



# **FIRST YEAR REPORT**

## **2012**

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# INTRODUCTION

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On June 13, 2011, the New York State Legislature passed, and on August 15, 2011, Governor Andrew M. Cuomo signed into law, the Public Integrity Reform Act of 2011 (“PIRA”). PIRA comprehensively reformed the oversight and regulation of ethics and lobbying in New York State – a key component of which was the establishment of the new independent agency, the Joint Commission on Public Ethics, which has oversight over both the Executive and Legislative Branches (the “Commission”).

The Commission assumed and continued the business and records of its predecessor agency, the Commission on Public Integrity. Additionally, it was granted broader regulatory authority and oversight to include state legislators, candidates for the Legislature, and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch state employees, certain political party chairs, and lobbyists and their clients. The Commission provides information, education, and advice regarding current ethics and lobbying laws, and promotes compliance with these laws through audits, investigations, and enforcement proceedings.

The Commission commenced operation on December 14, 2011 with the appointment of its fourteen commissioners, and shortly thereafter on February 28, 2012, the Commission appointed its Executive Director. Over the past year, the Commission has held more than twelve meetings and conducted a public hearing. This report highlights the accomplishments of the Commission's first year of operation and its progress in achieving PIRA's goals. This report is being offered in addition to, and in advance of, the annual report that will be submitted in March of 2013.

# BUILDING A NEW ETHICS AGENCY

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As a first step towards its mission of restoring the public trust in New York State government, the Commission authorized the Executive Director to reorganize and restructure the agency consistent with the new statutory mandates.

The agency was reorganized to maximize productivity and efficiency. Upon appointment, the Executive Director proposed, and the Commission adopted, a new staffing plan for the agency. Staff was reorganized into five divisions consistent with its multiple statutory and administrative functions:

- 1) Ethics and Lobbying Compliance, which handles the advisory functions of the agency, including providing daily guidance to the regulated community, developing regulations and guidelines to clarify legal issues, and creating an educational and training program on the ethics and lobbying laws;
- 2) Audit and Review, which administers the Commission's two statutory filing systems – annual Financial Disclosure Statements under Public Officers Law §73-a and required filings under the Lobbying Act – and conducts the random audit programs pursuant to which a percentage of filings are audited each year on a random basis;
- 3) Investigations and Enforcement, which handles the intake and review of complaints alleging violations of the Public Officers Law and the Lobbying Act, conducts substantial basis investigations commenced by the Commission, and represents the Commission before an independent hearing officer to adjudicate enforcement matters;
- 4) External Affairs, which oversees the Commission's external communications, including the release of public information, content on the Commission's website, and requests for public records; and
- 5) Administration, which manages the Commission's day-to-day administrative needs, including office management, financial transactions, and personnel matters.

Over the course of its first year, the Commission recruited experienced and talented staff to build the agency. The Commission currently has more than 40 employees including

attorneys, investigators, auditors, filing specialists, and administrative staff. While the agency's staffing level is lower than any prior ethics agency, it has completed its first year successfully, improving productivity with existing programs and achieving critical new statutory mandates.

The Commission has also established a statewide presence. The Commission opened offices downstate and in western New York to extend its coverage to the tens of thousands of state officers and employees, legislative members and employees, and registered lobbyists and clients located throughout the State. The Commission was able to offset any projected expenses related to the new offices by consolidating its Albany office space.

# PROMOTING TRANSPARENCY IN STATE GOVERNMENT

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A critical component of the Commission's mandate is improving transparency in government. Over the past year, the Commission has taken several significant steps toward this goal.

## ❖ **New Disclosure Requirements for Lobbyists and Clients**

Legislative Law Article 1-A (“Lobbying Act”) requires that registered lobbyists and their clients disclose information concerning lobbying activities and expenditures with the Commission. In 2012, the Commission processed more than 20,000 filings and completed approximately 400 random audits in accordance with its statutory mandate under the Lobbying Act.

Pursuant to PIRA, the Commission implemented two new disclosure requirements under the Lobbying Act that will provide the public with more information about the relationships between public officials and those who do business with or lobby before the state. Significantly, the Commission proposed and enacted historic regulations that require disclosure of individual sources of funding by certain entities that conduct significant lobbying activity in New York State. The Commission also adopted guidelines pursuant to which lobbyists and clients must disclose certain of their business relationships with State employees and officials. Specifically, the two new disclosures include:

- The disclosure by certain lobbyists and lobbying clients of each single source of funding in excess of \$5,000 that was used to fund lobbying activities.
- The disclosure by lobbyists and clients of any “reportable business relationship” with public employees and officials, or entities with which they have an interest, as set forth in the statute.

On June 7, 2012, the Commission conducted a public hearing during which it heard from the regulated community and public interest groups on these two new legal requirements. The Commission subsequently received and reviewed public comments concerning the scope and meaning of the disclosure sought. Based on those and other comments, the Commission developed regulations and guidelines on these two issues.

***Disclosure of Source Funding.*** Pursuant to PIRA's amendments to the Lobbying Act, new requirements provide that clients of lobbyists and lobbyists who lobby on their own

behalf, and meet certain financial thresholds with respect to lobbying activity, must disclose contributions received that are in excess of \$5,000. Regulations implementing these requirements were proposed by the Commission earlier this year and were submitted for public comment in accordance with the State Administrative Procedure Act. On November 20, 2012, the Commission approved modifications to the proposed regulations. The Commission also, on an emergency basis, adopted the regulations, as modified pursuant to public comments, to ensure they would be effective for the relevant filing deadlines in January 2013.

***Reportable Business Relationships.*** PIRA requires all registered lobbyists and clients to disclose the names of every state official and employee, including legislators and legislative employees, with whom the lobbyist or client has a “reportable business relationship.” PIRA defined “reportable business relationship” as a relationship in which compensation is paid by a lobbyist or by a client of a lobbyist in exchange for any goods, services, or anything of value, the total value of which is in excess of \$1,000 annually, to be performed or provided by or intended to be performed or provided by:

- (i) any statewide elected official, state officer, state employee, member of the legislature or legislative employee, or
- (ii) any entity in which the lobbyist or the client of a lobbyist knows or has reason to know the statewide elected official, state officer, state employee, member of the legislature, or legislative employee is a proprietor, partner, director, officer, or manager, or owns or controls 10% or more of the stock of such entity. This threshold is reduced to 1% in the case of a corporation whose stock is regularly traded on an established securities exchange.

After its public hearing, the Commission posted on its website proposed guidelines intended to clarify the reportable business relationship disclosure requirements. After receiving and reviewing public comments on the proposed guidelines, at its August 2012 session, the Commission adopted the guidelines.

## ❖ **New Requirements for Financial Disclosure Statements**

To maintain the public's trust and confidence in government through disclosure and to aid in the prevention of corruption, favoritism, undue influence, and abuses of official position, certain public officials are required to file an annual Financial Disclosure Statement ("FDS") with the Commission pursuant to Public Officers Law §73-a and Executive Law §94. PIRA expanded the Commission's authority to enable it to enforce this requirement with respect to legislative members, candidates for those offices, and legislative staff. In 2012, the Commission processed approximately 25,000 FDSs.

### ***Procedure and System Developed to Track and Review FDSs Submitted by Legislative Members, Candidates, and Staff***

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Starting in 2012, the FDSs for current legislative members and legislative employees are required to be filed with the Legislative Ethics Committee ("LEC") on May 15 of each year and then submitted by the LEC to the Commission by June 30. The Commission developed a procedure and system to track and review these FDSs

Further, pursuant to Public Officers Law §73-a(2)(d), the Commission must identify and post on its website a list of candidates who did not timely file. Public Officers Law §73a(2)(a)(iii)-(vii) requires that candidates for statewide elected office or candidates for the Legislature, within ten days of becoming a candidate, file an FDS with the LEC. The LEC forwards the candidate's FDS filings and a list of required filers to the Commission. Under the newly developed review procedure and system, the Commission contacts the state and each local board of elections to verify the list of required filers provided by the LEC. The names of more than 60 candidates who failed to submit their required FDS filings in a timely manner were posted on the Commission's website as required by statute, and the Commission will continue to take appropriate action with respect to these candidates.

### ***Updated Filing System to Incorporate New FDS Disclosure Requirements***

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PIRA provided for three new disclosure requirements effective on FDS filings submitted after January 1, 2013: first, filers must report on their annual FDSs the names of clients or customers to whom they personally provided services, or to whom their partnership or firm provided services in excess of \$10,000 as set forth in the statute (Public Officers Law 73-a); second, the categories of value were expanded to provide more precise disclosure about public officials' and employees' financial interests, and this information will be made available to the public for the first time; and third, the FDSs submitted by

statewide elected officials and legislative members will be posted on the Commission's website. The Commission has updated its filing system to incorporate these changes to the FDS forms. As of January 1, 2013, the new form will be available for filers.

### ***Random Review Program Developed for FDS***

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Pursuant to PIRA, the Commission developed a new Random Review Program ("Program") for comprehensive reviews of FDSs to begin in 2013. The primary objective of this Program is to ascertain compliance with Public Officers Law §73-a. Particular focus is devoted to validating whether all entries are completed, directly relate to each question, and are consistent with internal documents maintained by the Commission and related public information. This Program will ensure that the public has access to complete and accurate information about the financial interests and potential conflicts of state officials and employees.

At the beginning of each calendar year, the Commission will determine the quantity of filers to be selected for the Program. FDSs will be selected in a manner in which the identity of any particular filer whose FDS is selected is unknown to the Commission and its staff prior to its selection, and in which all required filers have an equal probability of being selected.

### **❖ Record Access Regulations and Meeting Guidelines**

With respect to its own governance, policies, and practices, the Commission strove to achieve a balance between the public interest in open government and the laws that require confidentiality of Commission activities and information. Accordingly, the Commission adopted meeting guidelines and records access regulations modeled on the Open Meetings Law and the Freedom of Information Law to ensure the greatest transparency permissible under its enacting statute. Pursuant to its new records access regulations, the Commission received and processed public requests for more than 1,770 individual FDSs throughout the year.

## ❖ New Website

This summer, the Commission built and unveiled its new website: <http://jcope.ny.gov>. The new website provides easy access to [the laws and regulations which govern the Commission's activities](#), links to [formal advisory opinions](#) issued by the Commission, a library of materials intended to provide guidance, and convenient methods to confidentially submit [sworn complaints](#) and [report a tip](#) of potential ethical or lobbying violations. The new website has also been used as a tool to engage stakeholders and the public in the work of the Commission. Access to electronic versions of [lobbying forms](#) (such as lobbyist registration and periodic reporting forms) and [ethics forms](#) (such as outside activity reports, FDSs, and the Honoraria reporting forms) –with easy to follow instructions – are available in a convenient location as well.

The website also provides intuitive and practical access for the public to view and download tens of thousands of disclosure filings provided by lobbyists and clients to help give New Yorkers meaningful information about those trying to influence government decisions. Likewise, the public can easily find the [names of candidates that were delinquent in their financial disclosure filings](#). Plans have been made to make electronically available from the website: (1) the FDSs of elected State officials starting with filings submitted after January 1, 2013; (2) filings pursuant to the new lobbying disclosure requirements; and (3) tools to better access and analyze data that will be available for the first time starting in 2013. Finally, the results of [Commission enforcement actions](#) can also be found on the website.

# PROVIDING GUIDANCE TO THE REGULATED COMMUNITY

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## ❖ **Ethics and Lobbying Training and Outreach**

The Commission has formed a new Education Resource Group to develop a comprehensive educational program to ensure that the public officers and employees, lobbyists, and clients are fully informed so that they are able to comply with the laws, regulations, and guidelines the Commission administers and enforces. Among other things, the Education Resource Group will provide instructor-led trainings on the State's ethics and lobbying laws, create web-based programming on a variety of topics, and compile a library of written educational materials to be posted on the Commission's website. This fall, the Education Resource Group conducted trainings on the changes to the Public Officers Law under PIRA and the new disclosure requirements in the Lobbying Act. It will continue to roll out its new training program next year.

The Education Resource Group has also established a State Ethics Officers Community of Practice to exchange information on government ethics, a collaborative tool between agency ethics officers and the Commission. This new network of ethics officers will be used to easily:

- Distribute regular E-blasts on new guidelines and policy changes
- Provide notice of new publications and training opportunities
- Address agency specific questions and concerns
- Announce periodic meetings on “Hot Button” ethics issues

## ❖ **Opinions and Advice**

The Commission provides regular guidance to the public officers, lobbyists, and clients whom it regulates. On a daily basis, Commission staff and counsel interact with the regulated community, answering questions and addressing issues in both formal and informal communications. Pursuant to Executive Law §94, the Commission issues formal Advisory Opinions, applying the Public Officers Law or the Lobbying Act to a particular set of facts. These opinions are issued upon approval of a majority of the Commission and are binding on both the Commission and the individual requesting the Opinion in any subsequent proceeding, provided that the requesting individual acted in good faith and neither omitted nor misstated any material facts. In addition, Commission staff provides informal opinions on request. These opinions serve as guidance, but are not binding on the

Commission. Informal opinions are issued on matters where formal opinions already have established precedent, especially in the areas of post-State employment restrictions and proposed outside activities by current State workers. Individuals who receive informal opinions, which are confidential, may request a formal Advisory Opinion from the full Commission. The Commission also reviews and approves requests from certain state officials to participate in an outside activity and to accept honoraria or reimbursement from non-governmental entities for travel expenses related to official duties.

This year, Commission staff has provided written guidance on more than 132 requests, including outside activity requests, informal opinion requests, and travel approval requests.

The Commission also issued Advisory Opinion No. 12-01. This opinion addressed a former hearing officer in the NYS Office of Temporary Disability Assistance (“OTDA”) who sought to represent, in a *pro bono* capacity (*i.e.* free of charge), individuals who appear before OTDA to appeal determinations concerning social service benefits and other public assistance issued by other agencies. He asked the Commission if the post-employment restrictions contained in Public Officers Law §73(8)(a)(i), known as the “two-year bar,” apply to this activity and therefore prevent him from undertaking this work. The Commission found that Public Officers Law §73(8)(a)(i) prohibits the former hearing officer from appearing before OTDA for any reason within two years of his termination, including representing individuals who are appealing other agency’s decisions, and further found that this prohibition applies even if he is appearing before OTDA on a *pro bono* basis. The full text of this and other Advisory Opinions are available on the [Commission’s website](#).

#### ❖ **Interim Guidance on Gifts**

The Lobbying Act, as most recently amended by PIRA, mandates that the Commission provide full and complete disclosure as to the identities, activities, and expenditures of those attempting to influence the governmental decision-making process in New York State on both state and local levels. Among other things, the Lobbying Act prohibits lobbyists and clients from offering or giving gifts to public officials unless, under the circumstances, it could not be reasonably inferred that such gift was intended to influence a public official. The new law amended and clarified two exclusions from the gift ban in the Lobbying Act as follows:

- 1) Excludes from the definition of “gift” food or beverage valued at \$15 or less as set forth in the statute; and

- 2) Clarified the “widely attended event” exclusion applies to an event offered by the sponsor at which at least 25 individuals who are not from the governmental entity in which the public official serves attend or were, in good faith, invited to attend, and is related to the public official’s duties or responsibilities or allows the public official to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a public official’s duties or responsibilities shall include but not be limited to either (1) attending an event or a meeting at which a speaker or attendee addresses an issue of public interest or concern as a significant activity at such event or meeting; or (2) for elected public officials, or their staff attending with or on behalf of such elected officials, attending an event or a meeting at which more than one-half of the attendees, or persons invited in good faith to attend, are residents of the county, district or jurisdiction from which the elected public official was elected.

In light of these amendments and to provide clarity to the regulated community during the holiday season, the Commission approved interim guidance on gifts at its November 2012 session. This interim guidance explained that the amendments to the definition of "Gift" in the Lobbying Act will be incorporated into the Commission's application of the Public Officers Law and provided a step-by- step analysis for individuals subject to the gift provisions to determine under what circumstances it may be permissible to offer or accept a gift. This interim guidance will be in effect until the Commission issues formal regulations on gifts.

#### **❖ Proposed Regulations on Gifts and Related Issues**

The Commission is in the process of developing new regulations and revising existing regulations to provide further guidance and clarity for public officials, lobbyists, and clients concerning the offer, acceptance, and receipt of items of value, compensation, or other reimbursement. Specifically, the Commission is considering regulations on gifts under the Public Officers Law, gifts under the Lobbying Act, honoraria; payments from non-governmental individuals or entities for expenses and services related to official duties; and public service announcements. The Commission will continue to work with the Legislative Ethics Commission and others in an attempt to develop consistent regulations and guidelines. Once adopted, the proposed regulations will be published pursuant to the State Administrative Procedure Act and will be subject to public comment prior to approval.

## PURSUING INVESTIGATIONS AND ENFORCEMENT

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The Commission is charged with investigating potential violations of the state's ethics laws (Public Officers Law §§73, 73-a, and 74), the "Little Hatch Act" (Civil Rights Law §107), and the Lobbying Act (Legislative Law article 1-a) as they apply to state legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch state employees, certain political party chairs, lobbyists, and their clients.

Under PIRA, the Commission's enforcement authority was expanded beyond any predecessor agency's jurisdiction. The Commission is authorized to impose civil penalties, and, where appropriate, refer for criminal prosecution certain violations of the Public Officers Law. In addition, the Commission has jurisdiction to investigate potential ethics law violations by members of or candidates for the Legislature and legislative employees. In the event that the Commission finds a substantial basis to conclude that such a violation has occurred, it submits a report to the LEC which may then assess penalties pursuant to its own adjudicatory regulations which are available on its website.

### ❖ **Procedures**

The Commission promulgated new regulations governing the conduct of adjudicatory proceedings relating to the assessment of civil penalties, appeals taken from hearing officer final decisions, and appeals of denials of requests to delete or exempt certain information from a FDS. Among other significant changes, to ensure fairness of the proceedings, the regulations provide that independent hearing officers who will be selected randomly from a pool of hearing officers will conduct adjudications. The Commission has selected 10 highly qualified individuals to serve as hearing officers thus far, and will continue to expand the pool of hearing officers as needed in the future.

In addition, the Commission adopted formal guidelines for filing sworn complaints alleging violations of the Public Officers Law or the Lobbying Act, which are available on the Commission's website. The Investigations Division also adopted internal procedures for intake and review of all tips and complaints and is in the process of creating a new case management system.

### ❖ **2012 Substantial Basis Investigations**

In 2012, the Commission received and reviewed more than 150 potential matters. After review, the Commission commenced more than 45 substantial basis investigations.

The Commission has resolved more than 25 investigations in 2012, resulting in settlements and penalties totaling more than \$40,000.

## CONCLUSION

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In its first year, the Commission has built and staffed a new agency with a statewide presence and broader oversight and authority. Although the Commission has operated with a smaller staff and budget than prior ethics agencies, it has worked productively to meet statutory mandates in each of its core areas, and will continue to diligently pursue its mission of promoting ethics and restoring trust in New York State government.