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ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MINUTES from October 28, 2014
FULL COMMITTEE MEETING
ANCHORAGE LIO, Conference Room 105

1. **CALL THE MEETING TO ORDER: [8:40:11 AM](#)** Committee Chair Gary Turner called the meeting to order at 8:40 a.m. Members present: Senator Cathy Giessel, Senator Berta Gardner, Representative Andy Josephson, Representative Charisse Millett, Janie Leask, H. Conner Thomas, Chair Gary Turner; Staff present: Joyce Anderson Committee Consultant, Ethics Administrator Jerry Anderson; Teleconference: Dan Wayne, LAA Legal; Absent: Dennis "Skip" Cook and Herman G. Walker, Jr.

2. **APPROVAL OF AGENDA: [8:41:21 AM](#)** There were no changes made to the agenda; Senator Gardner motioned to approve. No Objection. Motion passes.

Chair Turner welcomed new Ethics Administrator Jerry Anderson and introduced him to the floor.

[8:42:13 AM](#) Mr. Anderson provided members his background stating that he's been an attorney for 25 years and has been in public and private practice and experienced in both civil and criminal. He stated that he was a magistrate in Galena and Kenai for five years, prior to working for APOC (Alaska Public Offices Commission), where he was an Assistant Director for five years--almost six--before coming here. He stated that he was pleased to be onboard and is appreciative of Ms. Anderson's organized training. Members verbally welcomed him to the committee.

Representative Charisse Millett joins meeting.

3. **APPROVAL OF MINUTES: [8:43:23 AM](#)**
 - a. **October 28, 2013 Full Committee** - Chair Turner noted that Metlakatla was misspelled; motion to approve the minutes with spelling correction. No objection. Motion passed.
 - b. **January 23, 2014 Full Committee** - Senator Gardner motioned to approve. No objections. Motion passed.
 - c. **May 29, 2014 Full Committee** - Member Leask motioned to approve. No objections. Motion passed.

- d. **May 29, 2014 Senate Subcommittee** - Member Thomas motioned to approve. No objections. Motion passed.
- e. **May 29, 2014 House Subcommittee** - Member Leask motioned to approve. No objections. Motion passed.
- f. **June 19, 2014 Full Committee** - Representative Millett motioned to approve. No objections. Motion passed.
- g. **September 25, 2014 Full Committee** - Member Thomas stated that he attended this meeting but the minutes do not reflect this. Senator Gardner motioned to approve with correction. No objections. Motion passes.

[8:46:31 AM](#)

4. **PUBLIC COMMENT:** None.

[8:48:02 AM](#)

5. **CHAIR/STAFF REPORT**

- a. **Informal Advice** - Ms. Anderson reported that members should have received June's staff reports, the July 1-11 staff report, and September's staff report. The staff entries with initials RD are Reggie Drummond's informal advice entries. Ms. Anderson provided comments to some of entries for clarification purposes. Staff reports for July 12-31 and for the month of August will follow later. These were prepared by Reggie Drummond and are being reviewed by Ms. Anderson.
- b. **Ethics Disclosures** - A report of late disclosures was provided in the committee packet. Ms. Anderson also referred members to the report in the committee packet reflecting the number and type of disclosures filed from January - September 30, 2014.

Representative Josephson [8:50:15 AM](#) asked Ms. Anderson the most common reason for receiving late disclosures. Ms. Anderson replied that in regards to filers who file late "Gift of Travel/Hospitality" disclosures the reason is usually because the person forgot or sometimes a late filing is due to staff change over, versus waiting for information from the donor.

c. **Committee Member Vacancies for 2015** - [8:52:16 AM](#)

Ms. Anderson announced that two public members' terms will be expiring in January of 2015--Dennis "Skip" Cook and Herman G. Walker, Jr. Members Cook and Walker have been notified but neither has indicated whether

or not he will re-submit his name to Chief Justice Dana Fabe for reconsideration of another term. Ms. Anderson proceeded to provide members the procedures of the nomination process for vacancies on the committee. A letter will be sent to the Chief Justice notifying her of the two terms that are expiring. Chief Justice Dana Fabe will not appoint anyone until after session has begun. If the Chief Justice provides the names prior to session, the member will only serve for the first 30 days of the legislative session. If the names are provided after session starts, the members will serve until a successor has been appointed. Additionally, Ms. Anderson stated that by November 1, 2014, the committee will be sending out a notice announcing the two vacancies. It will be posted on our website, in our newsletter, and be sent to legislators, as well as all of the LIOs. The two members with expiring terms need to be approved by two-thirds vote of the full senate and house. Leadership involved in the process has been contacted. Ms. Anderson also stated the terms of the legislators who are currently serving on the Ethics Committee will expires the first day of session. The Ethics Committee has recommended that the House and Senate approve appointments to the committee on the first day of session, as the Ethics Committee is scheduled to meet on the second day of session. The floor was opened for questions. No questions.

d. Ethics Training 2015 [8:55:52 AM](#)

Ms. Anderson stated 2015 ethics training would be held at Centennial Hall due to construction of the Terry Miller Office Building. Training begins on January 13, 2015, for agency staff and other staff who do not work directly for legislators. On January 15, training will be available for new and returning staff to legislators. Training for new legislators will be held during the week of orientation. She and Jerry Anderson will be conducting the training sessions. There will be "make-up" sessions in the Capitol on the 22nd and 23rd as well as a teleconference training session for LIO staff who are not in Juneau in early February. Ms. Anderson stated that she would primarily conduct the training for "new" legislators with Mr. Anderson's assistance. The training for new legislators is personalized. For example, the backgrounds of new legislators will be reviewed to include in the

examples presented; if a new legislator is serving as a board member of an organization, then she will explain how that legislator is required to file a "board membership" disclosure. Mr. Anderson would conduct training for staff and returning legislators.

Mr. Anderson interjected that LIO training was also coming up on December 2, 2014. It will be held at the Westmark in Anchorage. Mr. Anderson will speak briefly and provide a short overview of questions and answers.

Senator Gardner asked members if staff would be in Juneau early enough for training on January 15. Ms. Anderson replied that week is orientation week and traditionally staff travel to Juneau a week before session starts.

Member Thomas and Chair Turner asked for more details on the Ethics Committee meeting in January. Ms. Anderson stated it is on January 21, and that public members are asked to arrive early to provide support and input during legislator training and also to meet their statutory requirement to attend training. Members may arrive in Juneau Sunday night or Monday morning. There will be a Full Committee meeting and likely a Senate Subcommittee meeting and a House Subcommittee meeting.

e. COGEL December 2014 Conference - [9:02:49 AM](#)

A handout of the COGEL conference and registration form was distributed to committee members. Chair Turner stated that the conference was being held in Pittsburgh, PA, December 7-10. Funds have been allocated or budgeted for up to two or three to attend and the committee formally requests that Jerry Anderson attend.

Ms. Anderson added that if anyone else wanted to attend, s/he would need to act on it asap. A certain number of rooms are allocated for the event and are booked early. Several members of the committee have attended in the past and found the conference helpful. Please contact Ms. Leigh of the Ethics office and she will assist in the registration and reserving a room.

The Chair extended the offer to attend the conference to Ms. Anderson. Ms. Anderson stated that she would

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think it over. The Chair thanked Ms. Anderson for her consideration.

f. Anchorage LIO Renovation Update [9:06:28 AM](#)

Juli Lucky was introduced by Chair Turner to provide an overview. Ms. Lucky introduced Andrew Weiss, Project Architect of KPB Architects in Anchorage, and distributed a handout.

Mr. Weiss provided an overview of the project stating that they began less than a year ago, taking over of the Anchor Pub, demolishing it, and began building the new tower. They are on schedule to be complete mid-December. Target date for the office furniture is December 15, 2014. Occupancy of building will occur during the move to Juneau.

Ms. Lucky interjected that the furniture for the Ethics office has been ordered with one piece outstanding, which is a privacy panel. Year-round employees should be moving around January 8 or 9, depending on how long it takes to load the vans for Juneau.

Mr. Weiss stated that there will be some coordination with the IT Department. The lights on floors 2-6 are lit up now, the front of the building is a little behind as far as the lighting goes, but stated they will catch up and meet our schedule. Mr. Weiss offered to provide tours to interested parties.

Ms. Anderson interjected that she, Mr. Anderson, and Ms. Leigh toured the building yesterday, led by Mr. Kendall.

Member Leask asked Mr. Weiss if they were on budget and he replied yes, they were on budget and on time; he also stated that often times when you dig into a project that's been around for a while, and start over, there's usually a lot of surprises but having done these in the past, they knew that that could happen and made provisions for it. They are past the "unknowns" and now it's just a matter of getting it done.

Ms. Anderson commented that there were two conference rooms on the second floor that were a good size and

could accommodate an Ethics Committee meeting - very convenient to be on the same floor as the Ethics office. Ms. Anderson noted that the carpet on the second floor had been installed and was covered while the work continued. She also noted that the walls had been painted--Mr. Weiss confirmed this. Ms. Anderson asked Mr. Weiss for details on the sound proofing.

Mr. Weiss stated that all walls between the suites had high, sound proof (STC rating) walls. It's more than your typical sheet-rock wall. There have been other provisions put into the wall to help sound going from room to room; the carpet helps absorb sound, they installed high-end ceiling tiles to help with sound bouncing over the top, and the partitions (or walls) between suites go from floor to the structure above, so there is no gapping space above the ceiling tile. They took every provision they could to separate the suites going down the corridor.

There is white noise in any project that will help but they can only do so much if you choose to leave your door open. He stated he felt that they did a pretty extensive job with sound proofing from room to room. In the hearing rooms on the first floor, everything is sealed up to the deck above for sound, so that it is solid jib board walls with insulation in between them. All the duct work that goes from the public corridors that goes into the offices has sound boots, which makes sound difficult to get around.

Ms. Lucky asked to return to the subject of the conference rooms, stating that when the architects designed the building, one requirement was that the public hearing rooms all be situated on the first floor to avoid heavy traffic in the elevators and to maintain the public in the LIO portion of the building. Other conference rooms would be upstairs. The second floor has two fairly large-sized conference rooms, roughly the size of what we had before on the 5th & 6th floors. One of them will be set up for video conferencing, so we won't be doing what we did earlier and having our video conferencing room and the public hearing room be the same space. Either of these rooms will be ideal for committee meetings or where there isn't a lot of public involvement other than a few more committee members.

Ms. Anderson interjected that they would be ideal for executive sessions. Ms. Lucky agreed, stating that it would also be easier to control for executive sessions because there is just one entrance, and it won't interfere with public hearings like before.

Ms. Lucky explained that on the 3rd-6th floors, there are small conference rooms or small areas/small meeting rooms, not designed for committee meetings.

Capacity of rooms was discussed; Senator Gardner asked the people capacity of the auditorium.

Mr. Weiss stated they were asked to lay it out in three basic configurations; a configuration like today's meeting which holds about 100-130 people; another configuration like a training room, and a third style to have a testifier and a note-taking person. The room is about 2-3 times larger than what the conference rooms were before on the second floor. Mr. Weiss added that if the auditorium were full, the meeting could be piped into the conference rooms next to it. Everything has been laid out to be moved on carts and put into storage in the basement.

Ms. Anderson asked for clarification regarding the outside door and inside door to the Ethics office [9:21:19 AM](#). She commented that the space for the entrance door to Ethics is very wide but is under the impression there is going to be a glass panel door that will be frosted or smoked.

Mr. Weiss confirmed that the glass going into the suites will be translucent which will allow light through but you won't be able to see who's in the space unless you're right up to it.

Ms. Anderson asked about the noise barrier.

Mr. Weiss reiterated that the noise is going from side to side, suite to suite, and the walls going out to the corridor also go up to the deck above and are sound insulated. The glass will do what it's supposed to do, but won't be 100%. He stated that it should be fine as long as you don't talk right up to it.

In regards to the glass, sliding door, located inside Ethics and the entrance to the Administrator's office, it is a sliding door to save square footage. It has a "soft close" mechanism so you can't slam it. The frame of the glass slider will capture the whole wall so there won't be any gaps. When the door shuts, there will be a gasket that seals against the vertical molding. It will help mitigate any sound transfer. He believes there was a request for the Ethics office to have an additional feature that when the door is closed another piece drops out of the bottom to seal to the floor.

Ms. Anderson asked Ms. Lucky for an approximate move in date for Ethics. Ms. Lucky stated that it will be January 8 or 9, but the furniture will be delivered mid-December. The only thing that we will be waiting on is the "D-mark" (installed after certification for occupancy), referred to by IT. At some point, the "server" has to be installed. The difficulty in moving Ethics is that there might not be any phone service or computer access if Ethics moves in too soon.

Mr. Weiss responded that there can be a conditional certification for occupancy drawn up well before that. This will allow all the other vendors to enter the building at that point to complete their work.

Ms. Anderson stated that Ethics items are contained in one office which should make the move easier than others who have items in storage, and other areas, etc.

Ms. Lucky reiterated that her concern isn't the difficulty of moving Ethics, it's that she wants to be sure that the infrastructure is complete. Ms. Lucky stated that Wi-Fi access might be an option until the server is up. When the server is moved from across the street, it has to be down 12 hours. The plan was to have it down while all the computers were on the van because it would be the least used computer time for most and the least inconvenienced time. Getting the office items moved in before January shouldn't be a problem. More discussion is encouraged as the time to move nears.

6. BUDGET [9:27:12 AM](#)

a. FY14 Final Budget Update: Ms. Anderson stated that what you see in the packet are final numbers for FY14, ending on June 30, 2014. There is a lapse of \$32,000. The carryover was highest in the services area which included money for Brent Cole, outside legal counsel, investigators, etc. She inquired why \$126 and \$15 were encumbered when the budget period is closed. The invoices were received in FY14 but paid out of FY15.

b. FY15 Budget Update: Ms. Anderson stated FY15 started on July 1 and will run through June 30, 2016. \$250,400 budgeted; \$47,500 expended, with a balance of \$205,000. Ms. Anderson reported under "personal services" there is a \$46,000 increase which is for benefits; a percentage of salary, and fixed health insurance costs. For Ms. Leigh, the health insurance benefit is 50%; Ms. Anderson who is under contract receives a reduced percentage of salary and no health insurance benefit. Ms. Anderson reported there are adequate funds for FY15 expenses based on current estimates of costs.

c. FY16 Budget Projections: Ms. Anderson talked to Executive Director Pam Varni who has recommended a maintenance budget level. Ms. Anderson stated she concurred. There will be a 1% across the board cost of living increase that is expected to be approved by the legislature; the health insurance monthly rate will decrease by \$25. [9:30:43 AM](#) Ms. Anderson stated she didn't expect the FY15 budget to lapse as many funds as FY14 due to increased costs related to the transition of the administrator; therefore, she recommended approving the maintenance budget.

Members were asked if there were any objections to approving the FY16 Maintenance Budget. There were no objections. Motion passes.

Representative Josephson asked if the motion that just passed included the committee asking Ms. Varni to submit the maintenance budget formally to the legislature.

Ms. Anderson clarified that the committee would be sending a letter to Ms. Varni stating that the committee recommends the maintenance budget. Ms. Varni will include the recommendation with the rest of

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Legislative Council's budget for the Ombudsman's office, Office Victims' Rights, etc.

7. **CONTRACT SUBCOMMITTEE REPORT:** [9:31:57 AM](#) Chair Turner stated that in May, the committee established a subcommittee to look at "independent consultants" and "contractors" and compliance with the Legislative Ethics Act. Chair Turner introduced Senator Gardner to the floor.

Senator Gardner stated that although the subcommittee did not officially meet, they reached out to each other and conducted some research on the subject and have a proposed recommendation. Senator Gardner introduced her aid, TJ Presley, to present the proposal.

Mr. Presley introduced himself as staff to Senator Gardner, and provided a recap on what the subcommittee was tasked to do and the status of their recommendations. He stated that the subcommittee was asked to look at a certain statute that includes "consultants" and "independent contractors" in the definition of a legislative employee. Currently, this means that if you are a consultant or contractor, you are required to take Legislative Ethics Training, subject to filing ethics disclosures, and follow other requirements of the Ethics Act.

Mr. Presley stated he obtained a legal opinion from LAA Legal and had submitted a research request. The recommendation that came from these areas is supported by Ms. Anderson. The recommendation is to simply change the definition of "legislative employee" by removing "consultant" and "independent contractor" from the definition, and properly give "consultant" and "independent contractor" their own definitions and then determine the ethical requirements.

Mr. Presley stated that in 2012, the Ethics Committee decided that students, interns, and volunteers of the legislature who fell under the definition of legislative employees should be given different ethical requirements than for those of employee working for the legislature. The subcommittee is recommending the same for "consultants" and "independent contractors".

The subcommittee, which is made up of four legislative members, Rep Charisse Millett, Sen Berta Gardner, Rep Andy Josephson, and Rep Chris Tuck, as well as Public Member Conner Thomas, will be having a public meeting to discuss definitions and ethical requirements for these groups.

Senator Gardner added that "consultants" and "independent contractors" technically already fall under the Ethics Act as employees but in practice they haven't actually followed the Act so it's difficult to know what kind of an impediment there might be to people who are interested in responding to a proposal from the legislature and whether or not people would balk at that requirement and not bid or respond. She believes the requirements could create problems if the Ethics Act were enforced as it is written today.

Member Thomas asked if Sen Gardner was suggesting a statute change. She responded yes.

Senator Gardner and Mr. Presley suggested scheduling a meeting date with a deadline for a resolution by December before committee terms ended so there would be something to submit to the 2015 Legislative Session.

Members of the subcommittee scheduled to meet on Monday, November 10, at 10 o'clock. The meeting will be teleconferenced for those who cannot attend in person.

8. DISCUSSION: 2015 STATUTORY CHANGES: [9:38:50 AM](#)

Chair Turner stated that the committee does not have statutory authority to collect fines. They have a legal opinion from Brent Cole that says that the committee can levy fines but if they are not paid, the committee cannot statutorily collect them. The opinion also stated the committee can pursue a statutory change. Mr. Cole suggested referencing a past suit, Malone vs. Meekins, prior to drafting language as the language may be helpful in providing some caution on the statutory wording.

Chair Turner invited Jerry Anderson to provide the members highlights of APOC's collection procedure.
[9:40:22 AM](#)

Mr. Anderson stated that APOC had similar concerns and developed a formal process with the Department of Law. The Department of Law prepared a memorandum which laid out the types of necessary forms for APOC to use when referring a matter to the Attorney General's office for collection. That was in 2009. In 2010 and 2011, APOC was undergoing a major regulation update, and the commission adopted the formal memorandum in order for APOC to give due process to those that came into contact with APOC through the complaint process. The due process is to notice an opportunity to be heard and an opportunity to appeal any ruling that APOC issued. A simple regulation was adopted showing they had the authority to forward a referral. Although it would be different for Ethics, the due process is what's important.

Mr. Anderson stated that when he was employed with APOC, a client who was a prominent attorney commented that he didn't think APOC would ever enforce collection which is why he didn't pay his fine.

Mr. Anderson proceeded stating that the Department of Law is looking to make sure that APOC (or whatever agency,) has gone through the proper steps. When the Department of Law receives a collection notice from an agency, such as APOC, they give the client notice again and verify the copy of the order is a certified copy and that APOC went through all the proper steps.

Ms. Anderson asked Mr. Anderson to further explain what happens once the Department of Law receives the notice from APOC.

Mr. Anderson stated that APOC developed form letters stating the matter will be referred to the Attorney General in an attempt to collect the fine. The AG office in turn sends out a letter stating they are going to be filing a suit against the person to formally get a judgment established. The intent is be able to attach any bank accounts of which APOC is aware of or the PFD for the collection. APOC, however, is at the bottom of the list of priority for

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collecting money; other agencies such as child support is high on the list. The matter will go to the courts eventually, if the fine is not collected, but it is very rare.

Chair Turner asked Mr. Anderson if fines accrued interest the longer they are not paid. Mr. Anderson stated that APOC does not have that provision in statute or in their regulations. Costs for the collection process are added, however.

Chair Turner asked if a statutory change would cover existing overdue fines and accrue interest for failure to pay. Mr. Anderson replied that it was his opinion it could be difficult to accomplish.

Ms. Anderson responded that perhaps statutory language could be written with an effective date for fines currently in place.

Member Thomas asked Mr. Anderson if APOC statutes currently allow the actual collection of the fines. Mr. Anderson stated that it exists by regulation. The imposition of a fine is by statute under AS 15.13.380, the complaint process. There are two complaint process methods; one is an informal process which typically is a late filing type of issue and the other is a formal complaint for other than late filings.

Member Thomas [9:46:58 AM](#) pointed out the reason he asks is because in Mr. Cole's letter, the Ethics Act is silent on how to enforce the collection of a fine. Mr. Anderson responded APOC enforces the collection of a fine by regulation of a particular statute.

Senator Gardner added that Ethics could do the same, because regulatory changes are sometimes easier to make than statutory changes. Ms. Anderson replied that Ethics does not have regulatory authority. Senator Gardner stated that Ethics could perhaps make the suggestion to whomever has the authority.

Representative Millett stated that it would be her understanding that they would have to have a statute change that gives us (Ethics) regulatory authority to do what APOC did.

Additionally, in response to late fines already accrued, Rep Millett stated that Ethics would run into retro activity. She also asked if Ethics currently had a large outstanding amount of money in fines or a small amount of money outstanding.

Ms. Anderson stated that there was a large outstanding amount owed by former Representative Alan Dick. He paid \$5,000 of his approximate \$17,000 fine due on September 1, 2014. His remaining outstanding balance is approximately \$12,000.

Representative Josephson added that he didn't believe there would be an issue for retroactivity because it's a collection, and not the punishment. The penalty does not change, therefore, you could go back and use the statute retroactively.

Mr. Anderson restated that it was the due process built into the process, and whether or not you'd have to go back and somehow implement that for a fine that had already occurred.

Ms. Anderson responded that Ethics does have a due process. Currently, the person has 30 days to respond to or appeal the decision or fine. In all complaints, when there's a decision issued by the Ethics Committee, the person is notified by letter stating that they have, by statute, 30 days to appeal the decision.

Mr. Anderson added that APOC had a due process for part of the process, but the courts required a separate due process when clients did not pay timely, as ordered by APOC.

Representative Millett stated that it was her understanding that Ethics has a due process that notifies people of the fine but no due process after the fine is in arrears, and asked members if this was correct. Chair Turner and Ms. Anderson both replied yes.

[9:51:04 AM](#) Dan Wayne, LAA Legal, was invited by Chair Turner to comment or add proposed statutory language to the two-step process before them. Mr. Wayne stated that he did not have any comment on today's

discussion; that he has not read Mr. Cole's memo, and that this was a new issue for him.

Member Thomas commented that the retroactive issue is more of a secondary issue and what they really want to make sure of is that we have the authority of going forward to collect fines.

9:52:44 AM Member Thomas motioned that the committee refer this matter to Mr. Wayne for further research and submit a proposal to the committee by December 1, 2014, if agreeable to him. There was no objection. Mr. Wayne responded that he would work on this but that he would need a specific question from the committee. Chair Turner replied that Ms. Anderson and Mr. Anderson would provide this to him.

9. **EXECUTIVE SESSION:** 9:53:38 AM Members went into Executive Session to discuss matters which must remain confidential pursuant to AS 24.60.160(b) Advisory Opinions.
10. **PUBLIC SESSION:** Members returned to Public Session.
11. **OTHER BUSINESS:** None.
12. **ADJOURN:** Meeting adjourned at 10:08am.