



January 25, 2023

Carol C. Quinn  
Acting Co-General Counsel and Acting Director of Lobbying  
NYS Commission on Ethics and Lobbying in Government  
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**Re: Comments on Emergency Regulations, Part 941 on Adjudicatory Proceedings**

Dear Ms. Quinn,

We write to provide comments on the emergency regulations adopted related to Part 941, Adjudicatory Proceedings, and generally comment on the delegation of authority to the Executive Director. We thank you for your willingness to accept and consider comments at this time, despite the official public comment period having concluded.

There are three issues we would like to raise in connection with the amended regulations:

- 1. Delegation to staff regarding subpoenas** – We take no issue with the new provision, [941.3-a](#), allowing the Commission on Ethics and Lobbying in Government (COELIG or “Commission”) to delegate the authority to the Executive Director to administer oaths, subpoena witnesses, or require production of records to allow investigations to be conducted more efficiently. The amended regulations allow for delegation to be either general or limited to specific matters, and requires the chair of the Commission to be notified prior to the issuance of any subpoena, and the full Commission to be informed at its next meeting.

However, we contrast the delegation authority in Part 941 with the manner in which the Commission has delegated authority to the Executive Director to issue informal letter opinions. The Commission’s ability to delegate this authority is not provided in commission regulations, or in the statute, Section 94(7) of the Executive Law. Instead, the Commission [passed a resolution in September 2022](#) authorizing the Executive Director to issue informal letters, provided they follow Commission precedent. (We

also thank the Commission for newly [publishing its resolutions on its website for 2022](#).) There are no provisions related to notification of the Chair or Commission of whether such letters have been requested or issued, and is allowed on a blanket basis for all informal letter opinions.

While we understand that the vast majority of informal letter opinions are *pro forma* and routine, we ask the Commission to amend its resolution or regulations to require a Commission vote on the issuance of informal letters/advisory opinions for statewide officials and agency heads, at a minimum, rather than delegate this authority, as discussed in our [September 2022 letter to the Commission](#). We further note that [the report from Hogan Lovells](#) regarding approval of former Governor Cuomo's book deal also recommended that outside activity approval requests from statewide officeholders be decided by a vote of the Commissioners.

2. **Definition of harm regarding victims** – We believe the statutory and regulatory definition of harm regarding victims is both vague and too narrow and may cause some confusion and differences in how victims are treated by the Commission. Specifically, we believe the word “harm” should be defined; harm can take many forms including physical, mental, or reputational. It can also mean harm that may, but has not yet, occurred. “Direct harm,” however, may be too restrictive, especially when the word “harm” is left undefined.
3. **Independent hearing officers/arbitrators** – The [amended regulations](#) track the 2022 changes to Executive Law 94, and provide that “independent arbitrators” are selected the same way as independent hearing officers under the former commission – at random from a list. “Independent arbitrators” are also defined as hearing officers. The amended regulations add a new provision allowing for a replacement officer to be selected at random from the list, should the first not be available.

Does the commission anticipate that it will have difficulty finding enough hearing officers to run the hearings? While we understand that this is not an issue related to the Commission's regulations, we would like to know whether there are resource needs that are not currently being met.

Thank you for your consideration.

Sincerely,

Rachael Fauss  
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Betsy Gotbaum  
Executive Director  
Citizens Union

Susan Lerner  
Executive Director  
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Laura Bierman  
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cc. Members of the Commission on Ethics and Lobbying in Government