

**MINUTES OF THE PUBLIC SESSION OF THE  
AUGUST 9, 2016  
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:**

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

**Members**

**Absent:**

**Staff:**

Seth H. Agata, Executive Director  
Monica J. Stamm, General Counsel  
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and  
Senior Counsel  
John P. Harford, Special Counsel and Director of Ethics and Lobbying Guidance  
Walter J. McClure, Director for External Affairs  
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement  
Stephen J. Boland, Director for Administration  
Emily A. Logue, Investigative Counsel  
Patrick E. Coultry, Chief Investigator  
Terence Mulderrig, Senior Investigator  
Peter J. Smith, Investigator  
Michael Sande, Associate Counsel  
Leah Ramos, Associate Counsel  
Lori Donadio, Confidential Legal Assistant  
Deborah Novak, Executive Assistant

**I. CALL TO ORDER**

Chair Horwitz called the August 9, 2016 Commission Meeting to order.

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

**June 28, 2016**

A motion was made by Commissioner Weissman, which was seconded by Commissioner Romeo, to approve the Minutes from the Public Session of the June 28, 2016 Commission Meeting. The vote on the motion was 9-0-3. Chair Horwitz, and Commissioners Koretz, Lavine, Rath, Renzi, Romeo, Roth, Rozen and Weissman voted in favor of the motion. Commissioners Jacob and Smalls abstained from voting because they were not present at the June 28, 2016 Commission Meeting. Commissioner Knox was not present for this vote.

**III. REPORT FROM STAFF**

**First Quarter Financial Report**

Director for Administration, Stephen Boland, stated that the appropriation in the enacted budget for this year is the same as last year. The appropriation is \$4,682,000 for personal service and \$900,000 for non-personal service. During the course of the first quarter, a transfer of \$200,000 was made out of personal service and into non-personal service to cover legal expenses. During the first quarter, the Commission spent \$983,000 on personal service and \$220,000 on non-personal service. Non personal service expenses were approximately \$10,000 for supplies, \$5,000 for equipment, \$7,000 for travel, and \$199,000 for contractual services.

**Outreach and Education Update**

Executive Director Seth Agata provided an update on recent outreach and education activities. Executive Director Agata stated that an Ethics Officer Forum was held for ethics officers at State agencies, attended by 50 ethics officers. The Forum covered post-employment restrictions and was well-received. The Commission expects to hold another forum in the next few months. The Education Unit issued a Spring/Summer

Newsletter in July which was sent to ethics officers and general counsels and is posted on the Commission's website. In addition, in July, "Ethics Reminders" on mandatory ethics training requirements were published and distributed to ethics officers and general counsels and posted on the Commission's website.

Executive Director Agata and other staff members met with the Assembly Ethics Committee to discuss several policy issues that are pending, including the draft FDS client exemption regulations. A follow up meeting is scheduled on August 23, 2016 with representatives from all conferences of the Senate and the Assembly and the Legislative Ethics Commission.

Executive Director Agata and Director of Investigations and Enforcement Pei Pei Cheng deCastro met with the Center for City Law which is part of New York Law School. It co-hosts an annual ethics program with the New York City Conflicts of Interest Board. Discussions included developing projects for JCOPE and publishing a volume on New York State Ethics Laws and jurisprudence similar to the Conflicts of Interest Board's volume on the City's ethics laws. This gives the Commission an opportunity to get involved with the Center and the Conflicts of Interest Board in developing CLE programs, writing articles, and improving the public's understanding of JCOPE's work.

#### **IV. REGULATIONS AND GUIDELINES**

##### **Proposed Emergency Amended Source of Funding Regulations**

Chair Horwitz stated that the staff is proposing that the Commission consider adopting emergency regulations today to effectuate the changes in the June legislation, and at the same time move forward with a process for permanent regulations. Executive Director Agata explained that the June bill has not been signed so it is not effective yet. The source of funding changes in Part D of the law will be effective 30 days from signature. The adjudicatory regulations will be effective immediately. The Commission can proceed on two tracks: the emergency regulations and final regulations through the SAPA process. Staff proposes that the Commission focus on the changes that need to be made now. Staff is developing drafts of more comprehensive lobbying regulations which it

hopes to begin presenting in September and the Commission can take up other issues then.

Director of Lobbying and Financial Disclosure Compliance and Senior Counsel Martin Levine explained the proposed changes to Title 19, Part 938, the current Source of Funding Regulations. There are three substantive issues and two procedural issues. First under current law, a lobbying organization, which is also a client, is required to disclose its sources of funding if it spends more than \$50,000 annually on lobbying in New York and such lobbying constitutes at least 3% of its total expenditures. Under the new law and in the proposed regulations, that expenditure threshold will be lowered from \$50,000 to \$15,000. The second change is that the minimum annual contribution that would trigger disclosure of a source falls from \$5,000 to \$2,500. The third substantive change in the law provides that contributions made to an organization for membership dues, fees or assessments are not included in the amounts that get disclosed as a source. The same sources would be disclosed but any amounts attributable to membership dues would not be reported in the amount of the contribution. In terms of implementation, once the bill is signed, the law goes into effect within 30 days and thus, it will be in effect when the next Client Semi-Annual filing is due in January 2017.

In order to balance the need to effectuate the provisions in the statutory timeline with principles of fairness (not imposing disclosure requirements before there was notice of the lower threshold), it is proposed that the Commission create a new subpart 938.3-a which deals solely with the filing deadline in January 2017 and covers activity in the second half of calendar year 2016. The subpart provides clear guidance on this one filing period where the law changes in the middle of the year. The proposed regulations will have a springing effective date because the bill has not yet been signed; the regulations will not go into effect until 30 days after the bill is signed.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Knox, to approve the proposed emergency regulations and to proceed under SAPA with

both emergency and permanent regulations. The motion was approved by unanimous vote.

### **Proposed Emergency Amended Adjudicatory Proceedings and Appeals Procedures**

Executive Director Agata explained that the changes to the Commission's procedures are located in Part J of the Ethics Reform Bill. One of the purposes of the changes is to provide Legislators and legislative employees with a hearing. This change is effectuated in Part 941.3 of the proposed emergency regulations, providing that a Notice of Substantial Basis Investigation and Hearing will be issued by the Commission and given to the Respondent. The content of that Notice is laid out in the statute which includes allegations of legal violations, the factual basis for the allegations and notice that any further information will be provided to Respondent prior to the hearing. The Notice begins the formal adjudicatory process. Before this point, the investigative process will continue as it did before. A major consequence of the legislative changes is that the hearing is going to be confidential. Under JCOPE's and its predecessor's procedures, hearings were held in public. Because of the placement of these hearing requirements in the statute, what had previously been in the discretion of the Commission is now specifically covered by the confidentiality provisions of the Executive Law. Notably holding confidential hearings is consistent with the practice of the State Commission on Judicial Conduct and the New York City Conflicts of Interest Board.

The legislation also provides that seven days before the hearing, the Respondent must be provided "any additional evidence" supporting the allegations that was not described in the Notice; this is addressed in the proposed regulations. Part 941.10 deals with the confidentiality of the hearing; however, as explained in the regulations, the ultimate report of the Commission is still public. Part 941.13 describes that after a hearing, the Hearing Officer has 60 days to make Findings of Fact and Recommendations on the appropriate penalty and then those recommendations are provided to the Respondent and to the Commission. Within 30 days of the transmittal of that Finding of Fact, the Respondent has an opportunity to address the Hearing Officer's decision in a written brief to the Commission. The Commission staff will submit a proposed Substantial Basis

Investigation Report to the Commissioners which will include findings of fact, conclusions of law, and assessment of penalty. After receipt of the Proposed Report, the Commission then has 60 days to vote on whether or not to issue a SBIR. The Commission retains full discretion to accept the Hearing Officer's recommendations, in whole or in part, or it can reverse, remand or dismiss it. The ultimate authority still rests with the Commission.

Executive Director Agata also summarized other changes in the regulations. A Commissioner had previously raised a concern about the impact on the Legislative Ethics Commission's procedures. The proposed regulations now make it clear, that when JCOPE issues the SBIR, the matter will be governed by Legislative Law Section 80.

Finally, Parts 941.20 and 941.21 provide the effective date for the regulations which will be when the Governor signs the bill. Part 941.20 deals with matters that are already before the Commission. There are two matters in which SBIRs have already been issued and are pending. Those matters will continue to be governed by the provisions of law that were in effect at the time that those SBIRs were issued.

Commissioners discussed some of the changes in the proposed emergency regulations.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Koretz, to approve the proposed emergency amended Adjudicatory Proceedings and Appeals Procedures Regulations and to proceed under SAPA with both emergency and permanent regulations. The motion was approved by unanimous vote.

### **Proposed Amended Meeting Guidelines**

General Counsel Monica Stamm explained that the changes in the legislation also affect the Commission's Meeting Guidelines. In its discretion, the Commission had previously provided that the Hearings on Investigative and Enforcement Proceedings would be public. The proposed amended guidelines remove the language providing that hearings

will be conducted publically; thus, rendering them confidential to conform with the statute. The change will become effective upon signing of the law.

A motion was made by Commissioner Romeo, which was seconded by Commissioner Knox, to approve the proposed amended Meeting Guidelines. The motion was approved by unanimous vote.

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

A motion was made by Commissioner Romeo and seconded by Commissioner Koretz to enter into Executive Session pursuant to Executive Law §94(19)(b). The motion was approved by unanimous vote.

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

Chair Horwitz announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission discussed a number of personnel matters, reviewed outstanding litigation issues with counsel, granted a request by staff to contact certain agencies regarding Financial Disclosure Compliance under Executive Law §94(12), considered two, and granted one exemption to the Revolving Door Provisions of the Public Officers Law §73(8)(b). The Commission considered and commenced 6 Substantial Basis Investigation against individuals and/or entities. The Commission closed an investigative matter, adjourned a matter, and received updates from staff on 9 pending Substantial Basis Investigations.

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

A motion was made by Commissioner Weissman, which was seconded by Commissioner Romeo, to adjourn the Public Meeting. The motion was approved by unanimous vote of Chair Horwitz and Commissioners Jacob, Knox, Koretz, Lavine, Renzi, Romeo, Roth and Weissman. Commissioners Rath, Rozen and Smalls were not present for this vote.