



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 **December 16, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:01 a.m. Also in attendance were Commissioners William J. Trach, Regina L. Quinlan, David A. Mills and Thomas J. Sartory.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Quinlan, seconded by Vice-Chairman Trach, the Commission voted 5-0 to waive the reading and approve the minutes of the November 18, 2015 public and executive sessions.

EXECUTIVE DIRECTOR'S REPORT

Budget

Executive Director Karen L. Nober reported that, so far, the Governor has not announced any decision on mid-year cuts, but he has left the door open for that. He has also made comments indicating that the FY17 budget will be a tight one. Ms. Nober said that the Governor will release his FY17 budget in January, the week after the Commission's January meeting, and she anticipates that the Commission will be level-funded. She said that anything less than level-funding will be problematic.

Personnel

Ms. Nober reported that 69 resumes have been received in response to the Director of Communications job posting. She said that she and David Giannotti reviewed the resumes and

first-round interviews will be scheduled with 7 to 10 applicants. Ms. Nober stated that she expects to post the Deputy Chief of Enforcement position sometime after the holidays in order to get the best possible response.

Audit

Ms. Nober informed the Commission that she, Chief Financial Officer Michael Memmolo and General Counsel Deirdre Roney met with staff from the State Auditor's Office yesterday. The State Auditor's Office is conducting what they call a "limited performance audit" which they informed us should take about 4 weeks to complete. She said that at the end of the process, the Auditor's Office will prepare a draft report, and we will have an opportunity to comment on it before it is finalized. The Auditor's Office will send its report to the members of the Commission. Chairman Dortch-Okara inquired about when the last time the Commission was audited, and Ms. Nober stated that a much more extensive audit was conducted in 2008.

COGEL

Ms. Nober reported that the COGEL conference, which was held earlier this month, was a very successful event. She said that more than 420 people registered for the event, which was a very high number. She said that she was pleased that a large number of Commission staff attended many of the sessions, and she was glad that some of the Commissioners also were able to attend some of the sessions. Ms. Nober noted that Chairman Dortch-Okara gave a speech during the first night of the conference that was very well received. She said that the Governor, the Mayor of Boston and the Secretary of State all spoke at the event as well. Ms. Nober said that General Counsel Deirdre Roney, CFO Michael Memmolo and Enforcement Chief Kelly Downes each participated on separate panels, and those all went very well. She noted that a number of Commission staff, along with staff from the Office of Campaign and Political Finance, provided support for the event by staffing the reception desk and the conference sessions. She said she heard a lot of positive feedback from other conference attendees, and she was very pleased with how the event turned out. Chairman Dortch-Okara added that she was very pleased with the conference and reported that the Commission staff got a lot of praise for staffing, promoting and leading the conference. She attended the enforcement panel and found it very enjoyable. She said that overall the conference was very well organized.

Correspondence re recent PEL

Ms. Nober noted that she had included in the packet copies of letters received regarding a recently issued Public Education Letter. The Commission had no questions.

Next Commission Meeting

Ms. Nober reminded the Commission that the January meeting was scheduled for Wednesday, January 20, 2016, at 9:00 am. Vice-Chairman Trach stated that he had a scheduling conflict and asked if the next meeting could be rescheduled to Thursday, January 21, 2016, at 9:00 am instead. The commissioners agreed to reschedule the meeting to that date.

PUBLIC EDUCATION DIVISION REPORT

Public Education and Communications Division Chief David Giannotti presented the Public Education and Communication Division's report for the month of November 2015. Mr. Giannotti reported that he has been sending emails to public agencies to notify them of the new compliance cycle. He explained that last year there were two components to meeting the mandatory education requirements: 1) to complete the online training, and 2) to acknowledge receipt of the summary of the conflict of interest law. The only requirement this year is to acknowledge receipt of the summary of the conflict of interest law. Mr. Giannotti further reported that House Counsel has asked that he wait until January to send out the notices.

Ms. Roney added that Commission will be receiving the summary of the conflict of interest law electronically and that the Commissioners may respond to the email instead of printing out the acknowledgment certificate in order to save paper.

LEGAL DIVISION MATTERS

New State Earned Sick Time Law and Revisions to Commission Sick Time Policy

Ms. Roney presented to the Commission a memorandum on the Commonwealth's new Earned Sick Time Law. She explained that the new law applies to all employers in the Commonwealth, including state agencies, and that the Commission is required to bring its own policies into compliance by January 1, 2016. Ms. Roney stated that the memorandum presents two approaches to implementing the new law: the first way is to adopt HRD's Earned Sick Time Policy and the Red Book's policies on sick time in place of the Commission's current sick leave policy, and the second way is to adopt a single sick leave policy that combines earned sick time with the Commission's current policy. Commissioner Trach stated that he strongly opposed adopting the Red Book's sick leave provisions because it references other documents and would be confusing. He stated that the new law should be written into the Commission's policy in a way that allows employees looking at the Manual to understand what applies to them. Commissioner Quinlan asked whether the changes mandated by the new law have been discussed with Commission staff. Ms. Roney responded that there was a meeting on Monday December 14 with staff to explain that the sick leave policy would be changing due to the new law. Ms. Nober stated that she did not support combining the earned sick time provisions with the Commission's current policies on sick time, as that would extend the earned sick time protections to all use of sick time. She said such an approach would remove any ability to manage the excessive use of sick time by employees, and that addressing the requirements of the earned sick time law in a separate policy, as the state is doing, would be a better way to implement the new law. Chairman Dortch-Okara stated that there were still limits under the new law and asked whether the new law actually removes all of a manager's ability to manage use of sick leave. Ms. Roney responded that the law does not remove all ability to manage sick leave and that employees are still prohibited from misusing sick leave. Commissioner Trach stated that he appreciated Ms. Nober's concerns, but that he was not seeing the new law as restrictive as she was reading it and that there is room to interpret the law. He stated that the Commission should adopt the law the way it is written in order to meet compliance requirements and continue the conversation. He stated that he is comfortable with the approach to adopt provisionally a single sick leave policy

that combines earned sick time with the Commission’s current policy. After discussion, on the motion of Commissioner Quinlan, seconded by Commissioner Mills, the Commission voted 5-0 to adopt provisionally a single policy that combines the earn sick leave time with the Commission’s current policy, which will be reviewed by the April Commission meeting.

Development of New SFI Filing and Management Application (Lauren Duca)

Legal Division Deputy Chief/SFI Lauren Duca reported on the current status of the new SFI Filing and Management Application. She reported that she and SFI Administrator and Analyst Robert Milt conducted 15 training sessions for 191 agency liaisons on the use of the Liaison Module; that liaisons were provided with an opportunity to test the new system and identified problems and provided suggestions; that she and Mr. Milt reviewed, updated and/or created messages and template notices to be automatically generated by the new filing system, that CFO Michael Memmolo and Project Manager Susan Laniewski demonstrated the new SFI system at the COGEL conference on December 6, 2015; that the Administrator and the Liaison Modules went “live” successfully on December 7, 2015; that she and Project Manager Susan Laniewski are finalizing a Liaison Manual; that SSB BART has completed the testing of the Filer Module which had a 76% compliance rate after the first test round for both visual and hearing assistive technologies, and the test detected no Level 5 errors, which are critical errors that would prevent the deployment of the Filer Module; that remediation of the Filers Module is underway to address the issues identified by SSB BART; that the final testing of the Administrator and Liaison Modules is underway and a report on that testing is expected to be provided to the Commission on December 18, 2015, and that testing on the Public Inspection Module is expected to be completed and the results available in January 2016. Ms. Roney commended the entire SFI team for their hard work on the application. The Commission had no questions.

Legal Division FY 2015 Report

General Counsel Deirdre Roney presented the following Legal Division metrics for November 2015. The Commission had no questions.

- **Written advice.** The Legal Division answered by letter or email 27 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
	November 2014 (same month last year):	43
	October 2015 (previous month):	32

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 352 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
	November 2014 (same month last year):	323
	October 2015 (previous month):	367

- **Review of municipal letters.** Division staff did not review any 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
	November 2014 (same month last year):	3
	October 2015 (previous month):	0

- **Backlog.** As of today, the Division has 5 pending requests for written advice that are more than 30 days old, of which the oldest was received on May 8, 2015. There are a total of 27 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. The Commission had no questions.

Adjudicatory Matters

Ms. Roney presented the calendar of hearing dates and pre-hearing conferences in pending Commission adjudicatory proceedings. The Commission had no questions.

Litigation Matters

McClure v. State Ethics Commission: Superior Court Civil Action No. MICV2013-04186-L. Ms. Roney reported that on November 3rd, a hearing was held in Middlesex Superior Court in Lowell before Justice Kenneth J. Fishman on Richard McClure's G. L. c. 30A appeal of the Commission's 2013 decision that he violated c. 268A, § 17(c). Justice Fishman took the matter under advisement. On November 27th, the Commission received a Clerk's Notice informing us that Justice Fishman had denied McClure's motion for judgment on the pleadings and ordered that judgment be entered for the Commission. McClure will have 60 days to appeal after judgment is entered. Ms. Roney commended Legal Division Deputy Chief David Wilson on a job well done arguing the matter. Mr. Wilson is tracking the docket to see when judgment is entered. The Commission had no questions.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics report

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented the monthly report of Investigations Unit activities for October 2015. Ms. Gallant reported that the Investigations Unit is working on a few complex matters at the intake phase that are taking a considerable amount of effort on the investigators' part before bringing them to the preliminary inquiry stage. The Commission had no questions.

Draft Enforcement Procedures

Enforcement Division Chief Kelly Downes presented the draft Enforcement Procedures to the Commission. After discussion, on the motion of Vice-Chairman Trach, seconded by Commissioner Quinlan, the Commission voted 5-0 to post the draft Enforcement Procedures Manual, with the revisions discussed at the meeting, on the Commission website until February 1, 2016, along with a statement inviting comment on the draft. The Commission also, on the motion of Vice-Chairman Trach, seconded by Chairman Dortch-Okara, voted 3-2 to make certain revisions to the Enforcement Procedures with respect to the Executive Director's role during deliberations in the adjudicatory stage, and to approve the draft, with the revisions discussed at the meeting, to be posted on the website.

[At 10:41 a.m. the Commission took a brief break. At 10:49 a.m. the Commission reconvened.]

EXECUTIVE SESSION

At 10:50 a.m., on the motion of Chairman Dortch-Okara, seconded by Commissioner Mills, the Commission voted 5-0 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. Chairman Dortch-Okara stated that such matters will include investigatory matters, cases deferred, a preliminary inquiry recommendation and summons authorization request, a preliminary inquiry report, a supplemental summons authorization request, a disposition agreement, advisory opinions, and deliberations, and a matter subject to the provisions of G.L. c. 30A, § 21, subparagraph (a)(1).

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>
	Commissioner Sartory	<u>yes</u>

Chairman Dortch-Okara stated that the Commission will not reconvene in public session following the executive session.

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of December 16, 2015.
2. Minutes of the State Ethics Commission Meeting for the November 18, 2015 Public and Executive Sessions.
3. Responses to Public Education Letter, Preliminary Inquiry No. 2014-03, dated Nov. 30, 2015 and Dec. 1, 2015.
4. Memorandum dated December 10, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for November 2015.

5. Memorandum dated December 11, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
6. Memorandum dated December 11, 2015 to the Commission from Karen L. Nober and Deirdre Roney concerning State Earned Sick Time Law, with Attachments 1-3.
7. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
8. Draft Enforcement Procedures
9. Report of Enforcement Division Investigations Unit FY 2016 Metrics.

Respectfully submitted,

A handwritten signature in blue ink that reads "Pauline Nguyen". The signature is written in a cursive, flowing style with a prominent flourish at the end.

Pauline Nguyen
Assistant General Counsel