

**MINUTES OF THE PUBLIC SESSION OF THE
NOVEMBER 16, 2021
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
540 BROADWAY
ALBANY, NEW YORK**

Chair: Jose L. Nieves (WebEx)

Members: Richard F. Braun (WebEx)
Terryl L. Brown (WebEx)
Colleen C. DiPirro (WebEx)
William P. Fisher (NYC)
Sharon Stern Gerstman (WebEx)
Randall Hinrichs (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)

Staff: Sanford N. Berland, Executive Director
Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Emily Logue, Director of Investigations and Enforcement
Walter J. McClure, Director of Communications and Public Information Officer
Keith C. St. John, Director of Ethics
Carol Quinn, Deputy Director of Lobbying Guidance
Michael Sande, Deputy Director of Ethics Guidance
Jeffrey Linehan, Investigative Counsel
Anthony DeFino, Confidential Investigator
Lori Donadio, Principal Investigative Analyst
Kelly A. McCready, Confidential Clerk

I. CALL TO ORDER

Chair Nieves called the November 16, 2021 meeting to order pursuant to Executive Law § 94(4).

I. GOVERNOR ANDREW CUOMO’S OUTSIDE ACTIVITY TO PUBLISH A BOOK
Proposed resolution to revoke staff’s informal advisory opinion issued pursuant to
Executive Law §94(16) and 19 NYCRR Part 932

Commissioner McNamara read his proposed resolution into the record for the Commission’s consideration:

“By virtue of the authority vested in the Joint Commission on Public Ethics (“the Commission”) under Section 94 of the Executive Law, and in particular, paragraph 16 thereunder, the Commission states as follows:

WHEREAS, by letter dated July 10, 2020 (the “Approval Request Letter”), a request was made on behalf of Governor Andrew Cuomo to the Commission for approval on stated conditions to engage in an outside activity relating to the authorship of a book in exchange for monetary royalties or other compensation therefrom. No title for the book was provided in the Approval Request Letter, which describes the book “as a memoir of [Governor Cuomo’s] professional and personal life since his last book” (the “Book”); and

WHEREAS, the Approval Request Letter represented that “the Governor will abide by all nine of the established requirements” for receiving compensation for writing a book and, in particular, represented to the Commission that Governor Cuomo “will write the [B]ook entirely on his own time, without the use of State resources or personnel”; and

WHEREAS, by letter dated July 17, 2020, the Commission’s staff issued an informal advisory opinion conveying conditional approval of the outside activity described in the Approval Request Letter (the “Conditional Approval Letter”); and

WHEREAS, among the other conditions to approval stated therein, the Conditional Approval Letter imposed, without qualification or exception, the condition that “No state property, personnel or other resources may be utilized for activities associated with the book”; and

WHEREAS, contrary to the representations made on behalf of Governor Cuomo, and not disclosed to the Commission, State property, resources and personnel, including staff volunteers, were used in connection with the preparation, writing, editing and publication of the Book; and

WHEREAS, the Approval Request Letter further represented that the Book would be a continuation of Governor Cuomo’s first book, a memoir published in 2012, and that consistent with item three of the nine established requirements “the subject matter was sufficiently unrelated to his job responsibilities so that authorship or the advice or material provided in the [B]ook could not be viewed as part of his job,” and

WHEREAS, the Conditional Approval Letter expressly conveys conditional approval of outside activity comprised solely of authoring “a continuation of [the Governors] last book, *All Things Possible: Setbacks and Successes in Politics and Life*,” and

WHEREAS, contrary to the representations made in the Approval Request Letter, the Book is not in compliance with item three of the Commission’s nine established conditions to approval as stated in the Conditional Approval Letter, in that it is a work that was developed as part of Governor Cuomo’s job responsibilities and is substantially related to his job responsibilities; and

WHEREAS, the Approval Request Letter submitted on behalf of Governor Cuomo stated, “Specifically, Governor Cuomo is seeking to author a book in the very near future...”, when, in fact, the Book was completed or substantially completed prior to the issuance of the Conditional Approval Letter; and

WHEREAS, the financial and payment terms, and all other terms and conditions involving the Book’s publication, were set forth in a contract between Governor Cuomo and his publisher, and that contract was withheld from the Commission prior to and after issuance of the Conditional Approval Letter; and

WHEREAS, the Approval Request Letter for the Book submitted on behalf of Governor Cuomo contained material omissions and misrepresentations, and that each of said material omissions and misrepresentations, individually, constitutes a ground for revocation.

NOW THEREFORE, it is

RESOLVED, that the Conditional Approval Letter be and it hereby is revoked; and it is

FURTHER RESOLVED, that the Commission’s determination herein is without prejudice to its prerogative or responsibility to find additional grounds in fact or law for revocation of the Conditional Approval Letter should future circumstances so warrant.

A motion was made by Commissioner McNamara, seconded by Commissioner Braun, to revoke staff’s informal advisory opinion issued to former Governor Andrew Cuomo.

Commissioner Fisher stated that item three in staff’s July 17, 2021 letter reads “the subject matter needs to be sufficiently unrelated to the Governor’s official duties so that

authorship or the advice or material provided in the book cannot be viewed as part of the Governor’s job.” Commissioner Fisher stated that he does not believe it is possible to view the advice or material provided in the book titled “American Crisis Leadership Lessons from the COVID-19 Pandemic” as part of the Governor’s job. Commissioner Fisher stated that the book does not contain a series of speeches Governor Cuomo gave to the state legislature, transcripts from his daily press conferences, or a recounting of what was done by the Governor’s office during the time period March 1, 2020 to June 19, 2021. Commissioner Fisher stated that he read the book and does not believe that it is fair to characterize the advice or material provided in the book as part of the Governor’s job. Commissioner Fisher suggested that if whereas clauses were removed that reference item three of the July 17, 2021 letter, he would be willing to support the resolution, but he cannot support it as drafted. Commissioner McNamara declined Commissioner Fisher’s amendment.

Commissioners Braun, Brown, DiPirro, Gerstman, Hinrichs, Jacob, Lavine, McCarthy, McNamara, Weissman, Yates, and Chair Nieves voted in favor of the motion. Commissioner Fisher opposed the motion. The motion carried with a vote of 12-1.

II. APPROVAL OF MINUTES – PUBLIC SESSION

A motion was made by Commissioner Weissman, seconded by Commissioner DiPirro, to approve the minutes of the October 5, 2021 and October 19, 2021 Commission meetings. The minutes were approved by a unanimous vote.

III. REPORT FROM STAFF

Operations Update

Executive Director Berland stated that behind attachment C is the October 2021 monthly operations report. Executive Director Berland stated that the chart reflects a busy month in the lobbying, training, audit, and ethics units.

Meeting Schedule

Executive Director Berland stated that behind attachment D is the Commission meeting schedule for January through June 2022. Since there have been no reported conflicts from any Commissioners, the schedule will be finalized.

Executive Director Berland stated that since the last meeting, the budget call letter was received, and the Commission responded requesting an increase of just over \$600,000 to cover the required personal service increases (including retroactive cost of living adjustments and performance advances) and to add personnel in the investigative and lobbying divisions.

IV. NEW AND OTHER BUSINESS

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

A motion was made by Chair Nieves, seconded by Commissioner Braun, to enter into Executive Session pursuant to Executive Law §94(19)(b). The motion carried with a unanimous vote.

VI. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

General Counsel Stamm stated that during the Executive Session, the Commission discussed matters concerning litigation, personnel, and ethics guidance. The Commission granted an application for exemption from the post-employment restrictions pursuant to Public Officers Law § 73 (8-b), authorized steps in several investigative matters, closed three matters, and discussed several other investigative matters.

VII. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Weissman, seconded by Commissioner Braun, to adjourn the meeting. The motion was approved by unanimous vote.