

**MINUTES OF THE PUBLIC SESSION
OF THE APRIL 25, 2023
MEETING OF THE COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT**

**540 BROADWAY
ALBANY, NEW YORK 12207**

**25 BEAVER STREET, 5TH FLOOR
NEW YORK, NEW YORK 10004**

Chair: Frederick A. Davie (ALB)

Vice-Chair: Leonard B. Austin (ALB)

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

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)
Brian Weinberg, Director of Investigations & Enforcement (ALB)
Michael Sande, Director of Ethics (NYC)

Emily DeSantis, Director of Communications, Public Information Officer
and Director of 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

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

Chair Davie called the April 25, 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 will be 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

March 24, 2023

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on March 24, 2023. A motion was made by Commissioner Carni, seconded by Commissioner Cardozo, to approve the minutes. The motion carried by unanimous vote.

REPORT FROM STAFF

Executive Director Berland welcomed to the Commission Brian Weinberg, who will be serving as Director of Investigations and Enforcement. Executive Director Berland noted that Brian is a consummate public servant with nearly 20 years of investigative and prosecutorial experience, including eight years overseeing public integrity cases. Most recently, he served as Deputy Chief of the Public Integrity and Law Enforcement Integrity Bureau at the Westchester County District Attorney's Office. In this role, he managed investigations involving allegations of public corruption and abuse of authority. Brian previously served as Special Counsel in the Public Integrity Bureau of the New York State Attorney General's Office, where he focused on government corruption, fraud, and abuse of authority by public officials, and as an Assistant District Attorney in the New

York County District Attorney's Office, overseeing investigations into corruption by public employees, elected and appointed officials and organized crime groups. He holds a J.D. from Brooklyn Law School and a bachelor's degree from Brandeis University.

Executive Director Berland also reported that Michael Antolini, who has more than a decade of experience in the New York City Department of Investigations and a deep background in public integrity cases will be joining the Commission in May as Deputy Director of Investigations and Enforcement and will be working closely with Brian to staff up the unit. Executive Director Berland thanked Deputy General Counsel Kavita Bhatt, who will now be able to take on the full responsibilities of her new role, for the extraordinary work she has done overseeing the unit since the inception of the agency, and also thanked Director of Lobbying Carol Quinn for her phenomenal work as Acting Co-General Counsel during the transition.

Operations Update

Executive Director Berland presented the operations update. Executive Director Berland noted that as has been done since the beginning of the year, the update includes a comparison of current staff activity in each category against the corresponding month and year-to-date period in 2022 for the prior agency as well as for staff's activity in the previous month. Executive Director Berland noted that activity has increased in several areas, including the number of investigative complaints, which have increased so far in 2023, and that although in other areas, the figures continue to reflect the residual effects of decreased staffing, with the positions under the interim staffing plan now largely – but not completely – filled, improvement will be seen and will accelerate with the filling out of the expanded plan that was approved at the Commission's March meeting. In response to a Commissioner question, Managing Principal Investigative Analyst Lori Donadio explained that no Notices of Delinquency were reported during the current month as Notices of Failure to File, which are non-public, must be sent before the Notice of Delinquencies can be issued and that next month's report will show the number of Notices of Delinquency issued.

FY 2022-2023 Budget Update

Executive Director Berland reported that the Commission closed out the current fiscal year ending March 31, 2023 with a surplus of just over \$1.8 million. The Commission was able to transfer some of the remaining budgeted personal services amounts to nonpersonal services to cover expenses incurred retaining an IT consultant for 30 months and for outside counsel. With respect to the \$33,000 second quarter 2022-23 expense item inquired about at the March Commission meeting, Executive Director Berland explained that the expense stemmed from the systems intrusion that occurred last year and was for the cost of providing statutorily required mail notice, with the assistance of the Department of Taxation & Finance, to individuals whose outdated usernames and passwords for the legacy FDS system, which is no longer in use, might have been accessed by the intruder. Further, Executive Director Berland noted some of the many steps that were taken, and measures implemented to test and secure the commission's systems against future intrusions.

Staffing and Recruiting Update

Executive Director Berland gave the staffing and recruiting update. He stated that staff is developing and preparing to post job descriptions for remaining vacant positions under the interim staffing plan and for new positions under the expanded staffing plan in the Lobbying Division, the Education and Training Unit, the Ethics Division and the Administration Division, The Commission will be expanding from 47 authorized full-time positions to 68.

FY 2023-2024 Budget Status

Executive Director Berland reported that both chambers of the legislature, in their respective "one-house" budget resolutions, had agreed with the Governor's Executive Budget proposed appropriation for the Commission; staff is awaiting enactment of a final budget.

Communications Logo

Director of Communications, Public Information Officer and Director of Public Affairs Emily DeSantis briefed the Commission on the new logo, explaining that the logo, designed with the help of the Office of General Services (OGS), is intended to demonstrate that the Commission is

distinct, separate, and independent from other state agencies. Feedback from senior staff was incorporated, and several iterations of the logo were reviewed. The logo clearly identifies communications as coming from the Commission, and it incorporates the principles of integrity, trust, and transparency. The image of a compass illustrates that the Commission is the moral compass of state government. Some Commissioners requested that independence and New York State be included in the logo and/or Commission tagline.

REPORTS FROM COMMITTEE CHAIRS

Chairs of the following committees reported as follows:

Communications Committee

Commissioner Cardozo reported that the communications committee and Director of Communications, Public Information Officer and Director of Public Affairs DeSantis met the previous week and discussed creating a communications policy to be circulated and presented to the full Commission at the May meeting. Commissioner Cardozo also explained that changes to the Open Meetings Law will have to be addressed next year, as certain provisions of the law are scheduled to expiration in 2024. The Committee also discussed methods to improve public hearings, including the time afforded witnesses to testify. Staff is currently sending thank you letters to the individuals who testified. The Committee is also categorizing the issues raised and will be referring them to the appropriate committee.

Legal Committee

Vice-Chair Austin reported that the legal committee met on April 24, 2023, to discuss the staff's recommendations regarding the draft Commissioner Code of Conduct, Meeting Rules and Recusal Policy and will be reviewing and making recommendations to the full Commission at its May meeting. Commissioner Groenwegen suggested to start off anew (instead of using JCOPE'S policy) because of the fundamental differences between JCOPE and COELIG in that the Open Meetings Law and FOIL are now applicable, and because it is confusing to identify records as

“publicly available” when the Commission is now subject to FOIL. Executive Director Berland explained that staff wanted to be as detailed as possible and that Section 94 of the Executive Law continues to require that certain categories of information and records be made available independently of FOIL. There followed a discussion of the scope of the term “representative” with respect to the draft Code of Conduct’s proscription of unauthorized Commissioner communications with their respective appointing authorities and others and of whether “senior staff” could be an appropriately specific as well as limiting alternative descriptor. Commissioners also discussed whether all Commissioners should receive all materials that will be presented at committee meetings.

A motion was made by Commissioner Groenwegen, seconded by Commissioner Whittingham, that all materials prepared for committee meetings be circulated by the committee chairs to all of the members of the Commission. Commissioners Ayers, Caraballo, Carni, Groenwegen, James, Whittingham, Chair Davie, and Vice-Chair Austin voted in favor of the motion, Commissioner Cardozo opposed. The motion carried with a vote of 8-1-0.

PROPOSED COMMISSION MEETING DATES – JULY THROUGH DECEMBER 2023

A motion was made by Vice-Chair Austin, seconded by Commissioner James, to approve the proposed commission meeting dates as set forth in Attachment E. The motion carried by unanimous vote.

PROPOSED REGULATION AUTHORIZING THE ISSUANCE OF SUBPOENAS AND OTHER PROCESS BY THE EXECUTIVE DIRECTOR AND AUTHORIZING COMMUNICATIONS ON PRIOR NOTICE TO THE CHAIR

Executive Director Berland stated that the proposed amendment relating to the issuance of subpoenas and other process by the Executive Director and authorizing confidential communication outside the agency on prior notice to the chair is under Tab F and is on the agenda for permanent adoption. It is a new provision added to Part 941 that in part implements and takes advantage of Executive Law §94(1)(c) and has been in effect on an emergency adoption since last

October and expires on April 28, 2023. Thus far, no subpoenas have been issued under the regulation, but it has been used very effectively thus far in allowing staff to reach outside the agency informally to develop information on matters prior to a decision to elevate any matter to a formal investigation and is fully coordinate with the statutory authorization. It has been working quite smoothly thus far and has made it possible for staff to keep Commissioners informed about new matters as they are received. One Commissioner suggested that a blurb be added to the attachment to describe why the proposal is on the agenda and another Commissioner suggested that the history be added to the introductory part of the regulation. Deputy Director of Lobbying Megan Mutolo stated that the history is already prepared for submission of the SAPA process. Chair Davie noted that staff is conducting an analysis of advisory opinions and formulate a plan to meet the statutory requirement that the Commission review and assess the consistency of existing precedent and laws and regulations. Commissioner Ayers requested that staff provide the Commissioners with the documents submitted for the SAPA process.

A motion was made by Commissioner Carni, seconded by Commissioner Groenwegen, to permanently adopt the proposed regulations 10 NYCCR §941.3-a with respect to the issuance of subpoenas and other processes and authorizing communications by staff. The motion carried unanimously.

PROPOSED FURTHER AMENDED PART 941 REGULATIONS

[Commissioner Ayers was not present for this portion of the meeting.]

Executive Director Berland stated that the proposed further extension of the Emergency Adoption of the proposed further conforming amendments to the Adjudicatory Proceeding and Appeals Process Regulations (19 NYCRR Part 941) is under Tab F and are on the agenda for emergency readoption. One Commissioner felt that the definition of “victim” is confusing and recommended adding a definition of “direct harm” with the definition of “victim.” After a discussion by the Commission, it was decided to modify section (2) “Direct harm, as it applies to this Part, means 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 Carni and seconded by Commissioner Groenwegen to adopt the proposed further amendments, as amended. The motion carried unanimously.

PROPOSED COMMISSIONER CODE OF CONDUCT AND MEETING GUIDELINES

Commissioners agreed, as previously discussed, that the proposed Code of Conduct Meeting Guidelines would be presented at the May Commission meeting after further consideration by committee. It was noted that the Administration Committee is reviewing the staff Policies and Procedures manual.

NEW AND OTHER BUSINESS

None.

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 Austin to adjourn the public session and enter Executive Session. The motion carried unanimously.

PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

[Commissioner Edwards was present for the remainder of the meeting.]

Executive Director Berland announced that during the Executive Session the Commission discussed matters related to litigation and legal advice. The Commission discussed personnel matters and informal guidance pursuant to Executive Law § 94(7) and Part 932 of the Commission's regulations, received and discussed legal advice regarding statutory compliance matters, and discussed several investigative matters. The Commission authorized steps in several

investigative matters, discussed several other investigative matters, and closed 11 matters.

MOTION TO ADJOURN THE PUBLIC MEETING

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

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