

**MINUTES OF THE PUBLIC SESSION
OF THE JULY 19, 2023
MEETING OF THE COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT**

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

**540 BROADWAY
ALBANY, NEW YORK 12207**

**1800 AXA TOWER I
100 MADISON STREET
CONFERENCE ROOM 19B – 19TH FLOOR
SYRACUSE, NY 13202**

Chair: Frederick A. Davie (NYC)

Vice-Chair: Leonard B. Austin (WebEx)

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

Staff: Sanford N. Berland, Executive Director (NYC)
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)
Jennifer Bliss, Associate Counsel (ALB)
Peter Smith, Chief Investigative Officer (WebEx)
Lori Donadio, Managing Principal Investigative Analyst (ALB)
Mariana Cadiz, Acting Director of Administration (NYC)
Martha Rivera, Executive Assistant (NYC)

DRAFT

CALL TO ORDER

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

Chair Davie called the July 19, 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, Vice Chair Austin 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 June 27, 2023.

Executive Director Berland noted that at page 4 of the public session minutes, first full paragraph, second sentence, the clause after the semicolon should read: "however, executive Director Berland further explained that the one thing we're not required by FOIL to do is to create records, so if records don't exist, there's not an obligation to create records, but if there is data that would support the request we'll provide access or provide the data, subject to relevancy exclusions, privileges and so on, and exemptions that exist in FOIL."

Vice Chair Austin noted that on page 3, first paragraph, it should read Executive Director Berland not Executive Director Sanford.

A motion was made by Commissioner Ayers, seconded by Commissioner James, to approve, as amended, the public session minutes. Chair Davie, Commissioners Ayers, Cardozo, Edwards, James & Whittingham voted in favor of the motion, Vice-Chair Austin and Commissioners Caraballo, Carni and Groenwegen abstained from the vote. The motion carried with a vote of 6-0-4.

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 in 2022, and we also have a column – the first column – showing activity for the preceding month. Executive Director Berland reported that activity overall has continued to increase this year, notably the number of complaints and referrals we have received so far this year is nearly comparable to the corresponding period for the prior agency in 2022. Executive Director Berland noted that in other areas, the figures reflect both essential normal cyclical patterns as well as new patterns, that for example, in Lobbying, the Commission is now at the beginning phases of a new biennial cycle, which began in January, as well as the inception of a new online ethics training program for lobbyists to which ethics training for lobbying clients has been added, producing a greater number of lobbying-related inquiries than last year as of this time, but declining as compared with last month as fewer lobbyists and clients remain to complete their training obligations. In addition, the Commission is well into the process of starting to fill out the expanded staffing plan, which will have an impact on activity across the organization. Executive Director Berland noted that the year-to-date number of individuals who completed lobbying training is 7,671.

With respect to workforce ethics training, Executive Director Berland noted that the table at page 5 shows attendees only at trainings conducted by Commission staff. The overall figure – that is, for training across the more than 380 agencies in the executive branch – is approximately 12,000 for May based upon still incomplete numbers at this point, and at least another 6,000 for June. He explained that meant the total for the period from inception of the agency through the end of the second calendar quarter of this year is going to be between 75,000 and 80,000, and likely higher than that when the full June figures are in. He noted that this is a huge achievement by COELIG training staff and agency ethics officers and training staff across the executive branch of state government. He also noted that throughout the transition and interim period, staff has stepped up across the board impressively, shouldering added burdens. He stated that it is anticipated that those added burdens will be eased as vacancies are filled and proposals for augmentation in a number of areas are implemented.

Commissioner Cardozo asked about the variation in the numbers on page 6, under Audit and Review, for the number of random FDS reviews completed and requests for additional information letters sent after random review. Director of Ethics Sande stated a list of 1,000 random audits to be conducted has been created and the review process has begun. Executive Director Berland further explained that it is the same staff conducting the various tasks listed and although there is a smaller number of random FDS reviews there is a significantly higher number of targeted FDS reviews completed year to date.

Commissioner Caraballo asked what some of the topics that are listed under miscellaneous on page 2. Director Ethics Sande explained those are general questions including questions related to the process for seeking approval for an outside activity, and the process for obtaining an opinion from the Commission.

Staff and Recruiting Update

Executive Director Berland provided a staffing and recruiting update and stated that the training unit has one new training associate starting; that an offer to another training associate applicant has been accepted and staff is awaiting budget approval to finalize that hire; and efforts are underway to fill the 3 remaining training assistant positions. In addition, the investigations unit will be hiring two enforcement attorneys and two investigators, and the administration unit staff is conducting a second interview with a candidate to fill a remaining vacancy in that division.

FY 2023-2024 Budget Update

Executive Director Berland stated that the budget update is under tab C and the Commission is currently running under budget, but with the hiring of additional staff per the staffing plan, the Commission will ultimately be utilizing its entire budget going forward and is anticipating requesting which will require a budgetary increase for next year.

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

Commissioner Per Diem Payments

Executive Director Berland stated there were no per diem payments made since the last report, but payments are in process to be paid on August 2nd. Executive Director Berland provided the following projected Commissioner per diem payments, which may not be the final payment amount for the months April through June:

Davie, Frederick	\$3,834.30
Austin, Leonard B.	\$2,811.82
Ayers, Ava	\$4,377.49
Caraballo, Dolly	\$3,291.11
Cardozo, Michael A.	\$7,828.36
Carni, Edward D.	\$3,418.92
Edwards, Claudia L.	\$7,796.41
Groenwegen, Nancy G.	\$2,108.87
James, Jr., Seymour W.	\$3,355.01
Whittingham, Kaylin	\$3,482.82
Total	\$42,305.11

Executive Director Berland noted that these per diem figures are within the budgeted amounts and include attendance at Commission and Committee meetings and additional time submitted by Commissioners for other permitted work. Chair Davie stated that not all Commissioners submit for reimbursement for additional time and some Commissioners are behind in submitting their time logs.

COMMITTEE UPDATES

Education

Commissioner Edwards reviewed the proposed charter and objectives for the Education Committee under tab D. The Education Committee met twice since the last Commission meeting, once in person and once through email discussions. Commissioner Edwards stated they have been working very closely with staff and thanks them for their input. Commissioner Edward explained that the

committee was established to provide oversight to the unit to ensure the Executive Director has the appropriate level of guidance resources and policy directives necessary to successfully execute the legislative requirements. Some items discussed included the language of the proposal, the rebranding of the education unit, and the Commission logo. A discussion was held regarding the proposed charter and objectives over the next three years.

Commissioner Edwards referred to attachment E which is a training related comments and questions that came out of the March 29th public hearing and have asked staff to come up with pros and cons on the recommendations.

Communications

Commissioner Cardozo informed the Commission that Director of Communications & Public Information Officer DeSantis circulated the first draft of the annual report. The committee has reviewed the report and it is being redrafted to include other developments and suggestions. A red-line draft followed by a proposed final will be circulated to the Commission.

Commissioner Cardozo provided an update on FOIL regulations that included the ongoing process of updating the website, staff's additional responsibilities and additional costs involved. Commissioner Cardozo stated he has circulated recommendations to the Education Committee, who has provided feedback, and chairs of the other committees and is waiting to hear back. Commissioner Cardozo stated addressing these issues will ensure recommendations will be prepared for the September meeting.

Commissioner Cardozo stated the Communications Committee is looking into eliminating the physical presence requirement of the open meetings law for meetings of committees that are advisory only. He noted that the current exception that allows member to attend meetings remotely for extraordinary circumstances provided a quorum of the body is physically present at one or more locations open to the public is set to expire in 2024.

Ethics

Commissioner James informed the Commission the Ethics Committee is scheduled to have a meeting tomorrow July 20, 2023.

PROPOSED RESOLUTION ON INTERIM PROCEDURES FOR ISSUANCE OF INFORMAL ADVICE AND GUIDANCE TO PERSONS WITHIN THE COMMISSION'S JURISDICTION

Vice Chair Austin stated they have been working on a draft resolution from the April meeting and have circulated it to other members for review. Vice Chair Austin stated that there is now a clear and coherent statement as to procedures, such as what staff is going to do when they receive something novel or different. The proposed resolution sets forth procedures that will give the public a clear perspective as to how the Commission operates, how the public communicates with the agency and what is done with regard to precedents. The Commission had a discussion regarding the proposed resolution on interim guidance procedures.

A motion was made by Vice Chair Austin motion, seconded by Commissioner Caraballo, to approve the proposed resolution and interim guidance procedures. The motion passed unanimously.

Vice-Chair Austin stated that this resolution makes it clear that opinions given by staff are binding on the Commission and can be relied upon. The only exception is when the requestor gives false, fraudulent, or incomplete information. The Commission can always revisit a determination on a prospective basis.

Commissioner Groenwegen requested that the comments be shared with all the Commissioners.

PROPOSED COMMISSION FREEDOM OF INFORMATION LAW REGULATIONS

Executive Director Berland explained that the adoption of the FOIL regulations fulfills the Commission's obligation under the Public Officer's Law and FOIL statute to adopt regulations implementing the statute. A discussion was had that addressed proposed additional amendments to

the proposed FOIL regulations. Executive Director Berland noted that comments received jointly from several groups that were reflected in the proposed regulations.

A motion was made by Commissioner Cardozo, seconded by Commissioner James, to approve the Proposed Commission Freedom of Information Law Regulations, 19 NYCRR Part 937. The motion carried unanimously.

OUTLINE FOR THE EXECUTIVE LAW §94(1)(F) MANDATED REVIEW OF ALL REGULATIONS AND ADVISORY OPINIONS FOR INTERNAL CONSISTENCY AND CONSISTENCY WITH ECRA AND WITH RESPECT TO THE EFFECTIVENESS OF EXISTING LAWS, REGULATIONS, GUIDANCE AND ETHICS ENFORCEMENT STRUCTURE

Executive Director Berland stated that Executive Law 94(1)(f), requires the Commission to conduct a review of all regulations and advisory opinions for consistency internally and with the Ethics Commission Reform Act of 2022, as well as of the effectiveness of the existing ethics laws, regulations and guidance and of the ethics enforcement structure.

Director of Ethics Michael Sande presented the Outline for the Comprehensive Review of Regulations, advisory opinions, and governing statutes that included a spreadsheet containing all 353 formal advisory opinions, which, he noted, serves as a good tool to check for consistencies with advisory opinions or to raise flags. Chair Davie reminded the Commission this was a response to a request made by Commissioners to have a comprehensive review of all existing advisory opinions pursuant to the mandates and statutes. A discussion was had regarding the outline and how to proceed with the comprehensive review.

Chair Davie announced Commissioners Ayers, Caraballo, Groenwegen and Whittingham will work closely to start the process of outlining a plan of action as to how the Commission will address the comprehensive issues as presented by Director of Ethics Sande. The plan of action will be distributed to the rest of the Commission for review and will be discussed at the special meeting to be scheduled in September.

Commissioner Ayers made a motion, seconded by Commissioner Cardozo, to have Commissioner Ayers work closely with Commissioners Whittingham, Caraballo and Groenwegen outlining a plan of action as to how the Commission will address the comprehensive issues in the outline and present direction to the Commission at the special meeting to be held in September. The motion carried unanimously.

NEW AND OTHER BUSINESS

Commissioner Ayers had previously drafted and circulated resolutions on committee procedures. Chair Davie stated that the draft resolution on committee procedures circulated by Commissioner Ayers will be the first item to be addressed at the special meeting to be held in September.

Commissioner Ayers stated that it was a short resolution and then read it before the Commission. Executive Director Berland stated there is an open meetings law legal issue that is implicated and stated that he would prefer that it be discussed in Executive session. Commissioner Ayers asked why Executive session and Executive Director Berland explained there is legal advice he would like to pass along to Commissioners for consideration that would be inappropriate to state in public session.

A motion was made by Commissioner Cardozo, seconded by Commissioner Caraballo, to table this discussion until after the Executive session. The motion carried unanimously.

Commissioner Groenwegen recommended that a staff member be named Parliamentarian. The Commission agreed.

A motion was made by Commissioner Groenwegen, seconded by Commissioner Ayers, to have Executive Director Berland designate a member of the staff to serve as Parliamentarian for the Commission. The motion carried unanimously.

Executive Director Berland appointed General Counsel St. John to serve as Parliamentarian for the Commission and in his absence, Executive Director Berland designated Deputy General Counsel Bhatt-Kapadia.

After consulting with the Commission, Chair Davie set the date of Wednesday, September 13, 2023. A motion was made by Commissioner Caraballo, seconded by Commissioner Ayers, to have a Special Commission Meeting on September 13, 2023 from 1:00pm to 4:00pm for two purposes.

1. Committees will report on the plan of action for those priorities coming out of the public hearing as assigned and delineated in the memo provided by General Counsel St. John.
2. The ad hoc group, consisting of Commissioners Ayers, Caraballo, Groenwegen and Whittingham, will provide a plan of action for the advisory opinion review that Director of Ethics Sande provided us today.

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 Vice Chair Austin and seconded by Commissioner Caraballo 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 the Commission discussed several other requests for guidance and discussed other guidance matters. In addition, the Commission authorized steps in

several investigative matters, closed 13 matters and discussed several other investigative matters. The commission also discussed matters related to information technology needs.

A discussion was had regarding the resolutions for committees, and it was tabled until the September 13th Special Meeting.

A motion was made by Commissioner Ayers, seconded by Commissioner Whittingham, to table the resolutions for committees until the September 13th Special Meeting. The motion passed unanimously.

Chair Davie stated that the Commission is depending on the Executive branch and the Assembly to provide the resources it needs to fulfill the mandate that has been set in ECRA and by the Executive branch and the Legislature. One huge issue is in technology and the ability to fulfill our mandate as it relates to technology. The Commission is coming up scarily short in terms of capacity in areas. Chair Davie asked everyone who has any influence who can support this Commission in getting what it needs, in terms of technology, to step up to the plate and do that. He emphasized the importance of doing so, in terms of carrying out what the public has requested the Commission to do. Public Meetings should not be cutting in and out because of technological issues where the public is cut off from hearing the meeting and the Commission must wait. Lobbying compliance should not be undermined by the absence of sufficient technological support. Other areas of operation should not suffer because we are limping along when it comes to meeting our technology needs. He further stated that this Commission could have alternatives provided if it had sufficient resources, but it would better if it got the capacity from the offices charged with providing technological support. Chair Davie made a public plea to all parties with responsibility here to work closely with this agency to ensure it has the maximum technological capacity that it needs to carry out its mandates.

MOTION TO ADJOURN THE PUBLIC MEETING

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