

**MINUTES OF THE PUBLIC SESSION OF THE  
DECEMBER 15, 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:** Hon. Joseph Covello (ALB)  
Marvin Jacob (NYC)  
Seymour Knox, IV (ALB)  
Hon. Eileen Koretz (ALB)  
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 (Webex)  
Dawn L. Smalls (NYC)  
George H. Weissman (Webex)

**Members**

**Absent:** David Arroyo

**Staff:**

Monica J. Stamm, General Counsel  
Kevin T. Gagan, Chief of Staff  
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and Senior Counsel  
John P. Harford, Special Counsel and Director of Ethics and Lobbying Compliance  
Stephen Boland, Director for Administration  
Walter J. McClure, Director for External Affairs  
Emily A. Logue, Investigative Counsel  
Stacey Hamilton, Manager of Education Program and Special Counsel  
Carol Quinn, Associate Counsel  
Michael Sande, Associate Counsel  
Leah Ramos, 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 December 15, 2015 Commission Meeting to order.

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

**October 27, 2015**

A motion was made by Commissioner Covello, which was seconded by Commissioner Koretz, to approve the minutes from the Public Session of the October 27, 2015 Commission Meeting. The vote on the motion was 11/0/1. Commissioner Smalls was not present at the October 27, 2015 commission meeting so she abstained from voting. Commissioner Romeo was not present for this vote.

**III. REPORT FROM STAFF**

**Meeting Schedule – January through June 2016**

Chair Horowitz stated that the staff circulated a proposed meeting schedule for the first six months of 2016 and hasn't heard from any commissioners that the proposed schedule poses personal or professional conflicts so the meeting schedule is final and will be posted on JCOPE's website.

**Update on Outreach Activities**

Manager of Education Program and Special Counsel Stacey Hamilton stated that JCOPE distributed a fall/winter newsletter that concentrated on gifts. The newsletter was well received and generated positive feedback. Special Counsel Hamilton also indicated that the Training Unit conducted outreach efforts to agency Ethics Officers and General Counsels, inquiring if they would be interested in participating in an Ethics Forum. Over 75 responded that they were interested in participating and provided lists of topics for discussion. The first forum will be held on January 14, 2016 and will cover Outside Activities. An e-blast will also be going out before the end of the year.

**Website Update**

General Counsel Stamm provided an update on the redesign of the JCOPE website. The Commission has retained an outside vendor to work closely with staff and ITS to

redesign the face of the JCOPE website. The goal is to make the website more user friendly and streamlined, so information is easier to find. Staff has conducted some group sessions with members of the public and other stakeholders to get input on improvements, and anticipates that the project will be completed in January.

**IV. SEARCH FOR EXECUTIVE DIRECTOR**

Chair Horwitz provided an update regarding the ongoing search for an executive director. The search committee has received over 200 resumes and is in the process of interviewing candidates. That process will continue into early January and the committee is hopeful that it can make some recommendations to the full Commission soon.

**V. ADVISORY OPINIONS PURSUANT TO EXECUTIVE LAW §94(16) AND THE LOBBYING ACT**

Chair Horwitz stated that JCOPE has a number of advisory opinions that are pending, that have been discussed over the last several meetings, that staff have solicited and received comments on, and asked staff to walk through each opinion.

**Lobbying and Social Media**

Director of Lobbying and Financial Disclosure Compliance Martin Levine explained that staff is looking into some outstanding legal issues in the lobbying regulatory scheme and approaching them on an individual basis. The long term goal is to repeal and reissue the lobbying guidelines, incorporating this guidance. The Commission has been working on guidance on lobbying and consulting. It is now moving forward to develop guidance on social media activities. Grassroots lobbying and social media are the topics that have generated the most questions to staff. Based on the growing use of emerging and emergent technologies, staff has framed questions for public comment that lay out an approach for how the lobbying law might apply to social media. Principles to keep in mind are not only what constitutes lobbying in social media, but also who is lobbying and what are the costs associated with that activity. Lobbying and registration is based on an expenditure threshold, so the costs have to be considered in order to determine whether the activity meets the threshold. Director Levine presented the specific issues that will be

covered in the material staff plans to post on JCOPE's website after the meeting in order to solicit public comment.

Commissioner Smalls questioned why staff is addressing these issues on an ad hoc basis if staff contemplates a broader overhaul of the lobbying regulations. Director Levine stated that overhauling the lobbying guidelines all at one time would be an overwhelming undertaking, so staff has determined that it would be more efficient and effective to bring each issue to the public one at a time, solicit input, reach a conclusion and then incorporate those conclusions into a final comprehensive guidance document.

Chair Horwitz stated that staff is proposing this guidance because enough questions have been received from the public and the regulated community to demonstrate that these issues need to be addressed in a timely manner. Chair Horwitz stated that this approach is more streamlined and more efficient than going through the full regulatory process that issuing new regulations entails. That does not necessarily mean that if there are underlying issues that require some regulatory change, which is a different process, that those issues should not be taken up in that regulatory process. The staff has been trying to balance those two competing issues.

### **Reporting Obligations under the Lobbying Act for Consultants**

Director Levine updated the Commission on the proposed guidance on Reporting Obligations under the Lobbying Act for Consultants. He indicated that JCOPE received positive feedback. The current version of the advisory opinion holds that in the application of the grassroots lobbying test to consultants, a consultant needs to have both participation (a "meaningful role") in the delivery of the message and the formation of the content. The comments received sought clarity regarding "meaningful role" and "formation of content." Comments indicated that some practitioners felt that it was too vague a concept. Other comments received pertained to consultants who operate in the space between the time that the message is drafted and the time it is delivered to the public. There are a number of steps that happen during that time where the consultant may engage in a series of activities, but never have any public exposure, the consultant's

connection is purely with their client. In response to these comments, staff is proposing a revision to the opinion. With respect to the application of grassroots lobbying to consultants, there needs to be engagement in the actual delivery as well as some role in the content.

Chair Horwitz stated that staff will post the revised opinion, continue to review the comments received, and present a revised draft for the Commission to consider at the next meeting.

### **Campaign Solicitations by Elected Officials**

Chair Horwitz stated that with respect to the Advisory Opinion on Campaign Solicitations by Elected Officials, the Commission has received public comments, including an additional letter from the Legislative Ethics Commission, which was received this morning and will be distributed to the Commission after the meeting.

Associate Counsel Michael Sande explained that JCOPE has received comments from several public entities that have identified potential issues and concerns with the proposed guidance. The comments have been published on JCOPE's website and are available for review. A summary of some of the more salient issues are as follows: there is uncertainty as to whether the term "subject" includes a person that is the potential subject of enforcement powers, or just the actual subject of enforcement powers. The term "subject" includes a relative of the subject or a person with a financial interest in an entity that is the subject of enforcement powers. Comments received suggested that this is too broad because it would be impractical for an elected official to have knowledge as to whether the contributor is a relative of a "subject" or holds a financial interest in a "subject" of enforcement powers. Issues were also raised regarding "actual knowledge." As discussed in the opinion, the elected official would be responsible for the actions of his/her campaign staff if he had actual knowledge of those actions. The City Bar submitted two sets of comments. In its initial comments it stated that an elected official should be presumed to know the identity of his/her significant donors. The City Bar and Common Cause suggested that the term "subject" should be extended beyond

enforcement powers to include all persons or entities which have an active matter before the state, or to any person or entity which is attempting to influence pending legislation. Both the Comptroller's office and NYPIRG suggested the opinion could be extended beyond elected officials running for re-election.

Chair Horwitz stated that the City Bar submitted a second and more comprehensive set of comments, dated December 14, addressing that the opinion only covers matters in which the elected official participates personally and substantially. General Counsel Stamm explained that the City Bar's second set of comments were submitted in response to the Comptroller's Office position that the opinion could be interpreted too broadly, leading to absurd results. The City Bar disagreed, and stated that it can be inferred that the opinion would only apply to enforcement actions in which an elected official has personal and substantial participation, but suggested that this language be added for clarity.

Commissioner Weissman asked about the LEC's letter.

Chair Horwitz read the letter from the LEC:

Monica Stamm, General Counsel, New York State Joint Commission on Public Ethics, 540 Broadway, Albany, New York 12207, Dear Monica: Thank you for contacting the Legislative Ethics Commission (LEC) regarding JCOPE's proposed advisory opinion updating previous opinion 98-12. It is our understanding that the revised draft states that, unlike Advisory Opinion 98-12, it will apply to the Legislature.

Based upon Section 94 of the Executive Law and Section 80 of the Legislative Law, JCOPE does not have the authority to issue advisory opinions for legislators, legislative staff or candidates for the legislature. Specifically, Executive Law Section 94(16) states, in relevant part:

Upon written request from any person who is subject to the jurisdiction of the commission and the requirements of sections seventy-three, seventy-three-a or seventy-four of the public officers law, other than members of the legislature, candidates

for member of the legislature and employees of the legislature, the commission [JCOPE] shall render written advisory opinions on the requirements of said provisions...

The LEC appreciates JCOPE raising this issue. The Commission intends to review the matter to determine if specific guidance for the Legislature in the form of an Advisory Opinion issued by the LEC is warranted. Please contact me at your convenience should you wish to discuss this matter further, best regards, Lisa Reid, Executive Director and Counsel.

Commissioner Weissman stated that the LEC letter can effectively be summed up to say that the LEC believes that JCOPE does not have jurisdiction to issue opinions for legislators and candidates for the legislature.

Chair Horwitz stated that his interpretation of the statute is that we do have jurisdiction to issue the advisory opinion. It is an advisory opinion, not a statute or a regulation. Chair Horwitz stated that the Commission will consider the LEC's comments as well as others and continue the discussion at the next Commission meeting.

## **VI. REGULATIONS**

### **Proposed Regulations for an Exemption from Publicly Disclosing Client Information in Financial Disclosure Statements**

Chair Horwitz stated that, in response to a request from Commissioner Rath, staff has prepared a PowerPoint presentation to compare JCOPE's proposed regulation to the Office of Court Administration's proposed regulation. Last year's budget provision regarding exemptions, and the enhanced FDS filing requirements, set up a menu of choice A, or choice B, as to who a filer can apply to for an exemption. There are some differences between the proposed regulation that JCOPE is considering and the regulation that OCA is considering. The Commission has received public comments that staff will present today. The Commission can have a discussion about the regulations but Chair Horwitz suggests that more careful and deliberate thought be given to the exact parameters of the regulation.

Special Counsel and Director of Ethics and Lobbying Compliance John Harford explained that since the moment the Commission began discussing the proposed regulations there was concern expressed by a number of the Commissioners. The potential for an exemption from certain disclosures or for deletions of items within a financial disclosure statement have previously been possible, however, JCOPE was the only authority that could grant such an exemption or deletion. With the change in the law, there are now two places a person can go to seek an exemption from disclosure. How that exemption has been characterized has also changed. The moment this was recognized, the Commission expressed a desire, to the greatest extent possible, to have JCOPE's regulations be harmonious with OCA's regulations. The Commission wants to eliminate any potential for forum shopping, so no advantage can be gained from going to one entity instead of the other. Since the last Commission meeting, proposed changes were made to the draft regulations in an effort to harmonize them with OCA's draft regulations. Director Harford used a PowerPoint presentation to illustrate the differences and the potential results. One significant difference is that OCA provides that in the first instance, someone requesting an exemption can withhold both the name of the client, as well as the expected compensation. OCA does reserve the right, if it deems that information necessary, to request it from the person seeking the exemption. Director Harford explained that another significant issue is the potential consequence if an exemption is granted. JCOPE staff's position in the proposed regulations is that the client's identity would be exempt from public disclosure. If the exemption is granted, the Commission would redact the client's identity from any public disclosure of the Financial Disclosure Statement. OCA does not take a position on this issue, deferring to JCOPE's authority to enforce the FDS requirements. That poses the question for this Commission to decide, if a request for exemption is granted, should JCOPE require the filer to provide that information in the Financial Disclosure Statement filed with JCOPE.

Commissioner Lavine asked if staff discussed with OCA how they were going to undertake an evaluation for an exemption without eliciting the client's name. General Counsel Stamm explained that based on discussions with counsel at OCA, OCA believes

that there may be instances when the determination is obvious based on the type of representation provided. General Counsel Stamm reminded the Commission that OCA posted its regulations for public comment after JCOPE's last meeting, and may make changes. Commissioner Lavine followed up asking whether, in the circumstance in which OCA does elicit who the client is, OCA is prepared to divulge that information to JCOPE if requested. General Counsel Stamm explained that she has not had those discussions with OCA.

Chair Horwitz stated that Commissioner Lavine raised two very good points. While it is reasonable that an individual would not want the identity of certain clients to be disclosed publicly, that policy needs to be balanced against the need to determine whether or not there is a conflict of interest. If you do not know who the client is, you cannot figure out if there is a conflict of interest. That seems to be an inherent problem in OCA's regulations, but that is for OCA to address. With respect to the second question that Commissioner Lavine asked, the Chair indicated that there isn't anything in the law that requires OCA to give JCOPE the information so if OCA did not provide it JCOPE would be powerless to do anything about it. These are issues that the Commission has to give serious consideration.

Commissioner Covello asked if the Commission is contemplating that if OCA grants the exemption, would JCOPE require the filer to list the exempted party on the FDS? Chair Horwitz stated that is one of the issues that the Commission has to consider. Chair Horwitz explained that the issue is that OCA does not have enforcement power relating to FDS filing requirements. OCA is simply the receptacle of the information in an exemption application. OCA is not authorized to act on that information, conduct an audit, or determine whether or not there is a conflict of interest. That is the role of the Commission. If applications for an exemption are made to OCA, how does JCOPE meet the mandate in auditing and enforcing the Lobbying Laws to determine whether there is a conflict of interest?

Commissioner Koretz stated that OCA's process is much easier. Chair Horwitz stated that if OCA's process is less onerous and presents less of an opportunity for scrutiny by a regulatory body, then there could be forum shopping which has obvious implications.

Commissioner Romeo agreed that no one would ever apply to JCOPE if they could just go to OCA. The Commission would never know if a party did something improper because the Commission would not have received the information.

Commissioner Weissman thanked Director Harford for the PowerPoint and requested that the presentation be sent to the Commissioners. Chair Horwitz said that staff will do so after the meeting.

Commissioner Rath thanked Director Harford for the presentation which was prepared on very short notice at the request of some Commissioners. Commissioner Rath believes that the process has been very helpful.

Commissioner Weissman stated that the last time they spoke he asked if the statutory exemptions could be included in the regulations for the convenience of those filers who are not as familiar with the statutory requirements. General Counsel Stamm explained that there are three sections of the statute that describe the various other types of exemptions which will be difficult to incorporate. Instead, like OCA, staff proposed adding a preamble to the regulation which references the other exemptions.

Chair Horwitz suggested that the exemptions could be incorporated into the instructions that accompany the FDS form. Commissioner Weissman believes that is a very good idea, and stated that if any JCOPE Commissioners have to fill out an application for an exemption, for transparency purposes, they should probably go to OCA.

Commissioner Lavine asks if OCA grants an exemption, would the Commission be informed. General Counsel Stamm explained that the exemption application is confidential pursuant to the statute and there is nothing in the statute that compels OCA to inform JCOPE that an exemption has been granted. Commissioner Lavine believes

there needs to be a further discourse with OCA. First, on the question of whether OCA is going to automatically notify this Commission when it grants exemptions, which he believes should be the case. The second question is, if JCOPE makes a request to OCA with respect to an exemption having been granted for the underlying information, will OCA divulge it to the Commission.

Chair Horwitz stated that perhaps OCA should rethink what they are going to do with the information they receive due to the fact that they are not a regulatory agency. These questions are all the right questions but the Commission does not have the ability to require OCA to provide the information to JCOPE. It would seem that JCOPE, the public, the regulated community and the people who are subject to FDS filing requirements would be well served if there was clarification on this point.

Commissioner Rath asked how the Commission could be left in a position where JCOPE might not find potential conflicts of interest because OCA has withheld them, and suggested that this issue needs to be addressed by the Legislature. Chair Horwitz does not know if this actually needs to be clarified with another statute, but agrees that JCOPE needs the information in order to do its job in determining whether there is a conflict of interest.

Commissioner Rath questioned how JCOPE could determine if there is a conflict of interest if OCA does not give JCOPE the exemption information. General Counsel Stamm explained that these concerns are covered in the current proposed version of the regulations. It is JCOPE's statutory obligation and mandate to interpret the FDS obligations and provide instructions. The current regulations would require that the client name be given to JCOPE so that JCOPE can review potential conflicts of interest under the ethics laws. The Commission can then, as it does in the case of other redactions and exemptions, make sure that the information is not disclosed to the public if OCA or JCOPE has granted the request for an exemption.

Commissioner Lavine asked if under JCOPE's regulations, it will be informed if OCA grants an exemption. General Counsel Stamm explained that under the current regulations, JCOPE will not know an exemption has been granted until the FDS is filed. Under the proposed regulations the filer is required to disclose that information in their FDS statement. General Counsel Stamm stated that staff has not discussed with OCA whether they will voluntarily disclose to JCOPE the exemptions it has granted.

Chair Horwitz stated that there are obviously some questions that need to be resolved, and the staff will follow up with OCA and others on these issues and report to the Commission at the next meeting.

**VII. NEW AND OTHER BUSINESS**

There was no new business.

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

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

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

Chair Horwitz announced that, during the Executive Session, the Commission commenced three investigations, discussed several other investigative matters and had a discussion covered by the attorney-client privilege in relation to two litigation matters.

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

A motion was made by Commissioner Koretz, which was seconded by Commissioner Knox, to adjourn the Public Meeting. The motion was approved by unanimous vote of those Commissioners present. Commissioners Renzi and Roth were not present for this motion.