

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

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Commission Meeting of December 15, 2020
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Appearances: Michael K. Rozen, Chair

Commissioners:

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Daniel J. Horwitz
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
Keith St. John, Deputy Counsel and Director of Ethics
Carol Quinn, Deputy Director of Lobbying
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst
Kelly McCready, Confidential Clerk

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Walter McClure: Okay, Mr. Chair, we are live.

2 Chair Rozen: Thank you all. Welcome to the final 2020
3 meeting of the New York State Joint Commission on Public
4 Ethics. As we've done in the past several months, this meeting
5 is being held using video conferencing technology. Public
6 session is accessible on JCOPE's website to watch via live
7 stream. As a reminder, it's important that only one person
8 speak at a time. In addition, I ask that when you speak
9 you identify yourself, so we have a clear record. As we have
10 done previously, we will take votes by a modified roll call to
11 ensure that everyone is counted. Please remember to mute your
12 phone when you are not planning to speak. Item two on the
13 agenda, approval of the minutes from the November meeting
14 public session behind attachment A, any questions or comments.

15 Commissioner Dering: I'll move them.

16 Chair Rozen: Second?

17 Martin Levine: Commissioner Weissman seconds.

18 Chair Rozen: Okay, Martin take the roll please.

19 Martin Levine: All in favor, please raise your
20 hand. I see Rozen, McNamara, Fisher, Horwitz, Weissman,
21 Dering. I'll call let's see Commissioner Cohen, we'll come
22 back, Commissioner DiPirro?

23 Commissioner DiPirro: Yes.

24 Martin Levine: Commissioner Jacob?

25 Commissioner Jacob: Yes.

1 Martin Levine: Commissioner Lavine?

2 Commissioner Lavine: Yes.

3 Martin Levine: Judge McCarthy, we'll come back,
4 Commissioner Cohen?

5 Commissioner Cohen: Yes.

6 Martin Levine: And Judge McCarthy?

7 Commissioner Yates: Sorry I joined late, what's the
8 vote about?

9 Martin Levine: This is the minutes, Judge Yates, are
10 you in favor?

11 Commissioner Yates: Yeah, I'm on and I'm a yes on
12 confirming the minutes.

13 Martin Levine: I will record it, so I have 11 in
14 favor. That motion passes.

15 Chair Rozen: Thank you. Item three, report from
16 staff.

17 Monica Stamm: Hi, this is General Counsel Monica
18 Stamm. First I will start with an outreach update. We issued
19 an ethics reminder recently about holiday gifts. Our fall/
20 winter newsletter is likely going to be published either later
21 this week or early next week. We had to postpone the ethics
22 officer forum on contractors until next year, but we're holding
23 an ethics officer forum on financial disclosure statements on
24 Thursday, January 14th. I'll move on unless anyone has
25 questions. To an update on the New York City office

1 construction. So, for those of you who usually participate
2 there, the New York City office has been fully remote since
3 March. So the entire building has been taking advantage of the
4 time and getting moving and having construction and the lobby
5 has reopened. To expedite the rest of the renovation, we've
6 agreed that the New York City office can be relocated
7 temporarily, starting in early 2021, until our new space on the
8 5th floor is ready. We expect it to be in the fall of 21. So
9 we're waiting for more information about where the temporary
10 space will be. It will either be in the 50 Beaver Street
11 entrance, or the 60 Broad. For people in the New York City
12 office, there are three entrances, but it's all the same
13 building, it's just each entrance has different elevator bays,
14 so they'll just switch us. The space will not have as many
15 individual offices, it'll have some cubicles, but we will have
16 space to store confidential records and will have access to at
17 least one or two offices or a conference room for use for
18 confidential purposes. So, we'll keep you posted on that.
19 The next issue is the lobbying filing. So, as you know, staff
20 would, can the people who are not on, could you, could you mute
21 please. As you know, staff would like to give more time to
22 lobbyists and clients to submit their statutory filings in
23 light of pending changes to the online lobbying filing system
24 which are going to be rolling out later this week. We want to
25 give filers until Friday, January 29th to submit their 21-22

1 biannual registrations as well as bimonthly and client semi-
2 annuals that are due on January 15th without facing late fees,
3 or enforcement actions from timely filing. So, in other words,
4 we just want to delay any enforcement procedures until after
5 filings come in. We would give them until January 29th. This is
6 consistent with what staff has done in the past when there have
7 been technical problems with the filing system, or what we did
8 in March due to the COVID-19 crisis. We would communicate this
9 to the filers via eblast and a posting on the website. We'd
10 like to do this as soon as possible. With respect to changes
11 in the filing system, we are sending a number of instructional
12 documents to guide filers through the changes in the
13 regulations and the filing system, and those are all ready to
14 go as soon as you make this decision. Unless anyone objects,
15 that's what staff's plan is, and we will communicate that as
16 soon as possible.

17 Commissioner Weissman: Mr. Chair?

18 Chair Rozen: Yes.

19 Commissioner Weissman: Do we need a motion to accept
20 the staff recommendation to move this forward?

21 Monica Stamm: We, you don't technically, sorry.

22 Chair Rozen: Go ahead, Monica. I was just going to
23 point, ask you that question? I don't think we do, right?

24 Monica Stamm: Right, a vote is not required. This is
25 something like I said, staff has had to do from time to time

1 between meetings. Certainly, there's nothing that would prevent
2 the Commission from voting, but staff needs this flexibility
3 because often issues arise between meetings where people can't
4 use the filing system and we have to give them a day or two
5 leeway.

6 Commissioner Weissman: No, I absolutely agree with
7 staff's proposal. I'm just asking the question whether or not
8 the Commission should adopt the staff proposal.

9 Chair Rozen: I don't think we have to, but I don't
10 think it's, I don't think it's a problem to do so, George, so
11 if you, if you move it.

12 Commissioner Weissman: I'm happy to make the motion.

13 Chair Rozen: Yeah. Go ahead.

14 Commissioner Weissman: Done.

15 Chair Rozen: Thank you. Second?

16 Commissioner Dering: I'll second it, Dering.

17 Chair Rozen: Thank you. I love you guys. Marvin,
18 Martin please.

19 Martin Levine: On the motion to accept staff's
20 recommendations regarding lobbying filing deadlines, please
21 raise your hand, all in favor. I see Rozen, McNamara, Horwitz,
22 Dering, Yates, Weissman. Okay, that's the WebEx contingent.
23 Commissioner Cohen? Sorry, go ahead.

1 Commissioner Cohen: Yes.

2 Martin Levine: Commissioner DiPirro?

3 Commissioner DiPirro: Yes.

4 Martin Levine: Commissioner Jacob?

5 Commissioner Jacob: Yes.

6 Martin Levine: Commissioner Lavine?

7 Commissioner Lavine: Yes.

8 Martin Levine: Judge McCarthy?

9 Commissioner McCarthy: Yes.

10 Martin Levine: Motion passes.

11 Chair Rozen: Thank you. Item four, attachment B.

12 Martin Levine: That's me.

13 Chair Rozen: Go ahead.

14 Martin Levine: Thank you. Mr. Chairman. This is, as
15 you mentioned, this is behind tab B in your books. The proposal
16 before you is to commence a revised rulemaking proceeding for
17 the Commission's, quote, access to publicly available records
18 regulations, which we call our records access regulations at
19 part 937. This would start a 60-day notice and comment period
20 under the administrative procedure act. This comes out of the
21 deliberations of the confidentiality and records access
22 committee and has been discussed in concept with the full

1 Commission with one exception. The proposed changes deal
2 exclusively with information related to financial disclosure
3 statements. Under current law and practice, the only
4 information related to financial disclosure statements that are
5 available to the public are the statements themselves. And so
6 this is governed by Executive Law 94(19), which spells out the
7 items that are available, the items, the records of the
8 Commission that are required to be publicly available. The
9 proposal and the regulations would make the following
10 additional information public related to FDS. One, date of a
11 filing, two, the status of a filing, that is whether it came
12 in, whether it's overdue, whether the filer was exempt, whether
13 there was an extension awarded, et cetera. Three, whether the
14 individual is required to file the FDS and either as a policy
15 maker or as a salary threshold filer, so we would reveal that
16 status. Item four, for a particular agency, a list of all their
17 filers, a list of titles that have been exempted from filing
18 under our regulations. And then finally, with respect to a
19 request by the filer themselves, they may ask of the Commission
20 whether their filing has been requested under these regulations
21 by someone else. Just to note, the proposal spells out clearly
22 that we would not reveal the name of the requestor to the filer,
23 only that their filing had or had not been requested. As I
24 mentioned, there's one change that is not related to financial
25 disclosure statements, and that is that the Commission would

1 make available the names, titles and the salaries of staff of
2 the Commission. As I mentioned, these came out of the records
3 access and confidentiality committee, and it reflects an
4 attempt to add transparency to our operations where we can
5 within the bounds of the Executive and Legislative Law. I can
6 answer any questions you have about this. Commissioner Weissman
7 has his hand up.

8 Commissioner Weissman: Thank you very much. Mr.
9 Chair and Martin. Martin, I want to take you to 97(b-1)(b),
10 it's on page two, the top of page two.

11 Martin Levine: Okay.

12 Commissioner Weissman: The deletions have been made
13 to the filing or information exempted.

14 Martin Levine: Yes.

15 Commissioner Weissman: Would we get any, as I
16 understand it, the Commission gets the FDS in two formats.
17 They get an electronic and they get it in writing.

18 Martin Levine: Correct.

19 Commissioner Weissman: Or by hand. Can you go
20 through the process in terms of first deletions then exemptions
21 as to how that would be reported? I mean, one's going to be
22 very easy where it's going to be a strike out for example. But

1 how would you, how would you deal with it, how are you going
2 to report a deletion in electronic format?

3 Martin Levine: Sure, so the, the process by which
4 someone requests or and receives an exemption from reporting a
5 specific piece of information or a request to have a piece of
6 information reported to the Commission and then subsequently
7 deleted, redacted from public view, is governed by Executive
8 Law 94(9) I believe it's H, I and I(1), but, to get to your
9 specific question about how it would play out in a redaction
10 request and a subsequent disclosure to the public, and I'm
11 going to, I might ask Walt McClure to step up if I misspeak,
12 but for redactions once those have been granted, and those are
13 with respect to the filer themselves, information about their
14 activities, their income, et cetera. That information would
15 have a, as you've seen in any legal documents, blackout square
16 over the text with the word redacted in front of it. The law
17 also provides that a filer may request that information related
18 to their spouse may be exempted from reporting at all and that
19 means that obviously would not come to the Commission. It would
20 simply be based on the request excluded from the required
21 information. And I believe, and Walt step in here if I misspeak,
22 that that information would have a similar box that is exempted.

23 Walter McClure: It would. The box would show a, it
24 would show the black box redacted and then, or it wouldn't say
25 the word redacted, it would show the redaction. The file name

1 would say the filer, FDS, and it would say redacted at the end
2 of it.

3 Martin Levine: But I think Walt, Commissioner
4 Weissman is alluding to the difference between a redaction and
5 an exemption for a particular question in the filing. So,
6 obviously a redaction is very straightforward, but if I'm
7 correct, when a piece of information is exempted would that be
8 in the field name exempted or would that?

9 Walter McClure: It would not. I would, that may be
10 possible, I think in the past it has just shown up as a
11 redaction.

12 Martin Levine: Commissioner Weissman, we can follow
13 up with you and get you a definite answer. I apologize for not
14 having the specifics on that. But I think what you're pointing
15 out is a, is a good point and a distinction that I think we can
16 make in terms of when we disclose it to the public whether it
17 has been redacted or accepted.

18 Commissioner Weissman: I think the, I think the real
19 focus that I'm going at is was distinguishing the deletion and
20 exemption, but really getting to the exemption question because
21 there may be instances where exemptions have been granted and
22 those exemptions are such that they may not be disclosed to the
23 public. For example, if something was under seal, in a court,

1 it would defeat the purpose. And that's where my focus is, and
2 I apologize for not asking this earlier in the discussion.

3 Martin Levine: Oh, I, I appreciate you bringing it
4 up now, and as this process is the merely the start of a rule
5 making, we have opportunities to clarify. I will point out in
6 the regulations that to your comments about additional legal
7 proceedings that might be taking place simultaneously. The
8 underlying application for a redaction or an exemption is not
9 in itself public. So, we would never reveal the basis for the
10 redaction, only that it had been.

11 Commissioner Weissman: And I'm concerned about the
12 exemption, especially. I just don't want to we, we're doing the
13 right thing in terms of transparency, but there is a balance
14 that we have to not, not to create an imbalance.

15 Martin Levine: Understood and we can, we can follow
16 up after the meeting and make sure that this is clarified for
17 sufficiently.

18 Commissioner Weissman: Thank you very much.

19 Martin Levine: You're welcome. Any other questions?

20 Commissioner Lavine: Mr. Chairman.

21 Chair Rozen: Go ahead Gary.

22 Commissioner Lavine: Thank you very much, Mr.
23 Chairman. Before proposing an amendment to the proposal, I

1 would like to get clarified with staff the current practice,
2 and I will interject a personal note if I may, Mr. Chairman.
3 I've had discussions with staff about inquiries with respect
4 to my own FDS. Particularly, I'm interested in ascertaining
5 if there's been an inquiry either by the Executive Chamber or
6 the office of Onondaga County District Attorney. Now, do I
7 understand correctly, recapitulating my own discussion, number
8 one, the current policy is to not divulge whether there was
9 even an inquiry, let alone who made the inquiry? Is that
10 correct?

11 Martin Levine: That's correct. That information is
12 not included in the current draft of the regulations.

13 Commissioner Lavine: And number two.

14 Martin Levine: Sorry.

15 Commissioner Lavine: Do I understand correctly that
16 the Commission has never voted upon or adopted this practice?

17 Martine Lavine: First, let me clarify what I said
18 earlier when I said current draft, I meant current adopted
19 edition of the regulation. Second, about whether they have ever
20 voted on this, I think, not to parse things too closely, but
21 the Commission has voted on these regulations and the fact that
22 it is not included you might argue they have voted in fact, on
23 that exact point.

1 Commissioner Lavine: Well, your, your point being
2 is the current regulations does not specifically provide for
3 disclosure, therefore it has to be assumed that the Commission
4 acceded to that proposition?

5 Monica Stamm: So, if I may. This is Monica Stamm.
6 The current regulations adopted the requirement of Executive
7 Law 94(19) and provided a process to get the information in
8 94(19). Those are our records access regulations. The
9 information that you are talking about is not required to be
10 made public under 94(19) and it was not incorporated into our
11 records access regulations to date, but some of it is addressed
12 in the current proposal.

13 Commissioner Lavine: So again, addressing the
14 current practice, do I understand correctly there is no
15 statutory prohibitions to the Commission divulging to a filer
16 of an FDS not only that an inquiry was made, but by whom?

17 Martin Levine: I think that's a fair statement, that
18 there's no restriction in the law preventing that.

19 Commissioner Lavine: Now, do I also understand
20 correctly, with the caveat FOIL does not apply to us, but the
21 Commission can adopt that practice, that under FOIL, an agency
22 FOIL log is subject to FOIL, which is to say that an inquiry
23 can be made with respect to all FOIL requests made to an agency
24 and by whom?

1 Martin Levine: I'm sorry, there was a lot of
2 background noise. Could you repeat that, Gary?

3 Chair Rozen: Can I remind everybody please just mute
4 yourself when you're not speaking, thank you.

5 Gary Levine: Again, with the caveat that FOIL does
6 that apply to us by statute, but that does not preclude us from
7 addressing best practice. My question is do I understand
8 correctly that pursuant to FOIL, FOIL requests can be made for
9 the FOIL log of an agency, whereby the individual making the
10 FOIL request would have access all other FOIL requests that
11 have been made to that agency potentially and by whom?

12 Monica Stamm: So, we're not as you mentioned, we're
13 not subject to FOIL and so I do not know the ins and outs of
14 the FOIL law. We could certainly get back to you with respect
15 to the answer to your question. But as you do know with respect
16 to FOIL law, there are various exceptions for turning over
17 information and one is that requests may be protecting the
18 identity of someone. So we'd have to do research, if you want
19 the answer to how the FOIL law would handle your question.

20 Commissioner Lavine: Thank you. Mr. Chairman, on the
21 proposal.

22 Chair Rozen: Go ahead, Commissioner Lavine.

23 Commissioner Lavine: The proposal as we've
24 propounded leads to a cul-de-sac, a dead end. Unless staff

1 cares to disabuse the notion, I cannot fathom what the point
2 is of making a request of who requested the scrutiny of an FDS
3 if the filer is not told by whom the scrutiny was conducted.
4 Therefore, I believe this regulation should be amended to
5 provide not only may the filer request whether an inquiry has
6 been made but by whom, with one exception which I will propose.
7 The exception being if a law enforcement agency certifies to
8 the Commission that the disclosure would interfere with an
9 investigation or identify a confidential source or
10 investigative technique. Otherwise, this information ought to
11 be disclosed. There is no reason not to, that I heard
12 articulated.

13 Martin Levine: So, Commissioner two things. The
14 first is, often a law enforcement request will come in as
15 subpoena, which is not covered by these regulations. The second
16 is, you can obviously, you're, you're well within your bounds
17 as a Commissioner to make such a proposal. I will point out
18 that the Commission, the Committee, and staff have looked at
19 this issue previously and come to a, not necessarily a legal,
20 but a policy conclusion that it would have a marked chilling
21 effect on people's ability to request public information if the
22 fact that they made those requests were subsequently going to
23 be turned around identifying who they were. Again, not a legal
24 barrier, but a policy argument nonetheless, and one that has
25 been discussed previously. But I'll shut up.

1 Commissioner Lavine: Well, yes, the usual cogent
2 repost. Let me just say by way of a sir reply. The way this is
3 being propounded is asymmetrical. The filer is put at the, is
4 given the subordinate position when any individual happens to
5 be making the inquiry. In my view, that's not proper. It's not
6 equitable. It doesn't make sense. With the exception of a law
7 enforcement agency certifying it would interfere with an
8 investigation. So, I move the amendment, Mr. Chairman.

9 Chair Rozen: Commissioner Horwitz, go ahead.

10 Commissioner Horwitz: I'd like to ask staff a
11 question or two about this proposal. My first question is
12 whether or not, Martin, you mentioned that there is a, there's
13 been a consensus view, or there seems to be a consensus view,
14 about the policy reasons in favor of, sort of, the amendment
15 as the, the regulation has proposed. Are there first amendment
16 issues here that are implicated by Commissioner Lavine's
17 proposal? Requests from the, from the fourth estate?

18 Martin Levine: I think there's certainly arguments
19 to that respect, Commissioner.

20 Commissioner Horwitz: Can you explain, can you
21 explain what those arguments would be?

22 Martin Levine: Sure the, the, the ability to request
23 public information, is one that is granted overall in the FOIL
24 statute and obviously we are exempt from that, but the law has

1 spelled out certain information that should be available, and
2 that is including the FDS, which is, has obvious public
3 transparency repercussions. To make that, make the fact that a
4 member of the press, like you said, the fourth estate, or merely
5 a member of the public who wants to do their own due diligence,
6 the fact that they have asked to see a public document to make
7 that fact, and their identity available, I think would
8 certainly be an arguable chilling effect. And as you know,
9 there are different standards for first amendment challenges,
10 but as this is not a time, place, or manner restriction on
11 speech. It would be subject to a slightly less restrictive
12 standard. Nonetheless, I wouldn't want to walk in unprepared
13 to an argument like that. But as I mentioned, you know, our,
14 our initial basis, and the Commission's discussion, focused
15 around the policy, but I think you raise certainly some risks
16 that we could discuss in executive session.

17 Commissioner Horwitz: Sure. I mean, the other issue
18 or question I wanted to raise is, so that I want to make sure
19 I fully understand, the public policy behind requiring a
20 financial disclosure for the public officers and public
21 employees in New York State who are required to fill out a
22 financial disclosure form, is the underlying presumption with
23 that requirement for those who make the thresholds, is the
24 underlying presumption that the filer anticipates that the

1 information in the FDS is public information and will be made
2 known to the public?

3 Martin Levine: You kind of shifted gears there. I
4 mean, I think it's, I think it's incumbent upon the filer, one,
5 to know that that information is public and can be made public.
6 It has been very diligent in its approach over the years to
7 convey that this information is in fact public. And as to
8 whether the intent under the statute was for the filer to know
9 that, I couldn't speak to that. But I think it's well known and
10 certainly something that we try to emphasize so that no one is
11 caught off guard.

12 Commissioner Horwitz: All right, thank you, thanks
13 Martin, thank you Mr. Chairman.

14 Chair Rozen: Thank you.

15 Commissioner Lavine: If I may, Mr. Chairman.

16 Chair Rozen: Go ahead.

17 Commissioner Lavine: With respect to the first
18 amendment implication, my view is that if the Legislature
19 wanted to prohibit the Commission from divulging who is making
20 the inquiries, they would have stated such in the Executive
21 Law. Moreover, if I am correct and I'm not presuming that I am,
22 but if I'm correct about how FOIL works, there's no reason for
23 us not to divulge this information when anybody making a FOIL

1 request is subject to having it known they made the FOIL
2 request.

3 Commissioner Horwitz: Martin, can you just for
4 historical purposes, and it really gets to this press issue.
5 Didn't we have an issue several years ago where we proposed a
6 regulation, a lobbying regulation, that the press perceived as
7 some limitation on their ability to get information and to do
8 their job, and this was in the regulatory capacity in our
9 regulatory capacity and there was some blowback. And if you, I
10 can't really remember all the details, I think we had a roll
11 back. Can you sort of remind us what that was and explain are
12 there any overlaps between that kerfuffle and the issues that
13 you've been discussing this morning?

14 Martin Levine: Sure, the, what you're mentioning is
15 a provision of Advisory Opinion 16-01 that the Commission
16 issued, I believe, in January of 2016. It's a near and dear
17 piece of work close to my heart. But what it said was that
18 attempts to influence an act of the Legislature, or the
19 executive, or any governmental action that falls under the
20 lobbying law, would include attempts to influence the press.
21 And that is through attempting to get, you know, the, what's
22 the term, earned media. Or using public relations firms to
23 generate tutorials. And the theory behind that was that
24 lobbying can take place in different forms, and it can go
25 through different intermediaries, whether that's the public or,

1 you know, an attempt to utilize a media outlet. The PR industry,
2 as you can imagine, loved this. And subsequently sued us
3 immediately. And before that case could be decided, the
4 Legislature, in their session in the spring, amended the
5 Lobbying Act to clarify that speaking to a member of the media
6 could not under any circumstances, be considered a lobbying
7 activity, and it was a protected speech. Now, the acts of the
8 media were always protected under the Lobbying Act. What this
9 did was further insulate anything related to the media, even
10 if it wasn't a piece of speech by the media. Sorry, it said
11 that communications with the media in addition were not
12 lobbying. And I think to your greater point about these
13 regulations is that the Legislature did speak about the need
14 to protect interactions with the press, actions by the press,
15 and that even the slightest restriction on speech like
16 lobbying, like the Lobbying Law, which was recently held in the
17 Albany Supreme Court, and has been held constitutional in
18 numerous times, even that is a restriction on speech, though,
19 constitutional. And even that was, and the Legislature decided
20 it was a bridge too far to cover these media interactions. And
21 so I don't want to put words in your mouth, but I think what
22 you're alluding to is that press activities when it comes to
23 requesting public information, you know, it should be equally
24 protected from this side, if I conveyed your point.

1 Commissioner Horwitz: I was just asking a question
2 and trying to understand, but I appreciate it. And yes, I have
3 serious concerns about anything that's going to chill anybody,
4 whether it's the press or, as you point out, even a member of
5 the public, from getting information learned about that. And I
6 think very carefully about that.

7 Commissioner Lavine: If I may.

8 Chair Rozen: Hold on, Commissioner Lavine.
9 Commissioner Horwitz.

10 Commissioner Horwitz: I mean, I, I, I finished. Thank
11 you, Mr. Chairman.

12 Chair Rozen: Hang on one second, Commissioner
13 Lavine. Commissioner Weissman, do you have something you want
14 to add?

15 Commissioner Weissman: Yeah, I have a suggestion. I
16 have a totally different view of the first amendment here. I
17 think some of this, the arguments that have been made
18 auspicious, and probably a red herring that belongs on the top
19 of a top of a Christmas tree, or behind the shamus on a menorah.
20 But having said that, I think the best way of resolving this
21 is for us to put this off, have staff take a look at how FOIL
22 actually operates. If Commissioner Lavine is incorrect, then
23 we should move these regulations as they exist. If he's correct,

1 then he raises a valid legal argument and that's what I have
2 to add.

3 Chair Rozen: Thank you. Commissioner Lavine.

4 Commissioner Lavine: Yeah, I'm very happy to defer
5 it to the January meeting. And I also, I also want to say that
6 Commissioner Horowitz and Counselor Levine were persuasive to
7 me that in the hiatus, we ought to consider whether some special
8 carve out should be for the media. But I agree with Commissioner
9 Weissman, it requires further work.

10 Chair Rozen: Martin or Monica, anything you want to
11 add to that?

12 Martin Levine: Judge Yates appears to want to speak,
13 so.

14 Chair Rozen: Sorry, Commissioner Yates. Go ahead.

15 Commissioner Yates: By the way, does the electric
16 hand signal work or should I just waive my hand?

17 Chair Rozen: Wave your hand, because I, I mean, I
18 can't see Martin, so I can only see a few of you at a time.
19 Martin's mostly tipping me off.

20 Commissioner Yates: Okay, loosely an informational
21 question if we put it off, and that is, what exactly what
22 information exactly do you take down now when someone requests
23 that information? Do you verify name, address, email, contact

1 information in any way? And what's to stop people when doing
2 this from using fronts or shells to make a request when you're,
3 when they want to hide their own identity? Especially a lot
4 of this comes up in the context of a campaign activity where
5 people are looking and the one candidate is looking to hurt
6 another candidate. And so, you know, I can foresee a lot of
7 game playing in terms of who makes the request if it's going
8 to be identified. And then what's a consequence for filling out
9 that form falsely?

10 Martin Levine: I think Monica wants to jump in here
11 so, I don't want to get in her way.

12 Monica Stamm: So, just with respect to the specifics
13 of your question. Candidates and the elected officials, they
14 are available on the website, correct, Walt?

15 Walter McClure: Candidates are not available on the
16 website. They're available upon request.

17 Monica Stamm: So, sitting elected officials, their
18 FDS are posted on our website, so some of this is alleviated
19 in that situation. But with respect to candidates and others,
20 you know, I think the form is not subject to anything other
21 than a false filing type, you know, prosecution I suppose, but
22 the reality of the situation is, they are meant to be publicly
23 available. There's nothing in the form that requires that they
24 attest to who they are. Anyone can get them. That was the design

1 of these forms, is to make them available to the public through
2 a process, so who they are and why they're asking is not part
3 of the policy behind it. So, the Legislature and the governor
4 at the time, (inaudible) decided it be available to the public,
5 to give the public information about potential conflicts of
6 their state officers, employees and elected officials. It's
7 less about who's asking for it because they're supposed to be
8 widely available.

9 Commissioner Yates: Yeah, but it's not just, yeah,
10 it's not just the elections. It's, for instance, if I'm a
11 reporter doing background research, maybe I don't want, you
12 know, especially if I'm working with sources who want to stay
13 undercover. Maybe, maybe I don't put the request in my name,
14 maybe I have someone else. Anyway, I'm just curious. It's an
15 informational question not a debating point.

16 Monica Stamm: Right, we have a log that Walt keeps.

17 Walter McClure: If you're, if you, I mean, I do keep
18 you, I can send you a copy or direct you to where the form is.
19 It basically just requires people to submit their name and
20 contact information so that we are able to supply them with the
21 information. To be honest, I can't think of any situation
22 where anything seemed to be as if someone was hiding that I
23 recall when I've seen these requests.

24 Commissioner Yates: If we change the law, they will.

1 Walter McClure: Yeah.

2 Commissioner Rozen: All right, anybody else.

3 Monica Stamm: You know it's fine with staff. Again,
4 the purpose of these regulations was to implement what the
5 Commission wanted to do. This would just delay making the rest
6 of the information publicly available for longer. The goal here
7 is to put it out there and get public comment so you could hear
8 from the public as well on your proposal while we're doing the
9 research. But if the Commission wants to delay, that's fine.
10 It will just push back when this information becomes publicly
11 available.

12 Commissioner Lavine: Well, may I point out, Mr.
13 Chairman, that all of the balance on the deliberation of the
14 committee has been put over to January. I don't, I don't see
15 where it's some great obstacle for public disclosure, to have
16 it folded in for the entire deliberation.

17 Chair Rozen: Does anybody have an issue with us
18 putting this over to January? Okay, so let's move on then. Item
19 five, new and other business. Commissioner Fisher, I understand
20 that you have something you want to articulate here.

21 Martin Levine: Muted, sir.

22 Commissioner Fisher: Thank you, Chair Rozen, I did
23 have something that I wanted to discuss. So after our meeting
24 on November 17th, I asked to meet with Martin Levine and he

1 gave me his time, and what I told Martin is that even though I
2 didn't support Commissioner Yates' resolution on that date, I
3 thought there was a lot of merit in the comments he made about
4 why he brought that forward, and I asked Martin to see if he
5 could draft something that would be successful in finding
6 common ground between the various positions that were discussed
7 last month. And I want to thank him in public for putting that
8 together, with assistance from General Counsel Stamm, and I was
9 very happy with the result that came out. I thought it addressed
10 the things that I felt needed addressing. But we had a
11 committee meeting of the confidentiality committee on Friday
12 morning and during that meeting, some issues were raised by Jim
13 Yates and others about one aspect of the informal advisory
14 opinions that should be looked at further. The confidentiality
15 committee was looking at the difference between our advisory
16 opinions, which we may publish, and I don't have the statute
17 in front of me, but I'm sure you're all more familiar with the
18 statute than I am. And that requires us to shield the
19 identifying characteristics of the person who made the request.
20 And there's you know, limitations, but we may publish those
21 formal opinions. But we struggled to find a statute or a
22 regulation or anything else that would allow us to publish the
23 informal opinions. And that seemed to be kind of paradoxical
24 and contrary to what I think the Commission is looking to do,
25 which is being more open about the things that we do, or our

1 staff does, in the case of things that are delegated to them.
2 So, what I'm going to ask is Chair Rozen, if you could refer
3 this resolution back to the confidentiality committee, and I'm
4 going to ask that it be adjourned and not voted on today. But
5 I also wanted to thank Commissioner Yates for the time that he
6 spent on the phone with me after the committee meeting on Friday.
7 We spent the better part of an hour on the phone and as before,
8 the institutional knowledge that Jim has of our Commission in
9 general, and the legislative history, these things in place,
10 and it's really valuable to me, and in fact, other Commissioners
11 as well. I just thank you, Jim, for the information you imparted
12 to me on Friday and look forward hopefully to working with you
13 to bring something forward that can win a consensus and a
14 majority vote of this Commission. I'll go on mute.

15 Commissioner Yates: And I just want to thank Bill
16 for what I thought was a very thoughtful discussion. We had a
17 lot of good back and forth and the bottom line is we both agreed
18 that we need to work some of these things through. That was a
19 good result, I think.

20 Chair Rozen: Anybody else on this? Okay, so we're
21 going to refer this back to the subcommittee and address it
22 again at some point in the near future. Anything else we need
23 to talk about under item five, Monica, Martin?

24 Commissioner Lavine: Mr. Chairman, may I?

1 Chair Rozen: Yes. Commissioner Lavine, go ahead.

2 Commissioner Lavine: If I can have your further
3 indulgence. I would like to revisit the matter of executive
4 order 202.6, which exempts from the provisions of the Public
5 Officer's Law protocols so-called volunteers assisting the
6 Governor responding to the public health. For the last several
7 meetings, we've had a discussion about making inquiry to the
8 Executive Chamber about exactly how the executive order is
9 being implemented and who falls within the ambit of it. Before
10 proceeding any further, I want to emphasize, for at least the
11 third time, my personal view is the Governor should be able to
12 have any resource that he deems valuable and to assist him in
13 responding to the Corona crisis. That's not at issue. My own
14 view is also that he should have those, even those who have a
15 particular conflict that would otherwise be held by us. The
16 analog, of course, being the Business Corporation Law, which
17 permits the board of directors of a corporation to waive a
18 conflict of interest of the corporation. But, of course, the
19 underlying premise of the BCL it should be the underlying here
20 is full disclosure. So I would like to put a few questions to
21 the staff. Number one, so far as staff is aware is there any
22 precedent for this executive order which basically obviates
23 scrutiny of whether there are conflicts, what the import of
24 those conflicts may be?

1 Monica Stamm: I don't know whether there are
2 precedents in the form of prior executive orders by other
3 governors that are similar to this executive order. That is
4 something that we could look into if the Commission thinks
5 that's warranted. But as we've discussed, there are, there are
6 principles in this executive order that are not unprecedented.
7 In other words, for the most part, volunteers are not subject
8 to the Public Officer's law. It would depend on specific job
9 duties that the volunteer is doing. We have precedent that says
10 if a volunteer is doing the exact same job that a state employee
11 is doing, they may be subject to the Public Officer's Law. But
12 in most cases, they're not. In addition, contractors generally
13 speaking aren't subject to the Public Officer's Law. So, in
14 that respect, some of the concepts aren't unprecedented. And
15 it isn't, there is a carve out from the post-employment
16 restriction for individuals who have left state service but
17 want to contract to provide services in a context of a state
18 of emergency. And that's in Public Officer's Law 73(8).

19 Commissioner Lavine: On the follow up, Mr. Chairman.
20 The executive order, as I understand it, alludes to a recusal
21 policy with respect to those volunteers who are exempted from
22 the ambit of the Public Officer's Law. Has there been any
23 public articulation or articulation to our staff as to exactly
24 how that recusal policy functions?

1 Monica Stamm: No, as we've discussed at the last few
2 public sessions, I have made the inquiry to the chamber, whether
3 or not they have a policy, and staff reported back at the last
4 meeting they said they're thinking about our request but want
5 to know what our basis was in law for making the request. And
6 we did not respond, so I have not had additional communications
7 with them about the executive order. So we don't have the
8 information that you're asking for.

9 Commissioner Lavine: Again, on the follow up, Mr.
10 Chairman, do I understand correctly, and I put the questions
11 to staff that our enabling statute provides that the Commission
12 shall advise and assist all state agencies with respect to
13 conflict matters. It doesn't say we have to be, there has to
14 be a request. There's also a distinction made between the system
15 advised. It would seem to me that within the ambit of that
16 function, the legislation is about us. It's legitimate for us
17 to at least ask the question how this order has been implemented.
18 Am I correct in my assertion with respect to the Executive Law?

19 Monica Stamm: The Executive Law 94(9) does say the
20 Commission shall advise and assist any state agency in
21 establishing rules and regulations relating to possible
22 conflicts between private interests, and official duties of
23 present or former statewide elected officials and state
24 officers and employees. I've always understood that that we
25 would assist them if they want to develop a policy for their

1 employees, not necessarily one-on-one providing guidance,
2 although we do that frequently under our informal guidance
3 delegation, but if they want to develop agency-wide rules and
4 policies, we assist them.

5 Commissioner Lavine: But that language does make a
6 distinction between advise and assist. It seems to me, it's,
7 it's our prerogative to advise the governor with respect to the
8 executive order. Therefore, I strongly urge that a further
9 inquiry be made to the Executive Chamber. In fact. Mr. Chairman,
10 I'm going to propose a resolution that the staff be directed
11 to communicate in writing to the Executive Chamber. Elicit from
12 the Executive Chamber the recusal policy. Two, an explanation
13 of whether the order partially exempts current filers. For
14 example, someone is a member of the MTA board who is already
15 filing with us, but then shows up as a volunteer on Corona, are
16 they then exempted, or partially exempted, or not exempted at
17 all? Unless staff cares to answer that question, I don't think
18 we know the answer. If, in fact, a volunteer receives a gift
19 from a lobbyist or another interested source doing business
20 with the state, is that, is the fact of that gift having been
21 offered and received beyond the purview of our Commission to
22 investigate? What about a volunteer who is also a lobbyist?
23 Does the executive order mean that the lobbyist is now exempt
24 from our purview in every respect? It seems to me that these
25 are questions that need to be addressed and can be done in a

1 way that does not interfere in any way with the Governor's
2 prerogative and legitimate need to enlist people to assist him.
3 Therefore, I move that staff be directed to make this written
4 communication to the Executive Chamber regarding executive
5 order 202.6.

6 Commissioner Jacobs: Mr. Chairman, Marvin. May I
7 make a statement?

8 Chair Rozen: Please.

9 Commissioner Jacob: Yeah, I, I think we're proceeding
10 on an assumption which may not be entirely correct or correct.
11 But tell me if I am right? The assumption is that since
12 we're dealing with an exemption from, for example, section 74,
13 then there is no basis for us to make inquiries because the
14 Legislature has granted an exemption. My understanding of how
15 exemptions work, and I think Dan could help on this point as
16 well, is that an exemption that is granted by a legislature to
17 an agency does not divest the agency of jurisdiction. For
18 example, in Securities Law, there are all sorts of exemptions
19 from registration and other provisions of the Securities Law.
20 But the SEC is never regarded that, my experiences with the
21 SEC, as a divestiture of jurisdiction from looking at the
22 exemption and whether the exemption is applicable. So, for
23 example, municipal securities, state security are, or city
24 securities are exempt from registration. But in my experience,

1 they are not exempt from inquiries or from investigation merely
2 because the exemption exists. So here too, I would suggest that
3 the Legislature has not passed a law that says that we are
4 divested of jurisdiction to look behind or look into the claimed
5 exemption. It is an exemption and that's all it is. And when
6 it applies, it applies, but the agency that has jurisdiction
7 on the section 74 has not been divested of its jurisdiction.
8 So that, that's, that's my analysis of the exemption. I would
9 welcome staff and others, and especially Dan, who has
10 experience in this area to comment, if I may.

11 Monica Stamm: Chair, this is Monica. Can I speak?

12 Chair Rozen: Yeah. Go ahead.

13 Monica Stamm: So, I think to some extent,
14 Commissioner Jacob, I agree with you. Commissioner Yates asked
15 the question similar, a similar read at the last meeting. If
16 we had allegations that someone who was either volunteering or
17 working as a contractor engaged in conduct that appears to
18 present a conflict under the Public Officer Law, could we
19 investigate, and I think that the Commission could make
20 inquiries and I think the Commission could investigate. I think
21 the issue will be, and we would get to this point, we would
22 then seek to find out from the chamber if any, or the appointing
23 authority, the agency that was managing the individual, whether
24 they had opined on how the Executive Law, I'm sorry, the

1 executive order would affect them, and then the Commission
2 would take that into account in whatever it was going to do.
3 So, we don't have a specific case in front of us, but should
4 we have a specific case, we would find out whether or not they
5 got guidance about the executive order and whether or not a
6 decision had been made on how the executive order applied to
7 them and then we would consider that. You know, I think there's
8 a difference between some sort of blanket question about how
9 they're interpreting the executive order versus applying it to
10 a very specific set of facts. And it's hard to answer the
11 questions about the application and specific set of facts
12 without that scenario. We wouldn't give guidance to a
13 hypothetical. So, I don't know that we're going to be able to
14 hash out various different scenarios at this point but when we
15 have one, if we have such an allegation, which so far we don't,
16 if we have that, then we would proceed.

17 Commissioner Horwitz: And Mr. Chairman, just because
18 Marvin invoked my view. I mean, I agree with Monica, really,
19 to get more to the point and to quote one of my favorite
20 Commissioners, George Weissman, when he said earlier today,
21 what'd you say this is a red herring on top of a Christmas tree
22 or behind the shamus of a menorah. It's apples, Marvin,
23 respectfully, it's apples and oranges for the reasons that
24 Monica said. If there's a violation, of course we have
25 jurisdiction. But a few weeks ago, I don't know, a few months

1 ago, whenever this issue came up one of the many times we've
2 had these discussions over the last few months, I think we had
3 a colloquy with the staff about whether or not the Legislature
4 would respond in a way that's different than the executive to
5 the current request for information. And I think historically,
6 the Legislature has said, when we have asked for information,
7 that is not required by them to disclose to us, very politely,
8 you're not entitled to that information. And so, in the same
9 way, that if there is an allegation that a legislature, a member
10 of the legislature has violated the Public Officer's Law, of
11 course we can investigate and use compulsory process to conduct
12 that investigation. But in the absence of a specific
13 allegation, in some ways, what's good for the goose that is the
14 Legislature has to be good for the rest of the governmental
15 agencies that we have jurisdiction over. So, I share your view
16 that, if there's a violation of, we should do what we need to
17 do to investigate it. But I'll say what I've said before, which
18 is that to the extent there is not explicit authorization in
19 the statute for us to request information, this is a bit of a
20 fool's errand. And so I stand on what I've said before and
21 agree with Monica. So now Marvin, you have my view.

22 Commissioner Jacobs: Thank you, Dan, Thank you.
23 Although I think on a lot of points, we all we all agree. But
24 Gary has asked that we make, that the staff make an inquiry in
25 just who, who has this been applied to as exempt. And that is

1 just an inquiry as to information. You can't, you can't really
2 go forward if you have no information at all. So, good question,
3 and, and my experience has been that I never was prevented from
4 making inquiries because of the existence, because of the
5 existence of a, of an exemption, in my practice, or my
6 experience under legislatively granted exemptions, we just made
7 requests. They were granted, and we were never confronted with
8 having to go to a court to, to, to get the right because we
9 weren't divested in jurisdiction because of an exemption.

10 Monica Stamm: Chair, I think Commissioner Yates
11 wants to speak.

12 Chair Rozen: Go ahead, Commissioner Yates.

13 Commissioner Yates: I just want to put this in
14 context because if I get the drift of Gary's motion, it's we
15 want to try and figure out what the counsel to the Governor,
16 for instance, thinks is the scope of the executive order as it
17 affects us. And let me just, let me just lay out some basics
18 here. Okay, the constitution says that the Legislature may
19 suspend certain laws in case of a disaster. The Legislature
20 went ahead and, at the Governor's request, amended the
21 Executive Law in the budget process. And in order to say that
22 if it's necessary to protect public health, then there could
23 be a 30-day temporary order by the executive to suspend the
24 law. And it said, in particular, that any suspension should be

1 de minimis suspension necessary to acquire to accomplish the
2 goal of protecting public health. So, in response to that, the
3 Governor first put out an executive order that said executive,
4 that Public Officers Law 74, which deals with self-dealing,
5 bribery, unlawful gifts, unlawful procurements, unlawful
6 financial information, et cetera, That none of that applied to
7 contractors, or people who were volunteers in the, in a pandemic
8 exercise. Apparently, there was second thought about that,
9 because especially for contractors, that would be ridiculous.
10 You can't, you can't sit there and say bribery and conflict of
11 interests and self-dealing and giving big, big companies giving
12 big awards to your own company, or your spouse's company, or
13 et cetera, that all of that's okay. So, then there was the
14 second executive order that limited it and just said that
15 section, that section 74 does not apply to someone working for
16 a nominal salary, or in a volunteer capacity. Once again, with
17 regard to our mandate and that is, is there self-dealing? Is
18 there bribery? Are people receiving gifts from interested
19 parties? Are they leaking information to one bidder versus
20 another? Are they awarding a large contract to their own company
21 or their son's company? All of those things that would, if you
22 read just the face of the executive order, maybe not the intent,
23 would be exempted and therefore not a violation of 74 at all.
24 Now, it could be that a conversation with the Governor's counsel
25 would help refine, refine this executive order and let it go

1 into a third tier, which would be a good thing. Because, you
2 know, just because, I don't know, just to pick a name out of
3 the hat, let's say, Jared Kushner only works for a dollar a
4 year doesn't mean that he can't have impact on governmental
5 contracts. And it doesn't mean that all the ethics laws should
6 be suspended. I disagree with one of the things, I haven't
7 researched it, but on the surface with casual research, I
8 disagree with one of the assertions that Monica made. And that
9 is that the Public Officers Law doesn't apply to volunteers.
10 That's not the way it works. The Public Officers Law applies
11 to people who function as state officers. And the approach is,
12 what functions are you performing, what duties, what
13 obligations do you have. It's not whether or not you sit there
14 and say well good, I can award myself a million-dollar contract
15 and I'll forfeit my salary. It doesn't work that way. So the,
16 so the bottom line is, if someone looks at the face of the
17 Governor's executive order, it needs refinement and further
18 discussion, because it cannot be that we don't give a darn
19 about self-dealing and conflicts if somebody happens to be
20 working for a dollar a year. And that's all I wanted to say.

21 Monica Stamm: If I may just respond, I don't think
22 we disagree, Commissioner Yates, but what I said is, is that
23 generally the Public Officers Law doesn't apply to volunteers,
24 with the exception of when the volunteers are doing a state job
25 and they are serving in the capacity of a state officer or an

1 employee, but a lot of volunteers are not in that capacity, so
2 we have guidance on this and that's just what I said. So, just
3 to be clear, I think we're, actually we agree. But that being
4 said, you know, it's up to the Commission here.

5 Commissioner Dering: Mr. Chair, can I make a couple
6 of comments?

7 Chair Rozen: Please.

8 Commissioner Dering: So, the way I look at this is
9 under the Executive Law, the Governor clearly has the ability
10 to issue executive orders in these circumstances.
11 And I think that the flavor of my recollection of some of the
12 flavor of prior discussions, related to how the Executive
13 Chamber was managing, was managing the executive order, which
14 I think I had indicated before, I respectfully, I don't think
15 it's JCOPE's place to get into issues with regard to how the
16 governor's office manages their executive orders. And, you
17 know, with regard to, just with regard to the comments today,
18 you know, I think it's the Governor's prerogative in terms of
19 what the executive orders say on their face. In terms of if we
20 had any input to assist them, if they wanted that with regard
21 to, you know, refinement or input or so forth, that's certainly
22 helpful, but I think in terms of us compelling that, that, that
23 we'd be able to somehow have involvement with regard to what

1 the executive orders say on their face, I, I don't agree with
2 that, if that's anyone's position.

3 Chair Rozen: Anybody else?

4 Commissioner Lavine: May I, may I, Mr. Chairman?

5 Chair Rozen: Go ahead, Commissioner Lavine.

6 Commissioner Lavine: First of all, let me say by way
7 of repost to Commissioner Dering, it is not my intent,
8 inclination, or my view that the purview of the governor, with
9 respect to issuing executive orders, should be constrained by
10 us. That's up to the Legislature and the Legislature can void
11 his executive order by a joint vote. That's up to the
12 Legislature, not us. However, matters of ethics, our enabling
13 statute says we may advise, which implies opining on ethics
14 matters within state government. I don't know how we can have
15 an informed discussion if we don't understand how they are
16 managing this particular executive order. And I further cannot
17 fathom, given all of the progress on full disclosure, why the
18 names of the individuals who are within the ambit of this
19 executive order are not being disclosed. And if I may Mr.,
20 Chairman, I'd like to juxtapose this discussion with the
21 discussion earlier in the meeting. Now, I'm a volunteer, have
22 been for decades, on the Board of the Javits Convention Center
23 in Manhattan. I file the FDS. The previous discussions was well,
24 there's first amendment interest, we don't want to show people

1 looking at the financial records and profile and potential
2 conflicts of those who are serving, even volunteers. And we now
3 in this part of the discussion are hearing, oh, well, the
4 Governor wants to exempt a few people, they don't have to file
5 an FDS at all. For me, it's highly anomalous, and inappropriate.
6 Without questioning the prerogative of the Governor to issue
7 an executive order, we ought to make an inquiry, politely,
8 respectfully, how, how are you implementing this executive
9 order? The Executive Chamber continues to stonewall giving an
10 answer.

11 Chair Rozen: Anyone else?

12 Commissioner Dering: Just one, one more comment.

13 Chair Rozen: Go ahead.

14 Commissioner Dering: I, I agree with the comments
15 Monica made before, in terms of, you know, if an issue arises,
16 we look into the issue and my recollection is the executive
17 order, I, if I recall correctly, I think there were some
18 provisions in there with regard to the agencies potentially
19 putting certain limitations on volunteers. So, I think this,
20 if my recollection is correct, you know, things could change
21 person to person and the agency to agency based on the
22 particular facts and circumstances. And I agree with the
23 comments made before with regard to you know, if an issue arises,

1 we investigate the circumstances and sort out the, sort it out
2 then. So, thanks for listening.

3 Chair Rozen: Anyone else, Commissioner Weissman, go
4 ahead.

5 Commissioner Weissman: Just one comment and one
6 question. In terms of the volunteers, and Judge Yates may
7 remember this going back to when the statute was drafted. There
8 used to be programs such as the Green Thumb. This is like, this
9 discussion is bringing this all back to me where we had
10 volunteers working with DEC to clean up state parks and some
11 of the wilderness areas, whether or not volunteer has been
12 expanded, a discussion on that, I don't want to engage in that.
13 But my question for counsel is, do we know whether there are
14 people serving in positions that otherwise they would have to
15 file an FDS that have been deemed to be volunteers and hence
16 haven't filed an FDS. Do we know an answer to that?

17 Monica Stamm: You mean under the executive order?

18 Commissioner Weissman: Yes. Somebody's, somebody's
19 volunteered, brought in is a volunteer, and has subsequently
20 been appointed to either FCB, MTA, the economic development
21 agencies. Do we know any?

22 Monica Stamm: I don't, I don't but the volunteer is
23 appointed to a position that is a policy making position, then
24 their appointing authority is supposed to put them into our

1 system to file. They're supposed to be designated to file.
2 Whether they're a volunteer or they're paid or their per diem.
3 That's how the system works. I don't know whether there are
4 other types of volunteers who fall under the executive order.
5 We don't know.

6 Commissioner Weissman: Well, so then my question.

7 Monica Stamm: Volunteers that are policy makers
8 should be filing.

9 Commissioner Weissman: Yeah. So, then my question
10 to you is whether or not the rash of appointments that were
11 made in July, were there any of those people, I'm going to skip
12 the names, seem to be the publicly back in earlier in the spring,
13 whether they filed, that's I don't want to get into today.

14 Monica Stamm: You went in and out, but there were
15 people who were appointed to positions, governmental positions,
16 throughout the year who have been added in as filers. I didn't
17 hear specifically, but if you want to talk about specific
18 individuals, we would do that in the executive session.

19 Commissioner Weissman: Yeah, okay. Thank you.

20 Chair Rozen: Anyone else? Okay. Monica, Martin, is
21 there anything else before we leave the public session?

22 Monica Stamm: Well, Gary made a motion.

1 Chair Rozen: I apologize, Commissioner Lavine. I got
2 caught up in all of the conversation around it and forgot about
3 your motion so, please restate your motion.

4 Commissioner Lavine: Yes, thank you, Mr. Chairman. I
5 move that staff be directed to communicate, in writing to the
6 Counsel to the Governor, with respect to executive order 202.6
7 and make inquiry with respect to how the order is being
8 implemented. What is the recusal policy? Are there partial
9 exemptions for current filers of FDS? The ambit of the
10 Commission is completely obviated to make inquiry with regards
11 to wrongdoing under the Public Officers Law. Strictly an
12 inquiry. Thank you. Mr. Chairman.

13 Chair Rozen: Thank you, Commissioner. Is there a
14 second?

15 Commissioner Yates: Would you accept a friendly
16 amendment?

17 Chair Rozen: Commissioner Lavine?

18 Commissioner Lavine: Yes, of course.

19 Commissioner Yates: First of all, you said, this is
20 just technical, you said 20.6, and it's really 202.6 and .7.
21 that's just.

22 Commissioner Lavine: Yeah, thank you.

1 Commissioner Yates: And the other thing is, me
2 personally, I'm more interested in not in the file, in section
3 73, filing requirements, but in the conflict of interest, in
4 the betrayal of confidences, self-dealing, and gifts. So I,
5 from my point of view, I would ask the staff to inquire in
6 writing of the, of the Governor's Council, when 202.6 and 202.7
7 say that section 74 of the Public Officers Law does not apply,
8 the quote is shall not apply to anyone who volunteers. Does
9 that mean is it their intent to say that all of the conflicts
10 and gifts and confidential information provisions in 74 don't
11 apply to someone who's acting as a state officer if they're
12 doing it for low pay in the assistance of the pandemic?

13 Commissioner Lavine: I agree to the amendments of
14 the resolution.

15 Chair Rozen: Thank you. Is there a second?

16 Commissioner Yates: I'll second it.

17 Chair Rozen: Okay, Martin, please take the role.

18 Martin Levine: Sure, I'm not going to restate the
19 motion, so I trust everyone caught that with the amendment. So,
20 as amended on the motion, all in favor, please raise your hand.
21 I see Commissioners Yates, McNamara, and Weissman. And if I
22 missed anyone. Okay, and then I'll call the roll for remaining
23 Commissioners. Commissioner Dering?

24 Commissioner Dering: No.

1 Martin Levine: Commissioner Fisher?

2 Commissioner Fisher: No.

3 Martin Levine: Commissioner Horwitz?

4 Commissioner Horwitz: Nope.

5 Martin Levine: Commissioner Cohen?

6 Commissioner Cohen: No.

7 Martin Levine: Commissioner DiPirro?

8 Commissioner DiPirro: No.

9 Martin Levine: Commissioner Jacob?

10 Commissioner Jacob: Yes.

11 Martin Levine: Commissioner Lavine?

12 Commissioner Lavine: Yes.

13 Martin Levine: Judge McCarthy?

14 Commissioner McCarthy: Yes.

15 Martin Levine: Chair Rozen?

16 Chair Rozen: No.

17 Martin Levine: That is one, two, three, four, five,
18 six in favor. Motion fails.

19 Chair Rozen: Okay, thank you. That concludes the
20 public session. I now need a motion to enter into executive
21 session please.

1 Commissioner Dering: I'll move. Dering.

2 Chair Rozen: Thank you, second?

3 Commissioner Fisher: Commissioner Fisher seconds.

4 Chair Rozen: Thank you. Martin?

5 Martin Levine: All in favor to go to executive.

6 Rozen, Yates, Horwitz, Fisher, McNamara, Weissman, and Dering.

7 Okay, I will call the remaining roll. Cohen?

8 Commissioner Cohen: Yes.

9 Martin Levine: DiPirro?

10 Commissioner DiPirro: Yes.

11 Martin Levine: Jacob?

12 Commissioner Jacob: Yes.

13 Martin Levine: Lavine?

14 Commissioner Lavine: Yes.

15 Martin Levine: McCarthy?

16 Commissioner McCarthy: Yes.

17 Martin Levine: Motion carries.

18 Chair Rozen: Thank you we're adjourned.

19 [The Commission went into Executive Session]

20 [Chair Rozen left the meeting during Executive Session and

21 Commissioner Dering served as chair for the remainder of the

22 Public Session]

23 [The Commission returned to Public Session]

24 Walter McClure: Okay, we're back in public session.

1 Commissioner Dering: Thanks. Monica, can you please
2 summarize what we did in Executive session?

3 Monica Stamm: Sure, we discussed litigation and
4 personnel matters. The Commission approved one settlement
5 agreement and the Commission authorized steps in several
6 investigative matters, closed one matter and discussed several
7 other investigative matters.

8 Commissioner Dering: Thank you. So, unless there's
9 anything else, is there a motion to adjourn?

10 Commissioner DiPirro: DiPirro, so moved.

11 Commissioner Dering: I see Commissioner Weissman
12 seconding.

13 Martin Levine: On the motion to adjourn, all in
14 favor, raise your hand. Fisher, Dering, Horwitz, McNamara,
15 Weissman, and Judge Yates. Cohen?

16 Commissioner Cohen: Yes.

17 Martin Levine: DiPirro?

18 Commissioner DiPirro: Yes.

19 Martin Levine: Jacob?

20 Commissioner Jacob: Yes.

21 Martin Levine: Lavine?

22 Commissioner Lavine: Yes.

1 Martin Levine: McCarthy?

2 Martin Levine: Motion carries.

3

4 Commissioner Dering: Happy holidays everyone.

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