

**NEW YORK STATE  
JOINT COMMISSION ON PUBLIC ETHICS**



**2013  
ANNUAL REPORT**

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# INVESTIGATIONS AND ENFORCEMENT

## *Overview*

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The Commission is charged with investigating potential 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 (Legislative Law article 1-A). The Commission has jurisdiction to investigate violations of law by members of or candidates for the Legislature and legislative employees, as well as by the four statewide elected officials, candidates for those offices, executive branch State employees, certain political party chairs, lobbyists, and their clients.

The Commission's procedures for submitting tips and filing sworn complaints alleging violations of the Public Officers Law or the Lobbying Act are available on the Commission's website. [Click here to view the procedures for filing a sworn complaint.](#)

Under Executive Law §94, to pursue an enforcement action, the Commission must determine whether there is a substantial basis to conclude that a violation of law occurred. If the Commission makes such a finding, then it issues a "Substantial Basis Investigation Report". The Substantial Basis Investigation Report alleges a violation of the law and becomes a publicly-available document.

In the event that the Commission finds a substantial basis to conclude that such a violation has occurred by members of or candidates for the Legislature and legislative employees, it presents its Substantial Basis Investigation Report to the Legislative Ethics Commission ("LEC"), which may then assess penalties pursuant to its own adjudicatory regulations, which are available on its website.

The Commission has jurisdiction to enforce penalties for alleged violations by executive branch officers and employees, lobbyists, and clients. The Commission has issued regulations governing the conduct of adjudicatory proceedings relating to the assessment of civil penalties. To ensure fairness of the proceedings, the regulations provide that



adjudications will be conducted by independent hearing officers who will be selected randomly from a pool of hearing officers. These regulations also cover appeals taken from hearing officer final decisions, and appeals of denials of requests to delete or exempt certain information from an FDS.

Information concerning the Commission's enforcement actions, including its settlement agreements, is published on the Commission's website.

### ***2013 Review and Disposition of Investigative Matters***

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In 2013, the Commission reviewed nearly 200 potential matters. The majority of those matters raised ethics issues under the Public Officers Law, including conflicts of interests, improper gifts, nepotism, and post-employment issues. In addition, some matters involved possible violations of the Lobbying Act, including improper gifts and failure to submit required filings.

As of the date of this report, the Commission has 21 open investigations and 69 matters pending review. In 2013, the Commission's investigations and enforcement actions, including the assessment by the LEC, resulted in penalties totaling approximately \$450,000. These enforcement actions involved a range of violations, including self-dealing, abuse of office, accepting prohibited gifts, violations of the post-employment restrictions, disclosing confidential information, and failing to file required disclosures with the Commission. Some noteworthy matters are highlighted below, followed by a chart summarizing all of the Commission's enforcement activity in 2013. Not all investigative matters warrant enforcement action. In some cases, based on the facts, the Commission concluded that the public interest would be better served by providing education and guidance to prevent future violations. In 2013, the Commission exercised its discretion to resolve some investigative matters with "guidance letters" setting forth the appropriate legal and regulatory considerations to guide future conduct.

**Former Assemblymember Vito Lopez:** On February 12, 2013, the Commission issued a Substantial Basis Investigation Report in the matter of Assemblymember Vito Lopez, concluding the first ever independent ethics investigation of a sitting Legislator. During the course of the five-month investigation, the Commission issued 49 subpoenas, interviewed more than 45 individuals, and reviewed approximately 20,000 pages of documents that were produced to the Commission. The investigation concluded with the issuance of a Substantial Basis Investigation Report which was unanimously approved by the Commission.

The Commission found that Assemblymember Lopez violated the public trust, abused his public office and political power to serve his personal interests, and misappropriated State resources. Specifically, the Commission's investigation revealed that since at least 2010, Lopez engaged in an escalating course of conduct with respect to multiple female staff members that began with demeaning comments about appearance and dress as well as demands for fawning text and email messages, increased to requirements for companionship outside the office, and culminated in attempted and forced intimate contact. The investigation found that Lopez violated the Public Officers Law by using his official position – through bonuses, raises, promotions and threats of adverse employment action – to compel these same female employees to comply with this inappropriate requests and demands. Based upon the evidence developed through the investigation, the Commission found that (i) Lopez used the powers and perks of his position as a member of the Assembly to engage in knowing, willful, and prolonged mistreatment of certain female members of his Assembly staff; (ii) Lopez engaged in a pervasive pattern of abuse of public office and resources, not for a personal financial gain, but to indulge his personal whims and desires; and that (iii) by this conduct, Lopez indisputably breached the public trust and thereby violated the Public Officers Law.

As required under Executive Law §94, the Commission presented its Report to the LEC for its consideration. In May of 2013, Assemblymember Lopez resigned from office. On June 11, 2013, the LEC issued a Disposition and Notice of Civil Assessment in which it concurred with the Commission's conclusions of law that there was a substantial basis to find that



former Assemblymember Lopez violated Public Officers Law §§74(3)(d), (f), and (h) through knowing and intentional conduct. The LEC found at least thirty-three distinct violations of the Public Officers Law and assessed a civil penalty in the amount of \$330,000.00.

**Self-Dealing:** An assistant physics professor at the City University of New York was found, through an investigation by the Commission, to have steered a State purchase of hi-tech research software to a company he covertly owned. The professor created a “sole source memorandum” attesting to his employer that he needed the software product and that only one company could supply it. However, the professor never evaluated other providers of similar research software and never disclosed he was president of the company. Under the terms of a settlement agreement with the Commission, the assistant professor paid nearly \$65,000 in fines and restitution for violating Public Officers Law §73(15) which prohibits State employees from participating in contracting decisions involving the payment of more than \$1,000 to that employee.

**Lobbying:** A major lobbying firm paid \$20,000 in fines relating to required disclosure filings in 2011 and 2012 under a settlement agreement with the Commission. Due to a former employee’s misfeasance and nonfeasance, numerous required disclosure filings of the lobbying firm were incomplete, inaccurate or not filed at all. The lobbying firm self-reported the problems with the filings to the Commission. As part of the settlement agreement, the lobbying firm submitted and updated all requisite registrations and filings for 2011 and 2012.

**Prohibited Gifts:** A New York electric and gas utility company and two employees of the State’s utility regulating agency paid fines settling cases involving the giving and receiving of improper gifts including rounds of golf and meals provided between 2002 and 2010. The total value of the gifts was estimated to be approximately \$7,000. Under a settlement agreement with the Commission, the utility, a registered lobbyist, paid a \$25,000 fine in addition to \$1.7 million in fines it paid the State regulating agency for the same conduct. Under the State Lobbying Act §1-m, lobbyists and lobbying clients are prohibited from



offering or providing gifts to public officials unless it cannot be reasonably inferred that the gifts were intended to influence the officials. A violation of the Lobbying Act's gift restrictions carries a maximum potential fine of \$25,000 or three times the value of a gift. The utility self-reported the improper gifts to the Commission after they were discovered through an internal audit. The two employees of the regulator, who both resigned during the investigation, paid fines of \$1,000 and \$1,500 for accepting the improper gifts.

### 2013 Enforcement Actions

NAME	VIOLATION CHARGED	AMOUNT PAID/OWED	OUTCOME	DATE
Assembly Member Vito Lopez	Public Officers Law §§74(3)(d), (f), and (h)	\$330,000	LEC Decision	2/12/2013
Mario Guerra	Public Officers Law §74(3)(f)	\$0	Settled	4/16/2013
Private Attorney Defense Services, Inc.	Legislative Law 1-A §1-j	\$2,000	Settled	5/15/2013
Clinica Modelo	Legislative Law 1-A §1-j	\$0	Decision and Order	5/25/2013
Uncle Sam's House, Inc.	Legislative Law 1-A §1-j	\$0	Decision and Order	5/28/2013
Inner City Development, LLC	Legislative Law 1-A §1-j	\$0	Settled	5/28/2013
Dr. Yasha Yi	Public Officers Law §73(15)	\$20,000 \$44,831	Settled	5/30/2013
King Cleaning Association	Legislative Law 1-A §1-j	\$1,000	Settled	6/12/2013
Black Agency Executives	Legislative Law 1-A §1-j	\$1,000	Settled	6/13/2013
National Grid	Legislative Law 1-m	\$25,000	Settled	6/25/2013
Micah Riggs, LLC	Legislative Law 1-A §1-j	\$2,000	Settled	6/28/2013

## INVESTIGATIONS

<b>Steven Blaney</b>	<b>Public Officers Law §74(3)(d)</b>	<b>\$1,500</b>	<b>Settled</b>	<b>8/14/2013</b>
<b>Joseph Klesin</b>	<b>Public Officers Law §73(5)(A)</b>	<b>\$1,500</b>	<b>Settled</b>	<b>8/14/2013</b>
<b>Carlos Ortiz</b>	<b>Public Officers Law §73(5)(A)</b>	<b>\$1,000</b>	<b>Settled</b>	<b>8/14/2013</b>
<b>Mercury Public Affairs</b>	<b>Legislative Law 1-A §§1-e, 1-h(a), 1-j</b>	<b>\$20,000</b>	<b>Settled</b>	<b>9/11/2013</b>