

**MINUTES OF THE PUBLIC SESSION OF THE
JULY 27, 2021
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
540 BROADWAY
ALBANY, NEW YORK**

Chair: Camille Joseph Varlack (WebEx)

Members: Richard F. Braun (WebEx)
Robert Cohen (WebEx)
James E. Dering (Albany)
William P. Fisher (Albany)
Daniel J. Horwitz (WebEx)
Marvin E. Jacob (WebEx)
Gary J. Lavine (WebEx)
James W. McCarthy (WebEx)
David J. McNamara (WebEx)
George H. Weissman (Albany)
James A. Yates (WebEx)

Absent: Colleen C. DiPirro
Juanita Bing Newton

Staff: Sanford 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 St. John, Director of Ethics
Michael Sande, Deputy Director of Ethics Guidance
Megan Mutolo, Associate Counsel
Peter Smith, Chief Investigator
Anthony DeFino, Confidential Investigator
Lori A. Donadio, Principal Investigative Analyst
Kelly A. McCready, Confidential Clerk
Harris Bresowsky, Intern

I. CALL TO ORDER

Chair Varlack called the July 27, 2021 meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

July 27, 2021

A correction will be made to Page 8, line 5, to change Commissioner Varlack to Chair Varlack.

Commissioner Weissman noted, as reflected in the minutes, that Commissioner DiPirro had stated that the meeting of January 2019 was her first meeting, but the July 2018 meeting was her first.

A motion was made by Commissioner Weissman, seconded by Commissioner Dering, to approve the July 2021 Public Session minutes, as amended on page 8. The motion was approved by a unanimous vote.

III. REPORT FROM STAFF

Operations Update

Executive Director Sanford Berland stated that behind attachment B is the June 2021 monthly operations report.

Executive Director Berland stated that the Buffalo office is scheduled to move to the new location the last weekend in July and the New York City office move is expected to be completed in September.

Executive Director Berland noted that staff is working primarily from home and plans are being prepared for staff to return to work in September.

Executive Director Berland stated that staff has been engaged in outreach to stakeholders and recently met with the New York State Bar Association to explore opportunities to collaborate and provide guidance to their membership. Staff plans to continue its outreach efforts and hold more meetings with the regulated community. Also, staff is working on finalizing the Spring/Summer newsletter and is planning a Fall Continuing Legal Education Program with the Center for New York City Law at New York Law School.

IV. REPORT FROM COMMITTEES

Confidentiality and Records Access Committee

Executive Director Berland stated that the Confidentiality and Records Access Committee met several times and addressed the Proposed Records Access Regulations and discussed the various confidentiality provisions in Executive Law §94. The comment period for the Proposed Records Access Regulations just ended. No new comments were received. Staff had previously received two letters from Reinvent Albany (on behalf of multiple civic groups) recommending two changes: to make the log of records access requests available to the public; and to make available on the Commission's website the Financial Disclosure Statements (FDS) of individuals directly appointed by the Governor, Elected Officials, Members of State Boards and Commissions, agency Commissioners, and other senior officials or Directors. Staff has prepared a proposal to revise the pending regulation and make records access request logs available on request beginning January of 2022. In order to proceed with staff's proposal, the Commission must vote to approve the amendment subject to the ongoing rulemaking and an additional 45-day notice and comment period would be required under the State Administrative Procedure Act.

A motion was made by Commissioner Yates, seconded by Commissioner Jacob, to approve the revisions to the proposed regulation, i.e., to include the first proposal from Reinvent Albany, and to move forward with the rulemaking process. Commissioners Braun, Fisher, Jacob, Lavine, McCarthy, McNamara, Weissman, and Yates voted in favor of the motion. Commissioners Cohen, Dering, Horwitz, and Chair Varlack voted against the motion. The motion carried, with a vote of 8-4.

Executive Director Berland stated that with respect to any proposal to post more FDS filings on the Commission's website, the Commission would need legislation authorizing the Commission to do so and would also need an additional budget allocation to develop a publicly accessible database and to hire additional staff to process and redact the larger volume of filings.

Rules and Protocol Committee

Chair Varlack stated that the Rules and Protocol Committee met and made progress in drafting Proposed Rules of Order to improve productivity and efficiency. The rules are mostly aspirational. The Committee plans to circulate a draft to the full Commission to review for discussion in advance of the September meeting. With respect to the recording of Executive Sessions, the Rules Committee has additional questions and has asked staff to provide additional information.

Commissioner Lavine asked if the practice of transcribing public session minutes ended after the COVID protocols were removed. Executive Director Berland confirmed that a written transcript of the public session is no longer required, but the video recordings of public session meetings continue to be posted on the website.

A motion was made by Commissioner Lavine, seconded by Commissioner Weissman, to record, transcribe, and circulate to Commissioners, upon request, the Commission's Public and Executive Sessions (including any closed sessions), and that all motions that fail in Executive Session be reported in the Public Session.

General Counsel Stamm stated that Commissioner Lavine's proposal raises legal issues, and she recommends having the discussion in the Executive Session. Commissioner Lavine agreed to table the motion until Executive Session.

Commissioner Yates asked if he could discuss matters from Committee meetings with other Commissioners. Chair Varlack confirmed that Committee members can share information with other Commissioners. General Counsel Stamm stated that such communications would not be considered disclosures outside of the Commission and therefore would not violate confidentiality requirements.

V. NEW AND OTHER BUSINESS

Commissioner Lavine made a motion that the Executive Director be instructed to make a referral to the Attorney General regarding the breach of confidentiality that occurred after

the January 2019 Commission meeting, as well as to any other leaks that may have occurred prior to January 2019. Chair Varlack stated that the matter would be more appropriately handled in Executive Session and asked Commissioner Lavine if he would be willing to move his motion to the Executive Session. Commissioner Lavine agreed, provided the vote of each Commissioner could be noted in the Public Session. General Counsel Stamm stated that if the vote takes place in Executive Session, it cannot be disclosed in the Public Session, but the discussion could be held in Executive Session and then voted on in the Public Session (as long as the motion or the discussion is not about a confidential matter). Chair Varlack stated that she had no objection to having the discussion in Executive and then voting in Public Session. Commissioner Lavine agreed to move the discussion to Executive Session and have the vote in the Public Session.

Commissioner Yates asked whether a vote was required to make public a discussion from the Executive Session. General Counsel Stamm stated that a vote is not required to discuss a subject in the Public Session, but if it is a confidential matter, it cannot be discussed in the Public Session.

Commissioner Jacob asked and Chair Varlack confirmed that she anticipated that the Commission would vote on Commissioner Lavine's motion during the current meeting.

Commissioner Lavine asked if approvals of outside activity applications that were done by staff prior to the last resolution (delegation of authority to staff) without a vote of the Commission could be voided by the Commission in a Public Session vote. General Counsel Stamm reminded Commissioner Lavine that the Commission was aware that staff had been handling outside activities requests since JCOPE's inception. When the Commission adopted the recent resolution changing the delegation of authority to staff, the Commission expressly stated that it can void an approval by staff, but only prospectively, as individuals have relied on the advice provided. General Counsel Stamm also stated that the Executive Law makes clear that guidance provided under 94(16) is confidential. Therefore, any discussions concerning guidance that was provided must take place in the Executive Session, as it is confidential by law.

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

A motion was made by Commissioner Dering, seconded by Commissioner McCarthy, to enter into Executive Session. The motion carried with a unanimous vote.

VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

[Commissioners Cohen, Dering, Horwitz, Jacob, McNamara, and Weissman were not present for the remainder of the meeting.]

General Counsel Stamm stated that in Executive Session, the Commission discussed litigation matters, approved two informal letter opinions pursuant to Executive Law 94(16), issued one advisory opinion pursuant to Executive Law 94(16), commenced two substantial basis investigations, authorized steps in several investigative matters, and discussed several other investigative matters.

Commissioner Lavine asked Chair Varlack if the Commission had a quorum to conduct business in Public Session. Chair Varlack stated that there was no longer a quorum. Commissioner Lavine urged the Chair and other Commissioners to hold a special meeting before the September 14, 2021 meeting.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

As there was no quorum, no motion to adjourn could be acted upon. Accordingly, Chair Varlack adjourned the meeting.