

Merom Brachman, *Chairman*
Megan C. Kelley, *Vice Chair*
Bruce E. Bailey
Julie A. Rutter
Elizabeth E. Tracy
Mark A. Vander Laan



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Paul M. Nick
Executive Director

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OHIO ETHICS COMMISSION
MINUTES OF MEETING
April 17, 2020

MEMBERS OF THE COMMISSION

Merom Brachman	Megan C. Kelley	Bruce Bailey
Elizabeth E. Tracy	Julie A. Rutter	Mark A. Vander Laan

CALL TO ORDER

The meeting of the Ohio Ethics Commission was called to order at 11:10 a.m. via teleconference as authorized by Am. Sub. HB 197.

ROLL CALL

The following Commission Members were present during the teleconference meeting: Mr. Brachman, Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, and Mr. Vander Laan. Staff present in the Ethics Commission Office Conference Room: Executive Director Paul M. Nick, HR & Fiscal Manager Alan Carlson, and IT & FD Administrator Brian Ring. Staff present via teleconference call: Deputy Director/General Counsel Jed Hood, Chief Investigative Attorney Julie Korte, Chief Advisory Attorney Karen King, Education and Communications Administrator Susan Willeke, Advisory Attorneys John Rawski and Tim Gates, and Investigative Attorney Molly Bruns. Also present by teleconference call was Principal Assistant Attorney General Hilary Damaser.

PREVIOUS MEETING MINUTES

The Commission reviewed the draft minutes from the March 6, 2020 Commission meeting. Mr. Nick noted that meeting minutes will be changed from previous years to remove statutorily confidential investigative information to allow the minutes to be posted on the Commission's website.

MOTION by Ms. Rutter, seconded by Mr. Vander Laan, that the Commission members approve the minutes of the March 6, 2020 Commission meeting. Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

The Commission also reviewed the draft minutes from the March 31, 2020 Advisory Committee meeting which was held via teleconference.

MOTION by Mr. Bailey, seconded by Ms. Kelley, that the Advisory Committee members approve the minutes of the March 31, 2020 meeting. Mr. Bailey, Ms. Kelley, and Ms. Rutter voted "yes". The motion was approved.

ADVISORY OPINIONS AND STATISTICS

Mr. Nick reviewed the advisory and investigative charts included in the packet.

Mr. Nick noted that advisory staff wrote 22 opinions since those reported at the last meeting. Mr. Brachman and Mr. Bailey asked staff about opinions on the Advisory Activity Report. Mr. Bailey noted that the Commission has recently received several questions regarding whether public officials can also serve as an officer or employee of a local chamber of commerce. He suggested that the Advisory Committee review the Commission's precedent on the issue. Mr. Brachman agreed that the Committee should develop a process to look at certain Commission precedents that could affect similarly situated officials in various jurisdictions. He noted that it may also be helpful to get more information from the requesters and professional groups and organizations that represent these officials so that the Committee Members can view the bigger picture. Mr. Bailey agreed that having the representative groups' input may help the Commission better understand the world these professionals live in. Mr. Brachman noted that the Commission has seen an increasing number of advisory opinion requests and the workload has grown but Commission staff has not. He also noted that it will take more time to issue opinions under this new process. Mr. Nick reminded the Commission that several years ago the Commission moved toward issuing more staff opinions and fewer informal opinions to eliminate the backlog that the advisory section had for many years.

Mr. Nick introduced a draft of Formal Advisory Opinion No. 2020-02. Mr. Hood explained that staff shared the original draft with the Ohio Attorney General's Office for their comment. The AG was concerned that the original draft appeared to make all matters and documents presented in executive sessions confidential, subject to criminal sanction. Mr. Hood said that staff added cautionary language to the draft that made it clear that an executive session does not in and of itself create a confidentiality requirement. He said that staff incorporated language from a 1986 staff opinion (Buck). He also noted that the Advisory Committee members agreed with the edits. Mr. Bailey and Mr. Vander Laan said they appreciate the clarity that the opinion provides for public officials. AAG Hilary Damaser said she also agreed with the current draft of the opinion and asked that she be sent a copy of the final opinion to share with her office.

MOTION by Mr. Vander Laan, seconded by Mr. Bailey that the Commission approve the 2020-02 draft Advisory Opinion. Mr. Bailey, Mr. Brachman, Ms. Tracy, Ms. Rutter, and Mr. Vander Laan voted "yes." The motion was approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Nick noted that staff has responded to many inquiries related to the COVID-19 pandemic, including potential conflict of interest questions involving an Ohio State University Trustee who runs Battelle and a senior official at the Ohio Department of Jobs and Family Services whose spouse works for a state vendor. Mr. Nick also reported that the Commission's website has been updated to include a message from the Executive Director regarding the Commission's ongoing work and staff availability to assist the public.

He also reported that after consulting with the Chairman, he extended the financial disclosure statement filing deadline to July 15, 2020 and provided notice to filers and agency contacts. The Chairman noted that the extension was helpful to filers who rely on tax returns and other documents to complete their disclosure statements.

Regarding the Commission's audit by the Auditor of State, Mr. Brachman inquired about the audit cost. Mr. Nick responded that the audit fee comes from the Commission's budget. Mr. Carlson reported that the cost has been fairly consistent in the past several years.

Mr. Nick next reported that he and Mr. Carlson submitted a plan to meet the administration's request that all state agencies cut their FY 20 expenditures by 20%.

Mr. Brachman reported that he and Mr. Nick stay in daily contact and commended Mr. Nick for his diligence in maintaining the Commission's work in unusual circumstances. Mr. Nick applauded the work product and work ethic of the entire staff during the COVID-19 crisis, noting that many staff are using their personal computer equipment while working from home. He noted that all calls to the Commission are personally answered by a staff member working from home who then forwards the callers to the appropriate person on staff.

LEGISLATION UPDATE

Mr. Hood reviewed the legislative update contained in the packet, noting that the General Assembly has not been meeting regularly during the public health emergency. Amended. Sub. HB. 197 is the legislative response to the COVID-19 crisis. Mr. Hood specifically highlighted the allowance of telephonic public meetings, tolling of the statute of limitations for criminal matters and delaying administrative hearings. Chairman Brachman asked if HB 238 (extending whistleblower protections) would involve the Commission. Mr. Nick and Mr. Hood agreed that the provisions that would require Commission action has been removed from the current version of the bill.

PUBLIC EDUCATION AND INFORMATION

Ms. Willeke reviewed the report in the packet and reported that the two most recent webinars which focused on work-from-home issues under the Ethics Law, were attended by 807 and 548 people, respectively. She also reported that an unprecedented number of public employees and officials and have taken advantage of the Commission's 2019 e-course while working from home. She will keep the Commission updated on speeches, including Executive Order and CLE trainings, that may need to be rescheduled.

FINANCIAL DISCLOSURE STATISTICS REPORT/COMPLAINT REPORT

Mr. Ring reviewed the Financial Disclosure Report statistics and pointed out that there are only two people currently out of compliance; he attributed this remarkably low number to the work of his staff member, Jen Boger. He also reported that although the filing deadline was extended, filings are well ahead of schedule. He noted that FDS billing began two weeks ago and checks from state agencies are being processed.

Mr. Nick informed the Commission that Mr. Ring and Mr. Carlson report to the Commission offices on Fridays to process any "hard-copy" checks that come in and also paper copies of disclosure statements.

Mr. Brachman asked if staff has additional time to process confidential filings this year since filings appear to be ahead of schedule. Mr. Ring responded that when all filers from a particular agency are in, they begin the process early which is a benefit to FDS staff.

EXECUTIVE SESSION

The Executive Director informed the members that the Commission would not go into Executive Session since it wouldn't be possible to do so on a public call. Mr. Ring reported that the State of Ohio is not recommending that agencies use the Zoom software, but that he is researching whether Microsoft Teams would suit the Commission's needs. It may be possible for the Commission to use that technology for

Executive Session at the next Commission meeting.

The Executive Director noted that it was fortunate that nothing time-critical for investigations had to be addressed at today's meeting. The Chairman updated the Commission that the Investigative Committee met on April 16, 2020 via conference call.

DATE OF FUTURE MEETING

The Commission set the next meeting for May 29, 2020 at 11:00 a.m.

The meeting was adjourned at 12:25 p.m.

These minutes are respectfully submitted by:

A handwritten signature in black ink, appearing to read "Paul M. Nick". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Paul M. Nick
Executive Director