

**MINUTES OF THE PUBLIC SESSION OF THE  
DECEMBER 20, 2016  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT THE COMMISSION'S OFFICE LOCATED AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Members:**

Marvin Jacob (Webex)  
Seymour Knox, IV (BUF)  
Hon. Eileen Koretz (NYC)  
Gary J. Lavine (ALB)  
J. Gerard McAuliffe, Jr. (ALB)  
David A. Renzi (Webex)  
Hon. Renee R. Roth (NYC)  
Dawn L. Smalls (NYC)  
George H. Weissman (ALB)

**Members**

**Absent:**

Michael K. Rozen

**Staff:**

Seth H. Agata, Executive Director  
Monica J. Stamm, General Counsel  
Stephen J. Boland, Director of Administration  
Martin L. Levine, Director of Lobbying and Senior Counsel  
Walter J. McClure, Director of Communications and Public Information Officer  
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement  
Emily A. Logue, Deputy Director of Investigations and Enforcement  
Patrick E. Coultry, Chief Investigator  
Peter J. Smith, Investigator  
Erin R. Lynch, Associate Counsel  
Stephanie Blattmachr, Associate Counsel  
Carol C. Quinn, Deputy Director of Lobbying Guidance  
Leah Ramos, Deputy Director of Financial Disclosure Compliance  
Lori Donadio, Investigative Analyst  
Deborah Novak, Secretary to the Commission

**I. CALL TO ORDER**

Commissioner Lavine called the December 20, 2016 Commission Meeting to order.

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

**November 29, 2016**

A motion was made by Commissioner McAuliffe, seconded by Commissioner Jacob, to approve the Minutes from the Public Session of the November 29, 2016 Commission Meeting. The vote was 8-0-1. Commissioners Jacob, Knox, Koretz, Lavine, McAuliffe, Renzi, Roth and Smalls voted in favor of the motion. Commissioner Weissman abstained from voting because he was not present at the November 29, 2016 Commission Meeting. The motion carried.

**III. REGULATIONS**

**Exemption from Publicly Disclosing Client Name in Financial Disclosure Statements**

Executive Director Agata stated that this matter has been before the Commission since last year. For the Commission's consideration are three possible options on how to proceed on this issue which will impact filers in 2017 for the 2016 reporting year. The statute provides that filers may seek an exemption from the Office of Court Administration or JCOPE from disclosing the names of clients. OCA has promulgated regulations on how to process those requests. The Commission must also establish procedures, but first it must consider what must be disclosed concerning such exemptions.

There are three options for the Commission's consideration:

- First, the Commission can adopt a position similar to the Legislative Ethics Commission. Based on discussions with the LEC, it has not issued any formal guidance, but on an *ad-hoc* basis, LEC is advising its filers that they do not need to disclose any information on a Financial Disclosure Statement if an exemption is granted. The LEC believes that practice is

consistent with current practice for other exemptions and the other carve-outs for not disclosing clients.

- Second, the Commission can follow the literal reading of the statute which provides that a filer can seek an “exemption to publicly disclosing the name of that client”. This option, which is included in the current version of the draft regulations before the Commission, is that the client’s name does not need to be disclosed, but the nature of the action and the monies received should be reported.
- The last option is listing on the form that an individual has applied to OCA or JCOPE for an exemption, and the exemption was granted. This option will provide the public with more information.

Once the Commission makes a determination on disclosure, JCOPE will need a procedure for evaluating requests for an exemption. The regulations that have been submitted for the Commission’s consideration can be edited and refined to reflect whichever option the Commission chooses.

Commissioner Weismann stated that when you look beyond the specific language concerning the exemption, to the broader provisions of the statute, as a whole, including § 73-a(7), it is clear, and consistent with past practice, that you would not need to disclose any information if a filer receives an exemption. Two instances that come to mind that JCOPE might require the information is, if a complaint was received about an FDS filing or in a random review of an FDS filing. Both circumstances warrant going to the filer to ask the question. Commissioner Weissman believes that option one is more consistent with a reading of the statute as a whole and the legislative intent.

A motion was made by Commissioner Roth, seconded by Commissioner McAuliffe, to approve the application of the current practice of not having to disclose on the FDS that

an exemption has been granted when exemptions to disclosure are granted by either OCA or JCOPE.

Commissioner Lavine questioned whether OCA had taken a position on disclosing information to JCOPE on request. General Counsel Stamm advised that to her knowledge OCA had not taken a position, but based on communications with counsel early on in the process, there were concerns about OCA's ability to share information with JCOPE given the confidentiality provisions in the statute. Executive Director Agata added that there may be separation of powers problems with issuing a subpoena to OCA.

The Commissioners voted on the motion. The motion was approved by unanimous vote.

Executive Director Agata stated that the Commission can authorize staff to proceed with the regulations, reflecting the position adopted today, both on an emergency basis and move forward with the SAPA process for permanent regulations. Those regulations will be posted on the website and up for public comment.

A motion was made by Commissioner Weissman, seconded by Commissioner McAuliffe, to adopt the regulations as amended on an emergency basis and proceed with a rulemaking under SAPA for permanent regulations. The motion was approved by unanimous vote.

### **Staff Draft of Comprehensive Lobbying Regulations**

Executive Director Agata stated that the hearing was held on December 7, 2016 on the Comprehensive Lobbying Regulations. Testimony and written comments were and continue to be received. Those comments and testimony are being reviewed and considered as these regulations are being reviewed and revised.

Director of Lobbying and Senior Counsel Martin L. Levine explained that he would present core concepts from the draft regulations to lay the groundwork for the sections of the regulations that will be presented and discussed at future meetings. He stated that the

goal of the regulations is to consolidate, update, and generally detail the rules and practices of the Commission (and its predecessors) with respect to lobbying. The regulations provide an opportunity for the Commission to ensure that there is clear guidance and an enunciation of the Commission's expectations under the Lobbying Act. Among other things, Director Levine covered the concepts of beneficial clients and contractual clients, employed and designated lobbyists, and retained lobbyists, as well as the variations of the lobbyist-client arrangement. These concepts are being incorporated into the regulations in order to achieve the disclosure and transparency required by the statute, and also to try to streamline filings and minimize the administrative burden on the regulated community. Several Commissioners asked questions based in part on issues raised at the hearing and in public comments. Director Levine explained that in response to the concerns raised at the hearing, the definitions of certain terms in the regulations will be modified to avoid certain unintended consequences. More time is necessary to address the issues that have been raised with respect to lobbying coalitions, so that topic will be included in a presentation at a future meeting.

**IV. NEW AND OTHER BUSINESS**

None

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

A motion was made by Commissioner McAuliffe and seconded by Commissioner Smalls 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**

Executive Director Agata announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission approved various communications in investigative matters, approved various substantial basis investigation reports and settlement agreements, and received reports from staff on a number of investigative

matters and ongoing litigation. The Commission also approved minutes from the Executive Session at the last meeting of the Commission.

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

A motion was made by Commissioner McAuliffe, seconded by Commissioner Weissman, to adjourn the Public Meeting. The motion was approved by unanimous vote.