



Commonwealth of Massachusetts **STATE ETHICS COMMISSION**

One Ashburton Place - Room 619
Boston, Massachusetts 02108

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

David A. Wilson
Acting Executive Director

MINUTES OF THE STATE ETHICS COMMISSION MEETING

October 20, 2016

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:03 a.m. Also in attendance were Vice-Chairman Regina L. Quinlan, Commissioner David A. Mills, Commissioner Thomas J. Sartory, and Commissioner Maria J. Krokidas.

Chairman Dortch-Okara officially welcomed Commissioner Krokidas to her first meeting.

ELECTION OF NEW VICE-CHAIR AND APPOINTMENT OF LEGAL COMMITTEE CHAIR

On the motion of Commissioner Dortch-Okara, seconded by Commissioner Mills, the Commission voted 4-0, with Commissioner Quinlan abstaining, to elect Commissioner Quinlan as the Vice-Chair.

Chairman Dortch-Okara appointed Commissioner Krokidas to serve as Chair of the Legal Committee.

APPROVAL OF MEETING MINUTES

On the motion of Chairman Dortch-Okara, seconded by Commissioner Quinlan, the Commission voted 5-0 to waive the reading and approve the minutes of the September 16, 2016 public and executive sessions, with the correction of a typographical error on page 5 of the public session minutes.

On the motion of Commissioner Mills, seconded by Chairman Dortch-Okara, the Commission voted 5-0 to waive the reading and approve the public session minutes of the September 16, 2016 Audit, Finance and Human Resources Committee ("HR Committee") meeting.

ACTING EXECUTIVE DIRECTOR'S REPORT

Acting Executive Director, David A. Wilson, welcomed Commissioner Krokidas to the Commission.

New Enforcement Division Chief

Mr. Wilson reported that Monica Brookman will be joining the Commission staff as the Enforcement Division Chief on October 27.

Mr. Wilson thanked Acting Enforcement Division Chief Candies Pruitt-Doncaster for her service and commended her for the immense amount of work she performed while serving as Acting Chief for the last seven months.

Hiring

Mr. Wilson reported that the Commission has received thirty-five (35) resumes for the Deputy Chief of Investigations position. These resumes are currently being reviewed.

Mr. Wilson reported that the Commission has received fifty (50) resumes for the Enforcement Division Counsel position. These resumes are currently being reviewed.

Mr. Wilson reported that interviews have been completed for the Chief Financial Officer/Director of Budget & Administration ("CFO") position and he anticipates that this position will be filled soon. Mr. Wilson thanked Lennie DeSousa Smith, Chief of Administration and Finance for the Massachusetts Commission Against Discrimination, for her assistance with the interview and hiring process for the CFO position.

Evaluations

Mr. Wilson reported that staff performance evaluations have been completed. He noted that for the first time, employees had the opportunity to evaluate their supervisors. He added that the information received from employees was helpful.

Ethics Reform Task Force

Financial Disclosure Administrator and Analyst Robert Milt presented a brief history of the Ethics Reform Task Force. Mr. Milt reported that the Joint Committee on State Administration and Regulatory Oversight held a hearing on the Resolve to establish a task force on integrity in state and local government. House Speaker Robert DeLeo provided written testimony in support of the Resolve. Pamela Wilmot, Executive Director of Common Cause, testified in favor of the Resolve and stated that Common Cause would be in favor of providing the Commission with full regulatory authority. Chairman Dortch-Okara inquired what the next step will be in this process. Mr. Milt responded that the House is likely to vote on the Resolve by the end of 2016.

Budget

Mr. Wilson reported it is likely that there will be a mid-year budget cut. The Governor's Office has reported a \$295 million state-wide budget gap. The Governor has offered a one-time pay-out incentive to executive branch employees who voluntarily leave state service by November 14. Following the completion of this program, the Governor will determine whether additional layoffs are necessary to reduce overall state spending by 1%. Mr. Wilson noted that because the Commission is an independent agency, it is not directly affected by these actions. However, when budget shortfalls occur, independent agencies are typically asked to voluntarily give back money in the form of a mid-year budget cut.

Next Commission Meetings

The next Commission meetings will take place on Thursday, November 17, 2016 at 9:00 a.m., Thursday, December 15, 2016 at 9:00 a.m., and Thursday, January 19, 2017 at 9:00 a.m.

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 September 2016. Mr. Giannotti reported that the Division is on-track to complete a greater number of conflict of interest law education seminars by the end of 2016 than the Division has completed in previous years. He reported that he completed fourteen (14) seminars in September, including seminars for the Presidents of the State Universities, the State Lottery Commission, and Housing Authority Board members. Mr. Giannotti stated that he is currently developing a four hour conflict of interest law training program for state managers that he will present as part of the Commonwealth Management Certificate Program (CMCP). Chairman Dortch-Okara inquired whether the CMCP training program may be used in the future for other for other agencies. Mr. Giannotti responded that the program may be adapted for future use.

Mr. Giannotti reported that the new compliance cycle for the conflict of interest law education and training requirements will begin soon.

Mr. Giannotti reported that he is continuing work on the website migration project. As part of this project he is removing redundant or obsolete content from the Commission's website. He noted that the Commission's website will be migrated to the new portal in 2017.

LEGAL DIVISION MATTERS

Personnel Manual

General Counsel Deirdre Roney presented the proposed revisions to the Personnel Manual. Ms. Roney noted that because the Commission is an independent agency, the personnel policies that apply to executive branch agencies do not automatically apply to the Commission. However, Ms. Roney recommended that the Commission follow the same personnel policies that apply to

other state employees, unless there is a particular reason not to. Ms. Roney reported that the HR Committee met three times since the September Commission meeting.

Commissioner Mills reported that, after a thorough review of the draft Personnel Manual, there are several provisions that the Committee would like to discuss with the Commission.

Commissioner Krokidas inquired whether it was unusual for Commissioners to be involved in the day to day operations of the Commission. Chairman Dortch-Okara stated that the Commission's enabling statute imposes certain responsibilities on Commissioners. Ms. Roney remarked that the structure of the Commission is comparable to a municipal Board of Selectmen, which serves as the head of the municipality. Vice-Chairman Quinlan noted that the Commissioners set policies for the Commission, but are not responsible for day to day management of staff.

Ms. Roney presented the following sections of the draft Personnel Manual to the Commission for further discussion:

1. Section 1.4 At Will Employment; Termination Absent Cause for Circumstances Affecting Commission and Section 1.5 Termination for Cause.

Ms. Roney reported that §§ 1.4 and 1.5 set forth the process by which termination decisions are made and finalized. Ms. Roney stated that, until the policy changed two years ago, Commission employees could appeal a termination decision to the full Commission before it was finalized. This appeal process was eliminated two years ago. Sections 1.4 and 1.5 reinstate employees' right to appeal a termination decision by the Executive Director to the full Commission. Ms. Roney reported that §§ 1.4 and 1.5 also require the Executive Director to consult with the Commission Chair and the HR Committee Chair prior to making a termination decision.

The Commission discussed whether it would be too burdensome to require the Executive Director to consult with both the Commission Chair and the HR Committee Chair before making a termination decision. Chairman Dortch-Okara questioned whether this process was overly burdensome and would diminish the authority of the Executive Director. Mr. Wilson noted that §§ 1.4 and 1.5 require the Executive Director to discuss the potential termination with the two Commissioners, but do not require the Executive Director to obtain permission from the Commissioners prior to making a termination decision. Commissioner Krokidas noted that although it is desirable for an Executive Director to discuss a disciplinary matter with the Commission Chair as the issue develops, it may also be preferable for the remaining Commissioners to refrain from discussing the issue with the Executive Director, so they may remain neutral in the event that the employee appeals the decision to the Commission.

Commissioner Sartory expressed his concern that the policy contains a list of reasons why employees may be terminated, because it may imply that employees are not "at will" and may only be terminated for the reasons listed.

Commissioner Quinlan asked whether the Executive Director could no longer be hired

pursuant to a contract if the Executive Director position is deemed “at will.” Ms. Roney stated that pursuant to §§ 1.4 and 1.5, the Executive Director is an “at will” employee, and therefore would not be employed pursuant to a contract. Ms. Roney added that, with the exception of the previous Executive Director, the Executive Director position has always been an “at will” position. Ms. Roney recommended that the Commission explicitly state that the Executive Director is an “at will” employee, as are all other Commission employees. Commissioner Sartory expressed concern that defining the Executive Director position as “at will” may limit the Commission’s ability to hire an Executive Director who may only be willing to take the position pursuant to a contract. Mr. Wilson stated that the Commission operated for many years with Executive Directors who were “at will” employees and it had not been problematic.

Ms. Roney stated that she would revise §§ 1.4 and 1.5 of the draft Personnel Manual and provide the Commissioners with the revisions at the next meeting.

2. Section 2.14 Performance Evaluations

Chairman Dortch-Okara expressed her concern that § 2.14 imposes overly burdensome requirements on the Commissioners with respect to the Executive Director’s performance evaluation. Chairman Dortch-Okara stated that although the Commission should evaluate the Executive Director, the evaluation process should be determined by the Commissioners rather than mandated by the Personnel Manual. Ms. Roney noted that adequate communication between the staff, the Executive Director and Commissioners has been a problem in the past, and if meetings to discuss performance are part of a set schedule, this may facilitate better communication. Mr. Wilson noted that although there is a stigma associated with unanticipated meetings to discuss performance, if the meetings are part of a predetermined schedule, then the stigma is gone and issues may be dealt with as they arise.

The Commission directed Ms. Roney to revise § 2.14 to state that the Commission will evaluate the Executive Director on an annual basis pursuant to a procedure that is determined by the Commission. Ms. Roney offered to assist the Commission with developing a performance evaluation process for the Executive Director in the future.

[At 10:50 a.m. the Commission took a brief break. At 11:00 a.m. the Commission reconvened.]

3. 3.1 Conduct of Employees

Ms. Roney reported that initially there was some concern that § 3.1 was overly vague. Ms. Roney revised § 3.1 based on the HR Committee’s recommendations. The Commission stated that it was satisfied with § 3.1.

4. Section 1.12 Commission Ombudsman

Ms. Roney described the Commission Ombudsman provision in § 1.12 and noted that this provision is a new concept for the Commission. The Ombudsman will be an employee, who is elected annually by the staff. The Ombudsman will bring issues to Commission when

necessary. Ordinarily employees are expected to handle employment issues with their supervisor, however, the Ombudsman will provide employees with an alternative means of resolving issues. The Commission discussed their concerns regarding the Ombudsman provision and agreed to discuss it further at the next Commission meeting.

5. Section 2.1 Attendance; Workweek; Regular Work Schedule; Lunch

Ms. Roney reported that the Commission is open to the public between 9:00 a.m. and 5:00 p.m. She stated that it is important for Commission staff to be available to the public from 9-5, to provide advice about the conflict of interest law, and to take complaints regarding alleged violations of the law. Ms. Roney stated that to ensure adequate coverage, both the Legal Division and the Enforcement Division set a monthly schedule to determine who will cover these duties each day. Ms. Roney stated that state agencies have discretion to set the hours during which their staff may work. Historically Commission employees were able to work between 7:00 a.m. and 7:00 p.m. Two years ago the work hours were changed to 8:00 a.m. - 6:00 p.m. Ms. Roney reported that the 7 a.m. – 7 p.m. span worked better for the agency. Ms. Roney stated that this time span will help with morale, provide more flexibility to staff, and enable individuals who request advice from the Legal Division to receive calls before/after the regular work day. Ms. Roney reported that there is currently a good balance among the staff of people who prefer to start work before 9:00 a.m. and those who prefer to work later in the day, however if issues regarding coverage arise, then managers must address those issues. Commissioner Quinlan inquired whether work schedules must be approved by a supervisor. Ms. Roney responded that work schedules must be approved by a supervisor, and that staff must ensure that there is adequate coverage in their Division prior to using flextime. The Commission agreed with the proposed changes to this section of the draft Personnel Manual.

Ms. Roney stated that she would revise the proposed draft Personnel Manual and present it for further discussion at the November Commission meeting.

Update on New SFI Electronic Filing Application (Lauren Duca)

Ms. Roney reported that the vendor for the new electronic filing application, PCC, has agreed to complete the remaining work for the application at no additional charge. Ms. Roney also reported that MassIT, the source of the capital funding for the project, has agreed to extend funding for the project into FY2017.

Legal Division Deputy Chief/SFI Lauren Duca reported that there are currently ten non-filers for 2015. Ms. Duca reported that she is continuing to work with PCC to complete the public user access module. Ms. Duca stated that when the public access module is complete, individuals who register and receive authorization to use the system may view SFIs online. Commissioner Krokidas asked what the authorization requirements will be. Ms. Duca responded that individuals must complete an online registration form and provide a copy of a government issued photo ID to receive authorization to use the system. Ms. Duca noted that filers will receive an automated email notifying them when their SFI is viewed.

Legal Division Metrics for September 2016

General Counsel Deirdre Roney presented the following Legal Division metrics for September 2016. The Commission had no questions.

- **Written advice.** The Legal Division answered by letter or email 43 written requests for advisory opinions under G.L. c. 268A and c. 268B.

For comparison:	September 2015 (same month last year):	57
	August 2016 (previous month):	73

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 359 requests for advice from state, county and municipal officials.

For comparison:	September 2015 (same month last year):	411
	August 2016 (previous month):	520

- **Review of municipal letters.** Division staff reviewed 4 letters issued by city solicitors/town counsel pursuant to G.L. c. 268A, § 22 and 930 CMR 1.03.

For comparison:	September 2015 (same month last year):	8
	August 2016 (previous month):	8

- **Backlog.** As of today, the Division has 5 pending requests for written advice that are more than 30 days old. There are a total of 25 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 in pending Commission adjudicatory proceedings. The Commission had no questions.

Litigation Matters

McClure v. State Ethics Commission: Middlesex Superior Court Civil Action No. MICV2013-04186-L. Judgement has been entered for the Commission. McClure's period to take an appeal has expired. It appears that this matter is over.

McGovern v. State Ethics Commission: Hampden Superior Court Civil Action No. 1679CV00082. Edward McGovern seeks judicial review pursuant to G.L. c. 30A of the Commission's finding of violation against him. We have filed the administrative record. The

next step is for McGovern to make a motion for judgment on the pleadings.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics Report

Acting Enforcement Division Chief Candies Pruitt-Doncaster presented the monthly report of Investigations Unit activities for September 2016. The Commission had no questions.

Attorney Metrics Report

Ms. Pruitt-Doncaster presented the report of Attorney Metrics for September 2016. The Commission had no questions.

UPDATE ON EXECUTIVE DIRECTOR HIRING PROCESS

[At 11:38 a.m. Acting Executive Director David A. Wilson recused himself and left the room.]

Ms. Roney reported that the Commission has received 40-50 applications for the Executive Director position. Commissioner Sartory, Commissioner Quinlan, Ms. Pruitt-Doncaster, Ms. Duca, and Ms. Roney reviewed the resumes and selected ten (10) candidates to interview. The first round of interviews will take place on October 26 and October 28.

EXECUTIVE SESSION

At 11:41 a.m., on the motion of Chairman Dortch-Okara, seconded by Vice Chairman Quinlan, 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. These matters will include investigatory matters, cases deferred, a preliminary inquiry report, preliminary inquiry recommendation and summons authorization requests, and advisory opinions.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>
	Commissioner Sartory	<u>yes</u>
	Commissioner Krokidas	<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 October 20, 2016.

2. Minutes of the State Ethics Commission Meeting for the September 16, 2016 Public and Executive Sessions.
3. Minutes of the State Ethics Commission Audit, Finance and Human Resources Committee Meeting for the September 16, 2016 Public Session.
4. Memorandum dated October 14, 2016 from David Giannotti to the Commission concerning Public Education and Communications Division activities for September 2016.
5. Memorandum dated October 14, 2016 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
6. Draft revised Commission Personnel Manual dated October 14, 2016.
7. Memorandum dated October 14, 2016 from Deirdre Roney to the Commission re Personnel Manual revisions.
8. Calendar of Hearing Dates in pending Commission Adjudicatory Proceedings.
9. Report of Enforcement Division Investigations Unit metrics.

Respectfully submitted,

Norah K. Mallam

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Staff Attorney