Title 19 NYCRR Part 941 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 941 ADJUDICATORY PROCEEDINGS AND APPEALS PROCEDURES

Section 941.1 Intent and purpose.

Executive Law §94(14) authorizes the Joint Commission on Public Ethics (the "Commission") to adopt rules governing the conduct of adjudicatory proceedings and appeals consistent with the New York State Administrative Procedure Act ("SAPA"). Moreover, the Commission's proceedings are otherwise subject to SAPA. These regulations set forth rules for adjudicatory proceedings and appeals relating to: potential violations of the law that fall within the Commission's jurisdiction; appeals taken from denials of requests to delete or exempt certain information from a financial disclosure statement pursuant to Executive Law §94(9)(h) or (i); and appeals taken from denials of applications for exemptions under Article 1-A of the Legislative Law §§1-h, 1-j and 19 NYCRR Part 938.6. Further, the Commission is amending its existing regulations to implement changes pursuant to Part J~~D~~, S. 8160/A.10742 (2016).

Section 941.2 Definitions.

(a) *Appellant* shall mean the recipient of a denial by the Executive Director for deletion or exemption of certain information from a financial disclosure statement who wishes to appeal or has appealed that denial to the members of the Commission.

(b) *Client Filer* shall mean:

(1) Any client retaining or designating a lobbyist that is required to file a semi-annual report pursuant to Legislative Law §1-j; or

(2) Any lobbyist registered pursuant to Legislative Law §1-e whose lobbying activity is performed on its own behalf and not pursuant to retention by a client. (Such a lobbyist is considered its own client for reporting purposes.)

(c) *Commission* shall mean New York State Joint Commission on Public Ethics established pursuant to Executive Law §94, which may delegate the authority to act as provided in these rules and regulations to its Executive Director.

(d) *Executive director* shall mean executive director of the Joint Commission on Public Ethics as appointed pursuant to Executive Law §94(9)(a).

(e) *Financial disclosure* statement shall mean annual statement of financial disclosure which is required to be filed pursuant to Public Officers Law §73-a.

(f) *Hearing officer* shall mean the presiding officer in adjudicatory hearings conducted pursuant to this Part and in accord with SAPA.

(g) *Hearing* shall mean any adjudicatory proceeding held by the Commission to determine whether a violation of Public Officers Law §§73, 73-a or 74, Civil Service Law §107 or Article 1-A of the Legislative Law has occurred.

(h) *Respondent* shall mean Statewide elected officials, any State officer or employee, members of the legislature or legislative employees, candidates for legislative and statewide offices, and political party chairs covered by Public Officers Law §§73, 73-a or 74 or Civil Service Law §107, or any lobbyist or client, as such terms are defined in Article 1-A of the Legislative Law, who receives a written notice from the Commission pursuant to Section 941.3 of this Part.

Section 941.3 Notice of Substantial Basis Investigation and Hearing

(a) Written notice shall be provided to the Respondent of the Commission's decision to commence an investigation and conduct a hearing to determine whether a substantial basis exists to conclude a violation of law has occurred. The notice of substantial basis investigation and hearing shall inform the Respondent of his or her right to be heard and appear by attorney at a confidential hearing to be held within thirty (30) days of such written notice. The notice shall contain the following:

(1) the alleged violations of law and the factual basis for those allegations;

(2) a statement of the time and place of the hearing;

(3) the hearing officer who will preside over the matter and instructions for the submission of any notices, filings, or other papers;

(4) a statement for hearing impaired parties and participants concerning the provision of deaf interpretation without charge;

(5) notice to the Respondent that failure to appear will not preclude the Hearing Officer or Commission from proceeding with the scheduled hearing; and

(6) any other information deemed necessary or appropriate.

(b) The notice of substantial basis investigation and hearing shall include a copy of the Commission's rules regarding the conduct of adjudicatory proceedings and appeals and shall also contain a plain language summary of the rules in this Part.

Section 941.4 Time and place of hearing and service of filings.

(a) The Commission shall determine the time and place of hearing and shall, as practicable, take into account the convenience of the parties and the availability of witnesses.

(b) The time and place of hearing shall not be changed unless a party formally requests a change pursuant to the adjournment request procedure contained in section 941.9 of this Part and the hearing officer determines that sufficient cause has been set forth for such a change of time and place in a timely manner.

(c) Any written notice or filing by the Respondent shall be served upon the hearing officer and the Commission at the offices of the Commission as specified in the notice of substantial basis investigation and hearing.

Section 941.5 Representation.

(a) Any person compelled to appear in person or who voluntarily appears in any hearing herein described shall be accorded the right to be accompanied, represented and advised by counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others in any hearing. However, any person appearing before the Commission in a representative capacity will be required to establish his or her authority to act in such capacity.

(b) Any counsel or attorney for the Respondent shall file with the Commission a Notice of Appearance in a form provided by the Commission.

Section 941.6 Selection of hearing officer.

(a) The Commission shall maintain a list of independent hearing officers in accordance with the Commission's policies and procedures.

(b) The Commission shall select at random from the list of independent hearing officers a hearing officer to preside over each hearing or appeal, when applicable.

(c) Such hearing officer shall not have any conflict of interest in the matter being heard before him or her. The hearing officer shall not sit as a hearing officer in a matter to which he or she is a party; or in which he or she has been attorney or counsel; or in which he or she is interested; or if he or she is related to any party or witness in the matter; or in any circumstance where there is conflict of interest.

(d) In the event of a hearing officer's death, resignation, removal, termination of employment, disability, or inability or failure to make a written finding and recommendation within the time period allowed after the completion of the hearing, the Commission may direct that all of the evidence taken at the hearing be submitted to the Commission for decision.

Section 941.7 Powers and duties of hearing officers.

(a) A hearing officer is authorized to do the following in any hearing to which the hearing officer is assigned:

(1) Administer oaths or affirmations.

(2) Sign and issue subpoenas in the name of the Commission, at the request of any party or the direction of the Commission, requiring attendance and testimony by witnesses and the production of books, papers, documents and other evidence. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the Civil Practice Law and Rules.

(3) When there is good cause to believe that the testimony of a potential witness will be unavailable at the time of hearing, testimony may be taken by deposition. The hearing officer shall allow the use of such depositions at the hearing.

(4) Regulate the course of the hearings, set the time and place for continued hearings and fix the time for filing of briefs and other documents for review by the hearing officer prior to the issuance of findings of fact and recommendations.

(5) Direct the parties to appear for pre-hearing conference and confer to consider the simplification or settlement of the issues and/or stipulations as to the underlying facts by consent of the parties.

(b) A hearing officer is authorized, in any hearing or appeal to which the hearing officer is assigned, to issue findings of fact, conclusions of law, and recommendations, as may be appropriate.

Section 941.8 Adjournment.

(a) A hearing officer shall grant an adjournment of any hearing conducted pursuant to these rules only for good cause.

(b) Written requests for adjournment shall be submitted to the hearing officer of record in the hearing and a copy provided to the other party. The request must be accompanied by an affidavit which contains sufficient detail to allow the hearing officer to rule on the request.

(c) No request for adjournment shall be considered granted until approved by the hearing officer.

Section 941.9 Time limits.

(a) At least seven (7) days before the hearing, the Commission shall provide to the Respondent any additional evidence supporting the allegations that was not previously described in the notice

sent pursuant to Executive Law §13(a) in sufficient detail to enable the Respondent to respond at the hearing.

(b) At least seven (7) days before the hearing, the Respondent shall provide the Commission and hearing officer a list of possible witnesses and notice of any defenses to be presented, and supporting evidence, in sufficient detail to permit the Commission to prepare for the hearing.

(c) Any other papers, statements, proofs, and evidence shall be provided to the other party and the hearing officer, in the hearing officer's discretion and at a time to be designated by the hearing officer. The hearing officer, Executive Director or the Commission may grant an extension of time for filing such matters only upon formal request.

(d) Except by consent of the parties, every hearing conducted pursuant to these rules shall be concluded within 180 days of the date of the hearing specified in the notice of substantial basis investigation and hearing. An adjournment or continuance granted at the request of the Respondent or by mutual consent of the parties will extend the period of time for conclusion by the length of time the adjournment or continuance is granted.

(e) The Commission, the Executive Director, or the hearing officer may, at any time before the time limits delineated above expire, extend such time period by making a determination that the time provided is insufficient to complete the hearing and shall state sufficient reasons therefor. This extension shall not be for a period longer than 90 days after the expiration of the original 180 day period during which the hearing should have been concluded.

(f) Failure by the hearing officer, the Executive Director or the Commission to adhere to time limits established by this section shall be reviewable under Article 78 of the Civil Practice Law and Rules in a proceeding in the nature of mandamus.

Section 941.10 Conduct of hearings.

(a) All hearings and proceedings before the hearing officer or Commission related thereto commenced under these rules are confidential in accordance with Executive Law § 94(13(b)).

(b) The Respondent shall not be deprived of the opportunity to appear; however, failure to appear after service of notice shall not preclude a decision by the hearing officer and the Commission, upon proof of service, to proceed with the scheduled hearing. Proof of service shall consist of a certified mail receipt or affidavit of service.

(c) The hearing officer shall conduct all hearings under these rules and shall exercise the power and authority of presiding officers or hearing officers as defined by SAPA, any other pertinent statute and these regulations.

(d) The hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in contemptuous conduct before the hearing officer.

Section 941.11 Oaths.

(a) All oaths required by these rules may be taken before any person authorized to administer oaths within the State of New York.

(b) Oaths shall be administered to all witnesses who testify or appear in any hearing conducted pursuant to these rules.

Section 941.12 Evidence and proof.

(a) The formal rules of evidence do not apply with respect to any hearings under the Commission's jurisdiction. Objections to evidentiary offers may be made and shall be a part of the record. Subject to these rules, any party may, for the purpose of expediting the hearing, and when the interests of the parties will not be substantially prejudiced thereby, submit all or part of the evidence in written form.

(b) The introduction of cumulative or irrelevant evidence shall be avoided and the hearing officer may curtail the testimony of any witness which he or she judges to be merely cumulative or irrelevant; however, the party offering such testimony may make a short avowal of the testimony which would be given and if the witness asserts that such avowal is true, this avowal shall be made part of the record.

(c) All evidence appearing in the record shall be deemed to have been validly introduced.

(d) The burden of proof shall be on the Commission unless otherwise provided by statute.

(e) Each party shall have the right to give sworn testimony, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence.

(f) The parties may, by agreement, stipulate as to any facts involved in the proceeding, provided that such stipulation is duly noted in the record.

(g) Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Commission. When official notice is taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

Section 941.13 Proposed Findings of Fact and Recommendation, Substantial Basis Investigation Report, and Notice of Civil Assessment.

(a) Within sixty (60) days of the conclusion of the hearing, the hearing officer shall make findings of fact and a recommendation as to the appropriate penalty to be assessed or any other action to be taken. The hearing officer shall transmit the proposed findings of fact and recommendation to the Respondent and his or her representative and to the Commission. The hearing officer may request from the Commission an extension of time in which to transmit the proposed findings of fact and recommendation. The Commission shall notify the hearing officer

and all parties and their representatives should it grant an extension.

(b) Within thirty (30) days of the hearing officer's transmittal of the findings of fact and recommendation, the following shall occur:

(1) The Respondent shall have an opportunity to respond in writing, in the form of a brief directed to the Commission, to the findings of fact and recommendation of the hearing officer. The brief may not include or discuss evidence which is not a part of the official record of the hearing.

(2) The Commission's staff shall have an opportunity to respond in writing in the form of a brief directed to the Commission, to the findings of fact and recommendation of the hearing officer, and shall submit a proposed Substantial Basis Investigation Report to the Commission for its consideration.

(c) The Commission shall have sixty (60) days from receipt of the proposed Substantial Basis Investigation Report, or as soon thereafter as possible, in which to vote on whether or not to issue a Substantial Basis Investigation Report and issue a Notice of Civil Assessment. In the Substantial Basis Investigation Report, the Commission may adopt the findings of fact and recommendation of the hearing officer in whole or in part, or it may reverse, remand and/or dismiss the hearing officer's finding of fact and recommendation based upon the record produced at the hearing.

(d) The Commission shall release such report publicly within forty-five days of its issuance.

(e) With respect to the investigation of a Respondent subject to the jurisdiction of the Commission, other than a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation and the hearing the Commission has found a substantial basis to conclude that Respondent violated the Public Officers Law, Civil Service Law or the Legislative Law, the Commission shall send a Substantial Basis Investigation Report containing its findings of fact and conclusions of law to the individual or entity.

(f) A substantial basis investigation report issued pursuant to Executive Law § 94(14-a) shall be delivered to the Legislative Ethics Commission and to the individual who is the subject of the report, and shall be made public and otherwise be governed by the ~~in accordance with~~ Legislative Law §80~~(9)(b)~~. ~~Any policies and procedures of the Legislative Ethics Commission pertaining to adjudication and disposition shall apply to these matters.~~ ~~After issuance of a substantial basis investigation report pursuant to Executive Law §94(14-a), the matter shall be governed by Legislative Law §80.~~

(g) The Commission shall mail or deliver to each party to the hearing and to its representatives of record a copy of all findings of the hearing officer and all final decisions including a Notice of Civil Assessment, if any, of the Commission.

Section 941.14 Fines, penalties.

(a) The Commission's assessment of civil penalties made pursuant to Executive Law §94(14) shall not preclude its referral of violations of law to a prosecutor for criminal prosecution.

(b) If the alleged violation has been established, and the Commission determines in light of all the circumstances that the violation is not serious enough to warrant assessment of a civil penalty, the Commission, in its discretion, may take such other action as appropriate including, but not limited to, a written admonition or a recommendation that disciplinary action be taken. The Commission may forward a copy of such admonition or recommendation for disciplinary action to the individual's appointing authority, as appropriate.

Section 941.15 Record of hearing.

(a) The record in hearings under these rules shall include:

(1) all notices, pleadings, motions, and intermediate rulings;

(2) evidence presented;

(3) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose;

(4) questions and offers of proof, objections thereto, and rulings thereon;

(5) proposed findings and exceptions, if any; and

(6) any decision, determination, opinion, order or report rendered.

(b) The Commission shall make available a complete record of all hearings in which the Commission has issued a final decision to any party to that hearing. The Commission shall make this record available upon reasonable notice and written request before the commencement of any judicial review. The Commission shall charge the reasonable cost of preparing such record to the requesting party.

(c) A written transcript for all hearings conducted pursuant to these rules shall be provided to any party to a hearing. This transcript shall be made available upon reasonable notice and written request following the conclusion of the hearing. The Commission shall charge the requesting party for the reasonable cost of preparing such transcript.

Section 941.16 Privacy/confidentiality.

The records or documents made available for public inspection and copying are set forth in Executive Law §~~section~~ 94(19) and the Commission's regulations.

Section 941.17 Appeals from Executive Director's denials to delete or exempt certain information from financial disclosure statements.

(a) Grounds for appeal of the Executive Director's denial to delete or exempt certain information from the financial disclosure statement.

(1) Any person required to file a financial disclosure statement whose written request for deletion of one or more items of information as provided in Executive Law §94(9)(h) has been denied in writing by the Executive Director, may file a written appeal of such denial, called a notice of appeal, within fifteen (15) calendar days of receipt of such denial, with the members of the Commission pursuant to these rules.

(2) Any person required to file a financial disclosure statement whose written request for exemption from any requirement to report one or more items of information that pertain to such person's spouse or unemancipated children as provided in Executive Law §94(9)(i) has been denied in writing by the Executive Director, may file a written appeal of the denial within fifteen (15) days of receipt of such denial, with the members of the Commission pursuant to these rules.

(b) Confidentiality of information related to the Executive Director's denials to grant deletion or exemption requests.

(1) Pending any application for deletion or exemption to the Executive Director or notice of appeal filed with the members of the Commission, all information which is the subject or a part of the application or appeal shall remain confidential. Upon an adverse determination by the members of the Commission, the reporting individual may request, within five (5) calendar days of receipt of an adverse determination, and upon such request the Commission shall provide, that any information which is the subject or part of the application remain confidential for a period of thirty (30) days from the date of notice of such determination. In the event that the reporting individual resigns from office and holds no other office subject to the jurisdiction of the Commission, the information shall not be made public and shall be expunged in its entirety from the financial disclosure statement.

(c) Notice and procedure for appeal from the Executive Director's denial to grant a deletion or exemption request.

(1) A notice of appeal must be filed with the members of the Commission within fifteen (15) calendar days of receipt by the appellant of a denial by the Executive Director. The notice of appeal must be in writing, must provide a clear statement of the reasons for appeal, and shall be addressed to the chairman of the Commission at the address provided on a document accompanying the denial by the Executive Director which shall include such information and the procedure for appeals.

(2) Upon receipt of the notice of appeal by the Chair of the Commission, the Chair, or his/her designee, shall issue a notice of docketing which sets forth a time and date for submitting written arguments and documentary evidence in support of the appellant's position that shall be no sooner than fifteen (15) days after receipt of the notice of appeal and no later than thirty (30) days thereafter.

(d) Record on appeal.

(1) The members of the Commission shall consider the record provided by the Executive Director and the written submissions of the appellant in making a determination on the appeal of the Executive Director's denial. The members of the Commission may request the appellant to file additional information.

(2) The formal rules of evidence shall not apply in the appeals process.

(3) The burden is on the appellant to show that the Executive Director made an erroneous determination in deciding not to grant appellant's deletion or exemption request.

(e) Decision on appeal from executive director's denials.

(1) The members of the Commission shall review the written appeal filed pursuant to these rules, and shall render a decision by a majority vote of a quorum being present. Such decision shall be based upon the entire record submitted to the executive director and the written submission of the appellant.

(2) The written decision of the members of the Commission shall affirm, reverse, remand and/or dismiss the decision of the Executive Director and, as appropriate, shall set forth a concise statement of the reasons for the Commission members' decision and shall be issued within sixty (60) days of the receipt of the written notice of appeal filed with the commission members pursuant to these rules, or as soon thereafter as possible.

Section 941.18 Appeals from denial of an application for exemptions under Article 1-A of the Legislative Law §§1-h, 1-j and 19 NYCRR Part 938.6.

(a) An appeal of a denial of an application for exemption to a judicial hearing officer, pursuant to Article 1-A of the Legislative Law §1-h and 19 NYCRR Part 938 is available only to a Client Filer who submitted an application under 19 NYCRR Part 938.4(a). A Client Filer who submitted an application under 19 NYCRR Part 938.4(b) is not entitled to such an appeal.

(b) A Client Filer may appeal a denial of an application for exemption. A notice of appeal must be in writing and include the original application for exemption together with any supporting materials that were submitted pursuant to 19 NYCRR Part 938.5. The written notice of appeal must be received by the Commission no later than fifteen (15) business days after the date of the denial. Any notice of appeal received by the Commission later than fifteen (15) business days after the date of the denial will not be considered and the Client Filer will be deemed to have waived the right to appeal.

(c) If the Client Filer appeals and such appeal is denied, the Client Filer shall, within five (5) business days of the date of the denial of the appeal, amend the Client Semi-Annual Report to include the required information relating to the subject of the application for exemption.

(d) Appeal Procedure and Standard of Review

(1) Upon receipt of a notice of appeal in accordance with Section 941.18(b), the Commission shall assign the matter to a hearing officer.

(2) The hearing officer shall review the entire record, which shall consist of the original application for exemption together with any supporting materials that were submitted pursuant to Section 941.18(b) and the Commission's written denial.

(3) The hearing officer may reverse the Commission's denial only if such denial is clearly erroneous in view of the evidence in the record.

(4) The hearing officer's final decision shall be in writing and shall affirm, reverse, or remand the decision of the Commission and shall set forth a concise statement of the reasons for the judicial hearing officer's decision. The hearing officer shall issue the final decision within fifteen (15) business days of the hearing officer's receipt of the materials identified in this section.

(5) A decision by the hearing officer to affirm or reverse the Commission's denial of an exemption shall be considered a final determination by the Commission.

Section 941.19 General provisions.

(a) All final recommendations of the hearing officer and all of the decisions of the Executive Director and the Commission shall be in writing or stated in the record and shall include findings of fact, conclusions of law, reasons for the decision and when appropriate, direct that specific action be taken by the Commission. The final decisions of the Commission shall be binding upon the Commission.

(b) Except in matters ex parte, members or employees of the Commission assigned to make a decision or to make findings of fact and conclusions of law in any hearing shall not communicate, directly or indirectly, in connection with any issue of law, with any person, party or its representative of record, except upon notice and opportunity for all parties to participate. Any such member or employee may communicate with other Commission members or employees and may seek the aid and advice of agency staff, including counsel to the Commission, other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

(c) The Commission shall maintain all substantial basis investigation reports and notices of civil assessments and make them publicly available as required by law.

Section 941.20 Savings Clause

All matters where the Commission has issued a Substantial Basis Investigation Report will be governed by the laws and adjudicatory rules in effect when such Substantial Basis Investigation Report was issued. All other matters and investigations will be governed by the provisions of this Part.

Section 941.21 Effective date

This Part shall become effective upon the effective date of Part J~~D~~, S. 8160/A.10742 (2016).