

**MINUTES OF THE PUBLIC SESSION OF THE  
JUNE 30, 2015  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT THE COMMISSION'S OFFICE LOCATED AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Chair:** Daniel J. Horwitz (ALB)

**Members:** David Arroyo (NYC)  
Hon. Joseph Covello (Webex)  
Marvin Jacob (NYC)  
Seymour Knox, IV (ALB)  
Hon. Eileen Koretz (NYC)  
Gary J. Lavine (ALB)  
Hon. Mary Lou Rath (BUF)  
David A. Renzi (Webex)  
Michael A. Romeo, Sr. (ALB)  
Hon. Renee R. Roth (NYC)  
Michael K. Rozen (Facetime)  
Dawn L. Smalls (NYC)  
George Weissman (ALB)

**Members  
Absent:**

**Staff:** Letizia Tagliafierro, Executive Director  
Monica J. Stamm, Chief of Staff and Deputy Counsel  
Walter J. McClure, Director for External Affairs  
Steve Boland, Director for Administration  
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and  
Senior Counsel  
Robert Cohen, Special Counsel and Director of Ethics and Lobbying Guidance  
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement  
Emily A. Logue, Investigative Counsel  
Shari Calnero, Senior Counsel and Manager of Training  
Carol Quinn, Associate Counsel  
Michael Sande, Associate Counsel  
Patrick E. Coultry, Chief Investigator  
Terence Mulderrig, Senior Investigator  
Peter Smith, Confidential Investigator  
Lori Donadio, Confidential Legal Assistant  
Deborah Novak, Executive Assistant

**I. CALL TO ORDER**

Chair Horwitz called the June 30, 2015 Commission Meeting to order.

**II. APPROVAL OF MINUTES – PUBLIC SESSION**

**May 27, 2015**

Commissioner Smalls requested an amendment to clarify that she and Commissioner Roth were absent only for the approval of the minutes.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Roth, to approve the minutes from the Public Session of the May 27, 2015 Commission Meeting as amended. The motion was approved by unanimous vote.

**III. REPORT FROM EXECUTIVE DIRECTOR**

**Update on Lobbying Guidance**

Executive Director Letizia Tagliafierro reported that, after the last commission meeting, JCOPE published on its website, and solicited comments on, the proposed guidance regarding the scope of the definition of “lobbying” under the Lobbying Act. JCOPE has received many comments and engaged in many productive discussions. JCOPE has decided to extend the comment period through July 10, 2015 in order to give people additional time to comment, and an e-blast to that effect was distributed.

**Training Update**

Executive Director Tagliafierro announced that JCOPE is offering a new training for users of JCOPE’s online lobbying filing system. This training is designed for the new users and will be offered on Wednesday, July 1, 2015 and again on July 9, 2015. Interested parties may register through the JCOPE website.

**IV. REGULATIONS**

**Proposed Amendments to Outside Activity Regulations**

Executive Director Tagliafierro stated that the proposed Outside Activity Regulations, which apply to officers and employees of the Executive Branch, are before the

Commission today for final approval. In March, the Commission voted to proceed with a rulemaking in accordance with the State Administrative Procedure Act. The regulations were published in the State Register in late April and were subject to a 45-day public comment period which ended on June 8, 2015. If adopted today, the amended regulations will go into effect when they are published in the State Register.

Director of Ethics and Lobbying Guidance, Robert Cohen advised that the proposed amendments do not substantially alter the existing regulations which have been in place for 25 years. The amendments are designed to clarify the existing regulations and practices. The material changes include increasing the compensation threshold for which JCOPE's approval is required from \$4,000 to \$5,000; notification to the employee's state agency of service on the board of a not for profit corporation; and notification to the employee's state agency of continuing outside activities on an annual basis. The Commission received 5-6 sets of comments, and but they do not raise issues that need to be addressed by the Commission.

Executive Director Tagliafierro stated she had a conversation with Commissioner George Weissman who suggested that the Commission further amend the regulations at Part §932-3 to add "substantially" to modify "conflicts" in order to comport with the language in section 74 of the Public Officers Law. Chief of Staff and Deputy Counsel Monica Stamm added that in staff's view the proposed change would not be material and therefore, an additional comment period is not required. Commissioner Dawn Smalls asked if "substantially" is defined. Deputy Counsel Stamm advised that it is not a defined term, and clarified that the modifier comes directly from Public Officers Law §74(2) which states an officer or employee cannot engage in activities which are in substantial conflict with the proper discharge of his duties.

Commissioner Weissman questioned whether Part 932.10, which gives agencies the opportunity to have more restrictive guidelines regarding outside employment, would permit an agency to foreclose an outside activity. Executive Director Tagliafierro stated that it is her understanding that an agency could do so. Deputy Counsel Monica Stamm

explained that agencies can adopt more restrictive rules with respect to outside activities, which go beyond the outside activity regulations and the ethics laws. Other concerns and laws, beyond ethics, also may apply and guide agency policies in this area. However, an agency's determination that certain activities are not permitted does not bind JCOPE in any way with respect to determining whether conduct violates the Public Officers Law. Commissioner Marvin Jacob suggested that the regulations should be clear that if an agency adopts a more restrictive rule it shall not be able to impose upon JCOPE a role in approval beyond those conditions which JCOPE requires. Director Cohen stated that he understands Commissioner Jacob's concern, but the relevant provision has been in place for 25 years, and as a matter of practice, the issue has not arisen. At this point, most agencies are familiar with the procedures, and it is rare that JCOPE receives a request for approval where JCOPE is not required to provide approval by its own regulations. In those instances the matter has been resolved with a call to the ethics officer. Chair Horwitz and Deputy Counsel Stamm discussed that, as a matter of administrative law, JCOPE could not be bound by another state agency's determination with respect to the application of the Public Officers Law. Deputy Counsel Stamm also stated that this same language, allowing agencies to adopt more restrictive provisions, is present in JCOPE's other regulations, and other agencies use similar language in other regulations.

Commissioner Smalls suggested an additional change to Part 932.7(b) to make it clear that agencies determine the time and manner in which the annual notice is made concerning ongoing outside activities. Deputy Counsel Stamm stated that such a change would not be material, as the change is consistent with the spirit of the regulations, so if the Commission proceeds today, another comment period would not be required.

Commissioner Smalls asked Director Cohen to briefly address the 5 or 6 comments that were received. Director Cohen responded the comments ranged from asking for a definition of outside activity or a clarification on specific terms such as public office. One entity thought that JCOPE should have less oversight with respect to outside activities and that the threshold for JCOPE's approval should be raised to \$30,000 in annual compensation. Director Cohen explained that staff recommends only one

additional change based on these comments. Some agencies were concerned that Part 932.6, which previously had language that an agency's determination is not binding on JCOPE, created an impression that an employee could appeal an agency's determination to JCOPE. This was not the intention of the provision nor is the provision necessary, so staff has removed it from the proposed regulations before the Commission today. Director Cohen added that two sets of comments were premised on a fundamental misunderstanding of the existing regulations and the proposed regulations. JCOPE will contact those agencies directly to discuss the purpose of the regulatory scheme that has been in place for the last 25 years.

A motion was made by Commissioner Jacob, which was seconded by Commissioner Roth, to adopt the proposed amended Outside Activity Regulations. The motion was approved by unanimous vote.

**V. NEW AND OTHER BUSINESS**

There was no new or other business discussed.

**VI. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW §94(19)(b)\***

A motion was made by Commissioner Arroyo, which was seconded by Commissioner Roth to enter into Executive Session pursuant to Executive Law §94(19)(b). The motion was approved by unanimous vote.

**VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

Chair Horwitz announced that, during the Executive Session, the Commission discussed certain investigative matters; the Commission approved a substantial basis investigation report and settlement agreement; the Commission commenced certain substantial basis investigations; the Commission closed an investigation; and the Commission approved an application for an exemption pursuant to Public Officers Law §73(8-b).

**VIII. MOTION TO ADJOURN THE PUBLIC MEETING**

A motion was made by Commissioner Romeo, which was seconded by Commissioner Roth, to adjourn the Public Meeting. The motion was approved by unanimous vote.