

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

2018 Advisory Opinions Enforcement Actions

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
617-371-9500**

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Included in this publication are:

**State Ethics Commission Decisions and Orders and Disposition Agreements
issued in 2018***

Cite Enforcement Actions by name of respondent, year, and page, as follows:
In the Matter of John Doe, 2018 SEC (page number).

Typographical errors in the original texts of Commission documents have been corrected.

*** No Formal Legal Opinions or Advisories were issued in 2018**

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In the Matter of Denis Nadeau

The Commission approved a Disposition Agreement in which Amesbury Building Inspector Denis Nadeau admitted to violating the conflict of interest law by intervening in his official capacity as building inspector in work performed at the home of his next-door neighbors, with whom he had a longstanding private dispute. Nadeau paid a \$3,500 civil penalty. Nadeau was involved in a contentious private dispute with his neighbors when he committed the violations. In or about October 2014, Nadeau entered his neighbors' property in his role as building inspector to question a landscaper who was planting trees. He ordered the work to cease until a Dig Safe inspection could be conducted, delaying the landscaping work for more than an hour. In a prior incident, Nadeau had also entered his neighbors' property in his role as building inspector to question the installation of a security camera. Nadeau violated § 19 of the conflict of interest law, which prohibits a municipal employee from participating in matters in which he knows he has a financial interest. Nadeau knew he had a financial interest as an abutting property owner in his actions as building inspector concerning his neighbors' tree-planting. Nadeau also violated § 23(b)(3) of the law, which addresses appearances of bias or undue influence in official actions, because someone aware of the ongoing disputes between Nadeau and his neighbors would reasonably have concluded that Nadeau would likely act unfavorably toward them as building inspector when he intervened in their tree-planting and questioned their security camera installer.

In the Matter of Sharon Napier

The Commission approved a Disposition Agreement in which Hingham Housing Authority Executive Director Sharon Napier admitted to violating two sections of the conflict of interest law by having a financial interest in a Housing Authority contract and by approving and co-signing Housing Authority payments to a friend's company which she co-founded. Napier paid a \$2,500 civil penalty. The Housing Authority Board voted on August 18, 2015 to award a contract to Napier to assist in a lottery to sell a low-to-moderate-income unit in a condominium complex in Hingham. Napier earned approximately \$4,660 for the housing lottery services she provided. She violated § 20 of the conflict of interest law which generally prohibits municipal employees from having financial interests in contracts made by the city or town that employs them. While there are several

exemptions to § 20, none were applicable to Napier's situation. In addition, Napier and her friend Patrick Rossetti organized a company in March 2006 to conduct inspections of Section 8 housing and other properties. The company, Housing Inspection Services, LLC, entered into a contract in November 2006 to conduct inspections of Hingham Housing Authority units. Rossetti signed the contract as the company's vice president and personally conducted the inspections. Napier's tax records showed no income from Housing Inspection Services, LLC, after 2007, and the Secretary of the Commonwealth involuntarily dissolved the LLC in 2011. In December 2011, Napier was appointed Executive Director of the Hingham Housing Authority. At the time, Rossetti, doing business as Housing Inspection Services, was still performing inspections of Hingham Housing Authority units. From 2012-2015, Napier, as Executive Director, approved payments and co-signed approximately \$22,000 in checks to Housing Inspection Services for performing inspections of Hingham Housing Authority units. Napier did not file any written disclosures with her appointing authority, the Hingham Housing Authority Board, regarding her relationship with Rossetti or Housing Inspection Services. A reasonable person, aware of Napier's connections to Rossetti and Housing Inspection Services, would conclude that they could unduly enjoy Napier's favor in the performance of her official Housing Authority duties. Napier violated § 23(b)(3) of the conflict of interest law by, as Housing Authority Executive Director, approving and co-signing payments to Housing Inspection Services without first filing a disclosure with the Housing Authority Board to dispel the appearance of bias or undue influence.

In the Matter of Robert MacDonald

The Commission approved a Disposition Agreement in which Dighton Police Chief Robert MacDonald admitted to violating the conflict of interest law by participating in his son's appointment as a full-time police officer. MacDonald paid a \$7,000 civil penalty. In 2015 MacDonald recommended that the Board of Selectmen hire his son, then a reserve officer, as a full-time police officer. At the time, the established practice of the Dighton Police Department was to post openings for full-time positions internally and have interested candidates submit letters of intent. Dighton had two openings for full-time police officers in July 2015. Instead of posting the positions, MacDonald directed a member of his command staff to call the 11

individuals on the reserve officer list to inquire about their interest in the open positions. At least six reserve officers expressed interest in the positions, but their interest was not documented in letters of intent, a departure from the Dighton Police Department's established practices. No interviews were conducted for the full-time officer positions. The Board of Selectmen is the hiring authority for the Police Department. As Police Chief, MacDonald recommended his son and another reserve officer for appointment to the two full-time officer positions. The Selectmen followed MacDonald's recommendation. MacDonald violated § 19 when he decided not to post the open positions and recommended that the Board of Selectmen appoint his son. MacDonald also violated § 23(b)(2)(ii) of the conflict of interest law, which prohibits municipal employees from using their public positions to secure unwarranted benefits for themselves or others, by using his position as Police Chief to secure his son's appointment as a full-time officer without posting the position or documenting the interest of other reserve officers.

In the Matter of James Jones

The Commission allowed a motion to dismiss the adjudicatory proceeding against former State Police Major James Jones after he paid a \$1,250 civil penalty for failing to file a 2016 Statement of Financial Interests on time. The Commission's Enforcement Division filed an Order to Show Cause on April 17, 2018 alleging that Jones, a former designated major policymaker, violated the Financial Disclosure Law by filing his 2016 Statement of Financial Interests several months late. The Financial Disclosure Law requires elected state and county officials, candidates for state office, and state and county employees in designated major policymaking positions to annually disclose their financial interests and private business associations by filing a Statement of Financial Interests with the Ethics Commission. When a Statement of Financial Interests is filed after it is due but before an Order to Show Cause is issued, the late filer is subject to a civil penalty of \$100 to \$1,250 in accordance with an established Commission schedule. After the Enforcement Division issued the Order to Show Cause, which initiated adjudicatory proceedings, Jones paid a \$1,250 civil penalty. In allowing the motion to dismiss, the Commission formally accepted the payment from Jones and dismissed the adjudicatory proceeding.

In the Matter of Gloria Fox

The Commission allowed a motion to dismiss the adjudicatory proceeding against former State Representative Gloria Fox after she paid a \$1,250 civil penalty for failing to file a 2016 Statement of Financial

Interests on time. The Commission's Enforcement Division filed an Order to Show Cause on April 17, 2018 alleging that Fox, a former elected state official, violated the Financial Disclosure Law by filing her 2016 Statement of Financial Interests several months late. The Financial Disclosure Law requires elected state and county officials, candidates for state office, and state and county employees in designated major policymaking positions to annually disclose their financial interests and private business associations by filing a Statement of Financial Interests with the Ethics Commission. When a Statement of Financial Interests is filed after it is due but before an Order to Show Cause is issued, the late filer is subject to a civil penalty of \$100 to \$1,250 in accordance with an established Commission schedule. After the Enforcement Division issued the Order to Show Cause, which initiated adjudicatory proceedings, Fox paid a \$1,250 civil penalty. In allowing the motion to dismiss, the Commission formally accepted the payment from Fox and dismissed the adjudicatory proceeding.

In the Matter of Thomas Fleming

The Commission approved a Disposition Agreement in which Northern Essex Community College Police Academy Director Thomas Fleming admitted to violating two sections of the conflict of interest law by recommending that the college purchase training gear for the Academy from his private employer, a sporting goods company, and for representing both the Academy and the company in those transactions. Fleming paid a \$5,000 civil penalty. Fleming received commissions on the purchases. NECC hired Fleming as a consultant in 2014 to help establish the Police Academy and appointed him Academy Director in August 2015. While working for NECC, Fleming also worked part-time for All Sports Heroes Uniforms, Sporting Goods and Promotions, Inc., a private uniform and sporting goods company. In July 2015, Fleming began earning commissions on All Sports sales, including the sale of physical training gear to the NECC Police Academy, which orders and pays for physical training gear for all Academy recruits. On multiple occasions from 2015 through 2017, Fleming presented price quotes from All Sports to NECC, recommended the college purchase training gear for the Academy from All Sports, filled the Academy's purchase orders, and approved payment of All Sports invoices for the purchases. Fleming received approximately \$5,000 in commissions on training gear sales to the Academy. Shortly after the Commission contacted and interviewed him, Fleming wrote a letter to the NECC President notifying him that he had been employed by All Sports since 2014 and may have had an indirect financial interest in contracts made

between the company and the college. Fleming tendered checks to the college totaling \$2,952, the amount he believed he had earned in commissions on sales to NECC. Fleming repeatedly violated § 4(c) of the conflict of interest law, which prohibits a state employee from representing or acting as the agent of anyone in connection with a matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest, by representing All Sports in transactions with NECC while also working for NECC. Fleming also repeatedly violated § 6 of the conflict of interest law, which prohibits a state employee from participating in his official capacity in a matter in which he or his private employer has a financial interest, by as an NECC employee, recommending that NECC purchase equipment from All Sports, forwarding price quotes to the NECC purchasing department, and approving invoices from All Sports despite knowing that he and his private employer had financial interests in the purchases.

In the Matter of Kendel Joyce

The Commission approved a Disposition Agreement in which Wrentham Housing Authority Maintenance Worker Kendel Joyce admitted to violating the conflict of interest law by using a third party to purchase a surplus truck from the Housing Authority after the Commission's Legal Division advised him that he could not lawfully buy the vehicle. Joyce paid a \$3,500 civil penalty. In autumn 2013, Wrentham Housing Authority Executive Director Nancy Siegel decided to sell the agency's 2005 Ford F-250 pickup truck. Joyce, who was friends with Siegel, expressed an interest in buying it. Joyce called the Commission's Legal Division on October 24, 2013 to ask whether he could bid on and purchase a truck from his public employer at auction. Joyce was advised that § 20 of the conflict of interest law prohibits municipal employees from having a direct or indirect financial interest in a contract made by an agency of the city or town that employs them. While there are exemptions to § 20, the Legal Division informed Joyce that there was no exemption that would allow him to legally purchase the truck from the Housing Authority. Joyce then contacted an acquaintance, Kurt Maloof, who owned businesses that bought and sold vehicles. At Joyce's request, Maloof agreed to purchase the truck from the Housing Authority on Joyce's behalf. Before the Housing Authority advertised the truck for sale on December 29, 2013, Siegel told Joyce when the ad would appear, and Joyce passed that information to Maloof. The Housing Authority subsequently received a single bid for the truck, Maloof's bid of \$875, which was substantially less than the truck's actual value. After the bid period closed, Siegel accepted Maloof's bid and signed the truck's title over

to him. On the same day, Maloof, in turn, signed the title over to Joyce. After Joyce paid Maloof \$875 for the truck, Maloof purchased a bank check in the same amount and submitted it to the Wrentham Housing Authority as payment for the truck. Joyce violated § 20 by using a third party to purchase the truck from the Housing Authority after the Commission advised him that he could not lawfully buy it, because he then had a prohibited financial interest a contract with his municipal employer. Section 20 prevents municipal employees from gaining an "inside track" on municipal contracts, such as the purchase of surplus municipal property and other valuable opportunities, by strictly limiting their ability to have financial interests in contracts with their municipal employers.

In the Matter of Harold MacGilvray

The Commission issued a Final Order allowing a Joint Motion to Dismiss the Adjudicatory Proceeding and approved a Disposition Agreement in which Medford police officer Harold MacGilvray admitted to violating the conflict of interest law by engaging in political activity while on duty and in uniform 10 days before the 2016 presidential election. MacGilvray paid a \$1,500 civil penalty. While working as a Medford Police Department patrol officer at a community event on October 29, 2016, MacGilvray and another uniformed MPD officer posed for a photograph, acting as if they were restraining a person who was wearing a Hillary Clinton mask, shackles, and a prison jumpsuit. MacGilvray, who also served as president of the Medford Police Patrolmen's Association, posted the photograph to the MPPA Facebook page with the caption "Look who the MPD grabbed at the Fall Festival in Haines Square Today..." Later that day, while still in uniform and on duty at another community event, MacGilvray and two other MPD officers posed for a photograph with a person dressed in a Donald Trump mask and business suit. MacGilvray authored the caption "Making America GREAT again in West Medford Square!!" and asked another MPD officer to post the photograph and caption to the MPPA Facebook page. Soon after the photographs were posted, they were widely circulated on social media and gained attention from local and national news outlets. In response to the controversy, MacGilvray removed the photographs from the MPPA Facebook page the same day. He later received a letter of reprimand from the MPD for violating the department's policy on political activity. He was also required to post a letter of apology, which appeared on the MPPA website for three days. MacGilvray violated § 23(b)(2)(ii) of the conflict of interest law, which prohibits public employees from using or attempting to use their official positions to secure for themselves or others unwarranted privileges

of substantial value that are not properly available to similarly situated individuals, by using public resources – a MPD police uniform and worktime – to engage in private political activity. Posting or otherwise causing the publication of photographs and captions that demonstrate support for one candidate over another, even if done as an attempt to amuse others, is private political activity. Wearing an official police uniform when engaging in private political activity creates the impression of official and public support.

In the Matter of Jeffrey Collingwood

The Commission approved a Disposition Agreement in which former Sheffield Conservation Commission member Jeffrey Collingwood admitted to violating § 17 of the conflict of interest law by representing a private client before the town while serving on the Conservation Commission. Collingwood paid a \$2,500 civil penalty. Section 17 is based on the principle that a municipal employee owes a duty of loyalty to the municipality that he or she serves. Because of this duty, a municipal employee generally may not represent or do paid work for a private party in a matter involving the municipality. Collingwood, a civil engineer, was hired on or about March 2, 2015 by George Soudant to assist with obtaining permits for work at his property on North Main Street in Sheffield, which contains wetlands. That July, the Sheffield Board of Selectmen appointed Collingwood to serve on the town Conservation Commission, which administers the Wetlands Protection Act and is the local permitting authority for the Massachusetts Department of Environmental Protection. Approximately two months after his appointment, Collingwood appeared before the Conservation Commission on Soudant's behalf regarding the North Main Street property. Collingwood also represented Soudant before the Sheffield Zoning Board of Appeals. Collingwood was paid \$4,343 for work performed in relation to the North Main Street property in 2015 and personally received approximately \$2,000 after paying subconsultants. After the Commission notified Collingwood in March 2017 that he was the subject of an investigation, he did not bill Soudant for work performed after August 2016. Collingwood violated § 17 when he represented Soudant before the town, filed documents with the town that he had signed on behalf of Soudant, and was paid by Soudant in connection with the work.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 18-0002

IN THE MATTER OF
DENIS NADEAU

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Denis Nadeau (“Nadeau”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 21, 2015, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On December 21, 2017, the Commission concluded its inquiry and found reasonable cause to believe that Nadeau violated G.L. c. 268A, § 19 and 23 (b)(3).

The Commission and Nadeau now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Nadeau, a resident of Amesbury, was during the relevant time the Amesbury Building Inspector. As such, Nadeau was a municipal employee as that term is defined in G.L. c. 268A, § 1.
2. During the relevant time, Nadeau owned and resided in a house in Amesbury.
3. During the relevant time, Lauren and Michael Provost (“the Provosts”) owned and resided in a house in Amesbury, next door to Nadeau.
4. During the relevant time, Nadeau and the Provosts had a contentious relationship. Both parties contacted the police on numerous occasions regarding their disputes as neighbors.
5. On or about May 2014, a Comcast worker began to install a security camera pointed towards the Provosts’ driveway.
6. On or about May 2014, Nadeau entered the Provosts’ property and, in his role as Building Inspector, questioned

the Comcast worker regarding whether the worker had a permit for the security camera.

7. Based on the Comcast worker’s response to his questions, Nadeau, as Building Inspector, determined that the camera installation did not require a permit.

8. On or about October 2014, a landscaper began to plant trees on the Provosts’ property.

9. On or about October 2014, Nadeau entered the Provosts’ property and, in his role as Building Inspector, questioned the landscaper about the proposed plantings. As Building Inspector, Nadeau ordered the landscaper to cease working until a Dig Safe inspection could be conducted. Nadeau, as Building Inspector, requested a Dig Safe inspection. The inspection found that the trees could be safely planted. The inspection delayed the landscaper’s work by one to two hours.

Conclusions of Law

Section 19

10. Except as otherwise permitted,¹¹ § 19 of G.L. c. 268A prohibits a municipal employee from participating¹² as such an employee in a particular matter¹³ in which, to his knowledge, he or an immediate family member has a financial interest.¹⁴

11. Nadeau’s determinations and decisions as Building Inspector on or about October 2014 concerning the installation of the trees on the Provost’s property, including to enter the Provosts’ property, to inquire about work being done on the property, to order the work stopped, to call for an inspection, and to order the work delayed until the inspection was completed, were particular matters.

12. Nadeau participated in these particular matters as Building Inspector by making these decisions and determinations and by carrying them out by entering the Provost’s property and ordering the work stopped until inspected.

13. As the owner of property abutting the Provosts’ property, Nadeau had a financial interest in these particular matters.

14. At the time of his participation, Nadeau knew that he had a financial interest in these particular matters.

15. Accordingly, by participating in these particular matters concerning the Provosts’ installation of trees, Nadeau violated § 19.

Section 23(b)(3)

16. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

17. By entering the Provosts' property and questioning the Comcast worker and the landscaper, Nadeau knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances related to the animosity that existed between the Provosts and Nadeau, to conclude that Nadeau would be likely to act unfavorably toward the Provosts in the exercise of his official authority.

18. Nadeau did not file a disclosure sufficient to dispel this appearance of bias in his official actions.¹⁵¹

19. Accordingly, by his above-described actions Nadeau violated G.L. c. 268A, § 23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Nadeau, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nadeau:

(1) that Nadeau pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$3,500.00 as a civil penalty for violating G.L. c. 268A, § 19; and

(2) that Nadeau waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

¹⁴¹ None of the exemptions to § 19 apply.

¹⁴² "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

¹⁴³ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

¹⁴⁴ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

¹⁵¹ Nadeau could have avoided violating § 23(b)(3) by making a written disclosure of the relevant facts to his appointing authority before participating in matters related to the Provosts.

DATE: April 9, 2018

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 18-0006

IN THE MATTER OF
SHARON NAPIER

DISPOSITION AGREEMENT

Introduction

The State Ethics Commission ("Commission") and Sharon Napier ("Napier") enter into this Disposition Agreement pursuant to Section 3 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 15, 2016, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A, by Napier. On December 21, 2017, the Commission concluded its inquiry and found reasonable cause to believe that Napier violated G.L. c. 268A, §§ 20 and 23(b)(3).

The Commission and Napier now agree to the following findings of fact and conclusions of law:

Housing Inspection Services

Findings of Fact

1. During the relevant time, Napier, a resident of Quincy, was the Hingham Housing Authority (“Housing Authority”) Executive Director. The Housing Authority Board was her appointing authority.
2. In March 2006, Napier and Patrick Rossetti (“Rossetti”) organized Housing Inspection Services, LLC (“HIS, LLC”), a limited liability company, to inspect Section 8 and other housing. Napier was the manager of HIS, LLC.
3. Napier and Rossetti were good friends at all relevant times.
4. On or about November 9, 2006, HIS, LLC entered into contract with the Housing Authority to conduct housing inspections of Housing Authority units. Rossetti signed the contract as HIS, LLC Vice President and personally performed the housing inspections.
5. On January 1, 2007, Rossetti and Napier executed a notarized “General Notice of Limited Liability Company Dissolution,” which purported to dissolve HIS, LLC.
6. Napier’s tax records do not show any income from HIS, LLC after 2007.
7. The Secretary of the Commonwealth involuntarily dissolved HIS, LLC on April 19, 2011.
8. The Housing Authority Board appointed Napier Executive Director of the Housing Authority in December 2011.
9. Rossetti, doing business as HIS, was still performing housing inspections of Housing Authority units as of December 2011, and continued to perform the inspections through 2015.
10. From 2012-2015, Napier, as Housing Authority Executive Director, approved payments and co-signed approximately \$22,000 in checks to HIS for performing housing inspections of Housing Authority units.
11. Napier did not file any written disclosures with her appointing authority, the Housing Authority Board, regarding her relationship with HIS or Rossetti.

Conclusions of Law

12. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner, which is public in nature, the facts which would otherwise lead to such a conclusion.

13. As the Housing Authority Executive Director, Napier was a municipal employee as defined by G.L. c. 268A, § 1.

14. By, as Housing Authority Executive Director, approving payments and co-signing checks to HIS, Napier knowingly or with reason to know, acted in a manner, which would cause a reasonable person having knowledge of all the relevant circumstances, to conclude that HIS and/or Rossetti could unduly enjoy Napier’s favor in the performance of her official Housing Authority duties. Napier did not file a disclosure with her appointing authority, the Housing Authority Board, to dispel this appearance of a conflict of interest. In so acting, Napier violated G.L. c. 268A, § 23(b)(3).

Lottery Contract

Findings of Fact

15. In 2006, the Housing Authority entered into a contract with Ridgewood Partners, LLC to provide lottery services for the sale of three low-to-moderate-income units in a 31-unit condominium complex in Hingham. Once sold, the units would become part of the Town of Hingham’s affordable housing stock. Two units sold in or about 2008.
16. The Housing Authority Board appointed Napier Executive Director of the Housing Authority in December 2011.
17. On August 18, 2015, at a public meeting, which agenda was previously posted, the Housing Authority Board voted unanimously to award a contract to Napier to facilitate the sale of the third unit using a lottery process. The contract stated, in part, the following:

This Lottery Services Agreement (the Agreement”) is made on this 18th day of August 2015, by and between the Hingham Housing Authority . . . and Sharon Napier (hereinafter “Ms. Napier”), the Executive

Director of HHA, acting as a private person and not employed as the Executive Director of HHA.

18. Napier's fee under lottery contract was \$40/hour. Napier earned approximately \$4,660 for the lottery services she provided.

Conclusions of Law

19. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party of which financial interest the employee has knowledge or reason to know. There are a number of exemptions in § 20, but none are applicable here.

20. The Housing Authority is a municipal agency, pursuant to G.L. c. 121B, § 7.

21. The Lottery Contract was a contract made by the Housing Authority, a municipal agency of the Town of Hingham, in which the Town of Hingham was an interested party.

22. Napier, as a party to the Lottery Contract for compensation, knew she had a financial interest in the contract.

23. By having a financial interest in the Lottery Contract with the Housing Authority, in which the Town of Hingham was an interested party, while employed as the Housing Authority Executive Director, Napier violated § 20.

24. Napier's financial interest in the Lottery Contract was not permitted or approved under any exemption to § 20, and the contract language "acting as a private person and not employed as the Executive Director of HHA [Hingham Housing Authority]" did not safeguard her from violating § 20.

In view of the foregoing violations of G.L. c. 268A by Napier, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Napier:

(1) that Napier pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,500 as a civil penalty for violating G.L. c. 268A, §§ 20 and 23(b)(3); and

(2) that Napier waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the

findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: May 21, 2018

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 18-0005**

**IN THE MATTER OF
ROBERT MACDONALD**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Robert MacDonald ("MacDonald") enter into this Disposition Agreement pursuant to Section 3 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 20, 2016, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On December 21, 2017, the Commission concluded its inquiry and found reasonable cause to believe that MacDonald violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii).

The Commission and MacDonald now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. MacDonald, a resident of Dighton, was the Dighton Police Chief during the relevant time.
2. The Dighton Board of Selectmen is the appointing authority for the Dighton Police Department ("DPD").
3. In or about July 2015, there were two open full-time police officer positions in the DPD.
4. The starting weekly pay for a full-time DPD police officer was \$976.63 at \$26.16/hour. The hourly pay for a reserve officer was \$16.01/hour.
5. In July 2015, MacDonald's son was living with him.
6. MacDonald knew his son had an interest in a full-time police officer position.

7. As of July 2015, the Town had no written policies and procedures for hiring police officers. The DPD's unwritten but established practice was to post open full-time police officer positions internally. Interested candidates would then submit letters of intent documenting their interest in the positions.

8. MacDonald, as the Dighton Police Chief, decided not to post the two full-time police officer positions and instead directed a member of his command staff to call the eleven police officers on the DPD reserve officer list to inquire as to their interest in the positions. The DPD's practice was to hire full-time officers from its reserve officers list.

9. MacDonald's son was one of eleven reserve officers on the DPD reserve officers list.

10. At least six reserve officers expressed their interest in the open positions, however their interest in the positions was not documented by letters of intent submitted in accordance with the DPD's unwritten but established practices.

11. No interviews were conducted for the two open full-time police officer positions.

12. MacDonald, as the Dighton Police Chief, decided to recommend his son and another DPD reserve officer to the Board of Selectmen for appointment to the two full-time police officer positions. MacDonald personally presented the recommendation on September 30, 2015, and presented a memorandum, signed by him and the DPD's Command Staff of three sergeants, documenting the recommendation. The Board of Selectmen accepted the recommendation and appointed MacDonald's son and the other candidate to the full-time police officer positions.

Conclusions of Law

Section 19

13. As Dighton Police Chief, MacDonald was a municipal employee as that term is defined in G.L. c. 268A, § 1.

14. Except as otherwise permitted,^[1] § 19 of G.L. c. 268A prohibits a municipal employee from participating^[2] as such an employee in a particular matter^[3] in which, to his knowledge, he or an immediate family member^[4] has a financial interest.^[5]

15. The decision to appoint and hire two full-time DPD police officers was a particular matter for which the Board of Selectmen was responsible.

16. MacDonald participated as the Dighton Police Chief in the particular matter of the appointment and hiring of the

two police officers by deciding not to post the positions and instead directing a member of his command staff to call the reserve police officers, by deciding to recommend his son for appointment to a full-time police officer position, and by presenting that recommendation to the Board of Selectmen.

17. MacDonald's son is a member of MacDonald's immediate family.

18. MacDonald's son had a financial interest in the particular matter because of the compensation he would receive if he were appointed and hired as a full-time DPD police officer.

19. At the time of his participation, MacDonald knew that his son had a financial interest in his appointment and hiring as a full-time police officer.

20. Accordingly, by participating as the Dighton Police Chief in the appointment and hiring of his son as a full-time DPD police officer including by making a recommendation to the Selectmen, MacDonald violated § 19.

Section 23(b)(2)(ii)

21. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions, which are of substantial value,^[6] and which are not properly available to similarly situated individuals.

22. The appointment of MacDonald's son to a full-time DPD police officer position was a privilege.

23. Here, the privilege was unwarranted because the appointment was secured through a process that was contrary to the DPD's unwritten but established practices.

24. The privilege was of substantial value because the starting weekly pay for a full time DPD police officer was over \$50 more than the amount a DPD reserve officer would be paid for the same number of hours of work.

25. Here, the privilege was not properly available to similarly situated individuals because MacDonald recommended his son's appointment after MacDonald had failed to follow the DPD's unwritten but established practice of posting open positions and allowing interested candidates to submit letters of intent documenting their interest in the positions.

26. By deciding as the Dighton Police Chief not to follow the unwritten but established practice of posting the

positions and allowing reserve officers to submit letters of intent documenting their interest in the positions, and instead directing the use of a telephone call process that did not document reserve officers' interest in the positions, MacDonald used his official position to secure his son's appointment. In so doing, MacDonald knowingly or with reason to know used his official position to secure for his son an unwarranted privilege of substantial value that was not properly available to similarly situated individuals and violated § 23(b)(2)(ii).

In view of the foregoing violations of G.L. c. 268A by MacDonald, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Robert MacDonald:

- (1) that MacDonald pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$7,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and
- (2) that MacDonald waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

¹⁴¹ None of the exemptions applies. In order for MacDonald not to have violated § 19, a public written determination by the Selectmen under § 19 (b)(1) allowing MacDonald to participate in the hiring of his son would have to have been made before that participation, even if, as here, one or more Selectmen knew that the Chief's son was a candidate. No such determination was made by the Selectmen.

¹⁴² "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

¹⁴³ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

¹⁴⁴ "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

¹⁴⁵ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected positively or negatively. *EC-COI-84-96*.

¹⁴⁶ The Commission has established a \$50.00 threshold to determine "substantial value." 930 CMR 5.05.

DATE: May 21, 2018

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 18-0003**

**IN THE MATTER OF
JAMES JONES**

Appearances: Candies Pruitt-Doncaster, Esq.
Counsel for Petitioner

James Jones, Pro Se
Respondent

Commissioners: Barbara A. Dortch-Okara, Ch., David A. Mills, Thomas J. Sartory, Maria J. Krokidas, R. Marc Kantrowitz

Presiding Officer: Commissioner R. Marc Kantrowitz

FINAL ORDER

On May 2, 2018, Petitioner filed a Motion to Accept Respondent's Payment of Civil Penalty and to Dismiss the Adjudicatory Proceedings ("Motion").

In this action, Petitioner alleges that Respondent James Jones, who has retired as a State Police Major, held a major policymaking position for purposes of G.L. c. 268B, and served for more than 30 days in 2016, but failed to file a Statement of Financial Interests ("SFI") for calendar year ("CY") 2016 by May 1, 2017 in violation of G.L. c. 268B,

Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On November 16, 2017, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On May 17, 2018, the Commission concluded its inquiry and found reasonable cause to believe that Fleming violated G.L. c. 268A, §§ 4 and 6.

The Commission and Fleming now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Thomas Fleming, a resident of Dracut, Massachusetts, was an employee of the Northern Essex Community College (“NECC”) at all relevant times.

2. In late summer/early fall 2014, Fleming began work as a part-time salaried employee of All Sports Heroes Uniforms Sporting Goods and Promotions, Inc. (“All Sports”), a private uniform and sporting goods supply company.

3. NECC’s President hired Fleming in the fall of 2014 as a consultant to assist in establishing its Police Academy.

4. The NECC Police Academy offered its first class in February 2015 and has subsequently run several 24-week training programs. Program participants are primarily “recruits” whose fees are paid by the municipal police departments in which they will serve (“sponsoring police departments”). Those fees are later repaid by the recruits.^[1]

5. In July 2015, Fleming began earning commissions on All Sports sales, including sales of physical training gear to NECC. The invoices for the sales identified him as an All Sports’ sales representative. Fleming’s commissions were 50% of the profit on those sales.^[2]

6. The NECC President appointed Fleming NECC Police Academy Director on August 3, 2015, and he has held that position since that time.

Physical Training Gear

7. NECC orders and pays for physical training gear, books and equipment for all Police Academy recruits. The physical training gear includes items such as t-shirts, hats, pants, water bottles and patrol bags. NECC issues invoices to the sponsoring police departments, which itemize the charges for the physical training gear and the fees to be paid by them.

8. Prior to the start of the first NECC Police Academy class in February 2015, Fleming as an NECC consultant recommended that NECC purchase physical training gear from All Sports. On Fleming’s recommendation, NECC purchased physical training gear from All Sports in January 2015.

9. On multiple occasions thereafter, from 2015 through 2017, Fleming, as an employee of All Sports and as the NECC Police Academy Director, presented All Sports’ price quotes for the purchase of physical training gear to the NECC Police Academy.

10. Acting in this dual capacity with respect to the NECC Police Academy’s purchases from All Sports was not in the proper discharge of Fleming’s official duties as NECC Police Academy Director.

11. The NECC Purchasing Department used All Sports’ quotes presented by Fleming to issue purchase orders.

12. On multiple occasions from 2015 through 2017, invoices issued by All Sports identified Fleming as All Sports’ representative on physical training gear sales to the NECC Police Academy.

13. Fleming, as an All Sports employee, also filled the NECC Police Academy’s physical training gear orders for delivery to the Academy.

14. On multiple occasions from 2015 through 2017, Fleming, as NECC Police Academy Director, approved payment of All Sports’ invoices for physical training gear purchased by the Academy.

15. From July 2015 through 2017, Fleming earned a total of approximately \$5,000 in commissions on All Sports’ sales of physical training gear to the NECC Police Academy.

16. Fleming knew that he and/or All Sports had financial interests in the sale of physical training gear to the NECC Police Academy.

Additional Facts

17. The Commission’s Enforcement Division interviewed Fleming informally on June 28, 2017, and under oath on April 11, 2018.

18. By letter dated June 28, 2017, Fleming notified the President of NECC that, among other concerns, Fleming had been employed by All Sports since 2014 and may have had an indirect financial interest in contracts between All Sports and NECC.

19. Shortly after the June 2017 interview, Fleming tendered a check to NECC for \$2,200. Shortly after the April 2018 interview, he tendered a second check to NECC for \$752. Those payments represented the commissions Fleming believed he had earned on All Sports' sales of physical training gear to be used by recruits at the NECC Police Academy.

Conclusions of Law

Section 4(c)

20. NECC Police Academy is a state agency and, as the Academy's director, Fleming is a state employee^[3] as that term is defined in G.L. c. 268A, § 1(q).

21 All Sports is a business organization because it engages in the sale of goods. See *EC-COI-07-2*

22. Section 4(c) of G.L. c. 268A prohibits a state employee from, otherwise than in the proper discharge of his official duties, acting as agent or attorney for anyone in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

23. The decision to order physical training gear from All Sports was a particular matter in which the NECC Police Academy, a state agency, was a party and had a direct and substantial interest.

24. Fleming, whom All Sports identified as its representative on invoices to the NECC Police Academy, acted as agent for All Sports in connection with the decision to order physical training gear by providing quotes and filling the NECC Police Academy orders. These acts of agency were not performed in the proper discharge of Fleming's official duties as NECC Police Academy Director. By so acting, Fleming repeatedly violated § 4(c).

Section 6

25. Except as otherwise permitted,^[4] § 6 of G.L. c. 268A prohibits a state employee from participating^[5] as such an employee in a particular matter^[6] in which, to his knowledge, he or a business organization in which he is serving as an employee, has a financial interest.^[7]

Initial Recommendation

26. While employed by NECC in a consultant capacity, Fleming was a state employee.

27. The decision to order physical training gear for the February 2015 NECC Police Academy class was a particular matter.

28. Fleming participated in that particular matter as a state employee by, as an NECC consultant, recommending the NECC Police Academy purchase physical training gear from All Sports.

29. Fleming knew at the time of the recommendation that the business organization in which he was serving as an employee, All Sports, had a financial interest in its sale of physical training gear to the NECC Police Academy.

30. By, as an NECC consultant, recommending the purchase of physical training gear from All Sports, Fleming participated as a state employee in a particular matter in which, to his knowledge, his private employer had a financial interest. By doing so, Fleming violated § 6.

Continued Selection of All Sports

31. From July 2015 through 2017, each decision to select All Sports to provide physical training gear for the NECC Police Academy was a particular matter.

32. Fleming participated in those particular matters as a consultant and/or NECC Police Academy Director by, on multiple occasions, deciding to forward All Sports' quotes to the NECC Purchasing Department, which the NECC Purchasing Department used to issue purchase orders to All Sports.

33. From July 2015 through 2017, Fleming had a financial interest in the selection of All Sports because he earned commissions on the sales of physical training gear to NECC.

34. Fleming's private employer, All Sports, also had a financial interest in the sale of physical training gear to the NECC Police Academy.

35. Fleming knew of his financial interest and that of All Sports each time he decided to forward quotes to the NECC Police Academy for the purchase of physical training gear.

36. By, as NECC Police Academy Director, on multiple occasions deciding to forward quotes from All Sports to the NECC Police Academy for physical training gear, Fleming repeatedly participated as a state employee in particular matters in which, to his knowledge, he and his private employer had financial interests. By doing so, Fleming repeatedly violated § 6.

Approval of Payments to All Sports

37. From 2015 through 2017, each decision to approve payment of All Sports' invoices for physical training gear was a particular matter.

38. Fleming participated in such particular matters as NECC Police Academy Director by on multiple occasions approving payments to All Sports.

39. Fleming had a financial interest in approving payment of All Sports' invoices because he earned commissions on the sales of physical training gear to NECC.

40. All Sports also had a financial interest in Fleming's approval of its invoices for payment.

41. Fleming knew of his financial interest and that of All Sports each time he approved payments of All Sports' invoices for physical training gear.

42. By, as NECC Police Academy Director, on multiple occasions approving payment of All Sports invoices for physical training gear used by recruits at the NECC Police Academy, Fleming repeatedly participated as a state employee in particular matters in which, to his knowledge, he and his private employer had financial interests. By doing so, Fleming repeatedly violated § 6.

In view of the foregoing violations of G.L. c. 268A by Fleming, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Fleming:

1. that Thomas Fleming pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §§ 4 and 6; and

2. that Thomas Fleming waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: August 6, 2018

^[1] The fee schedule and reimbursement methodology are set forth in a line item of the annual state appropriation act. See 2014 Mass. St. c. 165, § 2, line item 8200-0222.

^[2] Fleming continues to work for All Sports but stopped receiving commissions on the sales to NECC.

^[3] "State employee" is defined, in part, as: [A] person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis,

including members of the general court and executive council.

^[4] None of the exemptions applies.

^[5] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

^[6] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

^[7] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 18-0008**

**IN THE MATTER OF
KENDEL JOYCE**

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission ("Commission") and Kendel Joyce ("Joyce") pursuant to Section 3 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 18, 2015, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Joyce. On March 29, 2018, the Commission concluded its

inquiry and found reasonable cause to believe that Joyce violated G.L. c. 268A, § 20.

The Commission and Joyce now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Joyce was a maintenance worker at the Wrentham Housing Authority (“WHA”) during the relevant time.
2. Nancy Siegel (“Siegel”) was the executive director of the WHA during the relevant time.
3. Siegel and Joyce were friends during the relevant time.
4. In or around October 2013, Siegel decided to sell the WHA’s 2005 Ford F250 pickup truck (“the Truck”). Joyce told Siegel that he was interested in purchasing the Truck.
5. On October 21, 2013, Siegel, on behalf of Joyce, contacted the Commission’s Legal Division for advice about whether a WHA maintenance worker could submit a bid to buy the Truck. Siegel was provided with general information about §20 of the conflict of interest law and told to have the maintenance worker himself call the Legal Division for advice.
6. On October 24, 2013, Joyce contacted the Legal Division for advice under the conflict of interest law. He asked whether a “30-hour per week” maintenance worker could bid on and purchase a truck at auction from his employer, the WHA. Joyce was advised of the restrictions under §20 of the law and told that he could not purchase the Truck unless an exemption to this section applied to him. The Legal Division further explained to Joyce that there was no exemption which would allow him to legally purchase the Truck.
7. At the relevant time, Kurt Maloof (“Maloo”) owned two businesses which bought and sold used motor vehicles in the Wrentham area.
8. Joyce and Maloof knew each other through Joyce’s brother, who was previously employed by Maloof, as well as through work Maloof previously performed for the Town of Wrentham.
9. At Joyce’s request, Maloof agreed to purchase the Truck from the WHA on Joyce’ behalf.
10. The Truck was advertised in the Attleboro Sun Chronicle on Sunday, December 29, 2013. The ad, which was written and placed by Siegel as WHA executive director, offered the Truck for sale “as is, parts only” with the bids closing on January 2, 2014.

11. Prior to the ad’s placement, Siegel told Joyce when the Truck would be advertised, and Joyce passed this information on to Maloof.

12. The WHA subsequently received only one bid for the Truck, which was a \$875 bid from Maloof.

13. Siegel, as WHA executive director, accepted Maloof’s bid.

14. On Sunday, January 5, 2014, Siegel signed the Truck’s title over to Maloof and Maloof, in turn, signed the Truck’s title over to Joyce.

15. Joyce paid \$875 in cash to Maloof for the Truck. At the time of the purchase, the Truck was worth substantially more than the amount paid by Joyce.

16. On January 6, 2014, after receiving \$875 in cash from Joyce, Maloof purchased a bank check in the same amount and submitted it to WHA in payment for the Truck.

17. As of August 2017, the Joyce continued to own and use the Truck.

Conclusions of Law

18. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party of which financial interest the employee has knowledge or reason to know. Although many exemptions to §20 exist, none is applicable here.

19. The WHA is a municipal agency of the Town of Wrentham. In January 2014, as an employee of the WHA, Joyce was a municipal employee as that term is defined in G.L. c. 268A, § 1.

20. Upon acceptance of his bid, the WHA made a contract with Maloof for the purchase and sale of the Truck in which the Town of Wrentham was an interested party.

21. Joyce had a financial interest in the contract between Maloof and the WHA for the purchase and sale of the Truck because Maloof was acting on his behalf in purchasing the Truck and, upon his payment to Maloof of the bid price, Joyce would own the Truck.

22. Joyce knew of his financial interest in the contract between Maloof and the WHA.

23. Therefore, by, while serving as WHA employee, having to his knowledge a financial interest in the WHA contract to sell the Truck to Maloof, Joyce violated § 20.

Resolution

In view of the foregoing violation of G.L. c. 268A by Joyce, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceeding on the following terms and conditions agreed to by Joyce:

- 1. that Joyce pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$3,500.00 as a civil penalty for violating G.L. c. 268A, § 20;
- 2. that Joyce waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Disposition Agreement.

By signing below, Joyce acknowledges that he has personally read this Disposition Agreement, that it is a public document, and that he agrees to all terms and conditions herein.

DATE: October 23, 2018

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 18-0001**

**IN THE MATTER OF
HAROLD MacGILVRAY**

Appearances: Monica Brookman, Esq.
Counsel for Petitioner

Alan McDonald, Esq.
Counsel for Respondent

Commissioners: Maria J. Krokidas, Ch., David A. Mills,
Thomas J. Sartory, R. Marc Kantrowitz, Josefina Martinez-
Stamatos

Presiding Officer: Commissioner Maria J. Krokidas

FINAL ORDER

On October 10, 2018, the parties filed a Joint Motion to Dismiss (“Joint Motion”) with a proposed Disposition Agreement requesting that the Commission approve the Disposition Agreement in settlement of this matter and

dismiss the adjudicatory proceeding. The Presiding Officer, Maria J. Krokidas, referred the Joint Motion, with the Disposition Agreement, to the full Commission for deliberations on October 18, 2018.

In the proposed Disposition Agreement, Respondent Harold MacGilvray admits that he violated G.L. c. 268A, § 23(b)(2)(ii), by causing the public posting and dissemination of two photographs of himself and other officers in uniform with images and captions implying Medford Police Department (“MPD”) disapproval of presidential candidate Hillary Clinton and approval of presidential candidate Donald Trump.^[1] The Disposition Agreement identifies several circumstances that were considered in the resolution of this matter, including the fact that Respondent received an official letter of reprimand for violating MPD’s prohibition against political activity, and was required to post a formal letter of apology to the public on the Medford Police Patrolmen’s Association website. Further, the Respondent cooperated fully with the Commission’s investigation, he has served the City of Medford with distinction over the course of his career, and he testified that he did not request to be given copies of the photographs.

The Respondent agrees to pay a civil penalty of \$1,500 and to waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in the Disposition Agreement in this and any other administrative or judicial proceeding to which the Commission is or may be a party. Respondent has tendered the payment of the \$1,500 civil penalty.

In support of the Joint Motion, the parties assert that this matter would be fairly and equitably resolved by the terms set forth in in the Disposition Agreement and that this resolution would obviate the need for a hearing on any factual issues, saving time and resources for all involved. The parties assert that the interests of justice, the parties and the Commission will be served by the Disposition Agreement.

WHEREFORE, the Commission hereby **ALLOWS** the Motion. Respondent’s tendered payment of the \$1,500 civil penalty for violating G.L. c. 268A, § 23(b)(2) is accepted. Commission Adjudicatory Docket No. 18-0001, *In the Matter of Harold MacGilvray* is **DISMISSED**.

DATE AUTHORIZED: October 18, 2018

DATE ISSUED: October 23, 2018

^[1] G.L. c. 268A, § 23(b)(2)(ii), prohibits public employees from knowingly, or with reason to know, using or attempting to use their official positions to secure for

themselves or others unwarranted privileges or exemptions of substantial value which are not properly available to similarly situated individuals.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 18-0001**

**IN THE MATTER OF
HAROLD MacGILVRAY**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Harold MacGilvray (“MacGilvray”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On February 16, 2017, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by MacGilvray. On September 21, 2017, the Commission concluded its inquiry and found reasonable cause to believe that MacGilvray violated G.L. c. 268A, § 23.

The Commission and MacGilvray now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. MacGilvray is a paid patrol officer for the Medford Police Department (“MPD”).
2. MacGilvray was an MPD patrol officer on October 29, 2016.
3. In 2016, MacGilvray was president of the Medford Police Patrolmen’s Association (“MPPA”).
4. On October 29, 2016, MacGilvray was on paid duty and patrolled in uniform as an MPD Patrol Officer at two community events in Medford.
5. While on duty and in uniform at the first community event, MacGilvray posed for a photograph with an individual costumed as Hillary Clinton and another MPD officer, also in uniform (“Photograph 1”). The costumed individual wore a Hillary Clinton mask, a prison style orange jumpsuit with the word “inmate” printed on its

front, and wrist shackles. MacGilvray and the other MPD officer posed on either side of the costumed individual holding her arms as though they were restraining a prisoner.

6. While on duty, MacGilvray personally posted Photograph 1 to the MPPA Facebook page with the caption, “Look who MPD grabbed at the Fall Festival in Haines Square Today...” (“Caption 1”).

7. While on duty and in uniform at a second community event the same day, MacGilvray posed for a photograph with an individual costumed as Donald Trump and two other MPD officers, also in uniform (Photograph 2). The costumed individual wore a Donald Trump mask and a business suit. MacGilvray posed side- by-side with the costumed individual who had one arm over MacGilvray’s shoulder and his other arm over the shoulder of another MPD officer who stood on his opposite side. MacGilvray and the other MPD officer each had an arm around the costumed individual’s back. The third MPD officer stood next to MacGilvray.

8. While on duty, MacGilvray asked another MPD officer to post Photograph 2 to the MPPA Facebook page.

9. MacGilvray authored the caption that accompanied the second posted photograph, “Making America GREAT again in West Medford Square!!” (“Caption 2”).

10. MacGilvray caused Caption 2 to be posted to Photograph 2 on the MPPA Facebook page.

11. On October 29, 2016, Hillary Clinton and Donald Trump were candidates for President of the United States. The U.S. presidential election was to be held on November 8, 2016.

12. In October 2016, “Make America Great Again” was a Trump campaign slogan. In 2016, “Lock her up!”, referring to Hillary Clinton, was often chanted at Trump campaign rallies.

13. Soon after MacGilvray posted or caused them to be posted to the MPPA Facebook page, Photograph 1, Photograph 2, Caption 1 and Caption 2 gained attention from local and national news media outlets, including The Boston Globe, The Boston Herald and Fox25, and were widely circulated via social media.

14. MacGilvray removed the photographs from the MPPA Facebook page the same day they were posted in response to the controversy they created as shown by comments posted on the MPPA Facebook page.

15. MPD Rules and Regulations prohibit MPD officers from participating in political activity other than voting in elections.

Conclusions of Law

16. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

17. As a Patrol Officer for the Medford Police Department, MacGilvray is and was in October 2016 a municipal employee as defined in G.L. c. 268A, § 1.

18. The official uniform and on-duty work time of a municipal police officer are substantially valuable public resources and their use for private political purposes is not authorized by law and is unwarranted.

19. The MPD uniform is a public resource of the City of Medford. The use of this public resource to engage in private political activity, including but not limited to activity relating to a campaign for election to public office, is an unwarranted privilege that is not properly available to police officers or political candidates or any similarly situated individuals.

20. The unwarranted privilege of using a police uniform to engage in private political activity is of substantial value because, given the authority that the police command as armed enforcers of the law, the use of a uniform in political activity gives the impression of official and public support, which would carry significant weight with voters, possibly intimidate supporters of an opposing candidate, and erode the public trust in its police force. The use of paid on-duty work time is also a privilege of substantial value and its use for private political purposes is unwarranted.

21. Causing the publication of photographic images demonstrating support for one political candidate over another, even if such publication is done in an attempt to amuse others, is private political activity. Taking such actions while on duty and in uniform as a police officer is the use of official position to engage in private political activity and an unwarranted privilege of substantial value that is not properly available to similarly situated individuals.

22. Thus, by causing the public posting and dissemination of two photographs of himself and other MPD officers in uniform with images and captions implying MPD disapproval of presidential candidate Hillary Clinton and approval of presidential candidate Donald Trump,

MacGilvray knowingly or with reason to know used his Medford Police Officer position to secure for himself and others an unwarranted privilege of substantial value not properly available to other similarly situated individuals, in violation of § 23(b)(2)(ii).

Additional Circumstances Considered in the Resolution of this Matter

23. MacGilvray, testified that he had no prior knowledge that either costumed individual would attend the events he patrolled and was not involved in arranging their appearance at the community events. The investigation by the Commission revealed no evidence to the contrary.

24. MacGilvray testified that he did not request that the costumed individuals pose for pictures with him and other officers and did not request that he be given copies of those photographs. The investigation by the Commission revealed no evidence to the contrary.

25. MacGilvray testified that the amount of time he took to post or cause the posting of the photos was limited to one half hour or less. The investigation by the Commission revealed no evidence to the contrary.

26. MacGilvray received an official letter of reprimand for violating the MPD's prohibitions against political activity, among other violations. He was required to post a formal letter of apology to the public on the website of the MPPA, which was posted for three days.

27. MacGilvray cooperated fully with the Commission's investigation.

28. The Police Chief for the City of Medford has advised the Commission that MacGilvray has served the City of Medford with distinction over the course of his career.

In view of the foregoing violations of G.L. c. 268A by MacGilvray, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by MacGilvray:

1. that MacGilvray pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$1,500 as a civil penalty for violating G.L. c. 268A, § 23(b)(2); and
2. that MacGilvray waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: October 24, 2018

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 18-0010

IN THE MATTER OF
JEFFREY COLLINGWOOD

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Jeffrey Collingwood (“Collingwood”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 22, 2017, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Collingwood. On May 17, 2018, the Commission concluded its inquiry and found reasonable cause to believe that Collingwood violated G.L. c. 268A, § 17.

The Commission and Collingwood now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Collingwood was a civil engineer.
2. In or about 2014, George Soudant (“Soudant”) purchased 1375 North Main Street in Sheffield (“N. Main St.”).
3. The N. Main St. site includes wetlands.
4. On or about March 2, 2015, Soudant hired Collingwood to assist with obtaining permits for building reconstruction and site work at N. Main St.
5. In July 2015, Collingwood was appointed by the Sheffield Board of Selectmen to the Sheffield Conservation Commission (“ConCom”).
6. Sheffield ConCom members have been designated as “special municipal employees.”
7. The ConCom administers the Wetland Protection Act and it is the local permit issuing authority for Massachusetts Department of Environmental Protection.
8. On September 14, 2015, Collingwood appeared at the ConCom on behalf of Soudant regarding a request to make changes at N. Main St. The ConCom instructed Collingwood to file a Request for Determination of Applicability (“RDA”).
9. On September 15, 2015, Collingwood filed the RDA on behalf of Soudant. Collingwood signed the RDA as Soudant’s “representative” with his title, “professional engineer.”
10. On September 28, 2015, Collingwood appeared at the ConCom on behalf of Soudant regarding the RDA for N. Main St.
11. The ConCom approved the RDA for N. Main St.
12. Collingwood was paid a total of \$4,343.75 by Soudant for work performed from March 2 to December 31, 2015 relating to N. Main Street. After paying subconsultants, Collingwood personally received approximately \$2,000 for the work performed regarding N. Main Street in July through December 2015.
13. On August 18, 2016, Collingwood, on behalf of Soudant, submitted a request for a special permit (“Request”) to the Sheffield Zoning Board of Appeals (“ZBA”). Collingwood signed the Request as “special projects engineer” and included his Massachusetts professional engineer license number.
14. On September 22, 2016, Collingwood appeared on behalf of Soudant before the ZBA at a public hearing regarding the special permit application for N. Main St.
15. The ZBA approved the Request and granted the special permit.
16. On October 3, 2016, Collingwood, on behalf of Soudant, filed a Notice of Intent (“NOI”) with the ConCom. Collingwood’s Massachusetts Professional Engineer seal appeared on the NOI.
17. A NOI must be submitted to the ConCom when a proposed activity is likely to impact a protected wetland resource area.
18. On October 17, 2016, Collingwood, on behalf of Soudant, appeared before the ConCom at a public hearing regarding the NOI for N. Main St.
19. The ConCom approved the NOI for N. Main St.

20. As of October 2016, Collingwood was behind on his billing and had not sent an invoice to Soudant since January 2016.

21. On March 22, 2017, Collingwood received notice that the Commission had voted to initiate a preliminary inquiry into whether Collingwood violated G.L. c. 268A.

22. As a result of the above notice, Collingwood has not billed Soudant for work performed on N. Main St. matters from August 2016 to October 2017 and has to date not received payment for that work.

Conclusions of Law

23. As a ConCom member, Collingwood was a municipal employee as that term is defined in G.L. c. 268A, § 1.

24. Section 17(a) of G.L. c. 268A prohibits a municipal employee, otherwise as provided by law for the proper discharge of official duties, from directly or indirectly receiving compensation^[1] from anyone other than the municipality in relation to a particular matter^[2] in which the municipality is a party or has a direct and substantial interest.

25. Section 17(c) of G.L. c. 268A prohibits a municipal employee from otherwise than in the proper discharge of his official duties acting as agent^[3] for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

26. Section 17 provides certain exceptions for special municipal employees; however, the section still prohibits such employees from acting as agent for or receiving compensation from a private party in relation to a particular matter if they participated^[4] in or had official responsibility^[5] for that particular matter.^[6]

27. The ConCom's proceedings held on September 14, 2015, September 28, 2015, and October 17, 2016, regarding N. Main St. were particular matters.

28. The N. Main St. RDA and NOI were particular matters.

29. The N. Main St. Request and the proceeding on September 22, 2015 before the ZBA regarding N. Main St. were particular matters.

30. The Town of Sheffield was a party to and had a direct and substantial interest in the above particular matters because they involved determinations by Town agencies regarding whether the N. Main St. project complied with all relevant codes, laws, and ordinances, and whether certain Town permits should be issued by those agencies.

31. On September 14, 2015, when Collingwood appeared at the ConCom on behalf of Soudant regarding a request to make changes at N. Main St. and continuing through 2016, the ConCom had official responsibility regarding the N. Main St. project because the ConCom had direct administrative authority to approve, disapprove, or otherwise direct agency action regarding the project.

32. A ConCom member cannot avoid official responsibility for a particular matter before the ConCom by not participating in the matter. EC-COI-99-6.

33. Therefore, Collingwood had official responsibility as a ConCom member for the N. Main St. RDA, NOI and Request, even though he did not personally participate in the matters as a ConCom member.

34. Given that Collingwood had official responsibility as a ConCom member for the N. Main St. RDA, NOI and Request, § 17 prohibited Collingwood from acting as agent for or receiving compensation from a private party in relation to those particular matters.

35. By appearing on behalf of Soudant before the ZBA and ConCom, and submitting documents signed by Collingwood on behalf of Soudant, Collingwood acted as agent for someone other than the Town in relation to the N. Main St. RDA, NOI and Request, particular matters in which he had official responsibility and in which the Town was a party and/or had a direct and substantial interest. By doing so, Collingwood violated § 17(c).

36. In addition, by receiving approximately \$2,000 from Soudant for his professional services on the N. Main St. RDA, Collingwood received compensation from someone other than the Town in relation to a particular matter for which Collingwood had official responsibility as a ConCom member and in which the Town was a party and/or had a direct and substantial interest. By doing so, Collingwood violated § 17(a).

In view of the foregoing violations of G.L. c. 268A by Collingwood, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Collingwood:

(1) that Collingwood pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,500.00 as a civil penalty for violating G.L. c. 268A, § 17(a) and (c); and

(2) that Collingwood waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the

findings of fact, conclusions of law and terms and conditions contained in this Agreement.

^[1] “Compensation” means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another. G.L. 268A, § 1(a).

^[2] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties, and districts for special laws related to their governmental organizations, powers, duties, finances, and property. G.L. c. 268A, §1(k).

^[3] A municipal employee 'acts as an agent' by communicating on behalf of a third party or acting as a liaison for a third party. See Advisory 88-01: Municipal Employees Acting as Agent for Another Party.

^[4] “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county, or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1 (j).

^[5] “Official responsibility” means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action. G.L. c. 268A, §1(i).

^[6] Section 17 would also apply to a special municipal employee if the particular matter were pending before the special municipal employee’s agency, and if the special municipal employee served as such on more than sixty days during any period of 365 consecutive days.

ADVICE



EDUCATION



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COMMONWEALTH OF MASSACHUSETTS

STATE ETHICS COMMISSION

One Ashburton Place, Room 619

Boston, MA 02108