

**MINUTES OF THE PUBLIC SESSION OF THE
FEBRUARY 15, 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 (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
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 Assistant

I. CALL TO ORDER

Chair Nieves called the February 15, 2022 meeting to order pursuant to Executive Law § 94(4).

II. APPROVAL OF MINUTES – PUBLIC SESSION

A motion was made by Commissioner Braun, seconded by Commissioner Weissman, to approve the minutes of the January 25, 2022 Commission meeting. The minutes were approved by a vote of 12-0-1. Commissioner McCarthy abstained from the vote.

III. REPORT FROM STAFF

Operations Update

Executive Director Sanford Berland stated that behind attachment B is the 2022 monthly operations report and gave a summary of the report. The Commission issued a reminder to all ethics officers to anticipate an increased need for training this year, as the training requirement was initiated in 2013 on a three-year cycle.

The amendments to Adjudicatory Proceedings and Appeals Process Regulations are in effect on an emergency basis and will remain in effect for 90 days. The rulemaking was published in the State Register on February 9, 2022, the public comment period will run until April 10, 2022, and will be brought back to the Commission for further consideration at the April meeting.

IV. NEW AND OTHER BUSINESS

Former Governor Cuomo Executive Orders 202.6 et seq.

General Counsel Monica Stamm stated, as the Commission ordered at the last meeting, JCOPE has served a subpoena upon the Executive Chamber for the records requested. The subpoena was served on February 7, 2022 and is returnable to the Commission on February 28, 2022. Staff anticipates that the Executive Chamber may need additional time to respond and will be keeping the Commission apprised.

Proposed Resolution 22-XX (Amendments to Commissioner Code of Conduct)

Commissioner Fisher presented his draft resolution amending the Commissioner Code of Conduct that would install guard rails to ensure the Commission's independence from outside influence. He stated that his amendment to the Code of Conduct requires each Commissioner to provide notice to fellow Commissioners and the Executive

Director of any communications, direct or indirect, with his or her appointing authority regarding anything that might reasonably come before the Commission for action. This proposed amendment would increase the transparency of the actions taken by the Commission and increase public confidence that Commissioners are not being improperly or unduly influenced by any respective appointing authority.

Commissioner Gerstman supported the resolution and offered a friendly amendment expanding the scope to cover communications with any third party. Commissioner Fisher agreed to the amendment; he clarified that it would not prevent fellow Commissioners from being able to discuss matters among themselves or seek counsel from JCOPE staff about the implications of certain matters before taking a vote.

Commissioner Weissman stated that the amendment should cover staff, and any reporting should not go to the Executive Director.

Commissioner Braun agreed with the underlying principles of the amendment, i.e., independence and transparency.

Commissioner Yates expressed concerns with language regarding “any matter pending” and its intended scope. He stated that the resolution would actually now allow communication that would otherwise require a vote of eight commissioners, as long as there was disclosure of the communication. He also asked whether the resolution meant that Commissioners cannot speak to anyone outside of the Commission about our thoughts that would be helpful to changes in the rules or legislation. He suggested sending the resolution to the Committee on Confidentiality.

Commissioner Fisher noted that the resolution was limited to matters that are pending and can reasonably be expected to be voted on, so several of the things mentioned would never come to a vote and not be subject to this resolution.

Commissioner Jacob agreed with the proposal to send the resolution to the confidentiality committee.

Commissioner McCarthy expressed support for the motion but noted that existing laws seemed to already prohibit the same conduct.

A motion was made by Commissioner Yates, seconded by Commissioner DiPirro, to table the proposed resolution to amend the Commissioner Code of Conduct to the following meeting. Commissioners Braun, Brown, DiPirro, Gerstman, Hinrichs, Jacob, Lavine, McCarthy, McNamara, Weissman, and Yates voted in favor of the motion. Commissioner Fisher and Chair Nieves opposed the motion. The motion was approved with a vote of 11-2-0.

Commissioner Nieves stated that the resolution would be sent to the Confidentiality Committee and asked staff to schedule a committee meeting soon.

Commissioner Lavine asked about the status of the Commission's internal inquiry. General Counsel Stamm stated that the outside counsel would be starting shortly.

V. Motion To Enter into Executive Session Pursuant to Executive Law § 94(19)(b)

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

VI. Public Announcement of Actions from Executive Session

Commissioner Lavine asked if any member of the Commission staff had been contacted by the Office of the Attorney General with respect to the criminal referral that was made by the Commission regarding the leak from January of 2019. Executive Director Berland stated that to staff's knowledge there has been no such contact.

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

VII. Motion to Adjourn the Public Meeting

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