

VI. PROPOSED FURTHER AMENDED PART 941 REGULATIONS

SUMMARY OF PROPOSED RULE

Key changes in the law, as set forth in these amendments, provide that a Commission vote is no longer required to initiate an investigation. Instead, Commission staff or the Commission can decide to elevate a preliminary review into an investigation, and staff will present the matter to the Commission for a vote after it has investigated a potential violation(s) of the laws under the Commission's jurisdiction. At that time, the Commission may vote to proceed to hearing, return the matter to staff for further investigation, close the matter or authorize resolution of the matter through settlement or guidance.

The regulatory amendments further conform to and clarify statutory changes relating to the various notices the Commission may send, which include a Notice of Allegations, Notice of Hearing, and Notice of Closure, Continued Investigation or Guidance, and the requirements of such notices. They also clarify the definition of "victim," which is a term used in new Section 94 of the Executive Law, added to Section 941.2 of the regulations.

Furthermore, this rulemaking clarifies provisions relating to the conduct of hearings and authority of hearing officers and the attorneys for the parties to issue hearing subpoenas.

TIMELINE

The Notice of Revised Rulemaking and Emergency Adoption which amends 19 NYCRR Part 941 to conform the regulations governing the investigative and enforcement adjudicatory process to the new Section 94 of the Executive Law, as established by the Ethics Commission Reform Act of 2022, was first published in the State Register on November 9, 2022. Revisions were made to this

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proposed regulation during the Commission meeting held on April 25, 2023, which required an additional Revised Rulemaking. This revised rulemaking became effective on an emergency basis on April 25, 2023 and was published in the State Register as a Notice of Revised Rulemaking/Emergency Adoption on May 10, 2023 with a public comment period ending on June 24, 2023. A subsequent Notice of Emergency Adoption was submitted to the State Register on June 23, 2023, to become effective immediately and will be published in the State Register on July 12, 2023.

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PROPOSED REGULATORY AMENDMENTS

Pursuant to the authority vested in section 94 of the Executive Law, Part 941 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon filing as an Emergency Adoption and upon publication of a Notice of Adoption in the New York State Register, to read as follows:

PART 941 ADJUDICATORY PROCEEDINGS AND APPEALS PROCEDURES *Effective*

Title 19 NYCRR Part 941 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

Section 941.1 Intent and purpose.

Executive Law § 94(10)(o) authorizes the Commission on Ethics and Lobby in Government to adopt rules governing the conduct of adjudicatory proceedings and appeals consistent with the New York State Administrative Procedure Act (“SAPA”). Moreover, the Commission on Ethics and Lobbying in Government’s proceedings are otherwise subject to SAPA. These regulations set forth rules for adjudicatory proceedings and appeals relating to: potential violations of the law that fall within the Commission on Ethics and Lobbying in Government’s jurisdiction, including investigatory matters pursuant to Executive Law § 94(10); appeals taken from denials of requests to delete or exempt certain information from a financial disclosure statement pursuant to Executive Law §§ 94(9)(h) or (i); or Public Officers Law § 73-a(3)(8)(b-1), (b-2), or (c); exempt certain individuals from filing a financial disclosure statement pursuant to Executive

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Law § 94(9)(k); and appeals taken from denials of applications for exemptions under Article 1-A of the Legislative Law §§ 1-h, 1-j and 19 NYCRR Part 938.6.

Section 941.2 Definitions.

- (a) *Agency* shall have the same meaning as “state agency” in Public Officers Law §§ 73, 73-a and 74 and Article 1-a of the Legislative Law.
- (b) *Appellant* shall mean the recipient of a denial by the Executive Director for deletion or exemption of certain information from a financial disclosure statement or for exemption from filing a financial disclosure statement who wishes to appeal or has appealed that denial to the members of the Commission.
- (c) *Client Filer* shall mean:
 - (1) Any client retaining or designating a lobbyist that is required to file a semi-annual report pursuant to Legislative Law § 1-j; or
 - (2) Any lobbyist registered pursuant to Legislative Law § 1-e whose lobbying activity is performed on its own behalf and not pursuant to retention by a client. (Such a lobbyist is considered its own client for reporting purposes.)
- (d) *Complainant* shall mean an individual who submits a tip or complaint to the Commission regarding a violation of Public Officers Law §§ 73, 73-a or 74, Civil Service Law § 107 or Article 1-A of the Legislative Law.
- (e) *Executive director* shall mean executive director of the Commission on Ethics and Lobbying in Government as appointed pursuant to Executive Law § 94(6)(a).
- (f) *Financial disclosure* statement shall mean annual statement of financial disclosure which is required to be filed pursuant to Public Officers Law § 73-a.
- (g) *Hearing officer* shall mean the independent hearing officer presiding over adjudicatory hearings

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designated pursuant to this Part and in accord with SAPA and shall include, and is synonymous with, the “independent arbitrator” referred to in Executive Law § 94(10)(i).

- (h) *Hearing* shall mean any adjudicatory proceeding held by the Commission to determine whether a violation of Public Officers Law §§ 73, 73-a or 74, Civil Service Law § 107 or Article 1-A of the Legislative Law has occurred.
- (i) *Commission on Ethics and Lobbying in Government, Commission, or COELIG* shall mean the members of the New York State Commission on Ethics and Lobbying in Government established pursuant to Executive Law § 94, which is authorized to delegate the authority to act as provided in the Executive Law to its Executive Director.
- (j) *Respondent* shall mean Statewide elected officials, any State officer or employee, members of the legislature or legislative employees, candidates for legislative and statewide offices, and political party chairs covered by Public Officers Law §§ 73, 73-a or 74 or Civil Service Law § 107, or any lobbyist or client, as such terms are defined in Article 1-A of the Legislative Law, who receives a written notice from the Commission pursuant to Section 941.3 of this Part.
- (k) *Subject* shall mean any individual or entity identified in a tip, complaint, referral or in a matter initiated by the Commission as allegedly having violated or being in violation of Public Officers Law §§ 73, 73-a or 74, Civil Service Law § 107 or Article 1-A of the Legislative Law.
- (l) *Victim* shall mean any individual who has suffered or is alleged to have suffered direct harm from any violation of law that is subject to investigation under the jurisdiction of the Commission.
- (1) The victim may also be, though is not necessarily, the same as, the “complainant.”
- (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.

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Section 941.3 Notices.

(a) Notice of Allegations (“15-Day Letter”). If following a preliminary review, the Commission or Commission staff decides to elevate such preliminary review into an investigation pursuant to Executive Law § 94(10)(f) the Commission shall provide written notice to the respondent individual or entity setting forth, to the extent the Commission is able to do so, the possible or alleged violation or violations of law and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations. Any information that may, in the judgment of the Commission or staff, either be prejudicial to the complainant or victim, or compromise the investigation, shall be redacted.

(1) The 15-Day Letter shall provide the individual or entity with a fifteen-day period from the receipt of the 15-day Letter in which to submit a written preliminary response or information the respondent determines may benefit the Commission or Commission staff in its work, including any evidence, statements, and proposed witnesses, and setting forth information relating to the activities cited as possible or alleged violation(s) of law.

(i) While any response submitted will be reviewed by the Commission and/or Commission staff, Commission staff is not precluded from recommending and the Commission is not precluded from voting to close or settle the matter, to advance it to a confidential due process hearing or to return it to staff for further investigation prior to receiving a Respondent’s written response.

(ii) An extension of time to respond may be available to Respondent upon request.

(2) The 15-Day Letter shall include a copy of the Commission’s rules regarding the conduct of adjudicatory proceedings and appeals and shall also contain a plain language summary of the rules contained in this Part.

(3) Pursuant to Executive Law § 94(10)(k), the 15-Day Letter continues the Commission’s jurisdiction over the Respondent.

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(b) Notice of Hearing. (1) If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission has determined by majority vote to proceed to a hearing, having found that there is credible evidence of a violation under the Commission's jurisdiction, notice shall be provided to the Respondent to inform Respondent of their right to be heard and appear in person and by attorney at a confidential hearing and to give sworn testimony, present evidence, and cross examine witnesses. The notice shall contain the following:

- (i) the alleged violations of law and the factual basis for those allegations;
- (ii) a statement of the time and place of the hearing;
- (iii) the hearing officer who will preside over the matter and instructions for the submission of any notices, filings, or other papers;
- (iv) a statement for hearing impaired parties and participants concerning the provision of deaf interpretation without charge;
- (v) notice to the Respondent that failure to appear will not preclude the hearing officer or Commission from proceeding with the scheduled hearing; and
- (vi) any other information deemed necessary or appropriate.

(2) The notice of hearing shall include a copy of the Commission's rules regarding the conduct of adjudicatory proceedings and appeals and shall also contain a plain language summary of the rules in this Part.

(c) Notice of Closure, Continued Investigations or Guidance. If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission decides, by majority vote, to return the matter to the staff for further investigation, close the matter, or authorizes the resolution of the matter by guidance to the subject, or if the Commission's vote to proceed to a due process hearing does not carry, the Commission shall, within 60 days of such determination, provide written notice of its decision as follows:

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- (1) to the Complainant and/or Victim if any;
 - (2) to the Subject or Respondent if they have been notified, by the Commission or otherwise, of a complaint or allegations against them;
 - (3) to any Agency that made a referral to the Commission or otherwise, notified the Commission of the allegations, or any Agency which employs the Subject or Respondent.
 - (4) At the discretion of the Commission, written notice shall be provided to a Subject who has not been previously notified of the allegations against them or other interested parties, including but not limited to witnesses.
- (5) Pursuant to §94(10)(l), where the Commission's vote to proceed to a due process hearing has not carried, the notice shall not include any personally identifying information or information tending to identify any party involved in the investigation.

Section 941.3-a Subpoenas and other process; delegation.

- (a) In accordance with Executive Law § 94(10)(c), and to facilitate the expeditious and efficient performance of its duties under section 94 of the Executive Law, the Commission on Ethics and Lobbying in Government ("COELIG" or "the Commission") may by majority vote delegate to the Executive Director the power and the authority to administer oaths or affirmations, to subpoena witnesses, compel their attendance and testimony, and to require the production of any books or records that the Commission or the Executive Director may deem relevant or material when, pursuant to Executive Law § 94(10), the Commission or COELIG staff decides to conduct an investigation necessary to carry out the provisions of Executive Law § 94 or to elevate a preliminary review of any complaint or referral received or initiated by COELIG into an investigation pursuant to Executive Law § 94(10)(f).
- (b) Any delegation made pursuant to subdivision (a) shall be in writing and shall:
 - (i) specify whether it is general or limited to a specifically stated subject matter, transaction or transactions, complaint, referral or staff, or Commission-initiated matter; and

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- (ii) require that the chair of the Commission be notified prior to the issuance of any subpoena by the Executive Director pursuant thereto, and that the Commission be informed thereof and of the status of the matter at its next meeting occurring thereafter.
- (c) In connection with, and for the purposes of, the preliminary review and investigation, called for by Executive Law § 94(10)(d), of information in the nature of a complaint or referral received by the Commission or initiated by the Commission, and of determining whether there is specific and credible evidence that a violation of section seventy-three, seventy-three-a, or seventy-four of the Public Officers Law, section one hundred seven of the Civil Service Law or article one-A of the Legislative Law by a person or entity subject to the jurisdiction of the Commission including members of the legislature and legislative employees and candidates for members of the legislature, the Executive Director and Commission staff are authorized, pursuant to Executive Law § 94(10)(d) and (11)(b), to disclose confidentially to persons or entities outside the Commission testimony or confidential information related to matters pending before the Commission solely to the extent necessary to conduct such preliminary review and investigation and to make such determination, provided that the chair of the Commission is notified prior to any such disclosure or communication occurring, and that the Commission is informed of such disclosure and of the status of the matter or matters under review and investigation at its next meeting occurring thereafter.

Section 941.4 Time and place of hearing and service of filings.

- (a) The Commission shall determine the time and place of hearing and shall, as practicable, take into account the convenience of the parties and the availability of witnesses.
- (b) The time and place of hearing shall not be changed unless a party formally requests a change pursuant to the adjournment request procedure contained in section 941.8 of this Part and the hearing officer determines that sufficient cause has been set forth for such a change of time and place in a timely manner.
- (c) Any written notice or filing by the Respondent shall be served upon the hearing officer and the Commission at the offices of the Commission as specified in the notice of substantial basis investigation and hearing.

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Section 941.5 Representation.

- (a) Any person compelled to appear in person or who voluntarily appears in any hearing herein described shall be accorded the right to be accompanied, represented and advised by counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others in any hearing. However, any person appearing before the Commission in a representative capacity will be required to establish his or her authority to act in such capacity.
- (b) Any counsel or attorney for the Respondent shall file with the Commission a Notice of Appearance in a form provided by the Commission.

Section 941.6 Selection of hearing officer.

- (a) The Commission shall maintain a list of independent hearing officers in accordance with the Commission's policies and procedures.
- (b) The Commission shall select at random from the list of independent hearing officers a hearing officer to preside over each hearing or appeal, when applicable. In the event the independent hearing officer so selected is unavailable or unable for any reason to sit as a hearing officer in the matter, the Commission shall select at random from the list of independent hearing officers another hearing officer to preside over the hearing or appeal, as applicable.
- (c) Such hearing officer shall not have any conflict of interest in the matter being heard before him or her. The hearing officer shall not sit as a hearing officer in a matter to which he or she is a party; or in which he or she has been attorney or counsel; or in which he or she is interested; or if he or she is related to any party or witness in the matter; or in any circumstance where there is conflict of interest.
- (d) In the event of a hearing officer's death, resignation, removal, termination of employment, disability, or inability or failure to make a written finding and recommendation within the time period allowed after the completion of the hearing, the Commission may direct that all of the evidence taken at the hearing be submitted to the Commission for decision.

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Section 941.7 Powers and duties of hearing officers.

- (a) A hearing officer is authorized to do the following in any hearing to which the hearing officer is assigned:
- (1) Administer oaths or affirmations.
 - (2) Sign and issue subpoenas in the name of the Commission, at the request of any party or the direction of the Commission, requiring attendance and testimony by witnesses at the confidential hearing and the production of books, papers, documents and other evidence at such hearing. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue subpoenas under the provisions of the Civil Practice Law and Rules requiring attendance and testimony by witnesses at the confidential hearing and the production of books, papers, documents and other evidence at such hearing.
 - (3) When there is good cause to believe that the testimony of a potential witness will be unavailable at the time of hearing, testimony may be taken by deposition. The hearing officer shall allow the use of such depositions at the hearing.
 - (4) Regulate the course of the hearings, set the time and place for continued hearings and fix the time for filing of briefs and other documents for review by the hearing officer prior to the issuance of findings of fact and recommendations.
 - (5) Direct the parties to appear for pre-hearing conference and confer to consider the simplification or settlement of the issues and/or stipulations as to the underlying facts by consent of the parties.
- (b) A hearing officer is authorized, in any hearing or appeal to which the hearing officer is assigned, to issue findings of fact, conclusions of law, and recommendations, as may be appropriate.

Section 941.8 Adjournment.

- (a) A hearing officer shall grant an adjournment of any hearing conducted pursuant to these rules only for

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good cause.

- (b) Unless for good cause shown, written requests for adjournment shall be submitted to the hearing officer of record in the hearing and a copy provided to the other party no later than five (5) business days preceding the hearing date. The request must be accompanied by an affidavit which contains sufficient detail to allow the hearing officer to rule on the request for such adjournment.
- (c) No request for adjournment shall be considered granted until approved by the hearing officer.

Section 941.9 Time limits.

- (a) At least seven (7) days before the hearing, or at such earlier time as the parties may agree or the hearing officer may direct, the Commission shall provide to the Respondent any additional evidence supporting the allegations that was not previously described in the notice sent pursuant to Executive Law § 94(10)(f) and subsection 941.3(a) in sufficient detail to enable the Respondent to respond at the hearing.
- (b) At least seven (7) days before the hearing, or at such earlier time as the parties may agree or the hearing officer may direct, the Respondent shall provide the Commission and hearing officer a list of possible witnesses and notice of any defenses to be presented, and supporting evidence, in sufficient detail to permit the Staff of the Commission to prepare for the hearing.
- (c) Any other papers, statements, proofs, and evidence shall be provided to the other party and the hearing officer, in the hearing officer's discretion and at a time to be designated by the hearing officer. The hearing officer, Executive Director or the Commission may grant an extension of time for filing such matters only upon formal request.
- (d) Except by consent of the parties, every hearing conducted pursuant to these rules shall be concluded within 180 days of the date of the hearing specified in the Notice of Hearing. An adjournment or continuance granted by the hearing officer at the request of the Respondent or by mutual consent of the parties will extend the period of time for conclusion by the length of time the adjournment or continuance is granted.
- (e) The Commission, the Executive Director, or the hearing officer may, at any time before the time limits

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delineated above expire, extend such time period by making a determination that the time provided is insufficient to complete the hearing and shall state sufficient reasons therefor. Except for good cause shown, this extension shall not be for a period longer than 90 days after the expiration of the original 180 day period during which the hearing should have been concluded.

- (f) Failure by the hearing officer, the Executive Director or the Commission to adhere to time limits established by this section shall be reviewable under Article 78 of the Civil Practice Law and Rules in a proceeding in the nature of mandamus.

Section 941.10 Conduct of hearings.

- (a) All hearings and proceedings before the hearing officer or Commission related thereto commenced under these rules are confidential in accordance with Executive Law § 94(10)(f) and (11).
- (b) The Respondent shall not be deprived of the opportunity to appear; however, failure to appear after service of notice shall not preclude a decision by the hearing officer and the Commission, upon proof of service, to proceed with the scheduled hearing. Proof of service shall consist of a certified mail receipt or affidavit of service.
- (c) The hearing officer shall conduct all hearings under these rules and shall exercise the power and authority of presiding officers or hearing officers as defined by SAPA, any other pertinent statute and these regulations.
- (d) The hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in contemptuous conduct before the hearing officer.

Section 941.11 Oaths.

- (a) All oaths required by these rules may be taken before any person authorized to administer oaths within the State of New York.
- (b) Oaths shall be administered to all witnesses who testify or appear in any hearing conducted pursuant to these rules.

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Section 941.12 Evidence and proof.

- (a) The formal rules of evidence do not apply with respect to any hearings under the Commission's jurisdiction. Objections to evidentiary offers may be made and shall be a part of the record. Subject to these rules, any party may, for the purpose of expediting the hearing, and when the interests of the parties will not be substantially prejudiced thereby, submit all or part of the evidence in written form.
- (b) The introduction of cumulative or irrelevant evidence shall be avoided and the hearing officer may curtail the testimony of any witness which he or she judges to be merely cumulative or irrelevant; however, the party offering such testimony may make a short avowal of the testimony which would be given and if the witness asserts that such avowal is true, this avowal shall be made part of the record.
- (c) All evidence appearing in the record shall be deemed to have been validly introduced.
- (d) The burden of proof shall be on the Commission unless otherwise provided by statute.
- (e) Each party shall have the right to give sworn testimony, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence.
- (f) The parties may, by agreement, stipulate as to any facts involved in the proceeding, provided that such stipulation is duly noted in the record.
- (g) Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Commission. When official notice is taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

Section 941.13 Proposed Findings of Fact and Recommendation, Substantial Basis Report, and Notice of Civil Assessment and/or Other Penalty.

- (a) Within sixty (60) days of the conclusion of the hearing, the hearing officer shall make findings of fact and a recommendation as to the appropriate penalty to be assessed or any other action to be taken. The hearing officer shall transmit the proposed findings of fact and recommendation to the Respondent and

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his or her representative and to the Commission. The hearing officer may request from the Commission an extension of time in which to transmit the proposed findings of fact and recommendation. The Commission shall notify the hearing officer and all parties and their representatives should it grant an extension.

- (b) Within thirty (30) days of the hearing officer's transmittal of the findings of fact and recommendation, the following shall occur:
 - (1) The Respondent shall have an opportunity to respond in writing, in the form of a brief directed to the Commission, to the findings of fact and recommendation of the hearing officer. The brief may not include or discuss evidence which is not a part of the official record of the hearing.
 - (2) The Commission's staff shall have an opportunity to respond in writing, in the form of a brief directed to the Commission, to the findings of fact and recommendation of the hearing officer, and shall submit a proposed Substantial Basis Report to the Commission for its consideration.
- (c) The Commission shall have sixty (60) days from receipt of the proposed Substantial Basis Report, or as soon thereafter as possible, in which to vote on whether or not to issue a Substantial Basis Report and issue a Notice of Civil Assessment and/or Other Penalty. In the Substantial Basis Report, the Commission may adopt the findings of fact and recommendation of the hearing officer in whole or in part, or it may reverse, remand and/or dismiss the hearing officer's finding of fact and recommendation based upon the record produced at the hearing.
- (d) With respect to the investigation of a Respondent subject to the jurisdiction of the Commission, other than a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation and the hearing the Commission has found by a majority vote a substantial basis to conclude that Respondent violated the Public Officers Law, Civil Service Law or the Legislative Law, the Commission shall issue a report containing its determinations, including its findings of fact and conclusions of law, to the complainant, if any, and respondent.

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- (e) The Commission shall release such report publicly and publish it on its website within twenty days of its delivery to the complainant, if any, and the respondent.
- (f) A report issued pursuant to Executive Law § 94(10)(p)(i) shall be delivered to the Legislative Ethics Commission and to the individual who is the subject of the report, and shall be made public in accordance with and otherwise be governed by Legislative Law §80. The Commission shall provide to the Legislative Ethics Commission copies of the full investigative file and hearing record.
- (g) The Commission shall mail or deliver to each party to the hearing and to its representatives of record a copy of all findings of the hearing officer and all final decisions including a Notice of Civil Assessment, if any, of the Commission.

Section 941.14 Fines, penalties.

- (a) The Commission's assessment of civil assessments and other penalties made pursuant to Executive Law § 94(10) shall not preclude its referral of violations of law to a prosecutor for criminal prosecution in accordance with the provisions of Executive Law 94(10)(n)(iv).
- (b) If the alleged violation has been established, and the Commission determines in light of all the circumstances that the violation is not serious enough to warrant assessment of a civil penalty, the Commission, in its discretion, may take such other action as appropriate including, but not limited to, a written admonition or a recommendation that disciplinary action be taken. The Commission may forward a copy of such admonition or recommendation for disciplinary action to the individual's appointing authority, as appropriate.

Section 941.15 Record of hearing.

- (a) The record in hearings under these rules shall include:
 - (1) all notices, pleadings, motions, and intermediate rulings;
 - (2) evidence presented;

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- (3) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose;
 - (4) questions and offers of proof, objections thereto, and rulings thereon;
 - (5) proposed findings and exceptions, if any; and
 - (6) any decision, determination, opinion, order or report rendered.
- (b) The Commission shall make available a complete record of all hearings in which the Commission has issued a final decision to any party to that hearing. The Commission shall make this record available upon reasonable notice and written request before the commencement of any judicial review. The Commission shall charge the reasonable cost of preparing such record to the requesting party.
- (c) A written transcript for all hearings conducted pursuant to these rules shall be provided to any party to a hearing. This transcript shall be made available upon reasonable notice and written request following the conclusion of the hearing. The Commission shall charge the requesting party for the reasonable cost of preparing such transcript.

Section 941.16 Privacy/confidentiality.

- (a) Executive Law § 94 provides that proceedings, as well as information and evidence obtained, relating to the Commission's determination as to whether a substantial basis exists that there has been a violation of the laws it enforces are confidential while a matter is pending and unless and until the Commission issues a report, except that the Commission may authorize the disclosure of such information to the extent necessary in furtherance of its investigations.
- (b) Notwithstanding any other provision of law, pursuant to Executive Law 94(11) the Commission, by majority vote of the full Commission in accordance with section 94(4)(h), may disclose to any person or entity outside the Commission any testimony or information obtained by a Commissioner or staff upon a determination that such disclosure is in the public interest as set forth below. Disclosure so authorized may be by full public release or to designated persons or entities as directed by the Commission. The Commission may further direct that disclosure to designated persons or entities be conditioned upon

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the recipient's agreement to maintain confidentiality and to limit further dissemination.

(c) In determining whether release or disclosure of information relating to a matter is in the public interest, the Commission may consider any one or more of the following criteria:

- (1) Whether the Complainant, Victim, Subject or Respondent has made public statements relating to an allegation submitted to the Commission;
- (2) Whether the Complaint itself or the allegations therein have been publicly disclosed by the Complainant, Victim, or others;
- (3) Whether the identity of the Complainant or Victim is a matter of public knowledge;
- (4) Whether the fact of the Commission's inquiry or investigation is public knowledge;
- (5) Whether the matter, in the judgment of or as determined by the Commission, is, or involves facts or issues that are, of significant public concern;
- (6) Whether disclosure relating to the matter will address public safety concerns;
- (7) Whether there are public calls for an investigation;
- (8) Whether there is a need for public assurance that the Commission is or has considered the matter;
- (9) Whether there have been any inaccurate or misleading statements made publicly about the Commission's action or inaction with respect to the matter;
- (10) Whether the allegation is an attempt to utilize the Commission for partisan political or electoral gain;
- (11) Whether there is pending civil litigation that is related, directly or indirectly, to the allegations, and if so, whether the information will be used to impact the litigation in a manner that is relevant to the proceedings or appears to be aimed at harassment of a party;

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- (12) Whether a prosecutor has asked the Commission to defer action, and if so, whether in the view of the requesting prosecutor disclosure would adversely affect the criminal action;
 - (13) Whether there are alleged victims who have a particular interest in the proceeding;
 - (14) Whether the Commission's ability to proceed is inhibited because of a lack of jurisdiction over the Subject or conduct; and
 - (15) Any other factor the Commission deems relevant to determining whether the release of such information is in, or would otherwise serve, the public interest.
- (d) In accordance with this section, the Commission has also delegated to staff the authority to consider the criteria in subdivision (c) of this section, and upon a determination that disclosure is in the public interest, staff shall:
- (1) Publicly acknowledge receipt of a complaint. However, the complaint itself, including the identity of the Complainant or Victim, if not public, shall not be made public absent a vote of the Commission;
 - (2) Publicly acknowledge that a matter is "pending before the Commission" until such time as the matter has been closed for any reason;
 - (3) Publicly acknowledge that a matter is "no longer pending before the Commission" after the matter has been closed for any reason; and
 - (4) Publicly acknowledge if the Commission has received a request from law enforcement to defer the Commission's inquiry, and whether such deferral is in place.
- (e) Pursuant to this section, the Commission has determined that it is in the public interest to publicly release information relating to investigative and enforcement matters as follows:
- (1) its annual report, in accordance with the requirements in Executive Law § 94(12), shall include:

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- (i)* a listing by assigned number of each complaint and referral received which alleged a possible violation within the Commission's jurisdiction, including the current status of each complaint; and
 - (ii)* where a matter has been resolved, the date and nature of the disposition and any sanction imposed, with redactions, as necessary, to protect the identity of the Subject, Respondent, Victim, and Complainant as required under the confidentiality requirements in Executive Law § 94.
- (2) its website shall include, within sixty days of resolution or closure of a matter for any reason other than issuance of a substantial basis investigation report or settlement, a listing by assigned case number, setting forth the nature of the matter, the alleged violation of law, and the date and nature of the disposition, with redactions, as necessary, to protect the identity of the Subject, Respondent, Victim, and Complainant under the confidentiality requirements in Executive Law § 94 and in accordance with these regulations.
- (3) Information relating to an investigation or enforcement proceeding that would otherwise be confidential pursuant to Executive Law § 94, when a legal proceeding is initiated in court by the Subject or Respondent of such investigation, as deemed necessary by counsel representing the Commission in furtherance of its interests in such legal proceeding. With respect to other legal proceedings, the Commission may release such information by majority vote of the full Commission, in accordance with Executive Law section 94(4)(h), that such disclosure is in the public interest considering the criteria set forth in subdivision (c) of this section.

Section 941.17 Appeals from Executive Director's denials related to financial disclosure statements.

(a) Grounds for appeal.

- (1) Any person required to file a financial disclosure statement whose written request for deletion of one or more items of information as provided in Executive Law § 94(9)(h) has

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been denied in writing by the Executive Director, may file a written appeal of such denial, called a notice of appeal, as provided in Subpart 941.17(d) of this Title.

- (2) Any person required to file a financial disclosure statement whose written request for exemption from any requirement to report one or more items of information that pertain to such person's spouse, domestic partner, or unemancipated children as provided in Executive Law § 94(9)(i) has been denied in writing by the Executive Director, may file a written appeal of the denial, called a notice of appeal, as provided in Subpart 941.17(d) of this Title.
- (3) Any person required to file a financial disclosure statement whose written request for exemption from any requirement to report items of information that pertain to representation of a client as provided in Public Officers Law § 73-a(3)(8)(b-1), (b-2), or (c) has been denied in writing by the Executive Director, may file a written appeal of the denial, called a notice of appeal, as provided in Subpart 941.17(d) of this Title.
- (4) Any person eligible under Executive Law § 94(9)(k) to apply for an exemption from filing a financial disclosure statement whose written request for exemption from such filing requirement has been denied in writing by the Executive Director, may file a written appeal of the denial, called a notice of appeal, as provided in Subpart 941.17(d) of this Title.

(b) Confidentiality of information related to the Executive Director's denials.

- (1) Pending any application for deletion or exemption to the Executive Director or notice of appeal filed with the members of the Commission, all information which is the subject or a part of the application or appeal shall remain confidential. Upon an adverse determination by the members of the Commission, the reporting individual may request, within five (5) calendar days of receipt of an adverse determination, and upon such request the Commission shall provide, that any information which is the subject or part of the application remain confidential for a period of thirty (30) days from the date of notice of such determination. In the event that the reporting individual resigns from office and holds

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no other office subject to the jurisdiction of the Commission, the information shall not be made public and shall be expunged in its entirety from (or in the case of client information, not made part of) the financial disclosure statement.

(c) Requirement to file a financial disclosure statement pending the Commission's consideration of the appeal of a request for exemption from the requirement to file, pursuant to Part 935 of this Title.

(1) Pending any notice of appeal filed with the members of the Commission, the applicant or appellant is not required to file the financial disclosure statement.

(d) Notice and procedure for appeal.

(1) A notice of appeal must be filed with the Commission within fifteen (15) calendar days of receipt by the appellant of a denial by the Executive Director. The notice of appeal must be in writing, must provide a clear statement of the reasons for appeal, and shall be addressed to the chairman of the Commission at the address provided on a document accompanying the denial by the Executive Director which shall include such information and the procedure for appeals.

(2) Upon receipt of the notice of appeal by the Commission, the Chair, or his/her designee, shall issue a notice of docketing which sets forth a time and date for submitting written arguments and documentary evidence in support of the appellant's position that shall be no sooner than fifteen (15) days after receipt of the notice of appeal and no later than thirty (30) days thereafter.

(e) Record on appeal.

(1) The members of the Commission shall consider the record provided by the Executive Director and the written submissions of the appellant in making a determination on the appeal of the Executive Director's denial. The members of the Commission may request the appellant to file additional information.

(2) The formal rules of evidence shall not apply in the appeals process.

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- (3) The burden is on the appellant to show that the Executive Director made an erroneous determination in deciding not to grant appellant's deletion or exemption request.

(f) Decision on appeal.

- (1) The members of the Commission shall review the written appeal filed pursuant to these rules, and shall render a decision by a majority vote of the total number of members of the Commission without vacancy. Such decision shall be based upon the entire record submitted to the executive director and the written submission of the appellant.
- (2) The written decision of the members of the Commission shall affirm, reverse, remand and/or dismiss the decision of the Executive Director and, as appropriate, shall set forth a concise statement of the reasons for the Commission's decision and shall be issued within sixty (60) days of the receipt of the written notice of appeal filed with the Commission pursuant to these rules, or as soon thereafter as possible.

Section 941.18 Appeals from denial of an application for exemptions under Article 1-A of the Legislative Law §§1-h, 1-j and 19 NYCRR Part 938.6.

- (a) An appeal of a denial of an application for exemption to a judicial hearing officer, pursuant to Article 1-A of the Legislative Law § 1-h and 19 NYCRR Part 938, is available only to a Client Filer who submitted an application under 19 NYCRR Part 938.4(a). A Client Filer who submitted an application under 19 NYCRR Part 938.4(b) is not entitled to such an appeal.
- (b) A Client Filer may appeal a denial of an application for exemption. A notice of appeal must be in writing and include the original application for exemption together with any supporting materials that were submitted pursuant to 19 NYCRR Part 938.5. The written notice of appeal must be received by the Commission no later than fifteen (15) business days after the date of the denial. Any notice of appeal received by the Commission later than fifteen (15) business days after the date of the denial will not be considered and the Client Filer will be deemed to have waived the right to appeal.
- (c) If the Client Filer appeals and such appeal is denied, the Client Filer shall, within five (5) business days

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of the date of the denial of the appeal, amend the Client Semi-Annual Report to include the required information relating to the subject of the application for exemption.

(d) Appeal Procedure and Standard of Review

- (1) Upon receipt of a notice of appeal in accordance with Section 941.18(b), the Commission shall assign the matter to a hearing officer.
- (2) The hearing officer shall review the entire record, which shall consist of the original application for exemption together with any supporting materials that were submitted pursuant to Section 941.18(b) and the Commission's written denial.
- (3) The hearing officer may reverse the Commission's denial only if such denial is clearly erroneous in view of the evidence in the record.
- (4) The hearing officer's final decision shall be in writing and shall affirm, reverse, or remand the decision of the Commission and shall set forth a concise statement of the reasons for the judicial hearing officer's decision. The hearing officer shall issue the final decision within fifteen (15) business days of the hearing officer's receipt of the materials identified in this section.
- (5) A decision by the hearing officer to affirm or reverse the Commission's denial of an exemption shall be considered a final determination by the Commission.

Section 941.19 General provisions.

- (a) All final recommendations of the hearing officer and all of the decisions of the Executive Director and the Commission shall be in writing or stated in the record and shall include findings of fact, conclusions of law, reasons for the decision and, when appropriate, direct that specific action be taken by the Commission. The final decisions of the Commission shall be binding upon the Commission.
- (b) Except in matters *ex parte*, members or employees of the Commission assigned to make, or assist in making, a decision or findings of fact and conclusions of law in any hearing shall not communicate,

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directly or indirectly, in connection with any issue of law with any person, party or its representative of record, except upon notice and opportunity for all parties to participate. Any such member or employee may communicate with other Commission members or employees and may seek the aid and advice of agency staff, including counsel to the Commission, other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

- (c) The Commission shall maintain all substantial basis reports and notices of civil assessments and make them publicly available as required by law.

Section 941.20 Savings Clause.

All matters where the Commission has issued a Substantial Basis Report will be governed by the laws and adjudicatory rules in effect when such Substantial Investigation Report was issued. All other matters and investigations will be governed by the provisions of this Part.

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