

THE COUNCIL OF THE CITY OF NEW YORK

Adrienne E. Adams, Speaker

## BRIEFING PAPER OF THE

**COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS**

## Keith Powers, Chairperson

# February 24, 2022

**Council Chambers**

**City Hall**

**Topic I: Candidate for Appointment by the Mayor upon Advice and Consent of the Council as Corporation Counsel of the City of New York.**

* **Sylvia Hinds-Radix [M-012]**

By letter dated January 28, 2022, Mayor Eric L. Adams formally submitted the name of Judge Sylvia Hinds-Radix to the Council of the City of New York concerning the appointment of Judge Hinds-Radix as Corporation Counsel of the City of New York. As Corporation Counsel, Judge Hinds-Radix would serve as the head of the New York City Law Department.

Pursuant to the New York City Charter (“Charter”) Section 31,the Mayor nominates and, with the advice and consent of the Council, appoints the Corporation Counsel. Section 391(b) of the Charter stipulates that the Mayor shall submit a nominee for Corporation Counsel to the City Council for its advice and consent within 60 days of a vacancy. Today, the Corporation Counsel receives an annual salary of $243,272.

**Law Department Powers and Duties**

Chapter 17 of the Charter outlines the powers of the Corporation Counsel and the New York City Law Department. The Charter dictates that the Corporation Counsel shall be the attorney for the City and all City agencies. The Law Department “shall have the charge and conduct of all the law business of the city and its agencies and in which the city is interested.” New York City Charter, Section 394(a).

This mandate includes the ability to institute legal actions on behalf of the City in any court. New York City Charter, Section 394(c). Any settlement requires the approval of the Comptroller. *Id.* The Corporation Counsel is also charged with preparing certain legal papers for the City, including leases, deeds, contracts, and bonds, among other types of legal papers. New York City Charter, Section 394(b).

**Agency Structure**

Pursuant to Section 392 of the Charter, the Corporation Counsel is authorized to appoint and assign various positions.

The Corporation Counsel “may appoint a first assistant corporation counsel, and such other assistants as may be necessary . . . .” New York City Charter, Section 392(a).

The First Assistant Corporation Counsel “possesses all of the powers” to act as the Corporation Counsel if the Corporation Counsel is absent or disabled, and in case of the death or a vacancy in the office of Corporation Counsel, acts “as the Corporation Counsel until the appointment of a new Corporation Counsel.” New York City Charter, Section 392(b). Georgia Pestana was serving as the First Assistant Corporation Counsel when the position of Corporation Counsel became vacant. Since the vacancy occurred, she has been serving as the Acting Corporation Counsel.

Assistant Corporation Counsels will possess the power to perform duties as assigned by the Corporation Counsel, by written authority filed on record at the Law Department.  New York City Charter, Section 392(c).

**Conclusion**

If appointed, Judge Hinds-Radix will replace Georgia Pestana and serve for an indefinite term. Judge Hinds-Radix will appear before the New York City Council’s Committee on Rules, Privileges, and Elections on Thursday, February 17, 2022. Copies of Judge Hinds-Ridix’s résumé, Committee Report/Resolution, and answers to pre-hearing questions are attached to this briefing paper.

**Topic II: Candidate for Appointment by the Mayor upon Advice and Consent of the Council as Commissioner of the New York City Department of Investigation**

* **Jocelyn Strauber [M-013]**

By letter dated January 28, 2022, Mayor Eric L. Adams formally submitted the name of Jocelyn Strauber to the Council of the City of New York (“Council”) concerning the appointment of Ms. Strauber as Commissioner of the New York City Department of Investigation (“DOI”). As Commissioner of Investigation (“Commissioner”), Ms. Strauber would serve as the head of DOI.

Pursuant to the New York City (“City”) Charter (“Charter”)*,* the Mayor nominates and, with the advice and consent of the Council, appoints the Commissioner. Section 801 of the Charter stipulates that the Mayor may remove the Commissioner upon filing in the office of the Commissioner of Citywide Administrative Services and upon serving on the Commissioner the reasons for the Commissioner’s removal; the Mayor must also grant the Commissioner an opportunity to make a public explanation. Today, the Commissioner receives an annual salary of $237,240.

Charter § 801lists the requirements for appointment as Commissioner. The appointee must be a member of the Bar of the State of New York in good standing and have a minimum of five years of law enforcement experience.[[1]](#footnote-1)

**DOI Powers and Duties**

Chapter 34 of the Charter and Mayoral Executive Order#105 (1986), in conjunction with Executive Order #16 (1978), Executive Order # 72 (1984), and Executive Order #78 (1984), detail the primary responsibilities and jurisdiction of DOI. Primary responsibilities include investigating and referring for prosecution cases of fraud, corruption and other criminal activities by City employees, contractors and others who do business with the City. In addition, DOI is charged with studying City agency procedures to identify systemic failures and recommend improvements; investigating backgrounds of future City employees selected for sensitive positions; conducting background checks on companies awarded City contracts; and serving as the investigative unit of the Conflicts of Interest Board (“COIB”). DOI must maintain a Complaint Bureau, which receives complaints from the public.

The Commissioner is authorized and empowered to conduct any study or investigation that, in the Commissioner’s opinion, may be in the best interests of the City. These include, but are not limited to, investigations concerning the affairs, functions, accounts, methods, personnel or efficiency of any agency over which DOI has jurisdiction. The Commissioner must also conduct investigations directed by the Mayor or the Council. In addition, COIB may direct DOI to conduct investigations of matters relating to COIB’s responsibilities under Charter Chapter 68*.* In sum, the Commissioner has a duty to investigate any matter directed by the Mayor, Council and COIB and must do so within a reasonable time.

DOI has jurisdiction over any agency, officer, or employee of the City; any person or entity doing business with the City; and any person or entity paid with or receiving City funds. DOI has the right to compel the production of documents and testimony of witnesses.

**Appointment and Assignment Powers**

Under Chapter 34 of the Charter, the Commissioner is authorized to appoint and assign various positions. These appointment and assignment powers are summarized below:

The Commissioner may appoint two deputies who are authorized to conduct or preside over, at the direction of the Commissioner, any investigation authorized by Chapter 34 of the Charter. As with the Commissioner, each deputy also has the power to compel the testimony of witnesses, administer oaths and examine such persons.

Pursuant to Executive Order *#*11 (1990) (as amended by Executive Order #34 (1992)), the Commissioner must appoint a Special Commissioner of Investigation for the New York City School District (“SCI”). In April 2018, the Mayor issued Executive Order #32, which prohibits the Commissioner from appointing or removing the SCI without mayoral consent. The SCI investigates allegations of corruption, criminal activity, conflicts of interest and unethical conduct, instances of corporal punishments and sexual misconduct. In addition, the SCI determines whether Department of Education employee allegations concerning whistleblower violations are valid.[[2]](#footnote-2)

Pursuant to Executive Order #7 (1994), the Commissioner must appoint a Special Counsel to the Mayor for the Fiscal Oversight of Education, tasked with overseeing the budgetary procedures and finances of the City school system. The Special Counsel is also a Special Deputy Commissioner of DOI (receiving no compensation for this second role.)

Local Law 70 of 2013 empowers the Commissioner to appoint an Inspector General of the New York City Police Department (“NYPD”) (“OIG-NYPD”). The duties of the OIG-NYPD include investigating, reviewing, studying, auditing and making recommendations relating to the operations, policies, programs and practices of the NYPD on an ongoing basis, with the goal of enhancing the effectiveness of the department, increasing public safety, protecting civil liberties and civil rights, and increasing the public’s confidence in the police force. These investigations, reviews, studies, audits and recommendations also address NYPD’s ongoing partnerships with other law enforcement agencies.

Pursuant to Local Law #165 of 2016, the Commissioner must appoint an individual responsible for conducting system-wide investigations, reviews, studies and audits of operations, policies, programs and practices of the Department of Correction (“DOC”). The Commissioner must also make recommendations with the goal of improving conditions in City jails.

The Commissioner is responsible for approving the appointments of all City agency Inspectors General (“IG”). Beyond such appointments, the Commissioner is tasked with creating and disseminating associated standards of conduct for IGs. The Commissioner also has the responsibility of monitoring and evaluating the activities of IGs to ensure uniformity of activity. All IGs report directly to the Commissioner.

**Guidelines and Recommendations**

The Commissioner’s responsibilities include reviewing and auditing various City agencies and providing recommendations for improvements. These responsibilities are summarized below:

Pursuant to Executive Order *#*87-2 (1987), the Commissioner sets guidelines regulating the submission of annual employee financial disclosures. These disclosures must be submitted to DOI. The guidelines establish the time frame for the submission of these disclosures in order to ensure compliance within a reasonable time.

Executive Order #18 (1995) created the Commission to Combat Police Corruption (“CCPC”) to assist the Mayor and the Police Commissioner in monitoring and evaluating anti-corruption efforts made by the NYPD. While NYPD retains primary investigatory power concerning specific corruption allegations made by NYPD personnel, the CCPC and the Commissioner, with mayoral approval, may determine that there are special circumstances in which the very assessment of anti-corruption efforts mandate investigating underlying allegations against NYPD personnel.

Under Executive Order #26 (1996), which renamed the Child Welfare Administration to the Administration for Children’s Services (“ACS”), the Commissioner was mandated to chair the newly created Inter-Agency Group. The Commissioner, along with the Mayor’s Office of Management and Budget, Office of Labor Relations, NYPD, the Human Resources Administration and the Law Department are tasked with making recommendations concerning ACS, with the goal of improving ACS operations.

If in the course of its investigation the DOI uncovers the need for systematic changes at a City agency, it may publish Policy and Procedure Recommendations (“PPRs”). Aside from a few instances in which City agencies’ implementation efforts are publicly disclosed, DOI has been tracking overall City agency acceptance and implementation of PPRs since at least 2007. That year, the DOI formalized the PPR program, and began to track its recommendations and City agencies’ implementations in a centralized way.

Pursuant to Executive Order #64 (2021), City agencies that contract with outside entities for the provision of human services must make best efforts to amend existing contracts with such providers to require that such providers supply information about sexual harassment complaints brought against such providers. These contract amendments must require that the contracted providers make certain information (e.g., sexual harassment policies, complaint information, and complaint resolution information) available to DOI. DOI is required to review provided materials related to any sexual harassment complaint and to submit its findings to all City agencies that contract with the relevant provider.

Pursuant to Local Laws #33 of 2012 and #9 of 2021, the Commissioner has certain responsibilities pertaining to whistleblower complaints. An officer or employee of a City agency can make a report to the Commissioner concerning conduct which the officer/employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another City officer or employee that concerns that City officer’s office or employment, or by a person dealing with the City that concerns that person’s dealings with the City. Also, an officer or employee of certain City contractors and subcontractors can make a report to the Commissioner regarding such conduct by an officer or employee of that contractor or subcontractor that concerns a contract with a contracting City agency. Furthermore, an officer or employee of a City agency can make a report to the Commissioner concerning conduct which the officer/employee knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by another City officer or employee that concerns that City officer/employee’s office or employment, or by a person dealing with the City that concerns that person’s dealings with the City. Alleged adverse personnel action by a City officer/employee in retaliation for whistleblowing can be reported to the Commissioner, and the Commissioner must investigate such allegations. Upon a finding that retaliatory adverse personnel was taken, the Commissioner must report the Commissioner’s findings and any recommendations to the head of the appropriate agency or entity for remedial action.

**Reporting Requirements**

The Commissioner has a duty to comply with various reporting requirements. These requirements are summarized below:

The Commissioner must prepare a written report or statement of findings concerning completed investigations and forward a copy to any requesting party. If the investigation involves allegations of criminal conduct, the Commissioner, upon completing the investigation, must forward a copy of the written report or statement of findings to the appropriate prosecuting attorney. If the matter investigated concerns a conflict of interest or unethical conduct allegation, the Commissioner must forward a copy of the written report or statement of findings to the COIB.[[3]](#footnote-3)

The Commissioner has a duty to forward to the Council and to the Mayor a copy of all reports and standards prepared by DOI’s Corruption Prevention and Management Review Bureau upon their issuance.[[4]](#footnote-4)

DOI is required to post a report online each year regarding public complaints received by DOI for the preceding year. The report must include the total number of complaints, broken out by complaint mechanism, and a summary of DOI outreach activities.[[5]](#footnote-5)

The Commissioner, in consultation with the SCI and the Corporation Counsel, is required to annually report to the Mayor and the Council certain whistleblower-related information for the preceding fiscal year.[[6]](#footnote-6)

The Commissioner and the SCI are required to develop and maintain respective web applications providing information on City agencies’ compliance with DOI’s and the SCI’s investigatory recommendations.[[7]](#footnote-7)

Specifically, the Commissioner is required to report on the functioning of various City agencies, including the New York City Housing Authority (“NYCHA”), NYPD and the DOC. These reports are summarized below:

The Commissioner is required to submit to the Council two annual reports related to NYCHA employee overtime and small procurement contracts. The employee overtime report must include the total overtime hours recorded and total overtime paid to NYCHA employees for the prior calendar year aggregated by borough and housing development and disaggregated by department and job title. The second annual report must include the number of small procurement contracts, as defined by NYCHA procurement rules, awarded during the prior calendar year.[[8]](#footnote-8)

The Commissioner is required to submit a report to the Mayor, Council and Police Commissioner each time the Commissioner reviews NYPD operations, and must annually issue a report to these entities on the Commissioner’s review of NYPD that includes recommendations for operational improvement.[[9]](#footnote-9) Additionally, the Commissioner is required to submit a report to the Mayor, Council and Commissioner of Correction each time the Commissioner examines system-wide operations at the DOC, and to submit a report each year to these entities that summarizes the DOI’s investigations of and recommendations for the DOC.[[10]](#footnote-10)

Separately, the OIG-NYPD is required to work with the Law Department, Comptroller, NYPD, Civilian Complaint Review Board, CCPC, and City Commission on Human Rights to collect and evaluate information regarding allegations or findings of improper police conduct and to develop recommendations relating to the discipline, training, and monitoring of police officers and related operations, policies, programs, and practices of NYPD. Any written evaluation or recommendations developed by the OIG-NYPD was required to be posted online annually for the first three years following enactment of the local law that established this requirement, and now the OIG-NYPD is required to issue any evaluation or recommendations every three years.[[11]](#footnote-11)

**Conclusion**

If appointed, Ms. Strauber will fill a recent vacancy and serve for an indefinite term. Ms. Strauber will appear before the Council’s Committee on Rules, Privileges, and Elections on Thursday, February 17, 2022. Copies of Ms. Strauber’s résumé, Committee Report/Resolution, and answers to pre-hearing questions are attached to this briefing paper.

Attachments:

**PROJECT STAFF**

Charles W. Davis III, Director

Alycia Vassell, Legislative Investigator

Ramses Boutin, Legislative Investigator

Committee on Rules, Privileges and Elections Counsel

Lance Polivy

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1. Charter § 801does not define the term “law enforcement experience.” Black’s Law Dictionary, 9th ed., defines “law enforcement” as “[t]he detection and punishment of violations of the law.” The term is not limited to criminal law enforcement. For example, the Freedom of Information Act includes an exemption from disclosure for information compiled for law enforcement purposes and given in confidence. The exemption is valid for the enforcement of a variety of noncriminal (such as national security laws) as well as criminal laws. *See* 5 USCA § 552(b)(7). [↑](#footnote-ref-1)
2. A note on City school system naming: In June 30, 2002, the New York State legislature turned over control of the City school system to Mayor Michael R. Bloomberg, who was empowered to appoint a Chancellor to preside over a newly named “Board of Education.” The Board was expanded from seven to 13 members, with one member each selected by the Borough Presidents and the rest by the Mayor. The 13-member Board, later designated as the “Panel for Educational Policy,” together with the Chancellor comprise the “Department of Education of the City of New York.” [↑](#footnote-ref-2)
3. Charter § 803(e)(1) [↑](#footnote-ref-3)
4. Charter § 803(g) [↑](#footnote-ref-4)
5. [Local Law 43 of 2018](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3055680&GUID=5F6FC889-2591-4A4A-820A-5576B73942D6&Options=Advanced&Search=)/Charter § 808(b) (note that there are two section 808s) [↑](#footnote-ref-5)
6. Local Law 10 of 2003/[Local Law 9 of 2021](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4196294&GUID=76C69B50-32AF-4089-9D53-3B731116DFA6&Options=Advanced&Search=)/Administrative Code § 12-113(i) [↑](#footnote-ref-6)
7. Local Law [43 of 2020](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3852719&GUID=723B2E5F-78E9-4F26-85DF-590186F36655&Options=Advanced&Search=)/Administrative Code § 33-201 [↑](#footnote-ref-7)
8. [Local Law 141 of 2019](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3830901&GUID=976F907C-E57A-4D77-8B25-446785A9F847&Options=Advanced&Search=)/Charter § 803(h), (i) [↑](#footnote-ref-8)
9. Local Law 70 of 2013/[Local Law 165 of 2016](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2781715&GUID=BB98E462-F8BB-491B-B75E-26D63B80E5B2&Options=Advanced&Search=)/Charter § 803(c), (e)(2) and (e)(3) [↑](#footnote-ref-9)
10. Local Law 165 of 2016/Chapter 322 of the Laws of 2021/Charter § 803(d), (e)(2) and (e)(3) [↑](#footnote-ref-10)
11. [Local Law 166 of 2017](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1672818&GUID=0CA0B20D-5E48-45E4-B81C-07BB0630CADF&Options=Advanced&Search=)/Charter § 808 (note that there are two section 808s) [↑](#footnote-ref-11)