

**MINUTES OF THE PUBLIC SESSION
OF THE MAY 22, 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**

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 (WebEx)
Nancy G. Groenwegen (NYC)
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 & Enforcement (NYC)
Erin Lynch, Deputy Director of Ethics (ALB)
Megan Mutolo, Deputy Director of Lobbying (ALB)
Meghann Hennigan, Deputy Director of Education (WebEx)
Marlena Diaz, Deputy Director of Learning Innovation Administration (WebEx)
Melinda Funk, Deputy Director of FDS (WebEx)
Gareth Perrin, Deputy Director of Compliance Audit & FDS Review (ALB)
Jennifer Bliss, Senior Investigative Counsel (ALB)
Lisa Levy, Associate Counsel (NYC)
Lori Donadio, Principal Investigative Analyst (ALB)
Mariana Cadiz, Acting Director of Administration (ALB)
Gaetana Baldwin, Administrative Assistant (NYC)
Martha Rivera, Executive Assistant (NYC)

CALL TO ORDER

Chair Davie called the May 22, 2024 meeting to order. Executive Director Sanford Berland announced the meeting was being held pursuant to and in accordance with the provisions of the state's Open Meetings Law and Executive Law § 94. He noted that the meeting room at the New York State Conference Center at 25 Beaver Street in Manhattan and the conference room at the Commission's offices in Albany at 540 Broadway are open to the public during the public sessions. It was noted that Commissioner Edwards was attending the meeting remotely by video conference pursuant to § 103-a of the Public Officers Law and in accordance with the commission's procedures for remote participation. Executive Director Berland confirmed that a quorum was present at the New York State Conference Center in Manhattan.

APPROVAL OF MINUTES – PUBLIC SESSION

April 17, 2024

Chair Davie asked if there was a motion to approve the minutes, as corrected, of the open session of the Commission meeting held on April 17, 2024. Commissioner Edwards had a follow-up question on an item mentioned in the minutes. Chair Davie stated that this could be discussed in New and Other Business. A motion was made by Commissioner Ayers and seconded by Vice-Chair Austin to approve the public session minutes as corrected. The motion to approve the minutes as amended carried unanimously.

REPORT FROM STAFF

Operations Update

Executive Director Berland noted that as in previous months, the Operations Update, under Tab B, includes relevant activity figures for the most recent month, April, in column one; figures for the prior month, March, in column two; the comparable month figures for 2023 in column three; and the current and 2023 year-to-date figures in columns four and five.

Executive Director Berland called the Commission's attention to page one of the Operations Report, noting that the Investigations and Enforcement Division reported a total of 17 tips and referrals in April, of which the Commissioners received notice in their weekly notifications. He further noted a total of 15 closed matters for the month, of which two were carried over from the prior agency and 13 were COELIG matters. Pending and open investigations were 144 and 46, respectively, a net change of plus three pending matters and one additional investigation opened.

Director of Investigations and Enforcement Brian Weinberg added that the number of 15-day letters sent decreased in April as the unit was focusing on investigating current matters. He indicated that in the executive session, he would be discussing matters staff is working on to move toward hearing and that the group has been focusing on an older matter that is still on track for hearing in the next couple of weeks.

Executive Director Berland turned to page two of the update and reported that there had been 105 requests for guidance in April, only slightly down from the March total of 117 guidance matters. Director of Ethics Michael Sande stated April was another remarkable month for the Advice and Guidance Unit, as the total number of requests was almost double the number of requests from the same time last year. He stated that while there is no direct explanation for the increased numbers, it is possible that the agency's increased outreach and increased training, as well as normal cyclical changes, may be a factor.

Executive Director Berland turned to page three of the report, noting that there was a small increase in the number of lobbyists and clients in April over March – 6 and 93, respectively – and that the much larger annual change in lobbyists and clients over the same period last year reflects that last year was the start of a new biennial registration period, i.e., the numbers grow as the two-year period progresses. In 2025, a new biennial cycle will begin, and the clock will start over. He noted that, in April, there was a decline in inquiries and a relatively small number of bi-monthly and client semi-annual reports filed, as April was not a standard filing month.

Director of Lobbying Carol Quinn noted the April report shows three new data points to reflect the actual workload of the lobbying group better: the number of submitted registration amendments, the

number of submitted bi-monthly reports and amendments, and the number of client semi-annual reports and amendments. She also noted that in 2023, lobbying reviewed over 62,000 filings and that going forward, the monthly report will now show those numbers. She added that a statistic number that might be interesting to Commissioners is the registration column, which shows 1,243 registrations were received in March while the number dropped down to 585 in April. Director of Lobbying Quinn noted that this fluctuation is due to budget negotiations and is very typical, as clients will hire lobbyists to lobby on the budget. She also noted the bi-monthly reports numbers decreased, as there was a bi-monthly deadline that resulted in 6,407 submissions in March, with only 401 in April. The next deadline of May 15th will result in increased numbers for May.

Executive Director Berland turned to the Financial Disclosure Statements Unit's operations statistics, at page four of the report, noting that substantial FDS filings began – close to 10,000 in April – in anticipation of the May 15th deadline for non-academic filers and that next month's report will show an even larger uptick. He further noted the unit's great success in addressing outstanding filings.

Deputy Director of FDS Melinda Funk reported that as of the date of the Commission meeting, the unit has received over 22,000 filings. She stated that staff is still processing paper filings and that the number will go up once those filings have been processed. She reported that approximately 4,500 delinquent filers will be receiving Failure to File Notices beginning in June. She also noted that out of the 190 Notices of Delinquency issued for the 2022 filings, only 39 filers have not yet complied with the filing requirement.

Commissioner James asked how many of the filings are still paper versus electronic. Deputy Director of FDS Funk replied that approximately 1,000 to 1,200 are paper filings, including both academic and non-academic filers. She stated that more academic filers file by paper, and that there are 800 paper filings for this non-academic filing season. Executive Director Berland added that academic filings are due in November, and the number of paper filings is around two to three percent of total filings. He stated that electronic filing is easy, with the added advantage that the online form is automatically populated with the filer's prior year's entries, so a filer only has to update the information, as well as not having to mail in the form.

Executive Director Berland proceeded to the Training Unit report, at page five, noting that as in past months, the report shows the number of employees trained by our staff and also separately shows those trained by their respective agencies' personnel. He further noted that the number of live training sessions conducted by the Training and Education Unit has increased and that there has been a slight decline in the number of individuals using the on-demand application that was introduced last November. He pointed out that, in particular, notwithstanding a reporting lag, the total number of employees reported to have been trained this year through mid-May is 42,560, and assuming each entry represents a unique individual, this number puts the agency almost where it needs to be in order to achieve the Commission's goal of ensuring every executive branch employee receives one live or on-demand ethics training by the end of this year and a full two-training cycle by the end of 2025, as well as one ethics training every year thereafter. Executive Director Berland noted that a concerted effort would be required on the part of COELIG and agency training personnel to achieve those milestones, and while the targets set by the Commission are ambitious, the numbers that are accruing are impressive.

Deputy Director of Learning Innovation Administration Marlena Diaz reported that the training numbers had, in fact, increased since the date the numbers were pulled for this month's operations report, and that there had been 448 live CETC sessions conducted statewide in April. The number of employees who received live CETC training was up to 6,554, and the combined reported figure for April of employees who received either live training or on-demand online training had increased to 14,158. First-quarter numbers show that over 40,000 employees took one form of training, whether online or live.

Executive Director Berland, turning the Commission's attention to page six of the report, noted that April reflected normal cyclical activity for the Audit and Review unit, which had completed another 127 statutory targeted FDS reviews and 152 random lobbying filing audits during the month.

Deputy Director of Compliance Audit and FDS Review Gareth Perrin reported that the numbers from March to April were essentially flat. He explained the slight decrease in number of random audits on lobbying filings – from 66 in April 2023 to 52 in April 2024 – is the result of the group implementing a new framework as part of an upgrade in the unit's lobbying audit software, which

has taken a considerable amount of staff time. In addition to enhancing the lobbying audit process, the new framework is also being built to mainstream the process for FDS reviews as well as Internal Controls. Deputy Director of Compliance Audit & FDS Review Perrin stated that his unit is also devoting attention to conducting campaign contribution audits and has increased the number of targeted FDS reviews it conducts. He noted that once the software is implemented and the framework is built out, the unit will be able to conduct lobbying audits and FDS reviews more efficiently.

Executive Director Berland added that in addition to having to devote attention to implementing the audit software upgrade, the unit has been operating short-handed, and the agency is actively recruiting to fill another auditor position. Commissioner Groenwegen requested more information on campaign contributions reviews. Deputy Director of Compliance Audit & FDS Review Perrin explained that the statute provides that Commissioners may not contribute to individuals running for state-wide office or the legislature, and therefore the unit searches public campaign contribution databases to ensure that Commissioners are not unintentionally contributing to such candidates and makes agency management aware of any such contributions.

Executive Director Berland turned to page seven of the report and noted that the Public Information Division is continuing to receive FOIL requests at a steady rate. Director of Communications, Public Information Officer and Director Public Affairs Emily DeSantis reported an uptick in FOIL requests coinciding with the May FDS deadline and noted that the agency continues to provide timely responses to the FOIL requests it receives.

FY 2024-2025 Budget Update – Tab C

Executive Director Berland reported that since the last meeting, the state budget had been approved and the agency had received the appropriation that was anticipated from the Governor's proposed budget. He stated that the Commission had received a small increase from what was initially asked for in order to cover projected mandatory wage increases that have begun and will continue to be paid out in the coming months. He reminded the Commission that to stay within the budget while implementing the expanded staffing plan, staff is filling positions as needed, staging the increases in staffing throughout the year. Executive Director Berland explained that while the Commission will

likely be requesting an increase in its budgetary allocation for fiscal year 2025-2026, it is able to work within the budget this year.

Executive Director Berland stated that in addition to recruiting another auditor, the Audit and Review Unit will be creating and filling an Assistant Director position for the unit, which will enable it to increase the number of audits the unit conducts. He noted that an employee who has been working within the Audit and Review Unit on FDS reviews will be moving to the FDS unit to fill the position of Assistant Director, which has been vacant, to increase that unit's capabilities. Executive Director Berland also noted that the commission had received nearly 30 resumés in response to posting for the position of Deputy Director of Administration, that the submission period for that posting had concluded, and that candidate interviews would be starting soon for that position.

Commissioner James asked for an explanation of the difference between appropriation and cash allowance. Acting Director of Administration Mariana Cadiz explained that the difference essentially represents a cushion to guard against a budgetary shortage. She observed that it is considered better to have the cushion rather than having to seek an increase in the budget should an unanticipated cost arise. Chair Davie asked if this is common practice affecting other agencies and Acting Director of Administration Cadiz replied yes.

Commissioner Per Diem Payments

Executive Director Berland read into the record the following per diem submission amounts, expected to be paid to Commissioners today for their attendance at the October 2023 legislative working group meeting and the two February and two March 2024 Commission meetings:

Davie	\$	2,236.95
Austin	\$	1,310.06
Ayers	\$	1,981.07
Caraballo	\$	2,013.02
Cardozo	\$	2,268.64
Edwards	\$	2,013.02
Groenwegen	\$	2,013.01
James	\$	2,140.83
Total	\$	15,976.60

Executive Law Section 94(1)(d) Review – Process Update

Executive Director Berland updated the Commission on the planned two-track process to fulfill the direction of Executive Law §94(1)(d) to review the Commission’s statutes, regulations, and advisory opinions for consistency, effectiveness, and compliance with the statutory objectives. As approved by the Commission at its April meeting, one track will be survey-based, seeking input from various constituencies, including interest groups, stakeholders, academics, bar associations, and other interested parties on what works and what does not, what is creating issues, and what improvements are possible. The other track will entail an unpacking of the more than 350 ethics advisory opinions and the lesser number of lobbying advisory opinions that remain effective through a “master class” that Director of Ethics Sande along with Director of Lobbying Quinn will present in July focusing on the seminal advisory opinions.

Executive Director Berland reported that Commissioner Ayers had put staff in touch with the Center for Human Services Research group at the University of Albany, which has expertise in constructing, conducting, and supervising surveys and analyzing results. Director of Communications, Public Information Officer and Director Public Affairs DeSantis reported that two preliminary surveys have been drafted, one for the ethics community and one for the lobbying community. As staff does not have expertise in survey development, the Center identified experts to assist the agency in that effort. Director of Communications, Public Information Officer and Director Public Affairs DeSantis added that the experts believe a blended qualitative and quantitative survey can be created and that it is unnecessary to conduct separate qualitative and quantitative surveys. She noted that Commissioners will have an opportunity to review the preliminary draft surveys, with the caveat that the surveys could change greatly once the experts help to refine them. She stated that the agency will be responsible for distributing the surveys and has developed the distribution lists. The researchers anticipate that about three to four months will be required to distribute the surveys, receive the responses, and analyze the results. Thus, COELIG is on track to hold the next public hearing in October. Once the responses are in, the researchers will help to evaluate the results. Staff will continue to keep Commissioners informed.

Introduced Legislation

Executive Director Berland turned to tab D and stated that staff had met with several members of the legislature and representatives of the Executive Chamber and of the Division of the Budget to discuss the Commission's approved legislative agenda. He also stated that four of the Commission's proposals have thus far been introduced as bills in the Senate or the Assembly, either in committee or on calendars, and staff is monitoring whether the bills will reach a floor vote. The introduced bills include proposed revisions to the Open Meetings Law, electronic filing for lobbying filings, electronic filing for Financial Disclosure Statements, and imposing late fees on lobbyists who have not taken ethics training.

Chair Davie asked staff's opinion on the prospects for any of the bills to be approved in this legislative session by the full Assembly. Executive Director Berland replied that it is Staff's position that the bills are excellent and necessary pieces of legislation and should be adopted by the legislature and signed by the Governor. A discussion was held regarding the particulars of the proposed legislation, memos in support, and the importance of staff, not Commissioners, continuing to press the legislature and the executive chamber to support the Commission's proposals.

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 Executive Session, in accordance with Public Officers Law § 105 and Executive Law § 94(11), to address matters concerning personnel employment, 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

[Commissioner Cardozo was not present for the remainder of the meeting.]

Executive Director Berland reported that, in Executive Session, the Commission discussed matters related to litigation and legal advice. The Commission approved a confidential disclosure pursuant to Executive Law § 94 (11)(b). The Commission approved two staff recommendations pursuant to Executive Law § 94 (10)(f) to advance matters to hearing or settlement. The Commission authorized steps in several investigative matters, closed four COELIG matters, and discussed several other investigative matters.

2023 ANNUAL STATEWIDE ETHICS TRAINING COMPLIANCE REPORT, WITH 2023 THIRD CALENDAR QUARTER AND 2024 FIRST CALENDAR QUARTER REPORTS

Executive Director Berland directed the Commission's attention to page 3 of tab E, which summarizes training statistics from the inception of COELIG in July 2022 through April 29, 2024. He noted that this combined report has been submitted to the Governor's office and to the legislative leadership, to comply with the Commission's obligation under the statute.

Executive Director Berland referred to the statistics, stating that during this period of time, over 200,000 state officers have participated in ethics training, with over 170,000 receiving live training and over 35,000 taking the online on-demand course. He reminded Commissioners that, earlier in the meeting, he had reviewed the updated statistics showing increased training numbers since the report was issued, evidencing the Herculean effort the Commission's training staff and training personnel and ethics officers across the nearly 400 agencies in the Executive branch have been applying to achieve the goal of universal annual Executive branch ethics training. Executive Director Berland reported that staff's efforts have led the way to meeting the Commission's goal of administering at least one comprehensive ethics training, live or on-demand, to the entire executive branch workforce by the end of 2024, and having every executive branch employee complete the full two-year cycle by the end of 2025.

Executive Director Berland reported that the agency is on track to roll out, in mid-June, Phase Two of the training management system development project, which will provide for the scheduling, notification, monitoring and administration of ethics training across the Executive branch. He noted that there will be a ramp-up period as data is being entered into the system, as well as a transition period in reporting from Phase One to Phase Two, and that other issues may arise as the core system is fully implemented.

Executive Director Berland stated that the Phase Two core system will enable the Commission and agencies to know the status of every single individual employee's ethics training. While June 13th is the target date for the Phase Two launch, Executive Director Berland pointed out that much data still needs to be entered, and staff is working with ITS to achieve the target launch date. He further explained that there may be initial challenges in entering all State employees' email addresses and other information into the system, but once done, that information will help facilitate the training process, replacing the ad hoc manual systems that agencies are currently using to track employee ethics training. Executive Director Berland commended the efforts of those who have worked on advancing the training goal.

Commissioner Groenwegen asked for the meaning of the terms "parent agency" and "subsidiary agencies" on page 4 of Attachment E. Deputy Director of Learning Innovation Administration Diaz provided an example of the Department of Corrections and Community Supervision being a parent agency, and the individual facilities under Corrections being subsidiary agencies.

Commissioner Groenwegen asked if the data in the report only reflected live ethics training since some agencies may be training their workforce in other approved ways that are not shown in the data in the report. Executive Director Berland stated that this was correct, and that Deputy Director of Learning Innovation Administration Diaz and Deputy Director of Education Meghann Hennigan have prepared a supplemental schedule, to be posted along with the training report, that separates and details the on-demand trainings by agency, as well as the live trainings that have taken place; these schedules will also be provided to the Executive Chamber and Legislature. Commissioner Groenwegen explained that she asked because the numbers for certain agencies, such as the

Comptroller's Office and State Police, appeared to show the agencies were not in complete compliance and thought this might lead to confusion. Executive Director Berland said that staff created the supplemental schedule for that reason. Deputy Director of Learning Innovation Administration Diaz added that not every State entity currently has access to the on-demand training, so certain entities, such as the SUNY and CUNY campuses, are not utilizing the on-demand training because they do not have access to the Statewide Learning Management System. Deputy Director of Learning Innovation Administration Diaz further explained that those entities are in the process of either taking the COELIG training materials and putting on-demand training within their own agency's learning management systems or are opting to continue to do live training for this calendar year.

Commissioner Groenwegen stated that Deputy Director of Learning Innovation Administration Diaz's comments are important acknowledgments, and those who are trying to understand how to complete the training effort might not appreciate the work being done without knowing this information. Executive Director Berland agreed with this assessment and explained that Deputy Director of Learning Innovation Administration Diaz and Deputy Director of Education Hennigan are working diligently, along with ITS, to figure out the varied systems and programming across all State agencies that will collect the information. Commissioner Groenwegen said that the work was well done, but there appeared to be even more work that was done behind the scenes that has not been reported. Executive Director Berland agreed again, saying that the document does not give justice to the work that staff has done, and while the system will not have all the capabilities staff needs for some period of time, the impressive thing is that even without the finished system, training is happening, and staff is getting the State workforce on track with their required trainings.

Chair Davie thanked the staff for all of their hard work in training so many of the State's employees in a relatively short period of time and providing the Commission with the comprehensive report and would like to promote it as far and wide as possible.

PROPOSED COMMISSION MEETING SCHEDULE JULY THROUGH DECEMBER 2024

The Commission reviewed the meeting schedule, and the meetings are scheduled for the rest of the year as follows:

Tuesday, July 23rd in NYC

Wednesday, September 18th in NYC

Wednesday, October 23rd in Albany

Wednesday, November 20th in NYC

Wednesday, December 18th in Albany

Commissioner Edwards made a motion, seconded by Commissioner Ayers, to approve the meeting dates as amended. The motion carried unanimously.

NEW AND OTHER BUSINESS

Commissioner Edwards directed the Commission's attention to page 9 of the minutes, where there was a discussion about new legislation surrounding the Open Meetings Law, and if approved, the new legislation would require at least one location to be physically open for the public to have access to the meeting. She asked if the open public location could alternate between the Commission's offices in New York City and Albany, or if staff could provide criteria so that the public throughout the region have equal access. Chair Davie said that if the legislation passes, the Commission has the option to open one office or all offices.

Commissioner Edwards understood but asked that should the legislation be approved, there could be a process to select where the meetings take place or agree to have meetings at alternate sites.

Chair Davie stated that since Commissioner Ayers stepped out of the room, there was no longer a quorum in place, and proposed that the Commission look to have a resolution at the next meeting that states the preference of the Commission is that, should the legislation pass, the Commission have at least two sites open for physical attendance. Executive Director Berland clarified that the

proposal to amend the Open Meetings Law being discussed only applies to committees and subcommittees that are advisory bodies, and which do not have decisional authority.

Commissioner Edwards noted that in the discussion on page 11 of the minutes regarding the Executive Law § 94(1)(d) review process, there was a mention of a qualitative survey taking place and that survey would have been developed this month. She asked if this survey was related to the discussion held earlier in the meeting with respect to Executive Director Berland working with Commissioner Ayers to hire experts for the qualitative study. Director of Communications, Public Information Officer, and Director of Public Affairs DeSantis confirmed this and explained that, as mentioned in the morning, an outside vendor was identified who could assist with the study, and the vendor believed one survey could be done rather than two, and still reach the same end.

Commissioner Edwards turned the Commission's attention to page 12 of the minutes and asked for confirmation that the Commission would put on hold the discussion of the committee structure until the legal issue is satisfied. Chair Davie stated that there would be a special meeting held sometime between July 4th and the scheduled July Commission meeting to discuss the matter.

MOTION TO ADJOURN THE PUBLIC MEETING

Vice-Chair Austin moved, seconded by Commissioner Caraballo, to adjourn the meeting. The motion carried.