



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 **November 18, 2015**

One Ashburton Place, Room 619
Boston, MA 02108

PUBLIC SESSION

MEETING CONVENED

Chairman Barbara Dortch-Okara called the meeting to order at 9:03 a.m. Also in attendance were Commissioners William J. Trach, Regina L. Quinlan, David A. Mills and Thomas J. Sartory.

CLOSING ARGUMENT

In re McGovern: Both parties made closing arguments. The Commission took the matter under advisement.

NEW COMMISSIONER THOMAS J. SARTORY

On behalf of the Commission, Chairman Dortch-Okara welcomed new Commissioner Thomas J. Sartory.

APPROVAL OF MEETING MINUTES

On the motion of Commissioner Mills, seconded by Commissioner Trach, the Commission voted 4-0 to waive the reading and approve the minutes of the October 21, 2015 public and executive sessions. Commissioner Sartory, who was not present for the October 21, 2015 meeting, abstained.

ELECTION OF NEW VICE-CHAIR AND DISCUSSION OF COMMITTEE ASSIGNMENTS

After discussion, the Commission agreed by consensus to propose that Commissioner Trach serve as the next Vice-Chair of the Commission. Commissioner Trach agreed to do so.

The Commission also discussed assigning a new chair of the Enforcement Committee, which had been chaired by former Commissioner Murphy. The Commission agreed by consensus that Commissioner Sartory would serve as chair of the Enforcement Committee.

EXECUTIVE DIRECTOR'S REPORT

New Commissioner

Executive Director Karen L. Nober welcomed Commissioner Sartory to the Commission.

Budget

Ms. Nober stated that it has been reported that Governor Baker will decide in December whether mid-year budget cuts will be needed. Ms. Nober also noted that the Executive Office for Administration and Finance has directed that independent agencies, including the Commission, submit an FY17 budget request that is level-funded.

Personnel

Ms. Nober reported that Senior Staff Attorney Karen Gray has resigned and accepted a position with the Department of Public Health, and that this would be her last Commission meeting. She stated that Ms. Gray has been with the Commission for 25 years, and had been a wonderful colleague who has made significant contributions to the agency. She said that there will be a farewell lunch for Ms. Gray tomorrow. Ms. Nober thanked Ms. Gray for her service to the Commission, as did Chairman Dortch-Okara. Ms. Gray then addressed the Commission, stating that it was a privilege to work for the Commission, and that she wished everyone the best. Ms. Nober reported that she would be updating the job description and then posting Ms. Gray's position. She also reported that, the Director of Communications position was posted on November 6th, and that approximately 40 applications had been received to date.

Public Records Bill

Ms. Nober reported that she met with Representative Kocot regarding the proposed public records bill. She further reported that the bill was reported out of the House Committee on Ways and Means this morning. As revised, language in the original bill that could have been interpreted to require the Commission to post SFIs online, had been removed. Chairman Dortch-Okara asked whether Ms. Nober had any sense as to when the Senate would take up this bill. Ms. Nober responded that she did not know.

COGEL

Ms. Nober reported that all staff members, excluding the receptionists, and all Commissioners, have been registered for the COGEL conference in December. She stated that an all-staff

meeting was held in October to discuss logistics and to figure out what type of staff support the agency will provide, along with OCPF as the conference co-hosts. Ms. Nober informed the Commission that Chairman Dortch-Okara would be speaking at the reception on the opening night on Sunday.

Other

Ms. Nober announced that the next Commission meeting would be held on December 16, 2015 at 9:00 a.m. The Commission agreed to continue holding Commission meetings on the third Wednesday of each month at 9:00 a.m. through July 2016.

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 October 2015. Mr. Giannotti also gave a brief overview of the work of the Public Education Division for Commissioner Sartory. The Commission had no questions.

LEGAL DIVISION MATTERS

Enforcement Procedures - Executive Director's role. General Counsel Deirdre Roney reported that at the Commission's meeting on October 21, 2015, there was discussion of the latest draft revising the Commission's Enforcement Procedures, including Section 7 of the draft as it relates to the Executive Director's role during Commission deliberations in adjudicatory matters. Ms. Roney presented a memorandum addressing the issues discussed.

Commissioner Quinlan stated that she still had concerns about having the Executive Director present during the deliberations stage of the adjudicatory process. The other Commissioners did not share those concerns, but discussed whether, and to what extent, it would be appropriate for the Executive Director to comment during deliberations. No consensus was reached. The Commission also discussed whether the draft revised Enforcement Procedures should be made available for public comment, as has been done with several recent draft advisories. The Commission asked the staff to make some changes to the draft Enforcement Procedures and to present them for further discussion at the next Commission 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 the new SFI Filing and Management Application. He reported that PCC has finalized the Administrator and Liaison Modules of the new application, that the SFI Filer Module (SFI form) is receiving final edits, and Commission staff are testing the Filer Module to assess ease of use and to identify any bugs in the application. Mr. Memmolo also reported that PCC has commenced the "train the trainer" sessions and are training the Commission staff who will be conducting the agency liaison training sessions. He said that training sessions for agency liaisons are scheduled for mid-November and that Ms. Duca and Mr. Milt have scheduled approximately 14 liaison training sessions, over the next two weeks for more than 180 liaisons.

Mr. Memmolo also reported that the new application is still on schedule to “go live” on December 7th and that PCC hopes to finalize the Public Inspection Module of the application by the end of November. Mr. Memmolo stated that accessibility testing vendor SSB BART has completed accessibility testing of the Filer module, and the team is currently reviewing the testing results and feedback.

Commissioner Sartory inquired about the location of the data storage and whether the agency was content with the security of the storage location. Mr. Memmolo explained that the Commission is contracting with MassIT to provide storage and security. He explained some of the security features of the application and stated that the team was confident that the application will be adequately secured.

Legal Division Metrics

General Counsel Deirdre Roney presented the following Legal Division metrics for October 2015. The Commission had no questions.

- **Written advice.** The Legal Division answered by letter or email 32 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
	October 2014 (same month last year):	53
	September 2015 (previous month):	57

- **Oral advice.** The Legal Division attorneys provided advice by telephone or on a walk-in basis in response to 367 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
	October 2014 (same month last year):	450
	September 2015 (previous month):	388

- **Review of municipal letters.** Division staff did not review any 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
	October 2014 (same month last year):	10
	September 2015 (previous month):	8

- **Backlog.** As of today, the Division has 5 pending requests for written advice that are more than 30 days old, of which the oldest was received on May 8, 2015. There are a total of 19 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: *Superior Court Civil Action No. MICV2013-04186-L*. Ms. Roney reported that on November 3rd, a hearing was held in Middlesex Superior Court in Lowell before Justice Kenneth J. Fishman on Richard McClure's G. L. c. 30A appeal of the Commission's 2013 decision that he violated c. 268A, § 17(c). Justice Fishman took the matter under advisement. Ms. Roney added that Mr. Wilson did a nice job arguing at the hearing. 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 October 2015. Ms. Gallant added that the investigations unit is beginning to feel the effect of being down one investigator, who is out for six months on maternity leave. The backlog number is increasing, but Ms. Gallant noted that a number of the complaints that came in deal with the same conduct and same subjects, and the numbers do not reflect that some complaints are duplicative.

Draft Litigation Manual

Enforcement Division Chief Kelly Downes noted that she had carried out six hours of training of Enforcement Division staff on the draft Litigation Manual that she has prepared. She stated that she received good input on the draft Manual from Enforcement Division staff and that she plans to make some changes to the Manual based on that input. She reported that she hopes to be able to give the draft Manual to the Legal Division for further review and comment by the time of the next meeting, with the intention that the revised draft Manual could be reviewed at an Enforcement Committee meeting in January or February.

Draft Investigations Manual

Ms. Gallant also reported that she is working on an Investigations Manual, which will serve as a resource for the investigators. The Commission had no questions.

Draft Enforcement Procedures

Enforcement Division Chief Kelly Downes presented the draft Enforcement Procedures to the Commission. The Commissioners made further suggestions for revisions to the draft, and asked that it be on the agenda for further discussion at the next meeting.

[At 11:09 a.m., the Commission took a brief break. At 11:19 a.m., the Commission resumed its meeting.]

DEMONSTRATION OF NEW ELECTRONIC FILING SYSTEM FOR STATEMENTS OF FINANCIAL INTERESTS

Project Manager Susan Laniewski, along with Mr. Memmolo and Ms. Duca, gave a brief demonstration of the new SFI filing system and its features. The Commission agreed that the new system is a big improvement on the current legacy system.

EXECUTIVE SESSION

At 11:44 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, subparagraph (a)(7) and G.L. c. 268B, §§ 3 and 4. Chairman Dortch-Okara stated that 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 G.L. c. 30A, § 21, subparagraph (a)(1).

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

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>

LIST OF DOCUMENTS USED AT THIS MEETING

1. Agenda for the Commission Meeting of November 18, 2015.
2. Minutes of the State Ethics Commission Meeting for the October 21, 2015 Public and Executive Sessions.
3. Memorandum dated November 12, 2015 from David Giannotti to the Commission concerning Public Education and Communications Division activities for October 2015.
4. Memorandum dated November 13, 2015 from Deirdre Roney to the Commission setting forth Legal Division matters for the meeting.

5. Memorandum from Deirdre Roney dated November 9, 2015, concerning Draft Revised Enforcement Procedures Section 7 and Executive Director's role.
6. Calendar of Hearing Dates and Pre-Hearing Conferences in pending Commission Adjudicatory Proceedings.
7. Report of Enforcement Division Investigations Unit FY'16 Metrics.
8. Draft Enforcement Procedures, amended Nov. 18, 2015.

Respectfully submitted,

A handwritten signature in blue ink that reads "Pauline Nguyen". The signature is written in a cursive, flowing style with a prominent flourish at the end.

Pauline Nguyen
Assistant General Counsel