§ 94. Commission on ethics and lobbying in government. 1. (a) Commission established. There is hereby established within the department of state, a commission on ethics and lobbying in government, an agency responsible for administering, enforcing, and interpreting New York state's ethics and lobbying laws. The commission shall have and exercise the powers and duties set forth in this section with respect to statewide elected officials, members of the legislature and employees of the legislature, and state officers and employees as defined in sections seventy-three, seventy-three-a, and seventy-four of the public officers law, candidates for statewide elected office and for the senate or assembly, and the political party chair as is defined in section seventy-three of the public officers law, lobbyists and the clients of lobbyists as defined in section one-c of the legislative law, and individuals who have formerly held such positions, were lobbyists or clients of lobbyists as defined in section one-c of the legislative law, or who have formerly been such candidates.

(b) The commission shall provide for the transfer, assumption or other disposition of the records, property, and personnel affected by this section, and it is further provided, should any employees be transferred from the joint commission on public ethics ("JCOPE"), the predecessor ethics agency, to the commission, that such transfer will be without further examination or qualification and such employees shall retain their respective civil service classifications, status and collective bargaining agreements.

(c) The commission shall review any pending inquiries or matters affected by this section and shall establish policies to address them.

(d) The commission shall undertake a comprehensive review of all regulations in effect upon the effective date of this section; and review of all advisory opinions of predecessor ethics agencies, including JCOPE, the legislative ethics commission, the commission on public integrity, the state ethics commission, and the temporary lobbying commission, which will address the consistency of such regulations and advisory opinions among each other and with the new statutory language, and of the effectiveness of the existing laws, regulations, guidance and ethics enforcement structure.

(e) This section shall not be deemed to have revoked or rescinded any regulations or advisory opinions in effect on the effective date of this

section that were issued by predecessor ethics and lobbying bodies. The commission shall cooperate, consult, and coordinate with the legislative ethics commission, to the extent possible, to administer and enforce the laws under its jurisdiction.

(f) The annual budget submitted by the governor shall separately state the recommended appropriations for the commission on ethics and lobbying in government. Upon enactment, these separately stated appropriations for the commission on ethics and lobbying in government shall not be decreased by interchange with any other appropriation, notwithstanding section fifty-one of the state finance law.

2. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "commission" means the commission on ethics and lobbying in government established pursuant to subdivision one of this section.

(b) "selection members" means the governor, speaker of the assembly, temporary president of the senate, minority leader of the senate, minority leader of the assembly, comptroller, and the attorney general.

(c) "independent review committee" means the committee of the American Bar Association accredited New York state law school deans or interim deans, or their designee who is an associate dean of their respective law school, tasked with reviewing, approving, or denying the members of the commission as nominated by the selection members and other tasks pursuant to this section.

(d) "respondent" means the individual or individuals or organization or organizations subject to an inquiry, investigation, or enforcement action.

(e) "victim" means any individual that has suffered or alleged to have suffered direct harm from any violation of law that is subject to investigation under the jurisdiction of the commission.

3. Nomination and appointment of the commission. (a) The commission shall consist of eleven members, to be nominated by the selection members as follows: three members by the governor; two members by the temporary president of the senate; one member by the minority leader of the senate; two members by the speaker of the assembly; one member by the minority leader of the assembly; one member by the attorney general;

and one member by the comptroller.

(b) The independent review committee shall within thirty days review the qualifications of the nominated candidates and approve or deny each candidate nominated by their respective selection member.

(c) The independent review committee shall publish on its website a procedure by which it will review the qualifications of the nominated candidate and approve or deny each candidate.

(d) Those candidates that the independent review committee deems to meet the qualifications necessary for the services required based on their background and expertise that relate to the candidate's potential service on the commission shall be appointed as a commission member. The nominating selection member shall nominate a new candidate for those that are denied by the independent review committee.

(e) No individual shall be eligible for nomination and appointment as a member of the commission who is currently, or has within the last two years:

(i) been registered as a lobbyist in New York state;

(ii) been a member or employee of the New York state legislature, a statewide elected official, or a commissioner of an executive agency appointed by the governor;

(iii) been a political party chair, as defined in section seventy-three of the public officers law; or

(iv) been a state officer or employee as defined in section seventy-three of the public officers law.

(f) The independent review committee shall convene as needed or as requested by the selection members. The chair of the independent review committee shall be elected from the members of the independent review committee.

(g) Appropriate staffing and other resources shall be provided for in the commission's budget for the independent review committee to carry out its powers, functions, and duties. The independent review committee shall publish on the commission's website a procedure by which it will review and select the commission members and other processes to effectuate its responsibilities under this section.

(h) The majority of the independent review committee shall constitute a quorum to hold a meeting and conduct official business.

(i) During the pendency of the review and approval or denial of the

candidates, the independent review committee shall be subject to and maintain confidentiality in all independent review committee processes, reviews, analyses, approvals, and denials. A member of the independent review committee may be removed by majority vote of the committee for substantial neglect of duty, misconduct, violation of the confidentiality restrictions set forth in this section, inability to discharge the powers or duties of the committee or violation of this section, after written notice and opportunity for a reply.

(j) Upon the receipt of the selection members' appointments, members of the independent review committee shall disclose to the independent review committee any personal, professional, financial, or other direct or indirect relationships a member of the independent review committee may have with an appointee. If the independent review committee determines a conflict of interest exists, such independent review committee member shall, in writing, notify the other members of the independent review committee of the possible conflict. The member may recuse themself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse themself from the matter, the independent review committee, by majority vote finding the disclosed information creates a substantial conflict of interest, may remove the conflicted member from further consideration of and action upon the appointment.

(k) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding of the independent review committee shall be open to the public, except the applicable records pertaining to the review and selection process for a member's seat shall be subject to disclosure pursuant to article six of the public officers law only after an individual member is appointed to the commission. Requests for such records shall be made to, and processed by, the commission's records access officer.

(l) The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law.

(m) Notwithstanding subdivision (l) of this section, the independent review committee members shall be entitled to representation, indemnification, and to be held harmless to the same extent as any other person employed in service of the state and entitled to such coverage under sections seventeen and nineteen of the public officers law,

provided however, that any independent review committee member removed due to a violation of paragraph (i) of this subdivision shall not qualify for such entitlements.

4. Commission. (a) The first class of members of the commission shall serve staggered terms to ensure continuity. For the first class of the commission, the governor's first appointee shall serve an initial term of four years, their second appointee shall serve an initial term of two years, and their third appointee shall serve an initial term of one year; the attorney general's appointee shall serve an initial term of four years; the comptroller's appointee shall serve an initial term of four years; the temporary president of the senate's first appointee shall serve an initial term of four years and their second appointee shall serve a term of two years; the minority leader of the senate's appointee shall serve an initial term of four years; the speaker of the assembly's first appointee shall serve initial terms of four years and their second appointee shall serve a term of two years; and the minority leader of the assembly's appointee shall serve a term of four years. All subsequent members shall serve a term of four years. No member shall be selected to the commission for more than two full consecutive terms, except that a member who has held the position by filling a vacancy can only be selected to the commission for an additional two full consecutive terms.

(b) The commission by majority vote shall elect a chairperson from among its members for a term of two years. A chairperson may be elected to no more than two terms for such office.

(c) Members of the commission may be removed by majority vote of the commission for substantial neglect of duty, misconduct in office, violation of the confidentiality restrictions set forth in this section, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

(d) Any vacancy occurring on the commission shall be filled within thirty days of its occurrence in the same manner as a member is initially selected to complete the vacant term.

(e) During the period of a member's service as a member of the commission, the member shall refrain from making, or soliciting from other persons, any contributions to candidates, political action

committees, political parties or committees, newsletter funds, or political advertisements for election to the offices of governor, lieutenant governor, member of the assembly or the senate, attorney general or state comptroller.

(f) Members of the commission shall receive a per diem allowance equal to the salary of a justice of the supreme court divided by two hundred twenty for each day or each pro-rated day actually spent in the performance of the member's duties under this section, and, in addition thereto, shall be reimbursed for all reasonable expenses actually and necessarily incurred by the member in the performance of the member's duties under this section. For the purposes of this subdivision, a day shall consist of at least seven and one-half hours spent in the performance of the member's duties under this section.

(g) The commission shall meet at least quarterly and additionally as called by the chairperson, or upon the call of a majority of the members of the commission. The commission shall be subject to articles six and seven of the public officers law.

(h) A majority of the members of the commission shall constitute a quorum, and the commission shall have the power to act by majority vote of the total number of members of the commission without vacancy.

(i) The commission shall hold a public hearing at least once each calendar year to take testimony regarding the operation of the commission and solicit public input regarding potential or proposed changes in the laws under its jurisdiction.

5. Powers. (a) The commission has the authority to: (i) adopt, amend, and rescind any rules and regulations pertaining to section seventy-three, seventy-three-a or seventy-four of the public officers law, article one-A of the legislative law, or section one hundred seven of the civil service law; (ii) adopt, amend, and rescind any procedures of the commission, including but not limited to, procedures for advice and guidance, training, filing, review, and enforcement of financial disclosure statements, investigations, enforcement, and due process hearings; and (iii) develop and promulgate any programs for reviews, training, and guidance to carry out the commission's mission.

(b) The commission shall adopt and post on its website guidance documents detailing the processes and procedures of an investigation,

including the stages of an investigation; timelines, including the reasons for any potential delays in an investigation; the hearing and adjudication process; outcomes of an investigation; and, anything else the commission deems necessary to inform the public as well as relevant parties to an investigation including complainants, respondents, victims, if any, and witnesses as to such processes and procedures. The guidance documents shall delineate the processes and procedures that apply to the relevant parties, including, where applicable, the due process and any other rights or remedies that the relevant party may have under the commission's procedures or any other area of law. The guidance documents shall be provided to the relevant party of an investigation upon such party's involvement in such investigation.

(c) The commission has the authority to compel the testimony of witnesses, and may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material.

6. Executive director and commission staff. The commission shall:

(a) (i) Appoint an executive director through a majority vote of the members of the commission, who shall act in accordance with the policies of the commission. The executive director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties assigned by this section, and meet the qualifications necessary for the services required based on their background and expertise that relate to the candidate's potential service to the commission. No individual shall be eligible to be appointed as an executive director if the individual is currently, or within the last two years has been:

(1) registered as a lobbyist in New York state;

(2) a member or employee of the New York state legislature or a statewide elected official, or a commissioner of an executive agency appointed by the governor; or

(3) a political party chair, as defined in section seventy-three of the public officers law.

(ii) The appointment and removal of the executive director shall be made by a majority vote of the commission.

(iii) The term of office of the executive director shall be four years

from the date of appointment. The salary of the executive director shall be determined by the members of the commission based on experience.

(iv) The commission may remove the executive director for neglect of duty, misconduct in office, violation of the confidentiality restrictions in this section, or inability or failure to discharge the powers or duties of office, including the failure to follow the lawful instructions of the commission.

(b) The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission provided such delegation is in writing, the specific powers to be delegated are enumerated, and the commission shall not delegate any decisions specified in this section that require a vote of the commission.

(c) The commission, through the executive director, shall establish units within the commission to carry out it duties, including, but not limited to, (i) an advice and guidance unit, (ii) a training unit, (iii) a financial disclosure unit, (iv) a lobbying unit, and (v) an investigations and enforcement unit.

(d) The commission, through the executive director, shall appoint such other staff as are necessary to carry out its duties under this section, including, but not limited to, a deputy director of an advice and guidance unit to provide timely confidential advice to persons subject to the commission's jurisdiction, a deputy director for training, a deputy director for investigations and enforcement, and a deputy director for lobbying.

(e) In addition to meeting the qualifications necessary for the services required for the position, the deputy director for investigations and enforcement shall have completed substantial training and have experience in trauma-informed approaches to investigations and enforcement. The deputy director for investigations and enforcement shall complete a minimum of four hours of training annually in trauma-informed approaches to investigations and enforcement. Such trainings may include, but not be limited to, the impact of trauma, first impression matters, victim interviews, investigative strategies, and alcohol and drug facilitated cases.

(f) The commission, through the executive director, shall review and approve a staffing plan provided and prepared by the executive director

which shall contain, at a minimum, a list of the various units and divisions as well as the number of positions in each unit, titles and their duties, and salaries, as well as the various qualifications for each position.

7. Advice and guidance. (a) The commission shall establish a unit or units solely for ethics and lobbying guidance, and give such prompt, informal advice to persons whose conduct it oversees, except with respect to members of the legislature and legislative staff, who shall seek advice from the legislative ethics commission in the first instance.

(b) Persons receiving such informal advice may rely on that advice absent misrepresentation or omission of material facts to the commission and such communications with the commission shall be treated as confidential, except as disclosure is needed to prevent or rectify a crime or fraud, or prevent a substantial threat to public health or safety or if required by court order.

(c) The commission may also render, on written request or on its own initiative, advisory opinions, and may allow for public comment before issuance of an advisory opinion. Such an opinion rendered by the commission shall be relied on by those subject to the commission's jurisdiction and until, or unless, amended, superseded, or revoked. Such opinion may also be relied upon by any such person, and may be introduced and shall be a defense, in any criminal or civil action.

8. Training. The commission shall establish a training unit and shall develop and administer an on-going program for the education and training in ethics and lobbying for those subject to the provisions of this section, as follows:

(a) The commission shall develop and administer a comprehensive and interactive live-in person or live-online ethics training course and shall designate and train instructors to conduct such training. Such live course shall be designed to include practical application of the material covered and a question-and-answer participatory segment. Unless the commission grants an extension or waiver for good cause shown, statewide elected officials, members of the legislature and employees of the legislature, and state officers and employees as defined in sections

seventy-three, seventy-three-a, and seventy-four of the public officers law, and the political party chair as is defined in section seventy-three of the public officers law, shall complete the live course within ninety days of appointment or employment and shall complete the live course every two years subsequently.

(b) The commission shall develop and administer an online ethics refresher course for all individuals listed under subparagraph (i) of this paragraph who have previously completed the live course. Such refresher course shall be designed to include any changes in law, regulation, or policy or in the interpretation thereof, and practical application of the material covered. Unless the commission grants an extension or waiver for good cause shown, such individuals shall take such refresher course once every year after having completed the live course under paragraph (a) of this subdivision.

(c) The commission shall develop and administer an online live question and answer course for agency ethics officers.

(d) The commission shall develop and administer training courses for lobbyists and clients of lobbyists and adopt regulations and procedures related to such training courses including, but not limited to, establishing deadlines for training course completion.

(d-1) The commission may impose a fee upon lobbyists and clients of lobbyists for late completion of the training course required by this subdivision, as set forth in section one-d of the legislative law.

(e) The provisions of this subdivision shall be applicable to the legislature except to the extent that an ethics training program is otherwise established by the assembly and/or senate for their respective members and employees and such program meets or exceeds each of the requirements set forth in this subdivision.

(f) On an annual basis, the commission, in coordination with the legislative ethics commission, shall determine the status of compliance with the training requirements under this subdivision by each state agency and by the senate and the assembly. Such determination shall include aggregate statistics regarding participation in such training and shall be reported on a quarterly basis to the governor and the legislature in writing.

9. Financial disclosure statements. (a) The commission may delegate

all or part of review, inquiry and advice in this section to the staff under the supervision of the executive director.

(b) The commission shall make available forms for annual statements of financial disclosure required to be filed pursuant to section seventy-three-a of the public officers law.

(c) The commission shall review the financial disclosure statements of the statewide elected officials and members of the legislature within sixty days of their filings to determine, among other things, deficiencies and conflicts.

(d) The commission shall review on a random basis the financial disclosure statements for filers who are not statewide elected officials and members of the legislature.

(e) The commission shall review financial disclosure statements filed in accordance with the provisions of this section and (i) inquire into any disclosed conflict to recommend how best to address such conflict; and

(ii) ascertain whether any person subject to the reporting requirements of section seventy-three-a of the public officers law has failed to file such a statement, has filed a deficient statement or has filed a statement which reveals a possible violation of section seventy-three, seventy-three-a or seventy-four of the public officers law.

(f) If a person required to file a financial disclosure statement with the commission has failed to file a disclosure statement or has filed a deficient statement, the commission shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen-day period to cure the deficiency, and advise the person of the penalties for failure to comply with the reporting requirements. This first notice of deficiency shall be confidential. If the person fails to make such filing or fails to cure the deficiency within the specified time period, the commission shall send a notice of delinquency (i) to the reporting person; (ii) in the case of a statewide elected official, to the chief of staff or counsel to the statewide elected official; (iii) in the case of a member of the legislature or a legislative employee, to the temporary president of the senate and the speaker of the assembly; and (iv) in the case of a state officer, employee or board member, to the appointing authority for such person.

Such notice of delinquency may be sent at any time during the reporting person's service as a statewide elected official, state officer or employee, member of the assembly or the senate, or a legislative employee or a political party chair or while a candidate for statewide office, or within one year after termination of such service or candidacy. A copy of any notice of delinquency or report shall be included in the reporting person's file and be available for public inspection and copying pursuant to the provisions of this section. The jurisdiction of the commission, when acting pursuant to this subdivision with respect to financial disclosure, shall continue for two years notwithstanding that the reporting person separates from state service, or ceases to hold public or political party office, or ceases to be a candidate, provided the commission notifies such person of the alleged failure to file or deficient filing pursuant to this subdivision.

(g) The commission shall adopt a procedure whereby a person who is required to file an annual financial disclosure statement with the commission may request an additional period of time within which to file such statement, other than members of the legislature, candidates for members of the legislature and legislative employees, due to justifiable cause or undue hardship.

(h) The commission may permit any person who is required to file a financial disclosure statement with the commission to request that the commission delete from the copy thereof made available for public inspection and copying one or more items of information which may be deleted by the commission upon a finding by the commission that the information which would otherwise be required to be made available for public inspection and copying will have no material bearing on the discharge of the reporting person's official duties. If such request for deletion is denied, the commission, in its notification of denial, shall inform the person of their right to appeal the commission's determination in a proceeding commenced against the commission, pursuant to article seventy-eight of the civil practice law and rules.

(i) The commission may permit any person who is required to file a financial disclosure statement with the commission to request an exemption from any requirement to report one or more items of information which pertain to such person's spouse, domestic partner, or unemancipated children which item or items may be exempted by the

commission upon a finding by the commission that the reporting individual's spouse, domestic partner, on their own behalf, or on behalf of an unemancipated child, objects to providing the information necessary to make such disclosure and that the information which would otherwise be required to be reported shall have no material bearing on the discharge of the reporting person's official duties. If such request for exemption is denied, the commission, in its notification of denial, shall inform the person of their right to appeal the commission's determination, pursuant to article seventy-eight of the civil practice law and rules.

(j) The commission may permit any person required to file a financial disclosure statement to request an exemption from any requirement to report the identity of a client pursuant to the question under subparagraph (b) of paragraph eight of subdivision three of section seventy-three-a of the public officers law in such statement based upon an exemption set forth in such question. The reporting individual need not seek an exemption to refrain from disclosing the identity of any client with respect to any matter where they or their firm provided legal representation to the client in connection with an investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations matters. In addition, clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services need not be disclosed. Pending any application for deletion or exemption to the commission relating to the filing of a financial disclosure statement, all information which is the subject or part of the application shall remain confidential. Upon an adverse determination by the commission, the reporting individual may request, and upon such request the commission shall provide, that any information that is the subject or part of the application remain confidential for a period of thirty days following notice of such determination. In the event that the reporting individual resigns their office and holds no other office subject to the jurisdiction of the commission, the information shall not be made public and shall be expunged in its entirety.

(k) The commission shall permit any person who has not been determined by the person's appointing authority to hold a policy-making position, but who is otherwise required to file a financial disclosure statement

to request an exemption from such requirement in accordance with rules and regulations governing such exemptions. Such rules and regulations shall provide for exemptions to be granted either on the application of an individual or on behalf of persons who share the same job title or employment classification which the commission deems to be comparable for purposes of this section. Such rules and regulations may permit the granting of an exemption where, in the discretion of the commission, the public interest does not require disclosure and the applicant's duties do not involve the negotiation, authorization or approval of:

(i) contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses as such terms are defined in section seventy-three of the public officers law;

(ii) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor;

(iii) the obtaining of grants of money or loans; or

(iv) the adoption or repeal of any rule or regulation having the force and effect of law.

10. Investigation and enforcement. (a) The commission shall receive complaints and referrals alleging violations of section seventy-three, seventy-three-a or seventy-four of the public officers law, article one-A and section five-b of the legislative law, or section one hundred seven of the civil service law.

(b) Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for

the decision is clearly stated in the determination of the commission.

(c) The commission shall conduct any investigation necessary to carry out the provisions of this section. Pursuant to this power and duty, the commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and testimony, and require the production of any books or records which it may deem relevant or material. The commission may, by a majority vote and pursuant to regulations adopted pursuant to the state administrative procedure act, delegate to the executive director the authority to issue subpoenas, provided that the executive director first notify the chair of the commission.

(d) The commission staff shall review and investigate, as appropriate, any information in the nature of a complaint or referral received by the commission or initiated by the commission, including through its review of media reports and other information, where there is specific and credible evidence that a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for members of the legislature.

(e) The commission shall notify the complainant, if any, that the commission has received their complaint.

(f) If, following a preliminary review of any complaint or referral, the commission or commission staff decides to elevate such preliminary review into an investigation, written notice shall be provided to the respondent setting forth, to the extent the commission is able to, the possible or alleged violation or violations of such law and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations, provided however that any information that may, in the judgment of the commission or staff, either be prejudicial to the complainant or compromise the investigation shall be redacted. The respondent shall have fifteen days from receipt of the written notice to provide any preliminary response or information the respondent determines may benefit the commission or commission staff in its work. After the review and investigation, the staff shall prepare a report to the commission setting forth the allegation or allegations made, the evidence gathered in the review and

investigation tending to support and disprove, if any, the allegation or allegations, the relevant law, and a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing. The commission shall, by majority vote, return the matter to the staff for further investigation or accept or reject the staff recommendation.

(g) In an investigation involving a victim the commission shall ensure that any interview of such victim is upon such victim's consent and that the investigator or investigators interviewing such victim have adequate trauma informed and victim centered investigative training. If a victim is requested to testify at a hearing, the commission shall provide sufficient notice to the victim of such request. Regardless of whether a victim is requested to or testifies at a hearing, the victim shall be informed as to how any statements made or information provided will be used in an investigation.

(h) Upon the conclusion of an investigation, if the commission, after consideration of a staff report, determines by majority vote that there is credible evidence of a violation of the laws under its jurisdiction, it shall provide the respondent timely notice for a due process hearing. The commission shall also inform the respondent of its rules regarding the conduct of adjudicatory proceedings and appeals and the other due process procedural mechanisms available to the respondent. If after a hearing the complaint is unsubstantiated or unfounded, the commission shall provide written notice to the respondent, complainant, if any, and victim, if any, provided that such notice shall not include any personally identifying information or information tending to identify any party involved in an investigation.

(i) The hearing shall be conducted before an independent arbitrator. Such hearing shall afford the respondent with a reasonable opportunity to appear in person, and by attorney, give sworn testimony, present evidence, and cross-examine witnesses.

(j) The commission may, at any time, develop procedures and rules for resolution of de minimus or minor violations that can be resolved outside of the enforcement process, including the sending of a confidential guidance or educational letter.

(k) The jurisdiction of the commission when acting pursuant to this section shall continue notwithstanding that a statewide elected official

or a state officer or employee or member of the legislature or legislative employee separates from state service, or a political party chair ceases to hold such office, or a candidate ceases to be a candidate, or a lobbyist or client of a lobbyist ceases to act as such, provided that the commission notifies such individual or entity of the alleged violation of law within two years from the individual's separation from state service or termination of party service or candidacy, or from the last report filed pursuant to article one-A of the legislative law. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision eight of section seventy-three of the public officers law.

(l) If the commission's vote to proceed to a due process hearing after the completion of an investigation does not carry, the commission shall provide written notice of the decision to the respondent, complainant, if any, and victim, if any, provided that such notice shall not include any personally identifying information or information tending to identify any party involved in an investigation.

(m) If the commission determines a complaint or referral lacks specific and credible evidence of a violation of the laws under its jurisdiction, or a matter is closed due to the allegations being unsubstantiated prior to a vote by the commission, such records and all related material shall be exempt from public disclosure under article six of the public officers law, except the commission's vote shall be publicly disclosed in accordance with articles six and seven of the public officers law. The commission shall provide written notice of such closure to the respondent, complainant, if any, or victim, if any, provided that such notice shall not include any personally identifying information or information tending to identify any party involved in an investigation.

(n) (i) An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five-a, seven, eight, twelve or fourteen through seventeen of section seventy-three of the public officers law, section one hundred seven of the civil service law, or a reporting individual who knowingly and willfully fails to file an annual statement of financial disclosure or who knowingly and willfully with intent to deceive makes a false statement or fraudulent omission or gives information which such

individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law, shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation.

(ii) An individual who knowingly and intentionally violates the provisions of paragraph a, b, c, d, e, g, or i of subdivision three of section seventy-four of the public officers law, shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation.

(iii) An individual subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law shall be subject to civil penalty as provided for in that article.

(iv) With respect to a potential violation of any criminal law where the commission finds sufficient cause by a majority vote, it shall refer such matter to the appropriate law enforcement authority for further investigation.

(v) In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate.

(vi) A civil penalty for false filing shall not be imposed under this subdivision in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated.

(vii) Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of subdivision six of section seventy-three of the public officers law or section one hundred seven of the civil service law, except that the commission may recommend that the individual in violation of such subdivision or section be disciplined.

(o) The commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and

appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties or the recommendation of employee discipline herein authorized. Such rule shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms or scope.

(p) (i) The commission shall have jurisdiction to investigate, but shall have no jurisdiction to impose penalties or discipline upon members of or candidates for member of the legislature or legislative employees for any violation of the public officers law or section one hundred seven of the civil service law. If, after investigation and a due process hearing, the commission has found, by a majority vote, a substantial basis to conclude that a member of the legislature or a legislative employee or candidate for member of the legislature has violated any provisions of such laws, it shall prepare a written report of its findings and provide a copy of that report to the legislative ethics commission, and to such individual in violation of such law. The commission shall provide to the legislative ethics commission copies of the full investigative file and hearing record.

(ii) With respect to the investigation of any individual who is not a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation and due process hearing, the commission has found, by a majority vote, a substantial basis to conclude that the individual or entity has violated the public officers law, section one hundred seven of the civil service law, or the legislative law, the commission shall determine whether, in addition to or in lieu of any fine authorized by this article, the matter should be referred to their employer for discipline with a warning, admonition, censure, suspension or termination or other appropriate discipline. With regard to statewide elected officials, the commission may not order suspension or termination but may recommend impeachment. The commission shall then issue a report containing its determinations including its findings of fact and conclusions of law to the complainant and respondent. The commission shall publish such report on its website within twenty days of its delivery to the complainant and respondent.

11. Confidentiality. (a) When an individual becomes a commissioner or staff of the commission, such individual shall be required to sign a non-disclosure statement.

(b) Except as otherwise required or provided by law, or when necessary to inform the complainant or respondent of the alleged violation of law, if any, of the status of an investigation, testimony received, or any other information obtained by a commissioner or staff of the commission, shall not be disclosed by any such individual to any person or entity outside of the commission during the pendency of any matter. Any confidential communication to any person or entity outside the commission related to the matters before the commission shall occur only as authorized by the commission. For the purposes of this paragraph, "matter" shall mean any complaint, review, inquiry, or investigation into alleged violations of this chapter.

(c) The commission shall establish procedures necessary to prevent the unauthorized disclosure of any information received by any member of the commission or staff of the commission. Any breaches of confidentiality may be investigated by the New York state office of the inspector general, attorney general, or other appropriate law enforcement authority upon a majority vote of the commission to refer, and appropriate action shall be taken.

(d) Any commission member or person employed by the commission who intentionally and without authorization releases confidential information received or generated by the commission shall be guilty of a class A misdemeanor.

12. Annual report. (a) The commission shall make an annual public report summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include, but is not limited to:

(i) information on the number and type of complaints received by the commission and the status of such complaints;

(ii) information on the number of investigations pending and nature of such investigations;

(iii) where a matter has been resolved, the date and nature of the

disposition and any sanction imposed; provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to this section or other laws;

(iv) information regarding financial disclosure compliance for the preceding year; and

(v) information regarding lobbying law filing compliance for the preceding year.

(b) Such a report shall be filed in the office of the governor and with the legislature on or before the first day of April for the preceding year.

13. Website. (a) Within one hundred twenty days of the effective date of this section, the commission shall update JCOPE's publicly accessible website which shall set forth the procedure for filing a complaint with the commission, the filing of financial disclosure statements filed by state officers or employees or legislative employees, the filing of statements required by article one-A of the legislative law, and any other records or information which the commission determines to be appropriate.

(b) The commission shall post on its website the following documents:

(i) the information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except information deleted pursuant to paragraph (g) of subdivision nine of this section of statewide elected officials and members of the legislature;

(ii) notices of delinquency sent under subdivision nine of this section;

(iii) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed;

(iv) the terms of any settlement or compromise of a complaint or referral which includes a fine, penalty or other remedy;

(v) those required to be held or maintained publicly available pursuant to article one-A of the legislative law; and

(vi) reports issued by the commission pursuant to this section.

14. Additional powers. In addition to any other powers and duties specified by law, the commission shall have the power and duty to administer and enforce all the provisions of this section.

15. Severability. If any part or provision of this section or the application thereof to any person or organization is adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect or impair any other part or provision or the application thereof to any other person or organization, but shall be confined in its operation to such part or provision.