



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 25, 2016**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:04 a.m. Also in attendance were Vice-Chairman William J. Trach, Commissioner Regina L. Quinlan, Commissioner David A. Mills and Commissioner Thomas J. Sartory.

APPROVAL OF MEETING MINUTES

On the motion of Vice-Chairman Trach, seconded by Commissioner Quinlan, the Commission voted 5-0 to waive the reading and approve the minutes of the April 20, 2016 public and executive sessions.

EXECUTIVE DIRECTOR'S REPORT

Budget

Executive Director Karen L. Nober reminded the Commission that the Governor had recommended level-funding for us for FY17. She said that the House Committee on Ways and Means also recommended level funding us, but Representative Kocot filed an amendment for the Commission for an additional \$50,000, and the House ultimately approved an additional \$25,000 for the Commission. On May 17th, the Senate Committee on Ways and Means recommended level funding for the Commission. Ms. Nober said that because no amendments were filed relating to our funding, our budget will get decided in conference committee.

Ms. Nober also reported that a budget amendment was filed in the Senate which would amend the Gaming Commission's statute in accordance with what we had discussed and recommended to the Gaming Commission.

Personnel

Ms. Nober reported that we received 39 applications for Enforcement Division Chief position. She stated that she and General Counsel Deirdre Roney and Acting Enforcement Division Chief Candies Pruitt-Doncaster interviewed six candidates and will be interviewing two more applicants to complete the first round of interviews. She said that she intends to bring some candidates from the first round back for a second round of interviews with Enforcement Deputy Chief of Investigations Kathy Gallant, Public Education and Communications Division Chief David Giannotti and CFO Michael Memmolo.

Ms. Nober reported that one of our administrative assistants is still out on leave, and that Mr. Memmolo worked with Ms. Pruitt-Doncaster and Ms. Gallant to interview and select a temporary hire, Stephanie Slattery, who started last week. Ms. Nober stated that Ms. Slattery is doing well and everyone is pleased with her work.

SFI Filing Application

Ms. Nober reported that the new SFI filing application opened on May 10. She acknowledged and thanked the SFI team for all of their hard work. Ms. Nober also stated that she wanted to recognize the vendor, PCC, and Susan Laniewski, our project manager, for the terrific job they have done for us.

Office Improvements

Ms. Nober stated that because we have several vacant positions, including one employee who is off the payroll, we have a substantial amount of savings this fiscal year, so we are looking to see what improvements can be made to the office. Ms. Nober reported that an all-staff meeting was held to discuss what we are planning to do. She reported to the Commission that the improvements would include:

- Replacing the front door to the office with one that is mostly glass, similar to the door at MCAD, so that we can close the door during the work day, but have the office still look open and welcoming to visitors. Closing the door will cut the noise from the hallways, which is considerable, and will help to keep the receptionists' telephone conversations confidential. We have also added a small white noise machine to the lobby area to help keep the receptionists' conversations confidential.
- Replacing certain office doors with new doors that will include a glass pane so you can see if the person inside is in a meeting or on the phone without having to interrupt them, and they can see who is looking to talk to them. We have already made this change to some of the vacant offices and are making the new doors available to whoever wants them.

- Replacing the door in one of the offices that opens onto the hallway with a new door that is solid and does not have a window to decrease the likelihood of people in the hallway hearing what is being said in the office.
- Getting new desk chairs for whoever wants them – many of our chairs are quite old or do not provide adequate support. We are also replacing the Commissioners' chairs in the conference room.
- We typically do an office cleaning at the end of each fiscal year, which we will do again this year, involving stripping and waxing the floors and vacuuming and shampooing the carpets. In addition, earlier this week we brought in an environmental analyst from the Department of Public Health to test the air quality throughout the office and make recommendations for improvement. Ms. Nober stated that Mr. Memmolo will follow up with staff about that. Also this year, we are going to have the books and the bookshelves in this conference room cleaned, as well as the air vents in here.
- Buying new computer equipment.

Ms. Nober stated that new computer equipment would cost around \$6,500, and the new doors would cost about \$10,000.

Emergency Procedures

Ms. Nober reported that the agency formed a new emergency response team consisting of Mr. Memmolo, Staff Attorney Amy Nee, Ms. Pruitt-Doncaster and Investigator Brian McWilliams, and the team worked together to review and update our Emergency Procedures. Ms. Nober stated that a staff meeting was held to go over the Emergency Procedures, including where staff are supposed to meet outside after a building evacuation. She added that we expect DCAMM to conduct emergency drills in the upcoming months, and we are now prepared for that.

External Relations and Technology Committee Meeting

Ms. Nober informed the Commission that she would like to schedule a meeting in June with the External Relations and Technology Committee, which is chaired by Commissioner Quinlan. She stated that the agenda item for that meeting will be the Commission's policies on IT resources, which have been extensively revised and updated. The plan would be to review and discuss them with the committee before bringing them to the Commission for approval. She said that she also intends to review the policies with staff before the committee meeting.

Next Commission meeting

Ms. Nober stated that the next Commission meeting will be held on June 15 at 9:00 am. Chairman Dortch-Okara stated that she would be out of town on that date and asked to reschedule the June meeting. After discussion, the Commission agreed to reschedule the next Commission meeting to Wednesday, June 22, at 9:00 am.

PUBLIC EDUCATION DIVISION REPORT

Public Education and Communications Division Chief David Giannotti presented the Public Education and Communication Division's report for the month of April 2016. He reported that following special state elections, he will be following up with legislators on the education requirements under the conflict of interest law. Mr. Giannotti also stated that he is working with the Board of Higher Education to put a program together for trustees of state colleges. He has also begun working with the Department of Housing and Economic Development because of a new statute requiring continuing education for members of local housing authorities. The Commission had no questions.

LEGAL DIVISION MATTERS

Update on New SFI Electronic Filing Application (Deirdre Roney and Lauren Duca)

General Counsel Deirdre Roney reported that 976 SFIs have been filed electronically, and if we add the people who filed manually to that number, we are at well over a quarter of required filers who have filed an SFI. Ms. Roney stated that she wanted to recognize the SFI team, and suggested that the Commission consider using the extra money saved this year towards bonuses for staff members who worked on the SFI project. Ms. Roney added that she filed her SFI, which took about the same amount of time as it did in previous years, but she found the new application easier to use.

Ms. Roney further reported that the Public Inspection Module has been tested and reviewed and that it looks good. Commissioner Quinlan asked whether the Public Inspection Module fulfills the statutory notice requirements. Ms. Roney responded that it does by automatically sending a notice by email to the filer whose SFI is being viewed. Commissioner Mills asked if anybody in the public would be able to view an SFI. Ms. Roney explained that a member of the public wishing to view an SFI would first need to register through the application and be approved by the Commission.

Legal Division Deputy Chief/SFI Lauren Duca provided a brief update on the status of the new SFI application, including the following:

- Ms. Duca, Ms. Roney, SFI Analyst Robert Milt, IT Specialist Tony Webb and Assistant General Counsel Pauline Nguyen handled 677 phone calls or emails regarding the new system in April 2016.
- The reason that the opening of the system was delayed from April 20 to May 10, 2016 was so that a variety of glitches revealed through testing could be fixed. We worked with the vendor who fixed everything we had identified at that point. The vendor has been incredibly responsive. The vendor shows us all of the fixes in the TEST system before deploying them onto the live production.
- During the first week, 703 filers filed their SFIs electronically, and during this first week we identified some additional issues with the application. The largest number of questions concerned the cutting and pasting of the password because filers are inadvertently adding an extra space when they copy the password, which then does not

work in the system because it is not an exact match. Other questions filers have are due to the fact that the questions on the form are different this year, so filers are concerned that they are not seeing the same questions.

- We are coming up on our first filing deadline – May 31. This deadline cannot be extended as it is the Secretary of State’s elections deadlines for candidates running for office.
- Currently, we need to upload to the new application the SFIs that were manually filed. Before uploading those forms into the new system, we need to redact the forms. We will begin this process soon, starting with the filings of those whose SFIs are usually requested.

Ms. Nober added that in a normal year, we do not have this many manual filers. In the future, there should be fewer manual filers, and we would not need to redact as many filings as more filers move to using the electronic system. Chairman Dortch-Okara asked whether there have been any complaints about the new filing system. Ms. Nober responded that there have been complaints, particularly from those who were understandably frustrated by the late opening of the system, but noted that we received some positive feedback as well.

Vice-Chairman Trach asked if there was any reason we do not require filers to file electronically. Ms. Nober responded that there is currently no legal requirement that they do so, and if there were, we would probably need to provide reasonable accommodation for people who could not file electronically. Vice-Chairman Trach suggested that the Commission consider raising the bar to require filers to file electronically. He added that for those who insist on filing manually or need assistance filing electronically, they should be offered the option to come to the Commission and work with staff to file electronically. He stated that it might sound like a lot of work at first, but in the long run, it might save time for the agency. Ms. Nober responded that over next couple of years, we will have a better sense of how much of an issue the number of manual filers is causing for the agency.

Ms. Duca gave the Commission a brief overview of the Public Inspection Module and answered questions by the Commission. Commissioner Mills stated that Ms. Roney’s suggestion that additional funds be used in the form of a bonus for those who worked on the SFI system is a worthy suggestion. Commissioner Mills also expressed the opinion that the requirement regarding disclosure of financial holdings is an onerous one. Ms. Duca explained that in the new system, filers are able to select publicly traded stocks easily from a pre-populated menu, which includes all of the pertinent information for many publicly traded stocks, and should make it easier for filers to enter the required information.

Commissioner Mills asked whether the application could accept an image of a filer’s financial holdings, so that the filer would not need to type in every holding. Mr. Memmolo stated the technology that allows us to pull data from an image is quite expensive. Mr. Memmolo explained that our new application now provides administrators the ability to search by the type of financial holding that filers hold. For example, if we want to look up all filers who hold a specific stock, we would be able to do so. Ms. Roney added that the application is also meant to be a useful tool for the Enforcement Division.

Legal Division Metrics for April 2016

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

- **Written advice.** The Legal Division answered by letter or email 26 written requests for advisory opinions under G.L. c. 268A and c. 268B.

For comparison:	April 2015 (same month last year):	47
	March 2016 (previous month):	28

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 572 requests for advice from state, county and municipal officials.

For comparison:	April 2015 (same month last year):	652
	March 2016 (previous month):	513

- **Review of municipal letters.** Division staff review 5 letters issued by city solicitors/town counsel pursuant to G.L. c. 268A, § 22 and 930 CMR 1.03.

For comparison:	April 2015 (same month last year):	5
	March 2016 (previous month):	7

- **Backlog.** As of today, the Division has 22 pending requests for written advice that are more than 30 days old. There are a total of 36 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. The Commission had 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

McClure v. State Ethics Commission: Middlesex Superior Court Civil Action No. MICV2013-04186-L. Awaiting entry of judgment for the Commission.

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 have filed the administrative record. The next step is for McGovern to make a motion for judgment on the pleadings.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics report

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented the monthly report of Investigations Unit activities for FY 2016. Ms. Gallant noted that the number of complaints in March was up, and in April, the number has decreased. She explained that this is because the number correlates to when local Town Meetings are held. The Commission had no questions.

EXECUTIVE SESSION

At 9:56 a.m., on the motion of Chairman Dortch-Okara, seconded by Commissioner Mills, 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. These matters will include investigatory matters, cases deferred, preliminary inquiry reports, and advisory opinions, and 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.

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

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

PUBLIC SESSION

At 12:43 p.m., the Commission resumed its meeting in Public Session.

Pay Increase for the Executive Director

Ms. Nober made her request for a pay increase by reading the following statement:

Although I have given you some written materials, I would like to make my request for a pay increase by reading a brief statement I have prepared. I request that you include this statement in its entirety in the public session minutes of this meeting.

I am asking the Commission to approve a pay increase for me today of 5%, effective as of January 22, 2016, based on the FY15 evaluation period. My employment with the Commission commenced on January 22, 2008, and, if approved, this would be only my third raise in 8 years. The two raises that I have received, one in 2012 and one in 2014, were in the total amount of 6.25%, less than 1% a year. During this same period, I have

recommended, and the Commission has approved, merit increases for managers in the maximum total amount of 15.5%. The most recent manager pay raises were approved by the Commission last September, effective as of July 1, 2015, based on the FY15 evaluation period, the same period for which I am requesting an increase.

When I left my position with Massport in 2008, I took a pay cut to take the Executive Director position with the Commission. I agreed to do that, but I also expected that I would be receiving pay increases which reflected my performance as Executive Director. That has not happened, even though I have received consistently excellent performance evaluations throughout my tenure here, including my performance rating for the FY15 rating period, the period that my request relates to. In fact, my pay now is only about \$3,000 more than what I was making when I left Massport 8 and a half years ago.

I would like you to know that I did not even ask for a raise during my first four years with the Commission. That is because the economy was in very bad shape, the Commission's budgets were very tight, and I felt that removing myself from the equation put me in the best position to advocate on behalf of the agency. In retrospect, that was probably a mistake, but I was looking out for the Commission and its staff. And I always expected that the Commission would support and treat me fairly, particularly when the Commission had the financial resources to do so, as it does now.

The raise I am requesting today relates to my FY15 performance evaluation for the period mid-June 2014-mid-June 2015. (Managers are on a fiscal year cycle, so their raises are effective on July 1st, and their merit increases relate to the prior fiscal year's evaluation. My raises have been on my anniversary date and also relate to the prior fiscal year's evaluation.) I believe a 5% increase is fully warranted and supported by my FY15 performance evaluation rating. The Commission met with me in February to discuss my evaluation, including specific issues which had been factored into my overall rating of 4.8 out of a possible 5.0. In making my request today, I note that I have received 6 performance evaluations during my time here: two of those evaluation ratings were 4.8, and the other four were 5.0, again, based on a maximum rating of 5.0.

Merit increases for me and for the managers have always been made based on the most recent performance evaluation in the time that I've been here. To the extent that the Commission wishes to change its practices to consider factors outside the evaluation period, then I think it would only be fair for the Commission to factor in my evaluations for my entire tenure with the Commission. However, I think the more appropriate course of action would be to consider my request in light of my FY15 rating, consistent with the Commission's practices.

Thank you for your consideration, and, again, I ask that this request be reflected in its entirety in the meeting minutes.

On the motion of Vice-Chairman Trach, seconded by Commissioner Mills, the Commission voted 5-0 to include Ms. Nober's statement in its entirety into the public session minutes of this meeting.

Chairman Dortch-Okara stated that the Commission would take Ms. Nober's request under advisement and would add it to the agenda for the next Commission meeting.

MOTION TO ADJOURN

At 12:52 p.m., on the motion of Vice-Chairman Trach, seconded by Commissioner Quinlan, the Commission voted 5-0 to adjourn the meeting.

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of May 25, 2016.
2. Minutes of the State Ethics Commission Meeting for the April 20, 2015 Public and Executive Sessions.
3. Memorandum dated May 6, 2016 from David Giannotti to the Commission concerning Public Education and Communications Division activities for April 2016.
4. Memorandum dated May 20, 2016 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
6. Report of Enforcement Division Investigations Unit FY 2016 Metrics.

Respectfully submitted,



Pauline Nguyen
Assistant General Counsel