

MINUTES OF THE STATE ETHICS COMMISSION MEETING

February 20, 2014

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:02 a.m. Also in attendance were Commissioners Martin F. Murphy, William J. Trach and Regina L. Quinlan. Commissioner Paula Finley Mangum was absent.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Quinlan, seconded by Commissioner Trach, the Commission voted 4-0 to waive the reading and approve the minutes of the January 16, 2014 public and executive sessions.

EXECUTIVE DIRECTOR'S REPORT

Budget

Executive Director Karen L. Nober reported that the Commission's budget hearing was held on February 11th in Fitchburg. Ms. Nober and Chief Financial Officer Michael Memmolo attended the hearing, during which Ms. Nober testified and requested support for Governor Patrick's FY 2015 budget recommendation for the Commission, which includes a 2 percent increase from the Commission's FY 2014 appropriation. Ms. Nober stated that the Governor's proposed budget is essentially a maintenance budget since it would level-fund our operating costs and allow us to maintain current staffing levels. Ms. Nober said she also informed legislators that the Commission will be seeking bond funds or a supplemental appropriation pay for the costs associated with replacing the Commission's aging electronic filing application.

Legislative Update

Ms. Nober reported that an outside section of the budget that would have allowed the Commission to accept gifts and grants was included in the Governor's FY 2014 supplemental budget, but was removed from subsequent House and Senate versions. Ms. Nober said the language she is looking to add is pretty standard language that is in most agencies' enabling acts, and she plans to revisit the issue at some point in the future.

SFI Electronic Filing Application

Ms. Nober reported that the Commission submitted an initial application with the state Information Technology Division to request bond monies to replace the outdated SFI filing and management application. Chief Financial Officer Michael Memmolo and SFI Administrator/Analyst Robert Milt have been meeting with ITD staff to review the Commission's application and to proceed to the next step, the submission of a detailed project document. The project document is due in March.

Commissioner Murphy asked Ms. Nober how much the new SFI filing and management system is expected to cost. Ms. Nober said that the initial estimate was around \$600,000, but that during initial conversations about the proposal, ITD has suggested adding an IT professional project manager to the proposal, which would increase the cost. A project manager would oversee the technical aspects of development.

Meeting with Legislative Leadership

Ms. Nober reported that she and Chairman Dortch-Okara had meetings last week with the Speaker of the House and with the Senate President in order to introduce the new Chairman. She said that the meetings went well.

Personnel

Ms. Nober announced that Enforcement Division Chief Stephen P. Fauteux is retiring at the end of March after more than 31 years of service. More information about a retirement celebration to honor Mr. Fauteux will be forthcoming.

Ms. Nober stated that the Enforcement Division Chief position has been posted in Massachusetts Lawyers Weekly for two weeks, and has been posted on the Commission's website. The deadline for applications is February 26, 2014, but that date will be extended if necessary.

Commissioner Trach asked Ms. Nober whether she has considered advertising the Enforcement Division Chief position elsewhere. Ms. Nober reported that she may post the position on the Commonwealth's job listings site and would be open to posting it elsewhere depending on listing costs. Commissioner Trach suggested that information about the position may be targeted to certain agencies, to alert individuals about the position who may not be actively seeking employment. Commissioner Murphy also suggested that the Boston Bar Association has a job posting page that is free.

Ms. Nober also stated the Commission has had a vacant staff counsel position since the departure of former Enforcement Division Counsel Nancy Rothstein. Ms. Nober said she has waited to fill the position in order to evaluate staff workloads and for financial reasons, and that she intends to fill the position by hiring an attorney for the Legal Division to help address the high volume of requests for advice.

Legal Committee Meeting

Ms. Nober reported that the Legal Committee met this morning and invited Commissioner Trach to speak about the discussion. Commissioner Trach reported that draft Advisory 14-1 on public employees' private business dealings with subordinates and others under their regulatory jurisdiction will address issues that have been raised in numerous questions to the Legal Division as well as a number of Enforcement matters. Commissioner Trach said that he expects that a revised draft will be presented to the Legal Committee in March, and to the Commission at its April meeting.

Next Meeting

Ms. Nober reported that the next Commission meeting will be held on March 20, 2014 at 9:00 a.m. A Legal Committee meeting will likely be held at 8:00 a.m. on the same date.

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 January 2014. Mr. Giannotti added that the Public Education Division has just begun offering webinars in connection with educational seminars. The webinar option was used during the January in-house seminar and the feedback was positive. The option of webinar participation will be available for the monthly in-house seminars going forward. This will allow people who cannot travel to the Commission offices to be able to attend via webinar. Webinars will also be offered to public agencies and municipalities as an option if they cannot guarantee at least 30 attendees, the minimum number we require to justify our travel expense and time out of the office if we travel to their location. Mr. Giannotti said that seminars have had to be cancelled at the last minute because a seminar host had not been able to guarantee at least 30 attendees. Now, rather than cancel a seminar, we will agree to conduct the seminar via webinar.

Mr. Giannotti also reported that the division is working with Mass.Gov to pilot a new online form application that has encryption security features. Using these forms will provide improved security for complaints and legal advice requests submitted to the Commission through our website.

LEGAL DIVISION MATTERS

Legal Division Metrics

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

- **Written advice.** In January 2014, the Legal Division answered by letter or email 21 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
	January 2013 (same month last year):	28
	December 2013 (previous month):	29

- **Oral advice.** During this same period, Legal Division attorneys provided legal advice by telephone or on a walk-in basis to 438 state, county and municipal officials.

For comparison:	2008 monthly average (pre-Ethics Reform):	280
	2010 monthly average (post-Ethics Reform):	450
	January 2013 (same month last year):	416
	December 2013 (previous month):	352

- **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
	January 2013 (same month last year):	7
	December 2013 (previous month):	4

- **Backlog.** As of today, there are 23 pending requests for written advice that are more than 30 days old: one from August 2013, two from September 2013, four from October 2013, one from November 2013, nine from December 2013, and six from January 2014. The Legal Division has a total of 40 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. She stated that the Legal Division staff has been focusing on updating the advisory regarding public employees seeking future employment, which was previously issued in 1990, so that it reflects current advice and current precedent. There were no questions.

Adjudicatory Matters

Ms. Roney presented the calendar of hearing dates and pre-hearing conferences in pending Commission adjudicatory proceedings.

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, is due on March 24, 2014. Chairman Dortch-Okara asked for a brief explanation of the case, and Ms. Roney explained that the Commission found that Mr. McClure, a Chelmsford

Planning Board member, violated section 17 by, as a private attorney, representing clients in matters against the town.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented a report of the Investigations Unit activities for January 2014. She stated that there has been an uptick in complaints in recent weeks. The Commission had no questions.

Attorney Metrics

Mr. Fauteux presented a report of attorney metrics for the Enforcement Division. The Commission had no questions.

EXECUTIVE SESSION

At 9:22 a.m., on the motion of Chairman Dortch-Okara, seconded by Commissioner 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. 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	yes
	Commissioner Murphy	yes
	Commissioner Trach	yes
	Commissioner Quinlan	yes

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 February 20, 2014.
2. Minutes of the State Ethics Commission Meeting for the January 16, 2013 Public and Executive Session.
3. Memorandum dated February 13, 2014 from David Giannotti to the Commission concerning Public Education and Communications Division activities for January 2014.

4. Memorandum dated February 13, 2014 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 Metrics, dated January 8, 2014, and Attorney Metrics, dated January 7, 2014.

Respectfully submitted,

Marisa Donelan
Public Education and Communications
Division Deputy Chief