

<http://www.timesunion.com/tuplus-local/article/Will-review-of-ethics-watchdog-have-bite-6517967.php>

Will review of ethics watchdog have bite?

Six weeks before deadline, a question of depth

By Chris Bragg Published 8:24 pm, Sunday, September 20, 2015

timesunionPLUS

Albany

This is a TU+ story. Click for more information.

A panel reviewing the operations of the state's ethics and lobbying watchdog, the **Joint Commission on Public Ethics**, faces a Nov. 1 deadline to issue a report on its findings. But it's

not clear how deeply the panel can or will delve into the operations of an entity often criticized for its secrecy and charged with a lack of independence.

About six weeks from the deadline, one review panel member, **Patricia Salkin**, said she was not aware of any efforts to request nonpublic documents from JCOPE that might shed light on a watchdog that makes many of its decisions behind closed doors.

Unlike Gov. **Andrew Cuomo**'s defunct **Moreland Commission** on public corruption, the review panel lacks subpoena power; the 2011 legislation that created JCOPE requires that a majority of its 14 commissioners would have to vote to release confidential information voluntarily.

There are legitimate reasons why JCOPE might want to keep information about ethics inquiries confidential, experts say, but a lack of any documentation concerning its behind-the-scenes operations could make a candid review of its operations more difficult.

Salkin said she did not believe the review panel had asked for documents such as notes from JCOPE executive sessions. At its monthly meetings, JCOPE commissioners often do little business during what's usually a brief public session, and instead engage in lengthy executive sessions that are closed to the press and public.

The **Times Union** also asked Salkin, dean of Tuoro Law Center on Long Island, whether the review panel had asked JCOPE for any records of investigations that were opened but never ended up in enforcement actions or settlements, or asked to see requests for investigations JCOPE had received.

"Not to my knowledge but I am just one member," Salkin said via email.

Calls and emails to a number of other members of the review panel were not returned.

JCOPE, whose commissioners are appointed by Cuomo and legislative leaders, has faced criticism for rarely taking action against state lawmakers, even as federal authorities this year charged a raft of legislators with crimes related to official corruption. This year, the arrestees included **Dean Skelos** and **Sheldon Silver**, respectively the former leaders of the **Senate and Assembly**; both say they are innocent and are awaiting trial.

Under JCOPE's rules, even if a clear majority of commissioners favor launching an official investigation, it can be killed by a small minority. And it can be done secretly.

Some critics believe Cuomo and the legislative leaders who appointed the JCOPE review panel do not want a truly thorough review of its operations. JCOPE has faced particular criticism for its perceived closeness to the Cuomo administration.

Under the ethics reform law that created JCOPE, the panel was supposed to begin its work in June 2014, but its members were not appointed until this May 1.

As of early August, the review panel had held one live meeting and one conference call — neither of them open to the public.

According to Salkin, the review panel is in the process of scheduling a public hearing in Albany on Oct. 7, and scheduling a series of meetings in Albany on Sept. 28.

Salkin said interviews of JCOPE staff and commissioners have been conducted, and were ongoing. It's unclear how revealing those will be, however: JCOPE commissioners and staff, are required to sign non-disclosure statements saying they will not discuss confidential commission information, subject to a criminal penalty.

The review panel did confer in mid-August with leaders of several good-government groups, including **Barbara Bartoletti** of the **League of Women Voters**. Bartoletti said she was impressed by the academic credentials of the eight volunteer commissioners, and believed they would be independent.

The topic of whether the review panel was requesting documents from JCOPE did not come up at the meeting.

"Considering most of the people on the panel are very accomplished lawyers, I can only assume they thought about it and decided legally they can't do it," Bartoletti said.

But JCOPE's commissioners can collectively choose to make such information public. The law states that, "Any confidential communication to any person or entity outside the commission related to the matters before the commission may occur only as authorized by the commission."

JCOPE commissioners themselves have said they to want to make more information public.

In a February report on its own workings, the watchdog's very first recommendation was that lawmakers change state 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."

The commissioners also implored lawmakers to consider whether JCOPE's current exemptions from the Freedom of Information Law and Open Meetings Law should be "modified to increase the transparency of JCOPE's operations while still protecting the integrity of JCOPE's sensitive compliance and investigative functions."

David Grandeau, the state's former top ethics official and now a lobbying compliance lawyer, first raised some of these issues on his ethics and lobbying blog on Tuesday.

Grandeau, a strident JCOPE critic, posted an email he had received Tuesday morning from Salkin, in which she asked for Grandeau's input on the JCOPE review, and invited him to testify at the October public hearing.

Grandeau responded by asking Salkin to provide him with a list of investigations opened by JCOPE, files for concluded cases, minutes of executive sessions and transcripts of interviews of past and present JCOPE commissioners and staff.

"If you have these items I would be happy to review them prior to my appearance before your review commission so as to provide meaningful input on (JCOPE's) 'activities and performance,'" Grandeau wrote, adding later that "if you haven't requested or reviewed those items nothing else you do will have any value or worth."

Salkin did not provide Grandeau such documents in a follow-up email, as they apparently have not been requested by the review panel during its four-and-a-half month existence.

Salkin told the Times Union Tuesday, "I received David's suggestion this morning; the commission as a whole has not seen it yet. It will be shared with everyone."

cbragg@timesunion.com • 518-454-5303 • **@chrisbragg1**

© 2015 Hearst Communications, Inc.



[Return to Top](#)

About | [Contact Us](#) [Our Company](#) [Careers](#) [Advertising](#) [Ad Choices](#) [Terms & Conditions](#) [Privacy Policy](#)
[Your California Privacy Rights](#)

Content | [Blogs](#) [Weather](#) [School Closings](#) [Events Calendar](#) [Weddings/Celebrations](#) [Births](#) [Obituaries](#) [Online Store](#)
[Puzzles Palace](#)

Connect | [Newsletters](#) [Facebook](#) [Twitter](#) [Pinterest](#) [Google+](#) [Instagram](#)

Subscribe | [Subscriber Services](#) [Home Delivery](#) [Become a Carrier](#) [iPad app](#) [Times Union Plus](#) [Copyright and Reprint](#)
[eEdition](#)

© Copyright 2015 The Hearst Corporation