny of the Commission? That's my question.

15 Chair Joseph Varlack: Commissioner Lavine, if your
16 motion has been withdrawn, then that additional question, I
17 believe is out of order and I would ask that we move on to the
18 next motion that you would like to make.

19 Commissioner Lavine: Well, as I said earlier, madam
20 Chair, that I believe it is the prerogative of any Commissioner
21 in the public session to ask questions whether there's a motion
22 pending or not.

23 Chair Joseph Varlack: I do understand your position,
24 Commissioner Lavine, and I think, to be honest, that we have

1 given you a substantial amount of time, and given the
2 Commissioners a good amount of time, to be able to weigh in on
3 these issues. I agree with you that they are very important.
4 And I think it requires, you know, again, the due diligence
5 that we have the materials in front of us so that this
6 conversation can put in proper context. I do understand that
7 you have additional motions that you would like to make, and
8 would like to hear those motions now.

9 Commissioner Lavine: Thank you very much, madam
10 Chair. Now I'd like to address Executive Order 202.7, and I
11 put the question to the staff, has there been any other further
12 communication emanating from the executive chamber with regard
13 to the executive order that exempts so-called COVID volunteers
14 from the ambit of the Public Officers Law?

15 Chair Joseph Varlack: Commissioner Lavine, is this
16 new business?

17 Commissioner Lavine: It's other business.

18 Chair Joseph Varlack: General Counsel Stamm, do you
19 have an answer?

20 Monica Stamm: No, I have not had any other
21 conversations with the chamber or communications with the
22 chamber regarding the executive orders.

23 Commissioner Lavine: Well, at this juncture, I would
24 like to point out that in light of other recent discussions

1 had about response to COVID, it seems appropriate for us to
2 renew an inquiry to the executive chamber with respect to who's
3 exempted by this order and whether any conflicts of interest
4 have been presented by those individuals. Previously, the
5 observation is made, has been made, that we do not have
6 jurisdiction. I am of the view, as I've previously expressed,
7 Madam Chair, that under the Executive Law, it is our function
8 to advise and assist any state agency in establishing rules
9 and regulations relating to possible conflicts between private
10 interests and official duties. Therefore, I move that the
11 Commission send a letter to the Governor asking for the list
12 of those individuals who are exempted under the order, and
13 whether they are doing any business with the state.

14 Chair Joseph Varlack: General Counsel Stamm, am I
15 accurate that this motion has previously been brought to this
16 body?

17 Monica Stamm: Yes, I believe so. I believe
18 Commissioner Lavine previously made this motion and it did not
19 carry.

20 Chair Joseph Varlack: Commissioner Lavine, are you,
21 are you, with that response are you asking for reconsideration?

22 Commissioner Lavine: Yes, well, not in a technical
23 sense. I'm renewing the motion in light of recent events that

1 have transpired since the last meeting which I made the motion.
2 The events being obvious to one and all.

3 Chair Joseph Varlack: Okay, so, so there's a motion
4 on the floor. It has not yet been seconded. Is there a second?
5 Commissioner Yates, I believe.

6 Commissioner Yates: Yes, I'll second it.

7 Chair Joseph Varlack: Okay. Is there any discussion?
8 Commissioner Horwitz?

9 Commissioner Horwitz: Look, I'm not gonna make a
10 point of order with law which I think actually would lie,
11 because this, I'm getting an echo for some reason.

12 Chair Joseph Varlack: One moment, Commissioner
13 Horwitz, we can't hear you.

14 Monica Stamm: I think he's just stopped because
15 there's an echo. If anyone is not muted who's not speaking,
16 please mute yourself.

17 Commissioner Horwitz: But the motion, I'm not going
18 to make a point of order and I think I could, and it would be
19 well-founded. We, we cannot keep having motions made and then
20 those motions resolved in a decision and then the people who
21 make the motions, whose motions don't carry say, gee I didn't
22 like what the result was, let me come back next month and take
23 more time and may, I'll make that motion again. We have other

1 business, and I'm not suggesting that there aren't public
2 policy issues around the pandemic, and even issues that the
3 Commission should be focusing on. But you know, at some point,
4 you have to ask yourself, like, okay, we lost the motion. We're
5 going to make the motion again, and I don't know what the
6 outcome of this motion is going to be, but I have to wonder
7 whether it'll carry again. Which again makes me wonder what
8 are we doing, Madam chair? This just doesn't seem to be the
9 way to run a railroad. We have to have some regular order.
10 Thank you.

11 Chair Joseph Varlack: Thank you.

12 Commissioner Dering: Madam Chair. Can I speak? This
13 is Jim Dering.

14 Chair Joseph Varlack: Yes, Commissioner Dering.

15 Commissioner Dering: Thanks. I agree 100% that this
16 issue, we've gone over it and over it. The executive order
17 relates to individuals who don't constitute public officers
18 under the Public Officers Law. We don't have any jurisdiction.
19 With regard to the, the issue of advise and assist, we, we
20 don't have the ability to compel that, and again, like
21 Commissioner Horwitz said, we've gone over this again and again,
22 and, you know, right now it's, uh, 11:51, and all we've done
23 is, you know, rehash, you know, matters that we've talked about
24 many times before, so I'm in favor of moving on.

1 Chair Joseph Varlack: Thank you, Commissioner Dering.
2 Are there any additional comments? Okay. So Deputy General
3 Counsel Levine, I think I've lost the thread here. We have a
4 motion, I believe, that is on the table. Is that correct?

5 Martin Levine: Yes, ma'am we have a motion and a
6 second.

7 Chair Joseph Varlack: And second, okay. Is there any
8 additional debate?

9 Martin Levine: Judge Yates has his hand up.

10 Chair Joseph Varlack: Commissioner Yates yes. We
11 can't hear you. I think you're muted.

12 Commissioner Yates: Just a brief point of correction.
13 You said, we do, Commissioner Dering said, we do not have
14 jurisdiction. Under the Public Officers Law anyone who exercise,
15 who is empowered by the government to exercise the powers of
16 to a public officer, regardless of whether that person will
17 work for low pay, is still a public officer. It is not as a
18 matter of law, I would not say that somebody who's awarding
19 contracts is free of examination as to whether or not they're
20 acting in conflict, merely because they're willing to reward
21 contracts to themselves while taking low pay.

22 Chair Joseph Varlack: Commissioner Horwitz.

1 Commissioner Horwitz: Well, I'm sorry, just because
2 this is something, again, exactly the same discussion we had
3 two months ago. Commissioner Yates, I asked Commissioner,
4 Monica,
5 when we had this issue come up the last time that if there are
6 things that we've asked the legislature for, which you know
7 a great deal about, are there, if the legislature thinks that
8 we're acting outside of her jurisdiction, can they refuse to
9 answer and she said, yes. So the point I'm making is there are
10 clear limits to what our jurisdiction is. You may not like
11 what those limits are. You worked in the legislature, you know
12 how that process works. If you think that the law should be
13 changed to expand our jurisdiction, you should do everything
14 you can to try to expand that jurisdiction. But the answer is
15 simply not to say, hey, I lost this vote before. I'm going to
16 bring it up again because maybe there'll be a different result.
17 We could do this with the legislature too, and we get the same
18 results. So, again, I'm sorry for making a point that I've
19 made now at least two times, but I felt that was important
20 since it's been brought up again, so that we have a full record.
21 Thank you.

22 Commissioner Yates: If I may, Commissioner Horwitz,
23 I think you're wrong on two points. I was merely addressing a
24 misstatement of law that Commissioner Dering made. He said we

1 don't have jurisdiction, and that's wrong. Secondly, on this
2 particular point, as Gary said in his motion, which is why I
3 seconded it, it's a moving target and it has never been clearly
4 resolved. So, it may be that you were happy with the 6-6 vote
5 last time, where we deadlocked and didn't do anything, but my
6 comments were only addressing the misstatement of law by
7 Commissioner Dering.

8 Commissioner Horwitz: Jim, it has nothing to do
9 whether I'm happy. I'm trying to suggest that we should have
10 some regular order. We have processes. You, by all people,
11 should appreciate that there should be regular order. All I'm
12 suggesting is that every meeting we come back to the same
13 issues that we've been dealing with for the last three or four
14 months. If there was a result that people don't like, that's
15 the end of it. It's not a question of whether I like something.
16 I'm just trying to suggest, let's please have regular order
17 and with that, I'll stop talking, I've taken up too much
18 airtime as it is.

19 Chair Joseph Varlack: I moved the previous questions
20 so.

21 Commissioner Jacob: Madam Chair, Madam Chair, may I
22 just make a comment? Commissioner Jacob here I think if we
23 take the position as a Commission that the moment a person
24 asserts an exemption that JCOPE is divested of the jurisdiction,

1 we make a very bad precedent. And in fact, we have litigated
2 against people who have asserted exemptions, and we are
3 currently in litigation with persons who have asserted
4 exemptions. The assertion of exemption does not divest an
5 agency of jurisdiction.

6 Chair Joseph Varlack: Thank you, Commissioner.
7 Commissioner Levine, can you please, sorry the Deputy, could
8 you please repeat the motion that is currently on the floor?
9 I would like to move the previous question ending debate and
10 moving to a vote.

11 Monica Stamm: Martin, you're muted. Did you, I'm
12 sorry, Chair, do you want Martin or Gary?

13 Chair Joseph Varlack: Yes, Deputy General Counsel
14 Levine, if you could repeat the motion on the floor so that we
15 can vote?

16 Martin Levine: As I had it, it was to renew his
17 request that the Commission contact the executive chamber to
18 find out who is affected by the executive order. Did I
19 correctly describe that, Commissioner Lavine?

20 Commissioner Lavine: As far as it goes. The previous
21 motion was to have staff make the inquiry. The motion today,
22 Madam Chair, is that the Commission, by resolution, direct
23 staff to communicate, in writing, to the executive chamber
24 that this information be divulged to us.

1 Chair Joseph Varlack: Okay, all in favor.

2 Martin Levine: I'll call the roll. Judge Braun?

3 Chair Joseph Varlack: We can't hear you, Judge Braun.

4 Martin Levine: I see your hand, thank you.

5 Commissioner Cohen?

6 Commissioner Cohen: No.

7 Martin Levine: Commissioner Dering.

8 Commissioner Dering: No.

9 Martin Levine: Commissioner DiPirro?

10 Commissioner DiPirro: No.

11 Martin Levine: Commissioner Fisher?

12 Commissioner Fisher: No.

13 Martin Levine: Commissioner Horwitz?

14 Commissioner Horwitz: No.

15 Martin Levine: Commissioner Jacob?

16 Commissioner Jacob: Yes.

17 Martin Levine: Commissioner Lavine?

18 Commissioner Lavine: Yes.

19 Martin Levine: Judge McCarthy?

20 Commissioner McCarthy: Yes.

21 Martin Levine: Commissioner McNamara?

1 Commissioner McNamara: Yes.

2 Martin Levine: Thank you. Commissioner Weissman?

3 Commissioner Weissman: Yes.

4 Martin Levine: Thank you. Judge Yates?

5 Commissioner Yates: Yes.

6 Martin Levine: Chair Joseph Varlack.

7 Chair Joseph Varlack: No.

8 Martin Levine: That is 1, 2, 3, 4, 5, 6, 7. Motion
9 fails, ma'am.

10 Chair Joseph Varlack: Thank you. Commissioner Lavine,
11 do you have any other motions under new and another business?

12 Commissioner Lavine: I have one other motion, but
13 at this juncture, Madam Chair, I would like to put a question
14 either to the Chair or to staff. There's been a lot of palaver
15 today about deliberations and the committee confidentiality
16 and records, records access. What I'd like to understand now
17 before we adjourn today, is that the fact that the referral is
18 made to the committee, does it thereby preclude a discussion
19 in the public session subsequent to the deliberation of the
20 committee on confidentiality and records access?

21 Monica Stamm: This is General Counsel Stamm. The
22 answer your question is no. As we discussed several times, the
23 communications among the committee members would be

1 confidential, but just subject matter would be able, would be
2 open to full discussion in the public session.

3 Commissioner Lavine: Is it the position of staff
4 that a discussion of any specific request granted by the staff,
5 without a vote of the Commission, for outside activity is
6 precluded from a discussion in the public session?

7 Monica Stamm: Yes.

8 Commissioner Lavine: Would a generic question, such
9 as opinions 95-25 and 89-10, with respect to outside activity
10 involving literary activity and writing books, would that be
11 precluded from the public session?

12 Monica Stamm: I think it would depend on the
13 questions that you would want to put to staff. I mean,
14 certainly the precedent of the Commission could be discussed
15 by the Commission in a public session. If you're asking staff
16 to apply that precedent to a specific set of facts, then I
17 would be wary of staff doing that in a public session, that
18 giving opinions and legal opinions on those applications to a
19 specific set of facts. But if you wanted to discuss the
20 opinions themselves and ask questions about the opinions
21 themselves, yes, that could happen in a public session.

22 Commissioner Lavine: So, if I put the question to
23 you, does opinion 95-25, which as I understand it concluded

1 that compensation for a book in which the subject is involved,
2 the
3 current responsibilities of the author, is precluded, you're
4 saying could be discussed in the public session subsequent to
5 a deliberation of confidentiality and records access committee?

6 Monica Stamm: Yes.

7 Commissioner Horwitz: Can I just raise a point of
8 order, Madam Chair, again really in the vein of trying to get
9 some regular order for gosh sakes? I know Commissioner Lavine
10 is very steeped in the advisory opinions that the Commission
11 has written. I'm not, and I can't speak for anybody else, but
12 boy, he's given a lot of thought to this, maybe in the future,
13 it would be helpful if he can circulate things so that we can
14 get a chance to see what he's talking about. Because I have no
15 idea, basically. I'm sorry about that, but again, just in the
16 hope of trying to get some regular order. Thank you.

17 Chair Joseph Varlack: Thank you, Commissioner Horwitz.
18 Commissioner Lavine, did you have another motion that you
19 wanted to make?

20 Commissioner Lavine: Yes, I do, I do, madam Chair,
21 thank you very much. I believe it is accurate to say that the
22 last time the Commission met with the State Inspector General
23 was when Judge Leahy Scott held the position. I move that a
24 request be made to the Executive Deputy Inspector General

1 Spencer Freedman that he meet, in executive session, with the
2 Commission at the March meeting. My motion is premised on the
3 assumption that the Inspector General herself is recused from
4 all matters involving our Commission. That's my motion.

5 Judge Varlack: Thank you, Commissioner Lavine. Is
6 there a second? Seeing no second, sorry, Commissioner Weissman.

7 Commissioner Weissman: Let's move along. I'll second
8 it.

9 Chair Joseph Varlack: Okay, is there any discussion?
10 Okay, seeing no hands for discussion, let's move to the vote
11 all in favor. Please raise your right hand.

12 Martin Levine: I'll call the roll. Judge Braun?

13 Chair Joseph Varlack: You're muted, Commissioner
14 Braun.

15 Martin Levine: I'm sorry, sir, can you say again?

16 Commissioner Braun: No.

17 Martin Levine: Thank you very much. Commissioner
18 Cohen?

19 Commissioner Cohen: No.

20 Martin Levine: Commissioner Dering?

21 Commissioner Dering: No.

22 Martin Levine: Commissioner DiPirro?

1 Commissioner DiPirro: No.

2 Martin Levine: Commissioner Fisher? I'll come back.

3 Commissioner Horwitz?

4 Commissioner Horwitz: No.

5 Martin Levine: Commissioner Jacob?

6 Commissioner Jacob: Yes.

7 Martin Levine: Commissioner Lavine?

8 Commissioner Lavine: Yes.

9 Martin Levine: Judge McCarthy?

10 Commissioner McCarthy: Yes.

11 Martin Levine: Commissioner McNamara?

12 Commissioner McNamara: Yes.

13 Martin Levine: Commissioner Weissman?

14 Commissioner Weissman: Yes.

15 Martin Levine: Judge Yates?

16 Commissioner Yates: No.

17 Martin Levine: Chair Joseph Varlack?

18 Chair Joseph Varlack: No.

19 Martin Levine: 1, 2, 3, 4, 5 in favor. Motion fails.

20 Chair Joseph Varlack: Thank you. Commissioner Lavine?

1 Commissioner Lavine: Thank you, Madam Chair, for a
2 most animated session.

3 Chair Joseph Varlack: Thank you, Commissioner Lavine.
4 At this time can I please have a motion to move into executive
5 session pursuant to Executive Law 94(19)(b)?

6 Commissioner Dering: I'll move. Dering.

7 Chair Joseph Varlack: Is there a second?

8 Monica Stamm: Commissioner Horwitz seconded.

9 Chair Joseph Varlack: Thank you. All in favor?

10 Martin Levine: I'll call the roll. Judge Braun, I saw
11 your hand thank you. Commissioner Cohen?

12 Commissioner Cohen: Yes.

13 Martin Levine: Commissioner Dering.

14 Commissioner Dering: Yes.

15 Martin Levine: Commissioner DiPirro?

16 Commissioner DiPirro: Yes.

17 Martin Levine: Commissioner Fisher?

18 Walter McClure: We've lost his feed. We are trying
19 to get him back up.

20 Martin Levine: Thank you. Commissioner Horwitz?

21 Commissioner Horwitz: Yes.

1 Martin Levine: Commissioner Jacob? I'll come back.
2 Commissioner Lavine?
3 Commissioner Lavine: Yes.
4 Martin Levine: Judge McCarthy?
5 Commissioner McCarthy: Yes.
6 Martin Levine: Commissioner McNamara?
7 Commissioner McNamara: Yes.
8 Martin Levine: Commissioner Weissman?
9 Commissioner Weissman: Yes.
10 Martin Levine: Thank you. Judge Yates?
11 Commissioner Yates: Yes.
12 Martin Levine: Chair Joseph Varlack.
13 Chair Joseph Varlack: Yes.
14 Martin Levine: And Commissioner Jacob again.
15 Commissioner Jacob: Yes.
16 Martin Levine: Motion carries, thank you.
17 Commissioner DiPirro: Madam Chairwoman, this is
18 Commissioner DiPirro. I have a hard stop at 12:30. I have a
19 1:00 appointment for my second vaccine that I can't miss.
20 It seemed like the agenda was shorter today, so I didn't think
21 it was going to be an issue. I apologize.

1 Chair Joseph Varlack: Understood. Thank you,
2 Commissioner DiPirro.

3 Walter McClure: Please stand by. Hold on while me
4 leave public session.

5 [The Commission went into Executive Session]

6 [The Commission returned to Public Session]

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

8 Chair Joseph Varlack: Thank you very much. General
9 Counsel Stamm, can you please report on our executive session?

10 Monica Stamm: Sure, we discussed litigation and
11 personnel matters, we approved one settlement agreement, and
12 we authorized steps in several investigative matters, closed
13 two matters, and discussed several other investigative matters.

14 Chair Joseph Varlack: Thank you. Is there any other
15 business before the Commission? Please note that the
16 Commission's next meeting is scheduled for March 23rd. May have
17 a motion to adjourn? Thank you Commissioner Weissman.

18 Monica Stamm: Commissioner Weissman.

19 Chair Joseph Varlack: Can have a second.

20 Commissioner Dering: I'll move Dering.

21 Chair Joseph Varlack: Thank you all in favor.

1 Martin Levine: I see Commissioners Fisher, the Chair
2 Horwitz, McNamara, Weissman, Yates and Judge Braun,
3 Commissioner Cohen?

4 Commissioner Cohen: Yes.

5 Martin Levine: Commissioner Dering?

6 Commissioner Dering: Yes.

7 Martin Levine: Commissioner Jacob?

8 Commissioner Jacob: Yes.

9 Martin Levine: Commissioner Lavine?

10 Commissioner Lavine: Yes.

11 Martin Levine: Judge McCarthy?

12 Commissioner McCarthy: Yes.

13 Martin Levine: That's it, motion carries Madam Chair.

14 Chair Joseph Varlack: Thank you. Everyone have a
15 good afternoon.

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