

**MINUTES OF THE PUBLIC SESSION OF THE
MARCH 31, 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

Members: Paul Casteleiro
Hon. Joseph Covello
Marvin Jacob
Seymour Knox, IV
Gary J. Lavine
Hon. Mary Lou Rath
David A. Renzi
Michael A. Romeo, Sr.
Hon. Renee R. Roth
Michael K. Rozen
George Weissman

Members

Absent: David Arroyo

Staff: Letizia Tagliafierro, Executive Director
Monica J. Stamm, Chief of Staff and Deputy Counsel
John T. Milgrim, Director for External Affairs
Steve Boland, Director for Administration
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and
Senior Counsel
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement
Robert Cohen, Special Counsel and Director of Ethics and Lobbying Guidance
Emily A. Logue, Investigative Counsel
Shari Calnero, Senior Counsel and Manager of Training
Lou Manuta, 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 March 31, 2015 Commission Meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

February 24, 2015

A motion was made by Commissioner Covello, which was seconded by Commissioner Roth, to approve the minutes from the Public Session of the February 24, 2015 Commission Meeting. The motion was approved by unanimous vote.

III. REPORT FROM EXECUTIVE DIRECTOR

Update on Outreach Initiatives

Executive Director Letizia Tagliafierro presented an update on outreach initiatives over the past month. JCOPE held two roundtable discussions on the topic of redesigning the Commission's website and updating JCOPE's electronic lobbying filing system. Executive Director Tagliafierro thanked the participants of the roundtables, including members of lobbying firms, good government groups, and State agencies. JCOPE will be incorporating their comments and suggestions into the redesign of both the new website and the electronic lobbying filing system.

Executive Director Tagliafierro announced the expansion of JCOPE's 1-800-87ETHICS hotline in furtherance of one of the agency's primary responsibilities to educate State employees on their obligations under the Public Officers Law and to facilitate compliance with those laws. A new feature was added to JCOPE's existing hotline to directly connect with staff attorneys for advice and guidance.

Guidance under the Lobbying Act

Executive Director Tagliafierro discussed that JCOPE is engaged in developing guidance to address the line between consulting and lobbying. The Commission needs to bring clarity to this area of the law and ensure that the public receives the full range of disclosure required under the Lobbying Act. In the coming weeks staff will engage in a dialogue with interested parties in order to develop proposed guidance, which will be

posted on JCOPE's website, to solicit informal public comments. Proposed guidance will then be presented to the Commission for consideration.

IV. Proposed Amended Outside Activity Regulations

Executive Director Tagliaferro presented the proposed amended Outside Activity Regulations. In December 2014, draft regulations were discussed with the Commission and then posted on the website to solicit informal comments. JCOPE received comments from the public and agency ethics officers and has incorporated changes to the proposed regulations which are before the Commission today. If the Commission votes to proceed, the regulations will be submitted for publication in the State Register pursuant to the State Administrative Procedure Act.

Robert Cohen, Special Counsel and Director of Ethics and Lobbying Guidance, explained that the proposed amendments to the Outside Activity Regulations are largely meant to clarify the regulations and make them easier to understand. To that end, a number of the changes are technical in nature or add definitions where none exist in the current regulations. Director Cohen discussed three particular substantive changes. The first is to require that board service as a member of a not-for-profit entity be disclosed to an agency's ethics officer even if no compensation is received from such service. Currently, board service on a not-for-profit would only be required to be disclosed and approved if the individual was making at least \$1,000 dollars a year in compensation from such board service. Under the proposed change, if compensation is less than \$1,000, agency approval is not required; it is a mere disclosure requirement.

Second, under the proposed amendments, an individual will be required to inform his agency on an annual basis if he is still engaged in a previously approved outside activity. There is no such requirement as of now. This requirement would enable ethics officers to be apprised of the outside activities of agency employees which is important should there be changes in personnel and rotations of responsibilities within an agency.

Third, the threshold for requiring JCOPE approval for an outside activity has been increased to \$5,000, from \$4,000, in annual compensation. Director Cohen explained if an outside activity generates at least \$1,000 in compensation on an annual basis, it requires agency approval. Currently, if the outside activity generates at least \$4,000 in annual compensation, it requires agency and JCOPE approval. The threshold has not been changed since the regulations were enacted approximately 20 years ago, and the \$5,000 threshold will align with the upper range of Category C in the Financial Disclosure Statement reporting. Director Cohen also clarified that the approval process for outside activities applies only to policy makers, those individuals who have been deemed by their agency to hold policy making positions. Director Cohen added that the informal public comments received from agency's ethics officers were generally supportive of the proposed changes and were more technical in nature, alerting JCOPE to some small modifications that were needed.

Executive Director Tagliafierro explained that if the Commission votes to proceed with a rulemaking, then the proposed regulations will be submitted and published in the State Register on April 22. There will be a 45-day public comment period and the regulations will likely be back before the Commission at the June meeting.

Commissioner Weissman asked about how the definition of compensation differs from what is currently in the regulation. Director Cohen explained that the change is not meant to be substantively any different. Word changes were made to address some of the questions that had been presented to the Commission. To the extent that there are changes, the changes in the language reflect what has been longstanding guidance in application of the regulations. So while there are changes to the wording, there are not really any changes to the scope of the regulations.

Commissioner Weissman asked whether the definition of “party” is consistent with what is currently in the Election Law. Director Cohen explained that the current regulations do not define “party”, so the proposed regulations include the definition from the New York Election Law. Commissioner Weissman suggested that it would be better to cite to the law itself so if the statutory definition changes it will automatically be incorporated into these regulations. Director Cohen will incorporate this change into the proposed regulations.

Commissioner Weissman also suggested that the Commission should consider expressly creating a “safe harbor” provision for those who comply with the regulations. Chair Horwitz discussed that staff routinely provides guidance to State agencies, officers, and employees, so this type of issue is not limited to these regulations. Certainly, if the Commission approved an outside activity, that would be a fact the Commission would consider in any potential enforcement action. If the Commission had all the relevant facts at the time it gave the approval, it may be dispositive; a safe harbor provision is not really necessary. However, if the Commission wants to consider a safe harbor provision, it could proceed today and continue to make modifications when the regulations are back before the Commission.

Commissioner Jacob questioned the approval form and whether the approval process should be standardized for both agency and JCOPE approval. Director Cohen stated that the current approval form is available on JCOPE's website and the agency ethics officers know how to access it. The form has been revised but there are no changes in substance to the current form. Once the regulations are finally adopted by the Commission, the revised form will replace the current form. The form will be circulated to the Commission for review. Chief of Staff and Deputy Counsel Monica Stamm explained that the form is not intended to be incorporated into the regulations to allow for more flexibility as changes in technology and other considerations may call for minor amendments periodically.

Director Cohen recommended that the Commission keep the issue of standardization under consideration until the form has been circulated, given that it is more of a cover sheet. It just requires basic contact information and signatures, and provides some instructions. With respect to the process, to date, there has not been much of a problem that needs to be addressed. Agency ethics officers, almost without exception, are very conservative in nature and when there is ever any question they either seek guidance from JCOPE or deny approval. In addition, some of the agencies are so different from one another, in size, organization, and mission, that JCOPE generally leaves it to the agency to develop its own internal practices and procedures. Deputy Counsel Stamm added that another important issue for consideration is that agencies often have more restrictive rules than JCOPE's regulations, and one form or process may not capture everything an agency would want to have disclosed to them and consider in their approval process. The regulations have always been explicit that nothing prevents an agency from adopting additional rules with respect to outside activities. Further thought should be given to these issues while the Commission proceeds with the rulemaking process.

Commissioner Weissman asked about the new requirement that if an individual gets an outside activity approved, they must disclose to their agency on an annual basis if they continue to engage in that activity and whether JCOPE should set a specific date for such disclosure. Director Cohen explained that setting a date for annual disclosure had not been considered because agencies tend to have their own established administrative timelines for meeting these types of requirements. Deputy Counsel Stamm added that given the variance between different types of agencies in the matter of size, operating systems, fiscal years, they often work on different schedules. In addition, some of the Commissions and Boards do not meet as regularly as others and any date that JCOPE established might not work with whatever their traditional institutional deadlines are. Deputy Counsel Stamm suggested that JCOPE move forward with the rulemaking process today, submit the regulations for public comment, and continue to raise these issues with agency ethics officers. The Commission can always amend the regulations again and put them out for another comment period. Until the amended regulations become effective, there is no annual disclosure required.

Chair Horwitz agreed that JCOPE should move forward with the regulations and give further thought to whether a standardized approach would be efficient given the variation in State agencies. JCOPE can solicit more information during the public comment period and get additional views from the agencies. Staff can consider the questions that have been raised today and come back to the Commission at the expiration of the 45-day period, and at that point, the Commission can make any additional changes it feels are necessary.

A motion was made by Commissioner Jacob, which was seconded by Commissioner Casteleiro, to approve the proposed amended Outside Activity Regulations for publication in the State Register. The motion was approved by unanimous vote.

V. NEW AND OTHER BUSINESS

There was no new or other business discussed.

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

A motion was made by Commissioner Jacob, which was seconded by Commissioner Roth, 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 discussed a number of investigative matters. The Commission authorized a substantial basis investigation and closed a substantial basis investigation. The Commission authorized staff to communicate with third parties in connection with certain investigative matters.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

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