

**MINUTES OF THE PUBLIC SESSION  
OF THE MARCH 24, 2023  
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 (ALB)

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

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

**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 (WebEx)  
Michael Sande, Director of Ethics (NYC)  
Emily DeSantis, Director of Communications and Public Affairs (ALB)  
Megan Mutolo, Deputy Director of Lobbying (ALB)  
Marlena Diaz, Deputy Director of Learning Innovation  
Administration (WebEx)  
Peter Smith, Chief Investigative Officer (Webex)  
Lori Donadio, Managing Principal Investigative Analyst (ALB)

**CALL TO ORDER**

Interim Chair Davie called the March 24, 2023 meeting to order. Executive Director Berland

announced that a quorum was present at locations open to the public both in New York City and at the Commission's offices in Albany in accordance with the provisions of the state Open Meetings Law, and that, in addition, Commissioners Edwards and Carni were attending remotely pursuant to Public Officers Law § 103-a and the Commission's rules and procedures for remote participation in extraordinary circumstances.

## **APPROVAL OF MINUTES – PUBLIC SESSION**

### **February 28, 2023**

Interim Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting that was held on February 28, 2023. A motion was made by Commissioner Cardozo, seconded by Commissioner Groenwegen to approve the minutes. In response to a proposed correction to the draft minutes offered by Commissioner Caraballo, Interim Chair Davie expressed a desire for counsel to advise the Commission on how best to reconcile conflicting understandings among Commissioners of a motion made and seconded pertaining to adoption of a resolution on the payment of a per diem allowance and reimbursement of expenses to members of the Commission. A discussion ensued, after which Interim Chair Davie moved to table further reconsideration of the draft minutes pending advice from counsel during Executive Session.

## **REPORT FROM STAFF**

### **Operations Update**

Executive Director Berland presented the operations update. Some Commissioners had questions about the number of investigations opened this year compared with last year by the former commission. Executive Director Berland explained that the lack of staff has affected the numbers, that there now are accepted offers to fill the vacant positions of Director and Deputy Director of Investigations and Enforcement, and staff is awaiting approval from the Division of the Budget to finalize those appointments, and that staff has in addition identified a number of candidates for the remaining open positions in the Division, which will be filled once the leadership positions are approved by DOB. There were also questions about the lobbying and ethics training figures.

Executive Director Berland explained that the numbers in the operations report for ethics trainings reflects only the workforce ethics trainings that COELIG staff itself has conducted and does not include the thousands of ethics trainings being conducted by the 396 other state agencies, with respect to which staff is collecting and reporting data on a quarterly basis to the Governor and legislative leadership. He further stated that the staffing plan that is on today's agenda calls for at least tripling the number of trainers in the training unit as well as adding additional training assistants within the unit. Commissioners also inquired about the number of record access requests received and the number of records provided as stated in the Monthly Operations Report and whether there is a list of record requests that have been denied. Commissioner Whittingham also asked about the number of random versus targeted reviews being conducted by the agency and whether the former was declining. Director of Ethics Sande explained that the number of "Records Provided" in the report refers to the number of records access or Freedom of Information Law requests for which responses had been provided during the reporting period, not the quantity of records produced, that a log of requests received and of the agency's responses to them is maintained, and that the details of each are documented in the transmittal emails. General Counsel St. John explained that the random reviews are drawn on a quarterly basis and are completed after the targeted reviews have been completed, such that the number being conducted and completed at any given time varies during the course of each year, but that there has been no change in emphasis or priority from one type of review to the other.

### **Staffing and Recruiting Update**

Executive Director Berland gave the staffing and recruiting update. He stated that the efforts to complete the interim staffing plan have proceeded, and he reiterated that there are accepted offers for Director and Deputy Director of the Investigations and Enforcement Division and that suitable candidates have been identified for investigative counsel and investigators; that there are discussions to fill the one remaining position in the Ethics Division, which are expected to be successful; that efforts are continuing to fill a remaining position in the Lobbying Division; that there are postings up now for an additional training associate and training assistant in the training unit; and that staff is prepared to move forward, as well, with the expanded staffing plan that will be considered by Commissioners later in the agenda.

### **FY 2022-2023 Budget Update**

Executive Director Berland reported that staff anticipates closing out the current fiscal year with a surplus of a little over \$1.14 million after transferring some of the remaining budgeted personal services amounts to the nonpersonal services side of the budget and applying those amounts to cover expenses that are being incurred in connection with creating the tracking and scheduling system needed to meet the expanded training requirements on the ethics side and to move forward with projects that remain to be completed for the lobbying application. Commissioner James asked that future reports include a comparison of actual against budgeted amount in each expense category. Commissioner Whittingham asked about the nearly fourfold increase in the amount expended for supplies in the second quarter over the first quarter, and Executive Director Berland responded that the requested information would be supplied by Acting Director of Administration, Mariana Cadiz upon her return to the office.

### **FY 2023-2024 Budget Status**

Executive Director Berland reported that both chambers of the legislature, in their respective “one-house” bills, had agreed with the Governor’s Executive Budget Proposal, which granted the agency’s budget request in full together with an additional \$193,000 for contingencies and carried with it agreement with our proposal to expand staffing from 47 to 68 full time equivalents. The next step is final enactment of the State budget for fiscal year 2023-2024.

It was also noted that the Article VII provision in the Governor’s Executive Budget proposal clarifying the staggering of the terms of all eleven commissioners and allocating term lengths among the first class of commissioners was not accepted in the Assembly’s one-house bill. Accordingly, further negotiation will be required. (One proposal is to allow each “selection member” who has made multiple appointments to the Commission to allocate the terms).

## **REPORTS FROM COMMITTEE CHAIRS**

Chairs of the following reported as follows:

### **Administration Committee**

Commissioner Groenwegen reported that the committee had discussed at its first meeting whether it would be a function of the committee to coordinate the assessment of technology needs that each of the other committees would be making for their respective areas of the commission's operations. Committee members also discussed amending the committee's draft charter to include technology and internal controls, which currently includes financial operations and personnel matters. It was decided to wait to discuss further duties of the committee, including reviewing the employee handbook, personnel policies, and possibly adding an exit interview process for departing staff as a way to measure staff morale and understanding if there were useful suggestions for improving the operation of the agency. Commissioner Groenwegen stated that it was her understanding that the entire Commission would be approving each committee's charter and that there is value in having the commission as a whole consider and approve each committee's charter. After a discussion of the role of the committees, Interim Chair Davie stated that as each committee decides on its charter of responsibilities, it will bring it back to the Commission for approval by the full commission.

### **Communications Committee**

Commissioner Cardozo reported that the communications committee and Director of Communications & Public Relations Emily DeSantis had discussed and agreed that the top priority is to work on developing a new communications policy. He also noted that the Communications Division currently has two vacancies to fill.

### **Special Committee on Delegation**

Interim Vice-Chair Austin reported that the special committee on delegation has received materials

and is reviewing other state ethics commissions' delegation policies, has been exploring proposals and ideas, and will also be reviewing the regulations to continue identifying issues that will need to be addressed.

### **Lobbying Committee**

Commissioner Carni reported that the lobbying committee met on March 14<sup>th</sup> and discussed prioritizing improvement of the enhancements to the lobbying application and streamlining the registration review process. The committee also considered how best to utilize staff in reviewing and updating advisory opinions and changing the format of the Executive Law §166 record of appearance forms so that agencies can be required to submit them to the Commission in a more searchable way.

### **PROPOSED AMENDMENTS TO THE COMMISSION'S REGULATIONS AT 19 NYCRR 943 RELATING TO ETHICS TRAINING FOR LOBBYISTS AND CLIENTS AND THE ADOPTION THEREOF**

### **PROPOSED COMMISSION FREEDOM OF INFORMATION LAW REGULATIONS AND THE EMERGENCY ADOPTION THEREOF**

Executive Director Berland stated that the proposed amendments relating to ethics training for lobbyists and clients are under Tab D and are on the agenda for permanent adoption.

The Commission discussed the term "Chief Administrative Officer" (CAO) and whether the person completing the registration knows that they are then required to take lobbying ethics training. Director of Lobbying Carol Quinn explained that the term CAO appears in the Lobbying Act and that the Commission's regulations define the term "Responsible Party" as "the Lobbyist's or Client's Chief Administrative Officer who is responsible for" the lobbying filings, which is consistent with the statute. The designation is a practical one; before a filing can be submitted, let alone any training taken, there has to be a CAO who signs and attests that they are the CAO for the filing and that they are responsible for the filing. Then the organization can submit their statement of registration and either their client reports or their lobbyist reports. The submission of that

statement of registration is the triggering event that results in notices going out to people in training-required roles, that is, individual lobbyists and CAOs of organizations, who will receive notices informing them that they've been identified on a registration statement as being in a role that requires lobbying ethics training.

A motion was made by Commissioner Groenwegen and seconded by Commissioner Ayers to permanently adopt the proposed amendments to the Commission's regulations with respect to ethics training for lobbyists and clients. The motion carried unanimously.

Executive Director Berland stated that the proposed FOIL and records access regulations, Part 937 of the Commission's regulations, are on the agenda for commencement of a rulemaking and for emergency adoption. Deputy Director of Lobbying Megan Mutolo noted that the proposed text to be voted upon reflects corrections of several typographical errors and errors in citation and cross-reference that appeared in the version under Tab E. Also, Section 937.4(c) in the proposal was amended to clarify that if the response to a FOIL request is delayed, a written statement will be provided specifying the reason for the delay in response and a date by which the request will be granted or denied in whole or in part. The Commission discussed whether, given the number of regulations being considered, they should be reviewed piecemeal or all at the time of the intended global review of all the regulations. Interim Chair Davie stated that it might not be the best use of time to conduct copy edits during the Commission meetings. The Commissioners also discussed preparing guidelines for staff to consult when drafting regulations. Interim Chair Davie asked Commissioner Ayers to prepare a set of guiding plain language principles for drafting regulations and stated that the special committee can consider a process for the regulation review and make a recommendation for the global regulation review.

The Commission also discussed whether the disclosure log referenced in the proposed regulation should identify the staff member who logged each request, as well as whether there should be reference to the Commissioner per diem allowances disclosures in the list of agency records that is posted on the agency website. There was also discussion about the need to implement a process for waiving copying fees for financial hardship and of expanding the categories of records that can or will be made available on the Commission's website.

A motion was made by Commissioner Austin and seconded by Commissioner Cardozo to adopt the proposed Freedom of Information Law and records access regulations on an emergency basis, with an amendment to include a financial hardship provision and to add the name of the staff member recording the request on the log. The motion carried unanimously.

#### **PROPOSED EXPANDED STAFFING PLAN PURSUANT TO EXECUTIVE LAW §94(6)(F)**

A motion was made by Interim Vice-Chair Austin and seconded by Commissioner Cardozo to adopt the proposed expanded staffing plan. The motion carried unanimously.

#### **EFFECTUATING EXECUTIVE LAW § 94 (4)(F)**

This item was moved to the Executive Session.

#### **ELECTION OF CHAIR AND VICE-CHAIR**

A discussion was held about the election and duties of the Chair and Vice-Chair. Executive Director Berland reviewed the statutory provision, Executive Law Section 94(4), calling for the election by the Commission Members of a Chair to serve a two-year term and of the statutory authority of the Chair to call meetings of the Commission (as can a majority of Commission members), the traditional function of the Chair in working with staff to ensure proper preparations are made for Commission meetings and in ensuring that meetings are conducted in an orderly way, and the additional duties and responsibilities that the Commission has assigned to the Chair. Executive Director Berland also reviewed the authority in the Public Officers Law and the case law supporting the appointment of a deputy, or vice, chair to serve in place of the Chair whenever the chair is unable to perform the duties of that office as well as the importance to staff of having a vice chair or deputy who can assume the role of chair without further action by the members of the Commission when the chair is recused or otherwise unable to perform the duties of that office and in maintaining consistent lines of communication with Commissioners when that occurs. There followed a discussion of the necessity for the position of vice-chair and whether the Vice-Chair



should or should not continue to serve as an ex officio member of all committees. Some Commissioners stated that there is no downside to having a Vice-Chair and that it is beneficial having one to step in when necessary.

A motion was made by Commissioner Cardozo and seconded by Commissioner Edwards to establish the position of the vice chair to stand in for the chair in the event the chair cannot carry out the responsibilities of that position. Commissioners Ayers, Caraballo, Cardozo, Edwards, James, Whittingham, Interim Vice-Chair Austin, and Interim Chair Davie voted in favor of the motion; Commissioners Groenwegen and Carni opposed the motion. The motion carried by a vote of 8-2.

At Chair Davie's request, Commissioner Ayers acted as temporary Chair to entertain nominations for and the election of Chair and Vice-Chair of the Commission. Commissioner Cardozo proceeded to nominate Interim Chair Davie for the position of Chair of the Commission. A motion was made by Commissioner Cardozo, seconded by Commissioner Caraballo, to elect Interim Chair Davie Chair of the Commission for a term of two years. There were no other nominations. The motion carried unanimously. It was agreed that staff counsel would research the commencement date for Chair Davie's term as Commission Chairperson.

A motion was made by Chair Davie and seconded by Commissioner Cardozo nominating Interim Vice-Chair Austin to be elected to serve as Vice-Chair of the Commission. There were no other nominations. Commissioners Ayers, Caraballo, Cardozo, Edwards, James, Whittingham, Interim Vice-Chair Austin and Chair Davie voted in favor of the motion, Commissioners Groenwegen and Carni opposed the motion. The motion carried by a vote of 8-2.

### **UPCOMING ANNUAL PUBLIC HEARING**

Executive Director Berland reported that the Annual Public Hearing will be held on March 29<sup>th</sup> at New York Law School at 10:00 am. Interim Chair Davie encouraged public participation. Some Commissioners requested that additional notices and invitations be extended to local newspapers and churches. Commissioners also asked if it is appropriate for Commissioners to respond to

questions from reporters. Interim Chair Davie emphasized that Commissioners are always free to talk to reporters, but he would also suggest that requests or questions from the press or others be discussed in advance with Director of Communications & Public Affairs DeSantis.

#### **NEW AND OTHER BUSINESS**

Commissioner Ayers requested that staff advise the Commission on how they would like to be addressed during meetings of the Commission. It was agreed that Director of Communications & Public Affairs DeSantis would discuss with staff and advise Commissioners.

#### **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 §94 OF THE EXECUTIVE LAW. \***

A motion was made by Commissioner Caraballo and seconded by Commissioner Carni to adjourn the public session and enter Executive Session. The motion carried unanimously.

#### **PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

The Commission resumed public session A discussion was held concerning the public session minutes draft regarding the motion that was made to effectuate provisions of Executive Law § 94(4)(f) at the February 24, 2023 meeting. Chair Davie explained that the motion as reflected in the minutes may not have been accurately stated. In approving the public session minutes, the motion would be for approval of the minutes as amended by Commissioner Caraballo's proposal.

A motion was made by Vice-Chair Austin, seconded by Commissioner Edwards, to approve the public session minutes, with the amendment proposed by Commissioner Caraballo, and to amend Commission Resolution 2023-01 accordingly. The motion was approved by unanimous vote.

The Commission discussed that the Executive Director will review—but not be expected to

approve—monthly time sheets, and that the Chair will sign off on them electronically; the Chair’s time sheets will be subject to approval by the Vice-Chair.

Executive Director Berland announced that during the Executive Session, the Commission discussed matters related to litigation and legal advice. The Commission discussed personnel matters. The Commission authorized steps in several investigative matters, discussed several other investigative matters and discussed guidance related matters.

**MOTION TO ADJOURN THE PUBLIC MEETING**

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