

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from January 16, 2013 FULL COMMITTEE MEETING Butrovich Room State Capitol

1. **CALL THE MEETING TO ORDER:** Chair Herman Walker, Jr., called the meeting to order at 2:04 p.m. Members present: Senator Cathy Giessel, Senator Berta Gardner, Representative Charisse Millett, Representative Chris Tuck, Antoinette “Toni” Mallott, H. Conner Thomas, Dennis “Skip” Cook, Gary Turner. Also present: Dan Wayne, LAA Legal; Staff present: Joyce Anderson, Administrator.
2. **WELCOME NEW LEGISLATIVE MEMBERS:** Motion made by Rep Johnson to approve the agenda as written. No objection. Motion passes.
3. **APPROVAL OF AGENDA:** Senator Gardner stated that she would like to add two items to the agenda if time permitted; one is the issue of the Minority/Majority websites, which is being requested by another member, and the other is whether or not documents pertaining to meetings, such as this one, could be emailed to members instead of receiving a paper copy since most people are now using iPads, etc., and going paperless. Ms. Anderson responded that the packets can be obtained from BASIS or the Ethics office could email her the documents. Representative Tuck concurred that the issue of the Majority/Minority websites should be added to the agenda, as well. Motion was made by Member Turner to approve the agenda as amended. No objection. Motion passes.
4. **APPROVAL OF MINUTES:**
 - a. **November 20, 2012 Full Committee Meeting** - Member Thomas motioned to approve the minutes. No objection. Motion passes.

- b. **November 20, 2012 Senate Subcommittee Meeting** - Member Cook motioned to approve the minutes. No objection. Motion passes.
- c. **December 12, 2012 House Subcommittee Meeting** – Member Turner motioned to approve the minutes. No objection. Motion passes.

5. PUBLIC COMMENT: None.

- 6. ELECTION OF COMMITTEE CHAIRS FOR 2013-2014:** Chair Walker announced nominations were needed for the following positions: Senate Subcommittee Chair, Senate Subcommittee Vice Chair, House Subcommittee Chair, House Subcommittee Vice Chair. Member Turner nominated Conner Thomas for Senate Subcommittee Chair; Member Thomas nominated Skip Cook for Senate Subcommittee Vice Chair; Member Mallott nominated Gary Turner for House Subcommittee Chair; Member Turner nominated Herman Walker for House Subcommittee Vice Chair.

7. CHAIR/STAFF REPORT:

- a. **Informal Advice Staff Report** - Ms. Anderson stated that she usually provides a monthly staff report of informal advice to the committee, however, due to the heavy workload, she did not have one. Ms. Anderson stated that it would be available in about a week.
- b. **Update: Committee Member Appointments** - Ms. Anderson stated a letter was sent to Chief Justice Dana Fabe informing her that three committee members' terms were up and that an alternate committee member would be added to the Ethics Committee. Ms. Anderson pointed out the terms for members Conner Thomas, Toni Mallott, and Gary Turner were expiring. Ms. Anderson informed the Chief Justice there was new statutory language adding an alternate public member; the alternate member will serve when a public member is unable to serve. Also, language was added stating the member who begins hearing an issue in a subcommittee meeting, such as a complaint, should follow it through to the end for consistency in discussions and so forth. Ms. Anderson referred members to their packet for the letter. She received an update from the Chief Justice's office about an hour ago indicating a letter was mailed to the Senate President and House Speaker today. Ms. Anderson stated that it would be read across the floor. Members that are up for appointment, as well as the alternate, will go before the House and Senate Judiciary Committee for confirmation hearings.
- c. **Facebook Access Update** – Ms. Anderson stated the Ethics Committee, Ombudsman's office, and Office of the Victims' Right office requested access to Facebook last year, however, it did not materialize. This year, Ms. Anderson is working with Legislative Council's new chair, Representative Hawker, in obtaining Facebook access. Each of the three agencies has stated that it would be beneficial to have access to Facebook.

Ms. Anderson will be meeting with Juli Lucky, staff to Rep Hawker, in Anchorage next week.

- d. 2013 Ethics Training Update – Ms. Anderson conducted three training sessions for non-political staff, a training class for new staff to legislators, a training class for new legislators, and two training sessions for returning legislators. Ms. Anderson stated there have been a lot of good discussions, questions, and suggestions from the training sessions. There were two remaining sessions to conduct in Juneau. Ms. Anderson will also be conducting a teleconferenced training for employees who are not in Juneau and for all of the LIO staff, and eventually, a "make-up" training session for staff who missed previous sessions, and a one-on-one training session for Rep Guttenberg upon his return.

A new training video is needed. Ms. Anderson stated that she will work with LAA Media Services. The current video is outdated due to changes to the statute, and it has been removed from the Ethics website. Ms. Anderson stated that it was her hope to record the video and bring it back online in February for new hires who are required to complete training within 30 days of hire.

Ms. Anderson reported that she learned of a new training "tool" from attending the COGEL conference and from talking to Doug Gardner, Director of Legislative Legal. The tool is a hand held "clicker" mechanism which is given to each member of an audience to use to answer questions posed by the speaker or trainer. It is hooked up to a PowerPoint presentation and when the questions come up on the screen the audience depresses the clicker to answer them. The results appear on the screen showing how many answered yes or no. For example, while conducting training, she would ask a question such as, "How many think it's acceptable to receive a gift from a lobbyist, other than food and beverage?" The results of how many answered yes or no would appear on the screen. If 99% of the audience answered "no", then she would likely not pursue this question any further. If it was answered 50/50, Ms. Anderson indicated that she would probably explain it more, as it would indicate that an additional explanation or scenario was needed. This may enhance training by engaging the audience more, and increasing interaction and retention; especially for ethics training which can be very long and complicated. Ms. Anderson stated that it was a new and innovative way to look at training. Those at the conference who were already using this feature stated that it was useful in getting their message across. Mr. Gardner had contacted IS Manager Curtis Clothier to obtain bids for a price quote. Ms. Anderson stated that the cost was \$4,300, which would not likely be in the Ethics Committee's budget. Mr. Gardner suggested that the Legislative Affairs Agency may be interested in purchasing this device to allow usage in other training sessions, as well.

Chair Walker stated that he was in favor and felt any additional tool would make ethics easier to learn.

Rep Tuck asked Ms. Anderson why the length of training for legislators was two hours and training for legislative staff was three hours. What is the difference between the two training sessions; is it because the staff is a bigger audience and you field a lot more questions? Ms. Anderson responded that that was correct, but also because she glosses over with legislators on certain things, such as she does not focus as long on the “gift” statute as she does with legislative staff. She stated that she focuses on statutes that are more appropriate depending on who is in audience.

Rep Tuck commented that legislators seemed to be engaged in ethics training, but that the “clicker” might be more beneficial for legislative staff as they might be hesitant to speak up or ask questions. Ms. Anderson responded that when she encounters staff in the hall, they indicate to her that they would not have asked the question in the classroom setting. One staffer told her, “I wasn’t brave enough to ask the question in class”.

Rep Tuck asked Ms. Anderson if a legislator missed training, could s/he attend the training curtailed for legislative staff, and if it qualified him/her for the training requirement. Ms. Anderson replied that she focuses on different subjects for legislators than for staff and felt that it was important for legislators to hear the interaction with other legislators versus sitting in a lecture-type setting for staff.

Member Turner commented that clicker systems have been used extensively at universities across the country for about 7 years or maybe longer, and that he was in favor it.

- e. Campaign Period Oversight Activities – Chair Walker asked Ms. Anderson to provide the committee an update. Ms. Anderson reported that legislators may have already heard this but that the information was important to be on record for the committee. The year 2012 was a unique year for campaigning because of redistricting. There were a lot of questions and unique situations regarding current districts and campaigning in a new district, the boundary lines, and using state resources. Ms. Anderson stated that in her 12 years as the administrator, 2012 has been the most complicated year she has seen in the campaign area. She stated that she was asked questions about Facebook but not having access to Facebook made it labor intensive to provide assistance. Ms. Anderson hoped that sending out news alerts and newsletters helped legislators. Ms. Anderson stated that at training for legislators this year, she stressed the importance of taking down the “contribute” button and solicitation statements from campaign websites, and that the Ethics office would be

doing a couple of spot checks on them. She pointed out that even in the off season there are campaign-related questions.

- f.** Ethics Disclosures – Ms. Anderson referred members to the pink sheet in their packets and provided a recap stating that there were 415 disclosures received; 171 of them were “Gift of Travel” disclosures. Three late disclosures were received; all of which were first time late filers, therefore none were fined.
- g.** Website Update – Ms. Anderson reported that the Ethics office added some new items to the website. A disclosure “search” feature was added, which was highlighted at training classes. It allows anyone to view disclosures that have been submitted via the on-line filing system. Also added to the website, was “Useful Information Materials” which included an annual calendar, the internship process, a list of sanctioned charity events, an informational handout on legislative candidacies, and a model office policy for campaigning. These materials were frequently requested by legislators or staff so they were made available on our website. Ms. Anderson noted that if committee members have anything else they would like to see added to the website to let her know.
- h.** COGEL (Council on Governmental Ethics Laws) Conference Report – Ms. Anderson explained briefly that COGEL was a national organization of state, local, and non-profit agencies. COGEL provides information on lobbying, campaign reports, and ethics. They have an annual conference where sessions are set up with speakers for different topics. You can choose whichever sessions you want to attend and there is a lot of interaction between participants. Several people from the Legislature have attended in the past, such as Dan Wayne from LAA Legal, and members from the Ethics Committee, such as Chair Walker and Senator Gardner. Ms. Anderson reported that the conference was very informative and well attended. She was the only person who attended from the Alaska Legislature this year. There were five who attended from APOC—an attorney, a commissioner, and three staff. The sessions she attended focused on changes in technology, online education and training, online filing of disclosures, and outreach in education. Ms. Anderson stated that several agencies have an informational guide or pamphlet focusing on individual topics such as how to complete disclosures or what is acceptable and unacceptable in the area of gifts. They have found them to be very helpful to those who are covered by the regulations. The information could be on a paper handout or be made available online. They suggested including examples.

Another tool some agencies are using is called Survey Monkey. Survey Monkey is an on-line application that allows for 10 questions that can be

responded to by those taking the survey. Some agencies have used this website to obtain feedback after conducting ethics training.

From the interaction at the conference, Ms. Anderson stated that each state is different and it is interesting to compare what they are doing and what Alaska's doing. Ms. Anderson attended a session on advisory opinions. The session covered the format of an opinion and suggestions for the opening and closing statements. Advisory opinions in some states are not made public which Ms. Anderson stated seemed to defeat the purpose of an opinion. Ms. Anderson stated the session on the media was very good. There was discussion on tips for dealing with the media, for example, don't lie, call reporters back immediately, be available, (not Friday, 5pm, or at lunch), consider the news schedule of the day—don't release news at 3 o'clock or 4 o'clock because it won't meet the news schedule, if a reporter makes a mistake, call him/her back and offer a solution, and always assume it's on the record, even when they say they are only obtaining background information; off the record has different meanings depending on to whom you are talking.

Chair Walker commented that he enjoyed the conference that he attended. Chair Walker stated that the conference was open for all committee members and that money was budgeted for it.

- i. Annual Benefit and Loan Review – Chair Walker invited Ms. Anderson to provide the members a recap. Ms. Anderson stated that under statute, the committee is required to review all state benefit and loan programs that are administered through the state. A letter was mailed to all state departments asking if there were any changes, additions, or deletions to any of the benefit and loan programs under their jurisdiction. Several minor changes were submitted which did not need approval from the committee. Requests to add or delete a program would require committee approval/disapproval. Ms. Anderson informed the committee of the updates that were received from the Department of Commerce, Community, and Economic Development and the Department of Public Safety. The letter and the form mailed out to departments were in the packet as well as the current list of loans and programs awarded on a discretionary basis versus a certain set of criteria. Ms. Anderson stated that the intent of the statute was to avoid legislative influence when it is a discretionary award. The list of reportable benefit and loan programs is in Ethics' handbook.
- j. Publications:
 - i. Advisory Opinions and Public Decisions – Opinions and decisions issued in 2012 will be published in the Legislative Journal and available next week.

- ii. 2013 Standards of Conduct Handbook – Ms. Anderson stated that the Ethics’ handbook has been updated and provided to all legislators and legislative employees of the Legislative Branch.

8. BUDGET:

- a. FY13 Budget Update – Ms. Anderson referred members to the report in their packets reflecting what has been spent so far. She indicated that at this time there are sufficient funds for the remainder of FY13.
- b. FY14 Suggested Budget – Ms. Anderson reported that the FY 14 budget was submitted to Executive Director Pam Varni. As of today, there have been no additional recommendations or changes.

9. DISCLOSURE WIAVER:

Ethics Committee Administrator Joyce Anderson reported that with the passage of SB 89 last year, there is now a provision that allows a person who is subject to the Ethics Act to request a waiver if making a disclosure would violate either state law, federal law, the United States Constitution, the state of Alaska Constitution, or a rule adopted formally by a trade or profession that state or federal law required the person to follow.

Ms. Anderson also referred to Advisory Opinion 09-02, issued in 2009, on this very subject. Ms. Anderson stated that after reviewing Alaska Statute 24.60.105(d), Ethics Committee members determined that a form would be the best method of requesting a waiver to ensure the discloser would know what information was required. Ms. Anderson stated that the draft form in the packet was developed with input from Dan Wayne, Legislative Legal. Mr. Wayne also provided a legal opinion on the interpretation of the statute.

The Chair asked Mr. Wayne if he had anything to add to the opinion. Mr. Wayne stated no. He thanked Ms. Anderson for pointing out an error on the last page of the legal opinion which states that AS 24.60.060(a) would prohibit legislators or legislative employees from making unauthorized disclosure of confidential information but did not apply members of the Ethics Committee. Mr. Wayne explained that due to a statutory change, effective August of 2012, members of the Ethics Committee are now covered as well.

Representative Charisse Millett asked for verification that the drafted form was requiring the person’s status or position with whom the association exists, and not requiring the person’s name. Ms. Anderson stated that she would defer the question to Mr. Wayne as it involves HIPAA requirements, or to Senator Giessel who is in the medical field. Ms. Anderson stated that the form was drafted based on Mr. Wayne’s legal memo. Ms. Anderson provided an example of the form’s usage by referring to Sen Giessel who is a nurse. She stated that if Sen Giessel was providing services to a legislator or legislative employee, a financial relationship between the two would exist. The statute requires that financial

relationships between a legislator and a legislative employee be disclosed. However, because Sen Giessel is required to follow HIPAA, which is a federal law, she could not disclose the name of her patient; only the status or position of the legislator or legislative employee.

Ms. Anderson further stated that the Name of Discloser should be changed to Name of Requestor. The filer is provided with a list of applicable laws which may apply to the disclosure of certain information. The form also asks for the date that the association began, whether it was a one-time association, and his/her license number. The term "Requestor" should be added before license number and license type. Ms. Anderson suggested that Mr. Wayne provide some clarity on the reasons for inserting Nature of Services, and other additions that were recommended in his memo.

Chair Walker asked the members if there were any other suggested changes to the form before voting to adopt it. Member Cook motioned to approve the form with the recommended changes that Ms. Anderson mentioned. Chair Walker stated that there was a concern that the words, "Person's Status" may not be specific enough and asked Mr. Wayne for comments. Mr. Wayne agreed that the "Person's Status" may be somewhat confusing; however, examples of the titles were provided only as a reference point. He further stated that, as mentioned in his memo, the reason for the form is to obtain enough information so that the committee can decide whether or not the request for the waiver is legitimate and whether it meets the requirements of the statute without putting the requestor (or discloser) in a position where they have to disclose confidential, protected information. Chair Walker asked Mr. Wayne if he thought the form was sufficient enough. Mr. Wayne stated that it would be difficult to determine to know, for example, should someone say the person's status was "legal client" or "court client", you can infer different things from that, unlike "public official", which may not be enough information thus requiring the committee to request additional information. He recommended that one approach might be keeping what is requested narrow, thereby limiting the risk of the person providing information that should not be made public.

Senator Gardner stated that the intent of the form is to obtain what it is about this relationship that requires disclosure. Under AS 24.60.070, the filer needs to disclose what the category or relationship is without disclosing the name.

Chair Walker invited Patty Krueger, legislative employee, to the floor. Ms. Krueger stated that she was a medical provider and has provided services to legislators and employees. Based on her interpretation of HIPAA, she stated that she could not provide any more information other than what she just stated. Her main concern is that the committee could easily know to whom she is providing services if both people are required to file the waiver. Ms. Krueger posed several questions to members: Is the committee asking practitioners to go outside the bounds of HIPAA confidentiality requirements? Does HIPAA supersede the

Ethics Act within the state or vice versa? Is the committee going to restrict the free practice of medical care because of this disclosure? She commented that the disclosure almost appears to be an unfair restraint of trade.

Ms. Anderson pointed out to the committee that there are two questions before them today:

1. Who is required to file a request to refrain from making a disclosure?
2. What information should be supplied on the disclosure form?

Ms. Anderson stated that in reference to the first question, the committee needs to determine if the provider or the person receiving the services is required to file a disclosure or is it both? Normally, a close economic association between two individuals covered by the Ethics Act must be disclosed by both; however, it would appear that the person receiving the services would not be required to file a Request to Waive, but that it was the provider's responsibility. Ms. Anderson further stated that she agreed with Ms. Krueger that requiring both to file would reveal the identity of the person.

Member Thomas asked if recently passed legislation authorizes the committee to exclude the person who is receiving the services. He stated that he agreed with Ms. Anderson and Ms. Krueger. In response to Member Thomas' question, Mr. Wayne stated that the statute does not specifically say what information should be disclosed or withheld. However, the statute did say if the information is confidential, then the person does not have to provide it. Mr. Wayne offered that instead of stating on the form "person with whom association exists", perhaps the term "person's status" would suffice; and instead of "description of economic association", insert "if you are requesting a waiver for describing your close economic association under 24.60.105(d), then please describe why"; describe the confidentiality. The person filling out the form could respond with, "nurse/patient" and "I cannot provide any additional information because of HIPAA". The committee would decide whether it is enough information or request additional information.

Member Thomas responded that the form already states, "Nature of Services". Member Thomas suggested that instead of disclosing the status of the person, a provision be inserted where all the categories (public official, etc.) are listed and the person answers yes or no. Then s/he is not identifying which one exactly, only that one of them applies.

Rep Millett stated that if only one person needs to disclose, then the form should state that, and which person is required to file. Member Cook responded that one person would say s/he is not providing this information on his/her patient and the other person would say s/he is not providing this information on his/her provider.

Mr. Wayne stated the statute is requiring both to disclose if both are covered by the Act; however, the committee could accept a disclosure by one as covering the other if that is the practice the committee wants to follow.

Member Turner suggested that the top line on the form be changed from Name of Discloser to Name of Requester or "Name of person providing the service". Sen Giessel stated that in viewing the form as a nurse practitioner, her interpretation is that the person providing the service is required to file because the person is not only a legislator, but a legislator who has the "trade or profession". The recipient of the services has neither a trade nor profession and would not be required to file. The professional, or the person with the trade who is providing the services, is the only person required to file.

Mr. Wayne pointed out to the committee to the language in (d) of AS 24.60.105 which addresses when it is appropriate for a person to submit a written request for a waiver. The statute is not adding to the burden of disclosure, rather it is saying that you already have a burden to disclose under the close economic association statute and if you want to refrain from disclosing because you think the information is protected, or that you are prohibited from providing the information, you can ask the committee for a waiver. The waiver is the option in this scenario versus not filing a disclosure at all and risking the chance someone were call you out on it. The request for a waiver would allow you to point out that you provided relevant information, but was constrained by the requirements of the nature of the service provided.

Chair Walker stated that it was his interpretation that a person is required to submit a request for a waiver but also has the duty not to disclose certain information because of confidentiality provisions. He did not believe the other person was required to make the disclosure.

Members of the committee decided to table the item, and in the meantime, consider the recommendations and suggestions presented before them today and come up with modifications to the form that satisfies all concerns.

10. 2013 LEGISLATION UPDATE: None.

11. OTHER BUSINESS: Senator Gardner circulated a handout to members and explained that if you were to look on BASIS for a piece of legislation, and you further wanted to look at the sponsor's statement for that piece of legislation, the link on BASIS would take you to the House Majority Caucus website or the House Minority Caucus website. These websites are partisan in nature to a great extent. One could argue that the websites are in violation of the Legislative Ethics Act since state resources are used for maintaining the sites and technically they are for partisan activity, even though the legislator may or may not be strictly a democrat or republican. A legislator's campaign website cannot refer people to the legislative website, which is contrary to some.

Representative Tuck further explained that when you look for a bill on BASIS, and click on the sponsor's statement, you will get a message on your screen saying that you are leaving the Alaska State Legislature website maintained by Legislative Affairs Agency, a non-partisan entity. It further states that LAA is not responsible for the content of the page from which your browser is about to be sent. You should be redirected automatically in about 10 seconds. If you don't want to wait, click here now. This means that you are going off the LAA browser or website and being linked to another website which happens to be, in this example, the AKDemocrats. When you look at the next page, the sponsor's statement is no longer online, but it tells you to call the press secretary Mark Gnadt at such and such number and that no sponsor statements are available at this time but please see AKDemocrats.org. (Emphasizing AKDemocrats.org) You are now going to another website where sponsor statements are allowed. Rep Tuck stated that for reasons unbeknownst to him, "opinions" cannot be posted on BASIS about their bills. You are redirected to another location where sponsor statements are allowed to be posted. When a legislator asks, during a campaign season, why can't somebody link to his/her sponsor statement when it's his/her opinions and his/her values, you will notice that at the AKDemocrats site, it talks about the values of the AKDemocrats. If you look at the Majority website, it has their values, which can either be the same or different, but nonetheless, that is where you have the statement that says it is a non-partisan entity, meaning that you're going to a *partisan* entity. Senator Gardner and Rep Tuck requested that the members consider the information presented before them, which came to them from another legislator.

Member Turner suggested that the real question before them is why can't the sponsor's statement be listed on BASIS? Chair Walker asked if there was an ethical reason why it was not on BASIS or is it just the way it's been done. Representative Tuck stated that it was his understanding it was because the sponsor statement is an "opinion" of a bill, and the legislator's opinion of the bill, even though it may be a bill he introduced, it is his opinion of the bill of what he thinks it should or should not do. Senator Gardner added that another question to be answered is who pays for the domain names and the hosting server.

Chair Walker suggested tabling the issue and asked that Sen Gardner and Rep Tuck meet with Joyce Anderson at a later time for follow-up as it may require an advisory opinion.

- 12. ADJOURN:** Member Turner motioned to adjourn the meeting at 3:10 p.m.
Motion approved.