

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

Commission Meeting of April 9, 2021

Appearances: Camille Varlack, Chair

Commissioners:

Richard F. Braun
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
Juanita Bing Newton
George H. Weissman
James A. Yates

Staff:

Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Emily Logue, Director of Investigations and Enforcement
Walter J. McClure, Director of Communications and Public
Information Officer
Keith St. John, Director of Ethics
Michael Sande, Deputy Director of Ethics Guidance
Lori A. Donadio, Principal Investigative Analyst
Kelly McCready, Confidential Clerk

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Chair Varlack: Good morning everyone. The meeting is
2 now called to order. This meeting is being held using video
3 conferencing technology. Walt, should I start over?

4 Walter McClure: Yes, you're fine.

5 Chair Varlack: Okay, thank you. Good morning everyone.
6 The meeting is now called to order. This meeting is being held
7 using video conferencing technology. The public session
8 meeting is available on JCOPE's website to watch via live
9 stream. I would ask (inaudible) if they could please mute
10 their phones. (inaudible) A couple of important reminders.

11 Commissioner Jacob: I'm having trouble hearing.

12 Commissioner Weissman: Madam Chair, we're having
13 trouble distinguishing what you are saying.

14 Walter McClure: Yes. Can everybody who is not
15 talking could please mute, and Madam Chair maybe you can get
16 closer to the speaker. There is a little bit of an audio
17 issue.

18 Chair Varlack: Okay, is that better?

19 Walter McClure: Yes.

20 Chair Varlack: Okay. A couple of important
21 reminders. It is important that only one person speak at a
22 time. In addition, I ask that when you speak, you identify
23 yourself so that we have a clear record. We will take votes
24 via a modified roll call to ensure that everyone is properly

1 counted. Please, again, always, also remember to mute your
2 phone when you are not speaking. Before we start, I'd like to
3 welcome our newest and fourteenth Commissioner, Judge Juanita
4 Bing Newton. Judge, I just want to thank you so much. Welcome.
5 We look forward to working with you. Deputy General Counsel
6 Levine, can you please confirm that we have a quorum?

7 Martin Levine: Yes, ma'am, you have a count of 14.
8 Quorum is met.

9 Chair Varlack: Thank you. May I have a motion to
10 enter into Executive Session, pursuant to Executive Law Section
11 94(19)b?

12 Commissioner Weissman: Madam Chair, I would like to
13 beg your indulgence and ask for two minutes or less to read a
14 very short statement.

15 Chair Varlack: So, thank you, Commissioner. I do
16 understand that you would like to make a statement and I want
17 to note that I very much appreciate that you (inaudible) prior
18 to the meeting to discuss this. I would ask that you consider
19 deferring the reading of your statement until the new and other
20 business portion of the agenda because again we have a whole
21 agenda in Executive Session.

22 Commissioner Weissman: Madam chair, in response to
23 that, having been on the Commission for over nine years, I
24 would beg your indulgence for two minutes.

1 Chair Varlack: Please proceed.

2 Commissioner Weissman: Thank you very much.
3 The New York State Constitution requires Commissioners to
4 "faithfully discharge the duties of the office according to
5 the best of [his/her} ability." Inherent to carrying out this
6 mandate is knowing information that comes within the purview
7 of the Commission and its staff. A former Commissioner, Ravi
8 Batra, once coined the terms "Super Commissioners" and
9 "Inferior Commissioners" to distinguish those Commissioners
10 who are privy to information from those who, by virtue of their
11 appointing authority, are not. This is magnified when staff,
12 for whatever reason, withholds information from some
13 Commissioners yet provides it to others. Once again, it has
14 become apparent that information has been withheld from certain
15 Commissioners. Commissioners are now being told that to be
16 denied information, confidential or otherwise, is confidential
17 in and of itself. Unfortunately, this discussion has been
18 ongoing since virtually the inception of the Commission. The
19 fact that parties outside the Commission can deem information
20 when provided to the Commission confidential and then have it
21 withheld from Commissioners is the first fallacy perpetrated.
22 The second is the position itself, which falls into the
23 category of reductio ad absurdum. One cannot faithfully
24 discharge their constitutionally mandated duties without all
25 available information. The argument that being deprived of

1 information is confidential in and of itself turns the
2 Commission into a Star Chamber presided over by the Super
3 Commissioners. Madam Chair, thank you very much.

4 Chair Varlack: Your welcome Commissioner Weissman.
5 May I now have a motion to enter into Executive Session?

6 Commissioner Lavine: Madam Chair if I, this is Gary
7 Lavine, if I may ask a question? Do I understand, can you
8 hear me, Madam Chair?

9 Chair Valack: I can, Commissioner Lavine.

10 Commissioner Lavine: Thank you. Do I understand
11 correctly one or more members of the gubernatorial cohort
12 object to my communications to the media? And that an airing
13 of those objections is contemplated in the Executive Session?

14 Chair Varlack: I'm not sure what you're referring
15 to Commissioner Lavine. Again...

16 Commissioner Lavine: Well, let me clarify. Have you
17 received, have you received expressions of objection from one
18 or more Commissioners relating to my discussions with the news
19 media?

20 Chair Varlack: Commissioner Lavine, we have a very
21 full agenda in Executive Session, and there is a portion on
22 the agenda that has already been allocated for new and other

1 business. So, I would like a motion at this time enter into
2 Executive Session.

3 Commissioner Lavine: Are you referring to the
4 Executive Session, Madam Chair?

5 Chair Varlack: I would like to make my statement and
6 then(inaudible) so, as I...

7 Commissioner Lavine: Again, if I, if I may interrupt,
8 I just want to say before we go into Executive Session, I would
9 be genuinely delighted to address the objections of other
10 Commissioners or the Chair in the Public Session. However, I
11 will not participate in such a discussion in Executive Session.
12 Thank you.

13 Chair Varlack: I understand. Commissioners, there
14 seems like a lot of noise.

15 Commissioner Jacob: There is a lot of interference.
16 Commissioner Jacob.

17 Walter McClure: Yes. Please if you are not speaking,
18 please mute your phone.

19 Chair Varlack: Walt, are we able to mute the phones?

20 Walter McClure: I probably can but then everybody's
21 going to have to make sure that they unmute their phones at
22 the proper time.

1 Chair Varlack: May I have a motion to enter into
2 Executive Session?

3 Commissioner Jacob: That noise is still there, that
4 noise is still there.

5 Commissioner DiPirro: And my audio keeps breaking
6 up.

7 Commissioner Jacob: Mine too.

8 Commissioner Braun: I notice a lot of people that
9 are not on mute, a number of staff members, and at least one
10 Commissioner are not muted. Now that I've said that I'm going
11 back to re-muting myself.

12 Chair Varlack: I am still seeing a phone number
13 ending in 32. Walt..

14 Commissioner Jacob: Madam Chair, I cannot, I cannot
15 hear you and there continues to be interference on the line.
16 People are not muted.

17 Walter McClure: Commissioners McCarthy and Horwitz,
18 it appears that you may be unmuted and that's causing
19 background noise.

20 Commissioner Braun: Plus some staff members are not
21 muted.

22 Monica Stamm: I, you might see that I'm not muted,
23 but I'm connected by my telephone and my telephone is muted.

1 Walter McClure: I think we're okay at the moment.
2 Please continue.

3 Chair Varlack: Thank you. I, okay, thank you. May
4 I have a motion to enter into Executive Session, pursuant to
5 Executive Law Section 94(19)?

6 Commissioner Fisher: Madam Chair, this is Bill
7 Fisher. I make that motion.

8 Chair Varlack: Thank you. Can I have a second?

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

10 Chair Varlack: All in favor.

11 Martin Levine: Please keep your hands up until I
12 call the roll. Dering, Weissman, Fisher, DiPirro, McNamara,
13 Newton, Braun. I don't see Varlack and I don't see Judge
14 Yates. There it is. Cohen?

15 Commissioner Cohen: Yes.

16 Martin Levine: Horwitz?

17 Commissioner Horwitz: Yes.

18 Martin Levine: Jacob?

19 Commissioner Jacob: Yes.

20 Martin Levine: Lavine?

21 Commissioner Lavine: Yes

22 Martin Levine: McCarthy?

1 Commissioner McCarthy: Yes.

2 Martin Levine: Motion carries.

3 Chair Varlack: Thank you. Walt, please let us know
4 when we're in Executive Session.

5 Walter McClure: Please stand by.

6 [The Commission went into Executive Session]

7 [The Commission returned to Public Session]

8 Walter McClure: Madam Chair, we are back in Public
9 Session.

10 Chair Varlack: Thank you very much. Okay, Ms. Stamm,
11 can you please report our Executive Session?

12 Monica Stamm: Sure. The Commission discussed and
13 authorized steps in investigative matters.

14 Chair Varlack: Thank you. Is there any other new
15 or other business before the Commission? Okay, seeing none,
16 may I have a motion to adjourn the meeting? I see Commissioner
17 Weissman and second by Commissioner Dering. All in favor?

18 Martin Levine: I see Commissioner Fisher, McNamara,
19 Yates, Newton, Weissman, Dering. Judge Braun, is that a hand?
20 And Cohen? I guess we lost Rob. Dering, I got you, I'm sorry,
21 I apologize, DiPirro, I don't think we have. Horwitz?

22 Martin Levine: Jacob?

1 Commissioner Jacob: Yes.

2 Martin Levine: Lavine?

3 Commissioner Lavine: Yes.

4 Martin Levine: McCarthy is out. Two, three, four,
5 five, six, seven, eight, nine. Motion carries, ma'am.

6 Chair Varlack: Thank you. Goodbye and have a good
7 evening.

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