

**MINUTES OF THE PUBLIC SESSION OF THE  
AUGUST 4, 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 (ALB)  
Marvin Jacob (ALB)  
Seymour Knox, IV (ALB)  
Hon. Eileen Koretz (NYC)  
Gary J. Lavine (ALB)  
Hon. Mary Lou Rath (ALB)  
David A. Renzi (ALB)  
Michael A. Romeo, Sr. (Webex)  
Hon. Renee R. Roth (NYC)  
Michael K. Rozen (Webex)  
Dawn L. Smalls (NYC)  
George H. Weissman (ALB)

**Members**

**Absent:**

**Staff:** Monica J. Stamm, General Counsel  
Kevin T. Gagan, Chief of Staff and Special Counsel  
Walter J. McClure, Director for External Affairs  
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and  
Senior Counsel  
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement  
Emily A. Logue, Investigative Counsel  
Stacey Hamilton, Manager of Education Program and Special Counsel  
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 August 4, 2015 Commission Meeting to order. Chair Horwitz spoke of former Executive Director, Letizia Tagliafierro, thanking her for her service. He extended congratulations to Monica Stamm on her recent promotion from Chief of Staff and Deputy Counsel to General Counsel. Chair Horwitz welcomed Kevin Gagan as Chief of Staff and Special Counsel.

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

**June 30, 2015**

A motion was made by Commissioner Rath, which was seconded by Commissioner Knox, to approve the minutes from the Public Session of the June 30, 2015 Commission Meeting. The motion was approved by unanimous vote.

**III. SEARCH FOR EXECUTIVE DIRECTOR**

Chair Horwitz explained the law as to who selects the Executive Director. He recommended JCOPE use the same process as has been used in the past to select an Executive Director, appointment of a committee to vet candidates and furnish recommendations to the full Commission. Chair Horwitz pointed out that this approach was intended to make the process deliberative, efficient and thoughtful. Chair Horwitz encouraged the Commission to discuss the process during the public session but asked the Commission to be mindful of the legal restrictions on discussing personnel matters in the public session.

Several Commissioners raised issues about the selection process. Commissioner Jacob stated that an objection to Letizia Tagliafierro's appointment as Executive Director was made that resulted in former Commissioner Ellen Yaroshefsky's resignation. Commissioner Rath opined that JCOPE needs a different approach concerning the process of appointing an Executive Director, pointing out that JCOPE was a new agency then and has since matured. Commissioner Roth asked if JCOPE was required to post a

vacancy along with the requirements for the position. Chair Horwitz explained that the position had been publicly posted in the past and believes that is how it should be handled this time. Commissioner Joseph Covello asked why this process is limited to the Executive Director and not other executive staff.

Chair Horwitz stated that JCOPE has utilized a committee in the past with positive outcomes. With regard to other hiring decisions, the Commission has deferred to the Executive Director and other professional staff to fill the approximately 50 positions at JCOPE, as they need the flexibility to manage the agency on a day-to-day basis. As JCOPE moves forward, with increased funding and an expanded mandate, to the extent that the Commission needs to reconsider some of its practices, because this is no longer a new agency, decisions should be made deliberately, thoughtfully, carefully and with a process. Chair Horwitz again suggested that a committee is the best way to accomplish this.

Commissioner Romeo stated that he believes staff should proceed with hiring personnel and the Commissioners should not micromanage this process. The Commission is provided with the resumes and sees that staff is hiring very capable people. As for the Executive Director, the Commission should choose someone who has the experience along the lines of what JCOPE does and hire the best person for the job, whether they are a state employee or not.

Commissioner Jacob stated that he hopes the process of the search for an Executive Director is reformed this time and that the Commission does a search for someone who is truly independent. Commissioner Rath agreed that the process should be reformed given the agency's increasing responsibility and growth over the years. Commissioner Jacob stated that what has been done in the past has a lot of merit. JCOPE was a young agency with virtually no staff. The statute requires all 14 Commissioners to appoint staff and the Commission delegated that authority to the Executive Director. Now that the commission is fully staffed and the need to hire arises from time to time, at certain levels of staff that delegation should no longer exist. Now may not be the time to remove that

delegation as there is no executive director or urgency. A committee should be utilized to consider these issues and determine whether to continue with a full delegation for hiring or if there is some level at which the Commission should reassume the responsibility imposed on the Commissioners by statute to appoint staff.

Commissioner Weissman posted a JCOPE organizational chart onto a monitor in the Albany conference room to point out that new hire Kevin Gagan has been designated as Chief of Staff and Special Counsel, but the title Special Counsel does not appear anywhere on the organizational chart. Chair Horwitz stated that the Commission will discuss at another time an efficient way to handle JCOPE's staffing needs. Chair Horwitz stated he has a slightly different view of the history of the organizational chart but wants to have a productive conversation for how JCOPE is going to move forward. Having spoken to most of the Commissioners as to how to address the executive director position, as well as the approach for staff decisions in light of the significantly increased responsibilities and additional funding, the Commission will move forward with the committee process.

Commissioner Roth suggested that Commissioner Horwitz should appoint the committee immediately, and she would like to know how the committee is going to be selected. Chair Horwitz asked anyone who is interested on serving on the committee to let him know. Current staff will play an important role in helping the committee and the Commission in conducting this search, as they have in the past. However, the decision to hire the executive director and to define the position is the Commission's, not the staff's.

Commissioner Koretz asked if it makes sense to use an outside agency to search and make recommendations to the Committee. Chair Horwitz stated that all options would be considered. If the committee feels JCOPE should pay for an outside consultant to help with the search then that is what should be done. The Commission will conduct a broad search through a deliberative and thoughtful process. Chair Horwitz asked Commissioners to let him know if they have thoughts on how the search should be conducted.

Commissioner Weissman commented on the process and committees. He stated he has served on the Administration Committee since the beginning of JCOPE, with a slight hiatus in 2013, and said this was the first time a number of appointments were made that were not run by the Administration committee. Commissioner Weissman stated that the Administration Committee has not met in at least four months, and he is unlikely to serve on the committee going forward.

Chair Horwitz stated that the Executive Director made recent appointments, as she was authorized to do, and she and her predecessor have done from the beginning. JCOPE has formed committees for some functions and they have generally functioned well. While some Commissioners are interested in serving on committees, others are not. As the decision has been made to proceed with a search committee, the Commission should move on with its agenda.

Commissioner Jacob stated that Commissioner Weissman made a very important point because the issue of special counsel titles has been raised in the past. He stated that what gave him the confidence that the process was working was that JCOPE had a representative Administrative Committee that vetted the resumes. Previously, if there was a new hire, the Commissioners received the new hire's resume and were told that this particular person was hired. However, in this case, the executive director hired new staff as she was leaving the agency. This is a radically different situation, and he agrees with Judge Roth that the committee should be appointed today rather than via email and announced at the next meeting.

Chair Horwitz explained that he prefers to have personal conversations with the other Commissioners and give everyone an opportunity to participate. Commissioner Gary Lavine stated the Chairman should have the opportunity to have individual discussions with each Commissioner as to whether or not they want to be on this committee and this meeting today is not an appropriate time to have those discussions. Commissioner Jacob

volunteered to be on the committee. Commissioner Roth also volunteered to be on the committee.

Commissioner Weissman asked whether there have been any other appointments. General Counsel Stamm advised that JCOPE has extended offers to people who will be starting in the next few weeks. As previously discussed with the Commission, JCOPE has undertaken a significant recruitment effort as a result of its increased responsibilities and funding in the State budget. There were job postings for positions of associate counsel, auditor, and filing specialist. JCOPE has been interviewing candidates for the past several months and has extended offers.

Commissioner Michael Romeo stated he recalled that when JCOPE was granted additional funding staff did advise the Commissioners that they were going to start to fill positions so it should not be any surprise that JCOPE is hiring people. He reiterated his objection to the Commission's micromanagement of staff over hiring pointing out that micromanagement is not good for morale. JCOPE has staff that is capable of filling positions and they do not have to come to the Commission for approval for everything that they do.

Commissioner Weissman pointed out that JCOPE received \$1.2 million dollars and that senior staff advised the Commission that they were developing a plan to allocate funds between technology and personnel. While the Commission is not supposed to micromanage the staff, it is supposed to know what is going on. Commissioner Roth stated that this is precisely why JCOPE has committees, so that a few of the Commissioners could consider the qualifications of a potential hiree, and other issues, which has been done in the past, but not recently. General Counsel Stamm clarified, that having participated in nearly every Administration Committee meeting, candidates for positions were not vetted by the Commissioners prior to being hired. Staff reported to the Administration Committee after the hirings were made. The Administration Committee received notice, but the Commissioners did not review resumes and did not make selections.

Several Commissioners had questions about the extended offers and the hiring process in light of the recent departure of the Executive Director. General Counsel Stamm reported that in addition to the new employees that have been identified for the Commission in the meeting book materials, there are three new hires who have not yet started at JCOPE. These people all have been officially hired, having accepted offers of employment, submitted required paperwork, and established start dates for their employment. General Counsel Stamm explained that all of the hiring decisions were made over the past several weeks while there was an Executive Director. The three new hires include filling a vacant audit position and a new filing specialist position. Filing specialists help administer both the Financial Disclosure Statement filing program and the Lobbying Disclosure filing program. The majority of the additional funding that JCOPE received has been devoted to covering its expanded responsibilities in both programs. It is also the plan to hire additional legal staff to assist with the responsibilities that come with JCOPE's expanded jurisdiction under the Lobbying Act and the new disclosures and exemption process for Financial Disclosure Statements. The additional legal staff positions have not yet been filled. However, there have been some recent departures from the legal staff and JCOPE needed to fill those vacancies in order to meet the day-to-day functions of this agency. General Counsel Stamm indicated that management has been very diligent in looking to fill those positions. In addition to the filing specialist and auditor, a senior lawyer was hired to take on former Director of Ethics and Lobbying Guidance, Rob Cohen's responsibilities.

Commissioner Jacob congratulated General Counsel Stamm on her recent promotion and stated that nothing being said in this meeting should be construed as negative toward her or her performance, praising her for the work she has done on behalf of JCOPE.

Commissioner Renzi asked what entities the new hires are coming from, whether they are former state employees or from the private sector. General Counsel Stamm advised that one individual is from state government and two are from the private sector, a law firm

and a corporation. General Counsel Stamm stated that there is a good balance between the private and public sectors among all the recent hires, including the new legal staff.

Commissioner Renzi stated he thinks it is important that JCOPE focus on the fact that it is an independent agency and try to find an Executive Director outside of state government. It is too difficult a job for someone coming from within state government, with previous relationships, to act independently and to lead this agency going forward.

Commissioner Covello stated he assumed Letizia Tagliaferro, Rob Cohen, and John Milgrim gave notice they were leaving but the Commission did not find out until about a day before, saying the Executive Director may have called him, or he heard from the press. He requested that if staff gets notice that someone is going to resign that the Commission be notified. He stated the Commissioners may have people they think are qualified for positions that are being filled but are not aware of the vacancies.

Chair Horwitz stated that is a good point and it is something they should think about doing. General Counsel Stamm advised that JCOPE's current vacancies include two legal positions, an auditor position, several filing specialist positions, and possibly an administrative position. JCOPE has postings up for these positions and has received hundreds of resumes. The positions are posted on the JCOPE website and were originally posted on the JOBSNY site. Some Commissioners have been sending resumes to staff, but if anyone else has any candidates, please send them in.

Commissioner Weissman asked where the Special Counsel and Chief of Staff appear on the organizational chart. General Counsel Stamm pointed out that the Chief of Staff position appears on the organizational chart. Commissioner Weissman observed that the position used to be Chief of Staff and Deputy Counsel and asked whether the position reports to the General Counsel. General Counsel Stamm explained that the position has always directly reported to the Executive Director. As to where Special Counsel is reflected, Rob Cohen previously held that title. Many people on the staff have secondary titles such as senior counsel or special counsel, and these titles have been used repeatedly

over the last three years. While these secondary titles are not reflected on this organization chart, they are reflected elsewhere, including every set of meeting minutes that the Commission has approved. This is the first time that an objection has been raised about a secondary title. To the extent that the Commission has concerns about the use of these titles, it is certainly something to be discussed going forward.

Commissioner Jacob asserted that Commissioner Renzi made a very important point, a point that Commissioner Jacob and others made regarding the appointments of the first and second Executive Directors, that the objective should be that JCOPE find someone who has absolutely no connection or affiliation with the legislative or executive branches of New York State government. Commissioner Jacob stated that he brought two such people to the search committees before Executive Directors Biben and Tagliafierro were appointed, and they were both turned down. JCOPE can find such people and his focus and emphasis in the future will be on finding such a person. It is impossible to put a person into the Executive Director position who will not feel the pull from one sector or another.

Chair Horwitz stated that the committee will consider this viewpoint and, moving forward, he would like to hear what other Commissioners think. In the past, when JCOPE searched for executive directors, everybody agreed that JCOPE needed somebody who was a qualified ethicist, somebody who was above reproach, bright, thoughtful, and forward thinking. Some Commissioners think it is important to have a background in law enforcement or regulatory enforcement, given the very important enforcement function JCOPE serves. There also are Commissioners who have said that given the work that this Commission does relates to public officers in the State of New York, that an understanding and appreciation for how New York State government functions is an important criteria. Chair Horwitz understands Commissioners Renzi and Jacob have a different view which the search committee will consider.

**IV. REPORT FROM STAFF**

**Update on Outside Activity Regulations**

General Counsel Stamm stated that the Commission had previously approved amended Outside Activity Regulations and that they became effective July 22, 2015. The proposed regulations were published in the State Register in July. JCOPE sent an e-blast to ethics officers and general counsels in the State agencies. The amended regulations were also posted on JCOPE's website along with other materials issued to provide more information about the amended regulations. JCOPE will conduct additional outreach to ensure everyone understands the amended regulations.

**First Quarter Financial Report**

In Director for Administration Steve Boland's absence, General Counsel Stamm presented the first quarter financial report. JCOPE has an appropriation of approximately \$5.5 million dollars for the 2015/16 fiscal year with the increase in this year's budget. As of June 30, the end of the second quarter, JCOPE spent approximately \$700,000 dollars in personal services, which is salaries and compensation. In non-personal services, which is supplies, lease, etc., JCOPE spent approximately \$159,000 dollars. That is approximately 16% of JCOPE's cash allocation for the year.

**V. APPLICATIONS FOR EXEMPTION FROM SOURCE OF FUNDING DISCLOSURE REQUIREMENTS**

General Counsel Stamm stated that JCOPE received three applications for exemptions from the source of funding disclosure requirements that were enacted in 2011 as part of the same law that created JCOPE, the Public Integrity Reform Act of 2011. Pursuant to statute, the Commission passed regulations implementing the disclosure requirements and exemption process. Client filers may seek an exemption from the Commission if they have exempt status under §501(c)(4) of the Internal Revenue Code and if they can show that their primary activities involve areas of public concern that create a substantial likelihood that disclosure would lead to harm, threats, harassment or reprisals to the source or individuals or property associated with the source. The Commission must

determine whether the three groups with applications pending satisfy the requisite showing. These groups received exemptions in the past after successfully appealing the Commission's initial decision to deny the exemptions to an independent hearing officer. Ultimately, the Commission decided that the groups would need to reapply on or before July 15, 2015. At a minimum, the exemptions would cover the prior reporting period, January 1 to June 30, 2015. In the past, JCOPE has granted the exemptions prospectively, so if an exemption is granted, the Commission must also determine the period of time the exemption will cover.

Commissioner Lavine sought clarity on Judge Pratt's decision. General Counsel Stamm confirmed that Judge Pratt did not define the standard "substantial likelihood of harm."

#### **Family Planning Advocates of New York**

General Counsel Stamm advised that Family Planning Advocates is the lobbying arm for entities like Planned Parenthood and that Planned Parenthood is one of its members. Commissioner Jacob stated that Family Planning Advocates did not proffer any proof of harm or threats it, itself, incurred, and relied upon the fourth factor in the regulations -- evidence of harm, threats, harassment, or reprisals directed against organizations or individuals holding views similar to those of the source or client filer. In other words, Family Planning Advocates refers to Planned Parenthood and the threats it has received and the harm it has incurred. Commissioner Jacob observed that when Judge Pratt considered this application in 2014, he looked to what the Commission said in denying the application and determined that the Commission was overruled by its own regulations because the regulations provide that evidence as to one factor is sufficient. Commissioner Jacob further stated that the information reflected in the current application appears too remote and too speculative because, among other things, it speaks only of threats and harm incurred by Planned Parenthood.

Commissioner Renzi stated that the hearing officer ruled the way he did partly because of the lack of record made by the Commission, and pointed out the importance of making a record of the basis for their votes this time. He reminded the Commission that, in the

past, they discussed these applications in the Executive Session so it was not part of the record. General Counsel Stamm informed the Commission that, at the time the prior applications were presented, the regulations mandated confidentiality, so the applications were reviewed in Executive Session. The Commission subsequently amended the regulations to provide that the applications be public and as a result the discussion can take place in the public session. Commissioner Renzi reviewed the bulleted points Family Planning Advocates put forth in its application as examples of “threats, harm, and reprisal” and pointed out the insufficiency of them, including among other things, that there was insufficient evidence relating to donors, other supporters, or funding. Chair Horwitz stated that the regulations and the law tilt heavily in favor of disclosure; however, Judge Pratt concluded that the statute and regulations did not require evidence of actual harm, as it was understood that donors had never before been required to be disclosed.

Commissioner Jacob stated that the application also is full of hearsay and questioned whether there is someone with firsthand knowledge who could testify in support of the application. Chair Horwitz observed that the current regulations do not require such proof and questioned whether it would make sense to require such proof in a public setting since the entire purpose of the exemptions are to prevent harassment through public disclosure.

Commissioner Lavine said there has been too little discussion about the meaning of “substantial likelihood.” In his view, it means “an event or circumstance will probably occur” it does not mean a potential or plausible outcome. Commissioner Lavine stated that the applications provide no basis for an assumption that an event is “probable of eventuality” and as a consequence, he will not support any of the applications.

A motion was made by Commissioner Roth, which was seconded by Commissioner Arroyo, to grant an exemption to Family Planning Advocates for two years. The vote was 6/8. Chair Horwitz and Commissioners Arroyo, Koretz, Rosen, Roth and Smalls

voted in favor of the motion. Commissioners Covello, Jacob, Knox, Lavine, Rath, Renzi, Romeo, and Weissman were opposed to the motion. The motion did not carry.

### **New York Civil Liberties Union**

Commissioner Weissman stated that similar to the points raised by Commissioner Renzi and Jacob in discussing the other application, the evidence is remote in time and location, noting that much of the material in the application pertains to ACLU not NYCLU and relates to instances outside of the New York area. Chair Horwitz stated that the application does reference some instances in New York. Commissioner Weissman agreed, but questioned the sufficiency of the evidence. Commissioner Renzi agreed.

Commissioner David Arroyo stated that the governing statute addresses “areas of public concern.” Although there may be differences of opinion about the weight JCOPE should give to legislative history, the bill jacket for the Senate bill that resulted in the enactment of the Public Integrity Reform Act expressly identifies “the area of civil rights and civil liberties as an area in which organizations are expected to qualify for such an exemption.” Specifically, it states “organizations whose primary activities focus on the questions of abortion rights; family planning; discrimination or persecution based on race, ethnicity, gender, sexual orientation or religion; immigrant rights and rights of certain criminal defendants are expected to be covered by such an exemption.” Commissioner Jacob stated that if the intention was to automatically provide exemptions to these organizations, there would be no need to submit an application at all. An applicant must still make a proper showing to qualify for an exemption. Commissioner Arroyo agreed with Commissioner Jacob, but added that the legislative history should be part of the record as the Commission considers how it is going to vote on these applications.

A motion was made by Commissioner Arroyo, which was seconded by Commissioner Roth, to grant a two-year exemption from the source of funding disclosure requirements to the New York Civil Liberties Union. The vote on the motion was 7/7. Chair Horwitz and Commissioners Arroyo, Koretz, Rosen, Romeo, Roth, and Smalls voted for the

motion. Commissioners Covello, Jacob, Knox, Lavine, Rath, Renzi, and Weissman opposed the motion. The motion did not carry.

**New Yorkers for Constitutional Freedoms**

General Counsel Stamm stated that based on the Commission's records, New Yorkers for Constitutional Freedoms did not appear to meet the expenditure threshold requirements of spending more than \$50,000 on lobbying in New York State during the applicable reporting period. The organization is seeking an exemption that is prospective, as was done in the past, in order to guide its future activities. There was a consensus that a motion was not required and a letter would be sent informing the organization that it did not meet the requirements to file and that JCOPE would not consider an exemption from a law to which it is not subject.

**VI. NEW AND OTHER BUSINESS**

There was no new or other business discussed.

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

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

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

Chair Horwitz announced that, during the Executive Session, the Commission considered a number of investigative matters.

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

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