

MINUTES OF THE STATE ETHICS COMMISSION MEETING
September 18, 2014

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 Commissioners Paula Finley Mangum, William J. Trach and Regina L. Quinlan. Commissioner Murphy was recused in the *Gorski* matter and arrived at 10:17 a.m.

CLOSING ARGUMENTS

In Re Elizabeth Gorski, Docket No. 13-0005: Closing arguments in the case were conducted before the Commission. The Respondent, Elizabeth Gorski, was represented by Attorneys Marc Laredo and Mark D. Smith. The Petitioner, State Ethics Commission, was represented by Enforcement Division Deputy Chief Karen Gray. The Commission first heard arguments in a Motion to Dismiss. Attorney Laredo began his argument at 9:11 a.m. and concluded at 9:21 a.m. Ms. Gray began her argument at 9:21 a.m. and concluded at 9:33 a.m. Attorney Smith began his closing argument at 9:33 a.m. and concluded at 9:46 a.m. Ms. Gray began her closing argument at 9:47 a.m. and concluded at 10:09 a.m.

Chairman Dortch-Okara stated that deliberations in this matter would begin in the executive session.

At 10:10 a.m., the Commission took a brief recess, and the meeting resumed at 10:17 a.m. Commissioner Murphy arrived at 10:17 a.m.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Murphy, seconded by Commissioner Quinlan, the Commission voted 4-0 to waive the reading and approve the minutes of the July 16, 2014 public and executive sessions. Commissioner Mangum abstained because she did not attend the July meeting.

The Commission reviewed the public session minutes of the September 4, 2014 Audit, Finance and Human Resources Committee meeting. There were no questions.

EXECUTIVE DIRECTOR’S REPORT

Correction to May and June Minutes

Executive Director Karen L. Nober reported that the same typographical error was found in the list of documents provided to the Commission in both the May 2014 and June 2014 public session minutes. The May and June lists of documents state that a memo describing Public Education and Communications Division concerned “activities for February,” when they should have said “April” and “May,” respectively. Ms. Nober stated that the errors were corrected in the versions of the minutes on the Commission’s website, and that after today’s meeting, they will be corrected in the official versions.

New Assistant General Counsel

Ms. Nober introduced Pauline Nguyen, who joined the Commission staff in August, as the agency’s new Assistant General Counsel. Prior to joining the Commission, Ms. Nguyen worked in the legal counsel office at the Massachusetts Division of Professional Licensure, and is a graduate of Harvard University and Boston College Law School. Ms. Nober stated that the selection process was a very good one, and that she is extremely pleased to have Ms. Nguyen on the staff.

The Commissioners welcomed Ms. Nguyen.

Personnel

Ms. Nober reported that all of the staff personnel evaluations have been completed, and that she has provided her self-evaluation to the Commissioners for their review. Ms. Nober stated that she had asked Public Education and Communications Division Chief David Giannotti and Legal Division Deputy Chief/SFI Lauren Duca to apply to the Commonwealth Manager Certificate Program, and was now pleased to announce that both Mr. Giannotti and Ms. Duca were accepted. This is the same program that Chief Financial Officer Michael Memmolo and Enforcement Division Deputy Chief/Investigations Katherine Gallant completed last year. Ms. Nober said that the program is an intensive, six-month training beginning in November.

Ms. Nober said that, as previously mentioned, she is working on updating the Commission’s personnel policies, and that there will be an Audit, Finance and Human Resources Committee meeting in the beginning of October to review proposed changes that were discussed at the September Committee meeting. Ms. Nober stated that Commissioner Mangum, as chair of that committee, will brief the Commissioners on the committee’s September 4, 2014 meeting later in today’s meeting. Ms. Nober stated that she hopes to bring a draft of the proposed policies before the full Commission at its October meeting.

Budget

Ms. Nober reported that after the FY 2015 budget was approved, the state entered into a collective bargaining agreement with the NAGE Unit 6 employees, which calls for 3% raises in January 2015, October 2015, and January 2016, respectively. Fourteen of the Commission's 25 employees will be affected by the new agreement. Ms. Nober stated that the increases were not factored into the FY 2015 budget, and therefore the Commission will have to find a way to cover the cost of about \$12,000 during this fiscal year. Ms. Nober said that the larger impact will be felt in the budgets for the next two fiscal years, as the increases are across-the-board raises, not tied to performance, and are in addition to the step increases most Unit 6 employees also receive. Ms. Nober said the increases make it extremely difficult for the Commission to get a sufficient budget appropriation each year, and also make it difficult to fairly compensate the Commission's managers.

Ms. Nober reported that she plans to address the FY 2015 budget shortfall by transferring the Commission's internal email system to the state's MassMail system. She said that the Commission's existing email servers have reached the end of their useful life, and, therefore, we had budgeted approximately \$22,000 to pay for two new servers, a consultant to assist with the installation and data transfer, and a software upgrade. Ms. Nober said that the state's Information Technology Division has informed us that there are bond funds available to pay for the cost of transitioning to MassMail. Along with the budget savings, transferring to MassMail will give the Commission the benefit of having the state bear responsibility for virus protection and the overall security of our email system as well as any disaster recovery efforts that might be needed. It would also give Commission staff access to the global address list, which would give us the email addresses of other state employees. The yearly cost to the Commission would be just under \$4,500 in the form of chargebacks for use of the MassMail system. Ms. Nober stated that she expects to enter a Memorandum of Understanding with ITD to address confidentiality concerns.

Ms. Nober also reported that ITD approved \$850,000 in bond monies for the replacement of the Commission's Statements of Financial Interests electronic filing and management system, and that we expect to begin meeting with ITD this month to begin the project. The project should take about two years to complete. Chairman Dortch-Okara asked when the new system is expected to go live, and Ms. Nober responded that the plan is to have the new system in place for when the calendar year 2015 filing season begins next fall. Commissioner Murphy asked whether the project will involve testing of the program for filers, and Ms. Nober said yes.

Committee Meetings and Schedule

Ms. Nober stated that the next Commission meeting will be held on Thursday, October 16, 2014 at 9:00 a.m. and that an Audit, Finance and Human Resources Committee meeting will be held on Thursday, October 2, 2014 at 9:30 a.m. Ms. Nober stated that all Commissioners are invited to attend the committee meeting.

PUBLIC EDUCATION DIVISION MATTERS

Mr. Giannotti presented his report of Public Education and Communications Division activities for the months of July and August, 2014. He noted a discrepancy from his memo to the Commission and stated that conflict of interest law disclosures for the month of August have not yet been posted to the website. The Commission had no questions.

LEGAL DIVISION MATTERS

Legal Division Metrics

Ms. Roney presented the following Legal Division metrics for July and August, 2014:

- **Written advice.** In June 2014, the Legal Division answered by letter or email 34 (July) and 28 (August) 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
July and Aug 2013 (same months last year):	49 (July), 40 (Aug)
June 2014 (previous month)	42

- **Oral advice.** During this same period, Legal Division attorneys provided legal advice by telephone or on a walk-in basis to 332 (July) and 355 (August) state, county and municipal officials.

For comparison: 2008 monthly average (pre Ethics Reform): 280
 2010 monthly average (post Ethics Reform): 450
 July and Aug 2013 (same months last year): 419 (July), 452 (Aug)
 June 2014 (previous month): 386

- **Review of municipal letters.** The Legal Division reviewed 1 letter (July) and 6 letters (August) 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
July and August 2013 (same months last year):	3 (July), 9 (Aug)
June 2014 (previous month):	3

- **No Backlog.** As of today, we have no pending requests for written advice that are more than 30 days old. We have a total of 12 pending requests for written advice.

Ms. Roney noted that the Legal Division staff worked very hard to eliminate the backlog of requests more than 30 days old.

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. Ms. Roney stated that the Enforcement Division recently issued an Order to Show Cause alleging that Kevin Franck, the former Executive Office of Labor and Workforce Development Director of Communications, violated the financial disclosure law by failing to file his 2012 SFI on time. Ms. Roney requested that the Commission assign a hearing officer in the matter and Commissioner Quinlan stated that she will serve as the hearing officer. Ms. Roney stated that she will assign a legal advisor in the matter.

Litigation Matters

Ms. Roney stated that the Commission's answer to the complaint filed by Richard McClure, who is seeking judicial review of the Commission's August 2, 2013 finding that he violated c. 268A, § 17, was filed on March 21, 2014. She stated that Mr. McClure has yet to file a motion for judgment on the pleadings, and that the Commission will move to dismiss the complaint.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented a report of the Investigations Unit activities for July and August, 2014. Ms. Gallant stated that the unit's activities slowed during the summer months as staff were on vacation, but that she expects the unit will be increasingly busier in the coming months.

EXECUTIVE SESSION

At 10:32 a.m., on the motion of Chairman Dortch-Okara, seconded by Commissioner Trach, 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 these 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.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Commissioner Mangum	<u>yes</u>
	Commissioner Murphy	<u>yes</u>
	Commissioner Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>

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

PUBLIC SESSION

At 1:12 p.m., the Commission reconvened in public session. Commissioner Mangum presided over the meeting. Present were Commissioners Mangum, Murphy, Trach and Quinlan.

AUDIT, FINANCE AND HUMAN RESOURCES COMMITTEE REPORT

Commissioner Mangum stated that the Audit, Finance and Human Resources Committee met on September 4, 2014 to discuss proposed revisions of the personnel policy to better address employee use of sick, personal, vacation and flex time. The Committee will meet again on October 2, 2014, and return to the full Commission with proposed personnel policy changes at its October meeting.

MOTION TO ADJOURN

At 1:15 p.m., on the motion of Commissioner Trach, seconded by Commissioner Quinlan, the Commission voted 5-0 to adjourn.

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of September 18, 2014.
2. Minutes of the State Ethics Commission Meeting for the July 16, 2014 Public and Executive Session.
3. Minutes of the Audit, Finance and Human Resources Committee Meeting for the September 4, 2014 Public Session.
4. Memorandum dated September 10, 2014 from David Giannotti to the Commission concerning Public Education and Communications Division activities for July and August, 2014.
5. Memorandum dated September 12, 2014 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.

6. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
7. Report of Enforcement Division Investigations Unit Metrics, dated September 4, 2014.

Respectfully submitted,

Marisa Donelan
Public Education and Communications
Division Deputy Chief