

**MINUTES OF THE PUBLIC SESSION OF THE  
NOVEMBER 15, 2022 MEETING OF THE  
COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT  
25 BEAVER STREET, 5<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10004**

**540 BROADWAY  
ALBANY, NEW YORK 12207**

**Interim Chair:** Frederick A. Davie (NYC)

**Interim Vice-Chair:** Leonard B. Austin (NYC)

**Members:** Michael A. Cardozo (NYC)  
Edward D. Carni (NYC)  
Claudia L. Edwards (NYC)  
Nancy G. Groenwegen (NYC)  
Seymour W. James, Jr (NYC)

**Staff:** Sanford N. Berland, Interim Executive Director (NYC)  
Carol Quinn, Co-Acting General Counsel and Deputy Director of  
Lobbying (NYC)  
Keith C. St. John, Co-Acting General Counsel and Director of Ethics  
(NYC)  
Michael Sande, Deputy Director of Ethics Guidance (NYC)  
Meghan E. Hennigan, Deputy Director of Education (WebEx)  
Kavita Bhatt, Associate Counsel (NYC)  
Jennifer Bliss, Associate Counsel (Albany)  
Megan Mutolo, Associate Counsel (Webex)  
Peter Smith, Chief Investigative Officer (Webex)  
Marlena Diaz, Assistant Director of Communications (Albany)  
Lori Donadio, Principal Investigative Analyst (Webex)  
Kelly McCready, Confidential Assistant (Albany)  
Michelle Merola, Confidential Assistant (Albany)

**I. CALL TO ORDER**

Interim Chair Davie called the meeting to order and welcomed the Commissioners and staff present in both the Albany and New York City office locations.

## **II. APPROVAL OF MINUTES**

Interim Chair Davie requested approval of the minutes for the meeting that was held on October 25, 2022. Amendments to the minutes were offered by Interim Vice-Chair Austin and Commissioners Groenwegen and Edwards. A motion was made by Commissioner Groenwegen, seconded by Interim Vice-Chair Austin, to approve the public session minutes, as amended, from the October 25, 2022 Commission meeting. The motion carried by unanimous vote.

## **III. REPORT FROM STAFF**

### **Operations Update**

Interim Executive Director Berland announced that a quorum of seven Commissioners was present in person. He noted that the Operations Update for the preceding month could be found under Tab B and that as in the prior meeting's Operations Update, comparisons were provided both for the current period and for the year-to-date figures to the corresponding periods in 2021.

Commissioner James inquired about the number of open investigations. Commissioner Cardozo inquired about the drop in numbers and if asked it was due to staffing shortages and lack of delegation of authority. Interim Executive Director Berland reported that numbers are light as a result of staff vacancies but are expected to increase as new staff are hired.

Commissioner Groenwegen inquired as to the status of the current Freedom of Information Law ("FOIL") requests and asked whether they have been denied or if they are pending. Interim Chair Davie asked why there was a drop in the number of records provided between 2022 and 2021, while the number of requests appear to have increased. Interim Executive Director Berland responded that the Commission is operating under the current model FOIL regulations that will remain in effect until the Commission promulgates new regulations and that the prior law affected the information that the Joint Commission on Public Ethics, which was not subject to FOIL was permitted and required

to make available. Interim Executive Director Berland added that in the coming months, Commission staff will present proposals for FOIL regulations for the Commission.

Commissioner James inquired as to the number of FDS notices of delinquency that were issued last year versus this year. Acting Co-General Counsel and Director of Ethics Keith St. John responded that the FDS and Investigations units are coordinating enforcement efforts for the 2022 filing schedules. Associate Counsel Kavita Bhatt noted that failure to file notices were issued, but there may have been a backlog due to COVID which resulted in the skewed number for 2022 year-to-date figures.

### **Recruitment Update**

Interim Executive Director Berland reported that the submission window has closed for thirteen of the fourteen postings for vacant positions. The Commission has received applications from a substantial number of qualified candidates and will begin conducting interviews in the coming weeks. Commissioner Cardozo asked, given the number of vacancies and the importance of the positions, what the Commissioners could do to help facilitate bringing in potential applicants interested in those vital positions. He inquired as to where the postings and descriptions could be located. Assistant Director of Communications Marlena Diaz responded that the Commission web page provides descriptions of the positions and that the State jobs website provides even more detailed information for the posted employment opportunities. Interim Executive Director Berland stated that while the spectrum of recruiting now underway seeks to fill vacancies in the existing staffing plan, as previously approved by the Commission, staff has developed a proposal going forward to increase staffing in certain areas and for restructuring some groups, which it would like present to Commissioners or an appropriate committee.

### **Budget Update**

Interim Executive Director Berland reported that the budget presentation, including a detailed projection to the end of the current fiscal year, which had been planned for today's meeting, has been deferred to the December meeting because Deputy Director of Administration Mariana Cadiz is ill. Commissioner Cardozo suggested that the

Commission should have an agency advocate contact the Governor's Office to urge favorable consideration of the budget proposal and recommended Interim Executive Director Berland. Interim Chair Davie noted that the Commission appears to be under budget on the personnel side, while the Commission may be over budget on the non-personal services side. Interim Chair Davie noted that as the Commission begins to plan for the next fiscal year budget, the Commission has requested a thorough review of the current budget at the December 16 meeting. He also noted that the Commission has a subcommittee on the budget under the Administration Committee, and the committees should begin working and reviewing the budget. Interim Executive Director Berland stated that Deputy Director of Administration Cadiz has, in fact, prepared a detailed financial projection to the end of the fiscal year, looking at each line item in the budget in terms of commitments, in terms of staffing and in terms of expected costs through the end of the year, which will be presented at next month's Commission meeting, that the budget is being monitored in a detailed way, and that the proposed staffing plan is integral to the budget going forward.

### **Proposed Meeting Schedule**

Interim Chair Davie requested a discussion regarding the approval of the Commission Meeting dates. Interim Executive Director Berland stated that under Attachment C was the proposed Commission meeting schedule from January through June 2023. Commissioner Cardozo and Commissioner James expressed conflicts with the March 28 date, and it was suggested that the March meeting be held a week earlier, on March 21, 2-23. Interim Chair Davie proposed that the originally scheduled meeting on December 20 be changed to December 16, because of a personal scheduling conflict. A discussion followed regarding the location, and a decision reached to hold the December 16 meeting in Albany. Interim Executive Director Berland added that the Albany office will always be available for public access to the Commission meetings. Commissioner Carni asked if there are plans to hold any Commission meetings in Syracuse and whether he would be able to attend meetings virtually from Syracuse. Interim Executive Director Berland responded that Commissioner Carni could do so provided the location used was open to the public.

Commissioner Cardozo inquired as to when the remaining Commissioners may be appointed to the Commission. Interim Executive Director Berland stated that there is no substantive update on the status and that he would contact the Independent Review Committee for an update.

**IV. PROPOSED CONFORMING AMENDMENTS TO THE COMMISSION’S REGULATIONS AT 19 NYCRR CHAPTER XX, EXCLUDING PARTS 937, 940 AND 941, AND THE EMERGENCY ADOPTION THEREOF\***

Interim Executive Director Berland introduced the proposed amendments to the Commission regulations and their emergency adoption. He noted that adoption on an emergency basis (effective today) and the proposed rule making process is in accordance with State Administrative Procedure Act (“SAPA”), as well as the Ethics Commission Reform Act (“ECRA”), which requires a formal review of the existing regulations. Interim Vice-Chair Austin and Commissioners Cardozo and Carni expressed an interest in serving on a committee to review regulations. There followed a discussion of the need to conduct the review of existing regulations, including with respect to the delegation to staff, and formal advisory opinions, as well as the Hogan Lovells report, as referenced in correspondence received from certain good government groups. Interim Executive Director Berland stated that it was important for Commissioners to meet with staff to gain an understanding not only of the outside activity approval request process but of the overall guidance process and noted that the new statute is specific in requiring that there be a staff unit dedicated to providing guidance. Interim Executive Director Berland further stated that the Hogan Lovells report is available on the Commission's website and that copies of, or a link to, the Assembly Judiciary Committee's report of the investigation conducted for it with respect to allegations involving the former Governor would be provided. Commissioner Groenwegen asked if an “emergency” exists to justify the emergency adoption of the proposed amendments to the Commission's regulations. Co-Acting General Counsel and Acting Director of Lobbying Quinn responded that the

amendments are needed to serve the general welfare and address concerns that there may be confusion among those affected by the regulations as to what their obligations are.

A motion was made by Commissioner Cardozo, seconded by Commissioner Carni, to adopt the proposed amendments to the Commission's regulations at 19 NYCRR Chapter XX, excluding parts 937, 040 and 941, on an emergency basis and as a proposed rulemaking. The motion carried by unanimous vote.

**V. APPLICATIONS FOR EXEMPTION FROM REVOLVING DOOR RESTRICTIONS, PURSUANT TO PUBLIC OFFICERS LAW § 73(8-b)\***

Co-Acting General Counsel and Director of Ethics Keith C. St. John announced that the Commission received four certifications of exemption from the Revolving Door Restrictions for Commission approval, allowing the respective State agencies to contract with former employees for consulting services. One application was from New York State Homes and Community Renewal and three were from the Thruway Authority. Commissioner Austin asked why the Thruway Authority would be submitting requests for former employees who retired in 2018, 2019, and 2020, and had additional questions with regard to the Commission's renewal policy should their contracts expire. There followed a discussion of the statutory requirements applicable to the applications and of how future requests might be handled. Co-Acting General Counsel and Director of Ethics St. John stated that the specifics on the individuals would be discussed in Executive Session. Further discussion was deferred to Executive session.

**VI. NEW AND OTHER BUSINESS**

Interim Executive Director Berland stated that there is a proposal to retain a communications consulting firm on a short-term basis while steps are being taken to fill the Director of Communications - Public Information Officer position at the Commission. He noted that the proposal would be discussed in Executive Session. Interim Executive Director Berland announced that there is also an additional proposal with respect to a proposed Commissioner per diem policy that will be discussed in Executive Session.

**VII. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO PUBLIC OFFICERS LAW § 105 AND EXECUTIVE LAW § 94(11) TO ADDRESS MATTERS CONCERNING EMPLOYMENT OF PERSONNEL, PENDING LITIGATION, AND INVESTIGATIVE AND ENFORCEMENT MATTER THAT IS CONFIDENTIAL PURSUANT TO SECTION 94 OF THE EXECUTIVE LAW\***

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner James, to enter into Executive Session pursuant to Public Officers Law § 105 to address matters concerning employment of personnel, pending litigation, and investigative and enforcement matter that is confidential pursuant to section 94 of the Executive Law. The motion carried by unanimous vote.

**VIII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

[Interim Chair Davie was not present for the remainder of the meeting.]

Interim Executive Director Berland announced that during the Executive Session, the Commission discussed matters related to litigation and legal advice. The Commission approved three applications from the Thruway Authority for exemption from the post-employment restrictions pursuant to Officers Law § 73(8-b), the Commission deferred consideration of the fourth application. The Commission discussed steps in several investigative matters and discussed five investigative matters that have been or will be closed. The Commission discussed several other investigative matters and discussed legal questions concerning a proposal to retain a communications consulting firm on a short-term basis while steps are being taken to fill a position at the Commission. The Commission discussed legal questions arising with respect to the proposed Commissioner per diem policy.

**IX. NEW AND OTHER BUSINESS (CONTINUED)**

A motion was made by Commissioner Cardozo, seconded by Commissioner James, to enter into a discretionary contract for communication services with Marathon Strategies, which shall not exceed \$50,000 in fees and expenses, to be negotiated by Interim Executive Director Berland. The motion carried by unanimous vote.

**X. MOTION TO ADJOURN THE PUBLIC MEETING\***

A motion was made by Commissioner James, seconded by Commissioner Groenwegen, to adjourn the public meeting. The motion carried by unanimous vote.