

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th Ave., Suite 230
Anchorage, AK 99501
(907) 269-0150
FAX: 269-0152

Mailing Address:
P. O. Box 101468
Anchorage, AK
99510 - 1468

MINUTES from February 26, 2013 FULL COMMITTEE MEETING Beltz Room, Thomas Stewart Building State Capitol, Juneau

- 1. CALL THE MEETING TO ORDER:** Chair H. Conner Thomas called the meeting to order at 9:05 a.m. Members present: Senator Anna Fairclough, Senator Berta Gardner, Representative Charisse Millett, Representative Chris Tuck (at 10:45), Antoinette “Toni” Mallott, Herman Walker, Jr., Dennis “Skip” Cook, and Gary Turner. Also present via teleconference: Dan Wayne, LAA Legal; Staff present: Joyce Anderson, Administrator.
- 2. APPROVAL OF AGENDA:** Chair Thomas announced that Rep Paul Seaton requested to present an issue before the committee, which is Item 10 on the agenda. The committee agreed to hear his issue and asked him to appear today upon his availability. Since Rep Seaton is present this morning, the committee will hear his testimony and proceed to approving the minutes as the next item. The Chair asked if there were any objections to the amended agenda. There were no objections and agenda was approved.

Chair Thomas invited Rep Seaton to the floor. Rep Seaton thanked the committee for taking time to address this issue. He stated that he is requesting that the Ethics Committee revisit Advisory Opinion 12-04, which talks about electronic links to Internet websites created or maintained specifically by the House Majority, House Minority, Senate Majority, and Senate Minority. Rep Seaton stated that since the committee had already received his letter, he will not go through it explicitly. He further explained that the Majority and Minority websites are maintained by people selected by those majorities, by the political groups, and that they contain political material and caucus priorities. He stated that his main concern is the availability of bill sponsor statements. One of the areas mentioned in the opinion

was that these websites are legislatively maintained. BASIS bill information is maintained by LAA, and if anyone wanted to look at a bill sponsor statement, there's a big disclaimer that appears on the screen that says you are leaving the Alaska Legislature website maintained by the Legislative Affairs Agency, a non-partisan entity, and they are not responsible for the content of where you are going to be sent. A bill sponsor statement is created by the bill sponsors; so there's no control of that information except by the bill sponsor. Rep Seaton stated that he had a hard time finding out how a legislator is to talk to constituents when campaigning, explaining our job, and what we have accomplished in the Legislature or if they disagree with us about a bill that we propose without referring them to the bill sponsor statement; but referring them to a bill sponsor statement is referring them to this very site, because that is where the statement is listed with all the other material about the bill. Rep Seaton further stated that he did not understand why you cannot provide a link containing information about what kind of job you are doing and whether the constituent agrees or disagrees. He stated that when he sponsors a bill that a number of people in his district disagree with, they should at least be able to find out what the bill is, the sponsor statement, and why he is sponsoring it. He stated that he was concerned that the House Majority and House Minority websites were being treated as if they were Legislative websites, when in fact the title of the House Democratic Caucus website is www.akdemocrats.org. The House Majority site reads www.housemajority.org. Rep Seaton stated that he felt there was a real problem if a legislator was prevented from providing a link to the Majority or Minority website about a bill while campaigning and he is prohibited from telling them to go to the House Majority website and look at his sponsor statement. He stated that there was no difference between providing the information to a constituent or doing it verbally when walking door-to-door. Rep Seaton stated that there was a disconnect between the two kind of websites; between legislative websites that are maintained by the Legislature or LAA, and set up for totally informational purposes, and the Majority website and Minority website which has our biographical information but also has the materials that he has placed on the site supporting the bills he has introduced.

He reiterated that he hoped the committee would reconsider and revisit the advisory opinion. A link is only a modern day communication method. It's just like talking to somebody at the door. If he's allowed to go door-to-door and tell someone to go to his House Majority.org website, there's no difference between that communication with constituents taking place and providing a link to that identical website with identical information that he believed that the committee is allowing him to do. He stated that he believes more cases like his could come up if he is prevented from using that information and those websites electronically. If the committee is saying that it is improper to communicate that exact same website and exact information verbally, we're not in the twenty-first century. Rep Seaton asked that the committee take another look at the websites, review the differences, take a look at them structurally, how you get to them, who maintains them, and the information that is on those websites. The committee should

separate House and Senate Majority, and House and Senate Minority websites from the criteria that the committee used for legislative websites.

Chair Thomas asked Rep Seaton if he was talking about going from his own campaign website link to the sites we're talking about. Rep Seaton responded that he was also referring to any other communication, such as if he were sending out a mailer to his constituents and telling them to look at his sponsor statements on these bills, and asked how he would do that. Is the committee allowing him to say to go to "www" and provide it in writing but if he provided an electronic link, it is an ethics violation? He stated that that was how he interpreted the advisory opinion.

Chair Thomas stated that the problem arises in the context of campaigning. The advisory opinion prohibits linking somebody to a website as part of a campaign pitch, for example, if that website includes legislative contact information. Changing the name of the Majority/Minority websites would not change the results of this opinion. The opinion prohibits the use of legislative information during campaigning. The idea being that the committee does not want people thinking that a website with legislative contact information is the one they contact with campaign questions. Chair Thomas stated that was his view of what he believes what the opinion is saying.

Representative Seaton stated that he agreed. However, when providing a link, it is not that you have provided the information; rather, it is a link for telling someone to go to a certain website. He stated that he was uncertain what the advisory opinion really does. Does it say that he cannot provide a link or that he cannot provide the information? The website contains his sponsor statement and his legislative information. He believed that the advisory opinion is saying that he cannot refer people to where his sponsor statement is located because his biographical information is there as well.

Chair Thomas interjected, correcting Rep Seaton by clarifying that it was because his "legislative" contact information was there as well.

Representative Seaton stated that maybe AO 12-04 is really saying that he cannot tell his constituents what he has been doing—that he really cannot tell them to look at his sponsor statements because the site also has other stuff on that website, and therefore, if he tells them to go to that website, where they would also see my contact information from 2004, suddenly, it's an ethics violation.

Member Cook stated that the opinion grew out of a prior opinion that said campaign material cannot contain legislative contact information. Legislative contact information cannot be on a business card or on a flyer that you handout at someone's door. That didn't prohibit you from providing that information to them verbally. The opinion never stated that providing it verbally was prohibited. You just cannot have your legislative contact information on campaign materials.

The reason for that is to prevent people from contacting your legislative office and using legislative staff for campaign associated work.

Member Cook further explained that AO 12-04 was simply saying that it is akin to having it on a printed folder to have a link that automatically provides that address. He believed that that was thrust of the opinion. Links were not as prevalent as they are today. He stated that he did not believe that the opinion was trying to prohibit people from finding your legislative contact information or sponsor statements. It just cannot be provided on printed campaign materials or electronically.

Representative Seaton agreed that he should not be putting his legislative contact information on campaign materials; but not being able to say there is a link with the information or use some other way, is not the same as having his legislative contact on his campaign materials. He asked the committee if the opinion was denying constituents access to information on legislative work. He did not believe that that is what the committee was trying to do.

Representative Millett asked Rep Seaton if what he was asking was that the committee re-open the advisory opinion because he wanted clarification that says we cannot write it, print it, or send the link in an email, but we can verbalize it, and that what he wants to know is what is the difference. For example, if you're going door-to-door and someone says that s/he didn't like the bill you sponsored and asked you where s/he can go to find out more information on it, and not being able to send someone to that legislative website because we are using legislative resources. Rep Millett stated that she agreed with Rep Seaton that the committee should revisit AO 12-04, and take into consideration the difference between a verbalized web link and a written web link, especially since that is where all the legislative information is stored even though they are state managed websites.

Member Walker motioned that the committee revisit AO 12-04.

Chair Thomas asked Rep Seaton if he were allowed to provide a link to BASIS, which does not contain his legislative contact information, would that satisfy his concern.

Representative Seaton responded that if he linked to BASIS, he would be linking to the Legislature; and if he clicked on the sponsor statement it takes you to one more route to the page where you can select House or Senate Majority.org that has the exact same contact information. He would prefer that it not be an ethics violation if he were to direct somebody to the website, whether it is an electronic link or verbally communicating the website to constituents to see his sponsor statement.

Chair Thomas stated that he did not firmly believe that even "verbally" giving out the website to legislative contact information was acceptable while campaigning

either. Additionally, it is not the use of state resources that is the problem; it is the legislative contact information. This opinion comes from the '07 opinion where the concern was that if you give out legislative contact information while campaigning, people would be contacting you for campaign matters as you are doing your legislative work.

Representative Seaton stated that he agreed with Chair Thomas' statement. However, he believed that people are sophisticated enough that when at the sponsor statement link, they will know to contact you at the information from your campaign material, not through a second or third level link.

Senator Gardner stated that she had a quick, easy fix for this issue and suggested taking your sponsor statements or anything that is normally on the Caucus website and cleanse it of legislative contact information and put it in your campaign website. Then you can direct people to your campaign website for sponsor statements or anything else. Sen Gardner stated that she went to the Caucus website, picked out things she thought would be interesting to use on her campaign website, and modified them for her campaign website.

Representative Seaton agreed there are other ways to provide this information, but if someone were to ask him about another bill, he would not be able to tell them where they could get his bill sponsor statement because it would be an ethical violation. He would have to tell that person he would have to get back to him, then cut and paste something. The Majority website has all the information on what he's been doing, the job he's been doing and is public information.

Senator Fairclough asked the committee to consider re-evaluation and stated that she supports the motion. She agreed with Sen Gardner's comments in that there are ways outside of the current proposition to provide the information to the community; but if the opinions that brought 12-04 before us was the appearance of leading the public to a state employee to acquire additional information, one way or another, the committee could take up the issue and offer—if it is a political website—to drop the whole state reference. All of that information could be removed. Sen Fairclough additionally stated that she was concerned about handing out business cards at the same time because politicians that are previously elected are asked in those situations sometimes for state information. The policy could be reviewed depending on the committee and staff workload. Perhaps a timeframe could be established. Is better to take this on in a different year, or is this the year that it can be accomplished?

Chair Thomas responded that he did not see why the committee couldn't address it in a timely manner, meaning by the time of the next committee meeting in the spring or early summer.

The motion by Member Walker was restated as follows, "Should the committee revisit Advisory Opinion 12-04?" A roll call vote was taken: YEAS: Sen

Fairclough, Sen Gardner, Rep Millett, Toni Mallott, Herman Walker, Skip Cook, and Gary Turner. NAYS: Chair Thomas. ABSENT: Rep Tuck. Motion passed.

3. APPROVAL OF MINUTES:

- a. **January 16, 2013 Full Committee Meeting** – Minutes are incomplete and were tabled for a future meeting.
- b. **January 16, 2013 Joint Senate and House Subcommittee Meeting** - Member Turner motioned to approve the minutes. No objection. Motion passes.
- c. **January 16, 2013 House Subcommittee Meeting** – Member Cook motioned to approve the minutes. No objection. Motion passes.

4. PUBLIC COMMENT: None.

5. CHAIR/STAFF REPORT:

- a. Informal Advice Staff Report - Ms. Anderson reported that the office has been extremely busy due to end of the year items and traveling to Juneau for training. There has not been a staff report since the new legislative members were confirmed. Ms. Anderson stated that she usually provides a monthly report of questions and informal advice given out for review by the committee. One should be available in the very near future.
- b. Update: Committee Member Appointments - Ms. Anderson stated that three public member terms are up this year; Members Turner, Mallott, and Thomas. Members Turner and Mallott have gone through one confirmation hearing, and she is working with the committee aides in the Senate and House Judiciaries. Due to scheduling conflicts, confirmation hearings may be on an individual basis. An alternate public member will also go through the confirmation process. Janie Leask was appointed by Chief Justice Fabe as the alternate member. Ms. Anderson is hopeful all will be on board shortly.
- c. Facebook Access Update – Ms. Anderson worked with Juli Lucky, who is in Rep Hawker’s office, on Facebook access. The Ethics Committee, Ombudsman’s office, Office of the Victims’ Right office, and Legislative Budget and Audit are all interested in having access to Facebook. The subject was removed from Legislative Council’s agenda this week, but hopefully will be added to the next meeting agenda. Ms. Anderson explained that the committee was not interested in having a Facebook page but rather the ability to look at Facebook pages when someone calls her about a post on Facebook. She would be able to view the page and respond. From what she has heard, there might be a blanket approval for access. She is still waiting to hear back from Rep Hawker’s office.

Chair Thomas asked Ms. Anderson if she had considered having a Facebook page. Ms. Anderson stated that it would be a lot of work to maintain a Facebook page and that the office would not have the time to manage it. It could be a possibility in the future.

Senator Gardner mentioned that a Facebook account was required for access and that Ms. Anderson would probably want to “Friend” the Legislators. Ms. Anderson stated that that was the plan.

d. 2013 Ethics Training:

- i. Update 2013 Training - Ms. Anderson reported that 59 legislators have completed ethics training, and that she will be providing one-on-one training to Rep Guttenberg upon his availability. There were 517 staff who have completed training. The last training was held in Anchorage via teleconference on February 12, for LIO staff and people working outside of Juneau. There were a few staffers to legislators who attended as well. Ms. Anderson stated that she moved the non-political items to the beginning of the class and placed the political items at the end so that the non-political attendees would not have to sit through the class in its entirety. Sen Fairclough asked Ms. Anderson if the remaining 14 people who still need to complete the training were from one department or from various departments. Ms. Anderson replied there are now 15, not 14, people, and that the fifteenth person is a staffer to a legislator. Ms. Anderson was initially informed that the person would be off payroll at the end of January but as of today that this person is still on payroll. Ms. Anderson stated that she did not want to name the person but wanted the committee to know that this person has taken the online video training the last two required training times and that she was concerned that this person had not attended an in-person training session for the past four years. Ms. Anderson stated that she would be working with the legislator about this concern. The remaining staff that need to complete training are disbursed throughout the Legislative Branch. The reasons were varied; either on maternity leave or medical leave; or part-time employees and worked elsewhere on their days off, or there were other legitimate reasons. Ms. Anderson conducted nine training classes for staff plus two classes for legislators. Member Turner asked Ms. Anderson if she has spoken to APOC about coming to Ethics Training classes. Ms. Anderson stated that she had a conversation with Paul Dauphinais, APOC’s Executive Director. He stated to her that APOC provided “lunch & learn” sessions; however, they were not well attended. She discussed with Mr. Dauphinais the possibility of coordinating training sessions in the future.

ii. Online Training – Ms. Anderson had scheduled to tape a new training video with Tim Powers, Media Services, tomorrow; however, because she is not feeling well, she canceled the session until she is feeling well.

e. Ethics Disclosures – Ms. Anderson stated that “annual” disclosures were due on February 13, 2013. As of today, 248 disclosures have been received. They are in the process of being reviewed for accuracy and content.

6. BUDGET:

a. FY13 Budget Update – Ms. Anderson referred members to the budget totals as of February 15, 2013. She indicated that at this time there are sufficient funds for the remainder of FY13, June 30. There are legal and contractual services encumbrances should there be a need for them.

b. FY14 Submitted Budget Update – Ms. Anderson reported that she has submitted the budget. There are no recommended changes by the committee or updates as of today to report. She has not been contacted by anyone on the Finance Committees in the House or Senate with questions.

7. OFFICE ALLOWANCE FUNDS-Use of State Resources to manage Account and Disclosures: Ms. Anderson stated that several legislative offices have contacted her requesting informal advice regarding the 2013 change in the manner of distribution of a legislator’s Office Allowance Account. After providing the informal advice, the offices asked if her advice could go before the committee and for the record. The question informally addressed was if a legislator could put their office allowance funds in a separate checking account specifically allocated for legislative purposes and if their legislative staff could manage the account. Ms. Anderson responded that she did not see any ethical concerns and had consulted the chair who also agreed that it was acceptable. The concern by legislators and staff seemed to focus on the fact that it was a private account of the legislator. Ms. Anderson stated that since the account would only be used for a legislative purpose and not for any expenses incurred for personal, political, or campaign purposes, she did not see any ethical concerns.

The second question asked related to the use of the account for staff to attend meetings and if so, was a “Gift of Travel/Hospitality” disclosure required when the threshold reached \$250 or more. Ms. Anderson pointed out the use of these funds would be considered a gift under the Ethics Act. There are two ways to report gifts of travel/hospitality for a legislative matter: The first is through internal accounting through the LAA Accounting office and the other way is external accounting through the filing of an ethics disclosure with the Ethics Office. An internal account maintained strictly by a legislative office is not a public document similar to public documents available through the LAA

Accounting office. A legislative office did not agree with this advice which is why the issue is before the committee today.

Senator Fairclough added the subject of POET account to the discussion, stating that other uses of the POET account had occurred, such as a legislator using it to reimburse a staffer for bringing the legislator's car to Juneau, as part as that staffer's job. In regards to the office allowance account, Senator Fairclough commented that this year is a new way of using the account, and the way it's being treated can bring with it complicated factors. For example, her town hall meeting was on the same weekend as the Lincoln Day dinner. Previous advice from the Ethics Office was that if she travelled on legislative funds, she could not attend anything political; which meant she could attend her town hall meeting on state funding but could not attend the Lincoln Day dinner. However, if she had chosen to use POET account funds, she could have attended both events. Senator Fairclough stated that the use of funds is extremely complicated because it was her home town that she was going to and for new legislators to understand this must be difficult for them as well. Senator Fairclough stated that she would like clarity so that she and others remain in compliance.

Ms. Anderson explained that the POET account, consisting of unused campaign funds, is managed by APOC, and APOC has said that as long as there is a legislative purpose, funds from the POET account do not have the same restrictions as for the use of state funds. Plus, the office allowance funds are now put in a personal account. If Sen Fairclough had used those funds to travel to Anchorage, she could have attended both events because the money is no longer considered state funds. It's the legislator's personal fund. Ms. Anderson also stated that she agreed with Sen Fairclough in that it has become complicated.

Senator Gardner agreed that the advice Ms. Anderson provided was correct. She further stated that the office allowance account is indeed their income to do with what they want. However, she stated that she felt it was important to keep track of how those funds are utilized should their constituents ask. The important thing for the POET account, stated Sen Gardner, is the source of that money, which is political.

Member Turner asked what if a legislator had Office Allowance Account funds leftover at the end of the year and wanted to give it back to the state; does the state have to disclose that amount as a gift? Senator Gardner stated that the money to which he is referring is no longer state money. When it was accountable, legislators didn't access the account except to seek reimbursement by submitting an invoice for repayment. It did not belong to the legislator; rather it was allocated for their use. It went into the general fund if the legislator did not use it.

Senator Fairclough stated that she has already paid taxes on the 2013 office allowance fund she received. This has made it challenging, especially for those in

rural areas. Senator Giessel, for example, is on the road from Anchorage to Soldotna, which may not seem like rural. However, under the current scenario, she has to front load payments. If you choose to take it monthly, you get the highest maximum use of the dollar amount because it is taxed less by the federal government. If you choose to front load a newsletter, for example, you pay for it out of your pocket and wait for reimbursement. What this means under the new system is that you have received a reduced benefit; depending on your tax bracket—5% is taken off the top. Senator Fairclough stated that there needs to be a change to the current method. She stated that she sat in at the last Legislative Council meeting and surmised that the committee was given poor advice on the federal government's requirement, as well as on accounting principles. She stated that she didn't think there was any intent for this to occur when it was voted on. Representative Hawker is taking up the issue presently as this change may be raising the retirement formula for legislators and may be increasing state debt.

Member Mallott stated that it will likely be a hardship for employees who receive payment for travel, as gifts from legislators.

Members recessed for 10 minutes. Members reconvened at 10:20 a.m.

8. DISCLOSURE WAIVER:

Chair Thomas brought the members to date on the status of the draft of the Waiver Form. It was the committee's responsibility to develop a procedure consistent with the requirements of AS 24.60.070, close economic associations.

Ms. Anderson stated that she met with Patty Krueger, staff to Representative Lynn, who is present for testimony today, and Sen Giessel, noting that she is a member of the committee and also present. Both are in the health field and were invited to discuss the draft form in relationship to HIPAA compliance. Ms. Anderson reviewed the overview of HIPAA Privacy Rule with Ms. Krueger and Sen Giessel. Ms. Krueger and Sen Giessel came up with a list of questions which are in today's packet. Ms. Anderson put together a draft of a new form which included revisions that were not considered in the previous draft and in which the committee had not made a decision on yet, which was whether or not both parties were required to file. There is a box to check if you are providing the service or receiving the service. She also added a suggestion made by Dan Wayne which was an addition at the top of the form, the third line down which states, "Information deemed "confidential by law" is not required. Do not provide." This was an important piece because the committee does not want information that is confidential by law. The committee only wants to comply with the requirements of the Ethics Act.

Chair Thomas reminded the committee that the Waiver Form will remain confidential. This point was not expressed at the last meeting. The Waiver Form will be treated the same as confidential Gifts of Travel/Hospitality forms. These disclosures are stored in a secured location and do not become public information.

Mr. Wayne stated that he reviewed the changes made to the form and felt that the questions were headed in the right direction. He commented on his recommended change in that the committee would not want to be burdened with the possession of information that was confidential by law. Depending on the law, there could be legal requirements on storing the information, with which the committee would not want to have to contend.

Member Mallott asked about tribal law and if the term “a rule or regulation adopted by trade or profession” applied. There are issues in tribal law where some villages run their own medical clinics and she was concerned about the adoption of Alaskan Native students.

Mr. Wayne stated that he had not considered tribal law in the context of the term, “confidential by law” that is used here and there in the statute. Even though it is not mentioned, it doesn’t mean that the committee couldn’t discuss adding it. He further stated that it would not be a rule adopted by trade or profession, as it would not fit in that category.

Member Walker stated that as a federal attorney, it would need to be there because in adoptions, what often happens in CINA cases, you can get a case removed from the state court system and moved to a tribal court and then those laws would apply and supersede our state laws under certain conditions. Member Walker recommended adding it. Chair Thomas stated that he believed that the statute allows for a waiver if making a disclosure would violate state or federal law and most of the authority for tribal law comes through federal law; therefore, is covered under the statutory provision. It might be advisable to make that clearer on the form.

Representative Millett stated that a tribal medical facility is under a federal health care provision. Unless they are a federally recognized tribe, they do not receive Indian health care services or federal money. She did not know of any that ran a tribal clinic that did not receive federal money.

Senator Gardner stated that her concern was disclosure of the “status” of the person with whom the association exists. Ms. Krueger had previously suggested that in a small state or small body that if she discloses that the person is a lobbyist or a legislator that it might be enough to identify them given certain circumstances. Senator Gardner asked the committee if identification of the status was a requirement and if saying that with whom the association exists is in one of the following categories to check yes or no was sufficient.

Ms. Anderson offered to read the section of AS 24.60.070 which states what is required for a close economic association: “a legislator or legislative employee shall disclose to the committee the formation or maintenance of a close economic association involving a substantial financial matter with *a supervisor, legislator, or legislative employee...*” and the statute also reads, “when making a disclosure

under (a) of this section concerning a relationship with a *lobbyist*". Ms. Anderson stated that the statute specifically points out the status of the person with whom the association exists if with a lobbyist. Senator Gardner asked if that meant the other categories could be unspecified. Ms. Anderson replied she did not know but that lobbyist was the only one she knew of that makes a distinction. She re-directed the question to Mr. Wayne.

Mr. Wayne responded that he agreed that the person's status as legislator or a registered lobbyist, and so forth, would need to be disclosed. Mr. Wayne stated that he wanted to point out something else in connection with AS 24.60.070 that is often overlooked. Under Section (a), the fourth sentence reads, "the formation or maintenance of a close economic association involving a substantial financial matter". When people read this, they think they have to disclose every little thing. There is a filter for associations that are trivial and not substantial. However, substantial is not defined in statute; and therefore, it is up to the committee to make that determination on a case-by-case basis. The first step in determining whether an association is a substantial matter rests with the person who has the reporting obligation. The person must weigh and consider whether or not the association is something that should be reported and whether or not it is something substantial enough to report.

Ms. Anderson added that during the discussion of a previous advisory opinion issued by the committee addressing a CEA (close economic association), the committee decided not to assign a dollar value to 'substantial financial matter' because they felt the value should be decided on a case-by-case basis. Chair Thomas clarified that this particular issue is not relevant only to this form. However, we are discussing a waiver form and there is no reason for the committee to address this issue specifically in relation to this particular form. Mr. Wayne confirmed Chair Thomas' statement and stated that he only brought it up because they were having a discussion about reporting or not reporting and it is something that is often overlooked.

Chair Thomas stated that the question before the committee is regarding the person's status on the form. He asked if the form should be modified to reflect that the association exists with a person who is a public official, legislator, or legislative employee without identifying which one. If so, would this change meet the statutory requirements for the disclosure? Mr. Wayne stated that the change might meet statutory requirements, keeping in mind there are special requirements in the case of a lobbyist as Ms. Anderson pointed out.

Senator Gardner asked if the form could ask if the person is a lobbyist, and be answered yes/no, and the provider would have to disclose that it was a person in the category or b) is the person a member of any of the following categories— listing lobbyist by itself, and lumping together the other three options as the other option.

Representative Millett suggested that if the person's status falls under the statute, then s/he doesn't have to disclose either way. Rep Millett further stated that even though these disclosures are confidential, she felt that it would make someone who was the provider or the patient of someone that works in the Legislature feel uncomfortable having both of those things disclosed. As long as s/he is complying with the law by saying that s/he falls under that category, s/he is still following that statute. She added that she did not see the benefit of disclosing whether the association was with a lobbyist or legislator as long as the association falls under that statute and s/he is following that statute.

Chair Thomas stated that the question is whether or not the statute is requiring identifying the person's status. Representative Millett responded that by completing the waiver form, s/he is stating the association falls under the definition of the statute; and therefore, eliminates the need to qualify the question.

Ms. Anderson stated that for clarification purposes, confidential disclosures are reviewed by the chair and her. They are not referred to the full committee unless there's a question. Ms. Anderson also stated that she understood Rep Millett's suggestion but that the committee also has to decide whether or not the person providing the service and/or the person receiving the service has to fill out the Request to Refrain from Making a Disclosure if either party is a legislator or legislative employee. Under current requirements, both parties must complete a disclosure. A public official or lobbyist is not covered under the Act; and therefore, is not required to complete an ethics disclosure. Chair Thomas stated that Rep Millett's point is to remove the categories and replace them with the statute.

A member asked why the license type, number, and expiration date were on the form. Ms. Anderson stated that they are on the form to satisfy the accountability concerns that arose at the last committee meeting. Members discussed whether or not the "reason" for requesting to refrain was sufficient enough to remove the licensing questions from the form. Ms. Anderson stated for the record that the licensing information is public information.

Chair Thomas invited the public for comment. Patty Krueger joined the discussion commenting that she agreed with Rep Millett's suggestion to leaving off the status of the person if they are a public official, legislator, lobbyist, or legislative employee, because a person would not be filling out the form if s/he weren't directed by the statute to do so. There does not seem to be a benefit by including who s/he is treating. It also opens the door to the possibility of revealing the identity of the person s/he is treating if that the person's status is a legislator. She believed that if the service was taking place in a small community such as Wrangell, revealing the status of the person would be a violation of HIPAA. Ms. Krueger added that she agrees if the statute replaced the status, this would prevent the above example from occurring. Ms. Krueger added that she

had no objection to providing the licensing information if it assists the committee and is required by statute.

Member Cook asked the members if someone were providing medical services to multiple people in the legislator if that person was required to file just one form or multiple ones for each person. Member Cook stated that he felt that only one form would be necessary. Ms. Krueger commented that she agreed that filing multiple disclosures is not going to provide any additional benefit to the committee and that she also felt that one filing would be adequate, but would comply with filing three separate forms if she were treating three different people who fall under the statute. Senator Fairclough stated that since there is no additional value in filing three separate forms if treating three people, she suggested adding a box to check that states treating one or more in the Legislature, unless there is a threshold limit.

Mr. Wayne commented that we need to comply with the requirements of .070 and .105(d). He stated that filing one form to cover multiple people was stretching the intent of .105(d). Mr. Wayne also stated that replacing the “person’s status” with the statute may not work because lobbyist and public official do not fall under the Act. Ms. Anderson suggested providing three separate check boxes: one if treating a lobbyist, one if treating a public official, and one if treating either a legislator or legislative employee. Ms. Krueger responded that having three check off boxes would make the person’s status too specific to disclose. Ms. Krueger quoted from page 17 of the Summary of the HIPAA Privacy Rule provided in the packet: “state laws that are contrary to the Privacy Rule are preempted by federal requirements.” In other words, federal requirements will apply. “Contrary” means that it would be impossible for a covered entity to comply with both the state and federal requirements. Ms. Krueger also stated that she would not hire a HIPAA lawyer to advise her whether or not she may or may not disclose something, nor would she believe that the committee would. State agencies have received extremely large fines because of HIPAA violations--some in the range of \$1.7 million in fines.

Member Turner stated that he re-read the waiver language in statute, and suggested inserting at the top of the form in brackets for clarity purposes the words, “this form constitutes as the written request”. Member Cook quoted both statutes and stated that he felt that the suggested changes, including filing one form to cover multiple associations, would meet the statutory requirements.

Chair Conner restated the consensus of changes to the form as follows: “person’s status” be removed and replaced with the statute; tribal law be noted that it falls under federal law; and move the “Explanation”, which contains language from the pertinent statutes, to the top of the form and add, in brackets, wording that states the form constitutes as the written request.

Member Turner motioned to adopt the form with the modifications as recapped by Chair Conner. A roll call vote was taken: YEAS: Sen Fairclough, Sen Gardner, Rep Millett, Rep Tuck, Toni Mallott, Herman Walker, Skip Cook, Gary Turner, Chair Thomas. Motion passes.

- 9. BOARD OF AN ORGANIZATION: Define the term under the requirements of AS 24.60.030(f), disclosure of board membership on an organization** – Chair Thomas referred members to the legal opinion drafted by Mr. Wayne and asked if there were any comments or questions. Senator Gardner asked what prompted this item to be discussed by the committee. Ms. Anderson stated that she receives numerous questions on the requirements to file a board disclosure. No advisory opinions defining what constitutes a board membership have been issued other than the fact board memberships must be disclosed. Ms. Anderson stated that it would be helpful to have criteria when providing informal advice on the matter. Chair Thomas stated that the need for this discussion came up in an Ethics House Subcommittee executive session. A person covered by the Act identified him/herself as a secretary of an organization but it was not determined whether or not a separate entity existed for that organization.

Members agreed that there needed to be some clarity to defining the requirements of when a board membership should be disclosed as there are many types of board memberships. Some members reported that they weren't necessarily board members but "delegates". Several committee members stated their own personal experiences in which they questioned whether or not they were required to disclose. Members agreed that a definition was much needed and discussed whether they should define it by adopting the legal opinion provided by Mr. Wayne, in which the statute is interpreted by LAA Legal, and a more general interpretation, or if they should request a formal, binding advisory opinion, which is interpreted by the committee and usually based on a specific fact pattern. Members concurred that they would seek an advisory opinion.

Mr. Wayne stated that when he drafted the Legal Opinion, it was helpful to him to break it down between two terms: Organization and Board. Ms. Anderson offered to draft up a question and circulate it to all of the members for comment and work with Mr. Wayne and any members interested in working on it.

- 10. ADVISORY OPINION 12-04, Use of State Resources – Campaigning: Should the committee revisit AO 12-04, limiting the discussion to links to an Internet website created or maintained with legislative resources?**
(TESTIMONY WAS HEARD AT THE BEGINNING OF THE MEETING.)

- 11. PROCEDURE TO ADDRESS RECOMMENDATIONS FOR CHANGES TO AS 24.60:** Chair Thomas stated that presently, there are no internal procedures or formal policy in place to follow when someone recommends statutory changes to the Ethics Act. There are occasions when suggestions or recommendations are made by legislators, employees, the public, or committee

members, or during ethics training or an Ethics Committee meeting. Some recommendations have been made by the committee and are forwarded prior to Legislative Session. There are occasions where the committee may not want to be the body that presents the change and may prefer that a legislator take it up instead. Chair Thomas noted that they may want to add to the procedures that suggestions or recommendations be addressed in the month of September, or once a year, prior to start of session. Ms. Anderson added that the committee has not been able to respond to legislators who made a request for a change to the Ethics statute at legislator training this year because there are no procedures in place. Ms. Anderson recommended that the committee formally develop procedures and add them to the committee's Rules of Procedures.

Representative Tuck suggested that the committee be a vehicle when recommending changes, but not "the" vehicle. Legislators should be the ones to carry the bill to the Legislature. He also stated that he felt that the Ethics Committee should be able to recommend changes to the statute on its own or continue requesting advisory opinions.

Representative Millett asked if there was any reason why suggestions couldn't be forwarded to the Senate President and Speaker of the House. Chair Conner responded that was the committee's procedure in the past. Ms. Anderson stated that she has made recommendations as well as the Chair based on repeated phone calls or statutes that need to be changed or clarified. Member Cook added that the advisory opinions may be an interim step to making changes in statute.

Senator Fairclough was in support of establishing a process. She stated that she hoped that if the committee made a specific recommendation based on a suggestion brought to the committee, or a complaint, or if issues were being raised, or if multiple advisory opinions needed to be addressed to clarify statutes, that the committee would move the recommendation forward rather than a legislator carrying the bill. In the areas in which the committee would not want to be involved in carrying legislation, the committee may want to consider addressing the letter to the Speaker or President, or the Rules Committee for consideration. Senator Gardner agreed with Sen Fairclough. The committee should state where there are problems or gray areas or conflicts. She also stated that as far as making policy changes, she was not sure they should come from the committee itself.

Chair Thomas restated that they need to formalize the process. For instance, the established time each year for the committee to review recommendations is in September, or whatever is decided. Senator Gardner suggested that suggestions or recommendations be required to be submitted in writing. Representative Millett suggested that the committee discuss suggestions more often than once a year either at a specific meeting for discussion about proposed legislation or incorporating them into a regular committee meeting.

The Chair offered to work with Ms. Anderson on a list of procedures and add it to the next committee meeting's agenda. The committee accepted the offer.

12. 2013 LEGISLATION UPDATE: None.

13. OTHER BUSINESS: None.

14. ADJOURN: Member Walker motioned to adjourn the meeting at 11:35 a.m.
Motion approved.