



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 **September 16, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:17 a.m. Also in attendance were Commissioners William J. Trach, Regina L. Quinlan and David A. Mills. Vice-Chairman Martin F. Murphy was absent.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Mills, seconded by Commissioner Quinlan, the Commission voted 3-0 to waive the reading and approve the minutes of the July 16, 2015 public and executive sessions. Chairman Dortch-Okara, who was not present for the July 16, 2015 meeting, abstained.

EXECUTIVE DIRECTOR'S REPORT

Budget

Executive Director Karen L. Nober reported that the FY16 budget for the Commission is final and the spending plan has been submitted to A&F.

Personnel

Ms. Nober informed the Commission that the part-time receptionist position was posted and the agency received 85 applications in response. Nine applicants were originally selected for initial interviews. A few applicants withdrew or did not show up, so only five were interviewed. Ms. Nober stated that she, General Counsel Deirdre Roney, and CFO Michael Memmolo conducted

the first round interviews. Four applicants were selected for second-round interviews, which will be conducted by Staff Counsel Candies Pruitt-Doncaster, Staff Counsel Amy Bressler Nee, and Special Investigator Scott Cole. Ms. Nober stated that she hopes to post the Director of Communications position next week.

Manager Merit Pay Raises – Vote requested

Ms. Nober stated that staff performance evaluations have been completed, and that she was recommending merit increases for those employees who are not paid in accordance with the NAGE Unit 6 salary chart, excluding herself. She requested that the Commission vote to approve increases of 4-5% for employees who received an overall performance rating of 3.0 or higher, with the amount of the increase based on their rating. She said she was recommending that the increases be retroactive to July 1, 2015. Ms. Nober said that the Commission's managers last received a raise effective as of July 1, 2013, and their raises have not kept pace with the staff who are paid in accordance with the NAGE Unit 6 salary chart or with the raises given to executive branch managers.

After discussion by the Commission and Ms. Nober, on the motion of Commissioner Trach, seconded by Commissioner Quinlan, the Commission voted 4-0 as follows:

To approve the award of merit increases, effective retroactively as of July 1, 2015, for all eligible Commission employees who are not paid in accordance with the NAGE Unit 6 salary chart, excluding the Executive Director. Eligible employees shall be those who received an overall performance evaluation of 3.0 or higher for the period of mid-June 2014 through mid-June 2015 (the "Rating Period"). Each merit increase shall be a percentage increase within the range of 4%-5% of the employee's annualized compensation, with the amount of each percentage increase to be determined by the Executive Director based on the employee's overall performance evaluation rating for the Rating Period, except that any employee who became employed by the Commission after July 1, 2014 shall receive an increase of 3%, provided the employee received a performance evaluation rating of 3.0 or higher.

COGEL Conference Update

Ms. Nober updated the Commission on the upcoming COGEL conference. She said that she extended an invitation to Governor Baker on behalf of the Commission and OCPF to make opening remarks at the conference. The Governor accepted that invitation and also agreed to provide a welcome letter to be included in the conference materials. Ms. Nober also informed the Commission that Lawrence Lessig, Director of the Safra Center for Ethics at Harvard University, announced that he is running for U.S. president, and, therefore, can no longer be a featured speaker at the conference because COGEL does not allow political candidates to speak at the conference. Ms. Nober also informed the Commission that the Commission will be providing both financial and staff support for the conference. After a question about the date of the conference from Commissioner Trach, Ms. Nober said she would send an updated conference schedule to the Commissioners.

Other

Ms. Nober stated that Vice-Chairman Murphy's term ends on September 21, 2015. She said that the Attorney General's Office has indicated they are making progress on the appointment, but she noted that Commissioner Murphy could serve in a holdover status if necessary. She also stated that the next three Commission meetings would be held on the third Wednesday of each month. Upcoming Commission meetings will be held on October 21, November 18 and December 16.

PUBLIC EDUCATION DIVISION REPORT

Public Education and Communications Division Chief David Giannotti presented the Public Education and Communication Division's report for the months of July and August 2015. He also reported to the Commission that municipalities have recently expressed more interest in sending new employees to seminars, either in-person or via webinar, and some municipalities want to host seminars. In response to Commissioner Mills' questions about the location of seminars and his concern about the commute deterring employees from attending the seminars, Mr. Giannotti stated that if a municipality can guarantee about 30 attendees, he would travel to the municipality to conduct a seminar. Mr. Giannotti agreed that travel time is a concern, which is why webinars are offered. Mr. Giannotti informed the Commission that in the upcoming months he will be working to ensure compliance with the education and training requirements for elected state and county employees by providing a summary of the conflict of interest law to them; and in turn, elected state and county officials are required to file an acknowledgment of receipt with the Commission. Mr. Giannotti also reported that Legal Division Staff Counsel Amy Bressler Nee put in a lot of time and effort to update the Commission's disclosure forms, which are now uploaded on the Commission's website.

LEGAL DIVISION MATTERS

Revised Draft Advisory 15-1, Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment

Ms. Roney presented draft Advisory 15-1, Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment, and stated that the draft, as preliminarily approved by the Commission at its May 21, 2015 meeting, was on the Commission's website for public comment for a period of time. She reported that during this time, the Commission received comments from a significant number of people, and noted that a memo explaining the significant proposed changes has been provided to the Commissioners. Chairman Dortch-Okara asked how the new advisory was received in general. Ms. Roney responded that based on the tone of the comments received, the response was very favorable on the whole and the comments were very positive. Chairman Dortch-Okara stated that she had no further comments and agreed with any wording changes made. She also commended staff for a "great job." Commissioner Mills agreed and also commended staff. Commissioner Trach asked whether there were any concerns from House and Senate counsel or the Governor's Counsel. Ms. Roney responded that the Governor's Deputy Counsel, Cathy Judd-Stein, and House Counsel gave useful feedback; Senate Counsel did not provide comments.

After discussion by the Commission, on the motion of Commissioner Trach, seconded by Commissioner Quinlan, the Commission voted 4-0 to approve revised draft of Advisory 15-1 as presented to the Commission at the September 16, 2015 meeting.

Development of New SFI Filing and Management Application (Mike Memmolo)

Chief Financial Officer/Director of Budget & Administration Michael Memmolo reported on the current status of work on the development of the new SFI Filing and Management Application. He stated that meetings with the vendor, PCC, resulted in a Functional Requirements Document that is a roadmap of the work that PCC will need to do. He commended Legal Division Deputy Chief/SFI Lauren Duca, SFI Administrator and Analyst Robert Milt and Project Manager Susan Laniewski for their hard work in this painstaking process. He also reported that PCC has started programming the new SFI application, and on September 2nd demonstrated the filer module of the new application, which already seems to be more user-friendly, intuitive and streamlined. Mr. Memmolo stated that MassIT has finalized the development environment, which is being used for development and testing of the new application, and training for the agency liaisons is scheduled to begin next month. With regard to accessibility testing, Mr. Memmolo reported that the Commission received two responses to our RFQ. Those responses were evaluated and scored on August 7, and the apparent successful bidder (ASB) was announced on August 12. Negotiations with the ASB failed due to their inability to meet timetables detailed in the RFQ. The second-ranked bidder was named the ASB, and the team is in the process of negotiating and finalizing a contract with them. Chairman Dortch-Okara asked when PCC would need to complete the application in order for filers to file this season. Mr. Memmolo stated that the application would need to be up by December in order for liaisons to submit their designation lists via the application. Ms. Roney asked the Commission whether they would be interest in seeing the new SFI application at a Commission meeting, as it would be possible for PCC to hold an audio presentation. The Commissioners expressed interest, and Ms. Roney proposed doing this at the October or November Commission meeting.

Legal Division FY 2015 Report

General Counsel Deirdre Roney presented the following Legal Division metrics for July and August 2015. She noted that the backlog of written advice is significantly lower than the last reported backlog. The Commission had no questions.

- **Written advice.** The Legal Division answered by letter or email 81 (July) and 57 (August) 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
	July 2014 (same month last year):	34
	August 2014 (same month last year):	28
	June 2015 (previous month):	42

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 441 (July) and 389 (August) requests for advice from state, county

and municipal officials.

For comparison:	2008 monthly average (pre Ethics Reform):	280
	2010 monthly average (post Ethics Reform):	450
	July 2014 (same month last year):	332
	August 2014 (same month last year):	355
	June 2015 (previous month):	488

- **Review of municipal letters.** Division staff reviewed 6 (July) and 2 (August) 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
	July 2014 (same month last year):	1
	August 2014 (same month last year):	6
	June 2015 (previous month):	1

- **Backlog.** As of today, the Division has 2 pending requests for written advice that are more than 30 days old, one from May and one from July. 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 and pre-hearing conferences in pending Commission adjudicatory proceedings. The Commission had no questions.

Litigation Matters

Ms. Roney reported that the Commission's cross-motion for judgment on the pleadings with respect to Richard McClure's complaint seeking judicial review of the Commission's August 2, 2013 decision that he violated c. 268A, § 17 has been served and filed. A hearing has not yet been scheduled. The Commission had no questions.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics report

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented the monthly report of Investigations Unit activities for July and August 2015. Ms. Gallant noted that she simplified the layout of the report. The Commission had no questions.

EXECUTIVE SESSION

At 9:49 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 the matters will include investigatory matters, cases deferred, preliminary inquiry recommendations and reports, summons authorization requests, disposition agreements, public and private education letters, advisory opinions and deliberations; and a matter subject to the provisions of G.L. c. 30A, § 21, subparagraph (a)(1).

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Murphy	<u>[absent]</u>
	Commissioner Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>

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

At 12:50 p.m., the Commission reconvened in public session.

Executive Director's Performance Review

On the motion of Commissioner Quinlan, seconded by Commissioner Mills, the Commission voted 4-0 to continue Ms. Nober's performance evaluation until the October Commission meeting.

MOTION TO ADJOURN

At 12:51 p.m., on the motion of Commissioner Trach, seconded by Commissioner Mills, the Commission voted 4-0 to adjourn the meeting.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Murphy	<u>[absent]</u>
	Commissioner Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of September 16, 2015.
2. Minutes of the State Ethics Commission Meeting for the July 16, 2015 Public and Executive Sessions.

3. Memorandum dated Sep. 9, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for July and August 2015.
4. Memorandum dated Sep. 11, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Memorandum dated Sep. 9, 2015 from Deirdre Roney to the Commission, re Draft Advisory 15-1.
6. Draft Advisory 15-1 (redlined), dated Sep. 9, 2015.
7. Draft Advisory 15-1 (clean), dated Sep. 9, 2015.
8. Legal Calendar.
9. Report of Enforcement Division Investigations Unit FY16 Metrics.

Respectfully submitted,

A handwritten signature in blue ink that reads "Pauline Nguyen". The signature is written in a cursive, flowing style with a large initial "P" and a stylized "N".

Pauline Nguyen
Assistant General Counsel