



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 **May 21, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:07 a.m. Also in attendance were Vice-Chairman Martin F. Murphy, Commissioners William J. Trach, Regina L. Quinlan and David A. Mills.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Mills, seconded by Vice-Chairman Murphy, the Commission voted 5-0 to waive the reading and approve the minutes of the April 16, 2015 public and executive sessions, with Commissioner Quinlan limiting her vote to the portion of the minutes commencing after the SFI status report during the public session, because she was not present for the earlier part of the meeting.

EXECUTIVE DIRECTOR'S REPORT

Personnel

Executive Director Karen Nober reported that after the retirement of an administrative assistant and the departure of a part-time receptionist, we are down to one part-time receptionist and two administrative assistants to support the entire agency. Ms. Nober stated that the remaining part-time receptionist, Nubia Villarroel, offered to increase her hours from two and half days to three full days, which has been very helpful; and both administrative assistants, Theresa Meli Omodei and Carolyn Teehan, are covering the receptionist's duties on the remaining two days in addition to performing their other support functions. Ms. Nober informed the Commission that if the FY16 budget allows, the first hire she will make is for another part-time receptionist.

Budget

Ms. Nober reported that since the Commission's budget hearing at the end of March, she and Chief Financial Officer Michael Memmolo met and talked with legislators and staff in both the House and Senate about the Commission's budget. The House's FY16 budget recommendation proposed to level-fund the Commission at its FY15 funding level. Ms. Nober stated that she then asked Representative Kocot if he would file a budget amendment for the Commission, which he did for an additional \$50,000. The House approved the amendment. She reported that last week the Senate released its budget, and its budget recommendation for the Commission was approximately \$58,000 more than the House's budget recommendation. Ms. Nober stated that because the House and Senate numbers do not match, they will have to reach agreement on a final number in conference committee. Chairman Dortch-Okara asked how the agency would be affected if the House's budget recommendation prevails. Ms. Nober responded that the agency would still be in good shape, as it would still allow the agency to fill the vacant Public Education and Communications Division Deputy Chief position, which she said she intends to reconfigure, fill the vacant part-time receptionist position, and give the managers raises.

Other Updates

Ms. Nober reported that she and Chairman Dortch-Okara met with the Senate President to introduce themselves and discuss the work the Commission is doing. She also informed the Commission that next week, she and General Counsel Deirdre Roney will hold a training session on the conflict of interest law for the members of the House.

MassMail

Ms. Nober reported that the agency recently converted from its internal email system to the state's MassMail system, so Commission employees now have new email addresses. She commended IT Specialist Tony Webb for his work in making the transition a smooth one. Ms. Nober explained the financial and operational effects of the conversion on the agency, including the fact that the Commission can now rely on the state for security and disaster recovery for its email.

Statements of Financial Interests

Ms. Nober discussed the recent request by a Boston Globe reporter for all of the Statements of Financial Interests ("SFIs") filed this year for Calendar Year 2014, which is approximately 4,000 SFIs. She reported that staff provided the reporter with a cost estimate to redact and produce the filings, which led to the article in the Globe. Ms. Nober informed the Commission that the public and the media generally do not have any difficulty in accessing SFIs. She said requests from the general public are typically for one SFI or sometimes several and those are promptly provided at no cost. She said that requests from the media are generally limited in number as well. She noted that, in the past few years, one particular news organization has asked for several hundred SFIs, and those have been provided at no cost. The Globe's request was the first

time the agency has been asked to produce 4,000 SFIs, and the agency does not have the resources to redact that many SFIs.

Ms. Nober provided the Commission with a brief background of the financial disclosure law, explaining that the current law contains a notice provision. This provision requires that filers receive notice of who requests to see their filings; the law also requires the Commission to verify the identification of the requestors before producing any SFIs to them. She stated that the law, as written, strikes a balance between the privacy rights of the filer, who is legally obligated to disclose all kinds of personal financial information as a condition of his public employment, and the public's right to access this information. The notice provision, along with the Public Records Law's protection of certain personal information, make it impossible to post the SFI filings online. Representative Dykema has filed a bill annually since 2011 that, among other things, eliminates the notice requirement and requires that all SFIs be filed electronically and be posted online within three days of receipt by the Commission.

Ms. Nober stated that the Commission is currently procuring a new electronic SFI filing application, which will allow the automation of the redaction function. We are also redesigning the form to minimize the need for redactions. She said that both of these improvements will allow the agency to respond to requests much faster, and to post the SFIs online in the event the notification provision was eliminated from the statute.

Ms. Nober explained that when Representative Dykema's bill was discussed with the Commission in 2011, the consensus position of the Commission was to: support the requirement that all SFIs be filed electronically, as long as there was some type of waiver provision; oppose the elimination of the notice requirement and oppose the posting of the forms online, unless consideration was first given to whether changes should be made to the information required to be reported; and oppose posting information online within three days of receipt because of the need to redact information and our inability to do that with our current filing system.

Ms. Nober suggested that it may not make sense to continue to oppose the posting of SFIs online, because news organizations post the filings they receive from public records requests online anyway, essentially rendering the notice provision in the law ineffective. Some Commissioners expressed general concerns about posting extensive financial information online as well as concerns about the safety and security of some public officials if SFIs are posted online. Ms. Nober explained that there are ways to avoid posting private information online, although she noted that Representative Dykema's bill specifically protects home addresses and is silent as to other information protected by the Public Records Law. The Commission discussed the possibility of revising the questions on the SFI form in a way that would make it more useful from an enforcement standpoint and also to make it easier to comply with the Public Records law if the filings will be posted online. Commissioner Trach stated that the SFI is primarily intended to function as a deterrent for certain conduct because filers know that certain information is public, and is not necessarily intended to function solely as an enforcement tool. Chairman Dortch-Okara stated that it would be useful to look at what other states are doing. Ms. Nober then presented to the Commission information regarding other what other states do. She said that forty-seven states require some type of financial disclosure. Of those, twenty-eight make at least some of the forms available online. She noted, however, that of those twenty-eight, twelve

have very short, simple forms that do not ask for a lot of information. She said that New York's form is the most like ours, and that New York puts elected officials' forms online, but not appointed officials, whose forms must be requested. She said that New Mexico and Rhode Island used to put forms online, but have stopped doing so.

Ms. Nober said that she thought staff should come back to the Commission with specific recommendations as to changes to the current form and the current questions for consideration by the Commission, so that the Commission could take a position on proposed legislation and make its own recommendations for legislative changes. The Commission agreed.

Upcoming Meetings

Ms. Nober announced that the next Enforcement Committee meeting was scheduled for 11:00 am, immediately following the Commission meeting, and that the next Commission meeting would be on Thursday, June 18, 2015 at 9 am.

PUBLIC EDUCATION DIVISION REPORT

Ms. Nober stated that David Giannotti could not be present for the meeting and asked if the Commission had any questions about the Public Education and Communication Division's report for the month of April 2015. There were no questions.

REPORT OF THE LEGAL COMMITTEE CHAIR

Legal Committee Chair Trach briefed the Commission on the status of draft Advisory 15-1, Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment, stating that a lot of work went into the advisory. He explained that the advisory contained a lot of similar concepts to the last advisory produced by the Commission, but addresses how the conflict of interest law applies specifically to public employees seeking new employment. He further explained that the advisory comprehensively covers the applicable restrictions at every step of the employment search process, including after leaving public employment and what happens if a public employee does not get the job offer.

LEGAL DIVISION MATTERS

Draft Advisory 15-1, Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment

Chairman Dortch-Okara stated that the advisory is excellent – it is organized in a logical sequence and clarifies the networking issue well. Commissioner Quinlan felt that the first example on page 5 of the draft advisory was confusing. After some discussion, the Commission agreed it would be best to make the example clearer, and requested that Ms. Roney do so. Ms. Roney explained that if the Commission voted to approve the draft, the draft would be posted for comments for a couple of months and then finalized in July.

On the motion of Commissioner Quinlan, seconded by Chairman Dortch-Okara, the Commission

voted 5-0 to approve as a draft the version of Draft Advisory 15-1 presented to the Commission at its May 21, 2015 meeting, as revised by the Commission at that meeting, and as further revised by staff; to authorize the Executive Director to release the draft to the public for comment through a posting on the Commission website and through other appropriate means; and to direct staff to present a final draft, revised as appropriate, to the Commission for final approval at a later Commission meeting.

SFI Status Report and Current Projects

Legal Division Deputy Chief/SFI Lauren Duca presented a report on the status of the SFI filing season and other current projects. Ms. Duca reported that the SFI Team (Lauren Duca, Robert Milt, Tony Webb, Carolyn Teehan) responded to 1,370 emails and phone calls from agencies and SFI filers during the month of April 2015. For comparison, the SFI Team responded to 453 emails and phone calls during the prior month of March 2015. She stated that the filing season has been extremely busy, likely due to the bad weather this past winter. Ms. Duca noted that one more deadline is coming up – the CY 2014 SFI filing deadline for elected public officials is May 26, 2015.

Development of New SFI Filing and Management Application

General Counsel Deirdre Roney reported on the procurement process for the development of the new SFI Filing and Management Application that will replace the Commission's current SFI electronic filing system. Ms. Roney explained that the new application will make filing a lot easier, because, in addition to other features, it will allow new filers to be added by the agency liaison as soon as they begin employment. She informed the Commission that a vendor has been selected as the successful bidder, and that the first round of negotiations will begin soon. The Project Management Team (PMT), with the support of MassIT, hopes to complete contract negotiations in a couple of weeks. Commissioner Murphy asked what the project's timetable looks like. Ms. Roney responded that the project would begin in June; testing would happen in August and September, with the goal of having the system going live by the end of the year, in time for the next new filing year. Ms. Roney stated that the PMT is confident that the Commission is getting a good vendor that will provide a much improved system.

Legal Division Metrics

Ms. Roney presented the following Legal Division metrics for April 2015, noting that the high numbers are typical for the month of April due to local elections and Town Meetings:

- **Written advice.** The Legal Division answered by letter or email 47 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 2014 (same month last year):	73
	March 2015 (previous month):	46

- **Oral advice.** The Legal Division attorneys provided legal advice by telephone or on a walk-in basis to 652 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
	April 2014 (same month last year):	678
	March 2015 (previous month):	568

- **Review of municipal letters.** We 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 2014 (same month last year):	6
	March 2015 (previous month):	5

- **Backlog.** As of today, we have 16 pending requests for written advice that are more than 30 days old, of which the oldest was received on December 31, 2014. We have a total of 35 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.

Adjudicatory Matters

Ms. Roney presented the calendar of hearing dates and pre-hearing conferences in pending Commission adjudicatory proceedings. Chairman Dortch-Okara noted that the *McGovern* hearing has been continued until September.

Litigation Matters

Ms. Roney reported that 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 served and filed. A hearing has not yet been scheduled.

ENFORCEMENT DIVISION MATTERS

Attorney Metrics and Investigations Unit Metrics

Investigations Unit Metrics report

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented the monthly report of Investigations Unit activities for April 2015. Ms. Gallant noted that the number of

complaints continues to be very high due to local elections, and the backlog of complaints continues to decrease.

EXECUTIVE SESSION

At 10:30 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, closing memoranda, public and private education letters, advisory opinions and deliberations.

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

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>yes</u>

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of May 21, 2015.
2. Minutes of the State Ethics Commission Meeting for the April 16, 2015 Public and Executive Sessions.
3. Memorandum dated May 8, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for April 2015.
4. Memorandum dated May 14, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Draft Advisory 15-1: Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment, dated May 14, 2015.
6. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
7. Report of Enforcement Division Investigations Unit Metrics, dated May 4, 2015.

Respectfully submitted,



Pauline Nguyen
Assistant General Counsel