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Resolution 2024-01

RESOLUTION ON A CODE OF CONDUCT FOR MEMBERS OF THE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

WHEREAS at its October 25, 2023 meeting, the Commission adopted a Code of Conduct, specifically leaving Article I, Section B, Paragraph h to be adopted at a subsequent meeting; and

WHEREAS at its January 24, 2024 meeting, that provision was adopted;

NOW, THEREFORE, BE IT

RESOLVED that the Code of Conduct as approved by the Commission be adopted as a Resolution of the Commission, as follows:

CODE OF CONDUCT FOR MEMBERS OF THE NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

INTRODUCTION

The New York State Commission on Ethics and Lobbying in Government (the “Commission”) exists to foster public confidence in State government, and is responsible for interpreting, administering, and enforcing the State’s ethics and lobbying laws (see, Executive Law Section 94(1)(a)). For the Commission to succeed, it must first and foremost foster the public’s confidence in the Commission itself. To this end, the members of the Commission adopt this Code of Conduct and commit themselves to adhering to the highest standards of conduct for:

- **Impartiality:** by maintaining independent judgment in performing their duties.
- **Confidentiality:** by understanding the types of information that may be shared with colleagues and members of the public, not sharing confidential information acquired in the course of performing their official duties, and not using confidential information to benefit themselves or someone else.
- **Stewardship of State resources:** by refraining from using their official position to secure unwarranted benefits or favors for themselves or others, and not using the resources of the State for their own or another’s personal use.
- **Preventing financial conflicts:** by abstaining from personal investments that conflict with their official duties and recusing themselves from any official matter involving an entity in which they may have a direct or indirect financial interest.
- **Integrity:** by avoiding situations in which it may appear they could be influenced or would attempt to influence someone else and conducting themselves in a manner that does not raise suspicion among the public that they are personally benefitting from their official position.
- **Business with the State:** by undertaking to accept limitations, when necessary to avoid a conflict of interest, or restrictions on their working for or providing goods and services to entities subject to the Commission’s jurisdiction.

I. CONFLICTS OF INTEREST

A. Avoiding Conflicts of Interest—Prohibited Conduct. To avoid conflicts of interest, members are prohibited from:

- 1) Directly or indirectly communicating, without prior authorization by the Commission, with the public official who appointed them to the Commission, or who directly reports to that official, with respect to any matter that is or reasonably may come before the Commission, except in an open meeting. A person ‘directly reports’ to an official if that official is their direct supervisor or the person would, as part of their official or informal duties, be responsible for keeping the official informed about matters related to the Commission or to the official’s personal ethical responsibilities. A public official who appointed a member may communicate in writing with the Commission as a whole through the Commission chair, who shall share the writing with the entire Commission. The writing shall be made part of the records of any relevant matter or of the Commission’s work to which it relates.
- 2) Directly, indirectly, or through another appearing or rendering professional or other services in relation to any matter before the Commission.
- 3) Directly, indirectly, or through another knowingly appearing or rendering services against the interest of the Commission in relation to any case, proceeding, application, or matter before any adjudicative body.
- 4) Knowingly having an interest, direct or indirect, in any contract made by the Commission. In the event a member learns of such an interest, after execution of any such contract, they will immediately disclose to all Commissioners, the Executive Director, and the General Counsel in writing.

- 5) Having any interest, financial or otherwise, direct or indirect, or engaging in any outside activity which is in substantial conflict with the proper discharge of their duties as a Commission member.
- 6) Initiating or 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 person(s) concerning other matters, such discussions shall be disclosed to the Commission, Executive Director, and General Counsel promptly in writing. 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(7), including requests for approval of outside activities and any other matter that is confidential by law.

B. Preventing Conflicts of Interest—Recusal

1) General Rules for Recusal

- a. The Executive Director or their designee is responsible for making all reasonable efforts to apprise the members of the identity of all persons who may be the subject of Commission consideration or action in advance of such discussion, so as to afford the members an opportunity to consider the need for recusal.
- b. Members are expected to recuse themselves from all Commission deliberations and votes on matters relating to any organization, entity, or individual where they have a conflict of interest or their impartiality in the deliberation or vote might be reasonably

questioned. In the first instance, it is the member's responsibility to identify a possible conflict of interest or other factor that may affect their impartiality.

- c. Members are expected to review their pre-meeting agenda and package and identify any party who may raise a question of a conflict of interest or impartiality.
- d. Members are expected to review their professional activities, associations, employment, and relationships for potential conflicts of interests on an ongoing basis.
- e. With respect to any matter from which a member is recused, the member is responsible for notifying, in writing, the Executive Director, General Counsel, and the other Commission members as soon as practicable. The notice need not give the reason for recusal, except as required by law.
- f. (1) Every member is strongly encouraged to seek counsel from the Executive Director or the General Counsel regarding whether that member's recusal from a particular matter before the Commission is required to avoid a substantial conflict between the proper discharge of the member's duties in the public interest and that member's personal, professional, financial, or other interests. Any such communication between a member and the Executive Director or General Counsel will be deemed confidential, except to the extent, and only to the extent, necessary for presentation to the full commission in executive session pursuant to paragraph 2, below, if required, and any advice or guidance rendered resulting from the member's inquiry considered advisory in force and effect.

(2) In the event a member elects not to recuse from a matter before the Commission, over the objection of the Executive Director or the General Counsel, the question of that member's recusal may, on notice to the subject member, be presented to the full Commission for its deliberation and determination. Any required Commission vote shall be taken in executive session at its next regularly scheduled public meeting.

(3) For any member advised by the Executive Director or the General Counsel to have a substantial conflict of interest with respect to a matter pending before the Commission, Commission staff shall withhold any information about that matter from the potentially conflicted member, unless and until otherwise directed by the full Commission.

g. A member who has been recused from a particular matter will receive no further information from the Commission or Commission staff regarding the matter. In addition, the minutes of meetings sent to the recused member will be redacted accordingly to avoid disclosure to the member of information relating to the matter.

h. (1) Within thirty days of joining the Commission, each member shall submit a Memorandum of Recusal ("Recusal List") to the Executive Director, who shall distribute copies to the General Counsel and members of the Commission.

(2) 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.

(3) The Recusal List shall be in the form consistent with Appendix 1 made a part hereof.

(4) Current members of the Commission shall file their Recusal List within thirty days of the adoption of this resolution. Thereafter, each member shall file an updated Recusal List by the thirty-first day of January of each year thereafter.

(5) Each member shall have a continuing obligation to supplement and update their Recusal List as soon as practicable after they become aware of circumstances which warrant disclosure.

2) Situations Requiring Recusal

- a. Financial or Personal Interest Matters. Members are expected to recuse themselves if they have, or have had within the prior two years, any financial or personal interest, direct or indirect, that is incompatible with the discharge of their duties or might reasonably be expected to impair their objectivity and independence of judgment in the exercise of their official duties. A financial or personal interest includes, but is not limited to:
 - i. Employment
 - ii. A debtor/creditor relationship
 - iii. A fiduciary relationship
 - iv. A source of income
 - v. A matter pertaining to a known relative (i.e., a spouse, domestic partner, or person who is a direct descendant of

the individual's grandparents or the spouse of such descendant)

- vi. Investments whereby a decision of the Commission could reasonably be expected to result in any material impact on the value of such investment, either positive or negative
 - vii. A past or present leadership role or other substantial role in a professional, trade, charitable, or not-for-profit organization
 - viii. A matter pertaining to a business investment or contractual relationship
- b. Any other situation, even in the absence of financial or personal interests, depending on the totality of the circumstances.
- c. Prior Private Sector Official Matters. Members are expected to recuse themselves from an official matter involving a private sector individual, association, corporation, or other entity that employed or did business with the member within the prior two years, provided the member had significant involvement in the matter. The term "significant involvement" includes any decision-making or approval authority over the matter.

II. GIFTS AND SPECIAL TREATMENT

A. No member shall, directly or indirectly, solicit, accept, or receive any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, or promise, under circumstances in which it could be reasonably inferred as intended as a reward for any official action on the member's part. Members are encouraged to seek an informal opinion in the event of any questions or doubt as to whether acceptance of the gift is improper or gives an appearance of impropriety.

B. No member should use or attempt to use their membership on the Commission to secure any unwarranted privilege or exemption for themselves or another, including, but not limited to, the misappropriation to themselves or another of the property, services, or other resource of the State for personal, private business, or any other purpose not a part of that member's official State duties or responsibilities.

III. CONFIDENTIAL INFORMATION

Members should make every effort to protect the confidentiality of Commission activities and avoid the unauthorized disclosure of information obtained through their work in accordance with the requirements of Executive Law § 94(11)(d).

IV. PROHIBITED POLITICAL ACTIVITY

Members shall not make or solicit from other persons, any contributions to candidates, political action committees, political parties or committees, newsletter funds, or political advertisements for election to the offices of Governor, Lieutenant Governor, Member of the Assembly or the Senate, Attorney General, or State Comptroller during the term of their service to the Commission.

IV. POST-COMMISSION POLICIES

A. No member shall, within a period of two years after leaving the Commission, appear or practice before the Commission or receive any compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any matter before the Commission.

B. No member, after leaving the Commission, shall at any time appear, practice, communicate, or otherwise render services before any State agency or receive any compensation for services rendered on behalf of any person, firm, corporation, or other entity, in relation to any case, proceeding, application, or transaction in which such member was directly concerned and in which the member personally participated during the member's term on the Commission, or which was under the member's active consideration.

VI. VIOLATIONS OF CODE OF CONDUCT

Any conduct violative of this Code of Conduct will subject the member to action by the full Commission, pursuant to Executive Law § 94(4)(c).

VII. AMENDMENT TO CODE OF CONDUCT

The Commission may amend this Code of Conduct, as necessary; however, no amendment may be adopted at the same meeting at which it has been proposed, so as to allow the public the opportunity to comment on the proposed amendment.

VIII. EFFECTIVE DATE

This Code of Conduct becomes effective on the first day of January 2024.

**APPENDIX 1
MEMORANDUM OF RECUSAL**

_____, as a duly appointed member of the Commission on Ethics and Lobbying in Government, pursuant to the members' Code of Conduct and Executive Law § 94(10)(b), hereby discloses the following list of potential conflicts of interest. This list includes organizations, entities, and individuals if they are subject to the Commission's regulatory oversight and (1) I have had a personal, professional, financial, or other direct or indirect relationship with the organization, entity, or individual within the prior two years, or (2) my relationship with any of them could, if they were the subject of Commission action, require my recusal based upon a conflict of interest or because my impartiality in the deliberation and/or my vote relating to the determination of the matter may reasonably be questioned.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

[Add additional sheets, if necessary]

Pursuant to the Member's Code of Conduct and Executive Law § 94(10)(b), I understand that from time to time during my tenure as a member of the Commission, in the event that additional or potential conflicts may arise, I am under a continuing obligation to supplement the foregoing list.

Print: _____
Commissioner

Dated: _____, 202__

To: Executive Director