

**MINUTES OF THE PUBLIC SESSION
OF THE JANUARY 24, 2024
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**

**541 OSCEOLA AVENUE
WINTER PARK, FLORIDA 32789**

Chair: Frederick A. Davie (NYC)

Vice-Chair: Leonard B. Austin (NYC)

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

Staff: Sanford N. Berland, Executive Director (NYC)
Keith C. St. John, General Counsel (NYC)
Kavita K. Bhatt, Deputy General Counsel (NYC)
Carol Quinn, Director of Lobbying (ALB)
Michael Sande, Director of Ethics (NYC)
Emily DeSantis, Director of Communications, Public Information Officer
and Director of Public Affairs (ALB)
Brian Weinberg, Director of Investigations and Enforcement (NYC)
Michael Antolini, Deputy Director of Investigations
and Enforcement (NYC)
Erin Lynch, Deputy Director of Ethics (ALB)
Megan Mutolo, Deputy Director of Lobbying
Marlena Diaz, Deputy Director of Learning Innovation Administration
(WebEx)
Meghann Hennigan, Deputy Director of Education (WebEx)

Jennifer Bliss, Senior Investigative Counsel (ALB)
Lisa Levy, Associate Counsel (NYC)
Lori Donadio, Principal Investigative Analyst (WebEx)
Sarah Mathers, Senior Investigator (NYC)
Alaina Infantino, Confidential Investigator (NYC)
Mariana Cadiz, Acting Director of Administration (NYC)
Gaetana Baldwin, Administrative Assistant (NYC)
Martha Rivera, Executive Assistant (WebEx)

CALL TO ORDER

Chair Davie called the January 24, 2024 meeting to order. Executive Director Sanford Berland announced this meeting was being held pursuant to and in accordance with the provisions of the state's Open Meetings Law, Article 7 of the Public Officers 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 and at 541 Osceola Avenue in Winter Park, Florida, are both open to the public during public session. The public session is also being live-streamed, and the link can be found on the Commission website, www.ethics.ny.gov. Executive Director Berland confirmed that a quorum was present at the New York City meeting site. In addition, Commissioner Cardozo will be participating in today's meeting by videoconference pursuant to Public Officers Law §103-a and the Commission's resolution and rules under that provision.

APPROVAL OF MINUTES – PUBLIC SESSION – NOVEMBER 29, 2023

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on November 29, 2023 and whether there were any questions or comments. There were no questions or comments.

A motion was made by Commissioner Ayers, seconded by Vice-Chair Austin, to approve the public session minutes. The motion passed unanimously.

REPORT FROM STAFF

Operations Update

Chair Davie noted that the operations reports appeared under tabs B and C. Executive Director Berland stated that for administrative purposes, the staff included the operations reports for both November 2023 and December 2023, but the focus would be on the December report, unless there were any questions about the November report.

Executive Director Berland noted that as the staff has been doing since the beginning of 2023, the report contains year-to-date comparisons for each category, in this instance, for the full year of the Commission's operations in 2023, as well as comparisons to the previous month's activity, with the first column showing the most recent month's activity. He called attention to the Investigations and Enforcement tables, which show activity reaching essentially a steady state, with referrals and complaints received and processed in 2023 mirroring the volume of referrals and complaints processed by JCOPE and COELIG in 2022. Commissioner Edwards referred to the number of investigative and enforcement matters received in 2022 and 2023 and asked if the volume is based on what comes in, and whether the Commission had any control over that. Executive Director Berland explained that the volume is based not solely on what comes into the Commission, but also includes, proactively, other matters, whether they are preliminary investigations or open matters initiated by the Commission. He further explained the Commission receives complaints and other information in several ways, including through its hotline and website and from the press, as well as receiving referrals from outside entities, but it also self-generates matters through the Commission's other operations.

Commissioner Edwards asked if an increase or a decrease in the volume of complaints was considered a good thing. Executive Director Berland answered that if the Commission was not receiving an expected number of complaints, it might consider that the mechanisms for receiving complaints were not working. He stated that looking back at the statistics over the past decade, generally 120 to almost 200 complaints, inquiries, and referrals were received each year. Commissioner Edwards said that she was trying to measure the extent to which the Commission's

educational activities have improved the situation, and whether fewer or more complaints received correspond to whether people are more aware of policies and ethics laws.

Executive Director Berland stated that deconstructing the numbers in that way would be difficult because, for example, fewer complaints could be the result of improved behavior, while an increased number of complaints could be due to heightened sensitivity and awareness of potential violations. Commissioner Edwards stated that with the Commission receiving a substantial budget increase, it should be able to demonstrate and define the degree to which it is successful.

Deputy General Counsel Kavita K. Bhatt agreed, and asked to clarify whether Commissioner Edwards was speaking about the ethics table or the investigations table. Commissioner Edwards clarified that when she was asking about the Commission's goals, she was speaking about the ethics numbers and how training could affect the number of inquiries coming in. Deputy General Counsel Bhatt stated that with respect to the requests for guidance coming in, it is possible that because of the education provided in different areas by the agency, more people are understanding the ethics laws and how they pertain to them more clearly. She stated training and education is important across the agency and it appears in different ways within the different departments of the agency. Deputy General Counsel Bhatt noted the decrease in guidance requests from 2022 to 2023, particularly in the area of post-employment guidance, which could suggest more employees left or contemplated leaving state service in 2022, as compared to 2023.

Commissioner Edwards asked about surveying users. Executive Director Berland replied there would be a proposal for the comprehensive review that involves surveys going out to, for example, agency ethics officers and general counsel across the state agencies over which the Commission has jurisdiction. He stated another method of metric is throughput, so the agency is not only looking at what is coming in, but also the volume of assistance and responses provided by the Commission's staff and the number of matters that are processed and closed.

A discussion ensued regarding empirical research and the difficulty of measuring the effectiveness of specific enforcement activities and initiatives. Chair Davie noted there is a lot of work to do in this regard, and a plan is needed for how the Commission will assess impact.

Commissioner James asked if the drop in notices of delinquency being issued with respect to Financial Disclosure Statement filings was due to fewer actual delinquencies or a timing issue. General Counsel Keith St. John replied this was a timing and cyclical issue and an increase is expected in February as the notices are sent out.

Executive Director Berland referred to the Lobbying report and stated that the Commission is at the halfway mark in the current biennial registration / filing cycle and that a drop in lobbying-related inquiries is to be expected. In 2023, the Commission had a high number of lobbying inquiries coming in compared to 2022, in part reflecting the beginning of the biennial cycle, during which there is a high number of new registrants and inquiries about registrations and filings. In addition, the launch of the new lobbying ethics training module on the COELIG website, which is available for both lobbyists and, for the first time, lobbying clients, has generated a higher than usual number of inquiries.

Executive Director Berland noted that, under current law, lobbyists and clients do not have to take the training again for three years and that a request will be made to change the timing to two years to coincide with the biennial registration cycle. Director of Lobbying Carol Quinn confirmed that 83% of those individuals required to complete the training have done so.

Executive Director Berland announced the hiring of additional new staff under the expanded staffing plan. Director of Ethics Michael Sande introduced the new Deputy Director of Ethics, Erin Lynch, who will be working out of the Albany office, and Lisa Levy, an Associate Counsel in the Advice and Guidance unit, who will be working out of the New York City office. The Commission welcomed the new additions to staff.

Executive Director Berland called the Commissioners' attention to the training statistics on page five of the operations report and noted that, under ECRA's expanded training requirement, the Commission is now required to provide annual training to the entire executive workforce of approximately 330,000 individuals. He reported that over 140,000 state officials and employees received live in-person or live-online comprehensive ethics training in 2023 and that when that figure is added to the more than 25,000 executive branch employees who received such training

in 2022 following the Commission's inception, the total number of individuals so trained – over 166,000 - represents more than half of the total executive branch workforce.

Executive Director Berland stated that, going forward, the Commission's plan is for live in-person and live online training to be provided each year to half of the workforce and in the intervening year, the Commission will provide online refresher training to the other half of the workforce. He explained that the goal, under the plan approved by the Commission, is that by the end of 2025, COELIG will have overseen the completion of a full two-year cycle of live comprehensive training and on-demand refresher training for every employee in the executive branch. Executive Director Berland stated that staff has also introduced an on-demand comprehensive ethics training course, which was launched during the latter part of 2023. He noted that the figure for employees reported to have completed on-demand comprehensive ethics training is currently at 11,653, which is in addition to the live training figures. Deputy Director of Education Meghann Hennigan confirmed that the figures stated in the operations table do not include all reporting for the end of December, as agencies have been given until the end of January to complete the reporting of their December numbers. Hence, the final figure for the number of executive branch employees trained through the end of 2023 will go up. Executive Director Berland emphasized the tremendous accomplishment these figures represent not only for the commission's training staff but for the numerous ethics officers and trainers in the nearly four hundred executive branch agencies who have made this achievement possible. He stated that all of them deserve congratulations for their very successful efforts. He also noted that much remains to be done to ensure that the goals that lie ahead are achieved.

Vice-Chair Austin stated the training numbers are very impressive in terms of what the Commission has accomplished and asked Director of Communications, Public Information Officer and Director of Public Affairs Emily DeSantis if it is possible to highlight that in a press release or other platform to let the world know that we are moving forward and succeeding in these various areas. Director of Communications, Public Information Officer and Director of Public Affairs DeSantis replied this could certainly be discussed, and that, generally, the press release is issued when the annual report is compiled with the final numbers for the year, along with additional context and analysis of those numbers.

Commissioner Groenwegen referenced page 10 in the minutes where Commissioner James had asked about how well COELIG had met its training requirement and asked if all COELIG staff had now been trained. Deputy Director of Education Hennigan replied that all Commissioners and staff had been trained, except for the new associate counsel who has just started.

Commissioner Cardozo referenced the FDS numbers, on page 4 of tab C, and asked about the significant drop-off in notices of delinquency issued, as well as the drop in the number of targeted FDS reviews completed, as reflected on page 6 of the report, compared to the previous year. Executive Director Berland explained that a staffing shortfall was partially responsible, but noted that the FDS unit has hired additional personnel, and is recruiting further staff, and is also reviewing its structure to determine ways to supplement staff and whether an additional Assistant Director position should be added to the group's staffing structure. He assured the Commission the agency will soon be on track to achieve its target volume.

Executive Director Berland provided a staffing update and stated that the agency is recruiting to fill a training assistant position in the Education Unit, an associate attorney position in the Advice and Guidance unit, other positions in the Investigations and Enforcement Division and a position in the Administration unit.

Executive Director Berland reported the Education unit held an ethics forum in December for agency ethics officers and training staff on statutory changes, agency-specific training sessions, and updates to the monthly training reporting application to be rolled out in February. Deputy Director of Education Hennigan explained that the unit is in the last phases of quality assurance testing for that rollout. Deputy Director of Education Hennigan explained that the statewide monthly training statistics are currently manually entered by COELIG Training staff, and the new system will automate the entry of the training data, facilitating the overall training initiative. Executive Director Berland informed the Commissioners that staff has been working closely and intensively with ITS on the main phase of the system for administering the overall ethics training program, which will provide program-wide scheduling, monitoring, communication, compliance, and reporting capabilities across the expanded training initiative, with the launch of the full system now scheduled for June.

Executive Director Berland also reported the Lobbying division has been conducting training sessions, the most recent of which was held in December. Director of Lobbying Quinn explained that the LA (Lobbying Application) Basics training held in December focused on the filing of client semi-annual reports and source of funding disclosures, and that the prior training, conducted by Lobbying Division staff in November, provided instruction on filing lobbying registrations. Director of Lobbying Quinn reported that the trainings were well-attended, with between 150 and 200 attendees at each session. Another training is scheduled for mid-February and will focus on how to file bi-monthly reports in the Lobbying Application.

FY 2023-2024 Budget Update

Executive Director Berland noted that current-year projections show that the Commission will come close to consuming the 2023-2024 budget appropriation. He stated that the current budget would have been exhausted had the Commission been able to recruit more quickly. Executive Director Berland also noted that the agency will exceed the budgeted appropriation for non-personal services and will transfer funds from the remaining balance in personal services to meet the need on the non-personal services side.

FY 2024-2025 Budget Update

Executive Director Berland stated that the Governor's proposed budget bill included a recommended appropriation that provided a cushion of some \$279,000 in the personal services allocation over the Commission's current budget (and \$137,000 more than our request). He noted that the proposed allocation will serve to fund the Commission's expanded staffing plan and to meet other expenses, and he emphasized that any excess in the personal services appropriation will be available, through transfer, to meet Commission needs on the non-personal services side. Executive Director Berland also referenced his proposed written testimony supporting the Governor's proposed Commission budgetary appropriation, previously circulated to the Commission, which was to be submitted for the following day's session of the joint legislative budget hearings and reminded Commissioners to provide any comments or suggestions as promptly as possible.

Chair Davie said he hoped receiving more resources than requested was a positive sign and hoped it would hold through the negotiation stage. Executive Director Berland stated that while there had been general concerns going into the budgetary process that there would be across-the-board cuts, having received a proposed appropriation in excess of the Commission's request (a request that was, in fact, greater than the flat budget the Governor's Budget Director has asked the Commission – and all agencies – to submit) gives him a sense of affirmation that the Commission is doing the right thing.

Commissioner Edwards questioned the mention, in the written testimony, of the Commission requesting the minimal amount to achieve its objectives, and if the Commission was required to reduce the expectations for the agency when preparing the initial budget due to any constraints. Executive Director Berland explained that the Commission did not reduce its expectations for the agency and that the flat budget requested by the Budget Director was not, in fact, submitted; rather, because we, as an agency, requested more - \$143,000 more - than the current fiscal year's appropriation. Commissioner Edwards pointed out that \$143,000 more was not a lot of money. Executive Director Berland stated that although the amount requested was not a vast increase, it reflected a growing agency and considered expected costs and responsibilities for the next year, and he assured that if there are additional costs that the budget cannot accommodate, the Commission will seek an increase for the next year. He stated that the Governor's proposed budget will cover the costs and plans for the agency in the year ahead, as did the Commission's submission, and will cover such items as our retained ITS consultant; a proposed new and up-to-date case management system, which is being pursued by Deputy Director of Investigations and Enforcement Michael Antolini; and, prospectively, an improved system to manage the processing and handling of financial disclosure statements.

Commissioner Caraballo asked if the IT consultant would be dedicated to the Commission. Executive Director Berland confirmed that this was already the case, and stated the agency has, in addition, posted to recruit an Information Technology Business Systems Analyst to assist with the range of upcoming system updates and improvements and to help with the agency's overall technology needs. He anticipates that the business systems analyst will also help augment Deputy

Director of Learning Innovation Administration Diaz's capabilities and in managing the various training projects.

Chair Davie requested that Commissioners receive assistance in accessing their "ethics.gov" email accounts. Executive Director Berland explained the authentication process is necessary for security, especially as the previous agency experienced a hack. Staff will work to have a tutorial set up with ITS to help Commissioners access their emails, with Executive Director Berland detailing the security measures and vetting process in these matters.

Commissioner Per Diem Payments

Executive Director Berland referred to the per diem payments listed under tab F in the agenda book and noted that they covered the October Commission meeting; the November Roundtable; and April, May, June, July, August and September Prep Hours for some Commission members.

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 MATTERS THAT ARE CONFIDENTIAL PURSUANT TO SECTION 94 OF THE EXECUTIVE LAW

Vice-Chair Austin made a motion, seconded by Commissioner James, 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 matters that are confidential pursuant to § 94 of the Executive Law. The motion carried unanimously.

PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Executive Director Berland reported that, in Executive Session, the Commission discussed matters related to litigation and legal advice. The Commission discussed personnel related matters. The

Commission discussed guidance and guidance-related matters pursuant to Executive Law § 94(7). The commission approved two Executive Law § 94(10)(f) reports and recommendations including one recommendation to close a matter. The Commission discussed steps in several investigative matters. The commission closed 12 additional matters, and the Commission discussed several other investigative matters.

PROPOSED COMMISSIONER MEMORANDUM OF RECUSAL (COMMISSIONER CODE OF CONDUCT SECTION I(B)(1)(H)) (REVISED)

Vice-Chair Austin stated that the Code of Conduct is basically finished and that once the remaining portion is completed, he will make two motions. The first will be to approve the amendments to the draft and the second will be to approve the entire Code of Conduct.

Vice-Chair Austin noted one of the changes from the prior draft was to have the memorandums of recusal be sent to Executive Director Berland, who will then circulate them to General Counsel and to the Commissioners, and another change is to include potential conflicts of interest in the form. Commissioner Ayers stated that she had circulated a draft earlier in the day, which she read aloud to the Commission and explained the changes.

The Commission was reminded that the Code of Conduct, without the Memorandum of Recusal, was adopted at the October 25, 2023 Commission meeting. Commissioner Ayers requested the Code of Conduct be made Resolution No. 24-01 so it becomes one of the official resolutions of the Commission.

A motion was made by Vice-Chair Austin, seconded by Commissioner James, to amend the language of h(2), to read as follows: The Recusal List shall identify each organization, entity, and/or individual subject to the Commission's jurisdiction with which the member has had a personal, professional, financial or other direct or indirect relationship within the prior two years; and each organization, entity, or individual as to which, if they were the subject of Commission action, a conflict of interest might arise or because the member's impartiality in the deliberation or vote relating to the determination of the matter may be reasonably questioned. The motion

carried 6-1-1, with Commissioner Caraballo voting in the negative and Commissioner Edwards abstaining.

A motion was made by Vice-Chair Austin, seconded by Commissioner Ayers, to adopt a resolution incorporating the Code of Conduct as amended, with such resolution available to the public on the resolutions page on the Commission website. The motion carried 7-1-0, with Commissioner Caraballo voting in the negative.

REVIEW OF COMMITTEE STRUCTURE

Chair Davie proposed having a special meeting before the next scheduled Commission meeting on February 21, 2024, that would include three things: 1) a matter that may come before the Commission and that the Commission may need to decide; 2) a review of our group dynamics and how the Commission might address them as a body; and 3) governance issues as it relates to the Commission.

A motion was made by Vice-Chair Austin, seconded by Commissioner Caraballo, to have a special meeting before February 21, 2023, as proposed by the Chair. The motion carried.

NEW AND OTHER BUSINESS

Commissioner Cardozo proposed to have Commissioners who have a relationship with organizations that may support the Commission's legislative agenda reach out to the relevant people in those organizations. Commissioner Cardozo stated Commission approval is required and he wants to avoid any appearance of conflict.

Executive Director Berland noted that many, if not all, of the potential advocacy groups are also lobbying entities, which list lobbying activity vis-à-vis this Commission.

A motion was made by Commissioner Cardozo, seconded by Vice-Chair Austin, to have individual Commissioners reach out to external organizations that have an interest in our legislative agenda and urge their support. The motion carried 7-0-1, with Commissioner Caraballo abstaining (based upon a lack of information about the implications of such outreach with respect to the Commissioners' Code of Conduct).

Commissioner Ayers expressed her concern for how long it has taken to get started on the process of creating a process for comprehensive review, as required by the Executive Law. She stated she now has a draft from staff about a more detailed way to go forward with this process and invited Commissioners who wish to be part of that conversation to let her know and she will include them going forward. Commissioner Ayers also proposed that if she needs to stop and wait for the conversation about intergroup relations and structure before reviewing staff's proposal and getting back to them with feedback, to please let her know. Commissioner Caraballo affirmed she would like to wait for the conversation to happen first, as it is expected to be had prior to the next Commission meeting.

MOTION TO ADJOURN THE PUBLIC MEETING

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