

**MINUTES OF THE PUBLIC SESSION OF THE  
OCTOBER 6, 2022 MEETING OF THE  
COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT  
540 BROADWAY  
ALBANY, NEW YORK**

**25 Beaver Street, 5<sup>th</sup> Floor  
New York, New York**

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

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

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

**Staff:** Sanford N. Berland, Interim Executive Director (NYC)  
Carol Quinn, Acting Co-General Counsel & Deputy Director of Lobbying (NYC)  
Keith C. St. John, Acting Co-General Counsel & 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)  
Peter Smith, Chief Investigative Officer (Buffalo)  
Mariana Cadiz, Deputy Director of Administration (NYC)  
Marlena Diaz, Assistant Director of Communications (WebEx)  
Lori Donadio, Principal Investigative Analyst (WebEx)

**I. CALL TO ORDER**

Interim Chair Davie called the meeting to order and noted that, in accordance with the Open Meetings Law, the meeting was open to the public in both the Albany and New York City office locations.

## II. APPROVAL OF MINUTES

A motion was made by Commissioner Groenwegen, seconded by Commissioner Edwards, to approve the public session minutes from the September 12, 2022 Commission meeting. The motion carried by unanimous vote.

## III. REPORT FROM STAFF

### Operations Update

Interim Executive Director Berland gave an update on staff operations. Commissioner Cardozo requested that staff provide a comparison to prior years at the next Commission meeting. Interim Executive Director Berland stated that it would be provided and added that staff has continued to give guidance and issue lobbying e-blasts during the intermediate period.

### Job Postings

Interim Executive Director Berland stated that the Commission has posted thirteen staff vacancies, with a response deadline of October 28, 2022. Commissioner Edwards stated that the Commission should ensure a broad search for a diverse pool of candidates is conducted.

### Budget Report—Second Quarter

Interim Executive Director Berland reported that although the prior JCOPE budget was insufficient to cover mandatory salary increases, the enacted 2023 fiscal year budget for COELIG increased the line for personal services substantially. Interim Chair Davie asked whether the budget allowed for the Commission to be fully staffed. Interim Executive Director Berland responded in the affirmative, but that the Commission will need additional funding for non-personal services costs. Interim Vice-Chair Austin asked what services are provided under the non-personal services budget line. Deputy Director of Administration Mariana Cadiz indicated that those services included contractual services, subscriptions, computer licenses, lease payments, and utilities, etc.

**Implementing the Executive Law § 94(8) Ethics Training, Tracking and Reporting Requirements for State Employees and Lobbyists and Lobbying Clients**

Interim Executive Director Berland reported that the Ethics Commission Reform Act (ECRA) substantially expanded mandatory ethics training requirements beyond designated policymakers and those earning above the salary-grade filing threshold, to now include all executive branch employees. Acting Co-General Counsel & Deputy Director of Lobbying Carol Quinn indicated that the new lobbying training requirement now includes training for clients. Since the Lobbying Act already included training for lobbyists, staff plans to incorporate clients into that training and develop a new online training course for both lobbyists and clients, to be launched to coincide with the 2023-2024 Biennial Registration Period beginning in January 2023.

Commissioner Cardozo asked if staff had been consulted by the Legislature when the new statutory requirements were being drafted. Interim Executive Director Berland responded that staff had not been so consulted. Interim Chair Davie asked if the new mandate caused technical issues or agency personnel issues. Acting Co-General Counsel & Director of Ethics Keith St. John stated that the new mandate presented both technical and personnel issues. Commissioner Groenwegen asked if State employees would still receive the same training. Acting Co-General Counsel & Director of Ethics St. John stated that the same trainings would be held but the audience greatly increased. Interim Chair Davie offered that staff should speak with the Chamber regarding those issues, given the impracticality of the mandate, and to keep the Commission apprised of any progress.

**IV. Proposed Policy for Handling Pending Inquiries and Matters Pursuant to Executive Law § 94(1)(c) - General Discussion**

Interim Executive Director Berland announced that staff is proposing implementing a policy to address the requirement in Executive Law § 94(1)(c) to be more consistent with the Investigations and Enforcement provisions under new Executive Law § 94(10). Interim Executive Director Berland proposed that all carried over pending matters that have not previously advanced to the hearing phase be made subject to the same investigative and enforcement procedures that will apply to matters initiated under the new statutory

regime. This new process provides for staff to conduct a preliminary review to consider whether a matter should be elevated to an investigation, which investigation culminates in a report and recommendation from staff as to whether a matter should be closed, settled, or taken to hearing, which the Commission is then called to vote upon. Interim Chair Davie indicated that staff's suggestion makes the most sense and then read proposed resolution 22-02 into the record:

WHEREAS, the Commission on Ethics and Lobbying in Government (hereinafter, "Commission") is authorized and called upon by Executive Law § 94(1)(c) to establish policies to address any pending matters or inquiries affected by Executive Law § 94 and review such matters; and

WHEREAS, Executive Law § 94(1)(e) provides, in pertinent part, that Executive Law § 94 "shall not be deemed to have revoked or rescinded any regulations . . . that were issued by predecessor ethics and lobbying bodies"; and

WHEREAS, Executive Law § 94(10) and 19 NYCRR Part 941 provide procedures and rules and regulations, respectively, for the handling and disposition of investigative and enforcement matters and inquiries by the Commission, including for the review of same by the Commission;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that any matter or inquiry that was pending on the effective date of Executive Law § 94 ("pending matter or inquiry") shall be continued and prospectively shall be subject to, and shall be handled and pursued by the Commission and Commission staff in accordance with, the procedures and rules and regulations, respectively, set forth in Executive Law § 94(10) and 19 NYCRR

Part 941, including as such provisions may be amended or otherwise modified in the future; and it is

FURTHER RESOLVED, that any “fifteen-day” letters and responses thereto and subpoenas or other process, requests, appointments, or notices issued or otherwise propounded by the Joint Commission on Public Ethics or the staff of that Commission, shall remain valid and effective.

A motion was made by Commissioner Cardozo and seconded by Interim Vice-Chair Austin, with a subsequent friendly amendment offered by the Interim Vice-Chair and accepted by Commissioner Cardozo, to treat pending JCOPE matters in a manner consistent with Executive Law § 94(10) and 19 NYCRR Part 941. The motion carried by unanimous vote.

V. **PROPOSED REGULATION AUTHORIZING THE ISSUANCE OF SUBPOENAS AND OTHER PROCESS BY THE EXECUTIVE DIRECTOR AS DELEGATED BY THE COMMISSION**

**Proposed Regulation Amending Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941) and the Emergency Adoption Thereof**

Interim Executive Director Berland reported that the proposed regulation is to amend the Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941) on a formal and emergency basis. Staff would file a Notice of Emergency Adoption and Proposed Rulemaking in the New York State Register and the proposed regulation would have a 60-day comment period with the emergency regulation becoming effective immediately upon filing. The first part of the proposed regulation amends the adjudicatory regulations and the second part delegates authority to the Executive Director. This would allow staff to do a preliminary review and make confidential disclosures necessary to conduct an investigation and issue subpoenas, with notification to the Chair between Commission meetings and presentation to the Commission at its next scheduled meeting.

Interim Chair Davie added that the rulemakings would give authority to staff to issue subpoenas, with notice to the Chair, and enable staff to have confidential communications. Commissioner Groenwegen stated that the regulation seems to streamline the process to benefit the public and to improve efficiency.

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, together with a friendly amendment offered by Commissioners Groenwegen, to adopt the proposed Adjudicatory Proceedings Appeals Process Regulations (NYCRR Part 941) on an emergency basis and submit as a proposed rulemaking for permanent adoption following public comment. The motion carried unanimously.

## **VI. FORMATION OF PROPOSED COMMITTEES**

Interim Executive Director Berland expressed that ECRA contemplates the formation of committees of the Commission to address matters between meetings, with matters then reported to the full Commission, and proceeded to give a summary of his recommendation on what each committee might handle:

### **Communications**

The communications committee would review public disclosure of information.

### **Staffing and Recruitment**

The staffing and recruitment committee would review staffing and handle job recruitment.

### **Regulations and Procedures**

The regulations and procedures committee would review the existing regulations and Advisory Opinions.

### **Litigation**

The litigation committee would review ongoing litigation.

Interim Vice-Chair Austin suggested that each Commissioner be responsible for different committees. Commissioner Cardozo suggested the commissioners be assigned committee membership by area of expertise. Interim Chair Davie created a subcommittee consisting

of Vice-Chair Austin and Commissioners Cardozo and Edwards to determine how best to form each committee.

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to discuss and form a subcommittee made up of Interim Vice-Chair Austin and commissioners Cardozo and Edwards to discuss and make recommendations to bring back to the Commission for further discussion. The motion carried unanimously.

**VII. APPLICATION FOR EXEMPTION FROM REVOLVING DOOR PROVISION OF THE PUBLIC OFFICERS LAW, PURSUANT TO POL § 73(8-B)**

Acting Co-General Counsel & Director of Ethics St. John reported that Public Officers Law § 73(8-b) authorizes exemption from the post-employment restrictions contained in Public Officers Law § 73(8)(a) for former State employees, and allows their former State agency to contract with them to provide services upon a certification to the Commission by the head of the State agency that the former State officer or employee has expertise, knowledge, or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost. Interim Chair Davie stated that the matter would be addressed in Executive Session and brought back to the Public Session for a recorded vote.

**VIII. NEW AND OTHER BUSINESS  
PER DIEM**

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner James, to discuss and form a subcommittee of Interim Chair Davie and Commissioners Groenwegen and James to discuss per diems and disbursements, and to bring the matter back to the full Commission for consideration. The motion carried by unanimous vote.

**IX. 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 MATTERS THAT ARE CONFIDENTIAL PURSUANT TO SECTION 94 OF THE EXECUTIVE LAW**

A motion was made by Commissioner Groenwegen, seconded by Commissioner James, to enter into Executive Session pursuant to Public Officers Law § 105. The motion carried.

**X. PUBLIC ANNOUNCEMENTS OF ACTIONS FROM EXECUTIVE SESSION**

Interim Executive Director Berland announced that, during the Executive Session, Commissioners discussed matters related to staffing and pending litigation and discussed an application for exemption from post-employment restrictions pursuant to Public Officers Law § 73(8-b). The Commission also authorized steps in a number of investigative matters and discussed several other investigative matters.

**XI. APPLICATION FOR EXEMPTION FROM REVOLVING DOOR PROVISION OF THE PUBLIC OFFICERS LAW, PURSUANT TO POL § 73(8-B)**

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Edwards, to approve the application for exemption for a one-time, one-year exemption. The motion carried unanimously.

**FDS APPEAL**

Interim Vice-Chair Austin made a motion, seconded by Commissioner Groenwegen, to table the FDS exemption appeal (item five on the Executive Session agenda) pending staff's report at the Commission's next meeting.

**XII. MOTION TO ADJOURN THE PUBLIC MEETING**

A motion was made by Commissioner Cardozo, seconded by Commissioner Edwards, to adjourn the public meeting. The motion carried without objection.