

***State Prosecutor Selection and Disabilities Commission Meeting Minutes***

**Attendants**

<b>Name</b>	<b>Present</b>
Brian L. DeLeonardo	In Person
Joan Carter Conway	In Person
Roger P. Manno	In Person
Doyle L. Niemann	In Person
M. Christina Hamilton-Eisler	In Person
Brian E. Frosh	In Person

**Meeting Location**

Office of Attorney General  
200 Saint Paul Place  
Baltimore, Maryland

**Meeting Date & Scheduled Start**

August 21, 2019 at 2:00 PM

**Meeting Scribe**

Cara Frieman

- I. Declaration of Quorum  
Chairperson Brian DeLeonardo called the meeting to order, and declared a quorum at 2:12 PM.
  
- II. Introductions  
All commission members present introduced themselves; members of the public present also introduced themselves. Chairperson Brian DeLeonardo noted that the commission has a seventh member, who had not yet been officially appointed to replaced former commission member Brian McHale. Governor Hogan’s chief counsel, Robert Scholz, was present as a member of the public and reached out to the Governor’s appointments secretary to attempt to determine the status of the seventh member’s appointment.
  
- III. Discussion of commission procedures for nomination of State Prosecutor candidates  
Chairperson Brian DeLeonardo noted that he was appointed as chairperson of the commission two weeks ago and that the commission received from Governor Hogan on August 13, 2019 that a vacancy existed for State Prosecutor. The commission has 70 days from that notice to evaluate candidates and make recommendations to the governor.

Chairperson DeLeonardo told commission members that the advertisement for the position of State Prosecutor has been posted in The Daily Record, delivered by press release to other local news outlets, posted on the Office of State Prosecutor’s website, and distributed to Maryland State’s Attorneys’ Association, Maryland State Bar Association, and all specialty bars listed on the Maryland State Bar Association’s website. DeLeonardo intended to distribute the advertisement to all county bar associations in

Maryland. The deadline for submitting applications to the commission is August 30, 2019.

October 15, 2019 is the deadline for the commission to submit its written report and recommendations to Governor Hogan. The governor has 30 days after receipt of the commission's report to make either appoint a State Prosecutor or return the list to the commission.

Maryland State Police will perform background investigations on all applicants, who will be required to sign background investigation waiver forms. Maryland State Police has agreed to perform the investigations in a timely fashion. Member M. Christina Hamilton-Eisler suggested that the commission also investigate all applicants' history with the Attorney Grievance Commission.

There was discussion on the process of interviewing applicants. Chairperson DeLeonardo noted that the commission has received two applications as of the time of the meeting. Member Hamilton-Eisler suggested that if there are many applicants, each member could individually interview applicants, particularly regarding sensitive issues. Chairperson DeLeonardo suggested the first-round interview be in front of the entire commission.

There was discussion regarding the application for the position of State Prosecutor. Member Brian Frosh suggested that it be the same application as judicial applicants, and Members Hamilton-Eisler and Doyle Niemann agreed. Chairperson DeLeonardo suggested that applicants be required to submit one writing sample, as opposed to the two writing samples required by the judicial application.

Chairperson DeLeonardo summarized the commission's application process as requiring, in addition to a resume, a completed judicial vacancy application, one writing sample, and complete background investigation waiver forms, including Attorney Grievance Commission background investigation.

Discussion returned to the interview process. Chairperson DeLeonardo's position was that no commission members should have discussions with applicants outside of the commission's interview process. Member Hamilton-Eisler suggested that the commission members individually vet candidates, rather than a group "assembly line" interview. Member Conway suggested a first-round "introduction" interview with the entire commission. Chairperson DeLeonardo suggested that the commission wait until the close of the application period to determine the number of applicants before finalizing an interview process; however, suggested that the commission calendar dates for interviews before the close of the meeting given the short timeframe for submitting recommendations to the governor. The commission selected September 17, 2019 and September 24, 2019 as potential interview dates. The commission selected October 8, 2019 as a potential final meeting date.

IV. Consideration of appointment of interim State Prosecutor

Chairperson DeLeonardo noted that former State Prosecutor Emmet Davitt's resignation was effective July 31, 2019, and as such, there is no current State Prosecutor.

Member Brian Frosh, Attorney General, stated that with regard to the authority of the Office of State Prosecutor to continue operations pending the appointment of a State Prosecutor, there are opinions that support the idea that the Office of State Prosecutor has authority to continue existing/in-progress investigations, but there is conflicting opinions as to whether the Office of State Prosecutor could initiate new investigations pending the appointment of a State Prosecutor. There is no statutory provision for a process of appointing an interim State Prosecutor.

Member Conway asked if there was a current interim State Prosecutor. Member Frosh said that prior to his resignation, Mr. Davitt gave acting authority to the Deputy State Prosecutor. Chairperson DeLeonardo noted that there is no legal authority supporting the idea that the outgoing State Prosecutor has authority to designate an interim State Prosecutor. Because there is no statutory process for appointing an interim State Prosecutor, Chairperson DeLeonardo suggested that the commission nominate an interim State Prosecutor and send its recommendation to the governor, in the same fashion as it will nominate a final State Prosecutor and submit its recommendation to the governor. Member Niemann noted that it was critical for the commission to make a nomination of interim State Prosecutor to ensure that any ongoing or new investigations during the pendency of the appointment of a State Prosecutor are immune from challenge.

Member Hamilton-Eisler suggested that pending and new investigations be handled by the Office of Attorney General until a State Prosecutor is appointed by the governor. Member Frosh agreed that this could be an option, but that it would be cumbersome. Member Niemann noted that the reason the Office of State Prosecutor is a separate entity because of the inherent conflicts created by the type of crimes it investigates. Member Roger Manno suggested the commission work as quickly as possible to submit its report to the governor, and Chairperson DeLeonardo agreed but wanted to ensure the commission is thoughtful and does not want speed to supersede the need for thorough vetting.

Member Hamilton-Eisler suggested the governor empower the commission, by executive order, to select an interim State Prosecutor. Chairperson DeLeonardo suggested the "cleanest" approach is to follow a similar procedure to the appointment of a final State Prosecutor, by having the commission consider and nominate an interim State Prosecutor and send its recommendation to the governor, who can appoint an interim State Prosecutor. At this point, the commission wanted to consider individual candidates for interim State Prosecutor.

V. Designation of commission member to receive training on the Open Meetings Act

Before moving for closed session, Chairperson DeLeonardo noted that he had completed the required training on the Open Meetings Act. At 3:10 PM the commission designated

Chairperson DeLeonardo as the commission member that had received training on the Open Meetings Act.

VI. Motion to close session to discuss individual candidates for interim State Prosecutor

At 3:12 PM at 200 Saint Paul Place, Chairperson DeLeonardo moved to close the meeting to consider the nomination of individuals for interim State Prosecutor. The statutory authority to close the session was General Provisions Article § 3-305(b)(1) “to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance valuation of appointees, employees, or officials over whom this public body has jurisdiction; any other personnel matter that affects one or more specific individuals,” and General Provisions Article § 3-305(b)(13) “to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.” Criminal Procedure Article § 14-104(b)(2) requires that voting by the commission regarding candidates for State Prosecutor be done by secret ballot. This motion was seconded by Member Roger Manno. All present commission members (6) voted in favor of the motion, 0 members were opposed and 0 abstained. 1 member of the commission was absent. All commission members listed on page 1 of the minutes attended the closed session.

During the closed session, the commission discussed potential candidates for nomination as interim State Prosecutor and these candidates’ experience and qualifications for the position of interim State Prosecutor. At 3:30 PM commission then voted by secret ballot to nominate an interim State Prosecutor and to send that nomination to Governor Hogan for appointment of interim State Prosecutor.

At 3:31 PM, Member Conway moved to re-open the meeting. Member Hamilton-Eisler seconded the motion. All members voted in favor of re-opening the meeting, 0 members opposed, 0 members abstained.

VII. Discussion of next steps of the commission

Chairperson DeLeonardo announced that the commission had voted to recommend Kelly Madigan, current Deputy State Prosecutor, to the governor to act as interim State Prosecutor pending the appointment of the State Prosecutor. Chairperson DeLeonardo noted that Mr. Davitt had designated Ms. Madigan as the individual to continue the work of the Office of State Prosecutor while the commission completes its process of evaluating and selecting candidates for State Prosecutor. Chairperson DeLeonardo further noted that Ms. Madigan has submitted an application to be considered by the commission for State Prosecutor, and that the commission’s decision to nominate Ms. Madigan as the interim State Prosecutor is meant only to ensure continuity of the Office of State Prosecutor’s work while the commission evaluates all applicants for the position of State Prosecutor and submits its recommendations to the governor.

Governor Hogan’s chief counsel, Robert Scholz, told the commission that while it was in closed session, Governor Hogan appointed Galen Clagett as the seventh member of the commission, replacing Brian McHale.

Chairperson DeLeonardo noted that all future meetings of the commission will be at the Office of Attorney General at 200 Saint Paul Place, Baltimore, Maryland. He also noted that he will distribute received applications to all commission members upon the close of the application period and after Maryland State Police has completed background investigations. Member Hamilton-Eisler moved to have all applications sent through secure electronic means. After some discussion about means of distributing the applications to commission members, at 3:40 PM, Chairperson DeLeonardo amended Hamilton-Eisler's motion to have applications distributed to commission members in the form requested by each commission member. Member Conway seconded the motion, all present commission members (6) voted in favor, 0 opposed, 0 abstained.

Member Hamilton-Eisler discussed whether commission members could have contact with applicants or applicants' references moving forward. Chairperson DeLeonardo suggested while there was no statute prohibiting commission members from contacting applicant, it would provide credibility to the commission if members did not have contact with applicants and applicants' references outside of the commission's interviews. Member Niemann moved to establish the rule that all commission members will no speak to applicants or applicants' references outside of the commission's interview process. Member Frosh seconded the motion. All present commission members (6) voted in favor of the motion, 0 opposed, 0 abstained.

At 3:50, Member Manno moved to adjourn the meeting, Chairperson DeLeonardo seconded the motion, all present commission members (6) voted in favor of the motion, 0 opposed, 0 abstained.