

MINUTES OF THE STATE ETHICS COMMISSION MEETING

October 16, 2014

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:01 a.m. Also in attendance were Commissioners Paula Finley Mangum, William J. Trach and Regina L. Quinlan. Commissioner Martin F. Murphy was absent.

APPROVAL OF MEETING MINUTES

On the motion of Chairman Dortch-Okara, seconded by Commissioner Trach, the Commission voted 4-0 to waive the reading and approve the minutes of the September 18, 2014 public and executive sessions.

The Commission had no questions regarding the public session minutes of the October 2, 2014 Audit, Finance and Human Resources Committee meeting, and the executive session minutes of the Legal Committee meeting of October 2, 2014.

EXECUTIVE DIRECTOR'S REPORT

New Commissioner

Executive Director Karen L. Nober reported that Commissioner Mangum's term expired earlier this month, and said she anticipates that the Governor will appoint Commissioner Mangum's successor later this month. Ms. Nober said that she had asked the Governor's Office if they would delay the appointment until later this month so that the Commission could finalize and issue a decision in a case in which Commissioner Mangum is the hearing officer. Ms. Nober said that today's meeting could be Commissioner Mangum's last, and she thanked Commissioner Mangum for her service as a Commissioner and her work as the Chair of the Audit, Finance and Human Resources Committee. Commissioner Mangum stated that it has been a pleasure to serve on the Commission. Chairman Dortch-Okara thanked Commissioner Mangum for her service, and said that Commissioner Mangum's contributions to the Commission have been invaluable. Ms. Nober stated that she will be in touch with the Commissioners regarding a farewell party for Commissioner Mangum.

Personnel

Ms. Nober reported that Public Education and Communications Division Chief David Giannotti and Legal Division Chief/SFI Lauren Duca are not present at today's meeting because they are attending the first day of the Commonwealth Manager Certificate Program.

Ms. Nober also reported that Mary Murphy, who has served as the administrative assistant in the Enforcement Division for 16 years, has announced her plans to retire in December, and Ms. Nober thanked Ms. Murphy for her contributions to the Enforcement Division. Ms. Nober stated that, for financial reasons, the position will not be filled for at least three months after Ms. Murphy leaves, and said that when a replacement is hired, the position will be a paralegal position, instead of an administrative assistant. Ms. Nober stated that the paralegal will provide litigation support services as well as assist, to some extent, with some of the administrative tasks of the division.

COGEL Conference

Ms. Nober reported that the COGEL (Council on Governmental Ethics Laws) annual conference will be held in Pittsburgh in early December, and she and Enforcement Division Chief Kelly Downes are planning to attend. Ms. Nober stated that she will be one of the panelists for a discussion about financial disclosure forms. Next year's COGEL conference will be held in Boston, and Ms. Nober said that she will be on the program committee that will plan and develop next year's programs. Ms. Nober stated that she would like to have the Commissioners involved in the conference, and said that she will discuss the conference more with Commissioners and staff in the coming year.

Budget

Ms. Nober reported that the plans to move the Commission's email system over to the MassMail system are under way, and that we have submitted a request to MassIT to complete the transition between February and March of next year. The transition will take about two weeks, and MassIT has bond monies available to fund the transition costs. Ms. Nober said that the move to MassMail will provide significant benefits to the Commission, as we will no longer have to maintain and replace our own email servers, and MassIT will be responsible for security and disaster recovery. General Counsel Deirdre Roney will work with MassIT's legal counsel to develop a Memorandum of Understanding regarding confidentiality. Ms. Nober stated that Legal Division staff have been working to provide guidance to the staff concerning records retention requirements.

SFI Application Replacement Project

Ms. Nober reported that the Statements of Financial Interests Team – Ms. Duca, Chief Financial Officer Michael Memmolo, SFI Administrator and Analyst Robert Milt and Information Technology Specialist Tony Webb – had its first meeting with the MassIT Project Advisor in

September. The first major task was to identify a project manager who will be hired as a consultant to oversee the replacement of the Commission's SFI electronic filing and management system. At the suggestion of MassIT, additional monies were added to the Commission's original request for bond funding in order to pay for the services of a project manager for two years. Ms. Nober stated that, prior to seeking bond funding for the project, we contracted with PCG to determine what the functional and technical requirements would be for a new filing system, help us develop a draft RFQ and identify how much money would be needed. Ms. Nober said that Susan Laniewski was the lead person from PCG on the previous contract, and that she is familiar with our staff and the SFI project. Ms. Nober stated that we are now looking to engage Ms. Laniewski's services as the project manager, so that she can help us finalize and issue the RFQ and select a vendor to develop the new filing application.

Committee Meetings and Next Commission Meeting

Ms. Nober reported that the Audit, Finance and Human Resources Committee met on October 2, and that the minutes are included in the Commissioners' packets. There was another Committee meeting held earlier today, and Commissioner Mangum will brief the Commission on that later in today's meeting. Additionally, Ms. Nober stated that the executive session minutes of a Legal Committee meeting on October 2 were provided separately to the Commission, and there will be a follow-up discussion later in today's meeting.

Ms. Nober stated that the next Commission meeting will be held on Thursday, November 20, 2014 at 9:00 a.m. She said that she would contact all of the Commissioners regarding possible dates for Commissioner Mangum's farewell party.

PUBLIC EDUCATION DIVISION MATTERS

Public Education and Communications Division Deputy Chief Marisa Donelan presented Mr. Giannotti's report of Public Education and Communications Division activities for the month of September 2014. Ms. Donelan noted that the list of conflict of interest law disclosures filed with the Commission in September has been added to the Commission's website.

LEGAL DIVISION MATTERS

New Legal Division Protocol for Telephone Requests for Advice

Ms. Roney reported that the Legal Division, with the assistance of Mr. Memmolo, the Commission's receptionists and the Legal Division's administrative assistant, has developed and recently implemented a new protocol for how the division responds to telephone calls seeking advice on c. 268A and 268B. Ms. Roney stated that now, if a requestor needs to file a disclosure, the attorney handling the call will email the correct disclosure form to the requestor, and that email will be included in the Commission's case management system's record of the call. Additionally, if a requestor asks for a written follow-up on the call, or if they seem confused about a complex situation, Ms. Roney said attorneys will send an email to the requestor, which

can include links to educational materials on the Commission's website. Chairman Dortch-Okara stated that the new protocol is a good idea, as the Commission will now have further electronic records of exactly what information the attorneys have given to requestors. Commissioner Trach suggested that it may be a good practice to send a follow-up email to every requestor, so that there is no ambiguity between advice the attorneys provide and actions taken by the requestor, but acknowledged this might be too time-consuming. Ms. Roney replied that that is a good idea, but would be time-consuming and may not be feasible in every case due to time constraints.

Legal Division Metrics

Ms. Roney presented the following Legal Division metrics for September 2014:

- **Written advice.** The Legal Division answered by letter or email 51 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 2013 (same month last year):	24
	August 2014 (previous month):	28

- **Oral advice.** During this same period, Legal Division attorneys provided legal advice by telephone or on a walk-in basis to 419 state, county and municipal officials.

For comparison:	2008 monthly average (pre Ethics Reform):	280
	2010 monthly average (post Ethics Reform):	450
	September 2013 (same month last year):	435
	August 2014 (previous month):	355

- **Review of municipal letters.** The Legal Division reviewed 3 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 2013 (same month last year):	0
	August 2014 (previous month):	6

- **Backlog.** As of today, there are 3 pending requests for written advice that are more than 30 days old, received on August 25 and 26 and September 4, 2014. We have a total of 31 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. There were 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 the Commission will file its Motion to Dismiss for failure to prosecute within the next month.

ENFORCEMENT DIVISION MATTERS

Attorney Metrics and Investigations Unit Metrics

Ms. Downes presented the quarterly report of attorney metrics and the monthly report of Investigations Unit activities for September 2014. Enforcement Division Deputy Chief/Investigations Katherine Gallant noted that an increase in Investigations Unit activity may be attributable to election season.

EXECUTIVE SESSION

At 9:22 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 strategy with respect to litigation since a discussion in an open meeting may have a detrimental effect on the litigation position of the Commission; and 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 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

AUDIT, FINANCE AND HUMAN RESOURCES COMMITTEE

At 12:20 p.m., the Commission reconvened in public session. Commissioner Mangum stated that the Audit, Finance and Human Resources Committee met earlier today before the Commission's meeting and reviewed proposed changes to the Commission's Personnel Manual. Commissioner Mangum stated that the Committee had voted to recommend approval of the revised Manual by the full Commission. She described the revisions as comprehensive, including updating many policies, and incorporating changes to the Commission's sick leave, vacation, and flextime policies. She stated that the revised Manual had turned out well.

EXECUTIVE DIRECTOR'S PERFORMANCE EVALUATION

At 12:25, the Chairman stated that the Commission would discuss the Executive Director's performance. Commissioner Mangum stated that she and Commissioner Trach had met with all of the Commission's Division Chiefs. Ms. Nober received pretty much universal praise from them. Commissioner Mangum noted that the Commission had previously asked Ms. Nober to develop her relations with the public and media. Staff felt that Ms. Nober had been successful doing that. Commissioner Mangum further noted that the meetings concerning Ms. Nober's performance evaluation had taken place while she was in the midst of making some policy changes with respect to work schedules and flextime that were distressing to some members of the staff, but that, even with that, there was appreciation of the reasons for the changes. Commissioner Trach stated that he did not have much to add and that the general consensus was that the organization was well run, particularly in a challenging budget year. He stated further that his principal takeaway was a suggestion that Ms. Nober help staff to process her decisions by better communicating to staff the reasons for those decisions. Commissioner Mangum stated that she agreed with that suggestion, and that conversations with staff had taken place while the changes were being made, and staff were subsequently better informed.

Ms. Nober stated that with respect to communications with staff about personnel policy changes, she had informed the managers of certain proposed changes, but waited to have a conversation with the entire staff about those changes until after discussing them with the Audit, Finance, and Human Relations Committee, as she would have reassessed the proposed changes if the Committee had opposed them. Ms. Nober stated further that after an all-staff meeting at which she explained the reasons for the proposed changes, she received positive feedback from many members of the staff.

EXECUTIVE SESSION

At 12:50 p.m., on the motion of Chairman Dortch-Okara, seconded by Commissioner Trach, the Commission voted 4-0 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.

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

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of October 16, 2014.
2. Minutes of the State Ethics Commission Meeting for the September 18, 2014 Public and Executive Session.
3. Minutes of the Audit, Finance and Human Resources Committee Meeting for the October 2, 2014 Public Session.
4. Minutes of the Legal Committee Meeting for the October 2, 2014 executive session, emailed separately to the Commission.
5. Memorandum dated October 9, 2014 from David Giannotti to the Commission concerning Public Education and Communications Division activities for September 2014.
6. Memorandum dated October 10, 2014 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
7. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
8. Report of Enforcement Division Investigations Unit Metrics, dated October 7, 2014.
9. Report of Enforcement Division Attorney Metrics, dated October 7, 2014.

Respectfully submitted,

Marisa Donelan
Public Education and Communications
Division Deputy Chief