

**MINUTES OF THE PUBLIC SESSION
OF THE JANUARY 31, 2023
MEETING OF THE COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT**

**25 BEAVER STREET, 5TH 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: Dolly Caraballo (NYC)
Michael A. Cardozo (NYC)
Edward D. Carni (ALB)
Nancy G. Groenwegen (ALB)
Seymour W. James, Jr. (NYC)
Kaylin L. Whittingham (NYC)

Staff: Sanford N. Berland, 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
(ALB)
Michael Sande, Deputy Director of Ethics Guidance (NYC)
Meghann E. Hennigan, Deputy Director of Education (ALB)
Kavita Bhatt, Associate Counsel (NYC)
Jennifer Bliss, Associate Counsel (Albany)
Megan Mutolo, Associate Counsel (Webex)
Peter Smith, Chief Investigative Officer (Webex)
Lori Donadio, Principal Investigative Analyst (ALB)
Mariana Cadiz, Deputy Director of Administration (Albany)
Michelle Merola, Confidential Assistant (Albany)

I. CALL TO ORDER

Interim Chair Davie called the meeting to order and announced that a quorum was present in the Albany and New York City office locations. Interim Chair Davie expressed condolences for Commissioner Carni and his family on the passing of his mother.

II. APPROVAL OF MINUTES – PUBLIC SESSION

December 16, 2022*

Interim Chair Davie requested approval of the minutes of the meeting that was held on December 16, 2022. An amendment to the minutes as drafted was offered by Commissioner Groenwegen. A motion was made by Commissioner Cardozo, seconded by Commissioner James, to approve the public session minutes, as amended, of the December 16, 2022 Commission meeting. The motion was approved by a vote of 7-0-2. Commissioners Caraballo and Whittingham abstained from voting.

January 6, 2023*

A motion was made by Commissioner Cardozo, seconded by Commissioner Caraballo, to approve the public session minutes of the January 6, 2023 meeting. The motion was approved by a vote of 8-0-1. Commissioner James abstained from voting.

III. REPORT FROM STAFF

Operations Update

Executive Director Berland stated that pursuant to, and in accordance with, provisions of the state's Open Meetings Law, the Commission meeting was being held at locations open to the public in Albany and New York City.

Executive Director Berland presented the Operations Update and noted that the Operations Report, under Tab C, included staff operations figures for the Commission for the current monthly period; for the Joint Commission on Public Ethics (JCOPE) for the corresponding monthly period in 2021; for both JCOPE 2022 through its sunset on July 7, 2022 and the Commission from its inception on July 8, 2022 through year end, combined; and for JCOPE for 2021.

Some commissioners inquired about the seeming disparities between the annual comparisons of notices of delinquency, guidance, audits, targeted and random reviews of financial disclosure statements and training figures, and also noted that in addition to the currently reported comparisons, it would be helpful to have comparative figures reported in each category for the prior monthly reporting period. Co-Acting General Counsel and Director of Ethics St. John stated that the difference in figures relates generally to the timing of the issuance of notices of delinquency, Covid-19, and staff shortage, and that the difference in random FDS reviews completed and RAILS sent reflects the fact that all such reviews had been completed previously. Executive Director Berland noted that staffing was limited prior to forming the new Commission and adopting the new staffing plan. He also stated that going forward, the operations report would include figures for the prior month in each category.

Recruiting Update

Executive Director Berland presented the recruiting update and explained that interviews have been conducted and offers have been extended to fill vacancies under the staffing plan, including positions within the Investigations, Communications, Lobbying, and Ethics Divisions, and he expects to fill the nine remaining vacancies very soon. Executive Director Berland noted that the interim staffing plan will continue through the end of this fiscal year, March 2023, with a significant budget increase for staffing in the new fiscal year.

Budget Update

Executive Director Berland reported that the Commission is continuing to run significantly under budget on the personal services side and over budget for non-personal services. Being over budget on non-personal services is a result of outside counsel legal fees that were incurred for defense of the lawsuit that had been brought by the former Governor against JCOPE and the internal review. He noted that the Commission remains under budget for the year by upwards of two million dollars, depending upon the number of additional hires completed before the end of the fiscal year. He further stated that the Commission received \$237,236 for retroactive salary payments in 2022.

Executive Law § 94(8) ethics and lobbying training, tracking and reporting requirements – Update and Third Calendar Quarter 2022 Report

Executive Director Berland reported that the 2022 Third Calendar Quarter Report was presented to the Governor and leaders of the Legislature on January 20, 2023. He noted that the Report, under Tab E, included figures from the third quarter of calendar year 2022, beginning July 8, 2022 (the effective date of the Commission’s enabling legislation) through September 30, 2022. He explained that State agencies have been largely cooperative, that training activity increased and that staff expects to continue to accelerate implementation of the expanded training mandate. He noted that staff is continuing to proceed with the plan approved by the Commission at the last meeting to provide at least online training to up to 90 percent of the workforce this year, with a system to monitor such training, while work is underway with the Office of Information and Technology Services to build a more robust statewide training tracking and scheduling system and to move forward on two fronts: having live training capacity built up at the agency level and exploring training delivery alternatives, including a centralized training hub, to concentrate efforts to reach beyond the population of 34,000 FDS filers and toward the 300,000 State officers and employees now subject to the ethics training requirement.

Executive Director Berland also reported that the online ethics training for lobbyists and clients launched on January 18, 2023. An estimated 13,000 individuals will be required to take the ethics for lobbyists and clients training based upon the submission of a 2023-2024 Statement of Registration. Approximately 1,100 of the 6,500 individuals currently required to take the training (based on the 2023-2024 Registrations submitted thus far) have completed the training, with the remaining required to complete the training by mid or late March 2023. Lobbying ethics training will be ongoing, as lobbyists and clients have 60 days to complete the ethics training once they are initially listed on a submitted 2023-2024 Statement of Registration. Thereafter, lobbyists and clients will be required to take ethics training again every 3 years.

Interim Chair Davie noted that the forecast is that 90 percent of the State workforce will receive ethics training by the end of the calendar year, a majority by straight online training, but some percentage of that – at least 34,000, but hopefully more than that – by live or live-online

training, with a substantial increase in live/live-online training, hopefully to up to 90% of the affected workforce, by the end of calendar year 2024, although there may be a recommendation to stagger the training, as it is a biennial training requirement, so that rather than undertaking all 300,000 live/live-online trainings every other year, do half each year. While implementing all of this without any ramp-up period built into the statute is a challenge for all of us, we anticipate a robust and ongoing commitment from those who are responsible for our budget to ensure the Commission has the resources it needs so that every State employee who is under the jurisdiction of the Commission receives the training that is required under the Ethics Commission Reform Act of 2022.

Communications Update

Executive Director Berland stated that the Commission has continued to work with Marathon Strategies, with its contract running through February 2023, and reported that Marathon has been extremely effective in communicating with the public the many things the Commission is doing, including the new ethics training requirement for lobbyists and clients and the Commission's online training initiative.

Interim Chair Davie stated that the Commission has spoken directly to the public via the Executive Director's interview on the public radio program *Capitol Pressroom*, as well as the Chair's recent Op-Ed in the *Albany Times Union*. In addition, it has been helpful to be able to communicate to the public about the training and other activities that the Commission is undertaking to fulfill the mandate of the Commission's enabling legislation.

Procedures and Guidelines

Executive Director Berland announced that staff has prepared preliminary drafts of the procedures and guidelines for the Commissioners' consideration and referred the drafts to the appropriate committee for further review.

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

Adoption of Proposed Regulation Amending Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941) to add new § 941.3-a*

After a brief discussion, adoption of the Proposed Regulation Authorizing the Issuance of Subpoenas and Other Process by the Executive Director as delegated by the Commission was tabled until the February 28, 2023 meeting. A motion to table was made by Commissioner Cardozo, seconded by Commissioner Whittingham. The motion carried by unanimous vote.

V. PROPOSED FURTHER AMENDED PART 941 REGULATIONS

Adoption of the Proposed Further Conforming Amendments to the Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941)*

After a brief discussion, the Commission adoption of the Proposed Further Amended Part 941 Regulations was tabled until the February 28, 2023 meeting. A motion to table was made by Commissioner Cardozo, seconded by Commissioner Whittingham. The motion carried by unanimous vote.

VI. SCHEDULING THE ANNUAL PUBLIC HEARING

Executive Director Berland announced that the annual public hearing called for by ECRA is tentatively scheduled for March 29, 2023. The purpose of the annual public hearing will be to solicit and receive public comment regarding the Commission's administration, interpretation, and enforcement of the ethics laws and potential regulatory changes. Interim Chair Davie advised that the finalized hearing outline will be posted on the Commission's website.

VII. EXECUTIVE LAW § 94(4)(F) PER DIEM POLICY*

Interim Chair Davie advised that the Per Diem Policy should be discussed in Executive Session to obtain the advice of counsel with respect to the provision, with a report-out to be provided in public session.

VIII. NEW AND OTHER BUSINESS

None.

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 MATTER THAT IS CONFIDENTIAL PURSUANT TO SECTION 94 OF THE EXECUTIVE LAW*

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Caraballo, 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 § 94 of the Executive Law. The motion carried by unanimous vote.

X. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

[Commissioner Edwards was not present for the remainder of the meeting.]

Executive Director Berland announced that during the Executive Session, the Commission discussed matters related to litigation, legal matters and personnel. The Commission discussed legal matters concerning the Executive Law § 94(4)(f), the per diem policy; the Commission approved informal guidance pursuant to Executive Law § 94(7) and discussed an outside activity approval request pursuant to Part 932 of the Commission's regulations. The Commission authorized steps in several investigative matters, closed one investigative matter, and discussed several other investigative matters.

Executive Director Berland noted that Commissioner Edwards participated during a portion of the meeting pursuant to Public Officers Law § 103-a, upon Interim Chair Davie's determination that extraordinary circumstances prevented her from participating in person at the meeting.

XI. MOTION TO ADJOURN THE PUBLIC MEETING*

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