



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 **July 16, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Vice-Chairman Martin F. Murphy called the meeting to order at 9:08 a.m. Also in attendance were Commissioners William J. Trach, and David A. Mills. Chairman Barbara A. Dortch-Okara was not present.

EXECUTIVE SESSION

At 9:09 a.m., on the motion of Vice-Chairman Murphy, seconded by Commissioner Trach, the Commission voted 3-0 to enter into executive session to discuss adjudicatory matters subject to the provisions of G.L. c. 30A, § 21, subparagraph (a)(7) and G.L. c. 268B, §4(i).

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

Vice-Chairman Murphy stated that the Commission will reconvene in public session following the executive session.

[At 9:10 a.m., Commissioner Regina Quinlan entered the room.]

PUBLIC SESSION

At 9:26 a.m., the Commission reconvened in public session. Vice-Chairman Murphy, Commissioner Trach, Commissioner Quinlan and Commissioner Mills were present.

HEARING

In re Robert Nichols, Docket No. 15-0001: The Respondent was not present. The Commission informed the Petitioner, the Enforcement Division of the State Ethics Commission, represented by Attorney Candies Pruitt-Doncaster, that after deliberations in executive session, the Commission voted to deny the Petitioner's Motion for Reconsideration or Clarification, which sought reconsideration of an Order Regarding Continuance of Hearing dated June 18, 2015. The Commission explained that the Motion for Reconsideration or Clarification is moot in light of Respondent's failure to comply with the conditions set forth in the June 18 Order. The Commission also informed Attorney Pruitt-Doncaster that it voted to deny Respondent's Motion for a Continuance. Commissioner Quinlan noted that this decision is consistent with the June 18 Order.

Because Summary Decision was entered against the Respondent establishing Respondent's liability, the Commission proceeded with a hearing on the amount of the civil penalty. In her statement, Attorney Pruitt-Doncaster recommended that the Commission impose a \$22,500 penalty on the Respondent for his violations of §§ 19, 20 and 23(b)(2)(ii) of the conflict of interest law. She stated that this amount is less than the maximum allowable penalty under the law. She argued that this amount would be consistent with prior decisions involving deceit and misrepresentation. After Attorney Pruitt-Doncaster presented her case and answered questions from the Commission, Vice-Chairman Murphy stated that the Respondent's Motion to Continue makes clear that the Respondent had notice of the hearing and his opportunity to argue his case on the merits; and that the Commission would take the matter under advisement for deliberation in Executive Session.

APPROVAL OF MEETING MINUTES

On the motion of Vice-Chairman Murphy, seconded by Commissioner Trach, the Commission voted 4-0 to waive the reading and approve the minutes of the June 18, 2015 public and executive sessions.

EXECUTIVE DIRECTOR'S REPORT

Budget

Executive Director Karen L. Nober reported that the Legislature reached agreement on the FY16 budget, which is currently pending before the Governor. Ms. Nober reported that the Conference Committee gave the agency the Senate's proposed budget, which is \$143,513 more than what the Governor recommended, and \$58,513 more than what the House recommended. She stated that this was excellent news for the Commission. Ms. Nober commended CFO Michael Memmolo on his work on the budget. Commissioner Mills acknowledged the challenges of asking for funding and stated that he does not take for granted Ms. Nober's and Mr. Memmolo's hard work in this area and commended them for a job well done.

Office Space

Ms. Nober reported that, using FY15 funds, a new office was created for Deputy Chief/Investigations Kathy Gallant, and Mr. Memmolo arranged to have the floors of the agency cleaned and waxed.

Personnel

Ms. Nober informed the Commission that, once the budget is finalized, she expects to backfill the Director of Communications and part-time receptionist positions. She said that both positions will be posted.

Evaluations

Ms. Nober stated that the performance evaluation process was near completion, and that she will soon be submitting her self-evaluation to the Commission.

Ms. Nober added that she will be looking to give the managers pay raises in September. She stated that the managers have not received raises since July 1, 2013, and that she will recommend that the raises be retroactive to July 1, 2015. Ms. Nober stated that raises for managers have not kept pace with raises for staff who are paid in accordance with the NAGE Unit 6 salary chart, nor have they kept pace with raises given to executive branch managers.

Audit, Finance and Human Resources Committee

Ms. Nober stated that she may be looking to hold an Audit, Finance and Human Resources Committee meeting in the fall to address the agency's Internal Controls Plan and possibly some other items. She noted that Commissioner Mills is the chair of this committee.

COGEL

Ms. Nober provided updates to the Commission on the planning process for the COGEL conference. She reported that General Counsel Deirdre Roney is moderating a panel discussion that she is organizing, and noted that Ms. Gallant will also be a panelist in a session regarding investigations. Ms. Nober stated that she expects that Chairman Dortch-Okara will make some welcoming remarks at the Sunday night kick-off reception and a letter from her will be included in the conference materials. Ms. Nober said that she helped to facilitate getting Larry Lessig, a Harvard Law professor who is the Director of the Safra Center for Ethics at Harvard, to serve as the featured speaker at one of the conference's plenary sessions. She informed the Commission that she is working with OCPF to address providing conference support.

Other

Ms. Nober reminded the Commission that Vice-Chairman Murphy's term is slated to end September 21, 2015. The Attorney General will appoint the next Commissioner. Ms. Nober

reported that the Attorney General asked us to post the notice for a new commissioner on our website, and Ms. Nober suggested also posting it on the Commission's website, which we did. Ms. Nober stated that she did not anticipate a delay in the Attorney General's appointment of a new commissioner.

Ms. Nober reported to the Commission that, due to a change in Chairman Dortch-Okara's schedule, the Chairman asked to move the Commission meetings to another day for the meetings in September through December. The remaining commissioners agreed to hold the monthly meetings on the third Wednesday of the month from September through December 2015. Ms. Roney noted that the new dates for the Commission meetings this fall will be: September 16, October 21, November 18 and December 16.

Ms. Nober stated that there will be no Commission meeting in August.

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 June 2015, and the report on the Public Education/Communications Division and IT Accomplishments for FY 2015. Mr. Giannotti also reported that the 2014 State Ethics Commission Rulings was issued and posted on the website. Mr. Giannotti noted that the number of seminars and webinars hosted by the Ethics Commission increased from previous years despite financial challenges faced by the Commission. He stated that the Commission is now hosting regular webinars for the Trial Court Security Department and the Probation Department. The Commission had no questions.

LEGAL DIVISION MATTERS

Revised Draft Advisory 15-1

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, has been on the Commission's website since that time. During this time, we have received comments from various individuals, including the Governor's Counsel, House Counsel and private practitioners. Ms. Roney informed the Commission that since last reviewed by the Commission, the draft has been revised to reflect some of the suggested changes received from commenters. The Commission agreed that the draft advisory was well-organized and "user friendly." After discussion by the Commission, Commissioner Trach requested more time to consider the comments to the advisory and suggested adding the advisory to the agenda for the next Commission meeting in September. The rest of the Commission agreed to this suggestion.

Vote to delegate to the Executive Director or her designee responsibility for responding to Open Meeting Law complaints.

Ms. Roney explained that under G.L. c. 30A, § 23 and 940 CMR 29.05, an Open Meeting Law complaint is to be filed initially with the chair of the public body, who distributes it to other

members of the public body. Within 14 days of receipt of the complaint, the public body must review the complaint's allegations and respond. She further explained that according to the Attorney General's Open Meeting Law Guide, a public body may delegate responsibility for responding to complaints to another individual. Ms. Roney stated that delegating this responsibility makes sense because it would allow the agency to respond to Open Meeting Law complaints in a timely manner given that the Commission generally meets only once a month.

On the motion of Commissioner Trach, seconded by Commissioner Quinlan, the Commission voted 4-0 to delegate to the Executive Director or her designee the responsibility for reviewing and responding to Open Meeting Law complaints against the Commission.

2014 SFI Filing Season Report

Legal Division Deputy Chief/SFI Lauren Duca presented a report on the 2014 SFI filing season. She noted that for that season, the Commission had a 95% filing compliance rate, a 42% reduction in late filing notices, and made only 3 referrals to the Enforcement Division. She also noted that the SFI team received 3,859 calls and emails – 1,500 more than the prior year, with most calls concerning issues with the electronic filing system. Ms. Duca reported that she and SFI Administrator and Analyst Robert Milt developed written material for candidates who need to file an SFI in order to appear on the ballot. Commissioner Mills asked about the review of SFI filings; Ms. Duca explained that although the Legal Division does not review the content of SFI filings, the Enforcement Division does such a review in certain circumstances. Ms. Nober added that while the agency does review manually filed SFIs for completeness, it has discontinued the prior practice of reviewing the content of all SFIs filed with the Commission because agency staff would need to have additional information to know what to look for. Also, with the limitations of the current electronic filing system, there is no way to search such filings. Ms. Nober explained that the new electronic filing system will have search and report capabilities that we do not have with the current system.

Commissioner Quinlan had questions about a new bill proposing changes to the Public Records Law and its impact on the agency. Ms. Roney stated that the impact on the Commission would be minor because many of the Commission's records are not subject to disclosure, and the Commission already complies with most of the proposed changes. The Commission had no further comments.

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

Chief Financial Officer/Director of Budget & Administration Michael Memmolo reported on the procurement process for the development of the new SFI Filing and Management Application that will replace the Commission's current SFI electronic filing system. Mr. Memmolo explained the two-tiered process for the creation of the new application: 1) data conversion and 2) the development of the application. From June 22, 2015 through July 1, 2015, so-called GAP Sessions were held, with Ms. Duca, Mr. Milt, Project Manager Susan Laniewski and three PCC Project Team members in attendance. Mr. Memmolo reported that these sessions were very long, but productive, as the sessions were meant to identify the functional differences or "gaps" between PCC's existing application and the functionality that the Commission seeks for its new

SFI application. The Commission had no questions. Mr. Memmolo also reported that the Project Team posted an ITS52 RFQ seeking accessibility testing on June 19, 2015 and two responses were received on July 7, 2015. Mr. Memmolo explained that accessibility testing is required to ensure that the new application is compliant with Federal ADA standards and the MassIT Accessibility Standards.

Legal Division FY 2015 Report

General Counsel Deirdre Roney presented a report on the Legal Division's projects and metrics for the period from July 1, 2014 through June 30, 2015. Ms. Roney stated that she is always impressed by the amount of work the Division staff accomplishes. The Commission had no questions.

Legal Division Metrics

General Counsel Deirdre Roney presented the following Legal Division metrics for June 2015:

- **Written advice.** The Legal Division answered by letter or email 42 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
	June 2014 (same month last year):	42
	May 2015 (previous month):	53

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 448 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
	June 2014 (same month last year):	386
	May 2015 (previous month):	651

- **Review of municipal letters.** Division staff reviewed 1 letter 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
	June 2014 (same month last year):	3
	May 2015 (previous month):	1

- **Backlog.** As of today, the Division has 26 pending requests for written advice that are more than 30 days old, of which the oldest was received on December 31, 2014. There are a total of 45 pending requests for written advice.

Ms. Roney noted that the number of backlogged requests for written advice has been cut in half

since the last time the numbers were run and that she hopes to report no outstanding requests for written advice at the September Commission meeting.

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: Superior Court Civil Action No. MICV2013-04186-L. Legal Division Deputy Chief David Wilson reported that this is a chapter 30A challenge to a finding of violations of G.L. c. 268A, § 17 by the Commission against the plaintiff, and reported the following: we were served with the complaint on December 24, 2013. On March 21, 2014, we answered the complaint and served and filed the record. On January 8, 2015, we were served with McClure's motion for judgment on the pleadings. On February 17, 2015, we served our memorandum in opposition to McClure's motion and in support of our cross motion for judgment on the pleadings, which were filed with the court on February 26, 2015. A hearing has not yet been scheduled.

ENFORCEMENT DIVISION MATTERS

Investigations Unit Metrics report

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented the monthly report of Investigations Unit activities for June 2015. Ms. Gallant noted that the number of complaints continue to be high, although she is unsure why this is the case. She also reported that there were glitches with the online complaint system as a result of the Commission's transfer from its internal email system to the Commonwealth's MassMail system. The Commission had no questions.

Attorney Metrics Report

On behalf Enforcement Division Chief Kelly Downes, Ms. Gallant presented the quarterly report of attorney metrics, and noted that the number of cases with a reasonable cause finding but where no Order to Show Cause has been issued should be 5 and not 8 as indicated. The Commission had no questions.

EXECUTIVE SESSION

At 10:35 a.m., on the motion of Vice-Chairman Murphy, 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. Vice-Chairman Murphy 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, advisory opinions and deliberations.

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

Vice-Chairman Murphy 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 July 16, 2015.
2. Minutes of the State Ethics Commission Meeting for the June 18, 2015 Public and Executive Sessions.
3. Memorandum dated July 10, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for June 2015.
4. Memorandum dated July 10, 2015 from David Giannotti to the Commission regarding FY 2016 Public Education/Communications Division and IT Accomplishments.
5. Memorandum dated July 10, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
 - a. Draft Advisory 15-1: Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment, drafted dated 7-10-15
 - b. Memorandum dated July 8, 2015 from Lauren Duca to the Commission regarding Summary of the SFI Filing Season for Calendar Year 2014.
 - c. Memorandum dated July 8, 2015 from Deirdre Roney to the Commission regarding Legal Division Report for FY 2015, 7/1/14 – 6/30/15.
 - d. Legal Division Calendar
6. Report of Enforcement Division Investigations Unit Metrics, dated June 30, 2015.
7. Report of Enforcement Division Attorney Metrics, dated July 1, 2015.

Respectfully submitted,

A handwritten signature in blue ink that reads "Pauline Nguyen". The signature is written in a cursive, flowing style with a long horizontal flourish extending to the right.

Pauline Nguyen
Assistant General Counsel