



REPORT
FROM THE NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS
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I. EXECUTIVE SUMMARY

The Joint Commission on Public Ethics (“JCOPE”) is an independent ethics agency that was created by the Public Integrity Reform Act of 2011 (“PIRA”). JCOPE is charged with enforcing the State’s ethics and financial disclosure laws that apply to the Legislative and Executive Branches of government. Additionally, the agency is charged with enforcing the laws regulating lobbying in the State, including disclosure requirements for lobbyists and their clients. JCOPE provides advice and guidance on these laws and their accompanying regulations. It promotes compliance through educational initiatives, audits, investigations, and enforcement proceedings.

PIRA expanded JCOPE’s jurisdiction and oversight responsibilities from its predecessors. Among other things, PIRA gave JCOPE jurisdiction over the members and staff of, and candidates for, the Legislature, where those responsibilities had previously been the exclusive province of the Legislature. For the first time, therefore, New York has one agency primarily responsible for the implementation and enforcement of the State’s lobbying laws as well as the ethics and financial disclosure laws for the Executive and Legislative Branches of government.

Under PIRA, JCOPE is required to “undertake a comprehensive review” of regulations and Advisory Opinions issued by its predecessor agencies, evaluate the effectiveness of the current regulations, and submit a report of its findings and recommendations to the Governor and Legislature by February 1, 2015. (Executive Law §94(1)). JCOPE’s findings and recommendations that are discussed in this report are drawn from JCOPE’s experience over the past three years, its analysis of the guidance and practices of its predecessors,

consultation with the Legislative Ethics Commission, the New York City Conflicts of Interest Board, and the New York City Office of the City Clerk, and suggestions and recommendations from the regulated community, civic groups, the media, and the public at large.

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A. JCOPE's First Three Years

JCOPE was established in the wake of a number of ethics controversies involving elected officials and was charged with carrying out the reforms enacted in response by PIRA. These reforms included enhanced enforcement powers for JCOPE, more robust financial disclosure requirements for elected officials and tens of thousands of State officers and employees, and more comprehensive disclosure requirements for lobbyists and their clients.

JCOPE's mission, as articulated in PIRA and its legislative history, is to be a key player in efforts to restore the public's trust in State government. As both a leader and an active participant in those efforts, JCOPE aims to spur fundamental change with the community of elected officials, government officers and employees, law enforcement and regulatory counterparts, lobbyists, and non-governmental organizations.

In its three-year tenure, JCOPE has made important gains. JCOPE has issued new regulations and guidelines, revised certain existing regulations, brought a number of actions to enforce violations of the ethics (the Public Officers Law) and lobbying laws (Legislative Law Article 1-A, the "Lobbying Act"), developed new educational materials, and

implemented training programs for tens of thousands of State officers and employees and registered lobbyists. The agency's major undertakings include the following:

- Completed the first independent ethics investigation of a sitting legislator, leading to a \$330,000 fine and his resignation from office.
- Adopted Source of Funding regulations (19 NYCRR Part 938) to implement the new requirement that entities lobbying the State disclose the sources of money they receive to fund their operations if their lobbying activity meets certain thresholds.
- Issued "Reportable Business Relationship" guidelines to implement the required disclosures by registered lobbyists and their clients of certain business relationships with State officers, employees, and elected officials.
- Adopted new regulations that govern the receipt of gifts by State officers, employees, and elected officials (19 NYCRR Part 933), as well as the offering of gifts by registered lobbyists and their clients to State employees and elected officials (19 NYCRR Part 934).
- Adopted new regulations prohibiting the appearance of high-level State officials in public service announcements for the 90-day period prior to an election in which they are a candidate (19 NYCRR Part 940).
- Revised existing regulations governing the receipt of honoraria by State officers and employees (19 NYCRR Part 930) and the payment of expenses related to travel for State officers and employees conducting official business (19 NYCRR Part 931).
- Proposed revisions to existing regulations governing outside activities of certain State officers and employees (19 NYCRR Part 932).
- Implemented substantial changes to the annual statement of financial disclosure ("FDS") imposing new disclosure obligations required by PIRA on State officers, employees, and elected officials.
- Introduced and carried out the first ethics training course for the thousands of registered lobbyists in the State.
- Developed a Comprehensive Ethics Training Course that has been provided to tens of thousands of State officers and employees, as well as an online ethics orientation for new State officials.
- Launched a new website and awareness campaign for the reporting of misconduct by State officials and employees.

In addition to this work, JCOPE devotes extensive efforts to regular duties. In the three years since its inception, JCOPE has:

- Commenced over 50 investigations, settled more than 60 matters, and conducted three public hearings, after reviewing hundreds of complaints, tips, and referrals. Settlements and civil assessments totaled more than \$500,000.
- Supplied nearly 1,300 written responses to requests by State employees for guidance or approval of activities under the Public Officers Law.
- Processed more than 75,000 FDS filings of State officials and more than 100,000 disclosure filings by lobbyists and their clients.

B. Looking Forward: Recommendations and Initiatives

JCOPE's analysis of the current regulatory environment governing ethics and disclosure obligations for State employees, lobbyists, and clients of lobbyists began the moment the agency commenced its operations in December 2011 and continues to this day. As a newly-formed agency with a broader mandate and wider jurisdiction than its predecessors, JCOPE is obligated under PIRA to assess past interpretations of the Public Officers Law and the Lobbying Act, as well as the practices and procedures developed by prior agencies.

JCOPE's ongoing review has included: the scrutiny of procedures and precedent inherited from predecessor agencies; a revisiting of the new changes mandated by PIRA; and a reexamination of the regulations and guidance JCOPE itself has recently issued. This review also has encompassed nearly 450 Advisory Opinions issued by predecessor agencies, all existing regulations and guidance, and the statutes governing State officers, employees, and elected officials, and lobbying activities.

The review has already yielded meaningful results. The new regulations governing gifts to State employees (19 NYCRR Part 933) and gifts from lobbyists and their clients (19 NYCRR Part 934) are a direct product of JCOPE's analysis of the regulatory environment it inherited. These regulations replaced the guidance contained in Advisory Opinions issued by predecessor agencies. The revisions JCOPE made to existing honoraria and travel regulations, as well as the currently proposed modifications to the outside activity regulations, are also a result of this comprehensive review.

As part of its ongoing review of its operations and the regulatory environment for which it is responsible, JCOPE also has considered a number of potential modifications to the laws under its jurisdiction and identified areas requiring further attention and analysis. These proposals are intended to: increase transparency of JCOPE's actions; improve compliance with the ethics laws and regulations by State officers and employees, elected officials and lobbyists; enhance the accountability of public officials and those who seek to influence government decision-making; and build public confidence that JCOPE is fully equipped to meet its broad mandate.

Below is a summary of JCOPE's proposals, including specific legislative recommendations for consideration by the Governor and the Legislature, which are more fully discussed in the body of this report.

1. Increasing Transparency and Disclosure

- Amend the Executive Law to provide JCOPE with more flexibility to make information public by a vote of the commissioners, including the ability to make investigative findings public if no legal violation is found or if JCOPE determines not to investigate. In addition, consider whether JCOPE's current exemptions from the "Freedom of Information Law" and "Open Meetings Law" (Public Officers Law Arts.

6 and 7) should be modified to increase the transparency of JCOPE's operations while still protecting the integrity of JCOPE's sensitive compliance and investigative functions.

- Amend the Lobbying Act to require lobbyists to disclose political consulting and fundraising activity in their lobbying filings, as is required by the City of New York for lobbyists.
- Amend the Lobbying Act to expressly prohibit lobbying entities and coalitions from creating or participating in shell or pass-through entities in order to shield the identities of the sources from which they solicit or receive funding.
- Amend the Lobbying Act to require that all filings by lobbyists and clients be submitted electronically (absent a demonstrable hardship).
- Amend the Public Officers Law to require that all FDS filings be submitted electronically (absent a demonstrable hardship).
- Amend the Public Officers Law to expand FDS disclosures regarding clients who have business before the State. Currently, individuals are required to disclose only clients they represent before the State in connection with certain, specified matters. The expanded disclosure would have to be consistent with other ethical and legal obligations pertinent to the individual's profession, such as the New York State Rules of Professional Conduct for lawyers.
- Undertake a review of the Lobbying Act to ensure that the current filing disclosure requirements effectively capture the forms of government advocacy used today, including political and strategic consulting, third-party arrangements, and grassroots efforts, and issue new guidance, accordingly, to elicit sufficient specificity and consistency in reporting.
- Invest in JCOPE's information technology. A new FDS filing system is in development and will be introduced in mid-2015. Plans are also underway to redesign JCOPE's website in 2015. Finally, JCOPE intends to revamp its lobbying filing system with the goal of delivering a new system in 2016.

2. Strengthening Enforcement

- Amend the Executive Law to give JCOPE full jurisdiction over all matters involving State public officials and employees, including those in the Legislative and Executive Branches of government up to and including conducting hearings and making findings of fact and conclusions of law. The Legislature would retain authority over determining an appropriate penalty for its members and staff. (Currently, if an investigative matter involving an employee or member of the Legislature proceeds

to a hearing, the hearing is conducted by the Legislative Ethics Commission and not JCOPE).

- Amend the Public Officers Law to provide for financial penalties for violations of sections of the State’s Code of Ethics (Public Officers Law §74) that currently contain no such penalties.
- Amend the Public Officers Law and the Lobbying Act to prohibit the solicitation, request, aid, or importuning of another to engage in conduct that violates those laws. (Currently, the Public Officers Law and Lobbying Law do not expressly provide for accessorial liability).
- Amend the Lobbying Act to provide financial penalties for a failure to cooperate with a JCOPE audit and for failure to take required ethics training.
- Amend the Lobbying Act to expand the conditions upon which JCOPE can bar an individual or entity from acting as a registered lobbyist to include repeated violations of the Lobbying Act, failure to pay civil fines or penalties imposed by JCOPE, and refusal to cooperate with an audit.
- Amend the Lobbying Act to provide for administrative penalties for violations of restrictions on contingency fee provisions in retainer agreements and to clarify that the registration requirements, restrictions, and penalties include third-party arrangements in which the client hires a third party who, in turn, hires the lobbyist to prevent “cut-out” arrangements.
- Amend the Lobbying Act to eliminate the provision that allows certain lobbyists and clients to avoid financial penalties if they file outstanding disclosure forms after an enforcement hearing.
- Amend the Lobbying Act to mandate that lobbyists and clients maintain records of both lobbying compensation and expenses (as opposed to merely expenses), and to authorize JCOPE to impose a penalty for any failure to do so.
- Amend the investigative procedures in the Executive Law to modify the 45-day time period in which commissioners must consider an investigative matter to clarify that JCOPE’s commissioners are authorized to vote on any action (including adjournment) they deem appropriate within the allowed time period, or as soon thereafter as practicable.

3. Enhancing Effectiveness and Efficiency

- Reevaluate the FDS form, the effectiveness of current disclosure requirements to elicit meaningful information, and the applicability of the filing requirement to those

individuals who are statutorily mandated to file solely on account of their income and not because they hold so-called “policy-making positions” in State government.

- Continue to assess the post-employment restrictions contained in Public Officers Law §73(8) to determine whether modifications should be considered. This process, which has been ongoing, includes a survey of similar prohibitions in other states as well as the restrictions imposed by the Federal government and New York City.
- Study whether changes should be made to the Public Officers Law to help facilitate joint ventures and the commercialization of intellectual property developed at State academic and research facilities.

It should be noted that certain issues are not addressed in this report. JCOPE is well aware that questions have been raised over several aspects of its structure and statutorily mandated procedures and practices. Among the statutory areas that have generated public discussion are the special voting requirements to initiate a full investigation of certain public officials, the total number of commissioners serving on JCOPE, and the independence of commissioners from their appointing authorities. These, and other questions concerning JCOPE as an institution that implicate separation of powers, are the prerogative of the Executive and Legislative Branches of government, and are not within the purview of JCOPE. Finally, this report does not address reforms to the Election Law, as they fall outside of JCOPE’s jurisdiction.

II. INTRODUCTION

The Public Integrity Reform Act of 2011 (“PIRA”) reformed the oversight and regulation of ethics and lobbying in New York State and established JCOPE as the State’s first independent ethics agency. JCOPE replaced the Commission on Public Integrity, but JCOPE’s jurisdiction and oversight responsibilities are broader than its predecessor. Similar to the Commission on Public Integrity, JCOPE’s purpose is to provide information, education, and advice regarding the State’s ethics laws (Public Officers Law §§73, 73-a, and 74), the “Little Hatch Act” (Civil Service Law §107), and the Lobbying Act (Legislative Law Article 1-A), and promote compliance with these laws through audits, investigations, and enforcement proceedings. Additionally, PIRA gave JCOPE oversight and jurisdiction over State legislators, their employees, and candidates for the State Legislature, as well as the four Statewide elected officials, candidates for those offices, Executive Branch employees, certain political party chairs, lobbyists, and their clients. PIRA also substantially expanded the disclosure and reporting requirements for those within JCOPE’s jurisdiction.

JCOPE was formally constituted in December of 2011, with the appointment of its commissioners. In terms of its structure, JCOPE has fourteen commissioners, appointed as follows: three appointed by the Temporary President of the Senate; three appointed by the Speaker of the Assembly; one appointed by the Minority Leader of the Senate; one appointed by the Minority Leader of the Assembly; and six appointed by the Governor and the Lieutenant Governor. The chairperson of JCOPE is selected by the Governor. Other than the initial appointments of commissioners, which had staggered terms,

commissioners serve for five years. JCOPE is required under the statute to meet at least bi-monthly. However, due to the workload, JCOPE routinely meets on a monthly basis.

The executive director of JCOPE is appointed by a vote of the commissioners and leads the day-to-day operations of the agency. JCOPE currently has approximately 40 employees, including attorneys, investigators, auditors, filing specialists, and administrative staff. JCOPE's appropriation has gradually increased over its three years. For State Fiscal Year 2014-15, JCOPE's appropriation was approximately \$4.5 million. Both the staff levels and operations budget for JCOPE have been lower than those of predecessor agencies. Despite this, and despite the expansion of its mandate and jurisdiction, JCOPE, in its first three years, has continued to perform critical functions, taken on new initiatives, and implemented substantive reforms.

JCOPE commissioners and staff have regularly consulted counterpart governmental agencies, various civic groups, and members of the regulated community regarding improvements that could – and should – be made to JCOPE's statutory mandate. Although PIRA provided significant reforms, the past three years have demonstrated the need for additional changes to the State's ethics and lobbying laws to allow JCOPE to better fulfill its mission.

This report presents (i) measures introduced by JCOPE to implement PIRA's reforms; (ii) changes implemented by JCOPE as a result of its ongoing analysis of the effectiveness of the laws under its jurisdiction; and (iii) legislative recommendations and other initiatives for increasing transparency, enhancing enforcement of ethics and lobbying laws, and fixing technical inconsistencies that JCOPE believes should be considered.

III. ETHICS

With respect to State ethics requirements, JCOPE's core function is to provide guidance and training to facilitate compliance with the ethics laws. On a daily basis, JCOPE provides written and verbal guidance to agency ethics officers, current and former State employees, lobbyists, and clients of lobbyists. JCOPE has provided more than 1,100 written, informal opinions on the application of the Public Officers Law and the Lobbying Act. At its inception, JCOPE was faced with a backlog of requests for written guidance accumulated during the period when its predecessor agency was winding down and JCOPE was establishing itself. This backlog has been eliminated, and the typical time for a written response to a request for advice or guidance is 5-7 days.

In addition to these activities, JCOPE has focused on improving the information available to State officers and employees, with an emphasis on providing clear guidance and a reasonable application of the law. As part of these efforts, JCOPE regularly engaged in discussions with the Legislative Ethics Commission, which provides guidance on the State's ethics laws for the Legislative Branch. In this regard, JCOPE analyzed the new provisions of the law and the existing ethics regulations. JCOPE also has undertaken a comprehensive review and analysis – together with a systematic cataloging and indexing – of the more than 400 formal opinions issued by predecessor agencies. As a result of this analysis and review, JCOPE issued three new ethics regulations and revised and amended two existing regulations.

Finally, JCOPE has developed an extensive training and outreach program that consists of formal training sessions for agency ethics officers and State officers and employees,

informal roundtable discussions with agency ethics officers, a newsletter, pamphlets that provide an overview of key areas of the Public Officers Law, and periodic one-page publications highlighting various obligations for individuals covered by the Public Officers Law.

JCOPE's efforts are described in more detail below.

A. Regulatory Work

1. Gift Regulations (Parts 933 and 934)

The analysis of the laws governing receipt of gifts by State officers and employees or the offer of gifts by lobbyists and clients of lobbyists, which is covered under both the Public Officers Law and the Lobbying Act, has historically been complicated. There were different rules embodied in the applicable laws and different interpretations of those rules among the different oversight authorities. JCOPE's predecessors did not promulgate regulations governing gift restrictions. Rather, the rules governing gifts for State officers and employees were embodied in a series of Advisory Opinions.

PIRA amended some of the statutory exclusions to the definition of a "gift," which were codified in the Lobbying Act. In light of these changes, and prompted by a review of existing Advisory Opinions issued by its predecessors and the need to formulate written rules, in 2014, JCOPE, for the first time, promulgated gift regulations. Part 933 covers gifts offered to or accepted by State officers and employees, while Part 934 covers gifts from lobbyists registered with JCOPE and their clients.

The regulations were developed after an extensive public outreach. Prior to submitting the regulations for formal public comment under the State Administrative Procedure Act (“SAPA”), JCOPE solicited input from ethics officers, lobbyists, and other interested parties. It also consulted the Legislative Ethics Commission. The regulations provide clarity by creating a comprehensive framework for determining when a gift may be offered to, or accepted by, a State officer or employee.

2. Public Service Announcement Regulations (Part 940)

PIRA authorized JCOPE to adopt regulations that both promote and define the permissible use of public service announcements. These new regulations, which became effective in July 2014, were designed to address questions that had arisen over the years about public officials appearing in announcements sponsored by entities who have business before them. The regulations were developed after consultation with interested entities, including the Legislative Ethics Commission, as well as consideration of the public comments received in the SAPA process. The new regulations provide clarity in an area that had previously been unresolved by addressing the intersection of the Public Officers Law and public service announcements. The regulations prohibit high-level State officials who are running for office from appearing in public service announcements during the 90-day period prior to the election.

3. Honoraria (Part 930) and Official Activity Expense Payments (Part 931)

JCOPE also amended existing regulations governing the reimbursement and payment of expenses for official travel, as well as the regulations governing the receipt of honoraria by State officers and employees. These amendments bring the regulations in line with the

conceptual framework in the new gift regulations, thereby providing a more coherent regulatory framework that spans across multiple types of scenarios that State officers and employees may encounter.

B. Education and Outreach

Education and outreach have been, and will continue to be, a top priority for JCOPE. To this end, JCOPE has engaged in a variety of projects to increase awareness and understanding of the Public Officers Law and the Lobbying Act.

PIRA established a program for ethics trainings for individuals who are required to file a FDS. Additionally, the statute required, for the first time, that registered lobbyists complete an ethics training course.

In fulfillment of this mandate, JCOPE developed a Comprehensive Ethics Training Course (“CETC”) for State officers and employees covering the obligations, responsibilities, and restrictions contained in Public Officers Law §§73, 73-a, 74 and Civil Service Law §107. In 2013, the CETC was delivered in a “train the trainer” format, where JCOPE conducts the course for ethics officers and other persons who, in turn, would provide the training to the officers and employees at their respective agencies. As a result of these efforts, in 2013, more than 24,000 State employees took the CETC. In 2014, JCOPE conducted regular CETC sessions for State officers and employees (as opposed to the “train the trainer” sessions, which were directed to ethics officers). The Legislative Ethics Commission has provided a similar ethics training program to legislative filers as required by PIRA. As a result of the

efforts of JCOPE, ethics officers at other agencies across the State, and the Legislative Ethics Commission, most FDS filers have now received ethics training.

In accordance with PIRA, JCOPE also developed an online Ethics Orientation for new State officers and employees. This newly-created course is offered through the State's new Statewide Learning Management System ("SLMS"), which provides a shared platform for agencies so that training programs are easily accessible. Since its implementation in mid-2014, nearly 1,000 new State officers and employees required to file FDSs have completed the orientation via SLMS.

Finally, with respect to the training mandated under PIRA, JCOPE developed an online ethics training course for registered lobbyists. The course went live in late September 2014, again utilizing the SLMS platform. In the nearly five months since the training has been available, more than 3,000 registered lobbyists have completed the training (nearly 50% of all registered lobbyists). JCOPE expects this number to increase over time.

In addition to complying with the requirements of PIRA, JCOPE has undertaken a number of initiatives, all of which are aimed at increasing knowledge and understanding of the Public Officers Law. JCOPE has initiated "The Ethics Review," a quarterly newsletter, the first edition of which was published in October 2014. Additionally, JCOPE publishes periodic Ethics Reminders – single-page documents on a discrete issue or requirement under the Public Officers Law. JCOPE has also created more in-depth publications that discuss, in greater detail, the post-employment restrictions applicable to former State employees as well as a guide to the new gift regulations.

C. Improving the Legal and Regulatory Framework

Based on its comprehensive review of the ethics laws and regulations, as well as its experience over the past three years, JCOPE has identified areas in which it will focus resources by either implementing changes it is able to make under existing law or providing analyses and recommendations for the Governor and the Legislature with respect to changes in the Public Officers Law. A brief explanation of these initiatives follows:

- Revisions to the Existing Outside Activity Regulations. Current regulations govern outside employment and other activities (such as Board service) for employees of the Executive Branch who hold “policy-making positions.” These regulations (19 NYCRR Part 932), referred to as “Outside Activity Regulations,” prohibit certain types of political activity and require that certain other outside undertakings be approved by both the employee’s agency and JCOPE. The regulations are decades old and have not been subject to review for quite some time. Certain provisions of the regulations have also been the source of frequent questions from State employees.

JCOPE has, therefore, proposed draft amendments to the Outside Activity Regulations. The amendments, which are posted on JCOPE’s website for informal public review, clarify the existing regulatory framework. The amendments also provide for increased oversight by State agencies with respect to the outside activities of their employees to ensure proper protocols are in place to avoid potential conflicts of interest. By way of example, one proposed change in the regulations would require employees who have been designated as policy makers to inform their agencies when they hold a position on the board of a not-for-profit organization, even if they receive no compensation for such service. Currently, no such notice is mandated. Consequently, agencies may not have the information necessary to even evaluate if not-for-profit board service presents a conflict, or the appearance of a conflict, with an individual’s State responsibilities.

- Post-Employment Restrictions. The post-employment restrictions, known as the “two-year bar” and the “lifetime bar,”¹ have a wide ranging impact on hundreds of

¹ The two-year bar is found in Public Officers Law §73(8)(a)(i). In general, the bar prohibits a former State employee from appearing or practicing before his former agency, regardless of compensation received, for a period of two years after leaving State service. The two-year bar also prohibits a former employee from being paid to render services in relation to a matter that is before his former agency even if he does not make an appearance before the agency. In other words, the statute forbids a former State employee from performing so-called “backroom services,” *i.e.*, working behind the scenes on a matter that is before his former agency.

thousands of individuals in the State and are the subject of the overwhelming majority of requests for guidance submitted to JCOPE. Over nearly three decades, JCOPE's predecessors grappled with the governing laws in an attempt to strike the proper balance between enforcing its anti-revolving door provisions and ensuring that the State's ethics laws are not an impediment to attracting qualified individuals to State service.

The result is scores of Advisory Opinions addressing the application of the post-employment restrictions in very specific, yet wide-ranging circumstances. At the very least, this hodgepodge of precedent is difficult to navigate, especially for non-lawyers who seek to comply with the law.

JCOPE intends to conduct an in-depth analysis of the post-employment restrictions, contained in Public Officers Law §73(8)(a) and relevant Advisory Opinions, with the goal of making legislative recommendations. In conducting its analysis, JCOPE will review the effectiveness of the current application of the law which is a product of these past Advisory Opinions. Additionally, JCOPE will evaluate the various post-employment restrictions used by other states, New York City, and the federal government.

- Joint Ventures. The creation of joint ventures and other business enterprises utilizing research and intellectual property that is developed by State employees at State entities, including institutions of higher learning and research foundations, among others, has become an important part of the State's economic development. The Public Officers Law was drafted before these types of ventures became prevalent at institutions like the State University of New York and the Department of Health. State ethics laws certainly have a place in these types of undertakings. The Public Officers Law, however, should not impede these important relationships which are being fostered by state governments throughout the country.

JCOPE will continue to assess whether the Public Officers Law presents hurdles for these types of joint ventures that have become an important part of the State's economic development and whether changes to the law should be considered.

- JCOPE's New Website. As part of its effort to make information more readily available, JCOPE plans to redesign its website in 2015. In response to suggestions from the regulated community and the public, JCOPE intends to streamline its website to make it more accessible and user-friendly.

A key feature of the new website will be search functionality. Among other improvements, JCOPE is developing a new system to catalogue its more than 400

The lifetime bar is contained in Public Officers Law §73(8)(a)(ii). This prohibition commences when an individual leaves State service and remains in place for the lifetime of that person. In general, the prohibition bars a former State employee from appearing, practicing or performing services in relation to any matter in which the former employee was directly concerned or had personally participated while a State employee.

prior Advisory Opinions. The new system will include a summary of each opinion as well as subject-matter categories. This information will ultimately be available, in a user-friendly format, on JCOPE's website. Thus, the public will have, for the first time, a fully searchable database of Advisory Opinions and the ability to research these decisions in a meaningful way.

IV. FINANCIAL DISCLOSURE

Section 73-a of the Public Officers Law requires Statewide elected officials, members of the Legislature, candidates for elected State positions, political party chairs, and certain State officers and employees and employees of the Legislature to disclose information about their financial interests in FDSs that are filed with JCOPE annually. FDS forms serve three critical purposes: (i) providing to the public significant information about the outside interests of public officials; (ii) requiring public officials to consider their potential conflicts of interests on an annual basis; and (iii) serving as an important tool for regulatory and law enforcement agencies in investigating possible official misconduct.

JCOPE provides assistance and guidance to filers and works closely with other agencies to achieve compliance with this statutory mandate. The Public Officers Law allows individuals to apply for an exemption from the FDS filing requirements. JCOPE, therefore, also determines these requests.

Below is a discussion of JCOPE's administration of the FDS filings as well as an overview of the reforms JCOPE is recommending. The proposed reforms are a result of the ongoing comprehensive review of the laws and regulatory structures as well as experience with the FDS system over the last three years.

A. Administration of the Annual FDS Filings

Each year, JCOPE works with executive agencies and the Legislative Ethics Commission to identify required filers, notify filers of their filing requirements, process filings, and ensure compliance. In addition to elected officials and political party chairs, the FDS filing requirement applies to State officers and employees and legislative employees who (i) receive compensation in excess of the statutory filing rate of a SG-24 (\$90,821 in 2015) or (ii) hold a policy-making position as determined by their appointing authority. JCOPE receives nearly 27,000 FDSs annually. Of such filings, approximately 16,000 are submitted by individuals designated as holding policy-making positions. Filers who are required to file solely based on their salary may apply for an exemption from the requirement to file, and all filers may apply for exemptions from certain reporting requirements relating to their spouse or children. JCOPE processes approximately 900 exemption requests per year.

In addition, over the past three years, JCOPE has implemented changes to the FDS disclosure requirements. Under PIRA, filers are now required to provide much more detailed information in their FDSs. PIRA made these changes to provide more information to the public in an effort to promote transparency. As a result of such changes, JCOPE, in 2013, developed and introduced a new FDS form and instructions.

Among other changes made by PIRA is a requirement that filers with outside employment disclose the identity of certain clients (Question 8(b) on the FDS questionnaire). Generally, under this new disclosure, filers must disclose clients who paid the filer or his firm for

services in direct connection with securing state contracts, legislative action, and grants. The statute also provides several exemptions to this disclosure requirement.

PIRA also significantly changed the way in which personal investment holdings, outside income, liabilities, receivables, and other financial interests are disclosed. These holdings are reported by use of a range of values. PIRA amended the statute to make each range smaller, thereby providing more insight as to the actual value of the item being reported. For example, prior to PIRA, a retirement account valued at \$800,000 would be reported as "Category F: \$250,000+." As a result of the changes in PIRA, that same account would now be reported as "Category L: \$750,000 - \$1,000,000."

PIRA also eliminated the rule that categories of value are redacted from public view. Before PIRA, an FDS was available to the public on request, but the law required redaction of all details regarding income and investments. Now, the public is able to see this important information. Additionally, PIRA mandated that the FDSs of State elected officials be posted on JCOPE's website for easier public access.

Based upon the changes to the FDS requirements in PIRA, and as part of JCOPE's ongoing effort to provide better guidance, JCOPE updated the existing FDS filing instructions. JCOPE introduced the new instructions in 2013 in time for the 2012 filing. The update is the first substantial revision to the instructions since at least 2007. JCOPE added new explanations, removed obsolete guidance, and provided more clarity on the application of the filing rules.

As part of its FDS responsibilities, JCOPE also identifies delinquent filers and works with these individuals to ensure that they file the required FDSs as expeditiously as possible.

Among other things, PIRA authorized JCOPE to conduct random reviews of FDS filings. JCOPE contracts with an independent statistical consulting firm to identify the selection of filers for review. The selection process includes a full randomization of the filer pool, consistent with industry standards. JCOPE also adheres to a formalized protocol to ensure uniformity in the review process, which is set forth in the guidelines for the random review program available on JCOPE's website.

When appropriate and necessary, JCOPE initiates enforcement actions, which can carry financial penalties, against delinquent filers. As part of the transition from the Commission on Public Integrity to JCOPE, all investigations, enforcement, and compliance activities were temporarily tabled. When JCOPE commenced its operations, it inherited a sizable backlog of non-compliance matters involving FDS filers. Recently, JCOPE entered into the first round of settlement agreements to resolve older FDS filing violations. JCOPE hopes to eliminate the backlog by early 2015 and reach its goal of pursuing real-time enforcement in the very near future.

B. Increasing the Effectiveness of the FDS System

Based on its review of the FDS disclosure requirements and its experience administering the filings, JCOPE concluded that further initiatives and reform are necessary in a number of different areas.

- Elicit Meaningful Disclosure. Although there have been great strides in increasing the public's access to information about the outside financial interests of government officials, JCOPE believes the purpose, effectiveness, and applicability of the FDS forms should be reevaluated. In addition, JCOPE has observed that responses to questions in the FDS filings often lack the specificity required by the statute to provide the level of disclosure intended by the law.

JCOPE recommends that consideration be given to both the scope and nature of the financial disclosure currently required in the annual filings. Among other things, the law should be amended to expand the disclosure about private clients who have business before the State. Currently, individuals are required to disclose only clients they represent before the State in connection with certain, specified matters.

In addition, JCOPE intends to conduct an in-depth analysis of the other disclosures currently required by section 73-a of the Public Officers Law. Over the years, JCOPE, its predecessors, and the Legislative Ethics Commission, have fielded thousands of questions about the various disclosure requirements. JCOPE will evaluate whether the existing disclosure requirements adequately elicit relevant information or whether more reform is warranted. JCOPE also will devote more of its resources to examining the adequacy of the responses supplied in these forms to ensure the public has access to meaningful information about potential conflicts of interest.

- Applicability of FDS to Threshold Filers. Currently, persons who are not policy makers, but exceed the salary threshold, file more than 10,000 FDSs annually. Most of the approximately 400 annual requests from the public for copies of FDSs, however, are for policy makers.

JCOPE intends to conduct an analysis of the applicability of the FDS filing requirement to non-policy makers to determine whether consideration should be given to changing the statute to provide a less burdensome, but effective means, for some of these individuals to file disclosures while still ensuring the public has sufficient information about any potential conflicts of interest.

- New FDS Filing System. JCOPE recognizes that its current FDS electronic filing system is inadequate to process the nearly 27,000 FDSs submitted annually.

JCOPE is developing, in conjunction with the State Office of Information Technology Services, a custom online filing system. The new system, which JCOPE will introduce in 2015 (in time for academic filers), will enhance the user-filing experience and improve JCOPE's administration of the filings. Below are the key new features that are designed to generate efficiencies in the filing process:

- A user-friendly filing process that facilitates filer compliance with technical and substantive requirements.
- Real-time access to the system for agency officials to update filer lists.
- New controls on filing entries, improving quality control of data entered and expanding JCOPE compliance reviews.
- Automated correspondence to address late, missing, or deficient filings, and, if necessary, begin enforcement proceedings.

- Electronic Filing. Currently, any FDS filer may submit his form either in paper or electronically. The paper submission of an FDS presents a number of challenges. Paper filings are difficult for the public to read and cannot be easily utilized by JCOPE when sorting data to assist in the enforcement of the ethics and lobbying laws. Working with agencies and filers, JCOPE has generated an electronic filing rate of more than 90 percent. The remaining paper filers, while a small percentage of all filers, consume significant administrative effort and resources.

JCOPE recommends that consideration be given to amending Public Officers Law §73-a to require *all* filers (absent a demonstrable hardship) to submit their FDSs electronically.

V. LOBBYING

JCOPE regulates lobbying activity in New York pursuant to its authority under the Lobbying Act. The Lobbying Act requires that registered lobbyists and their clients report information concerning lobbying activities and expenditures to JCOPE and that JCOPE make such information publicly available. Lobbyists are required to submit, for each client, biennial registration statements and bimonthly disclosure reports of lobbying activity. Clients submit a single report every six months detailing all lobbying activity performed on their behalf. These reports include disclosure of compensation and expenses paid in support of a lobbying effort, as well as details about the nature and substance of the lobbying itself. This disclosure provides the public with essential information concerning groups attempting to influence government decision makers; in recent years, lobbying entities reported spending more than \$200 million annually in support of their advocacy efforts.

An overview of JCOPE's administration of the lobbying filings, including implementation of the new disclosure requirements under PIRA, is provided below. In addition, as in other

areas under its purview, JCOPE has engaged in a review of the applicable laws and processes and has identified issues that are ripe for reform or further study.

A. Administration of Lobbying Disclosure

JCOPE's oversight of lobbying in the State includes processing and review of more than 40,000 mandated filings that are submitted on an annual basis by the nearly 6,900 registered lobbyists and their 4,600 clients. JCOPE also provides a technical support help desk for its online filing system, answers phone and email queries on filing best practices, and carries out hundreds of statutorily required random audits of filings each year. In addition to administering filings, JCOPE has made it a priority to develop a dialogue with the regulated community and the public on lobbying matters and to improve its training and guidance on the Lobbying Act.

To that end, JCOPE has conducted hearings on new disclosure requirements imposed by PIRA, held periodic roundtable discussions with the regulated community on a variety of subjects, and issued new training and education materials. PIRA imposed two new – and substantial – reporting obligations on the lobbying community:

- The disclosure by certain lobbyists and lobbying clients of each single source of funding in excess of \$5,000 that was used to fund lobbying activities; and
- The disclosure by lobbyists and clients of any “reportable business relationship” with public employees and officials, or entities with which they have an interest, as set forth in the Lobbying Act.

In June of 2012, JCOPE conducted a public hearing and solicited comments from the regulated community and public interest groups on these two new requirements. JCOPE subsequently received and reviewed additional public comments concerning the scope and

meaning of the disclosure sought. At the end of 2012, JCOPE approved regulations and guidelines on these two requirements based on the input it received. JCOPE also designed new forms, published guidance materials in various forms, and offered training programs on compliance with the new requirements.

In addition, as part of its daily operations, JCOPE processes filings, pursues compliance, conducts random audits under the Lobbying Act, and enforces the Lobbying Act through administrative proceedings when necessary. As discussed in the next section of the report, over the past three years, JCOPE has pursued more than thirty violations of the Lobbying Act, imposing approximately \$120,000 in penalties through settlement agreements and civil assessments.

B. Improving Compliance and Enforcement

Based on its experience administering, auditing, and enforcing the lobbying filing requirements, JCOPE has identified issues that affect the extent of information that is disclosed under the Lobbying Act, JCOPE's ability to effectively enforce the law, and the ease of access to public information. Among other things, additional reforms may be necessary to achieve the transparency that PIRA sought to effectuate with the new disclosure requirements and to capture the full range of advocacy efforts utilized today. JCOPE further recommends that its authority be amended to enable it to exercise more discretion in pursuit of remedies, including assessing appropriate penalties, for a broader range of misconduct. This enhanced ability to enforce the law will help deter misconduct and help to achieve the compliance and public disclosure goals of the Lobbying Act.

Brief explanations of the recommended changes are below:

- Reinforcing Source of Funding Disclosure. Questions have been raised about efforts to evade disclosing sources of funding by, among other things, using “pass through” entities to receive contributions. JCOPE has jurisdiction to pursue enforcement actions against any lobbying client who deliberately evades the reporting requirements and submits false filings. JCOPE does not, however, have authority over the sources themselves. Thus, individuals or entities are able, at this point, to construct funding mechanisms that may avoid disclosure while still technically complying with the law and the regulations. Additionally, the process by which certain clients seek an exemption from the source of funding disclosure requirements has attracted significant public attention.

In response to these issues, JCOPE has amended the regulations to, among other things: (i) require more disclosure about sources of funding that are controlled by or closely related to a lobbying client; and (ii) change the exemption application process to increase transparency and streamline appeals. JCOPE recommends that further consideration be given to amending the law to directly address efforts to evade disclosure by using “pass through” entities.

- Disclosure of Political Activities. JCOPE shares jurisdiction with the New York City Office of the City Clerk over individuals and entities that lobby New York City officials and agencies. Although there are many similarities, New York City imposes some disclosure obligations that are not required under State law. Specifically, New York City requires that its lobbyists disclose their participation in political fundraising and consulting activities.²

JCOPE believes there is value in directly connecting lobbyists and their campaign activities and recommends the adoption of a similar requirement at the State level.

- Addressing Current Forms of Advocacy. Based on changes in PIRA, issues raised through its dialogue with the community, and its own experience, JCOPE acknowledges the need to address the multiple forms of government advocacy taking place today. Among other things, questions have been raised about: the extent to which the Lobbying Act regulates grassroots lobbying efforts; whether third parties to lobbying contracts must be addressed directly in the law in order to ensure disclosure of information about the true lobbying client; and the meaning of “intended introduction of legislation” which PIRA added to the definition of “lobbying.”³

² See NYC Admin. Code Title 3, §3-216.1(a). Fundraising activities include the solicitation or collection of contributions for candidates for mayor, public advocate, comptroller, borough president, or member of the city council. The solicitation and collection of contributions for any public servant who is a candidate for any elective office are also covered fundraising activities.

³ Lobbying Act §1-c(c)(i).

In 2015, JCOPE will provide guidance on a number of these complex and timely topics to ensure full compliance with the Lobbying Act, and when necessary, recommend additional legislative reforms for consideration. In addition, JCOPE will promote more accurate and complete filings by conducting a comprehensive review of its Lobbying Guidelines, which function as the filers' "handbook" for complying with the Lobbying Act.

- Lobbying Compensation Recordkeeping. The Lobbying Act requires that lobbyists and clients maintain records of lobbying expenses, and imposes penalties for failure to do so. (See Lobbying Act § 1-o(b)(vi)) The Lobbying Act, however, does not impose the same requirements for maintaining records of lobbying compensation.

JCOPE recommends that the Lobbying Act be amended to mandate that lobbyists and clients maintain records of both lobbying compensation and expenses, and to authorize JCOPE to impose a penalty for any failure to do so.

- Failure to Comply with Audits. The Lobbying Act mandates that JCOPE conduct random audits of lobbying filings, and authorizes JCOPE to request documents from regulated entities to complete these audits. (See Lobbying Act § 1-d(b)) In order for JCOPE to fully realize this statutory goal, it should be able to assess penalties on those regulated entities that fail to comply with the audit process, produce documents on request, or provide any other requisite information.

JCOPE recommends that the Lobbying Act be amended to authorize JCOPE to assess penalties against lobbyists and clients who fail to comply with the audit process.

- Online Ethics Training. PIRA created a new requirement that lobbyists take an online ethics training to ensure that those who regularly interact with government officials understand the applicable laws. As discussed above, JCOPE successfully introduced this training in 2014 using the SLMS portal. To date, nearly 3,000 lobbyists have taken the training. There is, however, no mechanism to enforce compliance with this mandate.

JCOPE recommends that the Lobbying Act be amended to authorize it to assess financial penalties against those who fail to comply with the online ethics training requirements.

- Contingent-Retainer Agreements. The Lobbying Act prohibits a lobbyist or client from entering into a lobbying agreement in which compensation is contingent on the outcome of governmental actions.⁴ JCOPE has identified two problems with enforcement of this provision. First, the prohibition on contingent retainers expressly applies to agreements between lobbyists and clients. Many lobbying arrangements, however, use an intermediary. In other words, a client may hire a third party and that third party enters into a lobbying agreement with a professional

⁴ See Lobbying Act §1-k.

lobbyist. Second, while a violation of the contingent-retainer provision is punishable as a Class A misdemeanor, JCOPE lacks the authority to assess any civil penalties.

JCOPE recommends that the prohibition on contingent retainers be amended to expressly apply to any lobbying agreement covered under the Lobbying Act. JCOPE also recommends that the Lobbying Act be amended to authorize JCOPE to use administrative remedies to pursue violations of this provision, and impose civil penalties, in addition to or in lieu of referring violations to a prosecutor.

- Failure-to-File Cure for First-Time Offenders. JCOPE expends considerable resources in enforcing the Lobbying Act and pursuing administrative remedies, which include both an investigation and a public hearing before a randomly-assigned independent hearing officer. Nevertheless, under the Lobbying Act, a first-time offender is able to cure a failure-to-file violation without penalty, even after a hearing, by submitting the delinquent filing within 15 days of notice of a civil assessment.⁵ In addition to JCOPE's wasted resources, such a result is counterproductive to the goals of promoting compliance and cooperation, particularly in light of the fact that JCOPE routinely reaches out to delinquent filers in an effort to obtain compliance without resorting to enforcement procedures.

JCOPE recommends the repeal of the provision in the Lobbying Act that allows a first-time filer to cure a failure-to-file violation without penalty.

- Lobbying Bans. JCOPE recommends that further consideration be given to the current conditions under which entities may be banned from lobbying. Currently, a felony conviction can lead to a one-year ban from all lobbying activity.⁶ In the lobbying context, multiple convictions for failure to file, false filing, or gift violations of the Lobbying Act may be prosecuted as Class E felonies. Multiple *civil* violations of the Lobbying Act, however, may result in a one-year ban from *procurement lobbying only*.

JCOPE recommends that the penalty provisions of the Lobbying Act be amended to authorize JCOPE to assess a one-year ban from all lobbying (not just procurement lobbying) if an entity: (i) is found to have knowingly and willfully violated the Lobbying Act twice within any five-year period; or (ii) fails to timely pay civil assessments for violations of the Lobbying Act. Additionally, JCOPE recommends that the law be amended to authorize a five-year ban on all lobbying activity for an entity that violates a one-year lobbying ban, or is convicted of a lobbying felony or other corruption-related convictions under the Penal Law.

⁵ See Lobbying Act § 1-o(c)(iii).

⁶ The 2014 Public Protection and General Government appropriations bill (Laws of 2014; Ch. 55) created a new permanent ban on lobbying for anyone convicted of any of the following felonies: bribery; corrupting the government (a newly-defined crime); or defrauding the government. The law also created a new five-year ban on lobbying for anyone who is convicted of any of the following misdemeanors: bribery; corrupting the government; official misconduct; or attempting to defraud the government.

- New Electronic Filing System. JCOPE processes approximately 40,000 filings annually, many of which are filed electronically through JCOPE's online lobbying filing system. The public accesses these filings by this same system. Unfortunately, however, the system is a vestige of multiple predecessor agencies, and has evolved into a limited, unwieldy, and ineffectual tool for filers, the public, and JCOPE. Among other problems, the system is slow during peak filing periods and suffers from frequent stability issues (resulting in lost data). In addition, the system lacks proper controls to ensure consistency of data which limits the ability to extract reliable metrics data.

JCOPE intends to develop a new electronic filing system in conjunction with the State Office of Information Technology Services with the goal of delivering a new system in 2016. The improved system will provide increased bandwidth and capacity, easy-to-use electronic forms and filing processes, standardization and consistency in reporting data to generate better compliance and transparency, and automated compliance correspondence to generate on-time filing and facilitate any needed enforcement actions. In addition, a new application will enable users to run custom queries and reports with real-time data. These improvements will also allow JCOPE to run analyses of the data to spot trends in lobbying activity, identify compliance and enforcement issues, and recognize common reporting problems or questions that can then be addressed through targeted guidance and education.

- Electronic Filing. Although most lobbyists use the electronic filing system to submit registrations and reports, nearly half of clients do not file electronically. Among other things, administering paper filings drains resources and delays public access to information.

In conjunction with the development of a new electronic filing system, JCOPE recommends that – absent a demonstrable hardship – all filers be required to submit lobbying reports to JCOPE via the electronic system. The elimination of paper filings will increase JCOPE's efficiency, improve compliance monitoring, and generate unprecedented transparency and access to information for the public.

VI. INVESTIGATIONS AND ENFORCEMENT

As mentioned above, in accordance with its authority under Executive Law §94, JCOPE investigates violations of the State's ethics laws (Public Officers Law §§73, 73-a, and 74), the "Little Hatch Act" (Civil Service Law §107), and the Lobbying Act. JCOPE's enforcement jurisdiction is broad and applies to the following individuals: State legislators and candidates for the Legislature; employees of the Legislature; the four Statewide elected

officials and candidates for those offices; Executive Branch employees; certain political party chairs; and lobbyists and their clients.

Since its inception, JCOPE has reviewed nearly 700 matters based on allegations received in tips and complaints, referrals from government agencies, or upon its own initiative. As of the end of 2014, JCOPE had entered into more than 60 settlement agreements, and conducted three public enforcement hearings before an independent hearing officer. In total, JCOPE's enforcement actions have resulted in \$555,881 in penalties and restitution for the State.

As noted above, JCOPE is the first independent ethics agency in the State to have jurisdiction over the Legislative Branch. Utilizing this new authority, JCOPE conducted the first ever independent ethics investigation of a sitting New York State legislator – then-Assembly Member Vito Lopez. The comprehensive investigation into activities relating to charges of sexual harassment by Lopez resulted in a Substantial Basis Investigation Report. Under PIRA's statutory mandates, the report was referred to the Legislative Ethics Commission, which concurred with JCOPE's findings and conclusions and assessed a civil penalty against Lopez in the amount of \$330,000. As a direct result of JCOPE's investigation, Lopez resigned from office on May 20, 2013.

The specific rules and procedures for conducting investigations and enforcement activities are mandated by Executive Law §94. Among other things, the law dictates notice to the subjects of investigations, voting requirements, and the confidential treatment and public release of information concerning JCOPE's proceedings. Many of these rules and procedures have been the subject of scrutiny and criticism by lawmakers, civic groups, and

the media. JCOPE acknowledges that the existing system could be improved. To this end, and as detailed below, JCOPE recommends that consideration be given to revisiting some aspects of the investigative procedures to allow for increased transparency and improved enforcement of the law.

A. Investigation and Enforcement Procedures

PIRA made substantial changes to the investigative process that was used by JCOPE's predecessor agencies. (Executive Law §94(13)). Among other things, PIRA: (i) established a time period for JCOPE's commissioners to act upon receipt of a complaint or allegations of violations of the law; (ii) required that staff present and seek authority from commissioners before proceeding with an investigation and issuing subpoenas; and (iii) established special voting requirements relating to investigations.

Investigations may be conducted on JCOPE's own initiative or based on referrals from other governmental entities or sworn complaints meeting certain criteria. In all cases, Executive Law §94(13)(a) dictates the process by which investigations proceed.⁷ Before the commissioners can vote to commence an investigation, JCOPE must provide the person or entity subject to JCOPE's jurisdiction with a notice of any alleged violation of law and a 15-day period in which to respond to such allegations. This notice is commonly referred to as a "15-day Letter".

Section 94(13)(a) also requires that staff must present an investigative matter to JCOPE's commissioners for their consideration within 45 days of (i) receiving a sworn complaint or

⁷ JCOPE has inherited matters from its predecessor agency. Some of these matters may, depending on their investigative stage at the time of JCOPE's creation, be subject to different procedures

referral that alleges facts sufficient to support a possible violation of law or (ii) sending a 15-day Letter. Under the law, staff must provide the commissioners with information regarding the scope of any investigation and a subpoena plan. JCOPE's commissioners must then vote on whether or not to commence a full investigation to determine whether a substantial basis exists to conclude that a violation of law has occurred. At least eight members must vote in favor of authorizing an investigation in order for JCOPE to proceed, and the statute includes specific voting requirements that are based on whether the individual is a Statewide elected official (or candidate for one of those offices), a direct appointee of a Statewide elected official, a member of the State Legislature (or a candidate), an employee of the State Legislature, or an employee of the Executive Branch.

The confidentiality of the above procedures, *i.e.*, the 15-day Letter, voting on whether to commence an investigation, and all applicable notices are provided for in the law. Specifically, section 94(13)(b) expressly provides that these actions and proceedings are confidential. Thus, while the recipients of any 15-day Letter or notice from JCOPE are free to divulge to the public the information they have received, JCOPE may not do so. In fact, under PIRA, unauthorized disclosure of confidential information is punishable as a class A misdemeanor.

At the conclusion of an investigation, the commissioners determine whether there is a substantial basis to conclude that a violation of law has occurred and to assess appropriate penalties, if any. These procedures are found in Executive Law §94(14). Here, too, the law mandates special voting requirements, which are based on the same categories as those used for votes to determine whether to commence an investigation.

If a matter receives the requisite votes from the commissioners, JCOPE issues a “Substantial Basis Investigation Report.” This report is a publicly available document setting forth specific allegations of facts and violations of law. JCOPE may impose civil penalties, after a hearing, for violations by State officers and employees and lobbyists and clients. (Executive Law §94(14)). JCOPE’s allegations with respect to Legislative Branch officers, employees, and candidates are required to be referred to the Legislative Ethics Commission for enforcement. (Executive Law §94(14-a)).

In its first year, JCOPE comprehensively reviewed the new statutory procedures, relevant regulations, and internal practices for review and processing investigations. In early 2012, JCOPE amended the existing regulations governing the conduct of adjudicatory proceedings relating to the assessment of civil penalties. (19 NYCRR Part 941). To ensure fairness of the proceedings, the regulations provide that independent hearing officers, selected randomly from a pool of hearing officers, will conduct adjudications. JCOPE also published procedures, available on JCOPE's website, for filing sworn complaints alleging violations of laws under its jurisdiction.

Over the past three years, JCOPE has established internal procedures for intake and review of all tips and complaints and worked closely with the State Office of Information Technology Services to create an effective electronic case management system. Another important initiative was the introduction and promotion of JCOPE’s new hotline (1-800-ethics) and website (reportmisconduct.ny.gov), both of which are designed to make it easy for the public to report matters for possible investigation. Additionally, JCOPE has

introduced a periodic newsletter that is disseminated to all State agencies and available online. Among other things, this new publication highlights recent enforcement actions.

B. Review and Disposition of Investigative Matters

Over the past three years, JCOPE has processed almost 700 matters. In general, the allegations cover a broad range of violations under the Public Officers Law and the Lobbying Act, including subjects such as nepotism, post-employment restrictions, prohibited gifts, conflicts of interest, misuse of State resources, and failure to submit required disclosure filings to JCOPE. The vast majority of these matters have been resolved as of the date of this report.

JCOPE notes the importance of its working relationships with law enforcement agencies with respect to its investigative authority, particularly in light of the number of high profile matters involving public officials in recent years. Although JCOPE has tools to enforce the ethics laws and impose penalties, when conduct rises to criminality, in the first instance, it is within the province of law enforcement agencies charged with prosecuting crimes under State or Federal penal laws. Accordingly, since its inception, JCOPE has cooperated with several law enforcement agencies, including deferring investigative or enforcement actions so that the prosecutors may pursue potentially criminal matters.

As of the end of 2014, JCOPE had issued 121 15-day Letters and had commenced 56 investigations. Fifteen investigations involved the Public Officers Law and 41 involved the Lobbying Act. Nearly all of these investigations (95%) were commenced without any dissenting votes. Of the 56 investigations commenced, 33 resulted in settlement

agreements. The commissioners also had voted not to commence an investigation into 31 matters in which a 15-day Letter was sent. Again, in the vast majority of these matters (90%), there were no dissenting votes.

JCOPE has entered into a total of 62 settlement agreements⁸ and conducted three public hearings. Of the matters that have been settled or were the subject of public hearings, 34 involved violations of the Public Officers Law and 31 involved violations of the Lobbying Act. These matters resulted in a total of \$225,881⁹ in penalties and restitution for the State. Additionally, as a result of JCOPE's investigation into Vito Lopez, the Legislative Ethics Commission issued a \$330,000 fine against Lopez. As of the end of 2014, JCOPE had 10 open investigations and 67 matters pending review.

Through its enforcement activity, JCOPE has increased awareness of its presence, purpose, and value as an independent oversight agency. Among other things, JCOPE has developed relationships with law enforcement partners. It also has entered into ongoing dialogues with agencies, and has nurtured relationships with agency counsel, ethics officers, and other agency personnel. JCOPE will continue to collaborate with State agencies to efficiently resolve disciplinary matters that involve violations under JCOPE's jurisdiction.

C. Strengthening Enforcement of Ethics and Lobbying Laws

JCOPE has an ongoing responsibility to assess both the effectiveness of the laws it enforces, as well as its own procedures. This duty is an inherent part of JCOPE's core function of

⁸ The number of settlement agreements exceeds the number of investigations because some persons choose to settle with JCOPE prior to the commencement of an investigation and some matters were inherited from JCOPE's predecessor agency.

⁹ This figure includes \$11,600 in civil assessments related to matters that were opened under a predecessor agency.

enforcing the ethics and lobbying laws. It is also a statutory mandate under PIRA. In the process of reviewing potential investigative matters, conducting investigations, negotiating settlements, and holding hearings, JCOPE has identified several specific areas in which both its procedures and the substantive laws that it enforces can be improved in order to increase transparency and accountability.

- Presentation of Investigative Matters to the Commissioners. The new requirement in Executive Law §94(13)(a) that a matter must be presented to JCOPE's commissioners for a vote within 45 days has been the subject of debate. The apparent purpose of this provision is to ensure that JCOPE's staff promptly presents matters to its commissioners. Nevertheless, what is implicit in the statute is the ability of JCOPE's commissioners to exercise their discretion and vote to adjourn a matter. Establishing a better understanding of the allegations by having staff engage in additional fact gathering, allowing a subject more time to respond to a 15-day Letter, or deferring to a request from law enforcement partners that share jurisdiction over a matter are among the scenarios where a decision to adjourn may be the most appropriate course of action. The fact that the inherent power of the commissioners to adjourn a matter is not explicitly provided for in the statute has produced confusion.¹⁰ The 45-day requirement also appears to be inconsistent with other provisions of law. For example, the Lobbying Act requires that the commissioners meet only on a bi-monthly basis. Thus, it is entirely possible that JCOPE may not meet within 45 days of sending a 15-day Letter or of receipt of a sworn complaint.

To avoid any further confusion, JCOPE recommends that Executive Law §94 be amended to clarify that the commissioners are authorized to vote on any action (including adjournment) they deem appropriate within the allowed time period, or as soon thereafter as is practicable.

- Complete Jurisdiction over Investigations. The current statutory process mandates that, after conducting an investigation and issuing a Substantial Basis Investigation Report involving the Legislative Branch, JCOPE must transfer the matter to the Legislative Ethics Commission for its consideration, subject to whatever rules and regulations the Legislative Ethics Commission has adopted. In all other instances, after issuing a Substantial Basis Investigation Report setting forth allegations of violations of law, JCOPE proceeds to hearing before an independent hearing officer who issues findings of facts and conclusions of law for the consideration of JCOPE's commissioners in assessing a penalty, if any. Given JCOPE's familiarity with the evidence and comparative resources, it would be more efficient and effective for

¹⁰ In fact, the meaning of this provision is currently being litigated in New York State court.

JCOPE to proceed with a public hearing over matters involving the Legislative Branch.

JCOPE suggests that it should retain jurisdiction over a matter through the end of the public hearing that takes place before an independent hearing officer. Upon conclusion of the hearing, the independent hearing officer's report and recommendation would be presented to the Legislative Ethics Commission for its consideration. Similar to JCOPE's commissioners, the Legislative Ethics Commission would have the authority to adopt the findings of the hearing officer, or it may reverse, remand, and/or dismiss the hearing officer's findings based upon the record at the hearing. The Legislative Ethics Commission would also assess penalties as it deems appropriate. The proposed changes would streamline the adjudicatory process. The modifications also would increase the transparency of JCOPE's operations and further the goal of having an independent agency investigate and enforce possible violations of the law regardless of who is the subject of the investigation.

- More Transparency. Executive Law §94 limits JCOPE's ability to make all of its investigative findings public. Not only is it a potential crime to disclose confidential information, but JCOPE is exempt from the Freedom of Information Law and the Open Meetings Law (with some limited exceptions). These provisions ensuring confidentiality serve important public policies, including protecting the integrity of JCOPE's investigations and the reputations of the subjects of investigation unless and until there is basis to conclude they have violated the law. Nevertheless, JCOPE believes that, in some instances, the public interest would be better served if more information is released.

For example, several high profile matters have been publicly presented to JCOPE. Under the statute, JCOPE could not even acknowledge that it was reviewing those matters. Indeed, the only public pronouncement JCOPE is authorized to make is the publication of a Substantial Basis Investigation Report, which can only occur when the commissioners conclude that there has been a violation of the law or has entered into a settlement agreement. In all other circumstances (including ones in which the commissioners conclude, after an investigation, that there has been no wrongdoing), JCOPE is statutorily forbidden from issuing public statements about the outcome of a matter. This is unfair to the public and to individuals who have been publicly accused of violations of law with respect to which JCOPE determines there is no basis to proceed.

JCOPE recommends that Executive Law §94 be amended to grant the commissioners more flexibility to publicly release information about its activities, particularly with respect to investigative matters. Consideration should be given to the principles of the Freedom of Information Law and Open Meetings Law and whether more transparency is possible while still protecting the strong public policy interests in the confidentiality of certain of JCOPE's functions.

- Creating Express Accessorial Liability. The Public Officers Law and the Lobbying Act do not expressly authorize JCOPE to pursue individuals under JCOPE’s jurisdiction who aid others in the commission of acts in violation of the law. The inclusion of so-called “accessorial liability” in the law would strengthen JCOPE’s enforcement arm and promote compliance with the State’s ethics and disclosure laws.

JCOPE recommends that these laws be amended accordingly to expressly prohibit individuals and entities under JCOPE’s jurisdiction from the solicitation, request, aid, or importuning of another to engage in conduct that violates the State’s ethics and lobbying laws.

- Financial Penalties for all Violations. Section 74 of the Public Officers Law establishes a code of ethics for State officers and employees in both branches of government. The code of ethics is intended to guide public officials and to prevent both actual and apparent conflicts of interest. For example, section 74 prohibits, among other things, the disclosure of confidential information, obtaining outside employment that will impair independence of judgment, and using a public position to secure unwarranted privileges. Sections 74(3)(f) and (h) address broader and more general conduct.
 - Section 74(3)(f): “An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.”
 - Section 74(3)(h): “An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”

These two provisions often are integral to addressing improper conduct that does not fall into any of the other provisions in Section 74 dealing with more specific conduct. Notably, most of the provisions in Public Officers Law §74 carry significant financial penalties. Sections 74(3)(f) and (h) do not carry any financial penalties.

JCOPE recommends that Public Officers Law §74 be amended to allow for the assessment of monetary penalties for violations of sections 74(3)(f) and (h). JCOPE believes that its ability to assess, in its discretion, monetary penalties for violations of these provisions will be of particular benefit in enforcing the Public Officers Law and in sending a message to the public that violations of the law have concrete consequences.

VII. CONCLUSION

JCOPE appreciates the opportunity to convey its recommendations to the Governor, the Legislature, and the public. Like many aspects of JCOPE's work, this report is a product of robust discussion among the commissioners who come from different backgrounds, have varying political views, and often have diverse public policy concerns. This report also reflects the healthy debate that is inherent to the important and difficult work of JCOPE. The fact that consensus is often reached on key matters after such healthy debate is a reflection of the commissioners' commitment to making JCOPE as effective as possible.

In the course of drafting this report, commissioners discussed aspects of JCOPE that include: the composition of the commission (including the number of commissioners, the selection of the chair and commissioners, and filling of vacancies); the process by which entities seek exemptions from the Source of Funding disclosure obligations, and the special voting requirements for investigations. Although these issues, which are central to JCOPE's operations, are worthy of debate, JCOPE has determined that such matters are ultimately the prerogative of the Governor and the Legislature.

Accordingly, JCOPE respectfully submits this report to the Governor and Legislature for consideration.

* * *

Respectfully submitted,

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Chair

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