

CANNABIS CONTROL COMMISSION

February 23, 2023

In-Person with Remote Participation via Microsoft Teams

EXECUTIVE SESSION MEETING MINUTES

Documents:

- Discussion Items for Executive Session 11
- 20230222 Draft Charter V9
- Budget Process SOP

In Attendance:

- Chair Shannon O'Brien
- Commissioner Nurys Camargo
- Commissioner Ava Callender Concepcion
- Commissioner Kimberly Roy
- Commissioner Bruce Stebbins
- Executive Director Shawn Collins
- General Counsel Christine Baily
- Chief of Investigation and Enforcement Yaw Gyebi
- Chief Operations Officer Alisa Stack
- Director of Human Resources Justin Shrader
- Mediator Susan Podziba
- Chief Communications Officer Cedric Sinclair
- Paralegal Sabiel Rodriguez

Minutes:

- I. Call to Order
 - The Chair called the meeting to order and deferred to Mediator Susan Podziba (Mediator Podziba) to conduct the Mediation Executive Session.
- II. Discussion – Mediation Regarding Commission Governance, G.L. c. 233, § 23C, and public records not subject to disclosure under G.L. c. 4, § 7 (26)



- Mediator Podziba gave an overview of the discussion items and stated that the goal for executive session was to understand the reasoning behind suggested edits to the Charter.
- In the Draft Charter Section: Background, Mediator Podziba facilitated discussion on redundancies in Nos. 2, 4, 6, and 7 related to appointing authorities' power to remove, accountability, elected commission roles, and background information, respectively.
- Mediator Podziba moved to review the Draft Charter Section: Roles and Responsibilities. She noted that she and Executive Director Shawn Collins (ED) would work offline to clarify the distinction between Direct Reports and Department Heads. Mediator Podziba asked for feedback on the broadness of No. 1(b)(i). Chief Operations Officer Alisa Stack (COO Stack) noted that she did not believe that the language was too broad and noted her understanding of the topic. GC Baily proposed language to bring it in line with statute. Commissioner Roy proposed additional changes. Mediator Podziba stated that they would circle back. Chief of Investigation and Enforcement Yaw Gyebi (CIE Gyebi) asked a question related to the word “deliberate” in No. 1(b)(i) and requested for further clarity. GC Baily suggested including a footnote with a link to Open Meeting Law educational materials to clarify that it was a term of art. Mediator Podziba noted a suggested edit to No. 1(d)(ii) and asked for the rationale for a suggested edit. GC Baily stated that she wanted to include the word “prosecutorial” and described the adjudicatory and prosecutorial functions of the Commission. Mediator Podziba noted a suggested edit No. 2(c) and asked why it was made. GC Baily clarified her feedback regarding the requirements to call a Public Meeting and chairing meetings when the Chair was absent. Mediator Podziba moved to the section defining the role of the Treasurer, which was held by Commissioner Camargo. GC Baily noted her role in the financial reporting process. COO Stack shared feedback and noted objections to No. 3(b) and No. 3(c)(iii). CIE Gyebi noted his concurrence with COO Stack and stated that the current language put the ED on the same level as the Direct Reports (DR). Mediator Podziba moved to No. 4 and discussed the role with regards to public records requests with input from Commissioner Roy and GC Baily. GC Baily and Chief Communications Officer Cedric Sinclair (CCO Sinclair) delineated differences between public records requests and press inquiries. COO Stack noted that there was a difference in language between reviewed and approved language in the Secretary and Treasurer roles. The Chair noted that the Secretary position, which was held by Commissioner Roy, had a review function and that was not necessarily true for the Treasurer’s role. The ED noted his understanding of the reasoning behind the language differences. COO Stack noted that she wanted to ensure that the discrepancy was a conscious one. Commissioner Stebbins described his understanding of the roles and language. GC Baily noted statutory differences between the roles. Mediator Podziba moved to section No. 4(b)(v) and COO Stack stated her preference for the language regarding state training to be broadened as those trainings were evolving. GC Baily concurred. Commissioner Stebbins agreed with the proposed changes to the language and suggested that trainings should be coordinated with the ED, GC, and human resources.

The Commission took a short recess.



- Mediator Podziba moved to No. 5: The Executive Director. She asked if there were questions regarding changes to No. 5(b) and No. 5(e), and the Commissioners did not object to the language. She moved to Section I and Commissioner Concepcion noted that the language was clunky. Mediator Podziba explained that the language might be modified later on in the process. She moved to review No. 5(j) and CIE Gyebi noted that he had concerns about the GC's role. COO Stack concurred and stated that she did not want this item to be overly specific. GC Baily explained her reasoning behind the edit and noted that she saw it as protective of the ED. COO Stack proposed some language and noted that she liked the broader language. Commissioner Concepcion asked the ED his opinion and if it gave him enough authority to manage staff. He agreed with the language. Commissioner Roy asked if the language precluded the ED from seeking Commissioners' counsel and the ED stated it did not. Mediator Podziba moved to section No. 5(r), relating to how the ED would coordinate with the Office of the Attorney General as to litigation. GC Baily noted her reasoning behind adding this section and how she was given latitude to handle litigation.
- Mediator Podziba moved to review the Draft Charter Section: Public Meeting Agenda Setting, No. 4. She stated that there had been discussion regarding who would serve as the presiding officer of a Public Meeting which was not called by the Chair. The Chair asked if she would be precluded from presiding over a meeting which she did not call. The ED stated that it is his understating that all Commissioners have the right to attend all Commission meetings. The Chair stated that did not address her question and asked GC Baily to look into this matter. Mediator Podziba stated this may be answered in statute or Robert's Rules and asked the GC to look into the matter. The GC confirmed she would review the question.
- Mediator Podziba moved to review the Draft Charter Section: ED Goals and there were no questions regarding an edit which suggested that goals should be approved prior to the end of the calendar year.
- Mediator Podziba moved to review the Draft Charter Section: Interactions Between And Among Commissioners And Executive Director, Leadership Teams, And Staff. Mediator Podziba moved to review Nos. 4 and 5, relating to how Commissioners may request staff resources. CCO Sinclair explained that Commissioners were not aware of all of the staff's priorities and leaving Direct Reports and Department Heads out of communications could create operational challenges. COO Stack noted the opportunity cost of not including Direct Reports and how leaving them out may not include the appropriate staff. Commissioner Roy stated that the drafted language limited the Commissioners' ability to directly access staff. The ED explained that there was a subjective understanding of staff resources and expectations of staff support. The Chair noted her role to manage Commissioners and determine staff resources. She also noted the role of culture and how Commissioners should address issues as they arise in coordination with the Chair and the ED. CIE Gyebi expressed his agreement with the ED and stated that Commissioners should be able to freely talk to staff noting that the language before them related to resources. Commissioner Concepcion suggested having staff only take direction from a superior in their department and coordinate requests from Commissioners through that superior. The Chair noted that the Commissioners should



have the ability to reassign work. Mediator Podziba stated that informal communications were fine, but when resources were implicated a sign off by the staff's direct supervisor was required. Commissioner Roy requested that this be included in the Charter. Commissioner Camargo stated that this would also need to be communicated to staff. CIE Gyebi noted that he would not like to preclude the Commissioners from speaking with his staff and expressed the need to be mindful of the competing interests of staff. COO Stack cited the regulatory working groups as a positive example of collaboration between Commissioners and staff. She explained that departments' internal reporting structures would also address this issue. GC Baily noted historical situations where staff had been pulled in a lot of different directions. The ED suggested that he review the Charter as the language could be read as harsh. Mediator Podziba stated that it would be helpful if the ED and two Commissioners could form a drafting group. Commissioner Camargo noted that the Commissioners need be committed to the language if they put it into the Charter. Mediator Podziba moved to review No. 9 and asked for feedback. COO Stack asked a question related to No. 9(a), noting the role Dynamics case management played and asked if that should be reflected in the Charter. CIE Gyebi noted frustration among his staff due to complaints being frequently filed after sending out a Notice of Deficiency (NOD). Commissioner Roy asked how the Commissioners could help staff, leadership, and licensees with that issue. CIE Gyebi suggested creating SOPs on how to respond to complaints. Commissioner Concepcion asked how to address this issue in the Charter. The ED explained that the Licensee's recourse to an NOD would be a Plan of Correction. The Chair noted that every month of delay in the licensing process was effectively a penalty for Licensees who had to pay rent while they may not have commenced operations. Commissioner Concepcion noted the importance of separating the Charter and the regulations. GC Baily explained that she had drafted item No. 9 and the intent had been to separate Commissioners from ongoing investigations. She explained that her perspective differed from CIE Gyebi and that in her opinion information about investigations could be shared with Commissioners while remaining compliant with Open Meeting Law through proper oversight. CIE Gyebi responded that a complaint goes directly to a Commissioner, or the ED following an NOD, which was effectively an ex parte communication. He explained that he understood Licensee's frustration with delays in licensing but disagreed with GC Baily's comments. He emphasized that his department's tasks were time consuming and broad. The Chair stated that the Commission needed to figure out how to streamline the process and take some of the burden off the Licensee's while ensuring public health, safety, and equity. Mediator Podziba noted that she would work to revise the section. Commissioner Concepcion noted that the language was clunky and recommended that the section be restructured to be the compliance section. Mediator Podziba asked Commissioner Concepcion to join her for edits. CIE Gyebi requested that staff be involved in that process. GC Baily also noted that the any discussion on the prosecutorial function should include legal.

The Commission took a short recess.

- Mediator Podziba moved to review the Draft Charter Section: Budgeting and Budgeting Process. She stated that COO Stack's team had informed her that there were many errors



in the draft Charter and proposed three approaches to correct the section: incorporate the budget SOP by reference, copy and paste parts of the SOP into the Charter, or go through and edit the Charter to accurately reflect the SOP. She observed that the SOP did not speak to the Treasurer or Commissioner's roles. COO Stack explained that the Finance and Communications departments were the only ones which were identified in the Charter and some staff felt micromanaged. She also noted that the Commission had not had a standard budget year since FY19 and FY20. She emphasized the need to update the SOPs related to finance. The Chair noted her preference to be involved in the budget process, and that the previous budget process had not been very transparent. COO Stack stated her preference was to go with the first option provided by Mediator Podziba. The GC noted her concurrence related to the COO's comments specially as it related to staff sentiment.

The Commission took a short recess.

- COO Stack reiterated her preference that the Charter referenced the budget SOP rather than spell out the process because her team felt singled-out. CCO Sinclair agreed and reiterated that Communications team felt the same way. Mediator Podziba asked the group how they felt about simply referencing the budget SOP for this section. Commissioner Stebbins stated that he wanted to include the advocacy process in the budget section. Commissioner Camargo explained how this had been a part of a learning process for most Commissioners and that was how the section ended up being drafted in this way. COO Stack stated she agreed with Commissioner Stebbins' suggestion to explain how Commissioners were involved in the process. GC Baily noted that processes which require flexibility should not be included in the Charter. The Chair asked for further clarity as to why Finance felt singled-out. COO Stack explained that her staff felt micromanaged and suggested changing the Commissioner's initial orientation on the topic so that they had a better understanding. Commissioner Roy noted that the Secretary role was specifically laid out and asked if the COO Stack was uncomfortable with that. COO Stack expressed that the Charter was an agreement between the ED and the Commissioners and her job description described her role. Mediator Podziba asked if anyone was hesitant to simply reference the SOP in the section and no Commissioners objected. Commissioner Roy asked for confirmation that the SOP would be built out to fully explain the Treasurer's role.
- Mediator Podziba moved to the Draft Charter Section: Press, Media and External Engagement and asked CCO Sinclair to provide feedback related to the Section. He stated that his understanding was that the Charter was intended to help the Commissioners and ED best serve the Commonwealth but noted issues in the language. He explained that the document skimmed over very broad topics while being too granular in others and suggested that staff be more involved in drafting the Charter. Mediator Podziba asked how CCO Sinclair would describe a healthy Communications department. CCO Sinclair stated that communications strategies would be worked out between Commissioners and staff while the specific methods were left for staff. He stated that Commissioners would have input in terms of direction but would not micromanage the



process. COO Stack stated that this section read as if it was written in response to negative press and suggested working from a positive example. CIE Gyebi emphasized the need to make the Charter amendable and not a document that is stuck in time. He noted that the advantage of leaning on SOPs so that they could speak to the current Commissioners and explained how hard staff worked to collaborate and do their jobs. Mediator Podziba asked for additional feedback. The ED noted that he appreciated the comments related to SOPs and asked for clarity in how staff ensured that proper feedback was received from Commissioners on SOPs. Commissioner Roy stated that she understood the CCO's sentiment but noted that she did not want to be micromanaged either. She noted a suggested edit that indicated that Communications would be given 7.5 business hours' notice of their decision to participate in a press event. She recounted a recent experience where she was given 20 minutes to participate in an interview and asked CCO Sinclair if his staff would have been able to assist in that instance. CCO Sinclair said he could not guarantee that and noted the need for protection of the staff. He preferred to keep the language at a high level. Commissioner Roy felt that the 7.5 business hours referenced in No. 4 micromanaged Commissioners. Mediator Podziba noted her understanding of the issue and asked everyone to try and build from positive experiences. Commissioner Camargo echoed COO Stack's comments related to the looking at the positives and recommended that a small subcommittee be formed to rewrite the section in order to nail down the process. COO Stack explained the role of SOPs in the process and proposed an annual review of relevant SOPs by the Chair and the Commission Secretary. Commissioner Concepcion indicated her agreement with the proposal but noted that the proposal negated the ability of others to review the SOPs. Director of Human Resources Justin Shrader (DHR Shrader) expressed the section's effect on the culture. The ED noted the role of Public Meetings as it related to talking about administrative functions and the ability for the Commission to talk about these items at a public meeting. CIE Gyebi asked if the Commission could develop subcommittees to discuss such matters and discussed how it would improve transparency with staff and the public. Mediator Podziba asked if the Commissioners were in agreement with removing the language and making the section broader. Commissioner Concepcion concurred and noted that it was helpful to hear from staff on how the Charter would affect them. CCO Sinclair noted the need to delineate from approach on process and the available capacity of staff. Mediator Podziba noted her understanding of CCO Sinclair's comments and the need for setting expectations. Commissioner Roy echoed her comments from last meeting and acknowledged the need for flexibility.

The Commissioners took a short recess.

- Mediator Podziba moved to review the Draft Charter Section: Accountability, Checks and Balances and asked for feedback on item No. 5 relating to how complaints against employees were filed. The Chair asked the GC for feedback on the role of the appointing authority and how disciplinary measures were determined. GC Baily stated that not every issue would be handled by the appointing authority, and in some instances the Commissioners would be bound by the same employee handbook as staff. The Chair



clarified that she was trying to understand the progressive disciplinary measures. The GC described how the handbook was developed but stated that she was not in the position to discuss specific progressive disciplinary measures at that time. The Chair requested that GC Baily get back to her on that topic. DHR Shrader noted that progressive disciplinary action could mean many things from mandatory training to termination. The Chair noted that termination could be complicated due to the appointing authorities. Mediator Podziba moved to review edits to No. 5(c) and noted that GC Baily had requested that notice of the results of a complaint be shared with the Chief People Officer, the Chair, the ED, and the GC. GC Baily further described advice received by outside counsel on investigations. DHR Shrader noted the importance of confidentiality in terms of investigations and suggested that Commissioners not be notified if they were not involved with the complaint. The ED suggested preparing an SOP to spell out the process. Commissioner Concepcion stated that in its current form, the Charter indicated that any complaint against a Commissioner would cause an investigation. DHR Shrader asked if there was any guidance in the employee handbook or state law which could guide them on how to determine if an allegation merited an investigation. GC Baily explained the process. She noted that the Chair would not be replaced until after the violation had been determined. Commissioner Concepcion expressed some confusion as she thought this was solely related to notice. Mediator Podziba explained that GC Baily was talking about point No. 5(c) and Commissioner Concepcion restated her full understanding that it related to notice only. The ED clarified that, pursuant to No. 5(c), the Chair would be notified at the conclusion of an investigation of a Commissioner. He asked who would be notified if it was the Chair that was under investigation. Mediator Podziba indicated that it would be the Secretary. Commissioner Concepcion asked if there was a statutory requirement to notify the Chair. The ED stated that his recollection was that it had been an internal decision to involve a member of the Commission so that he would not be the only person aware. CCO Sinclair expressed concern about creating a conflict of interest if the same two Commissioners were always involved with investigations. COO Stack suggested that an SOP would be helpful and that, as it stood in the draft, this was a closed system of controls. Mediator Podziba noted the involvement of outside counsel. The Chair stated that the input had been helpful, and they could make further edits offline. DHR Shrader suggested creating a personnel committee. Mediator Podziba noted that No. 5(c)(i) explained how appointing authorities would be notified and GC Baily added that it would be in coordination with outside counsel. Commissioner Concepcion stated that if a Commissioner was being reported to their appointing authority, then they should receive notice in writing. GC Baily explained that Commissioners would be notified at the same time as the appointing authority. Commissioner Concepcion asked what the notice process was for staff and CCO Sinclair stated that they were not notified. DHR Shrader concurred that staff were not notified until the end of the investigation and were not given the investigative report. The ED explained the statutory requirement for Commissioners to be provided with the basis for their removal and given a chance to be heard on the matter. Mediator Podziba asked if the process for what to do in the event that the ED is the subject of an allegation or complaint should be included. The ED stated that made sense as he had an appointing authority. Commissioner Concepcion asked if



Commissioners would have access to the same information which was given to the appointing authority. The ED suggested including a provision that Commissioners be notified simultaneously and in the same manner as their appointing authority. CIE Gyebe agreed with GC Baily on investigative procedure.

- Mediator Podziba moved to review the Draft Charter Section: Structural Mechanisms For Joint Commissioner and Commission Staff Work (Project Work Groups). Regarding No. 1, Mediator Podziba asked whether staff should be able to directly propose a project or if it should be vetted through a supervisor or Commissioner. The ED stated that it should not be in the Charter language as it did not involve Commissioners and suggested changing the section heading. The Chair asked for clarification on why this section was included. Mediator Podziba noted that it was intended to make it clear how Commissioners could access staff resources. The ED stated that was an important topic, but in his opinion this section might be too granular. Commissioner Concepcion stated that there was some utility for Commissioners to understand the staff's role in the Commission. COO Stack suggested keeping Nos. 1 and 2 and removing the rest as it was covered by SOPs. The ED stated that No. 7 was important. CIE Gyebe noted that this section could be helpful to future Commissioners. The Chair stated that it was the Chair's responsibility to advocate for Commissioners and wanted the Charter to reflect that.
- Mediator Podziba moved to review the Draft Charter Section: Legislative and Executive Branch Outreach and noted that an edit to No. 1 was a clarification. She moved to review No. 6 and asked for GC Baily's feedback on her edits. GC Baily stated that the intent of her edit was to avoid a situation where there was outreach which had an impact on how the Commission was governed or implemented its laws. CCO Stack noted how the legislative outreach policy had worked in the past through Director of Government Affairs and Policy, with input from GC Baily. Commissioner Concepcion stated that No. 6 reads as a lack of faith in the Commissioners performing outreach. GC Baily described that she had not always been kept in the loop during outreach regarding Chapter 180. CCO Sinclair stated the way to manage that was through himself. Commissioner Concepcion asked for clarification on what issue specifically GC Baily was concerned. GC Baily stated that there were instances where she had been kept out of the loop, which had been improved by Direct Reports meetings, but it was still an issue. She stated that she wanted to have legal involved with anything which could affect the Commission's governing laws.
- Mediator Podziba moved to review the Draft Charter Section: Conflict Resolution. She noted that this section was new and she had received feedback that item No. 1 was overly complicated. Commissioner Roy asked when should it be raised with the ED if there is a violation of the Charter or an ambiguous term. Commissioner Camargo asked how a new ED would be trained on the Charter process. The Chair stated that this was not so much related to conflict resolution, but that Charter conflicts should be reported to the ED. The ED stated that the Chair should be brought in and if there was a tie it should go to the full Commission. The GC asked if there would be a built-in review date for the Charter and Mediator Podziba stated it would be every two years after it was finalized.
- CCO Sinclair stated that it may be helpful to refer to SOPs in the Legislative and Executive Branch Outreach section.



- CIE Gyebi suggested that Commissioners plan a press strategy for when the Charter was released and COO Stack noted that parts that were cut out should be retained to direct staff.
- DHR Shrader discussed exit interviews and how they had provided useful feedback.
- The ED asked about how to introduce the document to staff. Commissioner Concepcion suggested an all-staff meeting in which Commissioners listened to feedback but did not speak. Commissioner Roy suggested renaming the document to something more positive.

III. Adjournment

- Commissioner Roy moved to adjourn executive session.
- Commissioner Stebbins seconded the motion.
- The Chair took a roll call vote:
 - Commissioner Camargo – Yes
 - Commissioner Concepcion – Yes
 - Commissioner Roy – Yes
 - Commissioner Stebbins – Yes
 - Chair O'Brien – Yes
- The Commission unanimously approved the motion.

