



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

September 16, 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 David A. Mills, and Commissioner Thomas J. Sartory. Commissioner Regina L. Quinlan was not present.

APPROVAL OF MEETING MINUTES

On the motion of Chairman Dortch-Okara, seconded by Vice-Chairman Trach, the Commission voted 4-0 to waive the reading and approve the minutes of the July 20 and August 11, 2016 public and executive sessions.

ACTING EXECUTIVE DIRECTOR'S REPORT

Personnel

Mr. Wilson reported that Enforcement Division Deputy Chief, Investigations, Katherine Gallant will be leaving the Commission on September 30th to take a position with the Department of Mental Health. Mr. Wilson stated that Ms. Gallant has done an extraordinary job in all of the capacities in which she has served the Commission and she will be sorely missed.

Mr. Wilson reported that Carolyn Teehan has returned to her position as Administrative Assistant for the Enforcement Division.

Mr. Wilson reported that Assistant General Counsel, Pauline Nguyen has been promoted to Senior Assistant General Counsel. Mr. Wilson informed the Commission that Ms. Nguyen will temporarily assist the Enforcement Division and he appreciates that she has agreed to take on these duties. Chairman Dortch-Okara noted that the promotion was well warranted and thanked Mr. Wilson for recognizing Ms. Nguyen's contributions to the Commission.

Hiring

Mr. Wilson reported that interviews for the Enforcement Division Chief position will be completed next week. He noted that an offer for this position was previously made, but had not been accepted by the candidate. Mr. Wilson reported that several strong candidates for the position remain.

Mr. Wilson reported that the Commission has received resumes for the Chief Financial Officer/Director of Budget & Administration position and interviews for this position have been scheduled.

Mr. Wilson reported that the Deputy Chief of Investigations position and Assistant Enforcement Counsel position will be posted in the next few weeks.

Evaluations

Mr. Wilson reported that staff performance evaluations should be completed by the end of next week. He noted that for the first time, supervised staff has been given the opportunity to evaluate their supervisors.

Appointment of New Commissioner

Mr. Wilson reported that he has received assurances from the Governor's Legal Counsel that a new Commissioner will be in place for the October 20th meeting. The new Commissioner will replace outgoing Vice-Chairman Trach, whose term is set to expire.

Ethics Reform Task Force

Mr. Wilson reported that although it previously appeared that the proposed Joint Task Force on Ethics Reform would not move forward, based on a recent conversation with House Counsel, Jim Kennedy, he anticipates that the Task Force will proceed. Most of the Task Force activities are likely take place in October and November, and if legislation is recommended by the Task Force, it will need to be filed by January 20, 2017. Mr. Wilson reported that the Commission will not have a representative on the Task Force, but Mr. Wilson has expressed to Mr. Kennedy the Commission's desire to assist the Task Force throughout the process.

Financial

Mr. Wilson reported that the annual spending plan for FY 2017 was completed and filed with the Executive Office of Administration & Finance on Sept 9, 2016. Mr. Wilson thanked Financial Disclosure Administrator and Analyst/SFI, Robert Milt, for his assistance in completing the report.

Mr. Wilson reported that the process for formulating the Governor's FY 2018 budget recommendation will begin in the next few weeks. Mr. Wilson is currently analyzing the funding required to maintain the current level of Commission operations. He noted it is

necessary to ensure there are adequate funds to cover salaries for the positions that are in the process of being filled, particularly in the event of a mid-year budget cut. Commissioner Mills thanked Mr. Wilson for his efforts with respect to the budget process and offered, if necessary, to provide assistance with the difficult task of obtaining additional funding.

Next Commission Meeting

Mr. Wilson stated that the next Commission meeting will take place on Thursday October 20 at 9:00 a.m.

PUBLIC EDUCATION DIVISION REPORT

Mr. Wilson reported that Public Education and Communications Division Chief, David Giannotti, was not present because he was conducting a public education seminar in Holyoke. Mr. Wilson noted that the July and August 2016 Public Education and Communications Division report reflected a significant amount of work by Mr. Giannotti. Mr. Wilson commended Mr. Giannotti for the progress he has made on the website migration project, which Mr. Giannotti is working on in conjunction with Mass.Gov. Mr. Wilson reported that Mr. Giannotti will receive an award from MassIT next week in recognition of his exemplary work on the website migration project.

LEGAL DIVISION MATTERS

Legal Division FY 2016 Report

Ms. Roney presented a report of projects and metrics for the Legal Division for FY 2016. Ms. Roney reported that during the last fiscal year, which ended in June 2016, the Legal Division completed a significant amount of work, including issuing an advisory, responding to the largest number of annual advice requests the Commission has ever received, completing a significant amount of work on the new electronic application for annual filing of Statements of Financial Interests (“SFIs”), succeeding in several litigation matters, participating in the Counsel on Governmental Ethics Laws (“COGEL”) conference, and participating in the Commonwealth Management Certificate Program (“CMCP”). Ms. Roney commended the Legal Division staff for keeping up with a large volume of work despite facing various difficulties. Chairman Dortch-Okara thanked the division for its work.

Personnel Manual

Ms. Roney reported that she had completed a draft revised Personnel Manual. The proposed draft reflected input she received from staff as a result of a staff survey and from several staff meetings. Ms. Roney noted that she reviewed manuals from other state agencies to ensure that the policies contained in the draft are consistent with other agencies. The draft Personnel Manual will be discussed and reviewed at the next Audit, Finance & Human Resources Committee meeting and the revised Personnel Manual will eventually be brought before the full Commission for approval.

Commissioner Sartory requested that the draft Personnel Manual highlight differences between Commission policies and other state agencies. Ms. Roney responded that she would provide a version of the manual noting any such deviations.

Chairman Dortch-Okara inquired whether the proposed draft Personnel Manual reversed all changes that were made to the Personnel Manual in 2014. Ms. Roney responded that many of the 2014 changes remain in the proposed draft; however, the draft contains changes to ensure compliance with the state sick leave law, which went into effect January 1, 2016, as well as changes to other policies which were problematic for staff. Specifically, a number of changes have been made to the flex-time policy and to the hours in which staff may complete their work-day. Commissioner Dortch-Okara questioned whether we will be able to guarantee that the public will be adequately served if the hours in which staff may complete their work-day are changed. Ms. Roney responded that the Commission is open to the public from 9 a.m. to 5 p.m., and the proposed draft Personnel Manual contains provisions to address staff coverage in order to ensure that adequate coverage is provided during normal business hours.

Vice Chairman Trach noted that, although he appreciated the changes in the proposed draft Personnel Manual, he was concerned that some of the proposed policies could result in additional work for some staff members and Commissioners, specifically with respect to changes to the performance evaluation process and the creation of an Ombudsman. Chairman Dortch-Okara expressed her concern regarding additional duties the proposed policies would impose on Commissioners. Mr. Wilson noted that an absence of process had resulted in Commissioners spending substantially more time than would have been necessary, had a process had been in place to deal with certain personnel issues. Ms. Roney stated that Commissioners had spent a significant amount of time handling personnel matters during the last year, and the proposed policies are an attempt to create a mechanism for communication between Commissioners and staff in order to prevent these types of situations from arising in the future. Commissioner Mills noted that it is necessary to find a balance between attending to the interests of a professional staff and a need to ensure that the public is adequately served. Ms. Roney stated that when the proposed Personnel Manual is in final form it will be brought back to the full Commission for approval.

Update on New SFI Electronic Filing Application (Lauren Duca)

Legal Division Deputy Chief/SFI Lauren Duca provided an update on the status of the new SFI application. Ms. Duca reported that the number of calls and emails received regarding the SFI application has decreased significantly. Ms. Duca reported that currently there are 25 non-filers, and she intends to spend the next few weeks ensuring that these individuals file. Ms. Duca reported that she is working with the Comptroller to obtain current contact information for the non-filers who are no longer employed by the state. Ms. Duca reported that she is planning to develop a training program for agency liaisons to assist them in understanding the notification requirements for filers who are former public officials. Ms. Roney noted that as a result of all of the changes to the SFI system she is inclined not to refer late filers for prosecution this year. Ms. Duca reported that she is continuing to work with the SFI application vendor to identify the tasks necessary to complete to launch the public user access module. Ms. Duca anticipates that

the public inspection element of the SFI application will be functioning in approximately nine weeks.

Legal Division Metrics for July and August 2016

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

- **Written advice.** The Legal Division answered by letter or email 33 (July) and 73 (August) written requests for advisory opinions under G.L. c. 268A and c. 268B.

For comparison:	July 2015 (same month last year):	81
	August 2015 (same month last year):	57
	June 2016 (previous month):	64

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 332 (July) and 520 (August) requests for advice from state, county and municipal officials.

For comparison:	July 2015 (same month last year):	441
	August 2015 (same month last year):	389
	June 2016 (previous month):	660

- **Review of municipal letters.** Division staff reviewed 1 (July) and 8 (August) letters issued by city solicitors/town counsel pursuant to G.L. c. 268A, § 22 and 930 CMR 1.03.

For comparison:	July 2015 (same month last year):	6
	August 2015 (same month last year):	2
	June 2016 (previous month):	8

- **Backlog.** As of today, the Division has 5 pending requests for written advice that are more than 30 days old. There are a total of 12 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 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. Judgement has been entered for the Commission. Awaiting expiration of appeal period.

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

Acting Enforcement Division Chief Candies Pruitt-Doncaster expressed her regret that Ms. Gallant is leaving the Commission and stated that Ms. Gallant has been a fantastic manager.

Investigations Unit Metrics Report

Ms. Pruitt-Doncaster presented the monthly report of Investigations Unit activities for July and August 2016. The Commission had no questions.

Attorney Metrics Report

Ms. Pruitt-Doncaster presented the report of Attorney Metrics for July and August 2016. The Commission had no questions.

UPDATE ON EXECUTIVE DIRECTOR HIRING PROCESS

[At 10:01 a.m. Acting Executive Director David A. Wilson recused himself and left the room.]

Ms. Roney reported that the Executive Director position has been posted in both Massachusetts Lawyers Weekly and State House News. The Commission has received 19 applications for the Executive Director position and applications will continue to be accepted through September 30th. Ms. Roney reported that the Search Committee, which in addition to herself, is comprised of Commissioner Sartory, Commissioner Quinlan, Ms. Duca, and Ms. Pruitt-Doncaster, will review the resumes and determine which candidates to interview.

EXECUTIVE SESSION

At 10:09 a.m., on the motion of Chairman Dortch-Okara, seconded by Vice-Chairman Trach, the Commission voted 4-0 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, a preliminary inquiry report, a preliminary inquiry recommendation and summons authorization request, and advisory opinions.

VOTE:	Chairman Dortch-Okara	yes
	Vice-Chairman Trach	yes
	Commissioner Mills	yes
	Commissioner Sartory	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 September 16, 2016.
2. Minutes of the State Ethics Commission Meetings for the July 20 and August 11, 2016 Public and Executive Sessions.
3. Memorandum dated September 9, 2016 from David Giannotti to the Commission concerning Public Education and Communications Division activities for July and August 2016.
4. Memorandum dated September 9, 2016 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Memorandum dated September 9, 2016 from Deirdre Roney to the Commission re Legal Division report for Fiscal Year 2016.
6. Memorandum dated September 9, 2016 from Deirdre Roney to the Commission re Personnel Manual revisions.
7. Calendar of Hearing Dates in pending Commission Adjudicatory Proceedings.
8. Report of Enforcement Division Investigations Unit metrics.
9. Report of Enforcement Division Attorney metrics.

Respectfully submitted,

Norah K. Mallam

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Staff Attorney