

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

Commission Meeting of May 25, 2021

Appearances: Camille Varlack, Chair

Commissioners:

Richard F. Braun
Robert Cohen
James E. Dering
William P. Fisher
Daniel J. Horwitz
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
David J. McNamara
Juanita Bing Newton
George H. Weissman
James A. Yates

Staff:

Sanford N. Berland, Executive Director
Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Walter J. McClure, Director of Communications and Public
Information Officer
Keith C. St. John, Director of Ethics
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics Guidance
Peter Smith, Chief Investigator
Anthony DeFino, Investigator
Lori A. Donadio, Principal Investigative Analyst
Kelly McCready, Confidential Clerk

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Walt McClure: Chair, we are in public session.

2 Chair Varlack: Thank you very much, Walt. Good morning
3 everyone. Welcome to the meeting of the Joint Commission on Public
4 Ethics. The meeting is now called to order. As with all JCOPE
5 meetings that are being held during the pandemic, we are using
6 video conferencing technology. Public session of the meeting is
7 accessible on JCOPE's website to watch via live stream. A couple
8 of important reminders. It is important that only person speak at
9 a time. In addition I ask that when you speak you identify yourself
10 so that we have a clear record. As has been our practice, we will
11 take votes via a modified roll call to ensure that everyone is
12 counted. Please also remember to mute your phone when you are not
13 speaking. Mr. Levine, can you please confirm that we have a
14 quorum.

15 Martin Levine: Yes, ma'am.

16 Chair Varlack: I'd like to take a moment to introduce
17 our new Executive Director, Judge Sanford Berland. Welcome
18 Judge Berland.

19 Sanford Berland: Thank you very much. I'm very happy
20 to be here.

21 Chair Varlack: Good. We are, we're happy that you're
22 here as well. Before we move to the first substantive item on
23 the agenda, I would like to take a moment to address one item.

1 What has become clear is that we need rules and order to ensure
2 that the Commission is efficiently and effectively able to
3 handle its business. Several of you have reached out to me on
4 this point over the past few months. To that end, I am
5 establishing a protocol committee to consider and develop
6 recommendations for the Commission. I ask that anyone who is
7 interested in participating please contact me offline. Moving
8 on to the second item on the agenda, it is the approval of the
9 meeting minutes of the Commission, which you will find behind
10 attachment A. These are the minutes of the public session for
11 the April 27, 2021 meeting. Are there any corrections to the
12 minutes?

13 Martin Levine: Yes, ma'am. On page three of the
14 public session minutes, line eight, Judge Yates has requested
15 that the sentence beginning "the revisions also make clear,"
16 would read "the revisions also make clear that the Commission
17 can publish and modify." Those two words would be added after
18 publish and modify informal letter opinions in redacted form.
19 Judge, have I accurately stated your amendment?

20 Commissioner Yates: Yes, thank you.

21 Chair Varlack: Okay, thank you. Are there any other
22 amendments to the minutes? Okay. Can I please have a motion
23 to adopt the April 27, 2021 minutes, as amended, of the public
24 session of the Commission?

1 Commissioner Weissman: So moved.

2 Chair Varlack: Thank you.

3 Commissioner Fisher: Seconded. Fisher.

4 Chair Varlack: All in favor, please raise your hands

5 Martin Levine: I see Judge Yates, I see Commissioner
6 Horwitz, McNamara, Dering, Judge Newton, Judge Braun, and
7 Albany, leaving Commissioner Cohen?

8 Commissioner Cohen: Yes.

9 Martin Levine: Commissioner DiPirro is not here.
10 Commissioner Horwitz I got. Commissioner Jacob?

11 Commissioner Jacob: Yes.

12 Martin Levine: Commissioner Lavine?

13 Commissioner Lavine: Yes.

14 Martin Levine: Judge McCarthy?

15 Commissioner McCarthy: Yes.

16 Martin Levine: Judge Yates, motion carries. 13, ma'am.

17 Chair Varlack: Thank you. Moving on to item three on
18 the agenda report from staff. Judge Berland?

19 Sanford Berland: Thank you, Madam Chair. Before we
20 give the report from staff, I wanted to say a few words and
21 introduce myself to the public. As you know, I'm Sanford Berland,

1 Sandy to my friends and family. I recently retired as a Court
2 of Claims Judge and as an Acting Supreme Court Justice. I had
3 a long career in private practice, and a two-year stint before
4 that as a Federal law clerk before my judicial appointment. My
5 wife Susan and I have four grown children, two older boys, and
6 we live in Suffolk County. Although I'll be working primarily
7 out of JCOPE's Manhattan office, I plan to be in Albany on a
8 regular basis. I do want to thank the Commissioners again for
9 their confidence in me and to reiterate my commitment to
10 carrying out the role of Executive Director vigorously, and
11 even-handedly. The people of the state deserve no less than the
12 assurance that JCOPE is doing everything within its power to
13 ensure that those who serve us in government understand what
14 their ethical responsibilities are and adhere to them. I'm
15 impressed with the caliber and dedication of the JCOPE staff
16 at every level and it is a primary goal of mine to ensure that
17 they have the resources they need to carry out their work
18 efficiently and thoroughly. Further, I want to let the public
19 and the regulated community know that I look forward to meeting
20 with you and working with you. Again, I have tremendous respect
21 for the JCOPE mission and for the work it does. I firmly believe
22 that to meet our mandate requires the direct and open dialogue,
23 both with those we serve and with those we regulate. To that
24 end, I will be setting up calls and meetings in the coming

1 weeks. I've already said to the staff, whether virtually or
2 otherwise, my door is always open, and I welcome comments from
3 all corners. In short, I'm excited to be here today and eager
4 to meet whatever challenges lie ahead. With that, I'll move
5 into the agenda with the operations report, which can be found
6 at tab B in the agenda book. Staff is happy to answer any
7 questions, if there are any, with respect to the operations
8 report. As has been previously reported, the majority of staff
9 has been working from home during the pandemic. They come into
10 the office as needed for operational purposes. And I'm
11 confident the staff has continued to be productive. There have
12 been no issues. I would add that ethics guidance calls and
13 tips appear to be returning to pre-pandemic levels, while
14 lobbying inquiries, which spiked with the January introduction
15 of new regulations, are continuing to run at a significantly
16 higher level than in the past. Staff will continue to work
17 from home until after Labor Day to align with children returning
18 to school and more or less the completion of long-planned work
19 on the New York offices. And we'll be developing a plan for
20 everyone to return to the office safely. If there any questions,
21 staff will be happy to respond to them. All right. Let me move
22 on to financial disclosure statements. The 2020 annual
23 statements of financial disclosure were due Monday, May 17.
24 We've received nearly 19,000 filings to date and the FDS unit

1 will be working on compliance shortly. FDS filings for the
2 statewide elected officials have been posted on JCOPE's website.
3 The FDS filings for the legislative branch are first filed with
4 the Legislative Ethics Committee, Commission. They'll be
5 submitted to JCOPE by June 30, and the FDS filings from members
6 of the legislature will be posted on JCOPE's website soon
7 thereafter. That's what I have on the FDS filings. Any questions?
8 All right. Thank you.

9 Chair Varlack: Thank you, Judge Berland. Moving on.

10 Monica Stamm: Commissioner Horwitz.

11 Chair Varlack: Sorry.

12 Monica Stamm: I'm sorry, Camille, Chair.
13 Commissioner Horwitz had his hand up.

14 Commissioner Horwitz: I had a question about the
15 legislative FDS filings. I just want to make sure I understand.
16 So the legislatures, the legislators, they file an FDS with the
17 Legislative Ethics Commission, and then after some period of
18 time, after all the other public officers in the state, get to
19 file, have to file their FDSs, then the LEC gives us the FDSs
20 of the legislature, do I understand that correctly?

21 Sanford Berland: Yes, by law, that's the procedure.

22 Commissioner Horwitz: Right. Do we ever get to see
23 what exactly the legislators file with the LEC, as opposed to

1 the final product that LEC sends to us? In other words, if a
2 legislature, legislator submits something to the LEC and then
3 there are changes to what the legislator gives to the LEC and
4 what we ultimately see, do we ever get to see what those changes
5 are?

6 Sanford Berland: The question is, do we get to see
7 the raw original submissions before any modifications or the
8 modification, a red line version?

9 Commissioner Horwitz: Yes, that's right, Judge
10 Berland.

11 Sanford Berland: I will defer to staff. I am not yet
12 familiar with that portion of a procedure.

13 Martin Levine: Commissioner Horwitz, this is Martin.
14 Whatever might occur prior to JCOPE, we post promptly on,
15 shortly after we receive them on June 30th every year. But I
16 wouldn't be privy to anything that happened before that.

17 Commissioner Horwitz: So if the LEC tells a
18 legislator to make a change in what the legislator gives to the
19 LEC, we don't get to see that, and the public doesn't get to
20 see that either, do they?

21 Martin Levine: I just, I don't think we're in a
22 position to speak to their process.

1 Commissioner Horwitz: Do we understand what the
2 public policy is behind that requirement in the law, not a
3 requirement, it's an exception to the law as I understand it.
4 What's the public policy behind the legislators sending a raw
5 FDS to an internal legislative body before the public gets to
6 see what the financial disclosure for the legislator is, what's
7 that public policy all about? I don't understand that.

8 Commissioner Weissman: Commissioner Horwitz, this is
9 Commissioner Weissman. I would strongly suggest you go to the
10 bill jacket and see if you can find it.

11 Commissioner Horwitz: Well, George, you're a great
12 student of the bill jackets for legislation. Do you know what
13 the public policy is?

14 Commissioner Weissman: I haven't looked for it, so I
15 can't answer the question.

16 Commissioner Horwitz: I don't need to belabor this.
17 I just was trying to get some information since we're talking
18 about FDS's today. I would like to hear from the staff at some
19 point what the public policy is behind this provision of the
20 FDS law. I think it would be helpful for the Commissioners to
21 know that. Thank you.

22 Sanford Berland: We would be happy to look into that
23 and report back to you at the next meeting.

1 Commissioner Horwitz: Great, thank you so much.

2 Commissioner Yates: Can I chime in with one brief
3 comment?

4 Chair Varlack: Yes, please. I'm sorry. I can't see
5 who's.

6 Martin Levine: Judge Yates.

7 Commissioner Yates: I just remind Commissioner
8 Horwitz that the LEC is equally divided between Democrats and
9 Republicans so that anyone from an opposing party to the, to
10 the filer would have free and open access to it, and I'm sure
11 would look at it carefully.

12 Commissioner Horwitz: Thanks, I mean, I appreciate
13 that Jim, and I'm sure you may have on the staff in the
14 legislature when this provision was written, so I'm anxious to
15 hear what the public policy is. I just, I just don't understand
16 why the public doesn't get to see, and I appreciate that, that
17 legislators are well intentioned and there's a attention to
18 party parity and the process. I just would like to understand
19 what the public policy is behind any legislators sending
20 something to an internal body before it is made public when the
21 rest of the people who work in the state have to file it on an
22 earlier date and don't have that provision, and again, I don't
23 need to belabor it, and I very much appreciate you know, your

1 insight, but I would like to hear from the staff about the
2 public policy. Thank you very much.

3 Sanford Berland: We'll look into it and we will
4 report back at the next meeting.

5 Chair Varlack: Thank you. Moving on to item four on
6 the agenda, which relates to a proposal relating to FDS filer
7 access information. This item has been requested to be added
8 to the agenda by Commissioner Lavine. Thank you. If you'll
9 recall this is something that we've discussed in previous
10 meetings and Commissioner Lavine graciously allowed us to table,
11 I think, at the last meeting to allow Commissioners more time
12 to review his proposal. So, Commissioner Lavine, I'll turn it
13 over to, you.

14 Commissioner Jacob: Madam Chair.

15 Commissioner Lavine: Thank you very much.

16 Commissioner Jacob: Madam Chair, this is
17 Commissioner Jacob. I was trying to comment on the dialog
18 between Commissioners Weissman and Horwitz with a simple
19 question. Can I do that now or shall I wait because I'm talking
20 about something before with a proposed, the resolution of JCOPE,
21 that you're about to get involved in and it's just a question
22 of Martin or the people who are the persons at JCOPE who monitor
23 the FDS filings and how it works at JCOPE.

1 Chair Varlack: Apologies that I didn't see your hand,
2 I'm a little visually challenged.

3 Commissioner Jacob: Well, I'm on the telephone, I'm
4 on the telephone, and it is often hard to get into the
5 discussion.

6 Chair Varlack: Please ask your question,
7 Commissioner.

8 Commissioner Jacob: Thank you very much. Martin, how
9 does it work at JCOPE? I know that, that from time to time,
10 Commissioners at JCOPE file their FDS's, staff reviews it
11 because even I have, from time to time, been called by staff
12 about my filing. And perhaps, once in the past I've amended it,
13 although I don't remember, but if a JCOPE commissioner files
14 an FDS, staff reviews it and staff finds some deficiency, calls
15 the Commissioner and the Commissioner amends it, is the
16 original filing by the Commissioner available to the public,
17 or is only the final available? How does it work here?

18 Martin Levine: The filings and their amended, and any
19 amendments that might follow, are both aware, excuse me,
20 available to the public. And should a legislator or their staff
21 file an amendment, it would be the same issue. The amended
22 filing as well as the original would be available.

23 Commissioner Jacob: Thank you for the information.

1 Martin Levine: Of course.

2 Commissioner Jacob: Thank you.

3 Chair Varlack: You're welcome, Commissioner Lavine.

4 Commissioner Lavine: Again, thank you very much,
5 Madam Chair. Let me emphasize in moving the proposal. The
6 current practice of the Commission renders the Commission an
7 outlier and it ought to be changed to conform with practice
8 that would obtain under FOIL. Moreover, one or more staff
9 members have access to this information. I believe it's
10 inappropriate that any information whatsoever be withheld from
11 the Commission. However, I do agree with Judge Braun and others
12 who have expressed the view that all filers should have the
13 benefit of this proposal. In moving the proposal, I want to
14 alert the Commissioners that the proposal as I am propounding
15 it today is retroactive. I move the proposal, Madam Chair.

16 Chair Varlack: Thank you, Commissioner Lavine. Is
17 there a second? Thank you, Commissioner Weissman.

18 Commissioner Yates: I'll second. OK.

19 Chair Varlack: OK. So Commissioners, the proposal is
20 behind your exhibit C. Is there any discussion? Yes.

21 Commissioner Fisher: Thank you, Chair. I'd to ask
22 Commissioner Lavine to clarify something he just said. What I
23 was going to say is that I'm prepared to support this resolution

1 if we can agree that it should apply only to requests for FDS
2 reports made after today. And if there's some sort of notice
3 given to FDS report requestors, that the fact of their request
4 may be disclosed to the filer because of this resolution. And
5 when we discussed this at an earlier meeting, I believe
6 Commissioner Lavine was in agreement with me on this. But it
7 sounds like when he says this would apply retroactively that
8 he no longer is. I think it's important that we give notice to
9 someone when they file, when they submit a request rather for
10 an FDS filing, that the person that is the filer could receive
11 information about their request. And I don't think we should
12 make it retroactive. And if that is your intention,
13 Commissioner Lavine, I would not support this, and I would vote
14 against it.

15 Commissioner Lavine: Madam Chair, if I may. I'm in
16 accord with Commissioner Fisher that our practice ought to be
17 that any individual making an inquiry with regard to a filing
18 ought to be notified, in very clear terms, that their inquiry
19 is subject to being divulged to the filer. However, I do not
20 agree with Commissioner Fisher with respect to restricting the
21 ambit prospectively only.

22 Commissioner Fisher: Okay, so I guess I, I
23 misunderstood. So the thing that's retroactive is the FDS, so
24 you can request FDS's, I don't understand. So, let's use an

1 example, let's say Jane Doe's filing that was made in April,
2 and let's say John Doe makes the request tomorrow for that
3 filing, for that filing, we're going to notify John Doe that
4 Jane may request information about his request? Go ahead,
5 Martin.

6 Martin Levine: So I think what Commissioner Lavine
7 is saying, and please correct me if I'm wrong, Commissioner,
8 is that requests for an FDS that were made in the past, the
9 filer could now, moving forward, ask if anybody had previously
10 requested their FDS even prior to the resolution, I think. Is
11 that right, Gary?

12 Commissioner Lavine: Mostly correct.

13 Commissioner Fisher: Okay, yeah. I don't think that
14 is what we should be doing because people that made requests
15 before today had no idea that information about their request
16 might be revealed for the filer. And I think they should be
17 given that notice at the time of the request, and therefore,
18 only requests after today should be subject to this new policy.
19 So I plan to vote against this because I don't think it's
20 reasonable to make it retroactive for requests prior to today.

21 Chair Varlack: Judge Newton.

22 Martin Levine: I think she's muted.

23 Chair Varlack: I think you're muted.

1 Monica Stamm: She's muted.

2 Commissioner Newton: Sorry. Good morning all. If I
3 may, I'd like to ask a couple of fundamental questions. One,
4 could we, someone please explain me the import of a resolution,
5 is that is it different from, it's not obviously a regulation,
6 it's not statutory so how are resolutions, what's the import
7 and impact of a resolution by JCOPE, is my first question. And
8 my second issue is one of concern about section three about
9 subpoenas and the limitations. I guess I would like to know how
10 does anyone think that that would work, and do we want it to
11 be something, whether this provision requires more work than
12 should be necessary if there is a law enforcement investigation.
13 So, those are two of my questions. And then my third question
14 is that, this resolution says that a filer may request from the
15 Commission regarding anyone who has requested the filer's
16 information. Yet some Commissioners suggested there will be
17 another automatic feature where any time someone's file is
18 requested, that filer would be notified. So, what is the
19 thinking of how this resolution would operate? Thank you.

20 Chair Varlack: Thank you, Judge Newton.

21 Commissioner Lavine: Well, may I, Madam Chair?

22 Chair Varlack: Yes.

1 Commissioner Lavine: First of all, your honor, you
2 recall that the New York City Charter provides that the city
3 conflict of interest board must take the initiative to notify
4 the filer if an inquiry is made. This proposal would not require
5 the Commission to take the initiative. The initiative would be
6 on the part of the filer to ask if the inquiry was made. With
7 respect to law enforcement, it's not the intent of the proposal
8 to interfere with these legitimate considerations that are
9 attendant to a criminal investigation, so this carve out will
10 provide that the right of filer to obtain the information will
11 be suspended during some course of the investigation, maybe to
12 the end of the investigation, unless the full Commission votes
13 otherwise.

14 Commissioner Newton: So, just a point of
15 clarification, Commissioner. You say that this resolution
16 permits a filer to ask JCOPE, hey, has anybody inquired about
17 my filing? I guess my feeling about that is how would any filer
18 know to ask that question? And if that's a reasonable response,
19 would we then open a floodgate of every filer just periodically
20 contacting JCOPE for them to interrupt their day to find out
21 if someone has filed for them. It seems awkward if we don't
22 first say that the triggering event should be the asking about
23 the filer's file and then notifying the filer, hey, this has

1 happened, you may want to ask some more questions. I guess I'm
2 just concerned about which comes first, the chicken or the egg.

3 Commissioner Lavine: It's certainly a very
4 legitimate concern. The object here is, in not requiring the
5 Commission to take the initiative to notify the filer, is to
6 bring the whole process into a realm of practicality, given we
7 have 30,000 filers. If a filer has some reason, or concern,
8 however, this change will permit the filer to take the
9 initiative to ascertain if the inquiry was made.

10 Commissioner Newton: Thank you.

11 Chair Varlack: General Counsel Stamm and Deputy
12 Counsel Levine, could you please speak to Judge Newton's first
13 question with respect to the import of it being a resolution?

14 Martin Levine: Yes, ma'am. I think the, I think the
15 point of the resolution is that it makes the Commission's
16 position memorialized, and I don't know that, legally, it has
17 any more strength or value than a motion, per se, but it also
18 documents the language clearly so that there's no confusion,
19 and it's been used by the Commission for different purposes
20 from time to time, but I think it has a clear distinction from
21 a regulation, which is an administrative process. This is
22 simply a memorialized motion.

1 Chair Varlack: I'd also ask and perhaps this has
2 happened before. Yeah, well, it looks like at that point.
3 Commissioner Horwitz, I see your hand raised.

4 Commissioner Newton: Thank you.

5 Commissioner Horwitz: Thank you, Madam Chair. I am
6 opposed to this resolution and I want to explain what my
7 concerns are with it, because I think that there are
8 institutional concerns and I think that, in a nutshell, this
9 resolution is completely contrary to JCOPE's mission and public
10 policy of ensuring integrity with public employees, and the
11 integrity of investigations and inquiries that we conduct.
12 Because it stands the process on its head. And what I mean by
13 that is that with an FDS filing, to the extent that a member
14 of the public, whether it's somebody who works in state
15 government who has concerns about a superior asking to see the
16 FDS, because that state employee believes that their superior
17 is engaged in outside activity, it isn't properly disclosed.
18 What this resolution does is it hand to the boss the name of
19 the person who's asked for his or her FDS, his address, it says
20 contact information, telephone number, address, so that the
21 boss knows exactly who it is that's asked for the FDS, can go
22 to that person's house, or call them on the phone, or send them
23 an email, and then who knows. It's off to the races of what
24 that boss does with the subordinate. And this turns that

1 process of protecting the public, whether it, again, it's
2 somebody who has concerns about a public official, whether
3 that's a member of the public generally, whether that's another
4 public officer, whether it's a member of the press. We've had
5 this discussion before, and this amendment does nothing to
6 protect a reporter, or the news organization's identity, from
7 disclosure to a possible target in an investigation. So, here's
8 a scenario. The U.S Attorney's office for the Southern District
9 is conducting a criminal investigation. Under this resolution,
10 we can say, if they ask us for the FDS, you may not tell the
11 filer that the U. S. Attorney's Office has sent us a subpoena
12 or asked for this information. However, as there often are,
13 there may be news stories about the investigation. Well, if
14 someone from the New York Post or the New York Daily News, the
15 New York Times, or the Albany Times Union, calls us up and says,
16 we understand that there's an investigation by the US Attorney
17 for the Southern District, and we'd like Legislator Jones' FDS
18 filing. Of course, that would be the one that is filed with
19 us and not to scratch that gets filed with LEC. But
20 nevertheless, we would then disclose to the target of the
21 investigation that the Albany Times Union is doing a story and
22 asked for your FDS. This stands the entire process on its head,
23 and to the extent that somehow the New York City Conflict of
24 Interest Board follows that, the process that's in encapsulated

1 in this resolution, that, that actually gives me great concern
2 because the COIB, while it does a lot of good things, the COIB
3 is the agency that gave Mayor DeBlasio a pass on the pay-to-
4 play investigations that everybody did and said it was okay for
5 him to raise the money that he did with the Campaign for One
6 New York. So I am not persuaded, Gary, that using the COIB as
7 precedent is good, is good policy. And again, I understand this
8 started because there were some, there was a thought that the
9 Commissioners on this Commission should be told when someone
10 requests their FDS, and now the resolution that we see before
11 is to expand it to everybody. That doesn't change the fact that
12 again, this tilts against our public policy and so that's why
13 I am going to oppose this. Thank you, Madam Chair.

14 Chair Varlack: Thank you, Commissioner Horwitz.
15 Judge Newton, I see your hand raised, and Judge Braun.

16 Commissioner Newton: So, my question is a simple
17 one. What is the current practice regarding financial
18 disclosure? Can anyone pick up the phone and call JCOPE and
19 say, I would like to see employee Jones' FDS, please let me see
20 it? Or does it have to be a showing as to who you are and why
21 you want to see it and the authority for you to see someone
22 else's filing? I know Monica has her hand up.

23 Monica Stamm: Sure, yes. Judge by, law, by law, the
24 financial disclosure statements are available on request. And

1 we have a process in our records access regulations, which the
2 Commission just voted to amend at the last meeting for how the
3 members of the public should do that. They can submit a written
4 request via email over our website, and then those are processed
5 and logged. But any...

6 Commissioner Newton: And the process.

7 Monica Stamm: ...there is no showing. no showing.

8 Commissioner Newton: Okay. That was my question. If
9 I'm curious, I can call and get your financial disclosure to
10 see what you got going on in your life. Okay, thank you. And
11 so so the question is, do we let that person know that
12 somebody's snooping around in your business? Thank you.

13 Monica Stamm: That's the law, yes.

14 Commissioner Newton: Can't argue with the law. Thank
15 you. Thank you.

16 Chair Varlack: Judge Braun, did you have your hand
17 raised? You're muted. Okay, thank you, General Counsel Stamm.

18 Monica Stamm: I'm sorry. Judge Braun, I can't hear
19 you. Is Judge Braun speaking?

20 Commissioner Braun: I just said I'm just listening.

21 Monica Stamm: Okay, so just two things, two things.
22 One I just wanted to clarify that and we will, we can certainly

1 report back on this at the next meeting, but I do believe that
2 the Legislative Ethics Commission gives us both the original
3 filing, and then any changes that are made afterwards are
4 handled as an amendment. And again, we can confirm that, but I
5 do believe, I just wanted to correct the record that that is
6 my understanding of how this works if there was any confusion
7 earlier.

8 Martin Levine: That's correct.

9 Monica Stamm: And then also just, Commissioner Lavine,
10 I just wanted to clarify, with respect to paragraph three of
11 your resolution, so that everyone understands. The exception
12 for subpoenas is only going to apply to what you characterize
13 as law enforcement subpoenas. So, just grand jury subpoenas.
14 It would not apply to civil subpoenas that are issued by other
15 investigative agencies who are conducting investigations that
16 may be relating to a state officer employee, or a private
17 business that is engaging in business with the state. So it
18 would only apply to, is it your position, it would only apply
19 to grand jury subpoenas when you say law enforcement?

20 Commissioner Lavine: So, Madam Chair, the intent is,
21 and I will amplify on General Counsel's observation. The object
22 is, if there's a criminal inquiry whence the subpoena emanates,
23 that would be subject to paragraph three.

1 Chair Varlack: Thank you. I see Commissioner Horwitz.

2 Commissioner Horwitz: So, Madam Chair, if I
3 understand then, if there was a request by an Inspector General,
4 let's say for the MTA or the Port Authority or the State
5 Inspector General, or the New York City Department of
6 investigation, this resolution, item three, the carve out for
7 law enforcement wouldn't apply to an inspector general's
8 investigation?

9 Commissioner Lavine: May I, Madam Chair? It's
10 contemplated, it's contemplated that within the ambit of law
11 enforcement, the Inspector General's activities would be
12 included.

13 Commissioner Horwitz: I mean, I think, I said that
14 I'm opposed to this, but for the sake, you know, of good order,
15 you know, law enforcement isn't actually a defined term, for
16 example, in Penal Law, and some of those agencies have law
17 enforcement responsibilities and they have extra
18 responsibilities that move beyond that. So, I, I think that,
19 to the extent if this passes, and I hope it doesn't, but if it
20 does there ought to be some clarification on what exactly law
21 enforcement means, so there isn't any confusion, as I said,
22 when, for example, who knows, the construction authority IG
23 calls up and asks for an FDS, that it's clear that's an agency
24 that's covered. Thank you.

1 Chair Varlack: Thanks, Commissioner Horwitz, Is
2 there any discussion before I call the question?

3 Commissioner Weissman: I have a question that I
4 believe should be directed at staff. This is Commissioner
5 Weissman. Would the request for contact information under
6 number two fall within the ambit of an unwarranted invasion of
7 privacy under the Freedom of Information Law?

8 Martin Levine: We'd have to, I personally would have
9 to do the research. I haven't, I don't know the FOIA exemptions
10 well enough to speak to that specific question, but we can...

11 Commissioner Weissman: Of all things that
12 Commissioner Horwitz raised, that's the one thing that struck
13 me as truly a concern, and maybe the language in paragraph
14 three that may need to be sharpened up to a certain extent. I
15 don't know if this is appropriate, but I'd request
16 Commissioners Lavine and Yates to withdraw their motion so we
17 can sort through some of the other legal issues that have been
18 made here today.

19 Chair Varlack: Commissioner Lavine, are you willing
20 to withdraw the motion at this time so that we can research
21 these additional issues and we can bring it back at the next
22 meeting?

23 Commissioner Lavine: Yes.

1 Chair Varlack: Thank you.

2 Commissioner Jacob: Madam Chair, this is
3 Commissioner Jacob. May I ask a question?

4 Chair Varlack: Absolutely.

5 Commissioner Jacob: I'd ask this of staff who handle
6 the requests that are raised from the public to access the FDS
7 filings, and this is based upon your experience. Do persons who
8 request FDS filings request that their names not be divulged,
9 request anonymity? Do they demand it? What is the experience
10 of the staff when these requests are made?

11 Sanford Berland: I think we'll have to survey staff
12 on intake and whether specific requests are made. The current
13 practice would not be to divulge the identity of the requestor.
14 So those who are sophisticated enough to understand current
15 practice would likely want the same thing on that protection
16 that's (inaudible). It may be that some individuals request the
17 need for it, but we'll have to survey staff to find that out.
18 I would add too we'll also look at the volume of the requests
19 as all as the point raised as to, if we're not going to be
20 informing filers who request, what kind of volume back of
21 standing requests, closure of requests, by the tens of
22 thousands of individuals who file FDS reporting.

23 Commissioner Yates: Madam Chair?

1 Chair Varlack: Yes.

2 Commissioner Yates: To the Chair. I made this
3 suggestion last time and I'll reiterate it. Instead of
4 reinventing the wheel, the exception should track FOIL. It
5 should cross-refer to Public Officers Law § 87, which has a
6 broad range of exceptions that would cover most of the things
7 that Commissioner Horwitz was concerned about and that
8 Commissioner Weissman expressed some concern about, including
9 invasions of privacy in ongoing law enforcement proceedings,
10 et cetera, et cetera. I think the simplest way to do this is
11 don't reinvent the wheel. Just look at whoever's doing the
12 redrafting, whether it's Commissioner Lavine or staff on behalf
13 of him, just look at 87 in the Public Officers Law and cross-
14 refer to it.

15 Chair Varlack: Thank you.

16 Commissioner Jacob: Madam Chair. Commissioner Jacob
17 here. I'm on the telephone and there's a lot of noise. I, maybe
18 it's because people are not muted, but it's difficult to hear.
19 I don't know whether others are having the same experience who
20 are on the phone, but I find it very difficult to hear what is
21 happening.

22 Chair Varlack: I was actually just, I was actually
23 just going to address it. I believe that someone who is on the

1 phone is not muted, and so we would absolutely ask that if
2 you're not, if you haven't been called upon, if you can just
3 mute your phone. It actually has gotten quiet now, so hopefully
4 (laughter)..

5 Commissioner Jacob: So just one, just one final
6 question, just to get the facts out. I don't know whether this
7 has been stated before, but what is the volume of requests to
8 access FDS filings? How many of these come in a month, a year?
9 What are we dealing with here in terms of volume? Perhaps staff
10 can look at that as well and get back to us.

11 Sanford Berland: We'll look at the question of
12 volume.

13 Chair Varlack: And I think, Judge Berland, a question
14 of capacity to address these additional, these additional
15 requests that potentially would come in. General Counsel Stamm?

16 Monica Stamm: I just wanted to point out that in the
17 monthly operations report, the very last page, we've been
18 reporting on this on a monthly basis and the year-to-date. But
19 my understanding is that now that they've just been filed, so
20 that this is obviously the last month's report, but when they're
21 filed, we get a huge uptick in requests. So, Walt and the staff
22 that process FDS's are dealing with those now. So these numbers
23 will take a big leap for the month of May. And then they also

1 will take a big leap in the month of November when we get the
2 academic filings. So, this is always included in the monthly
3 operations report, so we will have it at the next meeting. You
4 can see what the May numbers look like.

5 Chair Varlack: Moving on to our next item on the
6 agenda. It relates to the Governor's Executive Orders 202.6 and
7 202.7. Before we begin conversation on this item, Commissioner
8 Lavine, you asked that it be added to the agenda. I would ask
9 that you consider moving this item to Executive Session. My
10 understanding is that this proposal relates to the potential
11 issuance of subpoenas, and my general understanding of how the
12 Commission is operated, we don't generally have those
13 conversations in Public Session.

14 Commissioner Lavine: So, thank you, Madam Chair. I
15 have asserted before, and maintain the proposition at this
16 meeting, that the request is for an informational subpoena and
17 that the discussion should be in the open session.

18 Chair Varlack: Please proceed.

19 Commissioner Horwitz: May I have a point of order,
20 please?

21 Chair Varlack: Yes, Commissioner Horwitz.

22 Commissioner Horwitz: Thank you. I'd like somebody
23 on the staff to explain what the difference is between a quote,

1 unquote informational subpoena and an investigative subpoena.
2 And what the support is in the Public Officers Law for the
3 distinction, because I am very confused and highly skeptical
4 that there is something called a quote, unquote, informational
5 subpoena. I'm just not familiar with that concept with an
6 investigatory body like ourselves. Thank you.

7 Chair Varlack: Thank you, Commissioner Horwitz.
8 General Counsel Stamm or Deputy General Counsel Levine, if
9 either of you could speak to that point.

10 Monica Stamm: To Commissioner Horwitz's point,
11 there is no distinction between one type of subpoena and another.
12 We'd be issuing a subpoena pursuant to our authority under
13 94(17)(c) which, as I think most of the Commissioners are
14 familiar, but it says that the Commission shall have the power
15 and duty to, in relevant part, conduct any investigation
16 necessary to carry out the provisions of this section. Pursuant
17 to this power and duty, the Commission may administer oaths or
18 affirmations, subpoena witnesses, compel their attendance and
19 require the production of any books or records, which it may
20 deem relevant or material. So that would be the power under
21 which we would access or exercise the authority to issue a
22 subpoena. And obviously, if we were challenged on the subpoena,
23 we would have to establish that we had a good faith basis to
24 issue the subpoena. But there is no distinction between an

1 informational subpoena and any other subpoena that we would
2 issue.

3 Chair Varlack: Thanks, General Counsel Stamm.

4 Commissioner Horwitz: I guess, Madam Chair, I support
5 your suggestion that this issue be taken up by the Commission
6 but that it be done consistent with the law, which requires a
7 discussion like this to be held in Executive Session, and I am
8 fearful that any departure from that process will create a
9 dangerous precedent for us to begin to have discussions in the
10 public session for what is rightfully to be conducted and
11 lawfully to be conducted in the Executive Session. So I am
12 really unsure about the legal basis for our proceeding at this
13 point in the Public Session with this, with this application.

14 Chair Varlack: Thank you, Commissioner Horwitz, and
15 I certainly agree, especially based upon the clarification that
16 General Counsel Stamm has just made, and I would move that we
17 move this item to discussion in today's Executive Session of
18 the meeting. Is there a second?

19 Commissioner Horwitz: I would second that.

20 Chair Varlack: Thank you. Is there any further
21 discussion on this point, on this motion? All in favor.

22 Martin Levine: Okay. In Albany, Chair Varlack and
23 Commissioner Fisher. I see Commissioner Horwitz, McNamara,

1 Judge Newton, Commissioner Dering. That looks like it. I will
2 call the remainder. Commissioner, or Judge Braun?

3 Sanford Berland: You're muted, Judge Braun.

4 Commissioner Braun: No. I had with the mute button,
5 but no.

6 Martin Levine: Okay. Commissioner Cohen?

7 Commissioner Cohen: Yes.

8 Martin Levine: Commissioner Jacob?

9 Commissioner Jacob: Can you repeat the motion again?
10 I had trouble hearing on the phone.

11 Martin Levine: Yes, Commissioner. The motion is to
12 move the discussion of the item to Executive Session.

13 Commissioner Jacob: The answer is no.

14 Martin Levine: Thank you. Commissioner Lavine?

15 Commissioner Lavine: No.

16 Martin Levine: Judge McCarthy. I believe we lost the
17 judge. Commissioner McNamara, I saw your hand. Judge Newton, I
18 saw your hand. Commissioner Weissman?

19 Commissioner Weissman: No.

20 Martin Levine: Thank you. Judge Yates?

21 Commissioner Yates: No.

1 Martin Levine: Thank you, and Chair, it gives me
2 1,2,3,4,5,6,7 in favor. Motion fails, ma'am.

3 Chair Varlack: Okay. Commissioner Lavine, please
4 proceed.

5 Commissioner Lavine: Thank you, Madam Chair. With
6 the legislature now considering fundamental changes in ethics
7 administration, out of the hub of Executive Order 202.7 spoke
8 some very important implications for ethics administration.
9 First of all is the question, what constitutes status as a
10 public officer? I would note in the Percoco case, there was
11 extensive attention paid by the court to the question of when
12 Mr. Percoco was functioning as a public officer and when he was
13 not for purposes of federal law. We have in 202.7, since
14 rescinded by joint resolution of the legislature, a variation
15 on the theme. Who constitutes, what circumstances and
16 characteristics render an individual who is a supposed
17 volunteer, as a public officer or as not a public officer? Two,
18 there's an opinion of the Attorney General, which requires that
19 volunteers be supervised by state employees. But when the
20 Executive Chamber made its FOIL response, it stated it had no
21 relevant records. So, the response by the records access
22 officer in the Chamber is either fabrication, which itself is
23 unethical, or it indicates nonfeasance on the part of the
24 administration. Likely, one or more of the senior level

1 volunteers are not volunteers at all. They are being paid, or
2 they were paid, before the rescission of the order, by their
3 employers, employers who may have substantial business with the
4 state. Plausibly among the volunteers were those who were
5 politically involved, including soliciting campaign
6 contributions. Now, participating in politics is their
7 prerogative, so long as they do not exploit the de facto public
8 officer status. As I read the executive order, Madam Chair, the
9 volunteers had and continued to have the benefit of substantial
10 exemption from compliance with the Public Officers Law but
11 appeared to have and continue to have the benefit of Public
12 Officer's Law section 17 and 19, which provides legal fees in
13 civil and criminal proceedings, which, given current
14 circumstances, may turn out to be a very important
15 consideration. The one aspect of ethical compliance which is
16 explicitly addressed by the former executive order is a
17 conflict of interest protocol. However, so far as I'm aware,
18 the Executive Chamber has refused and continues to refuse to
19 disclose how this compliance has been enforced, if it has been
20 enforced at all. Volunteers are not subject, as I understand
21 it, to post-volunteering employment restrictions, which raises
22 again significant ethical questions. Indeed, there are many
23 questions posed by Executive Order 202.7 and so far, there've
24 been very few answers. With the legislature undertaking its

1 review, I believe it's incumbent upon us to participate in that
2 deliberation of what reform should be made in ethics
3 administration, and we cannot offer an informed viewpoint in
4 the deliberation unless we have information about how this
5 order was administered. Under the Executive Law, I will
6 reiterate, it is our responsibility to advise with respect to
7 ethics administration in this state. I believe it's important
8 that we have this information so that we can meaningfully
9 contribute to that discussion and I move the proposal.

10 Chair Varlack: Commissioner Lavine, can you just be
11 very clear so that we all know what we're considering, exactly
12 what your proposal is?

13 Commissioner Lavine: Yes, Madam Chair. I am
14 proposing, and we can be polite about it, of course, that we
15 ask the Executive Chamber for: one, a list of individuals who
16 are within the ambit of the executive orders, two, who in the
17 Executive Chamber administered these Executive Orders and
18 compliance with the opinion of the Attorney General. And so
19 with respect to supervision of so-called volunteers, a list of
20 persons who are literally volunteers or were literally
21 volunteers within the ambit of the executive order and a list
22 of those were considered volunteers but who are actually being
23 paid by their employers. Any recusals with respect to the
24 individuals identified. Any instances in which gifts from

1 interested sources were given to individuals identified. And
2 lastly, any vendor which did business with the state under
3 emergency provisions which exempted them from regular
4 procurement process if the value of the contract is one million
5 dollars or more.

6 Chair Varlack: Thank you, Commissioner Lavine. Is
7 there a second?

8 Commissioner Horwitz: I'm not seconding. I have a
9 question about the language. We talked a few minutes ago about
10 what kind of subpoena this is, this amendment, this motion is
11 calling for, I think, that needs to be in the motion. I don't,
12 we need to know whether this is investigative subpoena, this
13 is an administrative subpoena. Is this subpoena being issued
14 pursuant to section 17(c) or some other part of the law? I
15 think this motion needs to have that degree of specificity in
16 it, Madam Chair.

17 Chair Varlack: Commissioner Lavine?

18 Commissioner Lavine: Yes. Thank you, Commissioner
19 Horwitz, for your observation. It is certainly not
20 unprecedented in administrative agencies to issue subpoenas to
21 glean information for the purposes of establishing policy or
22 advising on policy. The purpose of this subpoena is not
23 investigatory. It is to glean information so that the

1 Commission may make an informed contribution to the discussion
2 about ethics reform in the state.

3 Chair Varlack: Thank you. Is there a second? Okay,
4 Commissioner Weissman, thank you. Is there any additional
5 discussion? Commissioner Fisher.

6 Commissioner Fisher: I plan to vote against this.
7 As someone who believes in limited government, this is a great
8 example of overreach. This Commission can express its opinion
9 and ask the legislature to look into an executive order and
10 rescind it. There's investigative journalists that can
11 (inaudible), but this has nothing to do with any of our powers
12 and duties, and therefore, I'm going to vote against it.

13 Chair Varlack: Is there any, Commissioner, Judge
14 Yates?

15 Commissioner Yates: Thank you. This has been ongoing
16 for several months and the genesis of this, for those who are
17 not familiar with the history is the following: the Executive
18 Law allows the Governor, during an emergency or a disaster, to
19 go ahead and suspend certain laws. He can do that on certain
20 conditions and that is, it has to be reasonably necessary to
21 aid the disaster effort and it needs to, any suspension needs
22 to provide for the minimum deviation from the requirements of
23 existing statutes which have been suspended. If you look at

1 202, the executive orders, both 202.6 and 202.7, they say that
2 ethics laws, disclosure and conflicts of interest laws, Public
3 Officers Law 73 and 74 are suspended with regard to anyone
4 who's a low paid, a volunteer or a low paid person. We've asked
5 the question repeatedly, this might be the fourth month in row
6 when I've asked the question, and that is, suppose somebody is
7 invested with the authority of a state officer or a public
8 officer to wield great power during this emergency situation
9 and that person acts in conflict, for instance, awarding a
10 contract to a family member or to a, as a political favor. Is
11 there no way that we can look at it? So, the simple question
12 that Gary and I and a couple of other Commissioners have asked
13 over and over and over again, is if there's a conflict, can we,
14 an ethical violation, are we empowered to investigate it or has
15 the Governor's Executive Order divested us of any authority to
16 look into the conflict to examine a misdeed or corruption? In
17 order to keep it simple and informal, on a couple of occasions,
18 Commissioner Lavine asked staff, would you please reach out to
19 the second floor, to the Governor's office, and find out what
20 the scope of the impact of this executive order is. How many
21 people are affected and what powers do they have, just so we
22 know who's out there and whether or not they're covered. Now,
23 at one point or another, in one of the responses that we
24 received, we were told that the ethics laws don't apply because

1 oh, they're not state officers, they're not public officers if
2 they're volunteers. Well, that's clearly wrong. Commissioner
3 Lavine was talking about an Attorney General's opinion. You can
4 actually just look at the Public Officers Law, the definitions
5 in section two and thereafter, and then anyone who is invested
6 with the authority of the state is, by the governor and
7 appointed and empowered to perform certain functions, is a
8 public officer. You don't become free of ethics laws just
9 because you say, oh, you know what, I'll give myself a contract,
10 but don't pay me a salary. It doesn't work that way. So, the
11 question that we've been trying to get to for the longest time
12 is, do we have the authority, as the JCOPE, to look into and
13 hear complaints about conflict of interest or misdeeds or
14 corruption just because somebody has popped in and said, oh,
15 I'm acting on behalf of the governor, but by the way, I'm not
16 being paid? And that's what this is all derived at. The response
17 that our staff reportedly, that our staff got when they reached
18 out to the Governor's Counsel or Governor's, the second floor,
19 was, I'm being polite, was basically none of your business. So
20 the thrust and the point of this subpoena is to find out what
21 the scope of our authority is, period. And what the impact of
22 the suspension is, period. That's not an investigative matter.
23 We're not looking into anybody, any one particular case. We're
24 asking an administrative structural question and that is, are

1 the rules suspended for people who are empowered by COVID
2 because of 202? Now, the last thing that I'll say, I've gone
3 on and I appreciate you giving me the time to say this, is, the
4 way the Executive Law works is that a suspension by the governor
5 during an emergency is in effect, unless by resolution, the
6 legislature withdraws that power. So, the question that
7 Commissioner Lavine's motion puts in the public forum is an
8 essential and vital question, and that is, is this, has JCOPE
9 been divested of power to look into complaints about corruption,
10 and if so, shouldn't the legislature know that so that they can
11 take the power that they have by resolution to limit or adjust
12 that exemption? Thank you.

13 Chair Varlack: Okay. We've got a couple of hands.

14 Sanfrod Berland: Yeah, let me just say in response
15 to that, that absolutely, we have the authority to look into
16 complaints. I don't, I don't think that there's any question
17 about that. The other side of it is whether we have the
18 authority and the resources to go off in a different direction
19 seeking information, essentially, if I understood correctly,
20 at least partly for educational purposes, so that we could
21 learn whether there's some sort of issue that we might be able
22 to address through educational needs, through some of the
23 processes we use there, to inform state actors of what their

1 ethical responsibilities are. But those are very different
2 courses of action.

3 Commissioner Yates: I'm sorry. I have to jump back
4 in. I couldn't disagree with you more. The plain language of
5 the executive order says that section 74 is suspended for people
6 who are covered by that order, period. If section 74 is
7 suspended, then with all deference to, I would like to see a
8 written opinion either from counsel, or from the second floor
9 explaining to me, why being, why a suspension of section 74 of
10 the Public Officer's Law means we still have the power to
11 investigate. Thank you.

12 Chair Varlack: Thank you, Judge Yates. It's
13 Commissioner Horwitz, then Commissioner Fisher, and then Judge
14 Braun.

15 Commissioner Horwitz: Thank you, Madam Chair. For a
16 group of Commissioners that is committed to the rule of law, I
17 am highly disturbed by the deviance from what the law requires
18 of us. The issue is not whether the chamber gave us an obnoxious
19 response to an informational request. That is not what this
20 issue is. This issue right now is whether this Commission has
21 the legal authority under Executive Law 94 to issue this
22 subpoena. I am not passing judgment on whether or not it was
23 obnoxious for the chamber to blow us off, if that's what they
24 did. We are not, our authority is defined in Executive Law for

1 subpoenas. In section 13(a) under investigations and in section
2 17(c), we can issue subpoenas to conduct any investigation
3 necessary to carry out the provisions of Executive Law 94,
4 section 17. There's nothing in the law that gives us plenary
5 authority to issue an administrative subpoena in the way that
6 Gary said that we have the authority. And I appreciate what Jim
7 Yates is trying to do, which he's trying to, he's trying to
8 explain that, look, we have good reason for asking for this.
9 Gosh, we asked for this information and the chamber blew us off
10 and we really should get it. Well, that may be, but we should
11 do that with the legal authority that we have under Executive
12 Law 94 to conduct an investigation and issue a subpoena, which
13 we are authorized to do under Executive Law 94, mind you, in
14 an Executive Session. And so again, I come back to what I said
15 at the beginning, which is, for a group of people who honestly
16 are committed to the rule of law, this is an application that
17 deviates from that. Notwithstanding, whatever we feel the
18 chamber did in terms of responding to an information request.
19 At the end of the day, the legislature and the executive branch
20 created Executive Law 94, and we're stuck with it, whether we
21 like it or not. And we should follow that rule. So, I'm going
22 to vote against this for that reason, because I don't believe
23 that the way that this amendment has been proposed, again, it's
24 not going to the substance of the amendment, it's going to the

1 process. The process does not have legal basis. If this
2 amendment was brought up in the executive session, we would not
3 be, I would not be making these points, but because, because a
4 majority of Commissioners decided to proceed in the Public
5 Session, this amendment is without authority, and if it's
6 agreed to, it's my strong view that this is contrary to the
7 law, this amendment, if it passes, will be contrary to the law
8 and will be without legal basis in the law. Thank you, Madam
9 Chair.

10 Chair Varlack: Commissioner Fisher.

11 Commissioner Fisher: Madam Chair, with all due
12 respect to my friend Commissioner Yates, I wanted to correct
13 the record. At least as far as I know, the staff has not told
14 us that volunteers are not subject to our jurisdiction, and in
15 fact, they've told us the opposite, that if there's a person
16 volunteering, let's say at the New York State Department of
17 health, who's in a policy making position, it's the
18 responsibility of that department when they submit their list
19 of their people who are subject to FDS to include that person,
20 regardless of the fact that they don't make any money. I
21 requested a list of the Department of Health employees and
22 there's right around 500 people on it. Many are above a limit,
23 a salary limit. Others, though, are below the limit, but are
24 named because their positions as policy makers, and my

1 understanding, and I'll ask General Counsel Stamm to confirm
2 this, is that volunteers who are in policy making positions
3 need to be on that list of people that are subject to our
4 jurisdiction and must file financial disclosure.

5 Chair Varlack: Okay, so we do have a list of
6 Commissioners that need to speak, so I'm going to ask Judge
7 Braun and then Judge Newton to speak, and then General Counsel
8 Stamm, I will ask if you can respond to Commissioner Fisher.
9 Judge Braun?

10 Commissioner Braun: Thank you. Directed to
11 Commissioner Lavine, could you restate the portion of your
12 resolution motion that relates to recusal and elaborate for all
13 of us on the basis for your including that?

14 Commissioner Lavine: Yes, your honor. 202.7 has an
15 allusion, it's somewhat cryptic, I'll characterize it, to
16 recusals involving volunteers. But the order, as I interpret
17 it, does not delineate or enumerate a process by which these
18 recusals will be made, who monitors compliance with a recusal.
19 And the Executive Chamber won't divulge this information either.

20 Chair Varlack: Thank you, Commissioner Lavine. Judge
21 Newton?

22 Commissioner Newton: Yes. I have several questions,
23 and I appreciate the various positions and the backgrounds, but

1 right at this moment, I have one specific question, and may
2 want to tag on to what Judge Yates said about in writing an
3 opinion from staff to clarify. I think I've gleaned an
4 understanding that the relevant statute says that we can issue
5 a subpoena, and that it doesn't make any, it doesn't
6 differentiate between the type of subpoena. Doesn't say there's
7 an informal or formal, it just says subpoena, and my question
8 is that it is attending to the notion that the subpoena should
9 be issued when there is an investigation. And I guess as still
10 the newbie on the Commission, a new member, whether or not the
11 kind of subpoena with the focus offered by Judge Yates and
12 Judge Lavine is sufficient to call it an investigation. So, my
13 question is, do we have to have an investigation voted on in
14 order to issue the subpoena? And that is strictly a legal
15 question in my mind, and I think it's important to have the
16 answer to that, notwithstanding the very strong feelings that
17 people have about whether this matter in general should be
18 looked into, whether we have the legal authority. Is this an
19 investigation or are we opening an investigation? Is this a
20 subpoena? Would our subpoena withstand, have the specificity
21 that's necessary from a legal point of view and are we
22 considered just sort of, we're interested, and we want to learn
23 a lot so we can do our job better? So those are legal questions,

1 I think, that we need to at least consider having answered
2 before we complete this vote. Thank you.

3 Chair Varlack: Thank you, Judge Newton. General
4 Counsel Stamm, there's been several issues raised, including
5 the communications with the chamber. I'd ask you to comment.
6 We can't hear you.

7 Monica Stamm: Sorry, so just to clarify, despite the
8 fact that the Commission has discussed this multiple times in
9 the Public Session, there haven't been multiple communications
10 with the chamber about this issue because many of the
11 discussions in the Public Session have resulted in a vote that
12 didn't carry. So, I don't remember the specifics at this point
13 in time, but early on when this issue was first raised by
14 Commissioner Lavine he asked for information similar to what
15 he wants to request now by subpoena, and the direction I
16 received from former Chair Rozen at that time was, well, contact
17 the chamber and find out whether or not they have a process but
18 not going into all the specifics of the questions that have
19 been raised by Commissioner Lavine now. I had a discussion with
20 the chamber at that point in time and they responded that if
21 there were specific allegations relating to any individual
22 violating the Public Officers Law, that they would cooperate
23 with that request, but with respect to other requests, what I'm
24 going to characterize as informational, based on what, how

1 Commissioner Lavine has made this request, they asked what the
2 Commission's authority is to make that request, and again, I
3 reported that back to Commission. There's been multiple
4 discussions, but we never got back to the chamber because votes
5 to do so never carried, and so we never responded with our
6 legal authority for making such a request, whether orally, in
7 writing, or by subpoena. And, as Judge Yates has said, we have
8 discussed multiple times, whether or not there's anything in
9 the executive order that would prevent us from conducting an
10 investigation, or whether or not the executive order would just
11 give someone a potential defense if we were to conduct an
12 investigation. So, that question has been discussed, and I
13 understand Judge Yates's position. I don't see anything in the
14 executive order that precludes us from conducting an
15 investigation, but I think as Judge Newton said, and also Judge
16 Yates, this should be addressed by legal staff, could be
17 addressed by legal staff. Again, that should be done in
18 Executive Session if we're going to talk about our legal
19 authority, legal challenges to our legal authority. We
20 currently have two ongoing civil litigations relating to how
21 we've exercised our subpoena authority, and so this should be
22 discussed in Executive Session. As to the issue with respect
23 to volunteers, and Commissioner Yates and I have discussed this
24 also in the Public Session multiple times, we have precedent

1 that makes clear that in some circumstances, volunteers will
2 be subject to the Public Officers Law, and there's criteria for
3 that. Same for certain independent contractors, may be subject
4 to the Public Officer's Law if they meet certain criteria. Not
5 all volunteers and not all independent contractors; it depends
6 on the authorities and the powers and duties that they're
7 exercising. So then, to Commissioner Fisher's question, which
8 relates to whether or not an individual has to file a financial
9 disclosure statement. It turns on whether or not the appointing
10 authority has determined that that person is a policy maker and
11 that, by law, is a determination of the approving authority.
12 That's set forth in Public Officers Law 73-a. So, if the
13 appointing authority determines that the individual is a policy
14 maker, they are required to identify that person to us, and we
15 add them to our system, and they are required to file an FDS.
16 In addition, obviously, individuals who make over a certain
17 salary also have to file. I think I've answered many of the
18 questions, but I'm not sure if I answered all of them, and I'm
19 happy to answer more.

20 Commissioner Yates: Can I, can I proceed with a
21 question then, or with, actually three or four points that have
22 been raised? Thank you, Monica, for some of the clarification.
23 I couldn't agree with you more when you say that in the past,
24 the law and practice has been that, even if you're a volunteer,

1 the ethics law supplied to you. I agree with that and apparently
2 you agree with that. The concern here is that the executive
3 order put out by the governor says, oh, by the way, because of
4 the emergency, I'm suspending that rule. So, the issue is not
5 whether or not a volunteer is covered. The issue is whether or
6 not the governor has overbroadly, under Executive Law 29(a),
7 because it's not necessary to handle the emergency and it's not
8 a minimum deviation, whether or not he's suspended the law and
9 the practice, which is that the ethics rules do apply. That's
10 number one. Number two, in the answer that you were just
11 providing, which was very helpful, people have conflated and
12 confused section 73 with 74. 73 is the requirement to file a
13 financial disclosure form, and it's true that the employers
14 can, I think Commissioner Fisher pointed this out, and you did
15 as well, Monica, that under 73, that an employer can designate
16 someone as a policy maker, and we have a list for those people,
17 but that only applies to financial disclosures. My concern from
18 the beginning has never been about financial disclosures from
19 volunteers during the pandemic. My concern has always been
20 about conflicts. Whether or not there's corruption, self-
21 dealing, whether or not people are wielding power in an
22 unethical way merely because they're volunteers, and the
23 governor has said, I'm suspending that law. That's number two.
24 Number three, I've heard from staff, conflicting responses here

1 so far, on the core question, which Commissioner, I think it
2 was Commissioner Fisher raised, and that is whether or not,
3 today, we may investigate a conflict because I think I couldn't
4 tell because it's a phone number and not an image or whatever,
5 but I think I heard Executive Director Berland say, oh, clearly
6 the laws, the ethics laws are not suspended with regard to the
7 volunteers. Well, I don't see that and I agree with everybody,
8 I think, Judge Newton and everyone else, who said, yes, we
9 should get that in writing, either from the second floor, or
10 from staff itself because if that's the rule, and we're not
11 disempowered by the Governor's Executive Order, then I'm happy.
12 And I would, and I would just put aside this whole concern. The
13 problem is, I don't believe that's the rule and I don't read
14 it that way and I hear conflicting answers from different people
15 so I would like to have clarity on that issue. And then, finally,
16 with regard to the last point that Monica, Monica, I hope you
17 don't mind me calling you Monica throughout, it's, we're
18 friends so I do that, okay, Counsel Stamm has raised, with
19 regard to the last point, you raise an excellent point that
20 gives me pause about the prior vote. And that is, I voted to
21 have this discussion in public because I thought we were talking
22 about the scope and power and administrative structure of the
23 agency and not about any particular investigation. But you do
24 raise a good point and that is, if you think that a memo and a

1 legal discussion is going to rely upon advice of counsel to the
2 Commissioners, and we're going to have an internal legal
3 decision based on that, then I do agree with you, Monica, that
4 that particular discussion should be in Executive Session.

5 Sanford Berland: Let me just clarify, Judge Yates.
6 What I was saying was we clearly have the authority to
7 investigate in response to complaints. The broader question was
8 whether we'd have the resources to engage in a broader pursuit,
9 and that's something that we really need to look at. I was, I
10 was not reflecting on the question of whether or not the
11 Governor had the power, through executive order, to supersede
12 our jurisdiction under section 74.

13 Commissioner Yates: Well, if some empowered public
14 official has gone ahead and done something wrong, either
15 politically or ethically, and you're telling me, and there's
16 consensus here, that we can go and pursue that, then I'm happy.

17 Chair Varlack: So.

18 Commissioner Jacob: Madam Chair, Madam Chair.

19 Chair Varlack: Yes.

20 Commissioner Jacob: This is Commissioner Jacob. Just
21 wanted to make one point when you're prepared to recognize.

22 Chair Varlack: Please go ahead, Commissioner Jacob.

1 Commissioner Jacob: I respectfully submit that
2 there's been a serious misreading of section 17. Commissioner
3 Horwitz has advanced, at several meetings, the notion, and
4 staff has as well, that the only subpoenas we can issue are
5 investigative subpoenas. This is not literally what section 17
6 says. Section 17, if I may, in addition to any other powers and
7 duties specified by law, the Commission shall have the power
8 and duty to promulgate rules. That is 17(a). And 17(c) says,
9 to conduct any investigation necessary to carry out the
10 provisions of this section, not of the entire chapter. In other
11 words, what section 17 seems to be designed to do is empower
12 the Commission to issue subpoenas so it is in a position to
13 promulgate rules. That's what 17 says, and it's just being read
14 very broadly, and I believe, I submit, incorrectly. So the
15 notion, and I said this the first time this subject came up,
16 having served at other agencies, albeit federal, we conducted
17 studies, we promulgated rules and regs, and we issued subpoenas
18 to collect the information so we could intelligently do that.
19 And that's what 17 seems to be about. We promulgate rules in
20 the lobbying area, and if we need information, we're empowered
21 to subpoena that information. That's an informational subpoena.
22 Has nothing to do with investigations. And the notion that we
23 have no authority to issue informational subpoenas is clearly
24 contradicted by section 17. Section 13, in our investigations,

1 and 13 speaks about a subpoena plan, those are investigations.
2 17 is redundant if it means that. We already have the power
3 issues subpoenas to do investigations, but this gives us the
4 power to do studies if we need them, to assist the legislature
5 to legislate, to assist ourselves to regulate through rules and
6 regulations. So it clearly says, conduct any investigation
7 necessary to carry out the provisions of this section, meaning
8 section 17. It doesn't mean section 13 or 14. So, I again submit,
9 as I did the very first discussion, that every agency has the
10 authority to issue informational subpoenas, because agencies
11 regulate, they promulgate rules, they promulgate regulations
12 for comment. They haven't got the power to get the information
13 and it's all out there, they can't carry out their work, and
14 that's what I believe 17 recommends. So, 17 says, so I, what
15 Commissioner Lavine is talking about, an informational subpoena,
16 is not something alien and unheard of, not done. It's done
17 everywhere all the time. I was at an agency of the federal
18 government for years, we did it all the time. So, I again submit
19 that 17 should be read as it is written, and informational
20 subpoenas make a lot of sense, and the legislature thought so
21 and put it into 17. Thank you.

22 Commissioner Horwitz: Madam Chair, I feel compelled
23 to respond to what Commissioner Jacob just said. I mean, look,
24 let's come to the bottom line. May I finish please, because

1 nobody interrupted you and I want to just have the courtesy of
2 being able to respond, Marvin, as you would give the courtesy
3 to everybody. So I'll just proceed then.

4 Chair Varlack: Hold on.

5 Commissioner Jacob: I'm asking you to identify
6 yourself.

7 Chair Varlack: We have two Commissioners speaking,
8 which is going to be difficult for purposes of making sure we
9 maintain order. Commissioner Jacob, I thought.

10 Commissioner Jacob: You're asking people to identify
11 themselves. I'm on the phone. People talk. I don't know who's
12 talking. I was merely asking the person who was talking to
13 please identify himself or for herself. Is that too much?

14 Chair Varlack: No problem. No, no, no. Not at all.
15 I was actually going to acknowledge Commissioner Horwitz for
16 that very purpose. So, Commissioner Horwitz, please proceed.

17 Commissioner Horwitz: Thank you, Madam Chair. So as
18 much as Marvin would like to still be at the SEC from 40 years
19 ago, JCOPE's not the SEC. It has a completely different set of
20 enabling laws that give it a whole broad range of authority
21 that has zero to do with what we do. Now, looking at section
22 17, the fact is, that in 17(c), there's a word, and its
23 investigation. And as much as you want to substitute your

1 judgement for the judgment of the professional staff, our
2 general counsel, you can't get away from the fact that the
3 statute has the word investigation in it. Now, to the extent
4 that you say that we have the authority under 17 to promulgate
5 rules on outside activity and limitations on the receipt of
6 gifts and honoraria by persons subject to our jurisdiction, the
7 way that this motion has been framed by its author, and by a
8 number of people who have talked about the conduct of the
9 chamber, and trying to find out what the chamber did with
10 volunteers, and whether volunteers were in compliance with what
11 would otherwise be their requirements, that all smacks of
12 something that has nothing to do with our issuing a new rule.
13 I mean, as I understand it from the author, the purpose of this
14 is to gather information. We're not about to issue a new rule
15 because again, Marvin, going to the plain language of the
16 statute, it says promulgate rules concerning restrictions on
17 outside activities and limitations on the receipt of gifts and
18 honoraria by persons subject to its jurisdiction. That's what,
19 if you're going to limit this, 17, to that purpose, well, I
20 haven't heard anything about rules. I've heard questions about
21 conduct which go to the kind of investigative activity that we
22 engage in to find out whether there have been violations of the
23 law. So, again, that's my basis for believing in response to
24 you, Marvin, respectfully, that this motion is contrary to the

1 law, is not authorized by our law, not the law that enables the
2 SEC to do what it does, but our law, and so I don't think the
3 motion is legally appropriate and I think that if the Commission
4 votes in favor of issuing this subpoena, it will be a subpoena
5 outside of the law. Thank you, and thank you, Marvin, for giving
6 me an opportunity to respond and I'm sorry that I didn't
7 identify myself. I forgot that you're on the phone and it's
8 hard to figure that out, although you and I have known each
9 other for such a long time, I guess I just assumed you'd
10 recognize my voice but anyway, thank you. And thank you for
11 giving me the courtesy, Marvin.

12 Commissioner Jacob: Thank you. I would just ask the
13 Chair to just briefly respond to you. That you are, I am saying.
14 there is nothing to suggest that Commissioner Lavine's motion
15 does not direct itself as well to the promulgation of rules.
16 There is a legislative provision out there, 29-a, and there are
17 executive orders such as 202, et cetera, that happened during
18 disasters and emergencies, who's to say the Commission should
19 not today, tomorrow, be promulgating rules as to how these
20 things are to be conducted, so that there aren't the kinds of
21 disputes we're talking about now. We're not ousted from
22 promulgating regulations, so if you just look at 17(c), and
23 it's all Gary is asking, maybe we want to do regs about this,

1 and I want a subpoena issued for that purpose. That's exactly
2 what 17 says. That's my simple response to you.

3 Chair Varlack: Thank you, Commissioner Jacob.
4 Commissioner Fisher.

5 Commissioner Fisher: I have a couple of questions
6 for staff, and since Martin's right here, I'm going to ask him
7 rather than Monica, just because it's easier that way. So let
8 me understand the language of the resolution that Commissioner
9 Lavine read. Would this apply to health care professionals
10 offering their medical services on a voluntary basis?

11 Martin Levine: I don't want to speak for
12 Commissioner Lavine, but it would seem to include any
13 volunteers under the executive order which talked about
14 assisting with the COVID response.

15 Commissioner Fisher: Okay. And would it apply to
16 volunteers working at the testing centers and the vaccine
17 centers? I know in Onondaga County we have volunteers at all
18 of those places that are contributing their time. Most of those
19 people have jobs, so they have employers. Would those
20 volunteers at the pop-up centers and the testing centers have
21 to be on this list that we're looking for of volunteers that
22 are exempt from certain provisions of 73 and all of 74?

1 Martin Levine: Until the executive order was
2 rescinded, I would, I would think yes.

3 Commissioner Fisher: So that could be in well into
4 the thousands, if not over 10,000 people that have volunteered
5 as a medical professional or volunteered at a clinic or a
6 vaccine center?

7 Martin Levine: I don't have any information on the
8 volume.

9 Chair Varlack: So, Commissioners, I think. Just one
10 brief moment. Thank you for the discussion, the robust
11 discussion on this point. I just wanted to note that there
12 clearly seems to be a state of unreadiness, at least for some
13 Commissioners, with respect to a whole host of issues, several
14 of them being legal. And there was mentioned that it would be
15 helpful if there was, or that it perhaps would be clearer, if
16 there was a legal memorandum that perhaps addressed some of the
17 specific issues that have been raised by Commissioners on this
18 call. Commissioner Lavine, I would ask whether or not you would
19 consider tabling your motion for purposes of the legal staff
20 putting together such a memo, which could perhaps be
21 illustrative to the Commissioners on some of the points that
22 they've raised.

1 Commissioner Lavine: I don't accept the premise,
2 Madam Chair, that what we do with the information is germane
3 to the vote today, number one. I've stated previously, and I
4 will repeat for emphasis, it is certainly plausible that
5 information would be turned over to us that would prompt an
6 investigation. In that second phase, obviously, that would be
7 confidential under our statute. It is certainly the case that
8 information that should be otherwise redacted should be
9 scrutinized by staff and the Commissioners and appropriate
10 redaction taken. But nonetheless, there is no question in my
11 view. No memorandum is required. It is the inherent
12 institutional prerogative of the Commission to issue an
13 informational subpoena. Therefore, I will not withdraw today's
14 motion.

15 Chair Varlack: Okay. I call the question. All in
16 favor of the motion, please raise your hand.

17 Martin Levine: In Albany, I see Commissioner
18 Weissman. On the screen, I see Commissioner McNamara, Judge
19 Yates, and Judge Braun. I'll call the remaining roll.
20 Commissioner Cohen.

21 Commissioner Cohen: No.

22 Martin Levine: Commissioner Dering?

23 Commissioner Dering: No.

1 Martin Levine: Commissioner Fisher?

2 Commissioner Fisher: No.

3 Martin Levine: 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: Judge Newton?

12 Commissioner Newton: No.

13 Martin Levine: Thank you. Commissioner Weissman, you
14 voted in favor, Judge Yates, I apologize, I already forgot, can
15 you?

16 Commissioner Yates: I said yes.

17 Martin Levine: Thank you, Judge. I apologize. And
18 Chair Varlack?

19 Chair Varlack: No.

20 Martin Levine: That's 1,2,3,4,5,6,7 in favor. Motion
21 fails.

1 Chair Varlack: Thank you. We are now at the new and
2 other business of the agenda. Commissioners, do we have any?

3 Commissioner Lavine: Yes, Madam Chair, and then I
4 have a question for staff, and then I have a motion to make.
5 Two different subjects. The question deals with the
6 deliberations of the confidentiality committee. Would staff
7 indicate to the Commission what is the timetable for resolving
8 the myriad of other substantial issues with respect to
9 confidentiality?

10 Monica Stamm: So.

11 Chair Varlack: General Counsel Stamm?

12 Monica Stamm: Chair, if I may?

13 Chair Valack: Sure.

14 Monica Stamm: I don't think that there is a clear
15 timetable. There is an issue pending that has been on the
16 Executive Session agenda that the Commission hasn't been able
17 to get to, and then there are remaining issues that the
18 Commission has to address that the committee has made
19 recommendations on. But again, the Commission needs time in
20 Executive Session to discuss these issues. So they are, they're
21 ready for the Commission to consider, but the Commission needs
22 time in Executive Session to address them.

1 Commissioner Lavine: Well, on the follow-on, Madam
2 Chair, if I may address Madam General Counsel? Has the staff
3 considered for example whether the confidentiality provision
4 of the Executive Law obtains if one or more Commissioners are
5 subpoenaed by one or both Houses of the legislature to testify,
6 as the Senate has indicated they intend to do?

7 Monica Stamm: I would like, if you want me to address
8 that question, I'm happy to address it. We could do it offline
9 or we could do it in the Executive Session, but I'm not prepared
10 to answer that question in the Public Session.

11 Commissioner Lavine: Okay, thank you very much and
12 I will pursue that question, Madam Chair. Now to my resolution
13 if I may, Madam Chair, I propose henceforth, the executive
14 sessions be recorded and that the deliberations be transcribed.

15 Chair Valack: OK. Is there a second?

16 Commissioner Weissman: Yeah.

17 Chair Varlack: Okay, Commissioner Weissman has
18 seconded the motion. Is there any discussion? I believe, I'll
19 just start by saying, I am establishing a rules committee, and
20 I think that, you know, that the conversation with respect to
21 the recording of Executive Session certainly should be referred
22 to that committee for discussion. At minimum, I think it should
23 be discussed in Executive Session because there are potentially

1 legal issues with respect to our changing our current procedure.
2 Is there any other Commissioner that has a point that they'd
3 like to make on this matter? I don't see any hands raised.
4 Anybody on the call. Okay, Commissioner Lavine, would you be
5 willing to move the discussion on this point to today's
6 Executive Session?

7 Commissioner Lavine: On the proviso, Madam Chair,
8 that the result of the deliberation is in the public domain.

9 Chair Varlack: I'm not going to commit to that
10 because I don't know what the decision is going to be.

11 Commissioner Lavine: I will not withdraw the proposal.

12 Chair Varlack: Okay. I call the question. All in
13 favor?

14 Martin Levine: Okay. I see Commissioner Weissman in
15 Albany. Judge Newton, that's it on the screen. I'll call the
16 remaining roll. Judge Braun?

17 Commissioner Braun: No.

18 Martin Levine: Commissioner Cohen?

19 Commissioner Cohen: No.

20 Martin Levine: Commissioner Dering?

21 Commissioner Dering: No.

22 Martin Levine: Sorry, Jim, we missed that.

1 Commissioner Dering: No. Did you hear me?

2 Martin Levine: Thank you. Commissioner Fisher?

3 Commissioner Fisher: No.

4 Martin Levine: Commissioner Horwitz?

5 Commissioner Horwitz: No.

6 Martin Levine: Commissioner Jacob?

7 Commissioner Jacob: Yes.

8 Martin Levine: Commissioner Lavine?

9 Commissioner Lavine: Yes.

10 Martin Levine: Judge McCarthy?

11 Commissioner McCarthy: Yes.

12 Martin Levine: Commissioner McNamara?

13 Commissioner McNamara: No.

14 Martin Levine: Saw Judge Newton. Commissioner
15 Weissman, you voted in favor. Judge Yates?

16 Commissioner Yates: Madam Chair, point of
17 clarification before I vote. You suggested that there be
18 further discussion about this in Executive Session. I just want
19 a clarification that this won't be, the vote here today won't
20 be considered a final vote on that, and that you're offer to

1 discuss it further later, as part of the rules committee, is
2 still on the table.

3 Chair Varlack: My understanding is that we are voting
4 right now on Commissioner Lavine's motion, which is to proceed
5 to record our executive session, so.

6 Commissioner Yates: What I'm asking is, in your mind,
7 is this a topic for the protocol or rules committee,
8 subcommittee, later, or does today's vote take it off and out
9 of that realm?

10 Chair Varlack: I certainly think that there would be
11 additional conversations that would need to happen with respect
12 to whether or not we can do that, under any rules that govern
13 how the Commission acts, as well as operationally, how we would
14 actually get that done, and so those were the conversations
15 that I thought we needed to have before we voted on actually
16 doing it. So it's, it's not clear to me, sort of where those,
17 where those conversations can take place. Certainly can happen
18 there, but I would prefer that the conversation happens before
19 we vote on it.

20 Commissioner Yates: OK. Yeah, well, on the reliance
21 that this does not preclude further consideration, I vote no.

22 Martin Levine: Thank you, Judge, and Chair Varlack?

23 Chair Varlack: No.

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

2 Chair Varlack: Thank you. Is there any other?

3 Commissioner Braun: Madam Chair?

4 Chair Varlack: Yes.

5 Commissioner Braun: Okay. I voted no because I
6 thought this should they have further consideration, and I'm
7 going to move that this piece, this issue, be sent to the
8 rules committee that you're establishing for further
9 discussion.

10 Commissioner Yates: I'll second that.

11 Chair Varlack: Thank you, Judge Yates. Is there any
12 discussion? Okay. All in favor of moving a discussion about
13 this to the rules committee, please raise your hand.

14 Martin Levine: I see all in Albany. I see
15 Commissioner McNamara, Judge Yates, Commissioner Dering,
16 Judge Newton, and Judge Braun. Commissioner Cohen?

17 Commissioner Cohen: Yes.

18 Martin Levine: Commissioner Dering?

19 Commissioner Dering: Yes.

20 Martin Levine: Thank you. Commissioner Horwitz?

21 Commissioner Horwitz: No.

1 Martin Levine: Commissioner Jacob?

2 Commissioner Jacob: Yes.

3 Martin Levine: Commissioner Lavine?

4 Commissioner Lavine: Yes.

5 Martin Levine: Judge McCarthy?

6 Commissioner McCarthy: Yes.

7 Martin Levine: Commissioner McNamara, I think I
8 recorded you. Judge Newton, I recorded you. Commissioner
9 Weissman, Judge Yates, I recorded you, and Chair Varlack, so
10 that is 3,4,5,6,7,8, 9, 10, 11, 12, 13. Motion carries.

11 Chair Varlack: Thank you.

12 Martin Levine: 12, actually.

13 Chair Varlack: Are there any other items under new
14 and other business? At this time, may I please have a motion
15 to move into Executive Session, pursuant to Executive Law
16 section 94(19)(b)?

17 Commissioner Fisher: So moved, Fisher.

18 Chair Varlack: Thank you. Can I have a second?

19 Commissioner Dering: Second. Dering.

20 Chair Varlack: Thank you. All in favor.

21 Martin Levine: One, two, three. Braun. Cohen?

1 Commissioner Cohen: Yes.

2 Martin Levine: Commissioner Jacob?

3 Commissioner Jacob: Yes. Lavine?

4 Commissioner Lavine: Yes.

5 Martin Levine: McCarthy?

6 Commissioner McCarthy: Yes.

7 Martin Levine: I think that's everyone. Motion
8 carries. Motion carries, ma'am.

9 Chair Varlack: Thank you. Walt, can you please let
10 us know when we're in Executive Session?

11 Walter McClure: Yes. Stand by.

12 [The Commission entered into Executive Session]

13 [The Commission returned to Public Session]

14 Walter McClure: We are back in public session.

15 Chair Varlack: Thank you very much, Walt. General
16 Counsel Stamm, can you please report out on the actions taken
17 in Executive Session?

18 Monica Stamm: Sure. The Commission discussed
19 litigation matters. The Commission commenced one substantial
20 basis investigation. The Commission authorized steps in
21 several other investigative matters, and, I'm sorry, in

1 several investigative matters and discussed several other
2 investigative matters.

3 Chair Varlack: Thank you.

4 Monica Stamm: That was it.

5 Chair Varlack: Can I please have a motion to adjourn
6 the meeting?

7 Commissioner Weissman: Moved.

8 Commissioner Fisher: Seconded. Fisher.

9 Chair Varlack: All in favor?

10 Martin Levine: I see three in Albany, and I see
11 McNamara, Yates, Dering, Bill? Braun.

12

13 Martin Levine: Jacob?

14 Commissioner Jacob: Yes.

15 Martin Levine: Commissioner Lavine?

16 Commissioner Lavine: Yes.

17 Martin Levine: McCarthy?

18 Commissioner McCarthy: Yes.

19 Martin Levine: And if Judge Newton is still there,
20 Judge, can you give me a thumbs up to adjourn? There we go.
21 We're out, ma'am.

1 Chair Varlack: Okay. Thank you.

2

3