

**MINUTES OF THE PUBLIC SESSION OF THE
MAY 24, 2016
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:

Marvin Jacob (NYC)
Seymour Knox, IV (ALB)
Hon. Eileen Koretz (NYC)
Gary J. Lavine (Webex)
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 (ALB)

Members

Absent:

Staff:

Seth H. Agata, Executive Director
Monica J. Stamm, General Counsel
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and
Senior Counsel
John P. Harford, Special Counsel and Director of Ethics and Lobbying Guidance
Walter J. McClure, Director for External Affairs
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement
Emily A. Logue, Investigative Counsel
Patrick E. Coultry, Chief Investigator
Terence Mulderrig, Senior Investigator
Peter J. Smith, Investigator
Michael Sande, Associate Counsel
Leah Ramos, Associate Counsel
Lori Donadio, Confidential Legal Assistant
Deborah Novak, Executive Assistant

I. CALL TO ORDER

Chair Horwitz called the May 24, 2016 Commission Meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

April 26, 2016

A motion was made by Commissioner Weissman, which was seconded by Commissioner Romeo, to approve the Minutes from the Public Session of the April 26, 2016 Commission Meeting. The motion was approved by unanimous vote of Chair Horwitz and Commissioners Jacob, Knox, Koretz, Lavine, Rath, Renzi, Romeo, Rozen, Smalls, and Weissman. Commissioner Roth was not present for this vote.

III. REPORT FROM STAFF

Outreach Meetings

Executive Director Seth H. Agata stated that he has held outreach meetings with the conferences in each house of the Legislature and has had a series of meetings with the City Bar, NYPIRG, Common Cause, and others to establish a connection and seek comments and suggestions regarding the Commission. One of the topics raised by the legislative side, including the Legislative Ethics Commission, was the pending Client Exemption from Financial Disclosure Regulations. A draft of the regulations was vetted several months ago, discussions are continuing, and eventually more comments will be solicited through the SAPA process. It is hoped that by June a proposal will be completed for the Commission's consideration regarding exemptions from client disclosure. The conversations included concerns that the regulations should implement what the statute requires. The regulations will affect the next filing period, especially for individuals who have clients with covered activities. The various advocacy groups' comments generally fell into three different areas in addition to comments regarding changing the structure of the Commission, which would require legislative change. Comments related to lobbying included concern with "shadow government" consultants and support for more active regulation of lobbying and consulting. There were also

comments made about open meetings and being subject to FOIL. There was a general consensus that the Commission could use Public Officers Law §74(3)(h) to pursue more conduct. Currently there are no penalties for violating §74(3)(h) so it was noted to the groups that JCOPE has proposed adding a penalty of a \$10,000 fine to that section. JCOPE had also proposed adding the concept of “accomplice liability” for violations of the Public Officers Law and the Legislative Law.

Commission Jacob asked how it was left with the groups relating to the various suggestions. Executive Director Agata stated that he told the groups that he would bring the suggestions back to the Commission. Some of these issues could be addressed in the comprehensive lobbying regulations which staff currently are working on and hope to present to the Commission in the next few months. Chair Horwitz asked what the concerns about the “shadow government” were. Executive Director Agata stated that the good government groups had concerns with the use of consultants who operate in the shadows, specifically in New York City. The groups were pleased with the recent Advisory Opinion to the extent that consultants could no longer escape regulation merely by identifying themselves as consultants.

Staffing

Executive Director Agata reported that staff tried to schedule a meeting of the Management Committee over the past few weeks, but was unable to do so and it is imperative to have a meeting as soon as possible. There are two line attorney positions that need to be filled in the Advice and Guidance division. Executive Director Agata would like to present a plan for reorganization to the Management Committee, but in the interim, requests authority to hire two attorneys who can assist in advice and guidance and also assist as investigative attorneys when needed.

Commissioner Weissman asked what the salaries would be, and General Counsel Stamm advised that the salaries would likely range from \$90,000 to the low six figures, depending on candidates’ experience and years of practice. Commissioner Weissman believes that authority was only given to hire non-policymakers. Chair Horwitz stated

that it would be good if the Management Committee meets because whatever the litmus test was, it was meant to be temporary, in the absence of an Executive Director, to ensure that the Executive Director would be able to fill higher level positions. The Commission is still operating under that construct, so the Executive Director is not able to hire lawyers. Until Executive Director Agata presents a more comprehensive staffing plan, there are some immediate needs. General Counsel Stamm explained that the current authority is only to hire auditors and staff in the filings units. There are currently at least 11 vacancies, 4 of which need to be filled as soon as possible. Judge Roth asked if a Management Committee meeting is going to be scheduled. Chair Horwitz explained that staff has been attempting to schedule a meeting, but was unable to find a date that worked for all the Commissioners on the Committee.

A motion was made by Commissioner Romeo, which was seconded by Commissioner Knox, to delegate authority to Executive Director Agata to hire two line attorneys. The motion was approved by unanimous vote.

Kinn Hearing

General Counsel Monica J. Stamm provided an update on the Kinn Matter in which the Commission publicly issued a Substantial Basis Investigation Report. A public hearing was noticed for June 1st to be conducted at the JCOPE Buffalo office. As outlined in the Commission's rules, an Independent Hearing officer was randomly selected. An outside contractor is used to randomly pull hearing officers from a pool of 7 and provide a list to the Commission. Staff contacts the hearing officers starting with the first on the list, to learn availability and disclose potential conflicts. Following this process, Judge Pratt again was selected to be the independent hearing officer. Judge Pratt held a conference on May 23, 2015 with counsel for both sides, and due to scheduling conflicts with witnesses, the hearing was adjourned. The parties will reconvene after June 8th, to determine a new hearing date. Staff will keep the Commission apprised.

Presentation on Two-Year Bar

Special Counsel and Director of Ethics and Lobbying Guidance John P. Harford provided a 30 minute PowerPoint presentation regarding the Two Year Bar in Public Officers Law §73(8)(a). Executive Director Agata stated that the issues covered in this presentation take up a significant amount of staff time. It is staff's intention to turn the presentation into a training and primer for State employees and ethics officers to use when leaving State service. Commissioner Weissman asked if the training would address issues relating to working for an entity that has a State contract as well as the reverse two year bar for those who join State service after working for an entity with a State contract. Executive Director Agata advised that there are Advisory Opinions on the reverse two year bar which is more about conflicts of interest than post-employment restrictions, but consideration would be given to including that information as part of the final training presentation.

IV. NEW AND OTHER BUSINESS

Proposed Meeting Schedule – July through December 2016

Chair Horwitz stated that the Commission will now publicize the meeting schedule for the next six months from July through December 2016.

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

A motion was made by Commissioner Romeo 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

Chair Horwitz announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission had a privileged discussion with its attorneys about three pending litigation matters. The Commission authorized an extension in responding to a 15-day letter. The Commission commenced two Substantial Basis Investigations. The Commission authorized communications regarding several investigative matters, voted to

close an investigation with a guidance letter, and discussed a number of pending investigations.

VII. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Weissman, which was seconded by Commissioner Knox, to adjourn the Public Meeting. The motion was approved by unanimous vote of Chair Horwitz and Commissioners Jacob, Knox, Koretz, Lavine, Rath, Renzi, Romeo, Smalls and Weissman. Commissioners Roth and Rozen were not present for the motion.