



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 **March 23, 2016**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:00 a.m. Also in attendance were Vice-Chairman William J. Trach and Commissioners Regina L. Quinlan, David A. Mills and Thomas J. Sartory.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Mills, seconded by Commissioner Quinlan, the Commission voted 5-0 to waive the reading and approve the minutes of the February 17, 2016 public and executive sessions, and the public and executive session minutes of the special meeting of February 12, 2016.

EXECUTIVE DIRECTOR'S REPORT

Budget

Executive Director Karen L. Nober reported to the Commission that she testified on behalf of the Commission at the Joint Committee on Ways and Means budget hearing held on February 23rd at Wheaton College in Norton, which was co-chaired by Senator Timilty and Representative Cantwell. Chief Financial Officer Michael Memmolo attended the hearing with her. Ms. Nober stated that she asked the Joint Ways & Means Committee to support level-funding for the Commission in FY 17, and that she told the Committee that the Commission would be seeking funding in the near future to replace our case management system, once we are better able to estimate the cost for a new application. Ms. Nober further reported that the House Ways and Means is expected to release its budget recommendations on April 13th.

Personnel

Ms. Nober stated that there are two vacant attorney positions to be filled in the Enforcement Division right now, including the Division Chief position. She also noted that one of our administrative assistants has been out since early February, recovering from an accident, and, as such, we are short-staffed. Ms. Nober reported that the Enforcement Division Chief position has been posted on the agency's website and on the Commonwealth's job posting website. She said that we also have an ad in Lawyers Weekly, which is in this week and which will run next week. Ms. Nober informed the Commission that she has appointed Candies Pruitt-Doncaster as Acting Enforcement Division Chief, and stated that she is very pleased to be working with her in that capacity. Ms. Nober explained that in her new role, Ms. Pruitt-Doncaster has already taken on the one case that is currently at the adjudicatory hearing stage and has also taken on one of the open PIs. Ms. Nober thanked Legal Division Deputy Chief Dave Wilson for agreeing to assist Enforcement with the remaining open PIs. Ms. Nober stated that Mr. Wilson and Ms. Pruitt-Doncaster will work together to figure out what Mr. Wilson's assistance will entail. Ms. Nober also thanked Legal Division Staff Attorney Norah Mallam for agreeing to help with drafting some of the educational letters that Enforcement sends to resolve certain matters privately. Ms. Nober thanked Administrative Assistant Theresa Meli Omodei and Receptionist Nubia Villarroel for pitching in to help as well. Ms. Nober stated that Ms. Meli Omodei is also taking on payroll responsibilities while Mr. Memmolo is out, so she is really taking on a lot of extra duties. Ms. Nober reported that last week, she met with the Enforcement Division staff to talk through a plan for the transition period, and also to make clear that she intends to fill both vacant attorney positions to get the division back up to three attorneys.

Performance Audit by State Auditor's Office

Ms. Nober reported that the Auditor's Office completed its performance audit and has provided us with a draft report. She said that we provided the Auditor's Office with our response to that report yesterday, and she anticipates the final report will be issued shortly. Ms. Nober reported that the Auditor's Office mainly had two issues: the first having to do with the agency's Internal Controls Plan, which was last updated in 2013 based on the Comptroller Office's guidance from 2007 then in effect. She said new guidance was issued by the Comptroller in 2015, and we need to update our Internal Controls Plan accordingly. The second issue related to the agency's documentation of the agency's inventory processes. Ms. Nober said that we do in fact conduct the inventories at issue, but that because we are a small agency, we have not been documenting them in a way that is satisfactory to the Auditor's Office, and that we will do so going forward.

Ethics Reform Task Force

Ms. Nober reported to the Commission that the Speaker of the House has called for the Senate President and Governor to join him in creating a Joint Task Force on Ethics Reform, and it appears that they are all on board. Ms. Nober stated that it seems unlikely that the Commission will be represented on the Task Force, but that remains a possibility. She said that it is also unclear what the scope of the review will be - whether the Task Force will be looking only at the conflict of interest law or whether other laws will be reviewed as well. She stated that from what

has been reported, they are looking at a timeline of 60 days for the task force to come up with legislative recommendations, but nothing official has been announced so far. Ms. Nober explained that in 2008, the last time ethics reform was undertaken, both the Governor's Task Force and the Legislature held hearings, which she testified at, and she also had the opportunity to meet privately with the task force. She said that she is hoping that there will be a similar process and ability to provide input this time.

Ms. Nober stated that her understanding is that the Joint Task Force will be looking at changes to strengthen the law and to clarify the law. Ms. Nober said that she assumes that, among other things, this means they will be considering whether to give the Commission full regulatory authority with respect to the conflict law, and not just the authority to create regulatory exemptions to the law, which is what we have now. Ms. Nober explained that most state agencies have the authority to issue regulations, and that this is pretty standard, but that is something the Commission does not have with respect to the conflict of interest law. She further explained that since the Commission does not currently have that authority, we generally use our educational advisories to explain how the Commission interprets the law, but those advisories do not have the force of law, and they do not give us the ability to otherwise clarify or define the law. Ms. Nober reported that she has formed an internal working group to come up with suggestions for changes to the law. This working group had an initial meeting last week, and will have its first working session next week. The working group is looking to have recommendations to present and discuss with the Commission at the April Commission meeting.

Commissioner Mills expressed his belief that the Ethics Commission should be represented on the Legislative Task Force. Ms. Nober responded that she had this same initial reaction in 2008, but that, even though the Ethics Commission was not represented on that task force, there was significant opportunity for the Ethics Commission to provide input, both to the Governor's Office and to the Legislature. Ms. Nober added that the creation of the task force, including its members, has not yet been formally announced. Vice-Chairman Trach offered to meet with staff to assist the working group. Ms. Nober stated that that would be very helpful and that the group is looking to move quickly to ensure that we will be ready to make recommendations once the Task Force is formed and announced. She said it might make sense to hold a Legal Committee meeting before bringing recommendations to the Commission.

Next Commission Meeting

Ms. Nober reminded everyone that the next Commission meeting will be held on Wednesday April 20, at 9 a.m.

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 February 2016. Mr. Giannotti reported that he has an ambitious seminar schedule and he expects to exceed the number of seminars he has conducted in previous years. He also explained that he is reaching out to other agencies and working with them to tailor the seminars to the specific audience. Ms. Nober reported that the AG's office was very pleased with the seminar Mr. Giannotti recently

conducted for them. Mr. Giannotti also updated the Commission on the status of the elected state and county officials' compliance with the education requirements, and stated that they are almost at 100% compliance. The Commission had no questions.

LEGAL DIVISION MATTERS

Development of New SFI Filing and Management Application

Legal Division Deputy Chief/SFI Lauren Duca reported on the current status of the new SFI Filing and Management Application, including that she expects the Filer Module to open on or before April 20, 2016. Chairman Dortch-Okara asked where the April 20th date comes from. Ms. Duca responded that this date is based on the vendor's estimate of when revisions and changes to the application will be inputted by its developers and tested. Commissioner Quinlan asked whether the filing deadlines would change based on this date. Ms. Duca replied that the date will change for appointed public employees who are filers, and that their deadline would be moved from May 2, 2016, to May 31, 2016, which will give them more than 40 days to file. Ms. Duca further stated that she reached out to House and Senate Counsel to notify them as to when the Filer Module is expected to open. She also noted that the Secretary of State's Office had concerns about the late opening of the system because of election deadlines and the fact that candidates must present proof of having filed their SFIs to get on the ballot. However, Ms. Duca noted that if the system opens on or before April 20th, candidates will have sufficient time to file and obtain a receipt of filing which needs to be provided to the Secretary of State's Office on or before May 31, 2016.

Legal Division Metrics for February 2016

General Counsel Deirdre Roney presented the following Legal Division metrics for February 2016. Chairman Dortch-Okara noted the high number of AOD calls received by the Commission. Ms. Roney explained that elections tend to generate a lot of questions and that springtime tends to be a fairly busy time. The Commission had no questions.

- **Written advice.** The Legal Division answered by letter or email 55 written requests for advisory opinions under G.L. c. 268A and c. 268B.

For comparison:	February 2015 (same month last year):	44
	January 2016 (previous month):	31

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

For comparison:	February 2015 (same month last year):	300
	January 2016 (previous month):	376

- **Review of municipal letters.** Division staff review 5 letters issued by city solicitors/town counsel pursuant to G.L. c. 268A, § 22 and 930 CMR 1.03.

For comparison:	February 2015 (same month last year):	12
	January 2016 (previous month):	2

- **Backlog.** As of today, the Division has 15 pending requests for written advice that are more than 30 days old. There are a total of 42 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

McClure v. State Ethics Commission: Middlesex Superior Court Civil Action No. MICV2013-04186-L. Ms. Roney reported on the status of this case, stating that we are still awaiting entry of judgment for the Commission. The Commission had no questions.

McGovern v. State Ethics Commission: Hampden Superior Court Civil Action No. 1679CV00082. Ms. Roney reported that we have received notice that Edward McGovern is seeking judicial review pursuant to G.L. c. 30A of the Commission's finding against him. McGovern has also moved for a stay of his obligation to pay the civil penalty of \$7,500 imposed by the Commission. We will be filing our Answer and the administrative record. The Commission agreed by consensus at the February 17 Commission meeting to allow the payment of the civil penalty to be stayed pending McGovern's appeal in Superior Court. The Commission had no questions.

ENFORCEMENT DIVISION MATTERS

Ms. Pruitt-Doncaster also thanked Attorney Mallam and Attorney Wilson for their support to the Enforcement Division.

Investigations Unit Metrics report

Enforcement Division Deputy Chief/Investigations Katherine Gallant presented the monthly metrics for the Investigations Unit. Vice-Chairman Trach stated that he noticed that the number of backlogs has decreased significantly from last month's number. Ms. Gallant explained that the investigators' responsiveness and the return of an investigator from maternity leave has had an impact on the number of backlogged matters.

EXECUTIVE SESSION

At 9:44 a.m., on the motion of Chairman Dortch-Okara, seconded by Vice-Chairman Trach, the Commission voted 5-0 to enter into executive session to discuss matters subject to the provisions of G.L. c. 30A, § 21, subparagraphs (a)(3) and (a)(7) and G.L. c. 268B, §§ 3 and 4. Chairman Dortch-Okara stated that such matters will include investigatory matters, cases deferred, preliminary inquiry reports, advisory opinions, as well as strategy discussions with respect to litigation since an open meeting may have a detrimental effect on the litigating position of the Commission.

VOTE:	Chairman Dortch-Okara	<u>yes</u>
	Vice-Chairman Trach	<u>yes</u>
	Commissioner Quinlan	<u>yes</u>
	Commissioner Mills	<u>yes</u>
	Commissioner Sartory	<u>yes</u>

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 March 23, 2016.
2. Minutes of the State Ethics Commission meeting for the February 17, 2016 public and executive sessions, and public and executive session minutes of the February 12, 2016 special meeting.
3. Memorandum dated March 17, 2016 from David Giannotti to the Commission concerning Public Education and Communications Division activities for February 2016.
4. Memorandum dated March 17, 2016 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.
5. Report of Enforcement Division Investigations Unit FY 2016 Metrics.

Respectfully submitted,



Pauline Nguyen
Assistant General Counsel