

**MINUTES OF THE PUBLIC SESSION OF THE  
FEBRUARY 18, 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 (Teleconference from NYC)  
Paul Casteleiro (*via Skype*)  
Hon. Joseph Covello (*via Skype*)  
LaShann DeArcy (Teleconference from NYC)  
Marvin E. Jacob (*via Skype*)  
Seymour Knox, IV  
Gary J. Lavine (*via Skype*)  
David A. Renzi (*via Skype*)  
Hon. Renee R. Roth (*via Skype*)  
George H. Weissman

**Members**

**Absent:**

Mitra Hormozi  
Hon. Mary Lou Rath

**Staff:**

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

**I. CALL TO ORDER**

Chair Horwitz opened the Public Session.

**II. MINUTES - PUBLIC SESSION – JANUARY 28, 2014**

Upon motion made by Commissioner Weissman, which was seconded by Commissioner Knox, the Minutes from the Public Session of the January 28, 2014 Commission Meeting were approved by unanimous vote. Commissioner Lavine was not present at this time.

**III. REPORT FROM EXECUTIVE DIRECTOR**

**Lobby Update**

Executive Director Letizia Tagliafierro provided an update on the lobbying filings. Staff is preparing for the next filing under the Lobbying Act, which is the bi-monthly reports from lobbyists due on March 15th; as the filing date falls on a weekend this year, the filings will be accepted on March 17th. Staff continues to process the client semi-annual reports and bi-monthly reports that the Commission received in January.

**FDS Update**

Executive Director Tagliafierro provided an update on Financial Disclosure Statements. The Commission's FDS group is preparing for the annual filing season and the deadline is May 15th. Staff is currently working with State agencies to ensure that they have identified the required filers and that those filers are in the Commission's system. Once this step is complete, staff plans to send a notice, in April, to remind FDS filers of the deadline.

**Training Update**

Executive Director Tagliafierro provided an update on the new ethics orientation program, thanking Shari Calnero and the Training Unit for their

hard work, as they continue to finalize the content for the web-based program. Staff expects the new ethics orientation to be available in March 2014 to all State agencies through the Statewide Learning Management System.

#### **IV. SOURCE OF FUNDING**

##### **Source of Funding Exemption Written Denials**

Chair Horwitz provided an update on the written denials for the Source of Funding exemptions that were considered at the Commission's last meeting. Staff is working on drafts of the denials, which will be circulated among the Commissioners shortly. As discussed at the last Commission Meeting, any Commissioners seeking to file a dissent, should feel free to do that, and the Commission will post the dissent along with the written denials.

Commissioner Casteleiro inquired about the propriety of stating rationales for the denials after the fact, when there was limited discussion at the last meeting. Commissioner Roth suggested the Commission should have an open discussion on the matter, in light of the regulations, and the Commission's public vote. Chair Horwitz stated that the appropriate opportunity to have a discussion was at the last meeting, that there is a record from that public discussion, and that he expects the written denials to be consistent with the record. Commissioner Covello agreed that there was an adequate record based on the discussions in the public session for the Commission to render a written decision, as any Judge could do after hearing a matter in court, without previewing the written decision in the public session.

Chair Horwitz reiterated that the drafts will be circulated among the Commissioners and, to the extent a Commissioner feels that the written decisions needs to be augmented, supplemented, or dissented from, that Commissioner may express their view in either a dissenting or a concurring decision. After some discussion among the Commissioners, Chair Horwitz explained that although the regulations do not expressly provide for a dissent,

given the discussion the Commission has had to date, the desire of a number of Commissioners to write a dissent, and in the spirit of disclosure and the fullness of the record, a dissent should be permitted.

Commissioner Jacob stated his view that, based on the public meeting requirements, any discussion of the rationale for the decisions should be held in an open session, and not in private discussions among Commissioners and staff, and that there should be a detailed public analysis of the applications. Commissioner Renzi responded that, at the last meeting in the public session, he had quite clearly stated, and other Commissioners agreed, that the applicants had not met the statutory burden of proof for an exemption. The Commissioners had a discussion about the evidentiary burden, and Commissioner Renzi had made clear his concerns, including that with respect to at least one applicant, the evidence related to threats only to employees and nothing was presented which would suggest that the threats would extend to donors. Chair Horwitz agreed that there was a sufficient record of a reason or reasons why these applications were denied, and that record has been further amplified by this discussion. Commissioners Covello, Casteleiro, and Renzi continued to discuss the evidence that was presented in the applications and whether it was circumstantial evidence of likelihood of harm or whether it was too remote and speculative.

Chair Horwitz stated that based on the record, staff will draft written denials and will circulate them to the Commission shortly, so that the process can move forward expeditiously.

### **Proposed Amended Source of Funding Regulations**

Chief of Staff and Deputy Counsel Monica Stamm reviewed the procedural history of the Source of Funding regulations. After several rounds of public comments and revisions, pursuant to SAPA, the regulations were approved and finalized by the Commission. The Commission then adopted

amendments to the Source of Funding regulations to change the standard for the exemption applications to substantial likelihood and to make the process public rather than confidential. These changes became effective immediately on an emergency basis and were subjected to another round of public comments. The Commission has received two sets of public comments and the regulations are before the Commission for further consideration. Based on the public comments and discussions with our Commissioners, there is one proposed change to the regulations. If the Commission adopts that change, it would be a material change requiring another round of public comments. If the Commission amends the regulations, the Commission should also adopt the revised regulations on an emergency basis so they will continue to remain in effect.

Director of Ethics and Lobbying Compliance and Special Counsel Rob Cohen discussed staff's recommendation that the Commission need not make any changes in response to the public comments. Separate and apart from the comments, after discussions with some Commissioners, there was a suggestion that Part 938.6, which is entitled Appeals, should be amended to eliminate the appeal for 501(c)(4) organizations applying for an exemption pursuant to Part 938.4(b) in order to be consistent with the statutory language in the Lobbying Act, which does not provide for such an appeal. The proposal is to include a new Part 938.6(a) which would read as follows: "An appeal of a denial of an application for an exemption to a judicial hearing officer pursuant to Parts 938.6 and 938.7 is available only to a client filer who submitted an application under Part 938.4(a). A client filer who submitted an application under Part 938.4(b) is not entitled to such an appeal." The import of this change would be to amend the appeals process so that it only applies to entities who are seeking individual exemptions to the source of funding disclosure requirement.

Some Commissioners questioned whether this would deny applicants any mechanism to appeal the Commission's decision, and other Commissioners explained that the applicants could always bring an Article 78 action to challenge the Commission's action. Commissioner Jacob stated that this change follows the statute. Commissioner DeArcy agreed that this may be the best course for now, but suggested that the Commission recommend that the Legislature consider changing the statutory language. Commissioner Arroyo observed that the public comments submitted by New Yorkers for Constitutional Freedoms raised other issues about consistency between the statute and the regulations, including that in the statute, the individual exemptions do not have a "substantial likelihood" standard.

Chair Horwitz suggested that the Commission first consider the proposal on the table and can subsequently engage in discussion about any additional changes. A motion was made by Commissioner Weissman, which was seconded by Commissioner Covello, to adopt the proposed source of funding regulations as amended, with the changes to Part 938.6. The motion was approved by unanimous vote. Upon a motion by Commissioner Weissman, seconded by Commissioner Knox, which was unanimously approved, the amended regulations were adopted on an emergency basis.

Chief of Staff Stamm explained that the proposed regulations as amended will be subjected to another round of public comment and re-presented to the Commission for discussion, before becoming final. In addition, the changes to the appeal process will go into effect immediately, so that there will be no lapse in the regulations, but the changes will only apply to future applications. The Commission can continue to consider additional changes to the regulations. Chair Horwitz stated that a group of Commissioners should discuss other proposed changes and the Commission can consider them the next time the regulations are before the Commission.

V. **GIFT-RELATED REGULATIONS**

Chief of Staff Stamm discussed the five sets of regulations pending before the Commission. The first is the new proposed public service announcement regulations which have been subject to an informal public comment process, working with different groups in the community, but have not yet been approved by the Commission and need to be subjected to a formal public comment process under SAPA. There are two sets of gift regulations – one for public officers and one for lobbyists and clients – which have been adopted by the Commission, gone through one round of public comments pursuant to SAPA, and are now before the Commission. Based on the public comments and communications with Commissioners, the Legislative Ethics Commission, and other agencies, staff has proposed amendments to the gift regulations, and if the Commission adopts the changes, another round of public comments will be required. The last two sets of regulations are the proposed amended honoraria regulations and the proposed amended official activity expense payment regulations. These are existing regulations which the Commission voted to amend and have now gone through the SAPA process. Based on the public comments, staff recommends some technical changes for the Commission’s consideration, but these changes will not require another round of public comments.

Director Cohen led the Commission through a PowerPoint presentation about the five sets of regulations. One proposal, based on discussions with state agencies and the Commissioners, is to modify the definition of nominal to indicate that the term is not defined in the statute, but that the Commission is setting a benchmark of \$15.00. Another proposal is to modify the language concerning multiple permissible gifts and non gifts, to make it clear that Public Officers Law §74 still applies to the acceptance of such items by state officers and employees. In addition, there are proposed technical modifications to various aspects of the regulations.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Arroyo, to adopt the proposed Public Service Announcement regulations and to proceed under SAPA. The motion was approved by unanimous vote. Commissioner Renzi was not present for the vote.

A motion was made by Commissioner Covello, which was seconded by Commissioner Weissman, to adopt the proposed changes to the Gift Regulations for Public Officers and to proceed with another comment period under SAPA. The motion was approved by unanimous vote. Commissioners Renzi and Roth were not present for the vote.

A motion was made by Commissioner Knox, which was seconded by Commissioner Weissman, to adopt the proposed changes to the Gift Regulations for Lobbyists and Clients, and to proceed with another comment period under SAPA. The motion was approved by unanimous vote. Commissioners Renzi and Roth were not present for the vote.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Casteleiro, to adopt the proposed changes to the Honoraria Regulations. The motion was approved by unanimous vote. Commissioners Renzi and Roth were not present for the vote.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Casteleiro, to adopt the proposed changes to the Official Activity Expense Payment Regulations. The motion was approved by unanimous vote. Commissioners Renzi and Roth were not present for the vote.

**VI. NEW AND OTHER BUSINESS**

There was no new or other 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) to discuss certain confidential investigations and other confidential matters was made by Commissioner Covello and seconded by Commissioner Knox. The motion was approved by unanimous vote. Commissioners Renzi and Roth were not present for the vote.

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

Chair Horwitz announced that, during the Executive Session, the Commission approved some settlement agreements, approved action in several investigative matters, and closed a matter.

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

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