MINUTES OF THE PUBLIC SESSION OF THE
MARCH 28, 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: Hon. Janet DiFiore

Members: Patrick J. Bulgaro
LaShann DeArcy
Hon. Vincent DeIorio
Marvin E. Jacob
Daniel J. Horwitz (*via* Skype)
Seymour Knox, IV (*via* Skype)
Gary J. Lavine
Hon. Mary Lou Rath (*via* Skype)
David A. Renzi (*via* Skype)
Ellen Yaroshefsky (*via* Telephone)

Members Absent: Hon. Joseph Covello
Mitra Hormozi
George H. Weissman

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
John T. Milgrim, Director for External Affairs
Letizia Tagliafierro, Director of Investigations and Enforcement
Patrick Coultry, Chief Investigator
Louis Manuta, Associate Counsel
Deborah Novak, Executive Assistant

I. OPENING STATEMENT

Chair DiFiore opened the Public Session.

II. MINUTES - PUBLIC SESSION – FEBRUARY 26, 2013

Upon motion made by Commissioner Bulgaro, which was seconded by Commissioner DeIorio, the Minutes from the Public Session of the February 26, 2013 Commission Meeting were approved by unanimous vote.

III. EXECUTIVE DIRECTOR'S REPORT

Roundtable Discussions with regulated community

Executive Director Biben announced that Commission staff have conducted a series of roundtable discussions to engage the public and regulated community on various topics. They have been a productive and informative mechanism to obtain input from the regulated community on matters before the Commission, including the source of funding regulations and reportable business relationship guidelines, and staff looks forward to continuing these efforts.

Training update

Staff is continuing to develop the Commission's training curriculum, including on-line programming. The next event is a "Train the Trainers" program through which Commission staff will train ethics officers from the various agencies so that they are prepared to provide the mandated ethics training for all state officers and employees who file annual financial disclosure statements. Staff believes that this is an efficient and appropriate way to enable the agencies to meet their training requirements. This program will be held in May in Albany and details will be announced soon.

Presentation of 2012 Annual Report

Executive Director Biben provided a powerpoint presentation highlighting information in JCOPE's 2012 Annual Report. The full report will be available on the website immediately after the meeting, and for the first time, we will be posting entire sets of the lobbying data for 2012 in an electronic format.

IV. REGULATIONS AND GUIDELINES

Executive Director Biben provided an update on the gift and related regulations that staff have been developing. Additional time was granted for the public and regulated community to give the Commission comments, and staff has planned roundtable discussions on the regulations for next week. Staff has continued to coordinate with the Legislative Ethics Commission on the draft regulations. We hope to present proposed drafts at the April meeting for the Commission's review and approval to proceed with the SAPA process.

Source of Funding Regulations

Executive Director Biben discussed the proposed source of funding regulations, which were adopted by the Commission as permanent regulations, subject to public comment pursuant to the SAPA review process, and as emergency regulations which are currently in effect and have been extended to May 18. In response to some of the informal and formal comments that we have received, staff proposes two further revisions to the source of funding regulations.

The first revision is a non-substantive revision to clarify the regulations by eliminating the term "single source" and instead incorporating the concept of affiliated relationships in the defined term "source". The approval of this change would not require that regulations go back out for another public comment period under SAPA.

The second proposed revision would, in staff's view, be deemed a substantive revision requiring another public comment period under SAPA. In both informal and formal comments, concerns have been raised that certain sources of funding continue to be shielded from the real disclosure and transparency the statute intended because another entity has been disclosed as the sole source of funding. For example, some clients only disclose the name of a closely related LLC as the source of funding. To address this concern, the proposal is to impose an additional level of disclosure for a subset of sources that meet particular requirements. If the entity that has been disclosed as the source of

funding meets any of 5 factors, which are proxies for establishing that there is a tie between the source entity and the lobbying client receiving the funds, additional disclosure is required. The lobbying client can disclose either: (1) the name, address or principle place of business of at least one natural person who shares or exercises discretion or control over the activities of the source; or (2) the sources of funds contributed by the corporation, partnership, or entity to the lobbying client. This proposal addresses the concerns about the lack of transparency for certain types of sources without overburdening the reporting party.

Commissioner Yaroshefsky asked about some concern in the public interest community about the level of disclosure required. Executive Director Biben explained that staff has been engaged in an on-going dialog at the roundtable discussions on these issues and is trying to achieve a balance between the transparency intended by the statute and desired by the public interest community on the one hand and the burden on the regulated community on the other. The result is to create another level of disclosure for this sub-category of entities where there is a lack of transparency. Some of the comments asked for this additional disclosure across the board, but staff's proposal is a compromise.

A motion was made by Commissioner DeArcy, which was seconded by Commissioner DeIorio, to approve the proposed amendment which refines the definition of source. The motion was approved by unanimous vote.

A motion was made by Commissioner DeArcy, which was seconded by Commissioner DeIorio, to approve the proposed amendment relating to the additional level of disclosure. The motion was approved by unanimous vote.

The Executive Director stated that, as discussed, the proposed regulations will be submitted for another round of public comment, pursuant to SAPA, and that the new provisions would become effective upon filing as emergency regulations.

Reportable Business Relationships

Executive Director Biben presented a proposed change to the reportable business relationship guidelines based on staff's dialog with the regulated community and informal and formal comments received. A concern has been raised about the level of diligence that the entities need to undertake to satisfy the disclosure requirements. In the guidelines, the Commission has defined client to include not only the organization itself, but also its executive management and directors. Some members of the regulated community asked whether it is reasonable for them to rely on responses to a questionnaire submitted to an entity's board of directors. Staff believes this is a reasonable accommodation and recommends that the Commission modify the guidelines to expressly allow an entity to use a general questionnaire to elicit the appropriate information and rely on such questionnaire to satisfy the disclosure requirement under the statute.

The proposed language is "for the purposes of determining any proprietor or director or member of the executive management of an entity, has a business relationship that must be disclosed as a reportable business relationship, the entity which is responsible for making the filing may reasonably rely on the information provided by a proprietor or director or member of the executive management, in response to a general questionnaire or form that is designed to elicit the information necessary to make such a determination." Staff intends to develop a model questionnaire for the regulated community to use.

Commissioner DeArcy raised an issue relating to the "reason to know standard." She questioned the language "submitting a FOIL request does not necessarily establish that a lobbyist had reason to know the information." Director of Ethics and Lobbying Compliance Robert Cohen addressed the issue and whether the word "necessarily" should be deleted or substituted with the word "alone."

A motion was made by Commissioner Bulgaro, which was seconded by Chair DiFiore, to approve the Reportable Business Relationship guidelines, as amended, to include the language providing the clarity of the reasonable reliance on a questionnaire and to change the word "necessarily" to "alone." The motion was approved by unanimous vote.

Executive Director Biben stated, with that approval, the guidelines will be amended accordingly and because they do not go through the SAPA process, they can be amended and posted as soon as possible.

V. NEW AND OTHER BUSINESS

Executive Director Biben mentioned the upcoming May filing deadline for the annual financial disclosure statements. PIRA created some new categories and some additional disclosures, so staff is in the process of finalizing the new FDS form and accompanying instructions which will be posted soon.

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 DeIorio, seconded by Commissioner Bulgaro, and was approved by unanimous vote.

VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair DiFiore announced that there was no information to be reported out of Executive Session.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

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