

**MINUTES OF THE PUBLIC SESSION OF THE
MARCH 18, 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 (Webex)
Sharon Stern Gerstman (Webex)
C. Randall Hinrichs (Webex)
Marvin E. Jacob (Webex)
Gary J. Lavine (Webex)
David J. McNamara (Webex)
George H. Weissman (Webex)
James A. Yates (Webex)

Staff: Sanford N. Berland, Executive Director

Martin L. Levine, Acting General Counsel
Walter J. McClure, Director of Communications and Public Information Officer
Keith C. St. John, Director of Ethics
Michael Sande, Deputy Director of Ethics Guidance
Kelly A. McCready, Confidential Assistant

I. CALL TO ORDER

Chair Nieves called the March 18, 2022 meeting to order pursuant to Executive Law § 94(4).

II. NEW AND OTHER BUSINESS

Commissioner Lavine made a motion that the Executive Director be directed to convey to Inspector General Lang the request of the Commission that the Inspector General's investigation of the breach of confidentiality that occurred in January of

2019 be reopened and that Inspector General Lang review the manner in which the investigation was conducted by the Office of the Inspector General. Chair Nieves stated that this matter will be discussed in the Executive Session. Commissioner Lavine agreed, provided the vote for such matter be held in the Public Session. Commissioner Weissman seconded the motion.

Commissioner McNamara discussed a proposed resolution regarding former Governor Cuomo's unauthorized outside activities regarding the publication of the book "American Crisis, Leadership Lessons from the Covid-19 Pandemic." The resolution used terms defined in prior Commission resolutions and was read into the minutes by Commissioner McNamara in its entirety.

By virtue of the authority vested in the Joint Commission on Public Ethics (the "Commission") under New York Executive Law §94 (16 and 17), the Commission resolves as follows:

WHEREAS, by JCOPE Resolution 21-03 dated November 16, 2021 ("Resolution 21-03"), the Commission revoked the Conditional Approval Letter; and

WHEREAS, no request has been made to the Commission to change or retract Resolution 21-03;

WHEREAS, since the Approval Request Letter, Governor Cuomo has made no further request for approval of outside activity with regard to the Book;

WHEREAS, as a consequence of the revocation of the Conditional Approval Letter, Governor Cuomo lacked legal authority to engage in outside activity and receive compensation with regard to the Book while employed by the State of New York; and

WHEREAS, Governor Cuomo received and retained compensation from the publisher of the Book; and

WHEREAS, in the absence of JCOPE’s approval of his outside activity in connection with the Book, Governor Cuomo is not legally entitled to retain compensation paid to him, in any form, for his outside activities related to the Book; and

WHEREAS, by JCOPE Resolution 21-04 dated December 14, 2021 (“Resolution 21-04”), the Commission (i) ordered Governor Cuomo to pay the Book Proceeds to the Attorney General (the “Disgorgement Order”); (ii) referred the enforcement of the Disgorgement Order to the Attorney General should Governor Cuomo fail to comply with such order; and (iii) referred to the Attorney General the task of distributing the Book Proceeds to the appropriate party or parties; and

WHEREAS, in violation of the Disgorgement Order, Governor Cuomo has failed and refused to pay the Book Proceeds to the Attorney General; and

WHEREAS, as counsel for the State of New York, the Attorney General is vested with the legal authority to take the actions specified in Resolution 21-04; and

WHEREAS, despite Governor Cuomo’s failure to comply with the Disgorgement Order, the Attorney General has declined to enforce the Disgorgement Order on grounds that the Commission believes to be invalid as a matter of law; and

WHEREAS, specifically, and without limitation, the Attorney General has asserted that she is without legal authority to collect, receive or distribute the Book Proceeds as required by Resolution 21-04; and

WHEREAS, the Commission is mandated by law to ensure that Governor Cuomo does not retain the benefit of outside activities in which he engaged in violation of law; and

WHEREAS, the Commission desires to compel Governor Cuomo to disgorge the Book Proceeds through means that do not require the assistance of the Attorney General, but without prejudice to the legal effect of Resolution 21-04 and the Attorney General’s right to act pursuant thereto;

NOW THEREFORE, it is

RESOLVED, that it is hereby ordered that, by no later than 30 days from the date of this Resolution, Governor Cuomo pay an amount equal to the Book Proceeds to the party or parties that paid the Book Proceeds to Governor Cuomo (“Disgorgement Order No. 2”); and it is

FURTHER RESOLVED, that it is hereby ordered that, by no later than 30 days from the date of this Resolution, Governor Cuomo certify to the Commission, under penalty of perjury, that he has in all respects complied with Disgorgement Order No. 2; and it is

FURTHER RESOLVED, that, in the event that Governor Cuomo fails to make timely payment as ordered above, the Commission shall proceed with all actions necessary to seek authority and funding necessary to engage outside counsel to enforce Disgorgement Order No. 2 by way of a plenary action or proceeding seeking, among any other appropriate relief,

a mandatory injunction compelling Governor Cuomo to comply with Disgorgement Order No. 2; and it is

FURTHER RESOLVED, that it is hereby ordered that Governor Cuomo reject any payment or attempted payment to him or his designee(s) of Book Proceeds made after the date hereof, and immediately return any such payment to the party or parties from which such payment was received; and it is

FURTHER RESOLVED, that this Resolution 22-0_ is adopted without prejudice to the Commission's authority to conduct further proceedings, issue other orders, or impose penalties with regard to Governor Cuomo's unauthorized outside activities related to the Book.

Chair Nieves thanked Commissioner McNamara and asked if there was a second on the motion. Commissioner McNamara stated no objection to taking the discussion to Executive Session upon a second of the motion. Commissioner Weissman seconded the motion.

Commissioner Lavine reiterated his agreement to an update by Chair Nieves in the Executive Session regarding the subpoena sent to the Executive Chamber regarding Executive Orders 202.6 and 202.7.

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

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

IV. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Nieves asked for a readout of the results from the Executive Session. Commissioner Lavine asked that a vote be held on an earlier motion. Executive Director Sanford Berland stated that the Commission typically does the readout after coming out of the Executive Session, but it can be done in either sequence with the approval of the Chair. Chair Nieves asked for a vote on Commissioner Lavine's motion. Commissioners Fisher and Yates asked that the motion be read. Chair Nieves asked Commissioner Lavine to re-read the motion from earlier in the meeting, whereupon a motion was made by Commissioner Lavine, seconded by Commissioner Weissman, to direct the Executive Director to convey to Inspector General Lang a request that the Inspector General's investigation of the breach of confidentiality that occurred at the January 2019 meeting of the Commission be reopened, and further, that Inspector General Lang conduct an inquiry into the manner in which the original investigation by the Office of the Inspector General was handled. Commissioners Braun, Fisher, Hinrichs, Jacob, Lavine, McNamara, and Weissman voted in favor of the motion. The motion failed with a vote of 7-0-5. Commissioners Brown, DiPirro, Gerstman, Yates, and Chair Nieves abstained from voting.

Commissioner DiPirro asked Commissioner Lavine to separate the earlier motion into two separate motions that would 1) investigate what happened in January 2019 regarding the Commission meeting leak, and 2) to investigate what happened in the Office of the Inspector General during the investigation. Commissioner Lavine agreed to separate his motion into two motions. Commissioner DiPirro stated that she would vote in favor of the first motion. Commissioner Yates asked for clarification from Commissioner DiPirro on the separation into two motions. Commissioner DiPirro explained that Commissioner Lavine will be separating the motion with one to do a formal investigation into what happened at the January 2019 meeting and another to do a formal investigation into how the Office of the Inspector General's Office handled the investigation, so Commissioners can vote on each portion separately.

A motion was made by Commissioner Lavine, seconded by Commissioner Weissman, to move that the Executive Director convey to Inspector General Lang the request of the Commission to reopen the Inspector General's inquiry with respect to the breach of confidentiality that occurred at the January 2019 Commission Meeting.

Commissioner Yates, on the motion, had no issue looking into the Inspector General's original investigation, but clarified that the way the law works, it is an offense for someone within the Commission to leak the vote, which someone apparently did in January 2019. The Commission had a vote and somebody within the organization, whether staff or a Commission member, told someone and that got back to the Governor, either directly firsthand or secondhand, and then the former Governor complained to other people. It is public information that the former Governor complained to the Speaker of the Assembly about the vote. The only person that committed an offense covered under Executive Law Section 94 is the person from within the Commission organization who told someone on the outside what happened in the meeting. Being the person in receipt of that information, whether the Governor heard it firsthand or second or even third-hand from a newspaper reporter, was not committing an offense. The person who committed the offense is the person within who breached the confidence and broadcasted on the outside. That happened three years ago, and the Commission has a new Executive Director, new Acting General Counsel, and four out of the six gubernatorial appointees are gone, including the Chair at that time. There are only two of the gubernatorial appointees from former Governor Cuomo here currently, and Commissioner Yates stated he is completely confident that there is no evidence that those remaining two were the source of the leak. So, when it is suggested to investigate who breached confidentiality, this is not an internal examination, but instead would need to be going to the General Counsel that has left, the Executive Director that has left, and four of the Commissioners that are no longer part of the Commission and ask them again. Commissioner Yates stated that the first time around when this happened, he was public about the fact that there was a leak and in turn, reported this to the OIG, for which he answered many

questions under oath. Commissioner Garcia did the same thing. Now there is a new IG, and an investigation would be to hunt down seven or eight people no longer affiliated with the agency to ask if three years ago, they were the source of the leak; he stated, he was not sure what that would accomplish.

Commissioner Nieves stated that the Commission wanted to discuss this during Executive Session, so he was not going to allow for debate on this in Public Session but believed the Commission can take the vote at this point.

A motion was made by Commissioner Lavine, seconded by Commissioner Weissman, to move that the Executive Director convey to Inspector General Lang the request of the Commission to reopen the Inspector General's inquiry with respect to the breach of confidentiality that occurred at the January 2019 Commission Meeting. Commissioners Braun, DiPirro, Hinrichs, Jacob, Lavine, McNamara, and Weissman voted in favor of the motion. The motion failed with a vote of 7-0-5. Commissioners Brown, Fisher, Gerstman, Yates, and Chair Nieves abstained from voting.

Executive Director Berland stated that during the Executive Session, the Commission discussed matters related to its internal inquiry. The Commission authorized steps in connection with an investigative matter. The Commission approved informal guidance pursuant to Executive Law Section 94, subsection 16, and the Commission approved the resolution as read at the opening of Public Session by Commissioner McNamara with modifications to the third directive paragraph.

Commissioner McNamara stated that the resolution would be added to JCOPE's website for the public. Executive Director Berland stated it would be added to the website as soon as possible given it is somewhat after hours.

Commissioner Lavine asked Chair Nieves what the rationale is by which the vote is not being announced with respect to Commissioner McNamara's resolution. Chair Nieves stated that the vote will be listed on the resolution once it is posted. Commissioner Lavine asked when the resolution will be posted. Executive Director Berland stated that if the agency can get it posted that evening, it will, but otherwise, it will be posted on Monday morning promptly.

Executive Director Berland added that the Commission staff was invited earlier this week to participate in a webinar sponsored by the Organization for Economic Cooperation and Development in Quebec due to JCOPE's leading role, which is acknowledged internationally, in lobbying and ethics regulation. The agency's Acting General Counsel, Martin Levine, appeared for the staff and did a remarkable job in representing the Commission and Executive Director Berland thanked him for that and to share this with the Commissioners. Chair Nieves stated on behalf of all the Commissioners a thank you to Acting General Counsel Levine for representing the Commission at this event and for all he does for the Commission.

V. MOTION TO ADJOURN THE PUBLIC MEETING

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