

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

OHIO ETHICS COMMISSION
MINUTES OF MEETING
APRIL 30, 2021

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 10:00 a.m. via conference call as authorized by Am. Sub. HB 404.

ROLL CALL

The following Commission Members were present on the conference call: 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; IT & FD Administrator Brian Ring; and HR & Fiscal Manager Alan Carlson. Staff present via teleconference call: Deputy Director/General Counsel Jed Hood and Investigative Attorney Molly Bruns.

EXECUTIVE SESSION

MOTION by Ms. Kelley, seconded by Mr. Vander Laan, to go into Executive Session to discuss matters that are statutorily confidential, including pending litigation, updates on investigations, the confidential financial disclosure report, and executive compensation. Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved, and the Commission, pursuant to Section 102.06 of the Revised Code, went into Executive Session at 10:04 a.m.

The Commission returned to open session at 10:34 a.m.

Joining the meeting via teleconference following the Executive Session were: Chief Advisory Attorney Karen King; Advisory Attorney Tim Gates; Education and Communication Administrator Susan Willeke; and Assistant Attorney General Charles "Bill" Carter.

MOTION by Ms. Kelley, seconded by Ms. Tracy, to authorize a \$3.37/hour increase for the Deputy Director and a \$1.69/hour increase for the Executive Director to be effective with the pay period beginning May 9, 2021. Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

Mr. Brachman also noted the Governor's recent announcement that step increases that were frozen for exempt employees due to budgetary controls had been granted effective April 11, 2021. The Governor also announced that all exempt employees paid according to the E-1, E-2, E-3, and E-4 salary tables will be eligible to receive the frozen July 1, 2020 increase of 3% set forth in O.R.C. 124.152 effective April 11, 2021, but this will not result in any retroactive wages paid to the employee.

PREVIOUS MEETING MINUTES

The Commission reviewed the draft minutes from the March 12, 2021 Commission meeting.

MOTION by Mr. Bailey, seconded by Mr. Vander Laan, that the Commission approve the minutes of the March 12, 2021 Commission meeting. Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

RECOGNITIONS

Mr. Brachman acknowledged Mr. Ring for his excellent work in maintaining IT issues during the pandemic and during a recent equipment replacement and reboot at the Commission's offices at the William Green Building.

Mr. Nick noted that Mr. Gates has accepted a position as an Administrative Law Judge in the State of Washington and thanked him for his service to the Commission. Mr. Nick acknowledged Mr. Gates' contribution to the Advisory Section in the past year during the pandemic.

Mr. Nick then called the Commission's attention to several unsolicited messages of praise for the work of the Commission staff. The Legislative Inspector General reached out to Mr. Nick to compliment the Advisory Attorneys on Advisory Opinion 2021 – 01 for being impressively written and easy to understand. The Advisory Attorneys also received a compliment from a representative of the Cleveland Metro Schools for providing quick responses and helpful answers that resulted in an immediate resolution to the issue they had faced.

The Cleveland Metro Schools representative also commended the Education staff on the 2021 e-course which was described as "fun, accessible, and relatable." Mr. Nick also reported on emails received from North Central State College and the Ohio Facility Construction Commission regarding Ms. Willeke's online presentations.

ADVISORY OPINIONS AND STATISTICS

Mr. Brachman asked questions concerning advisory matters on the closure report. Mr. Gates and Ms. King responded to Mr. Brachman's questions. Mr. Nick noted that the Chairman had requested that the Commission defer consideration of item #3 on the agenda (R.C. 102.02(B) review of a newly created commission) because no appointments have been made and its budget is still under consideration by the Administration and the General Assembly. He noted that it will be reviewed instead at a later meeting.

EXECUTIVE DIRECTOR'S REPORT

Mr. Nick updated the Commission on the matters summarized in the packet. He expressed optimism regarding the ongoing budget process and reported that he testified before the Senate this week. He is confident that the Senate will uphold the House's restoration of previous Commission funding which would

support restoring staffing levels to pre-pandemic level. The requested funding level would also allow for needed IT infrastructure updates, especially in the financial disclosure area. Mr. Nick thanked the Chairman for his ongoing support in the budget process and for his communication with legislative leadership.

Mr. Nick also reported that Ohio Department of Administrative Services contacted him recently about continuing the Commission's lease with the BWC building. He has signed a tentative agreement to continue the lease through June 2025 at the same rate per square foot. He commented that the space works well for staff needs.

Mr. Nick then discussed with the Commission the State of Ohio v. Steven Towns appeal pending before the Ohio Supreme Court. The issue being argued is whether cases regarding the Ethics Law must come before the Commission at a formal hearing before a prosecutor can file charges against a defendant. He summarized a similar case litigated in 1996 in Franklin County regarding former Speaker of the House Vern Riffe. In that case, the court disagreed that the Legislative Ethics Committee must first hear a case before charges can be filed. The court concluded that the Committee (like the Commission) is not an adjudicative body and that county prosecutors have independent, statutory authority to prosecute crimes in their respective counties. Similar rulings have been issued in cases Mr. Nick prosecuted involving Wright State University and the University of Akron.

Mr. Nick commented that conducting formal evidentiary hearings before the Commission for each case would certainly result in missed deadlines under misdemeanor statutes of limitations. Mr. Bailey added that while it is helpful to have a balance of information so both positions are heard, the Commission is not designed to serve as a hearing officer body. The Commission agreed that Mr. Nick should continue to work with the Ohio Solicitor General to prepare an *amicus* brief for the Supreme Court, which is due to be filed by May 26.

LEGISLATION UPDATE

Mr. Hood updated the Commission on the report in the packet. Mr. Nick added that he was contacted by State Representative Jean Schmidt's office concerning a proposed amendment to the budget bill that would require the Commission (and the Ohio Supreme Court) to post online financial disclosure statements filed by any person who holds an elective office and also certain department heads in state government.

PUBLIC EDUCATION AND INFORMATION

Ms. Willeke summarized the information in the packet and especially noted the new "Deeper Study" webinars and the upcoming online CLE class. The Deeper Study webinars outline the Ethics Law through advisory opinions and are designed for those public employees and officials who already have a foundational understanding of the Ethics Law. The CLE will review interesting investigative stories from around the United States and will be compared/contrasted with the law in Ohio. Nearly 700 attorneys are registered for the CLE and Ms. Willeke invited any attorneys on the Commission to join her on the virtual class.

FINANCIAL DISCLOSURE STATISTICS REPORT/COMPLAINT REPORT

Mr. Ring summarized the packet report and emphasized that the filing deadline this year is Monday, May 17, 2021. More than 600 filings have been received since the packet was provided to the Commission members

and he expects an additional 2,800 submissions in the next two weeks. He also reported that reminders have been mailed to filers as well as reminder post cards to those who left public service but must still file one additional time.

Mr. Brachman applauded the excellent compliance rate pointing out the less than one percent of non-compliant filers. Mr. Nick attributed the 0.2 % non-compliant percentage to the effective online filing system created and programmed by Mr. Ring.

MOTIONS

Confidential Information:

MOTION by Mr. Vander Laan, seconded by Ms. Kelley, to authorize staff to share the Commission's confidential report of investigation in Case No. 17-Q-0113-010 with the Ohio Department of Medicaid, for good cause shown. Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

Late Fee Waivers:

MOTION by Ms. Kelley, seconded by Ms. Rutter, to waive the late fees for the individuals listed in the packet report. Mr. Bailey, Ms. Kelley, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

DATE OF FUTURE MEETINGS

The Commission set the next meeting for Wednesday, June 16, 2021 at 1:30pm.

The meeting was adjourned at 11:33 am.

These minutes are respectfully submitted by:



Paul M. Nick
Executive Director