



Commonwealth of Massachusetts **STATE ETHICS COMMISSION**

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Barbara A. Dortch-Okara (ret.)
Chair

David A. Wilson
Acting Executive Director

MINUTES OF THE STATE ETHICS COMMISSION MEETING **November 17, 2016**

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 Vice-Chairman Regina L. Quinlan, Commissioner David A. Mills, Commissioner Thomas J. Sartory, and Commissioner Maria J. Krokidas (participating remotely).

REMOTE PARTICIPATION

Chairman Dortch-Okara announced that the Commission previously voted to authorize remote participation on December 16, 2011; that Commissioner Krokidas will participate remotely in the entire meeting; that the reason for Commissioner Krokidas's remote participation is a personal illness that prevents her from travelling or attending 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 Vice-Chairman Quinlan, seconded by Commissioner Mills, the Commission voted 5-0 to waive the reading and approve the minutes of the October 20, 2016 public and executive sessions.

VOTE:	Chairman Dortch-Okara	yes
	Vice-Chairman Quinlan	yes
	Commissioner Mills	yes
	Commissioner Sartory	yes
	Commissioner Krokidas	yes

On the motion of Vice-Chairman Quinlan, seconded by Commissioner Sartory, the Commission voted 5-0 to waive the reading and approve the public session minutes of the September 30 and October 6, 2016 Audit, Finance and Human Resources Committee (“HR Committee”) meetings.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>
	Commissioner Sartory	<u>yes</u>
	Commissioner Krokidas	<u>yes</u>

ACTING EXECUTIVE DIRECTOR’S REPORT

Personnel

Acting Executive Director David A. Wilson welcomed new Enforcement Division Chief Monica Brookman, who started on October 27, 2016. Mr. Wilson also welcomed new Chief Financial Officer/Director of Budget & Administration, Alice Wu, who started on October 31, 2016. The Commissioners welcomed Ms. Brookman and Ms. Wu.

Hiring

Mr. Wilson reported that the Commission received sixty (60) resumes in response to the posting for the Assistant Enforcement Division Counsel position and forty (40) resumes in response to the posting for the Enforcement Division Chief of Investigations position. Mr. Wilson stated that the first round of interviews for these positions has been completed and the second round will begin next week. Mr. Wilson reported he anticipates making hiring decisions for both of these positions by the end of December.

Commissioner Trach Event

Mr. Wilson reported that a farewell event for former Commissioner William J. Trach will be held on the evening of November 22, 2016.

Ethics Task Force

Mr. Wilson reported that the House and Senate have both passed the Resolve to create the Ethics Task Force, which is charged with conducting an investigation and review of ethics laws. Mr. Wilson noted that he expects the Governor to sign the Resolve in the near future. The Task Force is required to take legislative action by March 17, 2017. Mr. Wilson reported that he had spoken with the House and Senate Counsel, as well as the Governor’s Assistant Counsel, and expressed the Commission’s willingness to provide assistance to the Task Force. Vice-Chairman Quinlan recommended sending a letter to the Task Force Chair to formally offer the Commission’s assistance. Chairman Dortch-Okara recommended scheduling a Legal Committee meeting to discuss the Commission’s position on issues that may be addressed by the Task Force.

Internal Control Plan

Mr. Wilson reported that he is working with the Division Chiefs to revise the Commission's Internal Controls Plan ("ICP"), which was last updated in 2013 and must be substantially revised to comply with the Comptroller's Office guidelines. Mr. Wilson stated that the HR Committee will review a draft of the ICP and it will then be brought to the full Commission for review in the next few months.

Budget

Mr. Wilson reported that the Commission's FY 2018 maintenance budget request, which was submitted to the Office of Administration and Finance ("A&F") several weeks ago, included \$45,000 for consulting services to plan the replacement of the Commission's eleven year-old case management system, Ethos. A&F recently requested an additional written explanation of the Commission's need for this money, and an explanation of how this need would be affected if the Commission were to receive bond money from MassIT. Mr. Wilson reported that he responded to A&F's request for additional information last week. Mr. Wilson commended Financial Disclosure Administrator and Analyst/SFI, Robert Milt, for his assistance with this matter.

New Legislators Academy

Mr. Wilson reported that that he is looking forward to participating in the New Legislators Academy at the University of Massachusetts at Amherst on December 8, 2016, where he will help educate newly elected legislators about the conflict of interest law.

Mr. Wilson reported that he received a copy of a letter of praise from the Massachusetts Council of School Committee Personnel to Public Education and Communications Division Chief David Giannotti regarding a seminar recently presented by Mr. Giannotti.. Mr. Wilson thanked Mr. Giannotti for his outstanding work.

PUBLIC EDUCATION DIVISION REPORT

Mr. Giannotti presented the Public Education and Communication Division's report for the month of November 2016. Mr. Giannotti noted that he had presented a conflict of interest law seminar to the Massachusetts Moderators Association. Additionally, in conjunction with the Attorney General's Office, he provided conflict of interest law training to approximately seventy (70) superintendents and school committee members. Mr. Giannotti also taught a four hour class to state managers as part of the Commonwealth Management Certificate Program ("CMCP"). Mr. Giannotti reported that as the new compliance cycle for conflict of interest law education and training has begun.

LEGAL DIVISION MATTERS

Personnel Manual

General Counsel Deirdre Roney presented the revised draft Personnel Manual. Ms. Roney reviewed the revisions she made to the draft since the October Commission meeting.

1. Section 1.4 At Will Employment; Termination Absent Cause for Circumstances Affecting Commission; and Section 1.5 Termination for Cause.

Commissioner Krokidas asked what the limited exceptions are to terminating an “at will” employee pursuant to *Parker v. Town of North Brookfield*, 68 Mass. App. Ct. 235, 240 (270), which is cited in a footnote in § 1.4 of the draft Personnel Manual. Ms. Roney responded that an “at will” employee may be terminated for no reason at all, but may not be terminated for an illegal reason, and *Parker v. Town of North Brookfield*, provides a list of illegal reasons for terminating an employee.

Ms. Roney reported that the requirement that the Executive Director consult with the HR Committee Chair prior to making a termination decision has been removed. Ms. Roney also reported that this section now clarifies that the Executive Director is an “at will” employee, unless the Commission hires the Executive Director pursuant to a contract.

The Commission discussed whether to include a list of reasons employees may be terminated for cause. Ms. Roney stated that it is desirable to have a list of reasons that can result in termination so employees are put on notice that certain conduct may result in termination.

Commissioner Sartory questioned whether the consequences are different for an employee who is terminated with cause versus without cause. Commissioner Sartory said that if there is no difference, then there should not be two separate provisions in the Personnel Manual for employees who are terminated with cause and without cause.

Vice-Chairman Quinlan stated that providing employees with notice and the opportunity to be heard prior to termination is critical to avoid potential litigation. Vice-Chairman Quinlan asked whether an employee who is terminated for cause has a due process right to notice and an opportunity to be heard. Ms. Roney replied that Commission employees, who are “at will,” are not required by law to receive any notice of termination, or an opportunity to be heard. Vice-Chairman Quinlan stated that all employees should be given a written notice of termination stating: (1) whether the termination is for cause, (2) the specific reason for the termination, and (3) an opportunity to respond to the notice.

Vice-Chairman Quinlan asked Ms. Roney to draft a memorandum addressing the rights of at will employees. Ms. Roney stated that she would revise this section of the draft Personnel Manual and provide a memorandum in the packet for the next Commission meeting. The Commission agreed to discuss this section further at the next meeting.

2. Section 1.6 Progressive Discipline.

Ms. Roney noted that she will delete the reference to the Chair of the HR Committee in the last sentence of § 1.6.

[At 10:40 a.m. the Commission took a brief break. At 10:47 a.m. the Commission reconvened.]

3. Section 1.12 Commission Ombudsman.

Ms. Roney reported that this section has been changed so that it now states that an employee who raises a complaint or concern may ask the Ombudsman to take no further action, and the Ombudsman shall respect that request unless it conflicts with some other provision of the manual. The Commission agreed with the proposed change.

4. Section 2.14 Performance Evaluations.

Ms. Roney reported that this section has been changed so that it now states that the Commission will determine the process for the Executive Director's performance evaluation. The Commission agreed with the proposed change.

5. Section 4.1 Compensation and Benefits, Appointment.

Ms. Roney reported that this section has been changed so that it now states that the Executive Director is an "at will" employee, unless the Commission enters into a contract with the Executive Director. The Commission requested that Ms. Roney change the wording of this section to state that the Executive Director is an at will employee "unless the Commission decides otherwise."

6. Section 1.6 Progressive Discipline.

The Commission discussed this section. Chairman Dortch-Okara noted that this section may need to be discussed further depending upon how the Commission resolves §§ 1.4 and 15.

After discussion, on the motion of Chairman Dortch-Okara, seconded by Vice-Chairman Quinlan, the Commission voted 5-0 to provisionally adopt chapters 2, 5 and § 4.9 of the draft Personnel Manual. The Commission agreed to further discuss the draft Personnel Manual at the December Commission meeting.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>
	Commissioner Sartory	<u>yes</u>
	Commissioner Krokidas	<u>yes</u>

SFI Status Report (Lauren Duca)

Legal Division Deputy Chief/SFI Lauren Duca reported that there are currently five non-filers for 2015, all of whom are former public employees. Ms. Duca reported that she is continuing to work on the public access module for the SFI application. Ms. Duca noted that work preparatory to the calendar year 2016 SFI filing season has begun. She stated that she has scheduled fifteen (15) educational forums and meetings with agency liaisons. Ms. Duca also reported that the SFI Team is in the process of reviewing agency designation lists, and will send reminders to agencies who have not yet submitted their designation lists.

Amicus Brief

Ms. Roney reported that the Commission has been asked to consider submitting an amicus brief to the Supreme Judicial Court on a question of interpretation of G.L. c. 268A, § 25. Section 25 permits suspension of a municipal employee who is under indictment for misconduct in office, and provides that any person “so suspended shall not receive any compensation or salary during the period of suspension.” At issue is whether § 25 provides a municipal employer with the right to not pay workers compensation to an employee who is under indictment. Ms. Roney stated that this is a novel issue; there is no Commission precedent on this issue and the Legal Division has not provided advice in connection with this matter. Ms. Roney noted that she is disinclined to put in an amicus brief on a question that the Commission has never considered. After discussion, the Commission agreed that Ms. Roney should not submit an amicus brief in connection with this matter.

Legal Division Metrics for October 2016

General Counsel Deirdre Roney presented the following Legal Division metrics for October 2016. The Commission had no questions.

- **Written advice.** The Legal Division answered by letter or email 33 written requests for advisory opinions under G.L. c. 268A and c. 268B.

For comparison:	October 2015 (same month last year):	32
	September 2016 (previous month):	43

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 373 requests for advice from state, county and municipal officials.

For comparison:	October 2015 (same month last year):	398
	September 2016 (previous month):	359

- **Review of municipal letters.** Division staff reviewed 6 letters issued by city solicitors/town counsel pursuant to G.L. c. 268A, § 22 and 930 CMR 1.03.

For comparison:	October 2015 (same month last year):	0
	September 2016 (previous month):	4

- **Backlog.** As of today, the Division has 10 pending requests for written advice that are more than 30 days old. There are a total of 13 pending requests for written advice.

Adjudicatory Matters

Ms. Roney presented the calendar of hearing dates in pending Commission adjudicatory proceedings. The Commission had no questions.

Litigation Matters

McGovern v. State Ethics Commission: Hampden Superior Court Civil Action No. 1679CV00082. Edward McGovern seeks judicial review pursuant to G.L. c. 30A of the Commission's finding of violation against him. We are waiting for McGovern to move for judgement on the pleadings.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics Report

Enforcement Division Chief Monica Brookman presented the monthly report of Investigations Unit activities for October 2016. The Commission had no questions.

UPDATE ON EXECUTIVE DIRECTOR HIRING PROCESS

[At 11:25 a.m. Acting Executive Director David A. Wilson recused himself and left the room.]

Ms. Roney reported that the first round of interviews has been completed for the Executive Director position and the hiring committee has identified four candidates to bring back for a second interview. The second round of interviews will be conducted by a panel of staff members on November 22 and December 2. The staff members will then provide their input to Commissioner Sartory and Vice-Chairman Quinlan. Chairman Dortch-Okara stated that the finalists will be interviewed by the full Commission in mid-January.

EXECUTIVE SESSION

At 11:36 a.m., on the motion of Chairman Dortch-Okara, seconded by Vice Chairman Quinlan, 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, and to discuss a matter subject to the provisions of G.L. c. 30A, § 21, subparagraph (a)(7), G.L. c. 4, § 7, clause Twenty-Sixth, exemption (c), and G.L. c. 66, § 10. These matters will include investigatory matters, cases deferred, a preliminary inquiry report, preliminary inquiry recommendation and summons authorization requests, advisory opinions, and a matter involving a former Commission employee.

VOTE: Chairman Dortch-Okara yes

Vice-Chairman Quinlan	yes
Commissioner Mills	yes
Commissioner Sartory	yes
Commissioner Krokidas	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 November 17, 2016.
2. Minutes of the State Ethics Commission Meeting for the October 20, 2016 Public and Executive Sessions.
3. Minutes of the State Ethics Commission Audit, Finance and Human Resources Committee Meeting for the September 30 and October 6, 2016 Public Sessions.
4. Memorandum dated November 20, 2016 from David Giannotti to the Commission concerning Public Education and Communications Division activities for October 2016.
5. Memorandum dated November 10, 2016 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
6. Draft revised Commission Personnel Manual dated November 10, 2016.
7. Memorandum dated November 10, 2016 from Deirdre Roney to the Commission re draft revised Personnel Manual.
8. Calendar of Hearing Dates in pending Commission Adjudicatory Proceedings.
9. Report of Enforcement Division Investigations Unit metrics.

10. Letter to David Giannotti dated November 4, 2016 from Mickey Fredericks, Chairman of the Massachusetts Council of School Committee Administrative Personnel Executive Board.

Respectfully submitted,

Norah K. Mallam

Norah K. Mallam
Staff Attorney