



**THE STATE OF NEW YORK
INDEPENDENT REVIEW COMMITTEE
FOR NOMINATIONS TO
THE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT
www.ny.gov/ethics-irc**

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**INDEPENDENT REVIEW COMMITTEE OF NEW YORK'S LAW DEANS
ISSUES PROCEDURES TO REVIEW NOMINATIONS TO THE NEW
COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT**

Today, the New York State Independent Review Committee (“Committee”), comprised of the Deans of New York’s 15 American Bar Association (“ABA”) accredited law schools, announced its procedures to review nominations to the newly established Commission on Ethics and Lobbying in Government.

In recent decades, New York State’s ethics commissions have faced public scrutiny regarding their effectiveness at enforcing public ethics and lobbying laws. One concern voiced has been that more independence is needed for State ethics commissioners to effectively implement their substantial and serious statutory mandates. The work of ethics commissioners can result in findings of violations of the ethics laws, as well as enforcement proceedings and penalties, against elected officials — including those who appoint the ethics commissioners — and other public servants and lobbyists.

In the State’s most recent budget process, the Governor worked with the Legislature to begin reforms to the State’s ethics laws and processes. One measure adopted is the New York Ethics Commission Reform Act of 2022. Among its provisions, the Act sunsets the current Joint Commission on Public Ethics (“JCOPE”), which is the State’s central ethics commission, and creates a new 11-member Commission on Ethics and Lobbying in Government (“Commission”) with staggered four-year terms. The breakdown of nominations/appointments to the new Commission is as follows: the Governor (3); Senate President and Majority Leader (2); Senate Minority Leader (1); Assembly Speaker (2); Assembly Minority Leader (1); the Comptroller (1); and the Attorney General (1).

Instead of these elected officials making direct appointments to the Commission, as is currently the case with JCOPE, the new law creates an Independent Review Committee (“IRC”) comprised of the Deans of the State’s 15 law schools. It requires the IRC to develop procedures to govern its review activities.

The IRC has developed a rigorous pre-nomination process that requires nominating elected officials to assess a broad array of critical information, including professional experience, findings from a thorough background check, and results of a seven-day public comment period on their proposed nominees to help determine the qualifications, suitability, and fitness of the candidates they will nominate. When the nominating elected officials have reviewed and considered this information, they will be able to make a fully informed choice of whether or not to formally nominate the candidate to the IRC for review.

After the IRC receives a formal nomination of a candidate, it will review the candidate’s professional experience and full history, background investigation findings, public comments, check references as needed, and conduct a personal interview with them. The IRC will then have the sole responsibility to determine whether or not to confirm the nominee for appointment. The nominating elected officials and their staffs are not permitted to communicate with IRC members about a nominee, except in writing to the IRC Chair, while a nominee is being formally considered. If a nominee is not confirmed, the nominating elected official will be notified in writing by the IRC, and must identify and submit a new nominee for review pursuant to the same process.

“As stewards of a profession built on the highest ethical and professional standards, we take seriously our role in determining whether a candidate nominated by an elected official should be appointed to serve as an ethics commissioner. We will conduct our work with the independence, transparency, and objectivity New Yorkers demand and deserve,” said Anthony W. Crowell, IRC Chair and Dean of New York Law School, on behalf of the IRC’s members.

The State’s Law Deans did not participate in the legislative negotiations that led to the statutory creation of the IRC. The IRC’s procedures were developed independently and exclusively by its members. After they were drafted, the IRC advised counsel to the nominating elected officials, as well as good government groups, on what the procedures require. The IRC’s work will be supported by the State Police and the Office of General Services (“OGS”) which will undertake the background investigation process. OGS will assign an attorney to serve as a liaison to the nominating elected officials and IRC, and who will coordinate of an efficient and timely background check process. The IRC also will maintain contact with staff from the new Commission on Ethics in Government and Lobbying for limited administrative purposes and to coordinate appropriate public information and education efforts.

JCOPE sunsets and the new Commission takes effect on July 8, 2022. With the publication of the IRC procedures, the pre-nomination background check process will begin immediately. Proposed nominees will have up to 10 days to complete their background investigation forms and fingerprinting and submit them to the State. The State Police and OGS will then have up to 21

days to complete the background investigation, and report findings to the nominating elected officials. Once a formal nomination is received by the IRC, which will include the background check findings, the IRC will have up to 30 days to determine whether or not to confirm the nominee.

The IRC will provide up-to-date information on its website concerning its procedures, activities, and other news. It also will provide a link for the public to communicate with the IRC in writing. The Independent Review Committee members are as follows:

Alicia Ouellette
President and Dean, Professor of Law
Albany Law School

Michael Cahill
President and Dean, Professor of Law
Brooklyn Law School

Aviva Abramovsky
Dean and Professor of Law
University at Buffalo School of Law

Melanie Leslie
Dean and Professor of Law
Benjamin N. Cardozo School of Law, Yeshiva University

Eduardo Capulong
Interim Dean and Professor of Law
City University of New York School of Law

Gillian Lester
Dean and Professor of Law
Columbia University School of Law

Jens David Ohlin
Dean and Professor of Law
Cornell University School of Law

Matthew Diller
Dean and Professor of Law
Fordham University School of Law

Hon. Gail A. Prudenti
Dean and Professor of Law
Hofstra University Maurice A. Deane School of Law

Anthony W. Crowell, IRC Chair
Dean and President, Professor of Law
New York Law School

Troy McKenzie
Dean and Professor of Law
New York University School of Law

Horace Anderson
Dean and Professor of Law
Pace University Elizabeth Haub School of Law

Michael Simons
Dean and Professor of Law
St. John's University School of Law

Craig M. Boise
Dean and Professor of Law
Syracuse University School of Law

Elena Langan
Dean and Professor of Law
Touro University, Jacob D. Fuchsberg Law Center

The full procedures of the Independent Review Commission are attached.



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***COMMITTEE PROCEDURES
PURSUANT TO THE NEW YORK ETHICS COMMISSION REFORM ACT OF 2022***

Considerations for the Independent Review Committee's (IRC) Evaluation of Nominee Qualifications for Service on the New York State Commission on Ethics and Lobbying in Government

The IRC maintains a high standard in determining the suitability of a nominee for service on the Commission on Ethics and Lobbying in Government ("Commission") and will review the nominee's professional experience and consider the following factors:

- Whether the nominee is of undisputed honesty, integrity, and character;
- Whether the nominee's past personal and professional conduct reflects adherence to the highest ethical standards, and that their lived experience allows them to understand the range of perspectives needed to effectively serve as a member of an ethics commission that has broad oversight of a large and diverse public workforce;
- Whether the nominee has clearly demonstrated ability to be impartial and independent, be fair and even-handed, and decide matters based solely on the law and facts presented; and,
- Whether the nominee has a demonstrated commitment to civic participation and public service.

The IRC's Review Process

- The IRC looks forward to reviewing nominees who reflect the great diversity of lived experiences and talents of the citizens of New York State as a whole.
- The IRC requires each proposed nominee of a Selection Member to complete a full background investigation, to be conducted by the State Police and New York State

Office of General Services (“OGS”). The background investigation questionnaire and releases to be used in this process shall be the same used for high level executive branch appointees.

- The IRC requires that the State, through OGS, assign an attorney with relevant investigative expertise to serve as a confidential liaison to the nominating elected officials and the IRC, and who shall coordinate an efficient and timely background check process. The attorney shall provide access to all information in the background investigation records as needed by the IRC.
- Selection Members shall maintain contact with the OGS confidential liaison for background investigations, and present their proposed nominees directly to OGS. Selection Members must ensure that, once their proposed nominees receive the background investigation questionnaire and releases, they complete and return them, along with fingerprinting, to OGS within ten days. The IRC requires that OGS complete the background investigation process within twenty-one days of receipt of a proposed nominee’s completed background questionnaire and releases. The background investigation must be concluded, and the findings reported, to the Selection Member before a formal nomination may be transmitted to the IRC.
- Nominees whose names are formally submitted to the IRC for review must sign a release, as part of the background investigation process, permitting the IRC to inspect the background investigation records of the nominee as needed. This includes the Appointment Questionnaire, financial disclosures, releases for criminal, tax, credit and other reports, and other relevant documentation.
- Prior to any nomination being sent to the IRC, the Selection Members shall publish the name(s) of the individual(s) they intend to nominate at least seven business days before making such formal nomination. This information shall, at a minimum, be prominently posted on the Selection Member’s website, provide a link by which the public may offer comments on the proposed nominee, and also be transmitted via a media advisory. At the time of publication, such information also shall be e-mailed directly to the IRC Chair.
- When making a formal nomination, each Selection Member shall provide to the IRC: the name(s) and contact information of those nominated to serve on the Commission, the background investigation findings reported to them by the State Police and OGS for each nominee, any written comments received by mail or electronically in support of or in opposition to the nomination, along with any written materials a nominee may have submitted to the Selection Members, including but not limited to a complete resume or curriculum vitae, and any written statements regarding a nominee’s qualifications from a Selection Member.
- Each IRC member may formally designate an alternate representative, from among their law school’s associate deans, or those with a functionally equivalent title and/or role, to

execute statutory functions when the IRC member is unable to do so. Alternate representatives are authorized by law to attend a meeting, or otherwise participate in the review process, because of an IRC member's absence or inability to attend meetings due to recusal or other reason. Such alternate representatives may assist IRC members with their individual preparation for the review process. In such cases, IRC members may invite their alternate representatives to attend IRC meetings but not vote.

- Upon the receipt of a nomination from a Selection Member, an IRC member shall assess whether there are any potential conflicts with their participation in the review process. Law school or university counsel may be consulted to facilitate this process. The IRC member shall disclose to the IRC (1) any personal, professional, financial, or other direct or indirect relationships they believe they may have with the Selection Member or nominee; and/or (2) any institutional conflicts they or their law school and/or university believe they may have with the Selection Member or nominee. In cases of Category 1 potential conflicts, the IRC member's alternate representative may be required to participate in the review of the nominee. In cases of Category 2 potential conflicts, the institution's dean or dean's alternate representative may be recused entirely from participation in the review process of the Selection Member's nominee(s).
- The IRC shall conduct individual personal interviews of each nominee. Such interviews may take place in person, or virtually using a remote platform, at the discretion of the IRC. Nominee interviews may be undertaken by a panel of no fewer than three IRC members, designated by the Chair of the IRC, who shall report the outcomes of such interviews to the IRC as a whole, as part of the review of each nominee's full record.
- The IRC may request from a nominee such additional documents or records that the IRC believes is necessary to its deliberations. The IRC may also ask a nominee to submit the names and contact information for personal and professional references.
- The IRC is expected to carry out and fulfill its obligations independently and confidentially. Accordingly, once the Selection Members transmit to the IRC their nominees, neither the Selection Members, nor anyone acting on their behalf, shall contact any member of the IRC, or any official of such member's law school or university, with regard to the nominee. After a nomination is submitted to the IRC, any additional supporting information concerning a nominee must be forwarded formally in writing exclusively to the IRC chair who shall ensure such information is incorporated into the formal record of the nominee and considered by the IRC as a whole. Inappropriate contact with an IRC member or such member's law school or university may compromise a nominee's review process and confirmation.

- After the IRC has interviewed and completed its review of a nominee, the IRC members shall vote on whether or not to confirm the nominee for appointment to the Commission. The IRC shall report to the Selection Members in writing whether a nominee is confirmed or not for appointment to the Commission. When the IRC does not confirm a nominee for appointment, it shall succinctly state its reasons to the nominee's Selection Member.
- The IRC shall establish a website through which it will communicate to, and receive information from, the public.
- The IRC shall maintain a written record of its meetings, succinctly noting dates, members present, actions taken, and a tally of votes.