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

Walter McClure: Yes, you’re fine.

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

Commissioner Jacob: I’m having trouble hearing.

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

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

Chair Varlack: Okay, is that better?

Walter McClure: Yes.

Chair Varlack: Okay. A couple of important reminders. It is important that only one person speak at a time. In addition, I ask that when you speak, you identify yourself so that we have a clear record. We will take votes via a modified roll call to ensure that everyone is properly
counted. Please, again, always, also remember to mute your phone when you are not speaking. Before we start, I’d like to welcome our newest and fourteenth Commissioner, Judge Juanita Bing Newton. Judge, I just want to thank you so much. Welcome. We look forward to working with you. Deputy General Counsel Levine, can you please confirm that we have a quorum?

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

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

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

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

    Commissioner Weissman: Madam chair, in response to that, having been on the Commission for over nine years, I would beg your indulgence for two minutes.
Chair Varlack: Please proceed.

Commissioner Weissman: Thank you very much.

The New York State Constitution requires Commissioners to “faithfully discharge the duties of the office according to the best of [his/her] ability.” Inherent to carrying out this mandate is knowing information that comes within the purview of the Commission and its staff. A former Commissioner, Ravi Batra, once coined the terms "Super Commissioners" and "Inferior Commissioners" to distinguish those Commissioners who are privy to information from those who, by virtue of their appointing authority, are not. This is magnified when staff, for whatever reason, withholds information from some Commissioners yet provides it to others. Once again, it has become apparent that information has been withheld from certain Commissioners. Commissioners are now being told that to be denied information, confidential or otherwise, is confidential in and of itself. Unfortunately, this discussion has been ongoing since virtually the inception of the Commission. The fact that parties outside the Commission can deem information when provided to the Commission confidential and then have it withheld from Commissioners is the first fallacy perpetrated. The second is the position itself, which falls into the category of reductio ad absurdum. One cannot faithfully discharge their constitutionally mandated duties without all available information. The argument that being deprived of
information is confidential in and of itself turns the
Commission into a Star Chamber presided over by the Super
Commissioners. Madam Chair, thank you very much.

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

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

Chair Varlack: I can, Commissioner Lavine.

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

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

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

Chair Varlack: Commissioner Lavine, we have a very
full agenda in Executive Session, and there is a portion on
the agenda that has already been allocated for new and other
business. So, I would like a motion at this time enter into
Executive Session.

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

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

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

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

Commissioner Jacob: There is a lot of interference.

Commissioner Jacob.

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

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

Walter McClure: I probably can but then everybody's
going to have to make sure that they unmute their phones at
the proper time.
Chair Varlack: May I have a motion to enter into Executive Session?

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

Commissioner DiPirro: And my audio keeps breaking up.

Commissioner Jacob: Mine too.

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

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

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

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

Commissioner Braun: Plus some staff members are not muted.

Monica Stamm: I, you might see that I'm not muted, but I'm connected by my telephone and my telephone is muted.
Walter McClure: I think we're okay at the moment. Please continue.

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

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

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

Commissioner Dering: I’ll second it, Dering.

Chair Varlack: All in favor.

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

Commissioner Cohen: Yes.

Martin Levine: Horwitz?

Commissioner Horwitz: Yes.

Martin Levine: Jacob?

Commissioner Jacob: Yes.

Martin Levine: Lavine?

Commissioner Lavine: Yes

Martin Levine: McCarthy?
Commissioner McCarthy: Yes.

Martin Levine: Motion carries.

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

Walter McClure: Please stand by.

[The Commission went into Executive Session]

[The Commission returned to Public Session]

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

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

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

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

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

Martin Levine: Jacob?
Commissioner Jacob: Yes.

Martin Levine: Lavine?

Commissioner Lavine: Yes.

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

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