

Pursuant to the authority vested in section 94 of the Executive Law, Part 941 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon filing as an Emergency Adoption and upon publication of a Notice of Adoption in the New York State Register, to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. [JOINT COMMISSION ON PUBLIC ETHICS] COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT

PART 941 ADJUDICATORY PROCEEDINGS AND APPEALS PROCEDURES

Section 941.1 is amended to read as follows:

Executive Law §94[(14)](10)(o) authorizes the [Joint Commission on Public Ethics] Commission on Ethics and Lobbying in Government to adopt rules governing the conduct of adjudicatory proceedings and appeals consistent with the New York State Administrative Procedure Act (“SAPA”). Moreover, the [Joint Commission on Public Ethics’] Commission on Ethics and Lobbying in Government’s proceedings are otherwise subject to SAPA. These regulations set forth rules for adjudicatory proceedings and appeals relating to: potential violations of the law that fall within the [Joint Commission on Public Ethics’] Commission on Ethics and Lobbying in Government’s jurisdiction, including investigatory matters pursuant to Executive Law §94([13]10); appeals taken from denials of requests to delete or exempt certain information from a financial disclosure statement pursuant to Executive Law §§94(9)(h) or (i); or Public Officers Law §73-a(3)(8)(b-1), (b-2), or (c); exempt certain individuals from filing a financial disclosure

statement pursuant to Executive Law §94(9)(k); and appeals taken from denials of applications for exemptions under Article 1-A of the Legislative Law §§1-h, 1-j and 19 NYCRR Part 938.6.

Subdivisions (e), (g), and (i) of Section 941.2 are amended to read as follows:

(e) *Executive director* shall mean executive director of the [Joint Commission on Public Ethics] Commission on Ethics and Lobbying in Government as appointed pursuant to Executive Law §94[(9)](6)(a).

(g) *Hearing officer* shall mean the [presiding] independent hearing officer presiding over [in] adjudicatory hearings designated [conducted] pursuant to this Part and in accord with SAPA and shall include, and is synonymous with, the “independent arbitrator” referred to in Executive Law §94(10)(i).

(i) [*The Joint Commission on Public Ethics, Commission or JCOPE*] Commission on Ethics and Lobbying in Government, Commission, or COELIG shall mean the members of the New York State Commission on Ethics and Lobbying in Government [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.

A new subdivision (l) is added to Section 941.2 to read as follows:

(l) Victim shall mean any individual who has suffered or is alleged to have suffered direct harm from any violation of law that is subject to investigation under the jurisdiction of the Commission. The victim may also be, though is not necessarily, the same as, the “complainant.”

Subdivisions (a), (a)(1), (a)(1)(i), a(1)(ii), and (a)(3) of Section 941.3 are amended to read as

follows:

(a) Notice of Allegations (“15-Day Letter”). If following a preliminary review, the Commission or Commission staff decides to elevate such preliminary review into an investigation pursuant to Executive Law §94(10)(f), [receives a sworn complaint or a referral alleging that a person or entity subject to the jurisdiction of the Commission has violated a law that the Commission is authorized to enforce or if a reporting individual has filed a statement that reveals a possible violation of such laws, or if the Commission determines on its own initiative to investigate a possible violation,] the Commission shall provide written notice to the respondent [notify the subject] individual or entity [in writing, describe] setting forth, to the extent the Commission is able to do so, the possible or alleged violation or violations of [such] law[s], and [provide] a description of the allegations against [them] the respondent and the evidence, if any, already gathered pertaining to [supporting] such allegations.]; provided however that the Commission shall redact any information that, in the judgment of the Commission, may be prejudicial to either the Complainant or the investigation.] Any information that may, in the judgment of the Commission or staff, either be prejudicial to the complainant or victim, or compromise the investigation, shall be redacted.

(1) The 15-Day Letter shall provide the individual or entity with a fifteen-day period from the receipt of the 15-day Letter in which to submit a written preliminary response or information the respondent determines may benefit the Commission or Commission staff in its work, [-] including any evidence, statements, and proposed witnesses, and [-] setting forth information relating to the activities cited as possible or alleged violation(s) of law.

(i) While any response submitted will be reviewed by the Commission and/or Commission staff, [the] Commission staff is not precluded from recommending and the Commission is not precluded from voting to close or settle the matter, to

advance it to a confidential due process hearing or to return it to staff for further [commence a substantial basis] investigation prior to receiving a Respondent's written response.

(ii) An extension of time to respond may be available to Respondent upon request[;however, if the requested extended deadline will lapse after the next scheduled meeting of the Commission, the Respondent must waive any claims or defenses against the Commission for failure to act in a timely manner].

(3) Pursuant to Executive Law § 94[(13)(c)](10)(k), the 15-Day Letter continues the Commission's jurisdiction over the Respondent.

Subdivision (b) of Section 941.3 is repealed.

Subdivision (c) of Section 941.3 is re-lettered as subdivision (b) and subdivision (d) is re-lettered as subdivision (c) and are amended to read as follows:

(b[c]) Notice of Hearing. (1) If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission has determined by majority vote to proceed to a hearing, having found that there is credible evidence of a violation under the Commission's jurisdiction, [At any time after commencing a substantial basis investigation,] notice shall be provided to the Respondent to inform Respondent of their right to be heard and appear in person and by attorney at a confidential hearing and to give sworn testimony, present evidence, and cross-examine witnesses [to be held within thirty (30) days of such written notice]. The notice shall contain the following:

(i) the alleged violations of law and the factual basis for those allegations;

- (ii) a statement of the time and place of the hearing;
- (iii) the hearing officer who will preside over the matter and instructions for the submission of any notices, filings, or other papers;
- (iv) a statement for hearing impaired parties and participants concerning the provision of deaf interpretation without charge;
- (v) notice to the Respondent that failure to appear will not preclude the [H]hearing [O]fficer or Commission from proceeding with the scheduled hearing; and
- (vi) any other information deemed necessary or appropriate.

(c[d]) Notice of [Closure] Closure, Continued Investigations or Guidance. If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission decides, by majority vote, to return the matter to the staff for further investigation, close the matter, or authorizes the resolution of the matter by guidance to the subject, or if the Commission's vote to proceed to a due process hearing does not carry, the Commission shall, within 60 days of such determination, [, upon receipt and review of a matter, it is determined at any stage that there is no violation, that any potential violation has been rectified, or if the matter is closed for any other reason, the Commission shall] provide written notice of its decision as follows:

- (1) to the Complainant and/or Victim, if any;
- (2) to the Subject or Respondent if they have been notified, by the Commission or otherwise, of a complaint or allegations against them;
- (3) to any Agency that made a referral to the Commission or otherwise, notified the Commission of the allegations, or any Agency which employs the Subject or Respondent.

(4) At the discretion of the Commission, written notice shall be provided to a Subject who has not been previously notified of the allegations against them or other interested parties, including but not limited to witnesses.

(5) Pursuant to §94(10)(1), where the Commission's vote to proceed to a due process hearing has not carried, the notice shall not include any personally identifying information or information tending to identify any party involved in the investigation.

Subdivision (b) of Section 941.6 is amended as follows:

(b) The Commission shall select at random from the list of independent hearing officers a hearing officer to preside over each hearing or appeal, when applicable. In the event the independent hearing officer so selected is unavailable or unable for any reason to sit as a hearing officer in the matter, the Commission shall select at random from the list of independent hearing officers another hearing officer to preside over the hearing or appeal, as applicable.

Subdivision (a)(2) of Section 941.7 is amended to read as follows:

(2) Sign and issue subpoenas in the name of the Commission, at the request of any party or the direction of the Commission, requiring attendance and testimony by witnesses at the confidential hearing and the production of books, papers, documents and other evidence at such hearing. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue [such] subpoenas under the provisions of the Civil Practice Law and Rules requiring attendance and testimony by witnesses at the confidential hearing and the production of books, papers, documents and other evidence at such hearing.

Subdivisions (a), (b), (d) and (e) of Section 941.9 are amended as follows:

(a) At least seven (7) days before the hearing, or at such earlier time as the parties may agree or the hearing officer may direct, the Commission shall provide to the Respondent any additional evidence supporting the allegations that was not previously described in the notice sent pursuant to Executive Law §94[(13)(a)](10)(f) and subsection 941.[8(c)]3(a) in sufficient detail to enable the Respondent to respond at the hearing.

(b) At least seven (7) days before the hearing, or at such earlier time as the parties may agree or the hearing officer may direct, the Respondent shall provide the Commission and hearing officer a list of possible witnesses and notice of any defenses to be presented, and supporting evidence, in sufficient detail to permit the Staff of the Commission to prepare for the hearing.

(d) Except by consent of the parties, every hearing conducted pursuant to these rules shall be concluded within 180 days of the date of the hearing specified in the [n]Notice of [substantial basis investigation and h]Hearing. An adjournment or continuance granted by the hearing officer at the request of the Respondent or by mutual consent of the parties will extend the period of time for conclusion by the length of time the adjournment or continuance is granted.

(e) The Commission, the Executive Director, or the hearing officer may, at any time before the time limits delineated above expire, extend such time period by making a determination that the time provided is insufficient to complete the hearing and shall state sufficient reasons therefor. Except for good cause shown, [T]this extension shall not be for a period longer than 90 days after the expiration of the original 180 day period during which the hearing should have been concluded.

Subdivision (a) of Section 941.10 is amended to read as follows:

(a) All hearings and proceedings before the hearing officer or Commission related thereto

commenced under these rules are confidential in accordance with Executive Law § 94(10)(f) and (11)[(13(b))].

Section 941.13 and subdivisions (b)(2) and (c) thereof are amended to read as follows:

Section 941.13 Proposed Findings of Fact and Recommendation, Substantial Basis [Investigation] Report, and Notice of Civil Assessment and/or Other Penalty.

(2) The Commission's staff shall have an opportunity to respond in writing, in the form of a brief directed to the Commission, to the findings of fact and recommendation of the hearing officer, and shall submit a proposed Substantial Basis [Investigation] Report to the Commission for its consideration.

(c) The Commission shall have sixty (60) days from receipt of the proposed Substantial Basis [Investigation] Report, or as soon thereafter as possible, in which to vote on whether or not to issue a Substantial Basis [Investigation] Report and issue a Notice of Civil Assessment and/or Other Penalty. In the Substantial Basis [Investigation] Report, the Commission may adopt the findings of fact and recommendation of the hearing officer in whole or in part, or it may reverse, remand and/or dismiss the hearing officer's finding of fact and recommendation based upon the record produced at the hearing.

Subdivision (e) of Section 941.13 is re-lettered to subdivision (d) and is amended to read as follows:

([e]d) With respect to the investigation of a Respondent subject to the jurisdiction of the Commission, other than a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation and the hearing the Commission has found by

a majority vote a substantial basis to conclude that Respondent violated the Public Officers Law, Civil Service Law or the Legislative Law, the Commission shall [send] issue a [Substantial Basis Investigation R]report containing its determinations, including its findings of fact and conclusions of law, to the complainant, if any, and the respondent [individual or entity].

Subdivision (d) of Section 941.13 is re-lettered to subdivision (e) and is amended to read as follows:

[(d)e] The Commission shall release such report publicly and publish it on its website within twenty days of its delivery to the complainant, if any, and the respondent [forty-five days of its issuance].

Subdivision (f) of Section 941.13 is amended to read as follows:

(f) A [substantial basis investigation] report issued pursuant to Executive Law § 94[(14-a)](10)(p)(i) shall be delivered to the Legislative Ethics Commission and to the individual who is the subject of the report, and shall be made public in accordance with and otherwise be governed by Legislative Law §80. The Commission shall provide to the Legislative Ethics Commission copies of the full investigative file and hearing record.

Subdivision (a) of Section 941.14 is amended as follows:

(a) The Commission's assessment of civil assessments and other penalties made pursuant to Executive Law §94[(14)](10) shall not preclude its referral of violations of law to a prosecutor for criminal prosecution in accordance with the provisions of Executive Law 94(10)(n)(iv) .

Subdivisions (a), (b), (c)(1)-(3), (d)(1)-(3), and (e) of Section 941.16 are amended to read as follows:

(a) Executive Law § 94 provides that proceedings, as well as information and evidence obtained, relating to the Commission's determination as to whether a substantial basis exists that there has been a violation of the laws it enforces are confidential while a matter is pending and unless and until the Commission issues a [substantial basis investigation] report, except that the Commission may authorize the disclosure of such information to the extent necessary in furtherance of its investigations.

(b) Notwithstanding any other provision of law, pursuant to Executive Law 94 [(9-a)(b)](11), the Commission, by majority vote of the full Commission in accordance with section 94[(6)](4)(h), may disclose to any person or entity outside the Commission any testimony or information obtained by a Commissioner or staff upon a determination that such disclosure is in the public interest as set forth below. Disclosure so authorized may be by full public release or to designated persons or entities as directed by the Commission. The Commission may further direct that disclosure to designated persons or entities be conditioned upon the recipient's agreement to maintain confidentiality and to limit further dissemination.

(c) In determining whether release or disclosure of information relating to a matter is in the public interest, the Commission may consider any one or more of the following criteria:

- (1) Whether the Complainant, Victim, Subject or Respondent has made public statements relating to an allegation submitted to the Commission;
- (2) Whether the Complaint itself or the allegations therein have been publicly disclosed by the Complainant, Victim or others;
- (3) Whether the identity of the Complainant or Victim is a matter of public knowledge;

(d) In accordance with this section, the Commission has also delegated to staff the authority to consider the criteria in subdivision (c) of this section, and upon a determination that disclosure is in the public interest, staff shall:

(1) Publicly acknowledge receipt of a complaint. However, the complaint itself, including the identity of the Complainant or Victim, if not public, shall not be made public absent a vote of the Commission;

(2) Publicly acknowledge that a matter is “pending before the Commission [JCOPE]” until such time as the matter has been closed for any reason;

(3) Publicly acknowledge that a matter is “no longer pending before the Commission [JCOPE]” after the matter has been closed for any reason; and

(e) Pursuant to this section, the Commission has determined that it is in the public interest to publicly release information relating to investigative and enforcement matters as follows:

(1) its annual report, in accordance with the requirements in Executive Law § 94[(9)(1)](12), shall include:

(i) a listing by assigned number of each complaint and referral received which alleged a possible violation within the Commission’s jurisdiction, including the current status of each complaint; and

(ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, with redactions, as necessary, to protect the identity of the Subject, Respondent, Victim and Complainant as required under the confidentiality requirements in Executive Law § 94.

(2) its website shall include, within sixty days of resolution or closure of a matter for any reason other than issuance of a substantial basis investigation report or settlement, a listing

by assigned case number, setting forth the nature of the matter, the alleged violation of law, and the date and nature of the disposition, with redactions, as necessary, to protect the identity of the Subject, Respondent, Victim and Complainant under the confidentiality requirements in Executive Law § 94 and in accordance with these regulations.

(3) Information relating to an investigation or enforcement proceeding that would otherwise be confidential pursuant to Executive Law § 94, when a legal proceeding is initiated in court by the Subject or Respondent of such investigation, as deemed necessary by counsel representing the Commission in furtherance of its interests in such legal proceeding. With respect to other legal proceedings, the Commission may release such information by majority vote of the full Commission, in accordance with Executive Law section 94[(6)](4)(h), that such disclosure is in the public interest considering the criteria set forth in subdivision (c) of this section.

Subdivision (a)(2) of Section 941.17 is amended to read as follows:

(2) Any person required to file a financial disclosure statement whose written request for exemption from any requirement to report one or more items of information that pertain to such person's spouse, domestic partner, or unemancipated children as provided in Executive Law §94(9)(i) has been denied in writing by the Executive Director, may file a written appeal of the denial, called a notice of appeal, as provided in Subpart 941.17(d) of this Title.

Subdivision (a) of Section 941.18 is amended to read as follows:

(a) An appeal of a denial of an application for exemption to a judicial hearing officer, pursuant to Article 1-A of the Legislative Law §1-h and 19 NYCRR Part 938, is available only to a Client

Filer who submitted an application under 19 NYCRR Part 938.4(a). A Client Filer who submitted an application under 19 NYCRR Part 938.4(b) is not entitled to such an appeal.

Subdivisions (a), (b), and (c) of Section 941.19 are amended to read as follows:

- (a) All final recommendations of the hearing officer and all of the decisions of the Executive Director and the Commission shall be in writing or stated in the record and shall include findings of fact, conclusions of law, reasons for the decision and, when appropriate, direct that specific action be taken by the Commission. The final decisions of the Commission shall be binding upon the Commission.
- (b) Except in matters *ex parte*, members or employees of the Commission assigned to make, or assist in making, a decision or findings of fact and conclusions of law in any hearing shall not communicate, directly or indirectly, in connection with any issue of law[,] with any person, party or its representative of record, except upon notice and opportunity for all parties to participate. Any such member or employee may communicate with other Commission members or employees and may seek the aid and advice of agency staff, including counsel to the Commission, other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.
- (c) The Commission shall maintain all substantial basis [investigation] reports and notices of civil assessments and make them publicly available as required by law.

Section 941.20 is amended to read as follows:

Section 941.20 Savings Clause.

All matters where the Commission has issued a Substantial Basis [Investigation] Report will be

governed by the laws and adjudicatory rules in effect when such Substantial [Basis] Investigation Report was issued. All other matters and investigations will be governed by the provisions of this Part.