

MINUTES OF THE STATE ETHICS COMMISSION MEETING

April 17, 2014

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:14 a.m. Also in attendance were Commissioners Paula Finley Mangum, Martin F. Murphy, William J. Trach and Regina L. Quinlan.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Mangum, seconded by Commissioner Trach, the Commission voted 5-0 to waive the reading and approve the minutes of the March 20, 2014 public and executive sessions.

The Commission reviewed the public session minutes of the March 20, 2014 Legal Committee meeting. An error in those minutes with respect to the time the meeting commenced was corrected. There were no questions, and no action by the Commission was required.

EXECUTIVE DIRECTOR'S REPORT

Next Meeting

Executive Director Karen L. Nober reported that several Commissioners had scheduling conflicts with the Commission meeting scheduled for May 15. After discussion by the Commission, Chairman Dortch-Okara stated the next Commission meeting will be held on Thursday, May 22, at 9:00 a.m.

Personnel

Ms. Nober reported that she appointed Karen Gray to serve as the Acting Enforcement Division Chief, effective April 1, 2014, and that Ms. Gray will serve in the position until a permanent appointment is named. Ms. Nober stated that the second round of interviews has been completed, and that she has asked Commissioner Murphy, as Chair of the Enforcement Committee, to participate in interviews with finalists, and Commissioner Murphy has agreed. She stated that she will make a decision shortly after the third round of interviews.

Budget

Ms. Nober reported that the House of Representatives released its FY 2015 budget proposal last week, and that its budget for the Commission matched the Governor's recommendation, which provides for a 2% increase over the FY 2014 budget. Ms. Nober stated that she is pleased with the House budget, as it reflects the Commission's request, and that we are now waiting for the Senate's budget proposal, expected to come out sometime in May. If the current budget number is what is ultimately approved, Ms. Nober stated that a potential issue could arise if there is a new collective bargaining agreement, as the current agreement expires on June 30, 2014. If a new collective bargaining agreement provides for raises, the Commission will likely need to seek additional funding to support them.

SFI Funding

Ms. Nober reported that the Commission's application to ITD for ITD bond monies to fund the replacement of the Commission's SFI electronic filing management system has generated positive feedback. She stated that she is cautiously optimistic, and expects to find out at the end of May or beginning of June about whether the funding is approved. Ms. Nober stated that she has briefed the Senate President and the Speaker of the House about the proposal, and that both were supportive. If the application is not approved, Ms. Nober said the Commission will likely go to the Legislature to seek supplemental funding or bond monies for the project.

Ms. Nober also reminded the Commissioners to file their calendar year 2013 SFIs, which are due May 1, 2014, if they have not already done so.

Legal Committee Meeting

Ms. Nober reported that the Legal Committee met this morning prior to today's meeting, and that Commissioner Trach, as Chair of the Legal Committee, will summarize the discussion shortly. This was the second committee meeting to discuss a draft advisory.

PUBLIC EDUCATION DIVISION MATTERS

Public Education and Communications Division Chief David Giannotti presented his report of Public Education and Communications Division activities for the month of March 2014.

The Commission had no questions.

LEGAL COMMITTEE CHAIR'S REPORT

Commissioner Trach reported that the Legal Committee met before today's Commission meeting to discuss Draft Advisory 14-1, Public Employees' Private Business Relationships and Other Private Dealings with Those Over Whom They Have Official Authority or with Whom They Have Official Dealings. Commissioner Trach reported the meeting was very productive, as the

committee has been trying to anticipate potential questions and areas of confusion and refine the Advisory so that it best explains the complex issues involved. He stated that the committee will meet again to discuss further revisions and bring a new draft to the Commission in May or June. Commissioner Quinlan asked whether the Advisory will provide a definition of “private dealings” and “other relationships,” and Commissioner Trach stated that it will explain such terms and others.

LEGAL DIVISION MATTERS

Outside Views on Educational Advisories

General Counsel Deirdre Roney presented a memo regarding past Commission practices in seeking outside views or input on educational advisories. Ms. Roney explained that because Commission advisories are merely informational and do not have the tone of law, the Commission is not constrained to follow any specific procedure to ask for outside view on them. She stated that we would be careful to distinguish any move to seek input on educational advisories from the requirement for a public comment period during Commission regulatory proceedings. Commissioner Trach stated that he does not see much of a downside to seeking public input, since the purpose of educational advisories is to clarify the law for the public. Ms. Nober stated that initially she believed it was not necessary to make drafts available to the public because upcoming advisories will be based on substantial Commission precedent. However, she noted that the Commission has gotten useful feedback in the past when it has sought input from outside parties, and, therefore, with the current draft Advisory 14-1, she suggests designating a fairly narrow period of time for outside input, posting it to the Commission’s website, and emailing it to subscribers of the Commission’s “Interested Parties” mailing list. Chairman Dortch-Okara agreed with the recommendation to seek input on Advisory 14-1 after the Commission has agreed upon a revised draft, and the other Commissioners agreed by consensus.

Legal Division Metrics

Ms. Roney presented the following Legal Division metrics for March 2014

- **Written advice.** In March 2014, the Legal Division answered by letter or email 28 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
	March 2013 (same month last year):	51
	February 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 559 state, county and municipal officials.

For comparison:	2008 monthly average (pre-Ethics Reform):	280
	2010 monthly average (post-Ethics Reform):	450
	March 2013 (same month last year):	610
	February 2014 (previous month):	466

- **Review of municipal letters.** The Legal Division reviewed 6 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
	March 2013 (same month last year):	9
	February 2014 (previous month):	4

- **Backlog.** As of today, there are 19 pending requests for written advice that are more than 30 days old: one each from September, October, November, and December 2013, six from January 2014, six from February 2014, and three from March 2014. The Legal Division has a total of 51 pending requests for written advice.

Ms. Roney stated that the number of SFI calls is getting high, and is expected to go up over the next few weeks. Legal Division Deputy Chief/SFI Lauren Duca stated that as of today, 1,728 have filed their calendar year 2013 SFIs. Ms. Duca stated that the Commission typically sends out approximately 500 Formal Notices of Lateness annually, and that she is hoping to reduce that number by sending reminder notices to all filers and agency liaisons in advance of the May 1, 2014 deadline.

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. There were 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

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 last month. She stated that she will let the Commission know if a hearing is scheduled.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented a report of the Investigations Unit activities for March 2014. Ms. Gallant stated that the backlog of cases has come down and continues to decrease, and thanked the investigators for their hard work. Commissioner Mangum asked whether the improvement in the division's backlog is due to the reorganization of the division, and Ms. Gallant said it has helped significantly.

Ms. Gallant stated that she anticipates an increase in the number of complaints now that municipal town meetings and elections are underway.

Attorney Metrics

Ms. Gray presented a report of Enforcement Division attorney metrics for March 2014. The Commission had no questions.

EXECUTIVE SESSION

At 9:42 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, public and private education letters and advisory opinions.

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

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

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of April 17, 2014.
2. Minutes of the State Ethics Commission Meeting for the March 20, 2014 Public and Executive Session.

3. Minutes of the Legal Committee Meeting for the March 20, 2014 Public Session.
4. Memorandum dated April 10, 2014 from David Giannotti to the Commission concerning Public Education and Communications Division activities for February 2014.
5. Memorandum dated April 10, 2014 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
6. Draft Advisory 14-1: Public Employees' Private business Relationships And Other Private Dealings With Those Over Whom They Have Official Authority Or With Whom They Have Official Dealings, dated April 9, 2014.
7. Draft Advisory 14-1: Public Employees' Private business Relationships And Other Private Dealings With Those Over Whom They Have Official Authority Or With Whom They Have Official Dealings, dated April 9, 2014 (redlined).
8. Memorandum dated April 9, 2014 from Deirdre Roney to the Commission concerning Commission Process with Respect to Seeking Outside Views on Educational Advisories.
9. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
10. Report of Enforcement Division Investigations Metrics, dated April 4, 2014.
11. Report of Enforcement Division Attorney Metrics, dated April 4, 2014.

Respectfully submitted,

Marisa Donelan
Public Education and Communications
Division Deputy Chief