



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 **October 21, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

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

REMOTE PARTICIPATION

Chairman Dortch-Okara announced that the Commission previously voted to authorize remote participation on December 16, 2011; that Commissioner Trach will participate remotely in the entire meeting and Commissioner Mills will participate remotely in some items of the Commission's agenda; that the reason for Commissioner Trach's remote participation is a personal disability that prevents him from travelling or sitting; that the reason for Commissioner Mills' remote participation is geographic distance, in that he will be in New York City on the day of the meeting; and that these reasons for remote participation are permissible under 940 CMR 29.10(5).

Chairman Dortch-Okara noted that all votes taken at this meeting would be by roll call.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Quinlan, seconded by Chairman Dortch-Okara, the Commission voted 3-0 to waive the reading and approve the minutes of the September 16, 2015 public and executive sessions. Vice-Chairman Murphy, who was not present for the September 16, 2015 meeting, abstained.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Murphy	<u>[abstain]</u>
	Commissioner Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>[absent]</u>

EXECUTIVE DIRECTOR'S REPORT

Personnel

Executive Director Karen L. Nober said she was pleased to announce that Jackie Riden had been hired as the Commission's new part-time receptionist, and said that Ms. Riden started work last week. Ms. Nober said that Ms. Riden has extensive experience working as a receptionist in both the public and private sectors, and that she also has government experience, having worked first as a receptionist, and then as Deputy City Clerk, for the City of Portsmouth, New Hampshire.

Ms. Nober stated that she has not yet posted the Director of Communications position, but expects to do so soon.

Enforcement Procedures

Ms. Nober stated that later in the meeting Enforcement Division Chief Kelly Downes would be presenting to the Commission the newly revised draft of the Enforcement Procedures. She said that both she and General Counsel Deirdre Roney spent a lot of time working on this with Ms. Downes, and she thought the revised Procedures were in good shape. Ms. Nober explained that the Enforcement Procedures needed to be updated to reflect the 2013 reorganization of the Enforcement Division.

SFI Issues

Ms. Nober informed the Commission that later in the meeting General Counsel Deirdre Roney would be discussing their recommendation that the Commission discontinue its current practice of asking for the names of filers' spouses and dependent children on Statements of Financial Interests, and would also discuss pending bills that would require posting SFI filings online.

New Commissioner

Ms. Nober reported that the Attorney General would appoint a new Commissioner next week. She noted that the Attorney General's Office graciously accommodated the Commission's request regarding the timing of the appointment. Ms. Nober, on behalf of herself and the staff, thanked Vice-Chairman Murphy for his service to the Commission, and said that it was an absolute pleasure to work with him. Chairman Dortch-Okara agreed with this sentiment. Vice-Chairman Murphy stated that he enjoyed serving on the Commission and appreciated working here. Ms. Nober notified the Commission that she was planning an event for Vice-Chairman Murphy, and said she would follow up with them as to the date.

Next Meeting

Ms. Nober stated that the next Commission meeting was scheduled for Wednesday, November 18, 2015, 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 2015. The Commission had no questions.

LEGAL DIVISION MATTERS

Statements of Financial Interests, Public Records Law Issues, and Related Pending Legislation

General Counsel Deirdre Roney presented a memo to the Commission from her and Executive Director Nober discussing two issues relating to the Statements of Financial Interests ("SFIs"). The first issue Ms. Roney presented was their recommendation that the Commission discontinue its current practice of asking SFI filers to report the names of their spouses and dependent children residing in their household on their SFI forms. She explained that the SFI statute does not expressly require that the Commission collect the names of filers' family members. Ms. Roney recommended that the Commission vote to discontinue this practice for three reasons: the statute does not require it; Enforcement has other means of obtaining that information if necessary; and collecting it raises privacy concerns, particularly with respect to children.

Vice-Chairman Murphy asked why the form asked for the names of family members if the statute does not require doing so. Ms. Roney responded that she was unsure, but her review of past SFI forms demonstrated that this was always the practice. She stated that in 1978, when the SFI law was enacted, there would not have been any thought of posting the forms online. Addressing Chairman Dortch-Okara's inquiry about the availability of past SFI filings containing names of family members, Ms. Roney explained that older SFIs would still be available, but that family member names and addresses would be redacted. She further stated that the Commission recently received an opinion from the Supervisor of Public Records in the Secretary of State's Office which confirmed that the Commission's practice of redacting family members' names and addresses on SFI forms is appropriate. She reported that currently there are still about 10% of filers who file manually, and some manual redactions and review of those redactions will be necessary, so it makes sense to minimize that burden by not asking for the names of family members at all, since it is not required.

After discussion by the Commission, on the motion of Chairman Dortch-Okara, seconded by Commissioner Quinlan, the Commission voted 4-0 to authorize staff to eliminate from the Statement of Financial Interests form questions that ask filers to state the names of their family members.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Murphy	<u>yes</u>
	Commissioner Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>[absent]</u>

The second issue presented by Ms. Roney was discussion of several pending legislative proposals that would require online posting of SFIs. The two bills are H. 2732, introduced by Rep. Carolyn Dykema, which would require online posting of all SFIs, and H. 3665, introduced (in an earlier version) by Rep. Peter Kocot, which sets forth a broader set of amendments to the Public Records Law that does not refer specifically to SFIs, but may require online posting of some SFIs. Ms. Roney stated that the purpose of the discussion is to ensure that Ms. Nober knows the Commission's views on the bills so that she can accurately represent the Commission's position in any discussions she may have with legislators or their staff.

The Commission discussed online posting of SFIs and the two specific legislative proposals concerning online posting. Following that discussion, the Commission decided to take no position on whether SFIs should be posted online. The Commission agreed that the Legislature should be advised that, absent legislative amendment of the current statutory requirements of ID and notice, the Commission will comply with those requirements by requiring requestors to produce driver's licenses and register online and sending email notifications to filers. The Commission agreed that we should ask the Legislature to make any bill that requires the posting of SFIs online to have an effective date no earlier than January 2017 to give us time to work out any issues with our new electronic filing system, which should be operational for the upcoming filing season. Finally, the Commission agreed that the Legislature should be asked to give the Commission seven (7) business days to post SFIs (only those filed after the effective date of the bill), and that we would not be able to post older forms online because of redaction issues.

Development of New SFI Filing and Management Application (Mike Memmolo)

Chief Financial Officer/Director of Budget & Administration Michael Memmolo reported on the current status of work on the development of the new SFI Filing and Management Application. He reported the following: PCC has finalized the filer module of the new application; Ms. Duca and Mr. Milt have scheduled the filer module to be tested by Commission staff; the administrative module is expected to be finalized by the end of October and is scheduled to be tested in early November; Ms. Duca and Mr. Milt have reached out to all agencies to confirm and update their Designator/Liaison lists and contact information; training has been scheduled; the contract with the accessibility testers has been executed; and the accessibility testing vendor is coordinating with PCC to begin testing of the application. Next week the vendor will demonstrate the application to Ms. Nober. Chairman Dortch-Okara asked whether the Commissioners would be able to see the application before it goes live. Mr. Memmolo responded that the team is aiming to have the application ready to demonstrate to the Commissioners in November.

Legal Division Metrics

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

- **Written advice.** The Legal Division answered by letter or email 57 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
	September 2014 (same month last year):	51
	August 2015 (previous month):	57

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 388 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
	September 2014 (same month last year):	419
	August 2015 (previous month):	389

- **Review of municipal letters.** Division staff reviewed 8 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
	September 2014 (same month last year):	3
	August 2015 (previous month):	2

- **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 17 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. Ms. Roney asked the Chair to assign a Commissioner to serve as Presiding Officer in *in re Lori Nelson*. Chairman Dortch-Okara assigned Commissioner Quinlan to the case.

Litigation Matters

Ms. Roney reported that a hearing on 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 has been scheduled for November 3, 2015. Ms. Roney informed the Commission that Legal Division Deputy Chief David Wilson will be arguing the case in Lowell. The Commission had no questions.

ENFORCEMENT DIVISION MATTERS

Attorney Metrics and Investigations Unit Metrics

Enforcement Division Chief Kelly Downes reported presented the monthly report of Investigations Unit activities for September 2015, noting the slight drop in complaints. Ms. Downes also presented the quarterly report of attorney metrics, stating that she thought the quarter was a very productive one. The Commission had no questions.

Enforcement Division Litigation Manual

Ms. Downes presented a draft of the Enforcement Division Litigation Manual to the Commission for their review, and sought the Commission's feedback. Ms. Downes stated that the Manual closely followed the outline that she presented to the Enforcement Committee, and that the Manual was thoroughly reviewed by the Enforcement attorneys, Karen Gray and Candies Pruitt-Doncaster. Ms. Downes reported that the Manual strengthened the sections addressing confidentiality and clarified procedures related to situations where an investigation has multiple subjects. She described the process of drafting the Manual, including the resources she used to guide her in the process. She reported that she expects to train the Enforcement staff next week on the draft Manual. She also noted that Ms. Roney asked that the Legal Division review the Manual and provide feedback, which Ms. Downes agreed would be a good idea.

Chairman Dortch-Okara commented that the Manual was very detailed and well done, although she had not had time to review it carefully. She asked what had been added to the draft, and what Ms. Downes needed to do before finalizing it. Ms. Downes stated that she planned to train staff and to highlight changes, and that suggestions made by the Legal Division would be added to a later draft. Chairman Dortch-Okara asked whether the Commission would have another opportunity to see the draft. She said that a week to review the Manual was not enough. Commissioner Quinlan agreed that they had not had enough time to review it. Ms. Downes indicated that the Manual was a draft and she was not asking the Commission to vote to approve it today.

Commissioner Quinlan commented that she could tell that Ms. Downes did a lot of work on the Manual, and asked whether there is a section addressing confidentiality issues during the discovery phase. Ms. Downes responded that there is. Ms. Roney stated that the Manual needs to address how documents are handled during the investigation stage, since the investigation is the preliminary to the hearing stage and responding to discovery requests, and that the Manual should include a uniform process for how files are maintained. Ms. Roney also stated that the Manual should be reviewed by the Legal Division and comments by the Legal Division should be incorporated into the draft Manual before the draft Manual is presented again to the Commission.

Vice-Chairman Murphy noted that the Commission will need to elect a new chair of the Enforcement Committee to replace him. He commented that the Manual made sense as he read through it, and suggested adding a description of how the Manual codifies existing practice and what is a new way of doing things. Ms. Downes stated that she will solicit more input from Enforcement staff when she reviews the Manual with them, and that her focus in drafting the Manual had been on the Enforcement attorneys.

Chairman Dortch-Okara stated that staff input should be solicited on the Manual. Ms. Roney commented that it would be premature to train the staff on the Manual before it was finalized. Commissioner Quinlan commented that staff should have input into the Manual, whether that input was called training or something else. Ms. Downes responded that the conversation about the Manual at her trainings would not be one-sided.

Enforcement Procedures

Ms. Downes presented a draft of the revised Enforcement Procedures (“Procedures”) to the Commission for their review. She stated that the Enforcement Procedures were revised to reflect the reorganization of the Enforcement Division, and to add specificity about the role of the Executive Director, particularly during the adjudicatory stage. Ms. Nober stated that the revised Procedures would replace what is currently on the Commission’s website, which is out of date. In response to Commissioner Quinlan’s question, Ms. Nober noted that the current Procedures are silent as to her role. Chairman Dortch-Okara commented that the date on the Procedures should be updated to the date that it is approved. Vice-Chairman Murphy suggested edits to Sections 3(C) and 3(D).

The Commission discussed Section 7 of the draft Procedures as it relates to the Executive Director’s role. Ms. Nober noted that shortly after she joined the Commission, she sought and received advice as to her role during the adjudicatory stage, and she has conducted herself in accordance with that advice. Ms. Roney noted that Ms. Nober is not a party to any of the Commission’s adjudicatory proceedings, and also noted that administrative proceedings are not completely analogous to court proceedings. She agreed to provide a research memorandum concerning the potential due process and ex parte communication issues discussed by the Commission for the next meeting. No vote was taken on the draft Procedures.

EXECUTIVE SESSION

At 10:58 a.m., on the motion of Chairman Dortch-Okara, 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. Chairman Dortch-Okara stated that the matters will include investigatory matters, cases deferred, preliminary inquiry recommendations and reports, summons authorization requests, disposition agreements, public and private education letters, 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 Murphy	<u>yes</u>

Commissioner Trach	yes___
Commissioner Quinlan	yes___
Commissioner Mills	[absent]

Chairman Dortch-Okara stated that the Commission will reconvene in public session following the executive session.

PUBLIC SESSION

At 12:16 p.m., the Commission reconvened in public session. Present were Chairman Dortch-Okara, Vice-Chairman Murphy, Commissioner Trach (participating remotely), Commissioner Quinlan and Commissioner Mills (participating remotely).

EXECUTIVE DIRECTOR'S PERFORMANCE REVIEW

Commissioner Trach stated that he and Commissioner Quinlan had met with various staff and had also received Ms. Nober's self-evaluation. The Commissioners discussed the information provided by the staff concerning Ms. Nober's performance and their own impressions of Ms. Nober's performance.

At 12:40 p.m., on the motion of Commissioner Quinlan, seconded by Chairman Dortch-Okara, the Commission voted 5-0 to enter into executive session pursuant to G.L. c. 30A, § 21(a)(7), c. 66, § 10, and c. 4, § 7, Twenty-sixth (c), to prepare Ms. Nober's performance evaluation. The Chairman stated that the Commission would not reconvene in public session.

VOTE:	Chairman Dortch-Okara	yes___
	Vice-Chairman Murphy	yes___
	Commissioner Trach	yes___
	Commissioner Quinlan	yes___
	Commissioner Mills	yes___

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 Oct. 21, 2015.
2. Minutes of the State Ethics Commission Meeting for the Sep. 16, 2015 Public and Executive Sessions.
3. Memorandum dated Oct. 13, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for September 2015.

4. Memorandum dated Oct. 16, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Memorandum dated Oct. 13, 2015 from Karen L. Nober and Deirdre Roney to the Commission, re Statements of Financial Interests, Public Records Law Issues, and Related Pending Legislation.
6. Legal Calendar.
7. Report of Enforcement Division Investigations Unit FY16 Metrics.
8. Report of Enforcement Division Attorney FY16 Metrics.
9. Memorandum dated Oct. 16, 2015 from Kelly Downes to the Commission, re Enforcement Division Litigation Manual Draft; and Draft Litigation Manual.
10. Memorandum dated Oct. 16, 2015 from Kelly Downes to the Commission, re Enforcement Procedures Draft; and Draft Enforcement Procedures.

Respectfully submitted,



Pauline Nguyen
Assistant General Counsel