

**MINUTES OF THE PUBLIC SESSION
OF THE FEBRUARY 21, 2024
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 (ABSENT)

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

Staff: Sanford N. Berland, Executive Director (ALB)
Keith C. St. John, General Counsel (ALB)
Kavita K. Bhatt, Deputy General Counsel (NYC)
Carol Quinn, Director of Lobbying (ALB)
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)
Erin Lynch, Deputy Director of Ethics (ALB)
Megan Mutolo, Deputy Director of Lobbying (ALB)
Meghann Hennigan, Deputy Director of Education (WebEx)
Melinda Funk, Deputy director of Financial Disclosure Statement (WebEx)
Jennifer Bliss, Senior Investigative Counsel (ALB)
Lisa Levy, Associate Counsel (NYC)
Lori Donadio, Principal Investigative Analyst (WebEx)
Gaetana Baldwin, Administrative Assistant (ALB)
Martha Rivera, Executive Assistant (NYC)

CALL TO ORDER

Chair Davie called the February 21, 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, as well as Section 94 of the Executive Law. He stated that the conference room being used at the Commission's offices in Albany at 540 Broadway, as well as the conference room at the Commission's offices at 25 Beaver Street in Manhattan, are open to the public during public session, and that in addition, the public session was being live streamed, the link for which could be found on the Commission website at www.ethics.ny.gov. Executive Director Berland confirmed that a quorum was present at the Albany meeting site.

APPROVAL OF MINUTES – PUBLIC SESSION – JANUARY 24, 2024

Chair Davie asked if there was a motion to approve the minutes of the open session of the Commission meeting held on January 24, 2024, and whether there were any questions or comments. There were no questions or comments.

A motion was made by Commissioner Cardozo and seconded by Commissioner Ayers to approve the public session minutes. The motion passed unanimously.

REPORT FROM STAFF

Operations Update

Executive Director Berland called the Commission's attention to the operations update, under tab B in the agenda book and noted that as before, it shows relevant activity figures for January and preceding periods. He noted that as shown in the investigations report, on page one, the agency received a total of 13 tips, complaints and referrals in January and closed a total of 13 matters. He pointed out that for closed matters, the report now separates shows the number of "continued matters," that is, matters carried over from the prior agency that were closed during the reporting period, from the "COELIG matters" closed since the prior report; Executive Director Berland explained that this is being done so that Commissioners and the public can see how staff is working their way through the caseload.

Commissioner Cardozo asked for an update on the staffing plan. Executive Director Berland replied the agency is on its way to completing the staffing plan, but it is not quite there yet, as will be discussed later in the report.

Executive Director Berland turned to the ethics report on page two and noted there were 77 requests for guidance. He then referred to the lobbying report and noted that the data reflects normal activity given the time of year, noting that the agency is in the second year of the biennial reporting period. Executive Director Berland also noted that the Division Directors were all present to answer any questions Commissioners might have.

Executive Director Berland called attention to the FDS chart on page 4 of the operations update, observing that the activity was normal and that the month-to-month fluctuations reflect the impact of academic filings. He explained that the academic filings were due in November, which results in failure-to-file notices issuing over the following two months, after which there is a period during which the agency presses for compliance from those who have yet to file.

Chair Davie asked how many of the 2,600 failure to file notices that were issued to academic filers. Executive Director Berland replied the total pool of FDS filers is just under 34,000. Deputy Director of FDS Melinda Funk added that there are approximately 5,000 academic filers every year, and the 2,634 reported failure to file notices were issued to a combination of academic filers and other filers, who are governed by the statutory May 15th deadline, so it is a mixed pool. Chair Davie asked what percentage would be academic filers, to which Deputy Director of FDS Funk replied approximately three-quarters of the number were academic filers. Executive Director Berland stated that, going forward, staff would be supplying the Commission with a breakdown of the non-filing group so one can see what institutions are generating more work for the group in terms of pressing for compliance.

Chair Davie asked whether most people come into compliance and eventually file or whether the agency is chasing them for the academic year. Deputy Director of FDS Funk stated most of the time the agency gets compliance, and this has been a tough year as the unit is short-staffed with two people currently doing the work of four. Executive Director Berland added the agency has

enforcement powers if there are failures to file, but Deputy Director of FDS Funk and her team generally get full or close to full compliance with required filers providing their disclosure statements, and the agency is restaffing the group after some key losses over the past year.

Executive Director Berland turned to the figures in training and pointed out that on February 6th the agency rolled out a new web-based vehicle for agency ethics officers to enter their agency's aggregate training data into our system directly, making it more efficient for the Commission to track the numbers of individuals being enrolled for and completing training. It is taking some time for users to become accustomed to the new vehicle, and the process will become more sophisticated by mid-year, when the full training and tracking system is in place and the monitoring and tracking compliance with the now-universal mandatory ethics training requirement is automated. He reminded the Commission that the agency has gone from training approximately 30,000 FDS filers every 3 years to training 330,000 individuals, including everyone in the Executive Branch of government, every year.

Commissioner Cardozo noted that at the last meeting, Commissioner Edwards asked whether we have been able to determine if the increased training has had an impact on the number of incoming guidance requests or the number of delinquent filers. Deputy Director of Education Meghann Hennigan stated that she has heard from ethics officers that they are receiving more guidance requests within their own agencies. Deputy Director Hennigan stated that the training team will also be sending out a survey to ethics officers to elicit information on the number of requests they are now getting, as well as the types/categories of requests coming in. Executive Director Berland pointed out the agency can receive guidance requests from anyone in the State workforce, but the individuals who are required to come to this agency are policymakers, agency heads, and Statewide elected officials. Agency ethics officers, from almost 400 agencies in the Executive Branch, do the brunt of the work in providing guidance to the employees within their respective agencies, and for the most part, even those state officers who are required to seek approval from us must first go to their agency ethics officers for approval.

Executive Director Berland pointed out in the Training report that the number of State workforce employees who took the relatively new on-demand ethics training has gone up, while quite a few

agencies have yet to report their January live-training figures. He continued that as everyone becomes accustomed to the new web-based reporting system, the agency will have more accurate and complete reporting. Commissioner Groenwegen asked if the survey mentioned earlier had input from the Education Committee, and Commissioner Edwards confirmed the Education Committee had provided feedback. Executive Director Berland stated that the survey was done in coordination with the Education Committee, as it is one of the committee's missions to look at the question of measuring the impact and the efficacy of our ethics training. He also pointed out that the Commission's training group has increased the number of live trainings it is providing, which supplements the work being done in the agencies by their trainers and ethics officers. Chair Davie reminded everyone that the Commission's goal is to have half of the workforce receive live training every year. Executive Director Berland added that the other half are to be receiving refresher training, which can be done on demand, and the vehicle for refresher training was launched in November. He added that at the end of last year, more than half of the workforce had received live ethics training, so the agency has reached its live-training goal. He also stated that for the agency to keep up with the Commission's goals, live training needs to reach 13,000 to 14,000 individuals every month.

Chair Davie asked for the annual total number of lobbying trainings. Director of Lobbying Carol Quinn replied that the number was over 8,000 and as of a couple of weeks ago, about 83% of the clients and lobbyists had taken the training. She noted that one of the items on the legislative agenda is to get some enforcement and penalty authority in order to reach 100% compliance. Executive Director Berland added that another proposal is to have the training cycle be every two years instead of every three years, in order to correspond with the biennial registration period.

Executive Director Berland reported the Audit and Review unit was operating at a steady rate performing random audits of the various lobbying filings, as well as random and targeted reviews of FDS filings. The FDS review side is hitting targets that they normally reach on an annual basis. Commissioner Edwards asked for the criteria used for random reviews. Executive Director Berland responded that the agency has no input into the randomized selection process, as it is done by an independent accounting group using an algorithm to make selections randomly periodically, both

for the lobbying registrations and other lobbying filings that are audited, and for the random FDS reviews.

Turning to the final page of the operations report, Executive Director Berland noted that number of requests the agency is receiving under the Freedom of Information Law has increased. Commissioner Cardozo asked if the agency has noticed the impact of putting more material on the website, so people don't have to make a FOIL request, or whether it was too early to tell. Director of Communications, Public Information Officer, and Director Public Affairs Emily DeSantis replied that there has not yet been a noticeable impact, noting that all of the Executive Law Section 166 forms that are in the Commission's possession have now been made available to the public electronically, but no further requests for them have come in thus far. Executive Director Berland explained that these forms are governed by that section of the Executive Law, which requires that when representatives appear for compensation before one of the eleven agencies and departments specified in the statute, the agency or department "keep" a record of the appearance, on a form specified by the Commission. The forms are retained by those eleven agencies, and they are required to send copies to the Commission following the close of every quarter, and the Commission is required to make them available to the public upon request.

FY 2023-2024 Budget Update

Executive Director Berland reported that the agency is moving along as projected. The agency is not going to use all of the personal services side of its budget, but it is going to exceed the non-personal services side of its allocation, which will necessitate transferring money from one side to the other to cover those expenses.

FY 2024-2025 Budget Update

Commissioner Cardozo asked if there were any updates for next year's budget. Executive Director Berland referred to tab E and noted Commissioners had seen the draft of his written testimony to the legislature before it was submitted. He stated that a number of watchdog and good government groups had sent a letter to the legislature supporting the agency's budget as proposed by the Governor. In their submission, the groups also made suggestions with respect to how our budget is determined in the future, e.g., using a fixed percentage of some index or a percentage of another

referent agency, or a percentage of the budget, or simply granting whatever request we make in full. Executive Director Berland stated the Governor’s proposed budget allocated the additional amount that was requested for personal services with a cushion of another \$135,000; but the allocation for non-personal services was not increased. The agency can continue to transfer money from one category to another but, at some point, this will become an issue that may have to be addressed.

The agency is in the process of seeking a replacement for the case management system that the Investigations and Enforcement Division uses, and the agency will need additional non-personal services monies to cover the running costs of the new system going forward. The agency has sufficient funds in its current budget for the initial installation of the case management system and for the first year of operations, but more funding will be required in subsequent years. In addition, the agency has recently upgraded the software the audit group uses and is seeking to upgrade other agency systems, including the system for FDS filings.

Commissioner Per Diem Payments

Executive Director Berland reported that there were no further per diem payments made to Commissioners in January, but he is anticipating that such per diem payments will be made later this month or in early March. The total expected to be paid will be \$19,107.62, a figure that includes the November Commission meeting and the Administration Committee meetings and August and September preparation time. Executive Director Berland provided the following projected Commissioner per diem payments:

Davie, Frederick	\$2,684.01
Austin, Leonard B.	\$1,725.44
Ayers, Ava	\$1,981.06
Caraballo, Dolly	\$1,981.06
Cardozo, Michael A.	\$1,981.06
Edwards, Claudia L.	\$3,450.87
Groenwegen, Nancy G.	\$2,620.11
James, Jr., Seymour W.	\$1,949.10
Whittingham, Kaylin	\$734.91
Total	\$19,107.62

2023 Accomplishments News Release

Executive Director Berland referred to the agency's news release behind Tab E that was issued earlier this month, recounting the Commission's 2023 accomplishments, including the operations statistics that were discussed at the January Commission meeting. He noted that the accomplishments were impressive, especially given the challenges the agency faced from short staffing at the beginning of the period. Commissioner Cardozo complimented Director DeSantis and her staff as the Commission is much more proactive in this respect than it had been, and he thinks it is having a positive long-term effect. Executive Director Berland seconded Commissioner Cardozo's compliment and added that the news releases are a key part of this agency's mission because if the public is not kept informed, the Commission really cannot accomplish its mission of fostering greater public confidence in government. Chair Davie added that for those individuals on social media, they can also drive traffic to the ethics site and post some of this information on their own by liking those posts on Indeed, LinkedIn, Facebook, Instagram, and X. Executive Director Berland further extended the compliment to the the agency's entire staff for their extraordinary work as reflected in the February news release.

Executive Director Berland returned to Commissioner Cardozo's question on staffing and reported that the agency is actively recruiting candidates to fill a number of positions at this time, and he referred the public to the Commission's website where the agency is listing positions, as well as its postings on the New York State Jobs site.

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

Commissioner Edwards 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 matters related to procedures involving personnel matters. The Commission addressed legal advice related to guidance matters and legislation. The Commission authorized steps in three investigative matters, closed four continued matters, closed ten COELIG matters, and discussed several other investigative matters.

NEW AND OTHER BUSINESS

Chair Davie announced that Commissioner Ayers will provide a report on the comprehensive review of rules, regulations, and other guiding documents. Commissioner Ayers stated that Commissioners should have received the staff draft proposal describing a method of going forward with the comprehensive review and noted that her own proposal, which she had circulated earlier, is no longer the operative proposal. She asked that the Commissioners review the draft over the next month, hold a discussion at the next full Commission meeting, and hopefully vote to approve the process. She added that if Commissioners have additional thoughts or concerns, they should circulate them so staff can review and act on their suggestions.

Executive Director Berland noted Commissioners had raised a question about the timing of the annual public hearing and explained that if the staff proposal is accepted at the next meeting, the annual public hearing would be pushed back to later in the third quarter or the fourth quarter, rather than being held in the first quarter of the year as previously discussed. He added that having the annual public hearing later in the year would yield efficiencies by allowing more substantive feedback and removing some potential duplication in advancing the legislative agenda.

Commissioner Edwards asked if the public hearing would be held in the fourth quarter of the following year. Executive Director Berland stated it would be the third or fourth quarter of this year, likely in September or October. It was decided to discuss the timing of the public hearing at the next meeting. A discussion was held about clarification as to which of the proposals needed to be reviewed. It was reiterated that it is the staff proposal needed to be reviewed.

Chair Davie asked Commissioner Cardozo if he had anything to share on the legislative process. Commissioner Cardozo stated that he did not, that they already alluded to where they stand on the lobbying issues, and the committee will continue to keep on top of them.

Commissioner Groenwegen made a motion to reconsider the vote made at the last meeting, moved by Commissioner Cardozo, and seconded by Vice Chair Austin, to have individual Commissioners reach out to external organizations that have an interest in the Commission's legislative agenda and urge their support. Commissioner Groenwegen added that at the January 24th meeting the motion had carried 7-0-1, with Commissioner Caraballo abstaining based upon lack of information.

Commissioner Edwards seconded the motion. A discussion followed concerning which members were eligible to make the motions. Chair Davie and General Counsel St John stated that only members who voted in the affirmative in the original vote can make this motion, meaning Commissioner Edwards could not second Commissioner Groenwegen's motion to reconsider the January 24th motion. Commissioner Caraballo put on record that the Public Session minutes of January 24, 2024 were incorrect, and Commissioner Edwards was the one who abstained, and Commissioner Caraballo had voted in the negative. The Commission recognized this rectification of the record. General Counsel St. John asked for another commissioner to second the motion to reconsider the vote. Commissioner James seconded the motion. The motion carried unanimously.

Chair Davie stated that the original motion was on the floor. The original motion was made by Commissioner Cardozo, and seconded by Vice-Chair Austin, to allow Commissioners who have a relationship with organizations that may support the Commission's legislative agenda to reach out to the relevant people in those organizations. The motion failed unanimously.

Chair Davie asked if there was additional business to come before the body. A motion was made by Commissioner Ayers, seconded by Commissioner Cardozo, to direct commissioners not to engage in outreach to outside parties to promote the legislative agenda without either a request from staff or the approval of the full Commission. The motion carried 6-1, with Commissioner Caraballo voting in the negative.

MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Ayers and seconded by Commissioner Cardozo to adjourn the meeting. The motion carried. The meeting was adjourned.

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