

**MINUTES OF THE PUBLIC SESSION
OF THE SEPTEMBER 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)

Vice-Chair: Leonard B. Austin (ALB)

Members: Ava Ayers (ALB)
Dolly Caraballo (ALB)
Michael A. Cardozo (ALB)
Claudia L. Edwards (ALB)
Seymour W. James, Jr. (Webex)
Kaylin L. Whittingham (ALB)

Absent: Nancy Groenwegen

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

CALL TO ORDER

Chair Davie called the September 27, 2023 meeting to order. Executive Director Berland announced that a quorum was present at locations open to the public both in the Commission's offices in Albany and in New York City in accordance with the provisions of the state Open Meetings Law, and that, in addition, Commissioner James would 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 – JULY 19, 2023

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on July 19, 2023.

Vice Chair Austin noted that a change on page 4 of the minutes, correcting the language under Operations Update from "Executive Director Sanford" to "Executive Director Berland." Commissioner Cardozo noted the language on the last line at the bottom of page 5 should remove the words "which will require." The Commissioner also noted that on page 7, the second sentence of the second paragraph under Communications should read, "the Education Committee, which has provided feedback" instead of "who has provided feedback." Chair Davie noted that on page 12, in the third sentence in the large paragraph before the final heading, the word "scarily" may not be the correct word to use and suggested removing that word from the sentence.

Commissioner Whittingham noted that on page 3, the heading referred to the May 23, 2023 minutes and it should read June 27, 2023 minutes. The Commissioner also noted that on page 3 where her

vote was counted in the motion, that she was not in the room. [This was an error in the minutes as Commissioner Whittingham was present for the entirety of the meeting.]

A motion was made by Commissioner Ayers, seconded by Commissioner Edwards, to approve the public session minutes, as amended. The motion carried unanimously.

Chair Davie announced Commissioner Ayers had suggested changing item VI on the agenda to a discussion of the Comprehensive Review proposal that she provided in her email. There were no objections.

REPORT FROM STAFF

Operations Updates

Executive Director Sanford Berland presented the operations update and reported that as in previous months, the reports included 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. The first column showed the activity for the preceding month. Executive Director Berland reported that activity had continued to increase overall since the beginning of the year and the number of complaints and referrals received this year was nearly comparable to the corresponding period for the prior Commission in 2022.

Executive Director Berland reported that in other areas the figures reflected normal cyclical patterns as well as new patterns; for example, lobbying is past the earliest phases of the current biennial registration period, which started in January and will continue to the end of 2024. Executive Director Berland explained the peak that occurred at the beginning of the year, which was also impacted by the new lobbying training for lobbying clients under ECRA, has also affected activity on the lobbying

side with respect to inquiries received. Executive Director Berland noted the numbers of incoming inquiries are going down now that the Commission has moved past the initial introduction of the new lobbying ethics training.

Executive Director Berland stated that in ethics training, a new row had been added to the training table to show, in addition to trainings conducted by our staff, ethics trainings conducted in numerous agencies by their ethics officers and others in those agencies. Executive Director Berland referred to August's numbers under Tab C, Page 5, which shows year-to-date trainings totaling 81,767, which is very positive news.

Commissioner Cardozo asked about the audit numbers behind Tab B, page 7, where there seemed to be a decline in the number of random FDS reviews completed and an increase in the number of targeted FDS reviews and wondered if those two points were related. Executive Director Berland explained these were periodic reviews conducted, as prescribed by statute, and there were random selections quarterly on the lobbying side. Executive Director Berland further explained that as the draws get completed, the numbers go down; as staff starts and completes the reviews, the numbers then go up. He further added that the targeted reviews and random reviews conducted by the compliance audit and review unit were periodic throughout the year.

Commissioner Caraballo referred to Tab C, Page 1, where it stated there were 115 tips that had come in and seven 15-day letters sent. Commissioner Caraballo requested an explanation of what those numbers represented. Deputy General Counsel Bhatt explained that the 15-day letters were investigations that had been opened where the subject had been made aware of the investigation. The

tips were complaints coming in and the number of matters pending included matters in which the investigation staff was doing preliminary investigations. Commissioner Caraballo asked if the 178 matters pending included matters from previous years; Deputy General Counsel Bhatt answered yes. Commissioner Whittingham referred to Tab C, page 3, Publications & Eblasts, questioning the reported seven year-to-date publications and eblasts for COELIG when JCOPE had 12 in the same period the preceding year. Director of Lobbying Quinn explained that these included cyclical things that are sent when required, such as reminders for filing bi-monthly deadlines or CSA deadlines. Director of Lobbying Quinn stated that at the end of 2022, there were several notifications sent on the new training requirements for 2023 and this may account for the difference in numbers. Executive Director Berland added that the communications division is now extremely active on social media and is also using the website to disseminate information, as well as providing notifications through the press and media. Director of Communications, Public Information Officer and Director of Public Affairs Emily DeSantis also noted that they are waiting for ITS's approval of the Constant Contact email marketing platform that will be used not only for lobbying but for ethics communications as well.

Commissioner Whittingham referred to Tab C, page 1, and noted the number of guidance letters sent by the Investigations unit were zero for this year and for JCOPE last year and asked if this was something the Commission was going to continue to send. Executive Director Berland explained that guidance letters are part of the end point in an investigation and there is also a new provision in ECRA that allows abbreviation of certain proceedings that can conclude with a guidance letter, and the Investigations unit will be using that procedure for certain cases going forward.

Staffing and Recruiting Update

Executive Director Berland stated the agency was making excellent progress and is getting near to but has not quite completed filling out the expanded staffing plan. Executive Director Berland informed Commissioners that the training unit now has three training associates on board, following one promotion and two new hires (Tami Cannon and Michael Smith). The Ethics division was approaching the point of extending an offer to a candidate for Deputy Director and is actively recruiting for a couple of additional associate attorneys. Investigations and Enforcement has one more position to fill and a new hire that Brian Weinberg, Director of Investigations and Enforcement would talk about a little later in the meeting, and Administration has one new hire. Executive Director Berland stated there were a few more positions to fill, but the new hires were already making a difference in the operation of the agency, and that was reflected in the statistics and the workflow of the agency. Executive Director Berland stated there are decisions to be made as to how to adjust the plan for next year's budget, because there were at least three internal moves from existing positions to some of the new positions.

Commissioner Cardozo asked if there were any special training programs for the new hires. Executive Director Berland explained that there is an overall orientation for new hires as they come onboard with the agency, but the basic training is undertaken by the respective unit or division.

FY 2023-2024 Budget Update

Executive Director Berland informed Commissioners that the agency was on track almost to use the entire budget and end the year in the "green." Executive Director Berland noted that for next year, the budget is going to be tighter as the agency will be fully staffed.

Commissioner Edwards requested to know how the agency's budget is doing regarding technology and the potential impact next year given the pending reductions. Executive Director Berland informed that NYS ITS services the agency's technology needs, so that part is taken care of through that budget. Acting Director of Administration Cadiz informed there is an increase in the fourth quarter for equipment being purchased for both the Albany and the New York City offices.

Executive Director Berland stated there may be certain items the agency may want to do that could not be fully provided by ITS because of limitations ITS may have in terms of staff, technology, or timing. A discussion was had regarding the budget and the agency's IT needs that included the costs of web-hosting of trainings, the possibility of going to outside providers, and the corresponding budgetary impacts.

Vice-Chair Austin pointed out that travel reimbursements were close to \$30,000 and wanted to note that for the Commission's agenda and legislative goals in this coming year, the Commission would be addressing in-person meetings under the Open Meetings Law (OML) versus utilizing technology for meetings. Vice-Chair Austin requested that staff break down the numbers to show the expense of in-person committee meetings versus virtual meetings that were live-streamed, allowing the public to still be involved. Vice Chair Austin proposed using those savings towards technology, education, or anywhere else it was needed. Executive Director Berland stated the breakdown will be provided at the next meeting.

Commissioner James asked about the personal services increase from July into August. Executive Director Berland explained that payroll was going up because staffing was going up and August had three pay periods, increase payroll costs paid by 50% over two-pay-period months.

FY 2024-2025 Budget Update

Executive Director Berland stated that the call letter from the Division of the Budget for the Commission's budget request for next fiscal year, 2024-2025, has been received. Executive Director Berland stated the agency is anticipating needing an increase in non-personal services costs to meet operating needs. Commissioner Cardozo referred to the call letter, behind Tab E, from the Division of the Budget, and the general knowledge that the State may have a significant problem with its budget. Commissioner Cardozo suggested starting to anticipate that the Legislature would not be able to grant the requested increases and what the agency would do in that scenario. Executive Director Berland understood that could happen and that just because they're talking about a flat submission does not mean that that will be granted. Chair Davie stated that it is incumbent upon the Commissioners to make a full push for everything that we need and not to relent until we absolutely must. Commissioner Edwards stated that if we did relent, we needed to be clear about the extent of what we would not be able to achieve and realign our short and long-term plans.

Chair Davie suggested that he, Vice Chair Austin, Commissioner James, Commissioner Edwards, Executive Director Berland, and staff could serve as a working group on the budget, that would bring a full budget proposal back to the Commission for discussion. There were no objections.

Commissioner Per Diem Payments

Executive Director Berland provided the following Commissioner per diem payments for the month of August, that include commission meetings, committee meetings and preparation.

	August	September
Davie, Frederick	\$3,834.44	\$172.78
Austin, Leonard B.	\$2,811.98	\$990.53
Ayers, Ava	\$4,377.71	\$2,204.73
Caraballo, Dolly	\$3,291.22	\$415.91
Cardozo, Michael A.	\$798.77	\$3,738.44
Carni, Edward D.	\$3,419.08	\$1,693.48
Edwards, Claudia L.	\$7,796.90	\$3,482.82
Groenwegen, Nancy G.	\$2,108.96	\$734.91
James, Jr., Seymour W.	\$3,355.18	\$1,214.20
Whittingham, Kaylin	\$7,093.85	\$702.96
Total	\$45,982.09	\$18,340.76

Executive Director Berland noted that the announced payments included the April and May committee meetings; April, May, and June commission meetings; and April and May preparation time. Executive Director Berland also noted that Commissioner Whittingham's payment included preparation time for January, February, and March.

Commissioner Whittingham requested to see what was being paid so she could keep track and submit those months that were missing. Commissioner Caraballo stated that she would like to receive a list of time that had been automatically submitted and time she had submitted. Acting Director of Administration Cadiz stated that staff is working on capturing and distributing that information once payments had been confirmed.

Annual Report

Executive Director Berland reported that since the last Commission meeting, the annual report had been issued and was well received, having generated quite a bit of public comment and media attention. Executive Director Berland stated the Annual Report is extremely informative and thanked the entire staff for its excellent work. Chair Davie stated that it generated quite a bit of public comment in a number of media circles and other circles as well.

**REVIEW, DISCUSS AND REACH AGREEMENT ON EACH REMAINING COMMITTEE'S PRIORITY ITEMS
DISTILLED FROM COELIG'S MARCH 29, 2023 ANNUAL PUBLIC HEARING AND PLAN OF ACTION**

Administration Committee

Commissioner Ayers is the new committee chair and hoped to have a meeting in October. Commissioner Ayers announced that the committee's major agenda items included committee procedures, meeting guidelines and the working group model vs. standing committees.

Commissioner Edwards wondered aloud why, after having already voted on the establishment of committees, Commissioners were discussing changing the committee structure. Chair Davie explained the committee structure was to be revisited in January 2024 and this is in preparation for that.

Commissioner Ayers added the need for a process to evaluate the executive director. Commissioner Ayers reported the committee was looking at other comparable organizations and would come back to the Commission with a proposal. Commissioner Edwards suggested having a self-evaluation of Commissioners. Commissioner Ayers agreed to add that item to the agenda.

Ethics Committee

Commissioner James did not have any new updates for the ethics committee.

Lobbying Committee

Director of Lobbying Quinn provided a summary of priority items and progress that included termination of lobbying contracts directly from the application, the massive data sets sent to Open

NY which should go live in mid-October and addressing the recommendation of allowing entities to certify training completion for all their individual lobbyists as something that could be done without legislation.

Commissioner Cardozo noted that the lobbying division has responded to most of the recommendations made at the annual public hearing.

Education Committee

Commissioner Edwards deferred to Executive Director Berland for the summary. Executive Director Berland summarized recommendations that were made at the annual public hearing as follows:

- Modification of agency's CETC ethics training – the Ethics Division has prepared a somewhat condensed version of the comprehensive training program for ethics officers to use where appropriate but is not prepared to depart from the substantially minimum statutory requirements for comprehensive ethics as developed.
- Streamlined training for general employees (non-white collar workers).
- Pure online training vs. live/online training – staff does not have the latitude to depart from statutory requirements.
- Commissioners personally participate in ethics training. Staff proposes greetings from Commissioners on a rotating basis for ethics trainings and Commissioners personally go to ethics training sites.

Commissioner Edwards asked whether these documents would be posted on the Commission's website so the public could see the exact responses provided for recommendations. Chair Davie recommended working with the Communications Division and Executive Director Berland on how to best publicize the committee's responses.

Legislative Working Group

Commissioner Cardozo stated he was working with Commissioners James and Ayers in this working group. Commissioner Cardozo also stated the working group had identified various issues the

Commission favored and was working on packaging proposals for presentation to the Legislature no later than January 2024.

Chair Davie announced that the Commission would be looking to forming working groups to address matters as they arise and not be setting up additional committees at this time because it was decided the Commission would revisit the committee structure in January. Chair Davie noted there were temporary items that needed to get done and in the interim it would be done by working groups that would sunset at the end of their prescribed activity. Chair Davie assured Commissioners their views would be fully incorporated into those conversations and discussions and reminded the Commission that nothing moves forward without a formal vote or discussion.

Commissioner Caraballo requested Chair Davie keep the Commission informed of working groups and participation in these groups. Commissioner Edwards also requested better communication for these working groups. Chair Davie reminded the Commission of all the work that must get done by the end of the year such as the budget, legislative agenda, comprehensive review and ethics training and the need for some flexibility.

COMPREHENSIVE REVIEW OF RULES AND REGULATIONS

Commissioner Ayers stated that the working group consisted of herself, Commissioners Whittingham, Caraballo and Groenwegen. Commissioner Ayers circulated a proposal for how to proceed with the comprehensive review as required by statute. Commissioner Ayers understood staff had further thoughts on that proposal. Chair Davie suggested having the working group meet with

staff soon. Chair Davie urged the development of a timeline, with milestones identified, to make sure progress was in line with deadlines.

PROPOSED COMMISSIONER CODE OF CONDUCT (AS FURTHER REVISED)

Chair Davie suggested reviewing the document section by section beginning with the introduction. A discussion was held regarding the various provisions in the introduction. Commissioner Cardozo made a motion, seconded by Vice-Chair Austin, to approve the language of the introduction. Commissioner Caraballo and Vice Chair Austin expressed support to amending the motion to also remove the POL citations in the listed bulleted provisions. The amendment carried 6-2-0 (opposed by Chair Davie and Commissioner Ayers).

Commission Caraballo made a motion to remove the last bulleted provision; Commissioner Whittingham seconded the motion. The motion failed 3-5-0 with Chair Davie, Vice Chair Austin, Commissioners Ayers, Cardozo, and James voting in the negative.

Chair Davie announced the commission would now vote on the entire introductory section of the draft code of conduct for members of the commission. The motion carried 6-2-0, opposed by Commissioners Caraballo and Whittingham.

Chair Davie asked if there were any comments in the conflicts of interest section. General Counsel St. John reminded the Commission that they had already approved items 1 through 5 and that section 6 was tabled from the last meeting to allow Commissioners to consider revised texts. A discussion

was had on the revised text for section 6 that included the ability of Commissioners to communicate with various groups and individuals.

A motion was made by Commissioner Whittingham and seconded by Commissioner Caraballo to remove paragraph 6 in its entirety. The motion carries 6-2-0.

A motion was made by Commissioner Ayers, seconded by Commissioner Cardozo, to replace section 6 using the previous text plus the definition of “matter” that limits “matter” to essentially adjudicative-type proceedings rather than policy-type issues. The motion failed 5-3-0, opposed by Commissioners Caraballo, Edwards, and Whittingham.

A motion was made by Commissioner Caraballo, seconded by Commissioner Ayers, to have whatever code of conduct is finally adopted by Commissioners to take effect 90 days from the date of adoption. The motion failed 4-4-0, opposed by Chair Davie, Vice Chair Austin, Commissioners Cardozo, and James.

[Commissioner Ayers was not present for the rest of the meeting]

Chair Davie referred to paragraph f on page 3, which refers to recusals. General Counsel St. John noted the last two sentences were the new text in this paragraph. A discussion was had regarding the recusal processes.

A motion was made by Commissioner Cardozo, seconded by Vice Chair Austin, to adopt paragraph f. The motion failed 5-2-0, opposed by Commissioners Caraballo and Whittingham.

A motion was made by Commissioner Edwards, seconded by Commissioner Caraballo, to table further consideration of the proposed code of conduct until there was a full complement of Commissioners present. The motion passed unanimously.

Executive Director Berland stated staff would prepare a version of the proposed Code of Conduct for the next Commission meeting highlighting the items voted on and those left to consider. Vice Chair Austin reminded Commissioners he had requested staff to draft a provision with regard to incoming Commissioners providing a recusal list and thought it was agreed that it would be added in. Executive Director Berland stated that such a provision it will be added to the proposal in the next draft.

ROUNDTABLE PLANNING

Director of Communications, Public Information Officer and Director of Public Affairs DeSantis stated the roundtable goes hand-in-hand with developing the legislative agenda and it would address where we have been, where we are, and where we are going. It started with the public hearing where the Commission received all the comments from the various groups, then had a special meeting to review all those comments. The Commission then had decided which comments would be addressed in the short-term, which would not be moving forward, and which would be part of the working group for the legislative agenda. Director of Communications, Public Information Officer and Director of Public Affairs DeSantis stated the special working group would develop a draft of the Commission's

legislative agenda based on the committee's work that it had to date and compile a list of items that had been assigned to the legislative working group.

Director of Communications, Public Information Officer and Director of Public Affairs DeSantis provided a timeline, indicating that to have this completed by the end of the year, the working group will need to share the draft of the proposed legislative agenda by the end of October. She stated that there was a three-week window between October 30th and November 17th to have this roundtable. Director of Communications, Public Information Officer and Director of Public Affairs DeSantis is going to circulate an email to all Commissioners requesting availability. Director DeSantis explained the purpose of the roundtable is to present the actions the Commission has already taken, share the Commission's draft legislative agenda and get feedback on the draft legislative agenda from the roundtable participants.

Director of Communications, Public Information Officer and Director of Public Affairs DeSantis stated next steps for this timeframe is that the roundtable meeting should be held in November. She stated the legislative working group should meet prior to the November Commission meeting to decide what feedback to incorporate and then share with the Commission, so that the legislative agenda could get voted on at either the November or January 2024 Commission meeting.

Commissioner Edwards asked who would be invited to the roundtable. Director of Communications, Public Information Officer and Director of Public Affairs DeSantis informed that the roundtable would be in the nature of a commission meeting where the majority of invited participants would be groups who participated in the public hearing. Director DeSantis stated that the meeting would be

webcast and only the invited speakers would be at the table and with whom the Commission would dialogue.

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 Cardozo and seconded by Commissioner Edwards to adjourn the Public Session and enter into Executive Session. The motion carried unanimously, except for Commissioner Ayers who had left the meeting.

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 discussed certain guidance matters; the Commission discussed a number of investigative matters; and the Commission approved an exception to the Commission's late fee program for lobbying related filings.

MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Vice-Chair Austin, seconded by Commissioner Caraballo, to adjourn the meeting. The motion carried unanimously.