

**MINUTES OF THE PUBLIC SESSION  
OF THE FEBRUARY 28, 2023  
MEETING OF THE COMMISSION ON ETHICS  
AND LOBBYING IN GOVERNMENT**

**540 BROADWAY  
ALBANY, NEW YORK 12207**

**25 BEAVER STREET, 5<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10004**

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

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

**Members:** Ava Ayers (ALB)  
Dolly Caraballo (ALB)  
Michael A. Cardozo (ALB)  
Claudia Edwards (POUGH)  
Nancy G. Groenwegen (ALB)  
Seymour W. James, Jr. (NYC)  
Kaylin L. Whittingham (ALB)

**Absent:** Edward D. Carni

**Staff:** Sanford N. Berland, Executive Director (ALB)  
Keith C. St. John, General Counsel (ALB)  
Kavita K. Bhatt, Deputy General Counsel (NYC)  
Carol Quinn, Director of Lobbying (ALB)  
Michael Sande, Director of Ethics Guidance (NYC)  
Mariana Cadiz, Acting Director of Administration (ALB)  
Megan Mutolo, Deputy Director of Lobbying (ALB)  
Marlena Diaz, Deputy Director of Learning Innovation  
Administration (ALB)  
Peter Smith, Chief Investigative Officer (Webex)  
Lori Donadio, Managing Principal Investigative Analyst (ALB)

**I. CALL TO ORDER**

Interim Chair Davie called the meeting to order.

Executive Director Berland announced that a quorum was present in the Albany and New York City office locations and stated that pursuant to, and in accordance with, the provisions of the state Open Meetings Law, the Commission meeting was being held at locations open to the public in Albany and New York City, with Commissioner Edwards attending remotely pursuant to Public Officers Law § 103-a and the Commission's resolution permitting remote participation in extraordinary circumstances.

**II. ANNOUNCEMENTS**

**Welcome newly appointed Commissioner Ava Ayers**

Interim Chair Davie welcomed new Commissioner Ava Ayers to the Commission.

Commissioner Ayers thanked everyone and stated it was an honor to be confirmed and looks forward to working with everyone.

**Staff promotions and new hires**

Executive Director Berland announced and congratulated staff who received promotions and welcomed the new hires. Executive Director Berland added there were two remaining executive staff vacancies, for Director of Investigations and Enforcement and Deputy Director of Investigations and enforcement, the recruitment for which was being finalized, and stated that with the filling of those positions, the major executive level appointments within the agency will be completed, and that once the remaining positions had been filled, the interim staffing plan will be completed.

**III. APPROVAL OF MINUTES – PUBLIC SESSION**

**January 31, 2023**

Interim Chair Davie requested approval of the minutes of the meeting that was held on January 31, 2023. A motion was made by Interim Vice-Chair Austin, seconded by Commissioner

Cardozo, to approve the public session minutes of the January 31, 2023, Commission meeting. The motion was approved by a vote of 8-0-1. Commissioner Ayers abstained from voting.

#### IV. REPORT FROM STAFF

##### Operations Update

Executive Director Berland reviewed the Monthly Operations Report, under Tab C, and noted that as requested, a new column has been added so that the current month's totals can be compared with the preceding month's operations figures as well as with the corresponding month in 2022. There are also columns comparing current year-to-date activity to the comparable period in 2022. It is expected that the numbers will continue to increase.

Some Commissioners inquired about there being no random lobbying audits completed in January, and Executive Director Berland stated the audits are pulled on a quarterly basis and once they are completed for the quarter, there are no completions to report until the next quarterly draw is made and the process begins again. Further, there is variability from year to year depending upon the time required to complete each audit. There were also questions about the low number of ethics trainings held compared with the number of individuals who took online lobbying training. Executive Director Berland explained that the Operations Report reflects only those live online workforce ethics trainings conducted by the Commission's training staff in January and the number of individuals who were trained by them, and does not include the thousands of state officials and employees trained by ethics officers in the hundreds of Executive branch agencies, while the lobbying training figures reflect the number of lobbyists and clients who have taken the online lobbying ethics training course that was rolled out on January 18 to coincide with the inception of the biennial registration cycle. He stated that he will report on the overall workforce training later on in the agenda.

There was a question on the FOIL log reporting and the difference between the number of requests and the number of responses. Executive Director Berland explained that under FOIL, within five days of receiving a request, an agency is either to provide the records requested,

which is rare but does happen, or provide an estimated time frame within which it expects to be able to provide a response, and if there are complexities or other issues affecting the response, they are to be addressed with the requester. Some requests are quite substantial and some less so, and some cannot be fulfilled because they are seeking records outside the Freedom of Information Law or that are excluded from disclosure.

#### Staffing and Recruiting Update

Executive Director Berland reported that the Commission has an accepted offer for the position of Deputy Director of Investigations and Enforcement and is on the cusp of extending an offer for the position of Director of that division. A number of individuals have been interviewed for the remaining investigative counsel and investigator positions in the division, and the final hiring determinations will be left to the incoming Director and Deputy Director.

#### FY 2022-2023 Budget Update

Executive Director Berland reported the Commission is continuing to run significantly under budget on the personal services side and somewhat over for non-personal services, but was able to transfer funds from personal services to non-personal services, primarily to cover legal fees; the remaining unspent balance for FY 2023-2024 is now projected to be below budget by less than \$1.4 million. In addition, as will be discussed later on in the agenda, the Commission is retaining the services of a dedicated consultant through the NYS Office of Information Technology Services (ITS) to help create the tracking and compliance systems to meet the requirements of the new state workforce-wide training mandate.

#### FY 2023-2024 Executive Budget Proposal

Executive Director Berland reported that behind Tab E could be found the Commission's component of the Executive Budget proposal that is now before the legislature, along with his written testimony that was submitted for the joint legislative budget hearing. The budget request sought by the Commission was included in the Governor's Executive Budget submission, with an additional payment of \$193,000 to cover contingencies and additional costs. Some Commissioners indicated the legislature should be urged to increase the budget. Others stated the Commission should avoid lobbying the people over whom the Commission

has oversight and suggested that the Commission seek legislation that would create a formula for determining, perhaps as a percentage of the overall state budget, for the Commission's appropriation. Chair Davie stated that the suggestion should be part of the proposals for legislative changes being prepared by staff.

Executive Director Berland explained there is also a clarification of the Commissioners' terms of appointment under the Ethics Commission Reform Act of 2022 (ECRA). In order to provide for the staggering of Commissioner terms, ECRA included a provision that prescribed initial terms of four-years for five commissioners, two-years for three commissioners and one-year for one commissioner. That provision thus accounted for only nine of the eleven initial appointments, and it did not include any methodology for allocating the terms. The Independent Review Committee recommended a solution that accounted for all eleven initial appointments, and the Executive Budget now addresses that discrepancy with a proposed amendment to statute.

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

Executive Director Berland explained the Commission just finalized its 2022 Fourth Calendar Quarter report on training and training compliance. Staff has requested that agencies report their training statistics monthly. Commissioners requested the report be provided to them.

Executive Director Berland also explained that with respect to the new tracking and reporting requirements, Marlina Diaz, the Commission's new Deputy Director of Learning Innovation Administration, is currently working on the development and administration of the statewide ethics training initiative and the Commission has retained an ITS consultant to assist with developing a reporting and tracking system for the expanded training initiative that was expanded as part of ECRA to include all State Officers and Employees as outlined in Executive Law § 94.

### Communications Update

Executive Director Berland gave a communications update and reported that today is the last day of the contractual arrangement with Marathon Strategies. Executive Director Berland thanked Marathon for its services and stated that they have been extremely effective in enhancing the Commission's ability to project its message, get the word out, elicit positive coverage, and be more responsive to the press.

## V. **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

Executive Director Berland stated the proposed regulation behind Tabs F-H are conforming regulations to align the Commission's regulations with ECRA. Those changes include adding a new section 941.3-a to 19 NYCRR Part 941. Several Commissioners voiced concerns about adopting the regulations on a permanent basis when the emergency regulations carried the same weight. Some Commissioners indicated the permanent adoption would require more input from the litigation committee and would also give newer Commissioners an opportunity to review them and potentially make changes to have plainer language. Some Commissioners inquired about the criteria that delegate to staff the ability to elevate a matter without notice to the Commission.

[Commissioner Ayers left for this portion of the meeting]

After an extensive discussion on all of the regulations, and with respect to re-adoption of the proposed Section 941.3-a authorizing the issuance of subpoenas and other processes by the Executive Director as delegated by the Commission, it was decided to vote on adopting the added regulation Section 941.3-a on an emergency basis only. A motion was made by Commissioner Whittingham, seconded by Commissioner Caraballo. The motion carried by unanimous vote.

**VI. 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)**

Executive Director Berland noted the watchdog groups, in their comments, requested a broadening of the definition of “victim” in the proposed conforming amendments to 19 NYCRR Part 941, and he explained the definition incorporated in the statutory definition verbatim. He proposed the Commission adopt a revised further rulemaking on an emergency basis with a shorter forty-five-day notice and comment period, explicating the definition of “victim” in Section 941 to include “individuals alleging harm of any kind, including physical emotional or reputational injury or loss from any violation of law that is subject to investigation under the jurisdiction of the commission.” A motion was made by Commissioner Whittingham, seconded by Commissioner Caraballo. The motion carried unanimously.

**VII. PROPOSED CONFORMING AMENDMENTS TO THE COMMISSION’S REGULATIONS AT 19 NYCRR CHAPTER XX, EXCLUDING PARTS 937, 940 AND 941**

**Adoption of the Proposed Conforming Amendments to 19 NYCRR Chapter XX, excluding Parts 937, 940 and 941**

After a discussion, the Commission decided to adopt the proposed conforming amendments to 19 NYCRR Chapter XX, excluding Parts 937, 940, and 941 on both an emergency and a permanent basis. A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo. The motion carried by unanimous vote.

**VIII. PROPOSED AMENDMENTS TO THE COMMISSION’S REGULATIONS AT 19 NYCRR 943 RELATING TO ETHICS TRAINING FOR LOBBYISTS AND CLIENTS AND THE EMERGENCY ADOPTION THEREOF**

**Extension of the Emergency Adoption**

After a discussion on the proposed amendments to the Commission’s regulations at 19 NYCRR 943, relating to ethics training for lobbyists and clients and including a discussion about the initialism “CAO” – i.e., the chief administrative officer responsible for an entity’s filings and for taking the required ethics training - the Commission decided to adopt the regulations on an emergency basis only. A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Whittingham. The motion carried unanimously.

In addition, Director of Lobbying Carol Quinn explained that, as part of its ongoing efforts to promote transparency, the Commission conducted a virtual tutorial for members of the media on how to utilize its online public search query to obtain lobbying activity information. Director of Lobbying Quinn explained she led the event and provided a comprehensive overview of the types of information disclosed in lobbying reports, and Deputy Director of Learning Innovation Administration Diaz presented step-by-step demonstrations of various search queries and of the specific types of responses generated from those queries.

**IX. PROPOSED COMMISSION FREEDOM OF INFORMATION LAW REGULATIONS**

Executive Director Berland informed Commissioners that proposed Commission Freedom of Information Law regulations are being finalized by staff, who have been conferring with the Committee on Open Government on the endeavor and will be brought to the Commission at the March meeting to commence a formal rulemaking aimed at adopting the proposed regulations in accordance with the State Administrative Procedure Act.

**X. NOTICE AND INVITATION TO TESTIFY - ANNUAL PUBLIC HEARING**

Executive Director Berland stated the notice of the Commission’s annual public hearing and the form of letter invitation to testify have been circulated to Commissioners. The hearing is scheduled for March 29, 2023, at New York Law School in Manhattan. Oral testimony will be received there and remotely from the Commission’s Albany office and on Webex. Written testimony and recommendations or comments can be submitted electronically. As stated in the notice of hearing, the purpose of the hearing is to take testimony regarding the operation of



the Commission and to solicit public input regarding the operation of the Commission and proposed changes in the laws under its jurisdiction as well as with respect to the laws, precedent, and other matter the Commission is to review pursuant to Executive Law Section 94(1)(d).

**XI. ROLE AND FUNCTION OF COMMISSION COMMITTEES**

Executive Director Berland stated that Commission's committee meeting day, which is scheduled for March 14, 2023 from 9:30 a.m. to 5:30 p.m. in New York City and remotely from other locations will begin with a discussion of the roles of the various committees.

**XII. EFFECTUATING EXECUTIVE LAW § 94(4)(F) \***

Commissioner Groenwegen explained her proposed redlined changes to the proposed resolution are based upon her not having a clear understanding of the roles of the committees. She suggested putting a cap on the per diem allowance for Commission and committee meeting preparation time. One Commissioner expressed agreement with the proposed changes and stated the cap was necessary to determine the proposed policy's fiscal implications, while other Commissioners opposed the changes and stated the legislation was clear that Commissioners should be paid for work on committee meetings and preparation time. A lengthy discussion ensued regarding whether the intent of the legislation and the expectation of appointing authorities was that Commissioners would be paid for their full time preparing for and attending Committee meetings or whether a cap should be placed on preparation time and Commissioners should be required to provide detailed records of their time spent in preparing for and attending meetings.

A motion was made by Commissioner Caraballo, seconded by Commissioner Whittingham, to table the discussion. The motion did not carry.

[Commissioner Ayers returned to the meeting].

A motion to amend the proposed resolution as suggested by Commissioner Groenwegen was made by Interim Chair Davie and seconded by Commissioner Cardozo. The motion did not carry.

A motion was made by Interim Chair Davie, seconded by Commissioner Whittingham, that Commissioners be compensated at an hourly rate as outlined in the statute for all activities related to their responsibilities on the Commission; that timesheets, in a form to be prepared by staff, should be processed by staff with annual auditing by the Office of the State Comptroller (OSC), and shared with the public; and that Commission per diem compensation should be reported at monthly meetings in the operations reports; The motion was approved by a vote of 6-2-1.

**XIII. NEW AND OTHER BUSINESS**

None.

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

A motion was made by Commissioner Caraballo, seconded by Commissioner Cardozo, to enter into Executive Session pursuant to Public Officers Law § 105 and Executive Law § 94(11), to address matters concerning the 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.

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

[Commissioner Caraballo 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 and personnel. The Commission discussed informal guidance pursuant to § 94(7) and Part 932 of the Commission's regulations. The Commission

authorized steps in several investigative matters, closed eight investigative matters, and discussed several other investigative matters.

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

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to adjourn the public meeting. The motion carried by unanimous vote.