Appearances: Michael K. Rozen, Chair

Commissioners:

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
David J. McNamara
George H. Weissman
James A. Yates

Staff:

Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Walter J. McClure, Director of Communications and Public Information Officer
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst
Gage Hodgen, Intern

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel
Chair Rozen: Good morning everyone, welcome to the August meeting of the New York State Joint Commission on Public Ethics. Before we get started, I’d like to read a statement. Thank you all for joining us today. I hope all of you and your families continue to be healthy and safe as the health crisis continues. As in prior months this meeting is being held using video conferencing technology. The public session is accessible on JCOPE’s website to watch via livestream. We anticipate that the Albany office will open to the public by the end of August to accept filings and other documents. As mentioned previously, some of the JCOPE operations that were paused for the past few months will resume shortly after the Albany office reopens. Announcements will be made and distributed at the appropriate time. We will continue to evaluate the circumstances of the health crisis to determine whether further accommodations are still needed. Please contact the Commission staff if you need assistance. Finally, to conduct this meeting smoothly, I will do my best to recognize anyone who wishes to speak. It is important that only one person speak at a time and when not speaking, that you mute your microphone. In addition, I ask that when you speak, you identify yourselves, so we have a clear record. We will need to take votes by roll call to ensure that everyone is counted. Let’s move on, attachment A, approval of the
minutes from the June Public Session. Any questions or
comments. I am not seeing or hearing any. Walt, Martin, Monica,
are we good?

Martin Levine: Seems we need a motion though.
Chair Rozen: Yeah. Can I have a motion please?
Martin Levine: I see Commissioner McNamara.
Chair Rozen: Commissioner McNamara. Thank you.
Second? Can I have a second please?
Commissioner Cohen: This is Rob Cohen, I’ll second.
Chair Rozen: Thanks Rob, all in favor, Martin, we
need a roll call, I guess.
Martin Levine: Yes, On the Public minutes,
Commissioner Cohen.
Commissioner Cohen: Yes.
Martin Levine: Commissioner Dering.
Commissioner Dering: Yes.
Martin Levine: Commissioner DiPirro? Commissioner
DiPirro, what about Commissioner Fisher? Commissioner Fisher?
Commissioner Fisher: Yes.
Martin Levine: Thank you. Commissioner Jacob?
Commissioner Lavine? Judge McCarthy?
Commissioner McCarthy: Yes.
Martin Levine: Commissioner McNamara?
Commissioner McNamara: Yes.
Martin Levine: Commissioner Weissman?
Commissioner Weissman: Yes.

Martin Levine: Judge Yates?

Commissioner Yates: Yes.

Commissioner Lavine: Did you call my name Martin, this is Gary.

Martin Levine: I did Commissioner, how do you vote on the minutes?

Commissioner Lavine: Yes.

Martin Levine: Chair Rozen?

Chair Rozen: Yes.

Martin Levine: And Commissioner DiPirro? Alright the motion carries.

Chair Rozen: Okay. Thank you. Report from staff. Monica, Martin, who is taking this.

Lori Donadio: Is Monica muted?

Martin Levine: Monica you have to unmute.

Monica Stamm: Can you hear me?

Chair Rozen: Yes, go ahead Monica.

Monica Stamm: Sorry so I was reminding everyone that financial disclosure statements filings are due on Monday, August 17th. We will be posting the elected official financial disclosure statements as we receive them. We expect to receive the legislative filings from the LEC by the end of August or early September. We are still pursuing compliance from candidates in the primary. There were approximately 25
candidates that we are actively pursuing before the election that did not file yet. If there aren’t any questions on that I will just move on to the Buffalo and New York City office update. This is about renovations and re-locations that have been planned, having nothing to do with COVID-19 response. The Buffalo office is due to be relocated to the new building in the spring of 2021. I believe it will be temporary, but we will keep you posted as we have more information about that. It has been delayed due to COVID-19 but that has been in the plan for a while now. In addition, as those of you in New York City knows the New York City office building is under renovation.

Monica Stamm: The lobby in the New York City office building is expected to be open in September. Due to construction delays related to COVID-19, our internal offices in New York City has been delayed from, it was supposed to happen the spring of 2021, but now expecting it will happen in August or the Fall of 2021. With that, I will turn it over to Steve Boland, Director of Administration, for the first quarter financial report. Steve needs to be unmuted.

Walter McClure: Steve is unmuted. Steve, can you hear us? Steve was having an issue with his audio, so he couldn’t hear you before.

Monica Stamm: Okay so the first quarter financial report, if anyone has questions, they can follow up with Steve. My understanding is that in the first quarter, we spent
approximately $1.1 million in personal service and about $122,000 in non-personal service so that is about 22% of our cash for the year. Does anyone have any questions?

Commissioner Yates: Yes.

Chair Rozen: Go ahead Commissioner Yates.

Commissioner Yates: Were you able to find out if the hiring freeze imposed by the governor prevents us from hiring a replacement Executive Director for Seth Agata?

Monica Stamm: We did not make those inquiries. I assume that when the time comes that the hiring freeze will not apply and that will be processed but if you want me to make those inquiries, we can make those inquiries. We did not make them.

Commissioner Yates: No, you can wait if you think it is appropriate. I just didn’t want to engage in the search and then find out we don’t have the money.

Monica Stamm: We haven’t been told that we have any kind of reduction to our personal service fund, so I wouldn’t expect that to be the issue, it is probably more about processing it. There have been many appointments that have been going on even despite the hiring freeze. So, like I said for something as significant as the Executive Director, I wouldn’t expect it to be an issue, but I am happy to make inquires between now and the next meeting.

Commissioner Yates: Okay, thank you.
Martin Levine: Any other questions on this?

Colleen DiPirro: This is Colleen DiPirro. I’m back in. I got knocked off and they wouldn’t let me back in, but I am back in now.

Chair Rozen: Thank you Commissioner. Monica keep going.

Monica Stamm: So, now I will turn it over to Martin. He is going to give an update on lobbying regulations.

Martin Levine: Okay is my audio okay?

Chair Rozen: Yes.

Martin Levine: Great. So after the Commission voted last meeting, we published the proposed regulations in the state register on July 14th for a sixty day comment period that brings us to September 13th. Since the publication, we have continued to engage with stakeholders to evaluate both the efficiency and the efficacy of the existing regs. We have been looking closely at the provisions that allow coalitions to register as a single entity in order to determine whether that provision of the regulations has been effective and/or taken advantage of. Our initial look, I’m sorry, I mean utilize, not taken advantage of, our initial look at the data shows that the coalition registration option was seldom used and certainly not in proportion to the amount of staff time and resources and questions that came up through the regulated community. As a result, after discussions internally, we are going to post for
an informal comment a segment of the regulations that propose to simplify the coalition model. Essentially what they would do is take away the coalition filing option and require any members of a coalition to simply disclose all their activities, whether they be individual or coalition related, including their contributions. We think this will simplify the process without creating any sort of meaningful burden at the option of removing was infrequently used we suspect due to its unfortunate complexity. This goes to the comment Commissioner Fisher had last month about sort of a cost benefit of sort of these complex regulations. We are also considering certain changes to the use of stock as lobbying compensation specifically we are evaluating whether there are additional criteria that can be used to determine a proposed compensation arrangement violates the contingent fee prohibition. Depending on how these two sort of interim proposals are received, it may bring changes back to you with the regulations in October. Obviously if any substantive changes were adopted by the Commission to this or anything else, that would trigger an additional Notice and Comment period under SAPA but there is nothing more to act on today. We just wanted to let you know that we are going to float a couple of proposals that we think will both simplify the process and sort of facilitate this new development this question of stock compensation.

Judge Yates: May I?
Chair Rozen: Commissioner Yates, go ahead.

Judge Yates: Does that proposed change on coalitions mean that if someone, part of a coalition, say signs onto a letter or something but they didn’t spend $5000 that they still would have to register and file.

Martin Levine: Let me sort of unwind that. If someone signs on to a coalition letter for instance but using that staff time and any other expenditures that they have for lobbying, they don’t exceed $5000, they would not register now nor would they have before. So, there is no change to that and there is no additional obligation.

Chair Rozen: Other questions? Yes.

Commissioner Weissman: This is George.

Chair Rozen: Hi George, go ahead.

Commissioner Weissman: Martin, what are you looking at in terms of the stock compensation, what areas?

Martin Levine: I think George we are going to drill a little more into specifics of the lobbying activity, for instance, whether it is procurement, or whether it is legislation, or whether it is regulation, and evaluate on a case by case whether the type of lobbying creates more or less of a risk of sort of perverse incentive to create a contingent fee. The other thing we are going to look at will be specific sides of the entity or the lobbying company that is seeking to pay their lobbyist in stock, and to determine whether that has a
more or less likelihood of the lobbying impacting the value of
the stock. Finally we are going to make clear that internal
employee compensation that includes stock options when you have
an internal employee who is a in-house lobbyist, that they are
not prohibited from receiving the same compensation as any other
employee but you being the in-house lobbyist, so we are going
to clarify that would not be of itself a violation. It continues
to be a factor based evaluation but we would just like to provide
a little more flexibility because we found that the factors that
we previously enacted didn’t really create any sort of avenue
to utilize this sort of arrangement so we are trying to make it
somewhat effective if possible.

Commissioner Weissman: Thank you very much.

Chair Rozen: Any other questions, okay, hearing none
that concludes the

Commissioner Lavine: May I ask Mr. Chairman?

Chair Rozen: Sure, Gary go ahead.

Commissioner Lavine: Do you intend to report on the
confidentiality committee deliberation and then I have a follow
traveling issue I wanted to address.

Chair Rozen: Sure, so regarding the confidentiality
committee, staff recently distributed revised materials for the
committee’s consideration. The committee plans to reconvene in
August and hopes to be able to present to the full Commission
at the next meeting a detailed plan including specific proposals
to amend the Commission’s records access regulations, meeting guidelines, and internal practices. Go ahead Gary.

Commissioner Lavine: Yeah, thank you Mr. Chairman. I want to raise the issue that was initially brought to the floor by Ravi Batra with whom some of us served when he was a commissioner. When Commissioner Batra parted company, he asserted that there is in effect a two-tier hierarchy of commissioners with respect to information sharing. He dubbed the term “super commission”, which is to say the super commissioners are those who are fully informed, he asserted salient information is withheld from the other commissioners, the others being not gubernatorial appointees. I want to state emphatically Mr. Chairman that as a matter of law is malpractice. Information should not be withheld from any commissioner. There is no need for the confidentiality committee’s analysis on this subject. A principal should be self-evident. I want to stress that my observations are not directed at staff. They are directed at the governance of the Commission, which is our responsibility, not staff’s. It is my distinct impression that Commissioner Batra’s characterization still is the situation regarding certain matters. If I am wrong, I would like to be disabused. However, it is my further impression the rationale has been propounded that certain commissioners cannot be trusted to maintain confidentiality emanating from those who’ve opposed pursuing the leak cover-up
perpetrated by the Inspector General’s office, this rationale couldn’t be more ironic. I want to say emphatically Mr. Chairman, withholding information is fundamentally antithetical to informed discussions and deliberations should not be abided. Thank you for letting me express myself.

Chair Rozen: No problem. Commissioner Weissman?

Commissioner Weissman: I will make it short. I am just going to second Commissioner Lavine’s statement, and like Commissioner Lavine, I was here from day one, and the notion that some commissioners have more information than others, and then those Commissioners, as Commissioner Lavine said, staff has similar information but have been precluded from sharing it, does cause a significant public policy issue.

Chair Rozen: So, since I am aware of, I think, of what you both are referring to, I am going to just say that I do not think it is the case that there are, what did you call them, Gary, super commissioners?

Commissioner Lavine: Yes.

Chair Rozen: Who have information while others don’t. I am aware of certain information that every other commissioner is not, and that is pursuant to discussions that we have all had, in delegation and all sorts of other things that we don’t need to discuss here in public session. But I am not aware of any other circumstance, so if there is that, please bring it to my attention privately and I will immediately look into that.
But I am not aware of anything else, other than that one item that I referred to, so if there is something else, please let me know, but not in public session obviously.

Commissioner Lavine: Thank you very much, Mr. Chairman.

Chair Rozen: Not at all.

Commissioner Lavine: Mr. Chairman, I have another item that I would like to raise, if I may.

Chair Rozen: Go ahead, Commissioner Lavine.

Commissioner Lavine: Let me address our General Counsel. This is in respect to the Committee for One New York and Mayor DeBlasio. Now as I understand it there is an idiosyncrasy in the law by which we have jurisdiction over lobbyists functioning before the City of New York and the office of the Mayor, but we do not have jurisdiction over the Mayor, is that correct?

Monica Stamm: Yes, that’s correct. The Public Officers law, the State’s Public Officers Law, does not apply to local officials.

Commissioner Lavine: And it is my further understanding that jurisdiction over the mayor is with the Conflicts of Interest Board, correct?

Monica Stamm: With respect to ethics provisions, yes.

Commissioner Lavine: Now to the extent that you are aware and can divulge in the public session, has any action been
taken by the New York City Conflicts of Interest Board with respect to our inquiry, which has demonstrated beyond any doubt whatsoever that there was impropriety in the gift giving to the Committee for One New York by lobbyists. Any action whatsoever emanating from the Conflicts of Interest Board?

Monica Stamm: The Conflicts of Interest Board’s activities are confidential, so other than what they have made public, I don’t have any information about what action they may or may not have taken. They did issue a statement, I believe, relating to their inability to enforce certain advisory opinions and then they engaged in a rule making process to adopt rules to allow them to impose penalties for certain types of violations of law, but if you want to get into more detail on that, I would have to look into it more because I am not, you know, the City’s rules and laws are not something that I focus on regularly.

Commissioner Lavine: It is the case, however, is it not, that prior to the commencement or our inquiry into this tawdry situation, that the Conflicts of Interest Board had issued two opinions, which should have been perfectly obvious to all the participants, the lobbyists, the mayor, and the mayor’s staff, that what they were doing was improper and unethical, is that not the case, that these opinions were issued?
Monica Stamm: Commissioner Lavine, I can’t really discuss this matter, and answer your questions in the public session this relates to you know.

Commissioner Lavine: Thank you very much, and I respect confidentiality. Mr. Chairman, let me say that at this juncture, I want to reiterate what I said late last year, the Mayor’s contempt for ethical propriety is reprehensible and something ought to be done about it, and as been stated here today, we don’t have jurisdiction to do anything about it. The jurisdiction is with the Conflicts of Interest Board. I strongly urge that our staff contact the Conflicts of Interest Board and ascertain exactly what they intend to do with the results of our findings and report back to us. Thank you very much, Mr. Chairman.

Chair Rozen: Thank you Commissioner. Alright at this time we need to enter into Executive Session, can I have a motion please.

Commissioner Dering: I will move.

Chair Rozen: Who was that?

Commissioner Dering: Dering.

Chair Rozen: Thank you Commissioner, is there a second?

Commissioner DiPirro: Commissioner DiPirro will second.
Chair Rozen: Thank you Commissioner. Martin, we need a roll call.

Martin Levine: Sorry. Commissioner Cohen.

Commissioner Cohen: Yes.

Martin Levine: Commissioner Dering?

Commissioner Dering: Yes.

Martin Levine: Commissioner DiPirro?

Commissioner DiPirro: Yes.

Martin Levine: Commissioner Fisher?

Commissioner Fisher: Yes.

Martin Levine: Commissioner Jacob?

Commissioner Lavine: Martin, did you call my name this is Gary.

Martin Levine: Commissioner Lavine, yes, I did.

Commissioner Lavine: Yes.

Walter McClure: Commissioner Jacob was muted. Try him again.

Martin Levine: Commissioner Jacob?

Commissioner Jacob: Yes.

Martin Levine: Judge McCarthy?

Judge McCarthy: Yes.

Martin Levine: Commissioner McNamara?

Commissioner McNamara: Yes.

Martin Levine: Commissioner Weissman?

Commissioner Weissman: Yes.
Martin Levine: Judge Yates?
Judge Yates: Yes.
Martin Levine: Chair Rozen?
Chair Rozen: Yes.
Martin Levine: Motion Executive Session.
Chair Rozen: Okay, so the public session is adjourned.
Walter McClure: We’re back on.
Commissioner Dering: Okay, we are back from Executive Session. Monica, could you please provide a summary of the action we took?
Monica Stamm: Sure. Yes, sorry. During executive session, we discussed litigation matters, we considered an appeal from the denial of request for exemption from filing an FDS pursuant to Executive Law 94(9)(k), we issued an advisory opinion pursuant to Executive Law 94(16) we approved one settlement agreement, we commenced three substantial basis investigations, and we authorized steps in several investigative matters, closed one matter, and discussed several other investigative matters.
Commissioner Dering: Great. Thank you. Given the time, is there a motion to close the meeting?
Commissioner Weissman: Motion to adjourn.
Commissioner Fisher: Commissioner Fisher seconds.
Commissioner Dering: Martin if could you please do a roll?
Martin Levine: To adjourn, Cohen?
Commissioner Cohen: Yes. Yes.

Martin Levine: Dering?
Commissioner Dering: Yes.

Martin Levine: DiPirro?
Commissioner DiPirro: Yes.

Martin Levine: Fisher?
Commissioner Fisher: Yes.

Martin Levine: Jacob?
Commissioner Jacob: Yes.

Martin Levine: Lavine?
Commissioner Lavine: Yes.

Martin Levine: McCarthy?
Commissioner McCarthy: Yes.

Martin Levine: McNamara?
Commissioner McNamara: Yes.

Martin Levine: Weissman?
Commissioner Weissman: Yes.

Martin Levine: It carries. We’re adjourned.

Commissioner Dering: Thank you everyone.