

**MINUTES OF THE PUBLIC SESSION OF THE
AUGUST 12, 2014
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

Members: David Arroyo
Paul Casteleiro
Hon. Joseph Covello
Mitra Hormozi
Marvin Jacob
Gary J. Lavine
Hon. Mary Lou Rath
David A. Renzi
Michael A. Romeo, Sr.
Hon. Renee R. Roth
George Weissman

Members

Absent: Seymour Knox, IV

Staff: Letizia Tagliafierro, Executive Director
Monica J. Stamm, Chief of Staff and Deputy Counsel
Martin L. Levine, Director of Audit and Review and Senior Counsel
John T. Milgrim, Director for External Affairs
Stephen J. Boland, Director for Administration
Robert Cohen, Special Counsel and Director of Ethics and Lobbying Compliance
Pei Pei Cheng-deCastro, Senior Investigate Counsel
Shari Calnero, Senior Counsel and Manager of Training
Joanna Weiss, Associate Counsel
Deborah Novak, Executive Assistant
Patrick E. Coultry, Chief Investigator
Terence Mulderrig, Senior Investigator
Jack Patterson, Confidential Investigator
Peter Smith, Confidential Investigator
Lori Donadio, Confidential Legal Assistant

I. CALL TO ORDER

Chair Horwitz called the August 12, 2014 Commission Meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION – JULY 22, 2014

A motion was made by Commissioner Roth, which was seconded by Commissioner Weissman, to approve the minutes from the Public Session of the July 22, 2014 Commission Meeting. The motion was approved by unanimous vote. Commissioner Hormozi was not present during this portion of the meeting.

III. REPORT FROM EXECUTIVE DIRECTOR

Executive Director Letizia Tagliafierro reported that the Commission recently issued an ethics reminder concerning the rules for State employees who are looking for new jobs. When a State employee is approached about a new job opportunity, or wishes to seek employment, with an entity that does business with the employee's agency, the employee must advise their ethics officer and recuse themselves from all matters involving the potential employer for 30 days before engaging in discussions about future employment.

Executive Director Tagliafierro advised that the Public Service Announcement Regulations have been finalized and will be published in the State Register on August 13, 2014. The PSA regulations are in effect immediately on an emergency basis and the blackout period has begun for both the upcoming primary and general elections.

IV. APPLICATION FOR EXEMPTION FROM SOURCE OF FUNDING DISCLOSURE REQUIREMENTS FROM NARAL PRO-CHOICE AMERICA

Chair Horwitz presented and discussed the matter of the application for an exemption from the Source of Funding Disclosure Requirements filed by NARAL. In June 2013, the Commission granted NARAL's exemption application based on a showing of a reasonable probability of harm under the regulations then in effect. The exemption covered all filings to date and until July 2016.

Shortly thereafter, the Commission considered revisions to its regulations relating to exemptions and determined to defer a ruling on the exemption applications of 4 other groups: NYCLU, New Yorkers for Constitutional Freedoms, Women's Equality Coalition, and Family Planning Advocates. The Commission then changed the evidentiary showing in the regulations from "reasonable probability" of harm to "substantial likelihood" of harm to be consistent with the statutory language.

In January 2014, in an effort to avoid litigation, the Commission and NARAL agreed that NARAL would keep its exemption, which had been awarded under the old standard, but it would be for a shorter period, with the understanding that NARAL would be subject to the same conditions as the other applicants. Consequently, NARAL would be required to submit a new application for an exemption for the July 15, 2014 semi-annual filing.

In the interim, the Commission denied the applications of the other four groups: NYCLU, New Yorkers for Constitutional Freedoms; Women's Equality Coalition, and Family Planning Advocates. Last month, a Hearing Officer reversed the Commission's decisions. In light of the Hearing Officer's determination, at the July meeting, the Commission resolved that the groups' exemptions should run for two years, requiring that the groups reapply in July 2015.

NARAL reapplied for an exemption, as required, in July 2014. NARAL's application presents similar evidence to the applications submitted by Family Planning Advocates and Women's Equality Coalition.

The issue before the Commission is the status of NARAL's exemption. The Commission should consider that the Hearing Officer's recent decisions were based on substantially similar records. Further, as a matter of fairness, NARAL should be treated in a manner consistent with other groups, and not be put in a detrimental position due to its consent to a reduction in the term of its initial 3-year exemption. Putting NARAL on the same time table as the other four groups has the added advantage that the Commission can review its existing regulations and make any necessary amendments in advance of the exemption

applications. In sum, the Commission could resolve today that NARAL's exemption will continue for the same period as the other four groups, and NARAL need not reapply for an exemption until July 2015.

Commissioner Weissman questioned whether NARAL meets the standard set forth in the regulations if it does not provide abortion services, as Planned Parenthood does. Director of Ethics and Lobbying Compliance Rob Cohen clarified that NARAL, like Women's Equality Coalition and Family Planning Associates, is an advocacy group and not an abortion service provider. Commissioner Weissman read a portion of NARAL's submission and stated that much of NARAL's evidence may not be applicable because it relates to centers that provide health care services as opposed to advocacy organizations. Commissioner Roth responded that NARAL is a lobbying organization, as were the other organizations that were granted exemptions, and suggested that some deference should be given to the decision of the Hearing Officer in those cases. Commissioner Casteleiro stated that it is not relevant whether NARAL provides abortion services. NARAL advocates on behalf of groups that provide abortion services, and they have presented evidence of threats of harm against individuals and entities who support these issues. Chair Horwitz clarified that the Commission has jurisdiction over NARAL precisely because it is an advocacy group. If an advocacy group also happens to provide abortion services, that would be an additional factor for the Commission to consider; however, the Hearing Officer found that similar advocacy groups satisfied the legal showing based on similar evidence, including events relating to direct service providers.

Chair Horwitz suggested that there are also some practical considerations before the Commission in that there are five similarly situated organizations and that it would be efficient to have them on the same timetable subject to the same legal standards. In light of the Hearing Officer's decisions, it is particularly important for the Commission to consider revisiting the applications at the same time as they raise similar legal and factual issues and it will be preferable, for the Commission, the public, and the applicants to deal with these issues at one time. Chair Horwitz further clarified that, in the future, any appeals of the Commission's decisions will only be subject to challenge via Article 78

actions, and it would not be constructive to have separate litigation over related questions of law on entirely different schedules.

Commissioner Lavine stated that he agrees with Commissioner Weissman's analytic distinction between advocacy groups and abortion service providers, and that these types of issues need to be addressed in the regulations. Commissioner Lavine stated he will support an extension of NARAL's exemption until July 2015 for practical reasons, but recommends that the Commission take up the regulations in the interim. Among other things, Commissioner Lavine recommends the Commission address the definition of substantial likelihood of harm.

Commissioner Renzi observed that part of the hearing examiner's determinations was based on a lack of a record of a thorough analysis of the applications. It is important for the Commission to continue to have this discussion and analysis in the Public Session given that the result of an exemption is to allow special interest groups to hide their donors. Commissioner Renzi concurred with Commissioner Weissman that there is no connection between health care providers and donors and that, therefore, NARAL presented insufficient evidence to show a substantial likelihood of harm to its donors.

Commissioner Roth stated that, as the Hearing Officer and dissenting opinion noted, the identity of donors to groups like NARAL have never before been disclosed, and as such, they could not have been subject to threats in the past. The Commission must look to evidence of threats to others whose identities have been disclosed, like employees, in order to assess the likelihood of harm. It is reasonable to conclude that if employees have been subject to harassment and harm, then donors will also be subject to such threats.

Commissioner Roth made a motion to grant an exemption for NARAL for the same period as the other four groups, requiring NARAL to reapply in July 2015. Commissioner Casteleiro seconded the motion. The motion was approved by a vote of 8/4. Commissioners Arroyo, Casteleiro, Hormozi, Horwitz, Jacob, Lavine, Romeo, and Roth

voted in favor of the motion. Commissioners Covello, Rath, Renzi, and Weissman opposed the motion.

V. NEW AND OTHER BUSINESS

Commissioner Weissman asked for a progress report on the Case Management System. Chief of Staff and Deputy Counsel Monica Stamm reported that the programming is complete and investigative staff is in the process of entering data. Staff will be able to do a demonstration for Commissioners by the September meeting.

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

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

VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Horwitz announced that, during the Executive Session, the Commission considered several investigative matters, approved two settlement agreements, and considered applications under Public Officers Law §73(8-b) for exemptions from post-employment restrictions.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

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