

**MINUTES OF THE PUBLIC SESSION OF THE  
APRIL 30, 2013  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT THE COMMISSION'S OFFICE LOCATED AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Present:**

**Chair:** Daniel J. Horwitz

**Members:**

Patrick Bulgaro  
Hon. Joseph Covello  
LaShann DeArcy (*via FaceTime*)  
Hon. Vincent DeIorio  
Mitra Hormozi (*via Skype*)  
Marvin E. Jacob  
Seymour Knox, IV  
Gary J. Lavine  
Hon. Mary Lou Rath (*via Skype*)  
David A. Renzi  
George H. Weissman

**Members**

**Absent:** Ellen Yaroshefsky

**Staff:**

Ellen N. Biben, Executive Director  
Monica J. Stamm, Chief of Staff and Deputy Counsel  
Jeannine Clemente, Director of Administration  
Robert Cohen, Special Counsel and Director of Ethics and Lobbying  
Compliance  
Martin L. Levine, Director of Audit and Review and Senior Counsel  
John T. Milgrim, Director for External Affairs  
Letizia Tagliaferro, Director of Investigations and Enforcement  
Shari Calnero, Senior Counsel and Manager of Training  
Louis Manuta, Associate Counsel  
Deborah Novak, Executive Assistant  
Patrick E. Coultry, Chief Investigator  
Terence Mulderrig, Senior Investigator  
Jack Patterson, Confidential Investigator

**I. OPENING STATEMENT**

Chair Horwitz opened the Public Session with a statement and remarks.

**II. MINUTES - PUBLIC SESSION – MARCH 28, 2013**

Upon motion made by Commissioner Bulgaro, which was seconded by Commissioner Knox, the Minutes from the Public Session of the March 28, 2013 Commission Meeting were approved by unanimous vote.

**III. EXECUTIVE DIRECTOR’S REPORT**

On behalf of staff, Executive Director Biben welcomed the new Chair, Daniel Horwitz.

**Training Update**

Executive Director Ellen Biben advised the Commission that Shari Calnero is now the Manager of Training, leading staff in developing new programs. Beginning May 13 through May 23, staff has scheduled the Commission's "Train the Trainers" program. The program will enable Ethics Officers to provide the statutorily required ethics training that almost 20,000 State employees must complete by the end of August. Staff already has scheduled approximately 200 individuals to attend the training. It is a comprehensive ethics program that will continue to be offered throughout the year, but the sessions for trainers begin in May.

**End of Year Financial Report**

Director Jeannine Clemente provided an update on the end of the year financial report. For fiscal year 2012-13, the Commission had a \$4.1 million appropriation. Due to the fiscal management of the staff, with the guidance of the Administration Committee, the Commission spent \$3.886 million, which is 97% of the Commission's cash for last year: \$2.665 million was for personal services, and \$1.220 million was for non-personal services.

### **FDS Filings**

Executive Director Biben stated that May 15th is the deadline for filing annual financial disclosure statements. All non-academic filers have received the notification e-mail. This year, the new financial disclosure statement form, which requires greater disclosure and more detailed categories of value, is in effect. The categories of value will no longer be redacted. The new form and instructions are available on the Commission's website. Staff is gearing up for the deadline and anticipate it will be a very busy time. The FDS forms for the legislative members and staff are first filed with LEC and are delivered to the Commission by June 30th.

### **Roundtable Discussions with Regulated Community**

Staff continued the roundtable discussions with the regulated community. These are informal discussions with ethics officers from the State agencies as well as others from the regulated community on a host of topics. They have been very productive and informative for staff, and staff has received positive feedback from the regulated community. Staff anticipates that we will continue these roundtable discussions on a regular basis. Staff will be posting in the next couple of days the next roundtable discussion to be held in May in both NYC and Albany.

## **IV. REGULATIONS**

Executive Director Biben presented and discussed proposed regulations for gifts, honoraria, and official activity expense and service payments. There has historically been inconsistency in this area, which has bred confusion. Staff hopes these regulations will provide uniformity and clarity that will, in turn, promote compliance with the relevant ethics laws.

During the December meeting, staff presented proposed draft regulations on these issues, and at the Commission's direction, staff posted the drafts on the website, solicited informal public comments, and consulted with the Legislative Ethics Commission ("LEC") to help develop informed regulations. Through the public comment process, productive roundtable discussions with the regulated community,

and an ongoing dialog with LEC, staff developed the revised drafts that are included in the meeting package for your review, consideration, and approval. If the Commission adopts the proposed regulations, they will be subject to the State Administrative Procedure Act, including a formal public comment period.

Executive Director Biben highlighted some of the features of the proposed regulations. In addition, the regulations clarify some of the new definitions under the Public Integrity Reform Act. For example, the statute sets new requirements for widely attended events, and the regulations establish an approval process for State employees to accept attendance at such events. Another change is the definition of nominal, an issue that was flagged in December. Staff has now included in this draft a \$10.00 figure to help define nominal. Staff has heard very good arguments on both sides out of the roundtable discussions and comments. The \$10.00 figure provides more clarity and guidance. Alternatively, leaving it as "nominal" allows for a more flexible, contextual approach. We look forward to the additional comments through the public comment period for further insight.

#### **Proposed Gift Regulations for Public Officers Regulations**

A motion was made by Commissioner Renzi, which was seconded by Commissioner DeIorio, to adopt the proposed gift regulations for public officers and to proceed under SAPA. The motion was approved by unanimous vote.

#### **Proposed Gift Regulations for Lobbyists and Clients Regulations**

A motion was made by Commissioner DeIorio, which was seconded by Commissioner Bulgaro, to approve the proposed gift regulations for lobbyists and clients regulations and to proceed under SAPA. The motion was approved by unanimous vote.

### **Proposed Amended Honoraria Regulations**

A motion was made by Commissioner Weissman, which was seconded by Commissioner DeIorio, to approve the proposed amended honoraria regulations and to proceed under SAPA. The motion was approved by unanimous vote.

### **Proposed Amended Official Activity Expense Regulations**

A motion was made by Commissioner Covello, which was seconded by Commissioner Renzi, to approve the proposed amended official activity expense and service payment regulations and to proceed under SAPA. The motion was approved by unanimous vote.

### **Proposed Amended Source of Funding Regulations**

Executive Director Biben reviewed the procedural history. In June 2012, the Commission held a hearing and solicited informal comments. As a result of that, staff developed regulations and the Commission authorized proposed regulations to go through the SAPA process back in July and informed by the public comments, the Commission approved amended source of funding regulations at the end of November 2012. Additional comments came in, and after discussion and consideration by the Commission, the Commission approved some additional amendments to the source of funding regulations at the March 28th meeting, which required that the regulations undergo another round of public comments.

This created an opportunity for staff to continue to engage with the regulated community and additional comments were received on an issue relating to the standard for the exemption. The statute provides for an application for an exemption from the disclosure requirements upon a showing that the disclosure would cause harm. The previously proposed regulations set a standard that if the proposed filer could show a substantial likelihood of that harm, then the exemption may be granted. Two issues have been raised relating to this standard in comments, and staff has been engaged in discussions in response to these comments. The first issue is that the substantial likelihood standard may well be unconstitutionally high and that the

standard set by the Supreme Court under similar, although not identical regulatory disclosure schemes, requires that the exemption be granted on a showing of a reasonable probability or a reasonable likelihood of harm. As a result of these discussions and additional research, staff recommends that the Commission consider the proposed change, which addresses the constitutional concerns while still providing the rigorous disclosure and transparency intended by the statute.

Staff proposes an additional change to the standard, based on the constitutional analysis, that if you make the requisite showing, granting the exemption is not discretionary.

These proposed changes will require another round of public comments. As the Commission already planned to submit amended regulations, this would not cause any further delay. There has been no practical effect due to the high standard as the Commission has not received an application for an exemption to date.

Executive Director Biben read the proposed amendments: 938.4(a) should read as follows: "The Commission shall grant an exemption to disclose a source of a contribution if the client filer shows by clear and convincing evidence that disclosure of the source will cause a reasonable probability of harm, threats, harassment or reprisals to the source or individuals or property affiliated with the source." 938.4(b) should read as follows: "The Commission shall grant an exemption to disclose all sources of contributions to client filer if one, the client filer has exempt status under IRC Section 501C4 and two the client filer shows that its primary activities involve areas of public concern that create a reasonable probability that disclosure of its source will cause harm, threats, harassment or reprisals to the source or individuals or property affiliated with the source."

A motion was made by Commissioner Jacob, which was seconded by Commissioner Weissman, to adopt the proposed source of funding regulations, as amended, on an

emergency basis and to proceed under SAPA. The motion was approved by unanimous vote.

**V. NEW AND OTHER BUSINESS**

There was no new or other business.

**VI. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW §94(19)(b)**

A motion to enter into Executive Session pursuant to Executive Law §94(19)(b) to discuss investigative and personnel matters was made by Commissioner Covello, seconded by Commissioner Bulgaro, and was approved by unanimous vote.

**VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

Chair Horwitz reported out certain actions taken in the Executive Session. The Commission voted to approve an application for an exemption from post-employment restrictions pursuant to Public Officers Law §73(8-b). The Commission also voted on several investigative matters, including the approval of proposed settlement agreements and commencement of a substantial basis investigation. The Commission also voted on a matter that the Commission previously considered relating to a pending random audit of a lobbying client. The Commission has also approved a statement regarding the substantial basis investigation report issued to the Legislative Ethics Commission in February 2013. The statement will be released shortly.

**VIII. MOTION TO ADJOURN THE PUBLIC MEETING**

Upon motion made by Commissioner Weissman, seconded by Commissioner Renzi, which was approved by unanimous vote, the meeting was adjourned.