

**MINUTES OF THE PUBLIC SESSION
OF THE OCTOBER 25, 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**

Chair: Frederick A. Davie (NYC)

Vice-Chair: Leonard B. Austin (NYC)

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

Staff: Sanford N. Berland, Executive Director (NYC)
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 Sande, Director of Ethics (NYC)
Emily DeSantis, Director of Communications, Public Information Officer
and Director of Public Affairs (ALB)
Jennifer Bliss, Associate Counsel (ALB)
Peter Smith, Chief Investigative Officer (WebEx)
Alaina Infantino, Confidential Investigator (NYC)
Mariana Cadiz, Acting Director of Administration (ALB)
Martha Rivera, Executive Assistant (NYC)

CALL TO ORDER

Chair Davie called the October 25, 2023 meeting to order. Executive Director Sanford N. Berland announced this meeting was being held pursuant to and in accordance with the provisions of the Open Meetings Law and Section 94 of the Executive Law. The meeting room being used at the New York State Conference Center at 25 Beaver Street in Manhattan as well as the conference room at the Commission's offices in Albany at 540 Broadway are open to the public during public session. The meeting is also being live-streamed, and the link can be found on our website, www.ethics.ny.gov. Executive Director Berland confirmed that a quorum was present at the New York City meeting site.

[Commissioners Caraballo and Whittingham were not present for this portion of the meeting.]

APPROVAL OF MINUTES – PUBLIC SESSION – SEPTEMBER 13, 2023

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on September 13, 2023. A motion was made by Commissioner James, seconded by Commissioner Cardozo, to approve the public session minutes. The motion carried unanimously.

APPROVAL OF MINUTES – PUBLIC SESSION – SEPTEMBER 27, 2023

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on September 27, 2023.

Chair Davie noted the sentence that included the word “scarily” on page 2 should be attributed to Vice Chair Austin.

Commissioner Cardozo asked when the Commissioners would be receiving the breakdown of reimbursement mentioned on page 7 of the minutes, as it was indicated Commissioners would be

receiving those numbers at this meeting. Executive Director Berland stated that figures would be provided later in the day.

Vice Chair Austin noted that on page 7, he had requested the breakdown of savings that would be realized if the Open Meetings Law (OML) were amended so committee meetings could be virtual rather than in-person in New York City or Albany. Executive Director Berland replied that a spreadsheet would be distributed following the meeting.

Chair Davie noted that on page 8, the minutes should reflect Commissioner Edwards' observation of the lack of female representation in the Budget Working Group, which resulted in her inclusion in said Working Group

A motion was made by Vice Chair Austin, seconded by Commissioner James, to approve the public session minutes as amended. The motion carried 6-0-1, with Commissioner Groenwegen abstaining, as she was not present at the September 27th meeting.

REPORT FROM STAFF

Operations Update

[Commissioners Caraballo and Whittingham were present for the remainder of the meeting.]

Executive Director Berland reported activity has increased overall this year both in the number of complaints and referrals received, which now exceeds the corresponding period in 2022. He also reported that in other areas, the figures reflect both normal cyclical patterns as well as new patterns; for example, lobbying is now past the earliest phases of the current 2023-2024 annual cycle that began in January, as well as the inception of the of the new training program for lobbyist clients. Executive Director Berland also reported the agency is near to completing the expanded staffing plan.

Executive Director Berland stated that page five of the Monthly Operations Report shows ethics training that is being conducted by agency ethics officers and trainers across the more than 380

agencies in the executive branch and that the numbers continue to look very solid. He stated that in the current calendar year through October 16th, over 92,000 State officers and employees have received live in-person or live online training, and that adding in the more than 25,000 individuals who received training in the prior calendar year after the inception of this agency, in excess of 115,000 executive branch officers and employees have received live in-person or live online comprehensive ethics training. Executive Director Berland stated that this represents a huge achievement by COELIG training staff and by agency ethics officers and training staff across the executive branch of state government. Executive Director Berland noted that the target is to reach 150,000 live in-person or live online trainings annually, representing roughly half the workforce.

Commissioner Cardozo asked, given the significant and commendable increase in training, if there was a way to evaluate the quality of the training and not just the quantity of people trained. Executive Director Berland replied there are two components in evaluating the quality of the training. The first is content, and the statute requires that the training be comprehensive, which has been a matter of discussion both at the Commission's annual public hearing and with agency ethics officers, and while there are some modifications for different components of the state workforce, COELIG is firm that content must be comprehensive. The second part concerns metrics, and the Education Committee has been looking at that and how to evaluate the effectiveness of the training, including outcomes, but also methodologies and technologies, for maximizing the impact of training and for ensuring that participation is active and meaningful.

Commissioner Edwards stated that she is more interested in the degree to which training has impacted incidents, meaning, for those individuals who have had training, whether the training has changed behavior. Executive Director Berland stated there are technologies that are being looked at to ensure individuals participate in the entire training. He stated the online CETC and SLMS courses have features where an individual must answer certain questions in order to advance, which is one safeguard, and there are other methodologies that agencies have long used. Executive Director Berland noted that an individual would be at a disadvantage not to take the training course to heart, as they could potentially find themselves in trouble. He also stated that there will be annual training for everyone and that while that is a heavy lift for our agency and the other agencies, that constant, repeated training should have an impact.

Commissioner Edwards stated she would like to change people's attitude about ethics training and find a way to inspire them to want to do the training rather than penalizing them. Commissioner Groenwegen agrees the assessment of the efficacy of training is important, but the agency cannot underestimate a strong communications plan with an enhanced website, and with the annual report having come out earlier this year, there are additional avenues for this body to publicize the message of this requirement of the law. She stated that watching the number of requests for guidance and the number of complaints could serve as an indicator that the training is sound. Commissioner Edwards suggested using surveys.

Executive Director Berland stated that Director of Communications, Public Information Officer and Director of Public Affairs Emily DeSantis and her team have devised a very comprehensive social media communications program that puts out a tremendous amount of information that anyone to access. He stated that the immediate focus is to get the entire workforce into compliance with the requirements of the statute. Chair Davie commended the good work of Director of Communications, Public Information Officer and Director Public Affairs DeSantis and her team as well as the Education Department, Deputy Director of Education Meghann Hennigan and Deputy Director of Learning Innovation Administration Marlena Diaz and their team of trainers and all the ethics officers in the agencies who are conducting these trainings.

Executive Director Berland asked if there were any other questions on the operations update. Deputy General Counsel Kavita K. Bhatt noted that some of the investigation and enforcement division numbers reflected on page one of the report were incorrect and that revised numbers would be provided to the Commission.

Staffing and Recruiting Update

Executive Director Berland reported the agency is moving along in the hiring process in the Training Unit with one new training associate starting soon. He also reported that in the Advice and Guidance Unit, there is an accepted offer for the Deputy Director of Ethics for which we are awaiting BDA approval from the Division of Budget. Executive Director Berland noted that there are identified candidates for the two open ethics attorney positions in the Advice and Guidance Unit, as well as an identified candidate for the open analyst position in the FDS unit, a new

employee in Administration starting tomorrow in Albany, with recruiting for another position in that division to begin shortly, and a new investigator who has joined the agency in the New York office. Director of Investigations & Enforcement Brian Weinberg introduced the new Confidential Investigator, Alaina Infantino, who has just joined the agency and has over ten years of experience with New York City's Department of Investigations. Executive Director Berland stated that Director of Investigations & Enforcement Weinberg is also in the process of filling an Investigative Counsel position and has interviews for that position underway.

Commissioner James requested to go back to the Operations Report and asked about the number of Notices of Delinquency issued on page four. Executive Director Berland replied that these are cyclical, and it may be simply a reflection of where they are in the process of conducting reviews, so it will vary by month, but over the year, the level should be steady.

Executive Director Berland announced that Chief Investigative Officer Peter Smith is retiring, and that he has done great work in his time more than ten years at COELIG and the predecessor agency, and that agency and the people of the State of New York owes him a huge debt of gratitude for his service to the state. Director of Investigations & Enforcement Weinberg thanked Chief Investigative Officer Smith for his work and wished him well in retirement. Chief Investigative Officer Smith thanked everyone for giving him the opportunity to serve for the past ten years and stated that he hopes everyone enjoys their job as much as he did.

FY 2023-2024 Budget Update

Executive Director Berland stated that the agency is currently running well below budget and that the personal services expenditure side will increase as we continue to make progress filling out the expanded staffing plan. He stated on the NPS side, the agency has some overages but adjustments in the budget will be made, and overall, the budget will be solid going forward from the current fiscal year into next year. Commissioner Groenwegen asked about the spike in August's personal services and Executive Director Berland explained that August had three pay periods. The Commission further discussed the budget that included the absence of two commissioners and the remaining staff to be employed.

FY 2024-2025 Budget Submission

Chair Davie noted that Commissioner Edwards asked a question at the start of the meeting related to a reference he made about the minutes, with respect to the fact that the Commission had talked about a working group for the new budget, and Commissioner Edwards questioned whether the Working Group had met. Executive Director Berland stated he circulated materials quickly but there was not a lot of turnaround time, and that the agency has not yet heard back from the Division of the Budget and there will opportunities for follow up. A discussion was held regarding the budget and the need for the Commission to be kept informed, concerns about the State budget, and the need to convey the urgency to meet the agency's needs so that it can fulfill its statutory requirements. Commissioner Groenwegen stated the budget letter that went out over the executive Director's signature did an excellent job laying out the priorities that we have discussed as a body. She noted that the Commissioners did have the opportunity to comment and to provide suggestions, and that she did so. She also noted that Executive Director Berland signed using two titles: as judge (retired) and his current position of Executive Director. Executive Director Berland stated it was only for consistency's sake with DOB.

Chair Davie asked if there were any other questions or comments regarding the proposed FY2024-2025 budget. Executive Director Berland explained that some of the non-personal services costs, such as streaming commission and committee meetings, is running about \$15,000 a year, that the agency has purchased updated audit software, and that it is using imaging services in order to be able to comply with and respond efficiently to FOIL requests. Executive Director Berland stated that overall, the agency is looking for about \$142,000 over the current fiscal year's budget, and that while DOB had asked for a flat budget, the agency does not think it can do that and still achieve its mission as Commission Edwards is pointing out. He stated the DOB started the cycle earlier this year, so they are probably taking their time looking at every agency submission before they begin to respond.

Commissioner Edwards asked if the fees collected from the agency that go into the state's general fund were mentioned in the letter to DOB. Executive Director Berland replied yes, those

fees were included under sources of revenue. There were no further questions regarding the proposed budget.

Commissioner Per Diem Payments

Executive Director Berland stated no actual payments were made in the reporting period since the last report; however, payments are in process that will be paid in November. Executive Director Berland provided the following projected Commissioner per diem payments:

| | |
|------------------------|-------------|
| Davie, Frederick | \$2,811.82 |
| Austin, Leonard B. | \$1,821.29 |
| Ayers, Ava | \$1,150.29 |
| Caraballo, Dolly | \$1,821.29 |
| Cardozo, Michael A. | \$4,026.02 |
| Edwards, Claudia L. | \$4,240.21 |
| Groenwegen, Nancy G. | \$1,054.43 |
| James, Jr., Seymour W. | \$1,821.29 |
| Whittingham, Kaylin | \$3,866.25 |
| Total | \$23,612.90 |

Executive Director Berland noted that these per diem figures include attendance at September’s Commission and Committee meetings and additional preparation time for several months submitted by Commissioners for other permitted work.

Executive Director Berland wanted to remind the public of the Roundtable discussion scheduled for November 1st and also that the lobbying division is going to be hosting a series of online training sessions for its online lobbying application. Registration is required and can be done on the website. The lobbying division will hold these trainings on a regular basis throughout the year. The trainings will be recorded and available after the fact. The first session is scheduled for November 7th at 10:00am.

PROPOSED COMMISSION LEGISLATIVE AGENDA

Commissioner Cardozo stated the legislative committee met to review the proposals that had been put together by staff and Commissioners, which was discussed at length. There were two items in the original proposal that will not be pushed forward, and various other proposals were reviewed that were not on this agenda that staff and relevant committees had determined were not appropriate at this time to put in the legislative agenda. Commission Cardozo stated the attachment under tab E is the agenda the committee has proposed and that there is one item that should be on hold prior to publicizing until more developments have occurred; but this is the list of items that the committee thinks should be advanced before the Legislature.

Commissioner Cardozo proceeded to highlight the proposals, noting that some proposals may be self-explanatory, while some items are offered to clarify ambiguities. The following proposals were noted:

- Expressly prohibiting individuals from soliciting or aiding others in violating the ethics and lobbying laws.
- Several proposed changes to the Lobbying Act to eliminate ambiguities, including clarifying language to the law to resolve any ambiguity between two sections of the statute on mandatory training; imposing late fees on lobbyists and clients who do not take the mandated ethics training; clarifying that the CAO of each lobbyist is responsible for filings; clarifying that late fees also apply to amendments to filings.

Commissioner Cardozo further stated that proposals in the ethics area include posting the Financial Disclosure Statements of primary candidates on the website, adding penalties for certain sections of the Public Officers Law that do not currently have a monetary penalty, and making clear that sexual harassment is a violation of the ethics laws. These proposals were adopted from recommendations received from the public.

Commissioner Cardozo express his thanks to staff, particularly Director of Communications, Public Information Officer and Director of Public Affairs DeSantis, and the committee.

Executive Director Berland explained that OpenNY is a web platform that now contains the entire body of lobbying data going back to 2019. It was a huge undertaking by Director of Lobbying

Carol Quinn and her team to move the agency's data onto the OpenNY servers, and the lobbying dataset is the largest dataset on the site, even surpassing the records of the Department of Motor Vehicles. Executive Director Berland reported that the agency has received very positive feedback, and he and Chair Davie thanked the lobbying team again.

Commissioner Cardozo thanked Executive Director Berland and staff for creating a proposal to change the Open Meetings Law (OML) to include an amendment to remove the in-person requirement for committee members for committee meetings that do not have decision-making authority and can only provide recommendations, provided the meeting can be viewed online. Commissioner Cardozo stated the Committee on Open Government has welcomed a letter from our agency, and they would consider including it in their report to the Legislature that is due by the end of the year. He stated the plan is to submit the letter to the Committee on Open Government, hear what they have to say, and then put it in the legislative agenda.

A discussion was held that included the physical access requirements, emergency meetings and expiration of Section 103-a of the Open Meetings Law in July 2024. Commissioner Cardozo also stated that other agencies are in support of the amendments.

Commissioner Davie suggested that staff talk to Commissioners in the next meeting about the critical path from here to submission of the legislative agenda. Commissioner Davie asked the committee to stay on top of this with staff.

Commissioner Groenwegen asked if the agency has a practice of commenting on bills moving in the Legislature. Executive Director Berland stated that the agency has been asked for comments when certain legislation was moving through the Legislature or has been passed by the Legislature, but we have not proactively provided comments during his tenure. General Counsel Keith St. John agreed with Executive Director Berland that typically the agency is asked by either the DOB or Chamber to comment on legislation that may have already passed both houses, and either not yet delivered to the Governor or delivered to the Governor. General Counsel Keith St. John stated there was one occasion he can recall where a particular bill had not passed either house of the Legislature, but there were signs that it was moving, particularly in the final weeks

of the legislative session. General Counsel Keith St. John stated we have been asked at times to comment on a bill even before it has been passed and sent to the Governor. He also stated it does not happen often, but it has happened.

Commission Caraballo asked if the Commission saw the agency comments on the issue of judicial nominations. Executive Director replied yes, it was circulated to Commissioners.

Chair Davie requested the emails on those comments, and any other comments on bills, be sent again. There were no other questions.

PROPOSED COMMISSIONER CODE OF CONDUCT (AS FURTHER REVISED)

Vice Chair Austin stated all should have an updated Code of Conduct with comments by staff. Vice Chair Austin noted that in the Introduction, the only point that has been not voted on and approved is the red bullet point at the bottom of the introduction, "Business with the State." Chair Davie asked if anyone wanted to move on it. Commissioner Caraballo stated she was under the impression that it was voted on and it did not pass. Vice Chair Austin believed it was not voted on because we did not have a quorum. General Counsel St. John stated Commissioner Caraballo is correct, it was voted on before and it did not pass. He thought direction from the Commission was for staff to revise, and staff is bringing back a revised version to see if this is more to the Commissioners' liking. General Counsel St. John stated staff just needs confirmation that this language is what the Commission would prefer to see over what they did not want to adopt at a prior meeting.

A motion was made by Commissioner Cardozo, seconded by Vice Chair Austin, to approve.

Executive Berland explained that staff had provided a proposed redraft of that provision because staff understood, perhaps incorrectly, that the request was for it to do so. A discussion was held that included reviewing the redraft made by staff, language, and a review of previous motions. Chair Davie recalled the amendment moved by Commissioner Caraballo in the previous meeting was not approved, but it did not necessarily mean that the Commissioners affirmed what was

there. Chair Davie stated the Commission then voted for the entire introduction, which could have meant we affirmed, but we asked staff to go back and bring alternative language, and that's what they have done.

Chair Davie stated the Commission should not waste time on what it thought it was going to do. Chair Davie stated there were Commissioners who were unsettled by language adopted when the introduction was adopted, and so rather than make it restrictive, the Commission has made it permissive and would like to discuss it further. Executive Director Berland stated the idea is to make an assessment on a case-by-case basis of whether the provision of a particular service or the sale of goods presents a conflict of interest for Commissioners.

Commissioner Ayers stated the language is not concise and needs to be more specific. Deputy General Counsel Bhatt stated she believes the idea behind the introductory paragraph is to set parameters for the rest of the Code of Conduct. She continued that with respect to the "Business with the State" portion, instead of the prior language, which was more restrictive, this redrafted provision is not imposing a blanket prohibition, which was part of the concerns that were raised before, but is acknowledging that there may be instances where there could be a conflict, and so there may be restrictions, and a Commissioner may need to accept that restriction depending on the circumstance.

General Counsel St. John agreed with Deputy General Counsel Bhatt and stated that what staff is talking about, with respect to limitations or restrictions, is a string that might be attached to a Commissioner's ability to contract with the State; for example, that activity might need to be disclosed in advance, or at the very least disclosed at some point, so there might be "strings attached," which might be a restriction or a kind of limitation on the otherwise unfettered ability to contract with the State. General Counsel St. John hopes that explanation provided clarity in response to Commissioner Ayers' question. He indicated, rather than what used to be a fairly prohibitive provision, this new language responded to concerns that were raised by other Commissioners. General Counsel St. John stated this allows some flexibility as to the determination of whether there is a conflict, that determination is made on a case-by case basis, as opposed to uniformly prohibited, and out of that case-by-case analysis, may come a case-

specific requirement to disclose the nature of that business with the State before the Commissioners.

The Commission had a further discussion regarding language provisions in the Code of Conduct and identifying conflicts of interest for Commissioners.

Commissioner Groenwegen proposed an amendment to change the language to “Business with the State: by undertaking to accept, when necessary to avoid a conflict of interest, limitations or restrictions,” and keep the rest of the paragraph.

A motion was made by Commissioner Cardozo, seconded by Vice Chair Austin, to approve the Code of Conduct introduction with a friendly amendment. The motion passed 7-2-0, opposed by Commissioners Caraballo and Whittingham. Chair Davie announced the motion has been approved.

Commissioner Edwards expressed her concerns for this process. She noted this was a highly contested conversation in the last meeting, and the Commission’s goal should be to make sure all Commissioners are heard and that whatever decision is made, Commissioners don’t get crushed. She feels that something that highly contested, and for staff to work on it without picking up the phone and calling Commissioners to make sure they were comfortable with the language, makes her feel uncomfortable. She stated this Commission has done this on more than one occasion where staff makes a decision in isolation. She believes staff should have called the two Commissioners involved.

Chair Davie thinks Commissioners have to be careful with that because we do not want to lead Commissioners to believe that just because they worked something out with staff, it is going to be the will of the Commission, so this has to be thought through.

Commissioner Edwards stated she understands Chair Davie’s point, but she is saying that there needs to be better communication between staff and Commissioners. Commissioner Edwards stated there is tension in this room that is not bringing us together as a group and makes us more

divisive and she thinks there are ways in which we can calm that down. She stated that when staff is asked to do something, not in every instance, but when there is a real difference of opinion, they should go directly to the Commissioners involved and have a conversation. Commissioner Edwards stated the point is there needs to be an intentional effort by staff to have a conversation with those Commissioners who are concerned, not to guarantee that it is going to pass at the meeting, but at least to make sure that everyone is somewhat on the same page. Executive Director Berland explained that he had, indeed, had a conversation with Commissioner Caraballo to get a better understanding of her concerns, and that staff had crafted the language of its redraft in the hope that the competing interests could be balanced.

Chair Davie stated it is a point well taken and staff will work overtime to engage Commissioners around different issues before a meeting. Chair Davie further stated there are two things he wants to make clear. First, that no one in the Commission should consider anything final until it has been voted on, and the second is this is an ethics commission held to higher standards, and while the Commission does not want those standards to be so high that it eliminates any category of people to participate on a commission like this, but this an ethics commission and that cannot be taken too lightly. Chair Davie stated that if the public sees the Commission cutting corners to meet Commissioners' own needs, then we run the risk of undermining the effectiveness of the Commission.

Commissioner Edwards responded that this seems to be said in this select situation and it feels offensive to her. Chair Davie stated it is not about this particular situation and understands how one can reach that conclusion. Chair Davie wants to be clear to this Commission and to the public that his intent always is going to be to call on everyone and himself, and he suspects at some point he'll be hung on his own guitar, but so be it, that is the point of having principles that guide an ethics commission, so that we can exhibit to the State and to the people of the State of New York how we believe public officials should comport themselves. Chair Davie further stated that being entrusted with the amount of authority and responsibility with which the Commission has been entrusted over those over whom the Commission has oversight is a great responsibility and should not be taken lightly.

Vice Chair Austin pointed out the last time the Commission met, the motion to remove this section was voted down and was not passed, so either the old section would remain or wording could be put in that tries to address the concerns that were made. Vice Chair Austin stated that what is being discussed is exactly what was done, so the Commission should move on.

Commissioner Edwards stated that she accepted to serve on the Commission because of her commitment to public service and high standards and that all Commissioners came on for that purpose, and she trusts that her colleagues have the public's best interest in mind. She stated she cannot tell Chair Davie what his intent is, but she can tell how she is receiving it, and she does not feel comfortable with what was stated, how it was stated, and the circumstances in which it was stated.

Commissioner Ayers stated she strongly agrees with the process point that Commissioner Edwards is making, and that when a Commissioner has significant concerns about a proposal, the best thing to do is to reach out to them so that when the Commission is presented with the issue for a vote, those Commissioners who have strong views about it can report back. She stated after discussions, it can be said a conversation was had where staff and Commissioners tried to reach a resolution and perhaps maybe still disagree so here is a proposal and the Commission votes it up or down. Commissioner Ayers stated it is an uncomfortable situation now that all know Commissioner Whittingham is opposed to this proposal. Commissioner Ayers stated she does not think that that there is anything wrong with trying to work those things out before the fact.

Commissioner Ayers doesn't understand why Chair Davie spoke about Commissioners accepting a high commitment to public service right now as opposed to half an hour ago or half an hour later. Chair Davie stated he has said this on other occasions. Commissioner Ayers acknowledged that, but was wondering what it has to do with the communications process point Commissioner Edwards is making. Chair Davie stated he is not disagreeing with Commissioner Edwards. Commissioner Ayers stated she is not trying to put Commissioner Whittingham on the spot, and is asking why she is opposed to something, and she has every right to not share—but it is an uncomfortable situation for the Commission be in.

Chair Davie asked Commissioner Whittingham if she would like to speak before the Commission to which she replied, “Not at the moment, thank you.”

Commissioner Groenwegen expressed agreement with Chair Davie’s timing for speaking about the meaning of the commitment to serve on an ethics body because this provision has very different implications for each Commissioner. She noted that as a retiree who has no business contact with the state, holding herself to a certain standard is very different and has different day-to-day implications than it does for other Commissioners who are still members of the workforce and who have dealings with government entities for a variety of reasons. Commissioner Groenwegen stated that it is imperative that the Commissioners understand their concerns and find a way, if possible, to address them, and if we can't address them, then so be it, but to hear that there was follow up conversations with Commissioner Whittingham on one issue but not this issue is a little surprising. She thinks it is imperative for our Code of Conduct that all Commissioners feel confident they can live by it and if there is a reason some Commissioners think they can't and it cannot be addressed, then so be it. Commissioner Groenwegen feels the Commission should make every good faith effort to try to address any issues and if the Commission can't, then it kicks in and the Commission will have to acknowledge that, but this Commission should continue to try, especially on this Code of Conduct. There were no other comments.

Vice Chair Austin referred to Page 2, paragraph 6, that was presented at the last meeting and read it aloud to the Commission regarding conflicts of interest. Commissioner Ayers stated that her recollection was that at the last meeting, there was a 6-2 vote to remove this provision, followed by a motion that she made to replace it with some revised text, which was rejected 5 to 3, which is why the text in red does not address the reasons why we voted to remove it the last time. Commissioner Ayers circulated the motion that failed last time and read it to the Commission.

A discussion was held regarding the definition of “matter,” using a broad definition versus a narrow definition, language, and third-party communications. Executive Director Berland suggested that the broadest possible exclusion or qualification is probably the best one for the Commission to have in this Code of Conduct. He stated if there are real practical reasons why

that is not acceptable, then we have to drill down and come up with more specific definitions and he thinks that is going to be very difficult.

Commissioner James agreed with Commissioner Ayers and stated that is critically important to define “matter” and that Commissioner Ayers’ definition is one that can enable the Commission to have conversations.

Chair Davie asked if anyone wished to make a motion on the definition of “matter” as circulated by Commissioner Ayers.

A motion was made by Commissioner Ayers, and seconded by Commissioner Cardozo, to accept the language in Commissioner Ayers’ email.

A motion was made by Commissioner Caraballo and seconded by Commissioner Edwards to table this discussion until the language can be reviewed. Motion failed 5-4-0 opposed by Chair Davie, Vice Chair Austin, and Commissioners Ayers, Cardozo, and Groenwegen.

A motion was by Commissioner Ayers, seconded by Commissioner Cardozo, to accept the following language:

Initiating and knowingly engaging in substantive Communications without prior authorization by the Commission with any person who has any direct or indirect interest in any matter before the Commission or any matter that may reasonably be expected to come before the commission about that matter. With respect to any discussions with such persons concerning other matters, such discussion shall be disclosed to the Commission, Executive Director and General Counsel. For purposes of this code of conduct, “matter” shall mean any complaint, review, inquiry or investigation into alleged violations of law, any requests for guidance under executive law 94 subsection 7, including requests for approval of outside activities and any other matter that is confidential by law.

The motion passed 7-2-0 with Commissioners Caraballo and Whittingham opposing.

Vice Chair Austin called the Commission's attention to page three, subparagraph f in the section entitled "Preventing Conflicts of Interest - Recusal," under "1. General Rules for Recusal." General Counsel St. John explained that there was some discontent with the originally proposed language and that the language brought today tries to soften the original proposal and expand it in terms of adding some clarity to the process. Vice Chair Austin noted the first line should read "Executive Director or the General Counsel."

A discussion was held regarding subparagraph f.

A motion was made by Commissioner Ayers, seconded by Commissioner Groenwegen, to adopt the subparagraph (f) text. The motion passed 7-1-1 with Commissioner Whittingham opposing and Commissioner Caraballo abstaining.

Vice Chair Austin referred to page 3 subparagraph (h) and suggested adopting the following paragraph:

- Subparagraph 1. Within 30 days of joining the Commission, each Commissioner shall file with the general counsel, a recusal list. The recusal list shall identify each organization, entity and or individual with which the Commissioner reasonably believes a conflict exists.
- Subparagraph 2. Current members of the commission shall file a recusal list no later than January 31, 2024.
- Subparagraph 3. Each commissioner shall have a continuing obligation to supplement and update their recusal list when they become aware of circumstances which warrant disclosure.
- Subparagraph 4. Every January 31st each commissioner shall review their recusal list and update it.

A discussion was held regarding language, recusals, and the recusal form. It was decided to defer this suggestion.

Vice Chair Austin referred to page 5, Section V, “Post Commission Policies,” noting that is something carried over from the last meeting that the Commission had asked staff to draft.

A motion was made by Commissioner Cardozo, seconded by Vice Chair Austin, to adopt the “Post Commission Policies.” The motion passed 7-2-0, opposed by Commissioners Whittingham and Caraballo.

Vice Chair Austin stated that he is willing to hold the recusal item and bring it in as an amendment later, and vote on this document as a whole, as we have now reviewed and revised it and any other amendments can be addressed later.

A motion was made by Commissioner Groenwegen, seconded by Vice Chair Austin, that the Code of Conduct be effective as of the date it is adopted.

Commissioner Whittingham asked that to the motion be amended the motion to make the effective date January 1, 2024. Commissioner Whittingham informed the Commission that she has spoken with her appointing authority and she is not seeking to be nominated to extend her term, which is scheduled to end on December 31, 2023, and stated that she is simply asking as a courtesy that the Code of Conduct be made effective in January.

Chair Davie proposed that the Code of Conduct be approved with that friendly amendment, with the understanding that even though it goes into effect January 1st and will not be retroactive, the Commission will comport itself under its guidance.

Commissioner Ayers stated that she agreed with delaying the effective date because the Code of Conduct is imposing new obligations on Commissioners and delaying the effective date will give all an opportunity to review current relationships and practices to make sure all Commissioners understand these obligations and that all will be able to fully comply.

Commissioner Caraballo suggested making two motions: one for the Code of Conduct and one for the effective date.

Commissioner Whittingham withdrew her amendment. Commissioner Groenwegen withdrew her motion.

A motion was made by Commissioner Ayers, seconded by Commissioner Groenwegen, to add a sentence to the end of the Code of Conduct that states that the effective date is January 1, 2024. The motion passed unanimously.

A motion was made by Commissioner Cardozo, seconded by Commissioner James, to approve the Code of Conduct. The motion passed 7-2-0, with Commissioners Whittingham and Caraballo opposing.

PROPOSED COMMISSION MEETING GUIDELINES

A motion was made by Commissioner Cardozo, seconded by Vice Chair Austin, to approve the proposed commission meeting guidelines.

Commissioner Ayers requested documents be dated to avoid draft confusion.

A discussion ensued regarding where on the Commission's website the guidelines will be posted, where regulating documents can be found on the website, and the website's design.

Commissioner Groenwegen stated that she wished to make a motion to table the discussion of the proposed meeting guidelines. She explained that she had started to revise this document and that one of the concerns she had is that it looks very similar to the meeting guidelines that were adopted by the prior commission. Commissioner Groenwegen stated that the most fundamental change regarding these guidelines occurred by law in that the Commission is now subject to the Open Meetings Law, and that while the proposed guidelines acknowledge that, there are still holdovers from prior procedures. The presumption now is in favor, as a matter of law, of holding matters in open session, which should be made clear, with exclusions for what is in executive session. She expressed concern that with this fundamental shift, the draft can cause more confusion rather than

enhance clarity. Commissioner Groenwegen further stated that it seems to her that to the extent the Commission wants to go above and beyond what is in the Open Meetings Law as to how meetings are held, there are a lot of things that can be included. She stated that her draft, after an introduction, starts with a section called “Open Law Compliance,” which states the agency’s commitment and defines “meeting” and “quorum” specifically for us and not generally. Commissioner Groenwegen reviewed various items included in her draft, and assured the Commission that she would have a draft circulated well in advance of next month’s meeting.

A motion was made by Commissioner Groenwegen, seconded by Commissioner Ayers, to table the guidelines until the next meeting with the understanding that Commissioner Groenwegen will draft and circulate proposed text well in advance of next month’s meeting. The motion passed unanimously.

NEW AND OTHER BUSINESS

Chair Davie stated that at the November 29th meeting, it will be decided if a meeting date can be set for December.

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 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 and legal advice; the Commission considered several

guidance requests pursuant to Executive Law § 94(7); and the Commission discussed several other requests for guidance and discussed other guidance matters. In addition, the Commission discussed several investigative matters and closed 31 matters.

MOTION TO ADJOURN THE PUBLIC MEETING

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

DRAFT