

**MINUTES OF THE PUBLIC SESSION OF THE
JANUARY 25, 2022
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 (Albany)
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 (Webex)
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
Stephen Boland, Director of Administration
Michael Sande, Deputy Director of Ethics Guidance
Jeffrey Linehan, Investigative Counsel
Lori Donadio, Principal Investigative Analyst
Kelly A. McCready, Confidential Clerk

I. Call to Order

Chair Nieves called the January 25, 2022 meeting to order pursuant to Executive Law § 94(4).

II. Approval of Minutes – Public Session

A motion was made by Commissioner Weissman, seconded by Commissioner Fisher, to approve the minutes of the December 14, 2021 Commission meeting. The minutes were approved by a unanimous vote.

**III. Report from Staff
Operations Update**

Executive Director Sanford Berland stated that behind attachment B is the 2021 monthly operations report. Executive Director Berland stated that it was a very busy month and year. He also noted that with respect to Financial Disclosure Statements (FDS), all of the individuals who had received a Notice of Delinquency have since filed their reports.

IV. Third Quarter Financial Report

Director of Administration Stephen Boland gave the third quarter financial report. For personal services, the Commission spent \$1,071,000, for a year-to-date total of \$3,566,000, or 78% of the cash budget. For non-personal service, the Commission spent \$159,000, for a year-to-date total of \$461,000, or 44% of the cash budget. Overall, the Commission spent \$1,230,000, with a year-to-date total of \$4,270,000, or 72% of the cash budget.

Commissioner Fisher asked whether the Commission has funding to hire outside counsel to assist with its numerous ongoing investigations. General Counsel Stamm stated that the Commission currently is seeking to hire an additional investigative counsel before considering whether to contract with outside counsel to assist with investigations. Retaining outside counsel would exceed the agency's budget.

Commissioner Lavine asked about the status of the retention of Hogan Lovell for the internal review to be conducted. General Counsel Stamm stated that the contract was executed and submitted to the Comptroller for approval.

V. **Confidentiality and Records Access Proposal**
Proposed Amended Adjudicatory Proceedings and Appeals

Chair Nieves stated that this was discussed at the November and December meetings and was referred to the Confidentiality Committee. Chair Nieves thanked the Committee and staff for the quick turnaround.

General Counsel Stamm presented proposed amendments to the Adjudicatory Proceedings and Appeals regulations, consistent with the Confidentiality Committee's recommendations. The Proposed Amended Regulations are aimed to continue to increase transparency and respond to criticism that the Commission is too secretive about its work and operations. The Commission can adopt these proposed regulations on an emergency basis and can also begin a revised rulemaking on a parallel track. The emergency regulations would become effective upon submission for publication in the State Register and would be in effect for 90 days (and the Commission can renew them for an additional 60 days). The publication of the notice of revised rulemaking initiates a comment period. If the Commission approves them, and staff submits them today (January 25, 2022), the proposed regulations would be published on February 9, 2022, with the comment period ending on April 10, 2022. The Commission could consider them again at its April 26, 2022 meeting. General Counsel Stamm stated that if adopted, the Resolution would be in effect immediately.

The key points are in § 941.3 and § 943.16 and provide for more notice to the complainant and respondent of action on matters, as well as to other interested parties. The regulations provide that the Commission will maintain a public list of completed investigations by case number with certain redactions. The Proposed Amended Regulations codify the Commission's recent motions and resolutions that allow the Commission to publicly disclose confidential investigative information and to make public statements about the status of certain investigative matters that are already public, when it is in the public interest to do. The Resolution also provides that the Commission may disclose information about otherwise confidential guidance if the

requestor makes public misstatements about such guidance. There is also additional reporting in the annual report regarding investigations, ethics training compliance, and lobbying late fees, which are consistent with the practice of the New York City Clerk. General Counsel Stamm stated that Commissioner Yates proposed a small amendment in § 941.2(d) (and an email was sent); the definition of “Commission,” to change “may act” to “are authorized to act on behalf of the Commission.”

A number of Commissioners discussed the definition of Commission in the regulations. Executive Director Berland stated for clarification that the definition being discussed relates only to the adjudicatory regulations of the Commission, and will not be, and is not intended to be, a global definition. Commissioner Gerstman proposed a revised definition.

Commissioners Braun and Jacob discussed the need for the “public interest” standard for disclosure enunciated in the regulations. Commissioner Jacob supported the need for such a standard, while Commissioner Braun suggested that all that is required is the Commission’s vote to approve disclosure. Ultimately, Commissioner Braun acknowledged that the catch-all “any other factor the Commission deems relevant” would provide the Commission sufficient discretion. Commissioner Braun also suggested removing factor 11, which considers the impact of the allegations on upcoming elections because the Commission should never be guided by political implications. General Counsel Stamm explained that the criteria was developed after reviewing policies of several state and federal agencies, but that language can be removed. Commissioner Yates noted that there have been efforts in the past to use the Commission in the context of upcoming elections.

General Counsel Stamm stated there are two different votes required, one for the revised rulemaking and one for the emergency adoption.

A motion was made by Commissioners Braun, seconded by Commissioner Jacob, to adopt the proposed rulemaking as amended to remove the language “whether the

disclosure could impact any election for public office...” and Commissioner Yates’ suggestion, as amended by Commissioner Gerstman, to change the language to “the Joint Commission on Public Ethics, Commission or JCOPE shall mean the members of the New York State Joint Commission on Public Ethics established pursuant to Executive Law § 94 which is authorized to delegate the authority to act as provided in the Executive Law to its Executive Director.” Commissioners Braun, Brown, DiPirro, Gerstman, Hinrichs, Jacob, Lavine, McCarthy, McNamara, Weissman, Yates, and Chair Nieves voted in favor of the motion. Commissioner Fisher abstained from the vote. The motion carried with a vote of 12-0-1.

A motion was made by Commissioner Weissman, seconded by Commissioner Hinrichs, to adopt the Emergency Regulations. 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 12-1-0.

Commissioner Gerstman made an amendment to the Resolution in the first whereas clause to include unredacted versions of the request for guidance and the advice given. General Counsel Stamm stated that the request is covered by the current language, but the Commission can be more specific. Commissioner Yates expressed a concern that the reference to the Revised Resolution on Delegation of Authority suggested that an informal opinion by staff is confidential. General Counsel Stamm explained that the language came straight from the revised delegation to staff that was approved by the full commission.

A motion was made by Commissioner Brown, seconded by Commissioner Braun, to approve the resolution with the amendment from Commissioner Gerstman to include in the first whereas clause “unredacted version of the request for guidance and the advice given” and Commissioner Yates’ amendment “guidance issued under Executive Law § 94 (16)” The motion was approved by unanimous vote of 13-0.

Chair Nieves asked General Counsel Stamm to provide an update on the status of the disgorgement resolution. General Counsel Stamm stated that a letter was received from counsel for the governor (that he made public) raising issues with both resolutions that were passed by the Commission in late 2021. General Counsel Stamm stated that there are some legal issues that need to be discussed in Executive Session relating to the resolutions. In response to a question from Commissioner McNamara, General Counsel Stamm also stated that she has had additional communications with the Office of the Attorney General related to legal issues that should be discussed in the Executive Session.

Commissioner Lavine made a motion, seconded by Commissioner Jacob, that staff be directed to issue an informational subpoena to the Executive Chamber regarding Executive Order 202.7 (promulgated by former Governor Cuomo and subsequently voided by the legislature) to get a list of “volunteers” within the ambit of the Executive Order; any exemptions regarding any perceived conflict of interest; the employment status of volunteers; and any other information regarding conflicts of interest presented. Commissioners Braun and Fisher suggested that due to the potential volume of the information, the scope of Commissioner Lavine’s motion should be limited. Commissioner Lavine agreed to amend his motion. General Counsel Stamm advised the Commission on the history with this request and concerns that had been raised previously by Commissioners, including the legal authority for issuing an “informational” subpoena, the scope of this request, the resources that were intended to be devoted to this request, and whether the information provided, if any, relating to recusal plans would be considered confidential.

A motion was made by Commissioner Lavine, seconded by Commissioner Braun, to direct staff to issue an informational subpoena to the Executive Chamber regarding Executive Order 202.7, for information on the number of volunteers within the ambit of Executive Order, the names of any volunteers who presented a conflict of interest, and how the conflicts were resolved. Commissioners Braun, Brown, DiPirro, Gerstman, Jacob, Lavine, McCarthy, McNamara, and Weissman voted in favor of the

motion. Commissioners Hinrichs, Yates, Fisher, and Chair Nieves opposed the motion. The motion passed with a vote of 9-4

A motion was made by Commissioner Lavine that staff be directed to divulge to the Commission in Executive Session all inquiries made during the Cuomo administration by the Office of the Inspector General's Office or the Executive Chamber to review the Financial Disclosure Statement (FDS) of any filer.

General Counsel Stamm stated that as of January 2022, in the Records Access Regulations, anyone can request to see a log of any requests for an FDS. The Commission now receives a log of any subpoenas issued to the Commission including subpoenas for FDS. Commissioner Fisher objected to the motion, noting that the issue had originally been presented as a motion to obtain disclosure of requests for individual Commissioner's FDS filings, and that it potentially provides Commissioners with preferential access to information.

Commissioner Jacob seconded Commissioner Lavine's motion that staff be directed to divulge to the Commission in Executive Session all inquiries made during the Cuomo administration by the Inspector General's Office or the Executive Chamber to review the FDS of any filer. Commissioners Braun, DiPirro, Gerstman, Hinrichs, Jacob, Lavine, McCarthy, McNamara, Weissman, and Yates voted in favor of the motion. Commissioners Fisher and Chair Nieves opposed the motion. Commissioner Brown abstained from the vote. The motion passed with a vote of 10-2-1.

VI. **Motion To Enter into Executive Session Pursuant to Executive Law § 94(19)(B)**

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

VII. Public Announcement of Actions from Executive Session

[Commissioners McCarthy and McNamara were not present for the remainder of the meeting]

General Counsel Stamm stated that during the Executive Session, the Commission discussed litigation and personnel matters, approved informal guidance pursuant to Executive Law § 94(16), commenced one Substantial Basis Investigation, authorized steps in several investigative matters, closed five matters, and discussed several other investigative matters.

Executive Director Berland announced that on January 13, the Commission held its annual Ethics Officer training – a record 118 filers attended, and staff received great feedback.

VIII. Motion to Adjourn the Public meeting

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