



Commonwealth of Massachusetts **STATE ETHICS COMMISSION**

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Barbara A. Dortch-Okara (ret.)
Chair

Karen L. Nober
Executive Director

MINUTES OF THE STATE ETHICS COMMISSION MEETING **March 19, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Vice-Chairman Martin F. Murphy called the meeting to order at 9:10 a.m. Also in attendance were Commissioners William J. Trach, Regina L. Quinlan and David A. Mills. Chairman Barbara Dortch-Okara was absent.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Mills, seconded by Commissioner Trach, the Commission voted 3-0, with Commissioner Quinlan abstaining because she was absent from the last meeting, to waive the reading and approve the minutes of the February 19, 2015 public and executive sessions.

EXECUTIVE DIRECTOR'S REPORT

Personnel

Executive Director Karen L. Nober reported that one of the Commission's part-time receptionists, Maria Muller, resigned in order to take a position with more responsibility that was closer to her home. This change puts additional stress on our support staff, as the Commission now has only two full-time administrative staff members to support the entire agency, along with only one part-time receptionist.

Budget

FY15 Budget Update: Ms. Nober provided an update to the previously discussed plan to use furloughs to address the mid-year budget cuts. Ms. Nober stated that Ms. Muller's resignation, along with some other personnel-related savings, would allow the Commission to absorb the mid-year budget cut without having to furlough Commission staff. Therefore, she did not anticipate any negative impact on staff during FY 2015. Ms. Nober stated that she met with and updated Commission staff on this matter.

FY16 Budget Update: Ms. Nober also reported that the Governor filed his FY16 budget recommendation, which proposes to fund the Ethics Commission at our FY14 funding levels. She stated that House 1, the Governor's proposed budget, is not a viable option for the Commission, especially in light of another collective bargaining increase scheduled to go in effect this October. Ms. Nober stated that, under House 1, one full-time administrative assistant position and one part-time receptionist position, both currently unfilled, will remain unfilled for FY16, and we would likely have to cut one additional staff position. Ms. Nober stated that she has a meeting scheduled with House Ways and Means Chairman Dempsey, and was looking to also meet with the Speaker. She said that the Commission's budget hearing was scheduled for March 25th in Worcester, and stated that the House will release its budget sometime in mid-April. Commissioner Mills thanked Ms. Nober for her report and acknowledged the difficulty in fighting for funding. He offered to accompany Ms. Nober and provide support at her meetings with the Legislature. Ms. Nober thanked him, and said that, while she would be open to that, she typically tries to keep the Commissioners removed from the budget process.

COGEL

Ms. Nober reported that she attended Planning Committee meetings on March 6 and 7 to develop the agenda for the COGEL conference scheduled to take place at the end of the year in Boston, and that the conference agenda was relatively set.

New Administration Training

Ms. Nober stated that in April, she and General Counsel Deirdre Roney will be conducting a training on the conflict of interest law for Senate members and that Public Education and Communications Division Chief David Giannotti will provide training for Senate staff.

Mandatory Conflict of Interest Law Training

Ms. Nober reminded the Commissioners that the deadline for acknowledging receipt of the summaries of the law and completing the online training is April 10, 2015. She also reminded the Commissioners of the May 1 SFI filing deadline.

Legal Committee Meeting

Ms. Nober announced that the next Legal Committee meeting would be held immediately following the April 16, 2015 Commission meeting, and that she hopes to schedule an Enforcement Committee meeting in May.

PUBLIC EDUCATION DIVISION REPORT

Mr. Giannotti presented the Public Education and Communication Division's report for the month of February 2015. The Commission had no questions.

REPORT OF LEGAL COMMITTEE CHAIR

Legal Committee Chairman Trach reported on the Legal Committee meeting held just prior to the Commission meeting regarding draft Advisory 15-1 on public employees seeking new employment. He explained that the new advisory is informed by the last advisory that the Commission published (Advisory 14-1), but focuses on the specific context of seeking employment. The new advisory deals comprehensively with advice the Commission has given over the years and addresses three major issues: 1) whom may the public employee approach during a job; 2) what happens if the public employee must have official dealings with someone with whom he is seeking employment while the employment application is pending; and 3) the restrictions on former public employees in new jobs. He reported that the Committee discussed in detail the first half of the draft advisory and would continue its discussions immediately following the next Commission meeting in April.

LEGAL DIVISION MATTERS

Ms. Roney explained that under the Commission's regulations, some actions are permissible if disclosed to and approved by the public employee's appointing authority. For example, acceptance of travel-related expenses and attendance at events are permissible if disclosed to and approved by the appointing authority. An appointing authority that is a multi-member body may delegate to its chair the authority to make such determinations. Ms. Roney requested that the Commission consider delegating to its Chair and Vice-Chair the authority to make necessary determinations in response to disclosures made by the Executive Director and General Counsel.

On the motion of Commissioner Trach, seconded by Commissioner Quinlan, the Commission voted 4-0 to delegate, pursuant to 930 CMR 5.04, to the Commission's Chair, or in the absence of the Chair, to the Commission's Vice Chair, the authority to make determinations necessary in response to disclosures pursuant to G.L. c. 268A and 930 CMR. Disclosures made by the General Counsel, and determinations made by the Chair or Vice-Chair to the General Counsel, shall be copied to the Executive Director.

SFI Status Report and Current Projects

Legal Division Deputy Chief/SFI Lauren Duca presented a report on the status of the SFI filing season and other current projects. Ms. Duca noted that in light of the snow storms this winter, the SFI team is increasing its notice reminders to filers in order to ensure a high compliance rate. Ms. Duca reported that she and Financial Disclosure Administrator and Analyst Rob Milt met with Greg Birne, General Counsel for the Office of Campaign and Political Finance (OCPF), to discuss how we could assist in providing information to candidates about their filing obligations, and drafted informational materials regarding the SFI process to be provided to first-time candidates by OCPF. OCPF said they were willing to distribute these informational materials.

Ms. Duca also reported that an error in the electronic filing system involving de-activated filers that occurred during the rollover to the CY 2014 filing season was identified. Because the error impacted the administrators' side of the application and did not cause any problems for filers, Ms. Duca indicated that the SFI team is not currently addressing the error, because it would be time-consuming and a poor use of staff time, which has been largely dedicated to developing the new SFI filing application.

Chief Financial Officer/Director of Budget & Administration Michael Memmolo reported on the procurement process for the development of the new SFI Filing and Management Application that will replace the Commission's current SFI electronic filing system. He reported that the Project Management Team (PMT) has contributed a large amount of time to the procurement process, which is going well. He also gave an overview of the procurement process to date, reporting that the team is currently in the scoring phase of the process. In April, there will be a bidder demonstration, which will be attended by agency liaisons, representatives from MassIT and Commission employees. It is unclear when the evaluation phase will be completed. The team hopes to have a clearer timeframe for the Commission at next month's meeting. Vice-Chairman Murphy asked how the new SFI filing system would affect the agency's budget. Ms. Nober explained that the money used for the development of the SFI filing system is separately funded through capital bond monies and not out of the agency's appropriation.

Legal Division Metrics

Ms. Roney presented the following Legal Division metrics for February 2015:

- **Written advice.** The Legal Division answered by letter or email 44 written requests for advisory opinions under G.L. c. 268A and c. 268B.

For comparison:	2008 monthly average (pre Ethics Reform):	31
	2010 monthly average (post Ethics Reform):	52
	February 2014 (same month last year):	26
	January 2015 (previous month):	40

- **Oral advice.** The Legal Division attorneys provided legal advice by telephone or on a walk-in basis to 300 requests for advice from state, county and municipal officials.

For comparison:	2008 monthly average (pre Ethics Reform):	280
	2010 monthly average (post Ethics Reform):	450
	February 2014 (same month last year):	478
	January 2015 (previous month):	378

- **Review of municipal letters.** We reviewed 12 letters issued by city solicitors/town counsel pursuant to G.L. c. 268A, § 22 and 930 CMR 1.03.

For comparison:	2008 monthly average (pre Ethics Reform):	6
	2010 monthly average (post Ethics Reform):	8

February 2014 (same month last year):	4
January 2015 (previous month):	0

- **Backlog.** As of today, we have 6 pending requests for written advice that are more than 30 days old, of which the oldest was received on December 10, 2014. We have a total of 23 pending requests for written advice.

Legal Division Special Projects

Ms. Roney provided the Commission with a list of the special projects currently being worked on by members of the Legal Division.

Adjudicatory Matters

Ms. Roney presented the calendar of hearing dates and pre-hearing conferences in pending Commission adjudicatory proceedings.

Litigation Matters

Ms. Roney reported that the Commission's cross-motion for judgment on the pleadings with respect to Richard McClure's complaint seeking judicial review of the Commission's August 2, 2013 decision that he violated c. 268A, § 17 is under advisement.

Commissioner Trach commented that the Commission waited for a long time before filing its cross-motion, and suggested that a motion to dismiss the matter based on Mr. McClure's failure to prosecute the action could have been filed sooner. Ms. Roney explained that she made the decision to provide more time to Mr. McClure, because he was a pro se litigant. Furthermore, when she spoke to the Attorney General's Office about what to do about the Motion to Dismiss, they also suggested giving Mr. McClure more time.

Commissioner Quinlan asked whether the matter was being handled in the Attorney General's Office. Ms. Roney explained that she has been appointed as a Special Assistant Attorney General and, as such represents the Commission in this case as well as in other cases. This means that the Legal Division writes and argues cases while the Attorney General's office reviews our briefs and provides support to us in representing cases on appeal. Ms. Roney further stated that under the new Attorney General, she has already been re-designated as a Special Assistant Attorney General and sworn in as such, and thus continues to represent the Commission in that capacity.

ENFORCEMENT DIVISION MATTERS

Attorney Metrics and Investigations Unit Metrics

Enforcement Division Deputy Chief of Investigations Kathy Gallant presented reports of the Investigations Unit activities for February 2015. Ms. Gallant stated that the number of pending complaints is at about 196. She further explained that there has been an increase in complaints

as municipalities enter into Town Meeting season. Furthermore, the Investigations Unit is receiving about 7-9 calls a day, compared to the normal average of about 4 calls a day.

Enforcement Division Chief Kelly Downes reported that 55 educational letters were completed in February, and that there are currently 27 pending. The Enforcement Division aims to get that number down to below 20. Ms. Downes stated that educational letters would be included in the metrics from now on. Ms. Gallant added that educational letters are largely a collaborative effort with investigators drafting the facts portion of the letter and the attorneys contributing the legal analysis.

EXECUTIVE SESSION

At 9:43 a.m., on the motion of Vice-Chairman Murphy, seconded by Commissioner Quinlan, the Commission voted 4-0 to enter into executive session to discuss matters subject to the provisions of G.L. c. 30A, § 21, subparagraph (a)(7) and G.L. c. 268B, §§ 3 and 4. Vice-Chairman Murphy states that these matters will include investigatory matters, cases deferred, preliminary inquiry recommendations and reports, summons authorization requests, disposition agreements, closing memoranda, public and private education letters, and advisory opinions.

Vice-Chairman Murphy stated that the Commission will not reconvene in public session following the executive session.

VOTE:	Vice-Chairman Murphy	<u>yes</u>
	Commissioner Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of March 19, 2015.
2. Minutes of the State Ethics Commission Meeting for the February 19, 2015 Public and Executive Sessions.
3. Memorandum dated March 13, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for February 2015.
4. Memorandum dated March 13, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. 930 CMR 5.04
6. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
7. Report of Enforcement Division Investigations Unit Metrics, dated March 3, 2015.

Respectfully submitted,

A handwritten signature in blue ink that reads "Pauline Nguyen". The signature is fluid and cursive, with a small "v" mark above the "y" in "Nguyen".

Pauline Nguyen
Assistant General Counsel