

MINUTES OF THE STATE ETHICS COMMISSION MEETING
May 22, 2014

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:02 a.m. Also in attendance were Commissioners Paula Finley Mangum, Martin F. Murphy, William J. Trach and Regina L. Quinlan.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Murphy, seconded by Commissioner Trach, the Commission voted 5-0 to waive the reading and approve the minutes of the April 17, 2014 public and executive sessions.

EXECUTIVE DIRECTOR'S REPORT

New Enforcement Division Chief

Executive Director Karen L. Nober reported that Kelly Downes will be joining the Commission staff as Enforcement Division Chief on June 9, and that she will be sitting in on today's meeting. Ms. Downes is currently the Director of Investigations and Assistant General Counsel at the Department of Youth Services. Ms. Nober stated that Ms. Downes' background and experience make her an extremely good fit for the position. Ms. Nober thanked Commissioner Murphy for participating in the final round of interviews, and said that his participation was very helpful.

Personnel

Ms. Nober reported that she plans to post a new position of Assistant General Counsel for the Legal Division next week. The new attorney will give advice to public employees on the conflict of interest law, but will not serve as legal advisor in adjudicatory matters. Ms. Nober stated that the position's responsibilities will include handling corporate governance issues such as contract and procurement matters, compliance with open meeting and public records laws, and drafting policies and reviewing legislation. Ms. Nober stated that there had been a vacant position since former Enforcement Division Staff Counsel Nancy Rothstein left for the Attorney General's office last summer, so this new hire is not a net gain in staffing levels.

Ms. Nober also reported that performance evaluations for Commission staff will begin in June. The Audit, Finance and Human Resources Committee met this morning and briefly discussed this process. Ms. Nober asked Chairman Dortch-Okara whether she wanted to change the procedure for the executive director's performance evaluation. Chairman Dortch-Okara said she does not want to change the process for Ms. Nober's evaluation, and asked Commissioner Mangum and Trach to continue to oversee the process this year, with the assistance of General Counsel Deirdre Roney.

SFI Update

Ms. Nober reported that Legal Division Deputy Chief/SFI Lauren Duca will give an update on the 2013 Statements of Financial Interests filing season later in the meeting. Ms. Nober commended Ms. Duca and SFI Administrator and Analyst Robert Milt for their efforts in reaching out and meeting with agency liaisons prior to this year's filing season, which resulted in a drastically lower number of late filers.

Budget

Ms. Nober reported that the Senate issued its budget last week, and it was approximately \$200 higher than the House budget. She said that the Senate number reflects the amount the Commission asked for in its budget request, while the amount recommended by the Governor and the House reflect a flat 2% increase. The budget will now go to a conference committee.

Ms. Nober stated that there is no news on the Commission request for ITD bond monies to replace the electronic SFI filing application.

Manager Pay Raises

Ms. Nober asked the Commission to approve pay increases for the Commission's managers – division chiefs and deputy chiefs, and the CFO – i.e., the employees who are not subject to the financial provisions of the NAGE Unit 6 collective bargaining agreement. Ms. Nober stated that the vote specifically excludes herself and the Enforcement Division Deputy Chief/Investigations, a position that was created last year and filled by promoting a Commission employee as of July 1, 2013. Ms. Nober stated that the recommended merit increase in the range of 3-3.5% is consistent with guidelines set by the Executive Office for Administration and Finance for executive branch manager raises effective last July. The last management pay increase for Commission managers was a 2-3% merit increase effective July 1, 2012.

Following discussion by the Commission, on the motion of Commissioner Trach, seconded by Commissioner Murphy, the Commission voted 5-0 to approve the award of merit increases, effective as of July 1, 2013, for all current employees who are not subject to the financial provisions of a collective bargaining agreement, excluding the Enforcement Division Deputy Chief, Investigations and the Executive Director. Each merit increase shall be a percentage

increase within the range of 3% to 3.5% of the employee's annualized compensation, based on the employee's rate of pay as of July 1, 2013, with the amount of each percentage increase to be determined by the Executive Director based on the employee's overall performance evaluation rating for the period June 2012 through June 2013.

Packet Schedule and Next Meeting

Ms. Nober asked the Commissioners whether they are receiving their packets with enough time to review the materials, and they responded that they are. Commissioner Murphy noted that his packet arrived late this month, and Ms. Nober stated she will look into why that happened.

Chairman Dortch-Okara asked the Commissioners to bring their calendars to the June meeting in order to set the meeting schedule for the rest of the calendar year. The next Commission meeting will be held on Thursday, June 19, at 9:00 a.m. Commissioner Mangum stated that she will not be able to attend the June meeting. After discussion by the Commission, Chairman Dortch-Okara stated that the July meeting will be rescheduled to Wednesday, July 16, at 9:00 a.m.

PUBLIC EDUCATION DIVISION MATTERS

Public Education and Communications Division Deputy Chief Marisa Donelan presented a report prepared by Division Chief David Giannotti concerning Public Education and Communications Division activities for the month of April 2014. Ms. Donelan noted that since the report was prepared, the division closed out the 2012-2013 compliance cycle for elected state and county officials' completion of the conflict of interest law online training program. Additionally, all of the elected state and county officials who received a summary of the conflict of interest law in December 2013 have acknowledged it. Chairman Dortch-Okara praised the division for its good work. The Commission had no questions.

LEGAL DIVISION MATTERS

2013 SFI Filing Season

Ms. Duca presented a report concerning the 2013 SFI Filing Season, which she described as wildly successful, as 97 percent of filers met the May 1 deadline. Ms. Duca stated that work on this year's filing season began last fall, when she and Mr. Milt visited agencies with large numbers of filers, and continued through the early opening of the filing period. Increased efforts to educate and coordinate with agency liaisons proved very helpful, as the Commission saw a 90 percent reduction in the number of formal notices of lateness sent to filers, with only 54 filers receiving notices this year. Ms. Duca reported that of those who received late notices, just three people did not file within the 10-day grace period at this point. Ms. Duca credited the agency liaisons for their diligent work in getting filers to comply before the deadline. Chairman Dortch-Okara praised the SFI team for its work.

The Commission had no questions.

Advisory 14-1

Ms. Roney presented Draft Advisory 14-1, Public Employees' Private Business Relationships and Other Private Dealing with Those Over Whom They Have Official Authority or With Whom They Have Official Dealings, explaining that Commissioner Trach at one point had suggested that staff prepare educational materials addressing these types of. Ms. Roney stated that the draft reflects years of Commission precedent on issues of public employees' private dealings with subordinates and those with whom they have official dealings.

Ms. Roney stated that, once approved, the draft will be posted on the Commission's website and emailed to the individuals who subscribe to the Commission's "interested parties" mailing list, with a 30-day period for feedback. The Legal Division will review the outside input and make any revisions, additions or clarifications necessary, and bring the draft before the Commission at its July meeting for final approval.

Chairman Dortch-Okara stated that the draft is an excellent product, and thanked Ms. Roney and Commissioner Trach, as Chair of the Legal Committee, for their work in developing it. Following discussion by the Commission, on the motion of Commissioner Trach, seconded by Chairman Dortch-Okara, the Commission voted 5-0 to approve as a draft the version of Draft Advisory 14-1 presented to the Commission at its May 22, 2014 meeting; and to authorize staff to release the draft to the public through a posting on the Commission website and through other appropriate means of distribution for the purpose of obtaining outside views on situations and questions that could usefully be addressed by the draft; and to direct staff to present a draft, revised as appropriate, to the Commission for final approval at a later Commission meeting.

Legal Division Metrics

Ms. Roney presented the following Legal Division metrics for April 2014

- **Written advice.** In March 2014, the Legal Division answered by letter or email 69 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
	April 2013 (same month last year):	44
	March 2014 (previous month):	45

- **Oral advice.** During this same period, Legal Division attorneys provided legal advice by telephone or on a walk-in basis to 648 state, county and municipal officials.

For comparison:	2008 monthly average (pre-Ethics Reform):	280
	2010 monthly average (post-Ethics Reform):	450
	April 2013 (same month last year):	748
	March 2014 (previous month):	559

- **Review of municipal letters.** The Legal Division reviewed 5 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
	April 2013 (same month last year):	4
	March 2014 (previous month):	6

- **Backlog.** As of today, there are 9 pending requests for written advice that are more than 30 days old: one from November 2013, four from March 2014, and four from April 2014. There are a total of 26 pending requests for written advice.

Ms. Roney stated that the volume of calls for advice continues to be high, as municipalities are in the middle of local election and town meeting season. Ms. Roney credited the Legal Division staff for working to reduce the number of outstanding 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. There were 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

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 passed the deadline for filing a motion for judgment on the pleadings, but expects that he will get an extension if he requests one.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented a report of the Investigations Unit activities for April 2014. Ms. Gallant stated that the number of complaints has held steady in the midst of the town meeting and election season. Ms. Gallant noted that the investigators spend a considerable amount of time educating callers about the conflict of interest law, which is something that is not reflected in the division metrics.

Ms. Gallant also congratulated Special Investigator Katelyn Farago, who recently returned from her wedding and honeymoon. The Commissioners extended their congratulations to Ms. Farago.

EXECUTIVE SESSION

At 9:41 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 and advisory opinions.

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 would reconvene in public session following the executive session. Chairman Dortch-Okara asked whether Ms. Downes could remain in the meeting room during the executive session, and Ms. Nober stated that Ms. Downes has signed a confidentiality agreement.

PUBLIC SESSION

At 10:45 a.m., the Commission reconvened in public session. Present were Chairman Dortch-Okara, Commissioner Mangum, Commissioner Murphy, Commissioner Trach and Commissioner Quinlan.

Executive Director's Pay

Chairman Dortch-Okara asked Commissioner Mangum to report on the meeting of the Audit, Finance, and Human Resources Committee of the State Ethics Commission. Commissioner

Mangum reported that that Committee, of which she is the Chair, had met that morning before the Commission meeting to consider Executive Director Nober's request for a compensation adjustment. Commissioner Mangum stated that Ms. Nober had received one previous raise, after working for the Commission for four years, and her previous raise was 2.75%, effective in January 2012. She has not had any subsequent raise. Commissioner Mangum noted that the Commission had just approved pay raises for Commission managers, retroactive to July 2013. Commissioner Mangum stated that the Committee recommended approval of a 3.5% pay raise for Ms. Nober, retroactive to January 22, 2014, her anniversary date with the Commission.

Commissioner Quinlan asked whether the managers' raises were retroactive to July 2013. Commissioner Mangum stated that they were, but that Ms. Nober had requested that her raise be retroactive only to January 22, 2014. Ms. Nober stated that she would prefer her raise be retroactive only to January 22, 2014, and that, from a budgetary point of view, doing so would have less of an impact on the current FY14 Commission budget.

On the motion of Commissioner Quinlan, seconded by Commissioner Trach, the Commission voted 5-0 to approve a pay increase of 3.5% for Executive Director Nober, effective as of January 22, 2014.

MOTION TO ADJOURN

At 10:56 a.m., on the motion of Commissioner Mangum, seconded by Chairman Dortch-Okara, the Commission voted 5-0 to adjourn.

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of May 22, 2014.
2. Minutes of the State Ethics Commission Meeting for the April 17, 2014 Public and Executive Session.
3. Memorandum dated May 2, 2014 from David Giannotti to the Commission concerning Public Education and Communications Division activities for April 2014.
4. Memorandum dated May 15, 2014 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Memorandum dated May 15, 2014 from Lauren Duca to the Commission concerning the 2013 SFI Filing Season.
6. Draft Advisory 14-1: Public Employees' Private business Relationships And Other Private Dealings With Those Over Whom They Have Official Authority Or With Whom

They Have Official Dealings, dated May 13, 2014.

7. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
8. Report of Enforcement Division Investigations Metrics, dated May 5, 2014.

Respectfully submitted,

Marisa Donelan
Public Education and Communications
Division Deputy Chief