

**MINUTES OF THE PUBLIC SESSION
OF THE JUNE 27, 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)

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

Absent: Leonard B. Austin
Nancy G. Groenwegen (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 (ALB)
Brian Weinberg, Director of Investigations & Enforcement (NYC)
Michael Antolini, Deputy Director of Investigations & Enforcement (NYC)
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 (ALB)
Meghann Hennigan, Deputy Director of Education (ALB)
Peter Smith, Chief Investigative Officer (WebEx)
Lori Donadio, Managing Principal Investigative Analyst (ALB)
Mariana Cadiz, Acting Director of Administration (ALB)
Martha Rivera, Executive Assistant (NYC)

CALL TO ORDER

[Commissioners Ayers and James were not present for this portion of the meeting.]

Chair Davie called the June 27, 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 Ayers will be attending remotely pursuant to Public Offices Law § 103-a and the Commission’s rules and procedures for remote participation in extraordinary circumstances.

APPROVAL OF MINUTES – PUBLIC SESSION - May 23, 2023

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on May 23, 2023. A motion was made by Commissioner Cardozo, seconded by Commissioner Caraballo, to approve the minutes.

Chair Davie referred to the top of page 9 of the draft minutes, at the first full paragraph, and requested the tape recording be checked. Executive Director Berland informed commissioners the recording had been checked and the minutes should be amended to read “Chair Davie requested that the Communication Plan, at Tab E, be amended on page 11 to state, “the Communications Director should respond to inquiries unless the Communications Director, Executive Director or the Chair decide a response from the Executive Director, Chair or other Commissioners or staff is warranted.” Chair Davie clarified that the Communications Director will be the first point of contact on any of these inquiries and, if it is warranted, others may respond.

The motion to approve the minutes, as amended, carried unanimously.

REPORT FROM STAFF

Operations Update

Executive Director Sanford presented the operations update and reported that as in previous months, the reports include the prior month's figures for comparison purposes as well as figures for the corresponding month and year-to-date period under the prior commission for this corresponding period. Executive Director Berland explained that, for a number of months now, the current reported figures are comparable and, in some instances, exceed the corresponding figures of the prior Commission and reflect the fact that, while the Commission has not completed the expanded staffing plan, it is well underway. Executive Director Berland also reported that several staff vacancies have been filled in the agency and that the activity numbers are improving; for example, in the Investigations Unit, the figures are now at about the same level as they were with the prior Commission, and we expect those numbers to grow as we move forward. He also reported that while closings have not yet caught up with prior levels, with the prospect of additional staffing in place, the Commission will see improvement in the number of matters being closed, as well.

Commissioner Cardozo referred to tab B, page 6, and noted there is a contrast in the Audit and Review table between the year-to-date figures reported for COELIG and JCOPE. Executive Director Berland explained that while the Commission was in formation, that is, in the period from when ECRA went into effect, on July 8th, 2022, until the Commissioners were seated, staff was not conducting compulsory audits in order to avoid questions about the authority of staff prior to the delegation of authority being made by the Commission. Executive Director Berland stated that the figures for that unit are going to increase in the coming months.

General Counsel St. John introduced Brendan Fanning, the newest addition to the Audit and Review Unit, who will increase the Commission's ability to address the backlog of filings to review and audit.

Commissioner Whittingham noted that, in the Public Information Office table on page 7, there were no numbers for April or May, but the year-to-date figure has a footnote indicating 79% are outstanding. Director of Communications, Public Information Officer and Director of Public Affairs Emily DeSantis explained that this is new row of information being provided in this table for this

month, and it will be included in operations tables going forward, because Commissioners had asked how many records requests were outstanding and if the records were being timely provided. DeSantis further explained that the row represents the number of outstanding, but timely, requests; these requests have all been acknowledged and have a date by which responses will be provided or an explanation given if there is a delay. Director of Communications, Public Information Officer and Director of Public Affairs DeSantis stated that as of the date of the meeting, the number of pending requests is down to 14, none of which are overdue.

Commissioner Whittingham asked how searches for responsive FOIL records are conducted. Executive Director Berland explained that conducting searches includes looking in files, looking in data systems, inquiries to relevant staff who might have responsive materials and, if need be, conducting an electronic search of emails, depending on the nature of the request. There are a variety of searches in effect that comply with the requirement of FOIL; however, Executive Director Berland further explained that the Commission does not create records, and so if records do not exist there is no obligation to create a record. If there is data that would support the request, the Commission will provide access to the data or provide the data, subject to relevant exclusions, privileges, or exemptions. Commissioner Whittingham asked if there are ever requests for records from the Commissioners. Executive Director Berland stated that staff has made requests of Commissioners where appropriate.

Chair Davie noted on page 5 of the operations report, the number of officers/employees overdue for ethics training shows the COELIG 2023 year-to-date field as blank and the previous year has over 2,000. Deputy Director of Education Meghann Hennigan stated that last year the FDS online system was able to track ethics training compliance for FDS filers, but that function is no longer operable; state agencies are keeping track of training completions themselves currently, until a new tracking system is built. Chair Davie requested that when the new systems are in put in place, staff report those numbers.

Executive Director Berland explained that currently there are no strict training deadlines and staff is proposing to put the first deadlines by at the end of this year for the first level of training for state employees. Executive Director Berland reminded the Commission that the training requirement has

gone from training solely FDS filers to training the entire executive workforce, from training about 30,000 individuals every three years to over 300,000 individuals for whom training in some form is required every year, either live or online. As the procedures are implemented and the first part of the training cycle begins, staff will start to create deadlines. Chair Davie emphasized, and confirmed with staff, that as the new deadlines applicable to the bigger pool of employees requiring training approach, the numbers of employees reported as overdue for training could increase markedly over the 2,000 reported by the prior agency for the comparable period in 2022, even if the goal is for that not to be the case.

Staff and Recruiting Update

Executive Director Berland stated the training unit has filled one position that had been vacant and is in the process of recruiting two additional trainers and two training assistants, as well. Further, recruiting is underway for a new Deputy Director of Ethics, two additional ethics attorneys and a filing specialist. In Investigations and Enforcement, the Commission is recruiting two enforcement counsel and two additional investigators, and in Administration, recruiting is in progress for two additional administrative assistant positions.

FY 2023-2024 Budget Status

Executive Director Berland noted that although as shown in the budget update, under tab C, personal services expenditures are below budget, it is anticipated that once recruiting is completed, personal services spending will reach its budgetary levels. Hence, additional funding will be required next year. Commissioner Whittingham noted that contractual services were significantly higher in May than in June. Acting Director of Administration Mariana Cadiz explained that the budget for 2023-2024 had not been approved until the beginning of May and thus funds were not available to pay for contractual services. The bulk of those payments were lease payments for both May and June, hence the doubling of payments in May.

Commissioner Per Diem Payments

There were no per diem payments for this month. Chair Davie stated there will be a report for next month.

Third Quarterly Training Compliance Report

Executive Director Berland referred to tab E and explained the third quarterly report (for the first calendar quarter of 2023) went to the Governor and legislative leaders in June. He indicated that 98% of agencies are now reporting statistics -- both on the size of their workforces and the numbers of trainings reported. He also indicated that the total number of trainings reported for the first calendar quarter of 2023 exceeds the total for the preceding two quarters. The report also provides the number of ethics trainings completed by lobbyists and clients of lobbyists.

Commissioner Edwards requested, and Executive Director Berland agreed, that in the future, the training reports be sent to the Education Committee and the full Commission prior to submission to the Governor and Legislature. Chair Davie stated consideration should be given to whether there should first be committee vetting of reports that are going to be made public. There followed a discussion concerning the establishment of targets and benchmarks for the quarterly ethics training report and the Commission's annual report.

March 29, 2023 Public Hearing Recommendations and Comments Digest and Committee Referrals and Next Steps

General Counsel St. John discussed the memorandum under Tab E, which provides a synopsis of each recommendation and comment that was offered at the March public hearing and suggests one or more committees of the Commission to consider each recommendation or comment. A discussion ensued regarding legislative proposals, public hearing recommendations, staff recommendations and committee assignments.

[Commissioner James was present for the remainder of the meeting]

Chair Davie proposed that the Commission select a day in the first two weeks of August on which the Commission can have a public discussion on legislative priorities. Commissioner Cardozo suggested inviting those watchdog groups that offered recommendations in the March 29th public hearing. Chair Davie stated the Commission's legislative agenda will be prepared by the end of the year.

A motion was made by Commissioner Cardozo, seconded by Commissioner Caraballo, that there be a meeting no later than early September at which each committee shall present what has been identified as the substantive priorities that it wants to focus on, with a proposal on specific actions that should be taken to implement those priorities. The motion carried unanimously.

COMMITTEE UPDATES

Education – Training – Presentation

Executive Director Berland informed the Commission that Deputy Director of Learning Innovation Administration Marlena Diaz and Deputy Director of Education Hennigan would be presenting the Education Committee's proposed plan for implementing the Commission's program to meet the executive workforce-wide ethics training requirement of Executive Law § 94(8)(a), which has been the focus of their work with the Education Committee. Deputy Director of Learning Innovation Administration Diaz and Deputy Director of Education Hennigan proceeded to present the committee's proposal, including the proposed implementations schedule.

[Commissioner Ayers was present for the remainder of the meeting]

Chair Davie thanked Deputy Directors Diaz and Hennigan for their presentation. Chair Davie stated that it is very useful for the Commission and the public to see how involved the process is for implementation of the new training requirements. Chair Davie noted the presentation makes clear what the issues are and the plan for addressing this monumental task. Chair Davie stated the state legislature, and the executive branch of government, should take notice as to what an extensive operation this is and the types of resources it requires, particularly on the technology side. Chair

Davie encouraged the legislature and executive branches of government to commit themselves to the investment of those resources if they are serious about implementing these specific requirements of ECRA. Chair Davie stated that if the Commission does not have stakeholders onboard, including the legislature and the executive branch, to put the required resources behind the Commission, then there would be a big challenge to implement an ethics program as envisioned by ECRA.

Chair Davie noted that it is important for the public to know that the other substantive work that this Commission is tasked with is getting done; investigations are going forward, routine informal guidance opinions are being provided and other major legal matters are all being dealt with expertly.

Commissioner Edwards noted a lack of benchmarks or goals in the presentation and asked why there was a sense of urgency to get this plan approved at this meeting. Deputy Director Diaz informed the Commission that approval of the plan is required to meet deadlines set for the development of the applications required with ITS. A discussion was held discussing benchmarks, goals, and deadlines.

Commissioner James asked why the end of 2025 was set as the deadline for training the 300,000 employees and not the end of 2024. Executive Director Berland explained that the Executive Law only provides guidance on deadlines with respect to new hires, and staff needs to address the larger population of seasoned state employees as well, and there are 384 agencies that have to build their capabilities in order to bring their agencies into compliance with the training requirements.

Executive Director Berland requested that the Commission vote to approve the plan for implementing and for staff to act on the plan and to so inform agency ethics officers, whose compliance with the plan is expected, and the Commission will work with agency ethics officers to achieve that end.

Commissioner James agreed that the plan should be approved, and he also agreed with Commissioner Edwards that milestones should be set and presented at the July Commission meeting.

A motion was made by Commissioner Carni, seconded by Commissioner Cardozo, to accept the proposed training schedule. The motion carried unanimously.

Commissioner Edwards stated that moving forward, resolutions should not be presented until they go through the appropriate committee.

There were no further committee updates or reports.

PROPOSED COMMISSION FREEDOM OF INFORMATION LAW REGULATIONS*

Executive Director Berland referred to tab F, the proposed FOIL regulations that had been originally proposed in March, and stated that at the last meeting, the Commission extended the emergency adoption through August so the Commission would need to act on the regulations at the July meeting. Consideration was deferred pending recommendation from the Communications Committee, which is scheduled to meet in July, prior to the July Commission meeting.

PROPOSED FURTHER AMENDED PART 941 REGULATIONS*

Executive Director Berland stated that Proposed Further Amended Part 941 Regulations were first prepared when the Commission was in formation and have been before the Commission continuously since they were first presented. A discussion was held regarding policies and procedures.

Commissioner Caraballo requested a list of the hearing officers used by the Commission. Commissioner Caraballo stated the Commission website should state who the hearing officers are, their background, how often they are reviewed, and what the criteria are for their selection.

Commissioner Caraballo and Commissioner Ayers mentioned the 15-day letter as an example of the need for plain language, and noted that, for example, the 15-day letter should be called the “Notice of Allegations.” Executive Director Berland explained that the agency was following the language of the statute. Commissioner Ayers noted that the agency was not precluded from calling the 15-day letter a “Notice of Allegations.” Commissioner James confirmed that the regulations cite the “15-day Letter” as the “Notice of Allegations (15-Day Letter).”

Commissioner Ayers noted that while she was happy approving the proposed amended Part 941 regulations at this time, the comprehensive review of all regulations is still in front of the Commission and should encompass plain language and accessibility concepts. Chair Davie emphasized that a discussion is needed of the process for doing the comprehensive review of all documents, regulations, etc. Executive Director Berland noted that a presentation was to be made to the Commission today but since some Commissioners were not available, it was moved to the July Commission meeting.

Commissioner Caraballo referred to Section 941.16, subsection d, and stated that it was too vague and would like it removed. A discussion was held regarding further provisions of the proposed amended Part 941 Regulations.

A motion was made by Commissioner Caraballo, seconded by Commissioner Edwards, to delete Section 941.16, subsection d, in its entirety. The motion did not carry 3-5-0. Chair Davie, Commissioner Ayers, Commissioner Cardozo, Commissioner Carni and Commissioner James opposed the motion.

Chair Davie reminded the Commission that a deadline of September 27th was set for the Special Committee on Delegation to come up with a set of recommendations on delegation of certain authority to staff.

Commissioner Ayers stated she would like to see a written charge that makes clear whether the Special Committee on Delegation is dealing with delegation globally or if it was limited to the context of guidance. Chair Davie deferred discussion of the responsibilities of the Special Committee on Delegation to new business.

Commissioner Caraballo referred to § 941.17(d)(1) and would like to replace “chairman” with “chair.” Commissioner James referred to page 3 and would like to change “Joint Commission on Public Ethics” to “Commission on Ethics and Lobbying in Government.”

A motion made by Commissioner Carni, seconded by Commissioner Edwards, to adopt the proposed amended Part 941 regulations as amended. The motion carried unanimously.

NEW AND OTHER BUSINESS

Chair Davie suggested tabling the delegation discussion to year-end as there are larger items on the schedule that require the Commission's immediate attention, such as the legislative agenda. A discussion was held on the delegation and the need for clarity.

A motion was made by Commissioner Whittingham, seconded by Commissioner Caraballo, to recognize the official name of the Commission's special committee as the "Special Committee on Delegation," and that it will have two responsibilities: delegation and guidance, with a report on guidance to be presented at the July Commission meeting. The motion carried unanimously.

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

A motion was made by Commissioner Caraballo and seconded by Commissioner Edwards to adjourn the Public Session and enter into Executive Session. The motion carried unanimously.

PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Executive Director Berland announced that during the Executive Session the Commission discussed matters related to litigation or legal advice; the Commission approved informal guidance pursuant to Executive Law § 94(7) and Part 932; and discussed several other requests for guidance and discussed other guidance matters. In addition, the Commission authorized steps in several investigative matters, closed six matters and discussed several other investigative matters.

MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Cardozo, seconded by Commissioner Edwards, to adjourn the meeting. The motion carried unanimously.

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