

**MINUTES OF THE PUBLIC SESSION OF THE  
JANUARY 29, 2013  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT THE COMMISSION'S OFFICE LOCATED AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Present:**

**Chair:** Hon. Janet DiFiore

**Members:** Patrick J. Bulgaro  
Hon. Joseph Covello (*via Skype*)  
Hon. Vincent A. DeIorio  
Mitra Hormozi (*via Skype*)  
Daniel J. Horwitz (*via Skype*)  
Marvin E. Jacob (*via Skype*)  
Seymour Knox, IV  
Gary J. Lavine (*via Skype*)  
Mary Lou Rath  
David A. Renzi (*via Skype*)  
George H. Weissman  
Ellen Yaroshefsky

**Members**

**Absent:** LaShann M. DeArcy

**Staff:** Ellen N. Biben, Executive Director  
Monica J. Stamm, Chief of Staff and Deputy Counsel  
Jeannine Clemente, Director of Administration  
Robert Cohen, Special Counsel and Director of Ethics and Lobbying  
Compliance  
John T. Milgrim, Director for External Affairs  
Letizia Tagliafierro, Director of Investigations and Enforcement  
Patrick Coultry, Chief Investigator  
Jack Patterson, Confidential Investigator  
Terence Mulderrig, Senior Investigator  
Shari Calnero, Associate Counsel  
Louis Manuta, Associate Counsel  
Deborah Novak, Executive Assistant

**I. OPENING STATEMENT**

Chair DiFiore opened the Public Session.

**II. MINUTES - PUBLIC SESSION – DECEMBER 18, 2012**

Commissioner Rath questioned whether the letter received from the Legislative Ethics Commission concerning gift regulations and her comments regarding that letter appeared in the minutes and whether staff had responded to the letter. Executive Director Biben noted that the minutes do reflect an active dialogue with LEC, on page 4, but not a specific reference to the letter. The Executive Director also explained that JCOPE has not responded to the LEC in writing because staff has been engaged in a very productive dialogue with LEC in an effort to draft informed gift regulations, which could possibly be joint regulations. Staff anticipates finalizing that draft soon and posting the draft on JCOPE's website to solicit further public comment to incorporate before proposing regulations for the Commission to adopt pursuant to SAPA.

It was discussed that a specific reference to LEC's letter should be added to the minutes. Upon motion made by Commissioner Weissman, which was seconded by Commissioner Bulgaro, the Minutes from the Public Session of the December 18, 2012 Commission Meeting were approved as modified by unanimous vote of twelve Commissioners. Commissioner Hormozi was not present for this vote.

**III. EXECUTIVE DIRECTOR'S REPORT**

**Staff Update**

Executive Director Biben announced the Buffalo Office is now open. JCOPE has hired an investigator, the first staff member in the Buffalo Office, so we are looking forward to using that office.

### **Quarterly Financial Report**

Jeannine Clemente, Director of Administration, provided an update on the quarterly financial report for the third quarter of Fiscal Year 2012-13, announcing that the Commission has spent a total of \$1.8 million on personal services, which is 59% of our personal services cash allowance, and \$467,000 on non-personal services, which is 55% of our cash allowance, for a total of \$2.3 million.

### **Regulation Update**

Executive Director Biben provided an update on some of the pending regulations. The Source of Funding regulations are proceeding on two tracks. The emergency regulations are effective. The proposed regulations have been published in the State Register, and the public comment period ends on February 8, 2013. Staff anticipates that after reviewing those comments, it will present the regulations for the Commission's further consideration and finalization at the February meeting.

As to the gift regulations, the Executive Director reiterated that staff has been very involved in productive conversations and ongoing dialogue with the LEC. Staff has resolved most issues and has a solid draft, but one issue of continued debate is whether or not to place a value on, or assign a dollar amount to, "nominal" in the definition of what is a "gift". There are very good arguments for both approaches. One argument against assigning a dollar figure is that the Legislature intended "nominal" to be a fluid concept that has different meanings under different contexts. Alternatively, assigning a dollar value would provide helpful clarity to the regulated community. Executive Director Biben did not think this issue needs to be resolved at this time, but wanted to flag it for the Commission. The recommendation is that the draft regulations be posted on JCOPE's website to solicit public comment and then come back to the Commission for the February meeting with proposed draft regulations to adopt pursuant to the SAPA process.

### **January 15, 2013 Filings**

The Executive Director announced that the January 15, 2013 filing deadline, which include the new disclosures under the source of funding and reportable business relationships requirements, passed relatively smoothly. Those filings are being processed by staff. As they are processed, the filings will be posted on JCOPE's website on a rolling basis and should become available shortly.

### **Training Update**

Executive Director announced that staff has been engaged in a number of ethics trainings. Those have been very productive and well received. In addition, staff have held lobbying trainings for the new disclosure requirements for which staff received positive feedback. Staff is working to expand its training curriculum so that more programs and trainings are available, including web-based programs, as soon as the technology is available.

During the trainings, and as part of the regular business of the agency, staff informally fielded questions relating to the new disclosure requirements and provided guidance to the regulated community. There also were one or two requests for advisory opinions, but the Executive Director explained that this may not be an appropriate mechanism for the Commission to address a question of compliance with a filing requirement. For example, the Executive Director noted that in the weeks shortly before the January 15 deadline, questions were raised informally about the definition of a State person in the reportable business relationship guidelines. Staff recognized the significance of the issue, that the statute did not provide a definition of State person and JCOPE's guidelines merely quoted the statutory language. It is a great example of when the regulated community can bring to our attention an area where staff could provide greater clarity. Staff reacted quickly, communicated with the Commission, and sent an e-blast to the regulated community with guidance. One of the matters on the agenda today for the

Commission's consideration is to formally amend the guidelines consistent with the guidance staff provided.

#### **IV. REPORTABLE BUSINESS RELATIONSHIP GUIDELINES**

##### **Proposed Amended Guidelines**

Executive Director Biben discussed the reportable business relationship guidelines which the Commission previously ratified. However, as just mentioned, further guidance was necessary and was communicated through an e-blast because staff wanted to notify the regulated community in advance of the filing date. Staff is now asking the Commission to formally ratify the modification to the guidelines. The change appears in the guidelines for both the lobbyists and clients, and it is the addition of the definition of State officer and employee.

Commissioner Weissman raised an issue relating to the definition of client in the guidelines. Looking at the definition of client in the Lobbying Act, the Commissioner cannot find the basis for the clause in the definition in the guidelines which extends the disclosure requirements to partners, directors or executive management of the client organization. Executive Director Biben acknowledged that the language in the Guidelines does not come from the Lobbying Act definition of client, but stated that this is an issue that has been raised from the outset during the drafting process by the regulated community in the comments submitted to the Commission and in informal communications with staff. Staff believed that it proposed a thoughtful compromise: the client clearly has to be more than just the organization itself if the statutory intent is to provide transparency as to the various relationships that exist with state employees and their businesses. This is not to say that such relations are improper, but just to provide the transparency, so the public understands who has relationships with whom and that there are not any conflicts. Commissioner Weissman agreed with the need for transparency. The Executive Director stated that this goal must be balanced so it is not so

onerous on the regulated community. The guidelines attempted to strike the right balance, drawing the line at the individuals who would be involved in the management of the client organization. The issue that Commissioner Weissman is raising, which also has been raised by the regulated community, is that the line should be drawn differently, or that there should be some exception for organizations with large boards or multi-national boards. The Commission has approved the guidelines, but it can revisit this issue.

The Executive Director and staff will engage the regulated community on these issues through trainings and other meetings. Commissioner Weissman asked the Chair if the Commission could get a report back by the March meeting if any progress has been made. Executive Director Biben said it is very workable.

A motion was made by Commissioner Weissman, which was seconded by Commissioner DeIorio, to ratify the proposed amended guidelines, with the understanding that staff will report back to the Commission about whether or not there needs to be further refinement to the definition of client. The motion was approved by unanimous vote.

## **V. STAFF RECUSAL POLICY**

### **Standard of review**

Executive Director Biben announced that a subcommittee was created to work with staff to administer the staff recusal policy the Commission previously adopted. Staff and the subcommittee had a very productive meeting. Executive Director Biben deferred to Commissioner Yaroshefsky, who was on the subcommittee.

Commissioner Yaroshefsky stated that in previous meetings there was discussion of the need to have further clarity concerning the role of staff who had previously worked on a matter while serving another government agency, not to address conflicts of interest, but to ensure transparency and accountability. For guidance, the

subcommittee looked at a related attorney ethics rule on prior government service, which is not applicable here, that prevents taking any advantage of government confidences in private practice and likewise from private practice to government service. The subcommittee adopted a standard based on the ethics rule, which is in the Commission materials, that provides if staff participated personally and substantially in investigating a matter in another agency, then staff would have to be screened off from the investigation at this agency.

The subcommittee used the definition of personally and substantially from the Code of Federal Regulations, which essentially says that if you participate through the exercise of discretion, approval, disapproval, recommendation, or the rendering of advice on an investigation or otherwise, that would mean that you participated personally and substantially. Personally means direct involvement and includes participation of a subordinate when directed by the former government employee. Substantially means that the employee's involvement must be of significance to the matter or form a basis for the reasonable appearance of significance and it requires much more than just official responsibility. With this standard in mind, the subcommittee, which comprised of Commissioners Yaroshefsky, Weissman, and DeArcy, had a productive conversation with Ellen Biben and Monica Stamm, and the subcommittee made decisions, as documented in a chart prepared with the assistance of staff. This is the standard the subcommittee will continue to use going forward in implementing the staff recusal policy.

**VI. NEW AND OTHER BUSINESS**

There was no new business.

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

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

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

Chair DiFiore announced that there was no reportable action taken in the Executive Session.

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

Upon motion made by Commissioner DeIorio, seconded by Commissioner Weissman, which was approved by unanimous vote, the meeting was adjourned.