

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

# 2010 Advisory Opinions Enforcement Actions

**MASSACHUSETTS STATE ETHICS COMMISSION**  
One Ashburton Place, Room 619  
Boston, MA 02108  
617-371-9500  
[www.mass.gov/ethics](http://www.mass.gov/ethics)

Included in this publication are:

**State Ethics Commission Formal Advisory Opinions issued in 2010**

Cite Conflict of Interest Formal Advisory Opinions as follows: EC-COI-10-(number).

**State Ethics Commission Decisions and Orders and Disposition  
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Cite Enforcement Actions by name of respondent, year, and page, as follows:

*In the Matter of John Doe*, 2010 SEC (page number).

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## **Summary of Advisory Opinion Calendar Year 2010**

**EC-COI-10-1** - Pursuant to c. 3, § 39, a person is not within the definition of an executive or legislative agent unless he or she has “at least one lobbying communication with a government employee.” Therefore, a former state employee does not violate c. 268A, § 5(e), which prohibits “act[ing] as legislative or executive agent” before one’s former agency for one year after leaving state employment, unless he or she has “at least one lobbying communication with a government employee.”

## CONFLICT OF INTEREST OPINION EC-COI-10-1

### FACTS

Two former state employees seek guidance under G.L. c. 268A, § 5(e), in light of recent amendments to that statute, and to the definitions of “legislative agent” and “executive agent” set forth in G.L. c. 3, § 39 and referenced in § 5(e). One former state employee was employed by the General Court, and the other by the Executive Branch; both currently work for entities engaged in lobbying. Both former employees wish to conform their conduct to the law as amended by Chapter 28 of the Acts of 2009.

### QUESTION

As of January 1, 2010, will a former state employee violate c. 268A, § 5(e) by engaging in strategizing, planning, and research as part of lobbying-related activities, if the former employee does not personally make any “lobbying communications,” as that term is used in c. 3, § 39, to the governmental body with which he or she was formerly associated?

### ANSWER

No. Pursuant to c. 3, § 39, a person is not within the definition of an executive or legislative agent unless he or she has “at least one lobbying communication with a government employee.” Therefore, a former state employee does not violate c. 268A, § 5(e), which prohibits “act[ing] as legislative or executive agent” before one’s former agency for one year after leaving state employment, unless he or she has “at least one lobbying communication with a government employee.”

### DISCUSSION

Employees of the General Court and of the Executive Branch are state employees for purposes of the conflict of interest law.

Section 5 regulates the actions of former state employees. Section 5(e) provides that a former state employee or elected official “who acts as legislative or executive agent, as defined in section thirty-nine of chapter three, for anyone other than the commonwealth or a state agency before the governmental body as determined by the state ethics commission with which he has been associated, within one year after he leaves that body,” violates the conflict of interest law.

Five years ago, in Advisory Opinion EC-COI-05-3, the Commission addressed the restrictions § 5(e) imposed on a former employee of the General Court who wished to act as a legislative agent before the General Court. We concluded then that § 5(e) prohibited a former legislative employee not only from directly lobbying his former governmental body, but also from indirect “strategic lobbying.” We explained that “strategic lobbying” included developing strategies for one’s current employer to use in opposing or supporting relevant legislation, assisting activities in planning which legislators to contact, drafting letters to be signed under a third party’s signature, strategizing with an employer or client on which legislative districts to target, obtaining information on legislation from legislative agents, and discussing an employer’s position on legislation with a legislative agent. Under EC-COI-05-3, any of those activities could be considering lobbying for purposes of § 5(e) even in the absence of any contact between the former state employee and any government employee.

We agree with the requestors that changes in the relevant statutory language made as part of Chapter 28 of the Acts of 2009, subsequent to our issuance of EC-COI-05-3, require us to reconsider our former opinion, and to reach a different conclusion.

At the time we decided EC-COI-05-3, § 5(e) prohibited former state employees from “act[ing] as [a] legislative agent, as defined in section thirty-nine of chapter three,” for anyone other than the state, within one year of leaving state service. A “legislative agent” was defined by c. 3, § 39 as any person “who for compensation or reward **does any act to promote, oppose or influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof.**” (Emphasis added)<sup>1/</sup> Relying upon the statutory words “any act,” we concluded that “*all actions* undertaken with the purpose of promoting, opposing or influencing legislation or the governor’s approval or veto thereof are the types of activities in which a legislative agent engages,” and that, therefore, a person who engaged in such activities “for compensation or reward” within one year of leaving public service and before his or her former agency would violate the statute, “whether that activity is labeled as public advocacy, strategic lobbying, or direct lobbying.”

Chapter 28 of the Acts of 2009 amended the statutory language on which our earlier opinion was based in several pertinent respects. First, it added a reference to executive as well as legislative agents. In addition, and determinative here, Chapter 28

significantly rewrote the definition of “legislative agent,” added a parallel definition of “executive agent,” and added new definitions of “executive lobbying” and “legislative lobbying.” As revised, the definition of a “legislative agent,” and the new, parallel definition of an “executive agent,” both omit the critical “does any act to promote, oppose, or influence” language upon which our prior opinion relied. Furthermore, the new definitions of “executive agent” and “legislative agent” both specify instead that to be an executive or legislative agent, a person must engage in “at least one lobbying communication with a government employee.”<sup>2/</sup>

It is true that the definitions of “executive lobbying” and “legislative lobbying” in the amended statute include the strategizing, planning, and research activities that we previously categorized as “strategic lobbying” within the one-year prohibition of § 5(e). However, § 5(e) prohibits former state employees from “act[ing] as legislative or executive agent” before their former agencies within one year of leaving state service – not from “executive lobbying” or “legislative lobbying.” In interpreting revised § 5(e), therefore, we look to the revised definition of “legislative agent” and the new definition of “executive agent,” and not to the new definitions of “legislative lobbying” and “executive lobbying.”

The new statutory definitions of “executive agent” and “legislative agent” are clear and unambiguous, and must be given effect. Commissioner of Correction v. Superior Ct. Dept. of the Trial Ct., 446 Mass. 123, 124 (2006); Casey v. Mass. Electric Co., 392 Mass. 876, 880 (1984). The express legislative statement that to be an “executive agent” or a “legislative agent” there must be “at least one lobbying communication with a government employee made by said person,” combined with the elimination of the former “any act” language, establishes that a person does not act as an executive or legislative agent unless he or she has “at least one lobbying communication with a government employee.” Consequently, a former state employee does not violate § 5(e) by engaging in lobbying activity unless he or she has “at least one lobbying communication with a government employee.”

In addition to the changes described above, Chapter 28 of the Acts of 2009 gave the Secretary of State regulatory power and the power to issue advisory opinions on the requirements of c. 3, §§ 39-50. Our conclusion that a former employee acts as an executive or legislative agent only when he or she engages in at least one lobbying communication with

a government employee is consistent with a January 21, 2010 informal opinion of the Secretary, concluding that “absent a direct, personal communication with a covered legislative or executive official by an individual, the participation of that individual in strategizing, planning and research activities does not trigger registration.”

In sum, we conclude that the changes in c. 3, § 39 and c. 268A, § 5(e) require that, to the extent that EC-COI-05-3 held that “strategic lobbying” of one’s former agency within one year after leaving state service, absent a direct lobbying communication with a government employee, would violate § 5(e), it should be overruled. A former state employee acts as an executive or legislative agent for purposes of § 5(e) only when he or she has “at least one lobbying communication with a government employee,” and the other requirements of § 5(e) and of c. 3, § 39 are met.

The requestors have not asked us to interpret the statutory phrase “lobbying communication.” Absent any expression of opinion about the meaning of this phrase from the Secretary of State, who is charged with its interpretation, we do not address the interpretation of that phrase.

## CONCLUSION

For the above-stated reasons, we conclude that the conflict of interest law, G. L. c. 268A, § 5(e), permits a former state employee to engage in “strategic lobbying,” including strategizing, planning, and research, as part of lobbying-related activities, as long as the former state employee does not have at least one lobbying communication with a government employee.

**DATE AUTHORIZED:** March 19, 2010

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<sup>2/</sup> Under G.L. c. 3, § 39 prior to its amendment by c. 28 of the Acts of 2009, “legislative agent” was defined as follows: “Legislative agent,” a person who for compensation or reward does any act to promote, oppose or influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof. The term “legislative agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, attempts to promote, oppose or influence legislation, or the governor’s approval or veto thereof, whether or not any compensation in addition to the salary for such activities is received for such services; provided, however, that for

purposes of this definition a person shall be presumed to engage in activity covered by this definition in a manner that is simply incidental to his regular and usual business or professional activities if he engages in any activity or activities covered by this definition for not more than fifty hours during any reporting period or receives less than five thousand dollars during any reporting period for any activity or activities covered by this definition.

<sup>2</sup> Under c. 3, § 39 as amended by c. 28 of the Acts of 2009, the full definition of a “legislative agent” is as follows: “Legislative agent,” a person who for compensation or reward engages in legislative lobbying, which includes at least 1 lobbying communication with a government employee made by said person. The term “legislative agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to be engaged legislative lobbying [sic] that is simply incidental to his regular and usual business or professional activities if he: (i) engages in legislative lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for legislative lobbying.

The full definition of “legislative lobbying” added by c. 28 is as follows: “Legislative lobbying,” any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation; provided further, that legislative lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with legislative lobbying at the state level; and provided further, that legislative lobbying shall include strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee; provided, however, that “legislative lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter.

Under c. 3, § 39 as amended by c. 28 of the Acts of 2009, the full definition of an “executive agent” is as

follows: “Executive agent,” a person who for compensation or reward engages in executive lobbying, which includes at least 1 lobbying communication with a government employee made by said person. The term “executive agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to be engaged in executive lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in executive lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for executive lobbying.

The full definition of “executive lobbying” added by c. 28 is as follows: “Executive lobbying,” any act to promote, oppose, influence or attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any general or special law, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement; provided further, that executive lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and provided further, that executive lobbying shall include strategizing, planning and research if performed in connection with, or for use in, an actual communication with a government employee; and provided further, that “executive lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the executive branch or an authority for technical advice or factual information regarding a standard, rate, rule or regulation, policy or procurement for the purposes of this chapter.

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## Summaries of Enforcement Actions Calendar Year 2010

**In the Matter of Brian Laumann-** Norfolk County Sheriff's Office ("NCSO") Correction Officer Brian Laumann ("Laumann") paid a \$6,000 fine for violating sections 23(b)(2) and 23(b)(3) of G.L. c. 268A, the conflict of interest law. According to the Disposition Agreement, in late 2003 or early 2004, Laumann offered to purchase the home of a jail inmate. The sale called for Laumann to pay off approximately \$200,000 in outstanding mortgages, and to give the inmate's spouse between \$10,000 to \$20,000 in cash. The closing on the sale occurred in February, 2004, with Laumann paying off the mortgages but providing only \$5,000 to the inmate's spouse. Laumann claimed he spent approximately \$20,000 on repairs to the home, and, just a few months later, in May of 2004, he sold the home for \$289,000. Section 23(b)(2) prohibits a county 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. NCSO regulations prohibited correction officers from contacting or associating with inmates or inmate family members, except as required by the correction officer's required duties. By purchasing the home from an inmate in violation of these regulations, and by purchasing the home from an inmate who was under his supervision, Laumann violated Section 23(b)(2). Laumann also violated Section 23(b)(2) by using his position as an NCSO correction officer to force the inmate and/or his wife to accept an amount that was less than the agreed-upon purchase price. Section 23(b)(3) prohibits a county 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. By being "poised to act in his official capacity" as an NCSO correction officer regarding the inmate during and after negotiating the purchase of the inmate's house, and by failing to submit a written disclosure to his NCSO superiors that the purchase of the inmate's house was entirely voluntary and initiated by the inmate, Laumann violated section 23(b)(3).

**In the Matter of Susan Bailey-** Palmer Public Schools ("PPS") Director of Food Services Susan

Bailey ("Bailey") paid a \$2,000 civil penalty and made restitution to the PPS in the amount of \$900, representing the value of the items she took for her personal use. According to the Disposition Agreement, as Director of Food Services, Bailey had regular dealings with a vendor, Con-Agra Food, Inc. ("Con-Agra"). Con-Agra has sold packaged food to the PPS since 2003. Con-Agra offered promotions to its customers in which customers could receive gifts depending on the quantity of product purchased from Con-Agra. In November 2006 and April 2007, Bailey applied on behalf of the PPS for gifts in connection with the Con-Agra promotional program. Eligibility for the gifts was based on the type and quantity of food previously purchased by PPS from Con-Agra. In both cases, Bailey selected 3 iPods. When the iPods were received, they were the property of the PPS. Bailey, however, did not turn over the iPods to the PPS. Instead, she took them for her personal use. Each iPod had an approximate value of \$150 each. Section 23(b)(2) of the conflict of interest law prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use her official position to obtain for herself or others unwarranted privileges or exemptions of substantial value not available to similarly situated individuals. By using her official position to make purchases from a vendor, and then by keeping for her own personal use gifts received from the vendor based on those purchases, Bailey violated section 23(b)(2).

**In the Matter of Priscilla Baez-** Former Lawrence School Committee member Priscilla Baez ("Baez") paid a \$2,000 fine for violating section 19 of G.L. c. 268A, the conflict of interest law. According to the Disposition Agreement, in August and September 2008, Baez, in her capacity as a School Committee member, voted to approve a request by the school superintendent to create a Special Assistant to the Superintendent ("Special Assistant") position and eliminate the position of Urban Affairs Liaison, a position held by Baez's brother. She voted on two occasions to approve the creation of the Special Assistant position and, at the time of such votes, Baez knew that the superintendent planned to appoint her brother to the new position, and that the new position would include a pay increase. Baez's brother was subsequently appointed to the Special Assistant position, and his salary increased from \$54,105 to \$69,104. Section 19 of the conflict of interest law prohibits a municipal employee from participating as such in any matters in which, to her knowledge, her immediate family member has a financial interest. As stated in the Agreement, by voting to create the

Special Assistant position, while knowing that her brother would be appointed to the new position, a position in which he had a financial interest, Baez violated section 19.

**In the Matter of Jeffery Fischer-** Former Plymouth Development Corporation board of directors ("PDC") member Jeffrey Fischer ("Fischer") paid a \$2,000 fine for violating section 21A of G.L. c. 268A, the conflict of interest law. According to the Disposition Agreement, in May 2007 the PDC voted not to renew a contract with a vendor to manage the town's parking program, and also to investigate whether it could hire a PDC board member to manage the parking program. In June 2007, PDC legal counsel sought an opinion from the Ethics Commission as to whether the PDC could appoint a board member to a temporary position under the supervision of the PDC. The Ethics Commission advised that, under section 21A of the conflict of interest law, a board member was ineligible for such an appointment until at least 30 days after the board member had resigned from the PDC. Fischer resigned from the PDC on June 27, 2007. The PDC entered into a written agreement to appoint Fischer as the parking manager of the parking program from July 1, 2007, until September 30, 2007, and pay him a total amount of \$30,000 for his services, payable in monthly installments of \$10,000. At some point after July 1, 2007, Fischer crossed out the July 1, 2007 date in the interim agreement, and wrote in August 1, 2007. Fischer served as the interim parking manager from July 1, 2007 until September 30, 2007. He was paid \$30,000 for serving as interim parking manager. Section 21A of the conflict of interest law prohibits a former member of a board from being eligible for appointment by such board to any position under the board's supervision until at least 30 days after the termination of his service as a board member. Fischer did not resign from the PDC board until June 27, 2007, and, therefore, he was ineligible to be appointed the interim parking manager until July 27, 2007, at the earliest. By serving as interim parking manager beginning on July 1, 2007, Fischer violated section 21A.

**In the Matter of Daniel Rowan-** Former Plymouth County Sheriff's Department ("PCSD") Fleet Supervisor Daniel Rowan ("Rowan") paid a \$1,500 civil penalty for violating sections 23(b)(2) and 23(b)(3) of G.L. c. 268A, the conflict of interest law. In a Final Order, the Ethics Commission concluded an adjudicatory proceeding involving Rowan by approving a Disposition Agreement ("Agreement"). In the Agreement, Rowan admitted that he violated

the conflict law by acquiring a used 1999 Ford Crown Victoria from Municipal Headquarters, Inc. ("MHQ"), a vendor that supplied vehicles and vehicle equipment to the PCSD, and with whom Rowan had official business dealings, and by failing to disclose to his PCSD appointing authority his private business relationship with PCSD. According to the Agreement, Rowan, as PCSD Fleet Supervisor, purchased vehicle equipment from MHQ, and, consequently, had a regulatory relationship with MHQ. While this regulatory relationship existed, Rowan initiated his private purchase of a Crown Victoria from MHQ. According to the Agreement, it cannot be established whether the sale by MHQ was entirely voluntary. Rowan did not disclose his private dealings with MHQ to his PCSD appointing authority. After taking possession of the Crown Victoria, Rowan continued to have official dealings with MHQ in connection with equipment purchases. Section 23(b)(2) prohibits a public 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 of substantial value not properly available to similarly situated individuals. Section 23(b)(3) prohibits a public employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the relevant facts, 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 of person. The Disposition Agreement states that "... a public employee who has a business relationship with a vendor within his regulatory jurisdiction violates § 23(b)(2) unless (1) the business relationship is entirely voluntary; (2) it was initiated by the vendor; and (3) the employee's public written disclosure under § 23(b)(3) states facts clearly showing elements (1) and (2)." By obtaining the Crown Victoria under the circumstances described in the Agreement, Rowan used his official position to obtain an unwarranted privilege of substantial value not otherwise available to similarly situated individuals in violation of section 23(b)(2), according to the Agreement. By having official dealings with MHQ after he took possession of the vehicle, and failing to disclose to the PCSD that he acquired the vehicle from MHQ, Rowan acted in a manner which would cause a reasonable person, knowing all of the relevant circumstances to conclude that MHQ might improperly influence him or unduly enjoy his favor in the performance of his official duties in violation of section 23(b)(3), according to the Agreement.

**In the Matter of Theresa Lord Piatelli-** The Ethics Commission issued a Decision and Order finding that Former Quincy College ("College") Board of Governors ("BOG") Chair Theresa Lord Piatelli ("Piatelli") violated sections 17, 23(b)(2) and 23(b)(3) of G.L. c. 268A, the conflict of interest law. Piatelli was fined \$4,000. According to the Decision and Order, in her capacity as a private attorney, Piatelli represented her first cousin, John Farrell, in civil and criminal matters. In a plea bargain, Farrell was required to complete 200 hours of community service as a condition of probation. Piatelli asked Sean Barry ("Barry"), then President of the College, to arrange for Farrell to perform the community service at the College. In June 2002, Piatelli contacted Barry seeking certification of Farrell's community service. Section 17(c) prohibits a municipal employee from acting as attorney for someone other than the municipality in connection with a particular matter in which the municipality or a municipal agency is a party or has a direct and substantial interest. Barry, as College President, agreed that Farrell could perform his community service at the College, and, therefore, the College was a party to that agreement. In addition, the community service had a value to the College, since the College would have received the benefit of Farrell's services at no cost. Accordingly, the Commission found that Piatelli "violated [section] 17 when she represented the interests of her client in seeking certification from Barry of Farrell's community service obligation." The Commission's Enforcement Division, the Petitioner in this case, also alleged that Piatelli violated sections 23(b)(2) and 23(b)(3) by directing Barry to write a letter misrepresenting that her cousin had completed the community service at the College, even though her cousin had not yet performed the work. The Commission ruled that the Enforcement Division did not prove these allegations. The Decision also states that, in the spring of 2003, Piatelli contacted Barry about her brother, Daniel Lord ("Lord"), applying for an entry-level position at the College. Piatelli advocated for her brother in conversations with Barry, BOG member Daniel Raymondi, and College Vice President Thomas DeSantes. As set forth in the Decision, "Piatelli held a position superior to Barry and a leadership position with the Board of Governors, and had joint responsibility for decisions about hiring or firing [Barry] as President." At the time of Piatelli's discussions with Barry about her brother, Barry's employment contract was under consideration for renewal. Barry hired Lord on May 2, 2003. On May 27, 2003, Piatelli, as BOG chair, signed a new employment contract for Barry, a year before his current employment contract was due to expire.

Section 23(b)(2) prohibits a public 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 of substantial value not properly available to similarly situated individuals. The Decision states that "... Piatelli knowingly used her position as a BOG member to influence Barry to give a job to her brother." It further concludes that Piatelli's brother was hired "despite the fact that he was considered unqualified for the position." Accordingly, the Commission found that "... Piatelli violated [section] 23(b)(2) with regard to the hiring of her brother." Petitioner also alleged that, in violation of section 23(b)(2), Piatelli asked Barry and Vice President DeSantes to transfer her brother from a job on the Plymouth campus to a position on the Quincy campus. The Commission found that Petitioner did not prove this allegation. In addition, the Commission found that Piatelli did not violate section 19 or section 23(b)(3) with regard either to the hiring or the transfer of her brother.

**In the Matter of Paul M. Wormser and Thomas Jefferson-** In a Decision and Order ("Decision"), the Ethics Commission determined that Town of Harvard School Superintendent Thomas Jefferson ("Jefferson") and former Harvard School Committee member Paul Wormser ("Wormser") each violated G.L. c. 268A, the conflict of interest law. The Commission found that Jefferson and Wormser circumvented established procedures, enabling Wormser to receive \$30,000 from the Harvard public schools as reimbursement for the costs of his child's private school tuition. The Commission also found that both Jefferson and Wormser failed to make required disclosures. Both were assessed civil penalties of \$4,000. As set forth in the Decision, Wormser became dissatisfied with the special education services his child was receiving in the Harvard public schools during the 2004-2005 school year. As School Committee Chair, Wormser had regular work meetings with then Superintendent Mirhan Keoseian. At the end of these meetings, Wormser repeatedly raised concerns about the services his child was receiving and later advocated for sending his child to private school and having the Harvard public schools bear part of the cost. Keoseian refused to consider these requests, consistently telling Wormser there were procedures he needed to follow. Under state law, a team consisting of teachers, evaluators and parents develop an Individualized Education Program ("IEP") detailing special education services for a student. If parents disagree with their child's IEP, they have the right to file for mediation or a hearing with the state

Bureau of Special Education Appeals ("BSEA") or file a court action. Parents who unilaterally withdraw a student from a school district, may seek, with proper notice, reimbursement for private school tuition, but they have to prove their case at a due process hearing before the BSEA. On June 3, 2005, Wormser's wife canceled an IEP team meeting scheduled for the next day, withdrew their child from the school district, and enrolled the child in Cushing Academy, a private school not approved by the state Department of Education to provide special education services. On July 1, 2005, Jefferson became Superintendent. At the end of regular work meetings Wormser had with Jefferson, Wormser again brought up issues regarding reimbursement of his child's private school tuition. According to the Decision, "repeatedly bringing up a personal financial matter at the end of meetings about school business was an improper use of Wormser's official position." In January 2006, an IEP team concluded that placement in the Harvard public schools was appropriate for Wormser's child. Wormser met with Jefferson about his child's placement at Cushing Academy, and Jefferson reviewed records regarding the child. On June 8, 2006, without consulting with the IEP team or setting up another IEP meeting, and without contacting anyone from Cushing Academy, Jefferson, over the objections of the Harvard public schools Special Education Director, approved partial reimbursement of two years of private school tuition. When the school district's attorney drafted the reimbursement agreement, it included a signature block for Jefferson. Jefferson, however, instructed the Special Education Director to sign, saying, "it wouldn't look right" for him to sign the agreement. The draft agreement was sent to Wormser on June 19, 2006. On June 26, 2006, as a School Committee member, Wormser signed Jefferson's performance evaluation. As a result of the evaluation, Jefferson received a pay raise. Between July and September, 2006, Wormser made additional reimbursement requests, and Jefferson approved each request. A final agreement, signed by the Special Education Director, provided for up to \$60,000 of tuition reimbursement. Wormser received a total of \$30,000 for two school years before the Wormsers moved out of the school district. No further payments were made. Section 23(b)(2) prohibits a public employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others an unwarranted privilege or exemption of substantial value not properly available to similarly situated individuals. According to the Decision, the Commission found that Wormser "repeatedly took advantage of official access that he had as school committee chair to superintendents

under his authority to make them focus on his personal requests for tuition reimbursement." The Commission also found that Jefferson used his position as Superintendent to deviate from usual procedure in order to approve an agreement of substantial value to Wormser, his superior. Section 23(b)(3) of the conflict of interest law prohibits a public employee from knowingly, or with reason to know, acting in a manner that 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 Commission concluded that "[Jefferson] violated [section] 23(b)(3) by participating in negotiations with Wormser, his superior, without publicly disclosing that he was engaged in a financial negotiation with a school committee member." The Commission also found that "[Wormser] violated [section] 23(b)(3) by failing to disclose that he was negotiating his tuition reimbursement claim with Jefferson while he participated in the school committee's evaluation of Jefferson's performance."

**In the Matter of Elizabeth Story-** The Ethics Commission concluded an adjudicatory proceeding involving former Department of Elementary and Secondary Education Fiscal Officer Elizabeth Story ("Story") by approving a Disposition Agreement ("Agreement") in which Story admitted to violating G.L. c. 268B, the financial disclosure law, and by dismissing the adjudicatory hearing. Pursuant to the Agreement, Story paid a \$500 civil penalty. According to the Agreement, Story was required to file her 2008 SFI by May 1, 2009. She failed to file her SFI by that date, and on May 4, 2009, she was sent a Notice advising her that she had 10 days to file or she would be subject to civil penalties. Story did not file within the 10 day period, and did not file her SFI for 2008 until June 25, 2009. The Commission has adopted a schedule of civil penalties for late filers and non-filers. The schedule calls for a \$500 civil penalty for filing an SFI more than 30 days after the 10 day period following receipt of a Notice. The financial disclosure law requires elected state and county officials, candidates for state office and "designated major policy makers" at the state and county level to annually disclose their financial interests and private business associations by filing an SFI with the Commission for the prior calendar year. The Commission can impose civil penalties for the failure to file an SFI and for the late filing of an SFI.

**In the Matter of Mark Rivera-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which Mark Rivera ("Rivera"), the former Lawrence School Department Urban Affairs Liaison and Special Assistant to the School Superintendent, admitted to violating G.L. c. 268A, the conflict of interest law, by improperly using his position to repeatedly obtain unauthorized access to personal information that was not related to official school business. Pursuant to the Agreement, Rivera agreed to pay a \$5,000 civil penalty. According to the Agreement, the Lawrence School Department paid a \$120 monthly fee to access LexisNexis, a database that contains both public and non-public information about individuals. The school department purchased access to the database to allow Rivera and one other school department employee to obtain contact information for parents no longer living in the district, and to contact parents and students regarding attendance issues. The Agreement states, "[f]rom 2007-2009, Rivera repeatedly misused his School Department authority to access the LexisNexis database through the School Department's account to conduct hundreds of searches of non-public information on individuals, including state and local elected officials, professional athletes and Hollywood celebrities, for his own private purposes ...." Section 23(b)(2) 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. By using his official position to access the database and conduct hundreds of searches of non-public information on individuals, Rivera repeatedly violated section 23(b)(2).

**In the Matter of Jean-Marie Smith-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which Hanson Council on Aging ("COA") Director of Elder Affairs Jean-Marie Smith ("Smith") admitted to violating G.L. c. 268A, the conflict of interest law, by, in her private capacity, managing the financial affairs of an elderly COA client ("Client"). Pursuant to the Agreement, Smith paid a \$2,000 civil penalty. According to the Agreement, the COA provides various services to town residents, aged 55 and older, through the town's senior center. In June 2007, Smith became concerned about the Client's appearance and behavior and arranged for his hospitalization. Smith then consulted with a town official about whether she could, in her private capacity, become the Client's representative and manage his financial affairs. She

was advised, through Town Counsel, that she could not do so. Although the Client's file at the COA contained contact information for his daughter, and despite having been advised that she could not act as the Client's private agent, after the Client was discharged from the hospital, Smith engaged in the following activities without notifying the Client's daughter: Arranged nursing home care for the Client and had her boyfriend sign the admitting paperwork as the Client's representative; Obtained the Client's approval to allow Smith to handle his financial affairs; Changed the Client's mailing address for a bank savings account to Smith's home address; Along with the Client, withdrew the entire balance from the Client's savings account, which was, at the time, \$17,155, and used \$8,455 of those funds to prepay the Client's funeral expenses; \$1,500 to open a bank account for burial expenses, listing Smith and her boyfriend as co-owners on the account; and kept the remaining \$7,000 in cash at Smith's home; Arranged for her boyfriend to act as the Client's representative to apply for MassHealth benefits for the Client; and Arranged to have herself added as the co-owner on the Client's savings account. The Agreement states that when Smith eventually spoke to the Client's daughter, Smith did not disclose that she was handling the Client's financial affairs. The Client was approved for MassHealth benefits. The nursing home costs were paid in part by MassHealth, and in part by the Client's Social Security and Veterans Administration ("VA") benefits. The VA benefits were direct-deposited into the Client's savings account. Between July 2007 and May 2009, Smith withdrew a total of \$27,703 from the Client's savings account, which she claimed she used to pay for the Client's expenses. Of the \$27,703 withdrawn, however, there were no receipts or other records documenting the expenditure of approximately \$2,500, although Smith offered oral justifications for \$1,000 of those expenditures. Expenditures totaling approximately \$1,000 were undocumented and unaccounted for in any way. The Client died in May, 2009. Smith used \$1,566 that remained in a pre-paid nursing home account to purchase a cemetery marker for the Client and to make a \$566 donation to the COA. The funds remaining in the Client's savings account were sent to the Client's daughter. Section 23(b)(2) prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use her official position to secure for herself or others unwarranted privileges or exemptions which are of substantial value and which are not available to similarly situated individuals. According to the Agreement, "by accessing and spending the Client's funds without oversight and without keeping adequate records documenting such

expenditures ... Smith knowingly or with reason to know used her official position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals ...."

**In the Matter of James M. Ruberto and Daniel Duquette-** The Ethics Commission issued a Decision and Order ("Decision") finding that Pittsfield Mayor James M. Ruberto ("Ruberto") and Daniel Duquette ("Duquette") each violated G.L. c. 268A, the conflict of interest law, in connection with Duquette's sale of 2004 World Series tickets to Ruberto. The Commission declined to impose civil penalties for the violations. According to the Decision, beginning in early 2004, Duquette, the owner of the Berkshire Dukes, a New England College Baseball League ("NECBL") team based in Hinsdale, expressed to Ruberto his interest in having the Dukes play at Wahconah Park (the "Park") in the City of Pittsfield (the "City"). Ruberto, however, told Duquette that he was not interested in an NECBL team because he wanted a professional minor league baseball team to play at the Park. At that time, Ruberto was already in talks with the Bouton Group about its plans to bring a professional team from the Canadian American League to play at the Park beginning in the Spring of 2005. Duquette contacted Ruberto in the summer of 2004 and was rebuffed again. In early October 2004, Duquette again contacted Ruberto after reading in the local newspaper that the City's negotiations with the Bouton Group had failed. During this conversation, Ruberto told Duquette that he was not interested in having a NECBL team play at the Park. He also told Duquette that he was an avid Red Sox fan and that his lifelong dream was to see the Red Sox play in the World Series in Fenway Park. On October 14, 2004, Duquette sent an email to Ruberto thanking him for his interest in the Dukes, and on October 22, 2004, Duquette offered Ruberto the opportunity to buy two tickets to Game 2 of the World Series at the face value amount of \$380. Ruberto accepted the offer and paid Duquette \$380 by check. Tickets for comparable seats were selling at the time for \$2,000 to \$3,000. In early November, Ruberto started to look into the possibility of an NECBL team playing at the Park. In March 2005, the City and Duquette reached a deal, the terms of which were favorable to the City, in which the Dukes would play at the Park. Section 3(a) of the conflict of interest law prohibits anyone from directly or indirectly giving, offering or promising anything of substantial value to any municipal employee for or because of any official act performed or to be performed by such an employee. In its Decision, the Commission found that Duquette's offer to sell the tickets to Ruberto at face

value was an offer of something of substantial value because "a reasonable person wishing to attend Game 2 of the 2004 World Series would pay \$50 or more over face value ... to purchase the [t]ickets." Although Duquette claimed that he offered the tickets with the intent only to create generalized goodwill with Ruberto, the Commission found that Duquette offered to sell the tickets "with the intent to influence Ruberto's official actions regarding the [licensing agreement and concession stand agreement] and the Dukes move to Pittsfield." Among the factors considered by the Commission were: Duquette's knowledge of Ruberto's lifelong dream to see the Red Sox play at Fenway in the World Series; Duquette's knowledge that Ruberto's support of the license and concession agreements was essential in order for the Dukes to move to the City; the lack of any prior social relationship between Duquette and Ruberto, and no evidence of any reciprocity. Accordingly, the Commission found that Duquette violated section 3(a). Section 3(b) prohibits a municipal employee from directly or indirectly receiving anything of substantial value for or because of any official act performed or to be performed by such employee. Ruberto violated section 3(b) because "Ruberto intended to receive the [t]ickets ... to influence Ruberto's official action regarding the [license and concession agreements, and Ruberto intended to receive the [t]ickets for or because of official acts he performed or would perform in the future related to the Dukes move to Pittsfield." Ruberto did not consider Duquette's requests to move the Dukes to the City until shortly after he received the tickets from Duquette, and after telling Duquette of his lifelong dream to see the Red Sox play in the World Series at Fenway Park. The Decision also states that Ruberto violated sections 23(b)(2) and 23(b)(3) of the conflict law. Section 23(b)(2) prohibits a municipal employee from 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. Ruberto violated section 23(b)(2) by using his official position as Mayor to obtain an unwarranted privilege, i.e., the opportunity to purchase the tickets at face value from Duquette, someone with whom he had no prior personal social relationship, while Duquette was seeking to move the Dukes to the Park. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner that would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person could improperly influence of unduly enjoy his favor in the performance of his official duties, or that he was

likely to act or fail to act as a result of kinship, rank, position or undue influence of any part or person. It further provides that it shall be unreasonable to so conclude if the employee has disclosed in a manner that is public in nature, the facts which would otherwise lead to such a conclusion. Ruberto violated section 23(b)(3) by acting as Mayor in matters affecting Duquette and the Dukes shortly after he purchased the tickets from Duquette. Ruberto did not make any public disclosure of his purchase of the tickets prior to participating in these matters. According to the Decision, the Commission declined to impose civil penalties on Duquette or Ruberto for their violations of the conflict law for the following reasons: Although the Commission found that both Duquette and Ruberto violated section 3, it acknowledged that it was a close question whether Duquette offered the tickets to Ruberto for or because of a specific official act or actions, or merely to obtain Ruberto's goodwill. At the time he offered the tickets, Duquette did not believe that Ruberto was interested in having the Dukes play at Wahconah Park because Ruberto instead wanted a professional minor league team to play at the park. Also, there is no evidence that Ruberto was actually influenced by receiving the tickets because the final deal worked out between the city and Duquette was favorable to the City, and the negotiations were at times contentious; The Commission was persuaded that neither Ruberto, who was a newly elected Mayor in 2004, nor Duquette, who was not a public employee, was aware in October 2004 of Commission Advisory 04-01, which warned that selling tickets at face value could raise conflict of interest issues if a public official, "accepts the special access to the tickets [to a major sporting event] offered as a result of his official position"; and Both Duquette and Ruberto knew that Duquette could not give the tickets to Ruberto for free, and they both believed that they were complying with the conflict law and scalping laws by selling the tickets at face value.

**In the Matter of Stephen Lisauskas-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which former Springfield Finance Control Board ("SFCB") Deputy Director Stephen Lisauskas ("Lisauskas") admitted to violating G.L. c. 268A, the conflict of interest law. Pursuant to the Agreement, Lisauskas paid a \$3,000 civil penalty. According to the Agreement, Lisauskas served as the SFCB Deputy Director from June 2006 until he was appointed Executive Director in July 2007. In September 2006, Lisauskas formed a committee to select an investment firm to manage the City of Springfield's (the "City's") approximately \$100

million in cash investments. Three investment firms were invited to be interviewed, one of them being the Albany, New York office of Merrill Lynch ("Merrill Lynch"). This firm employed Lisauskas' friend, Carl Kipper, with whom Lisauskas had regularly socialized when he resided in the Albany area, and with whom he kept in contact when Lisauskas moved to Massachusetts. Lisauskas orally disclosed a relationship with Kipper to the SFCB Executive Director and the committee members, but he did not disclose that they were friends, and he did not file any written disclosure of the friendship with the committee or with his appointing authority. The Agreement states that Lisauskas told the committee members that he and Kipper had worked together planning investments for the Town of Natick when Lisauskas was Natick's deputy town administrator. In fact, Kipper had no public investment experience in Massachusetts, and neither Kipper nor Merrill Lynch had ever managed any money for the Town of Natick. In addition, Lisauskas developed the interview questions for the committee to use, and he provided information about the questions to Kipper in advance of the interviews. Following the interviews, the committee, with Lisauskas participating, decided to give Merrill Lynch approximately 60% of the City's investment money to invest on the City's behalf. Merrill Lynch subsequently invested approximately \$13 million in risky, mortgage-backed securities which were not on a so-called "legal list" of investments, i.e., the types of investments in which public monies may be invested under Massachusetts law. Those securities lost nearly all of their value. In January 2008, Merrill Lynch agreed to reimburse the City \$13.7 million to cover the City's investment losses and legal fees. Section 23(b)(2) of the conflict of interest law prohibits a state 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. Lisauskas violated section 23(b)(2) by using his position as SFCB Deputy Director to engage in the above-described conduct, which resulted in Kipper and Merrill Lynch being selected to manage approximately \$60 million of the city's investment money. Section 23(b)(3) prohibits a state 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

This section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion. The Agreement states that Lisauskas violated section 23(b)(3) by participating as SFCB Deputy Director in the interviews and the decision to award Merrill Lynch approximately \$60 million in cash investments while his friend, Kipper, was a vice-president/broker for one of the competing firms. Lisauskas did not file a written disclosure with his appointing authority to dispel the appearance of a conflict of interest.

**In the Matter of Guy Corbosiero-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which Winchendon Planning Board ("Planning Board") member Guy Corbosiero ("Corbosiero") admitted to violating the conflict of interest law in connection with actions he took in his capacity as a Planning Board member to oppose the creation of affordable housing units on five properties in the Town of Winchendon (the "Town"), two of which abutted or were near his sister's home. Pursuant to the Agreement, Corbosiero will pay a \$2,000 civil penalty. According to the Agreement, in 2008, the Winchendon Housing Authority ("WHA") sought to create additional affordable housing in the Town. The WHA requested that the Planning Board support at the May 2008 town meeting a warrant article that would create an affordable housing overlay district (the "Overlay District"). The Overlay District would have allowed the WHA to create 130 new affordable housing units on five properties in the Town. Corbosiero's sister and her husband resided in a home that was across the street from one of the properties and a block away from another of the properties. At an April 2008 Planning Board meeting, Corbosiero, in his capacity as a Planning Board member, spoke in strong opposition to the proposed warrant article and voted against it. As a result, the WHA withdrew its plan to submit the article for consideration at town meeting. The following year, the WHA presented a revised version of the Overlay District warrant article to the Planning Board. Corbosiero again spoke and voted at a Planning Board meeting in opposition to the article, and his motion that the Planning Board not recommend the article to town meeting was approved. Section 19 of the conflict of interest law prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he or an immediate family member has a financial interest. Under the conflict of interest law, a property owner is presumed to have a financial interest in matters affecting abutting and nearby

property, although this presumption may be rebutted. By participating as a Planning Board member in considering the two proposed Overlay District warrant articles, which would have authorized the creation of affordable housing on two properties that were, respectively, across the street and a block away from his sister's home, Corbosiero participated in matters in which his sister, an immediate family member, had a financial interest. Therefore, Corbosiero violated section 19.

**In the Matter of Dianne Wilkerson-** The Ethics Commission concluded an adjudicatory proceeding involving former State Senator Dianne Wilkerson ("Wilkerson") by approving a Disposition Agreement ("Agreement") in which Wilkerson admitted to violating G.L. c. 268B, the financial disclosure law, and by dismissing the adjudicatory hearing. Pursuant to the Agreement, Wilkerson agreed to pay a \$500 civil penalty. According to the Agreement, Wilkerson was required to file her 2008 SFI by May 26, 2009. She failed to file her SFI by that date, and on May 27, 2009, she was sent a Notice advising her that she had 10 days to file or she would be subject to civil penalties. Wilkerson did not file within the 10 day period, and did not file her SFI for 2008 until February 3, 2010. The Commission has adopted a schedule of civil penalties for late filers and non-filers. The schedule calls for a \$500 civil penalty for filing an SFI more than 30 days after the 10 day period following receipt of a Notice. The financial disclosure law requires elected state and county officials, candidates for state office and "designated major policy makers" at the state and county level to annually disclose their financial interests and private business associations by filing an SFI with the Commission for the prior calendar year. The Commission can impose civil penalties for the failure to file an SFI and for the late filing of an SFI. The Commission also approved an Appendix to the Disposition Agreement which provides the terms for Wilkerson to pay the \$500 civil penalty.

**In the Matter of Curtis Plante-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which Town of Bolton (the "Town") Board of Selectmen member Curtis Plante ("Plante") admitted to violating G.L. c. 268A, the conflict of interest law, by representing his private employer in dealings with the Town and by having a financial interest in a Town contract to construct a new public safety building. Pursuant to the Agreement, Plante paid a \$10,000 civil penalty. According to the Agreement, on December 4, 2008, the Board of Selectmen voted to award a contract to Groom Construction ("Groom"), under which Groom

would be the general contractor for the construction of a new public safety building. Plante recused himself from the discussion and vote. In February 2009, Plante, in his capacity as Vice President and Treasurer of Bradford Site Development Corporation ("Bradford"), signed on behalf of Bradford a \$700,000 subcontract with Groom to perform the site preparation work for the new public safety building.

The subcontract with Groom was a substantial source of revenue for Bradford, and a significant portion of Plante's salary was derived from the subcontract. As detailed in the Agreement, Plante violated the conflict of interest law by having an indirect financial interest in the Town's contract with Groom, by being paid by Bradford for working on the subcontract and for representing Bradford in meetings with the Board of Selectmen in connection with the subcontract. Section 20 of the conflict of interest law prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by his municipality, in which the municipality is an interested party, and of which financial interest he knows or has reason to know. Plante had an indirect financial interest in the contract between the Town and Groom because a substantial portion of the compensation paid to him by Bradford was derived from Bradford's subcontract with Groom. Because members of the Board of Selectmen are classified as special municipal employees for conflict of interest law purposes, Plante could have avoided violating section 20 if he had filed a written disclosure of his financial interest in the Town's contract with Groom, and if the Board of Selectmen, with Plante abstaining, had voted to exempt him from the requirements of section 20. Plante did not file such a disclosure and did not obtain an exemption from the Board of Selectmen. Therefore, Plante violated Section 20. Section 17(a) of the conflict of interest law prohibits a municipal employee, other than as provided by law for the proper discharge of his official duties, from requesting or receiving compensation from anyone other than the same municipality in relation to a particular matter in which that municipality is a party or has a direct and substantial interest. Section 17(c) prohibits a municipal employee from, other than in the proper discharge of his official duties, acting as agent for anyone other than the same municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest. A special municipal employee is subject to sections 17(a) and 17(c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee; (b) which is or within one year has been a subject of his official responsibility; or (c) which is pending in the

municipal agency in which he is serving. As noted above, Board of Selectmen members are special municipal employees for conflict of interest law purposes. The Agreement describes several meetings with the Board of Selectmen in which Plante represented Bradford, including a meeting in which a change order was approved, which provided additional payment to Bradford. By representing Bradford at these meetings, and for receiving his Bradford salary for serving as its representative at these meetings, Plante violated both sections 17(a) and 17(c) on each occasion.

**In the Matter of Robert G. Cole-** The Ethics Commission issued a Decision and Order ("Decision") in which former Massachusetts Turnpike Authority ("Authority") Director of Toll Operations Robert Cole ("Cole") was found to have violated the financial disclosure law, G.L. c. 268B, by failing to timely file his 2008 Statement of Financial Interests ("SFI"). Pursuant to the Decision, Cole was assessed a \$250 civil penalty. According to the Decision, Cole was employed by the Authority until March 2008. Pursuant to the financial disclosure law, his position had been classified as a major policy making position. Because Cole served in that position for more than thirty (30) days during 2008, he was required to file a 2008 SFI with the Commission by May 1, 2009. Cole did not file his 2008 SFI until March 22, 2010, after the Commission's Enforcement Division filed an Order to Show Cause seeking to enforce the statute. The Decision states that because Cole also failed to timely file his 2007 SFI, he could have been assessed a \$1,000 civil penalty as a repeat late-filer. However, due to extenuating family and financial circumstances, the Commission exercised its discretion and only imposed a \$250 civil penalty, which Cole has six months to pay. The financial disclosure law requires elected state and county officials, candidates for state office and designated major policy makers at the state and county level to annually disclose their financial interests and private business associations by filing an SFI with the Commission for the prior calendar year. The Commission can impose civil penalties for late filing or failure to file an SFI.

**In the Matter of Michael Cole-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which Town of Eastham Planning Board ("Planning Board") member Michael Cole ("Cole") admitted to violating G.L. c. 268A, the conflict of interest law. Pursuant to the Agreement, Cole paid a \$2,000 civil penalty. According to the Agreement, Cole is the owner of Cape Associates, a

construction company located in the Town of Eastham. In 2005, on behalf of a Cape Associates client, Cole submitted a special permit application to the Planning Board to construct a dental office addition. At the May 11, 2005 Planning Board meeting, Cole stepped down from the board and then presented the application to the Planning Board. The Planning Board approved the special permit application. The client paid Cape Associates \$56,950 for the construction of the addition. Section 17(a) of the conflict of interest law prohibits a municipal employee, other than as provided by law for the proper discharge of his official duties, from requesting or receiving compensation from anyone other than the municipality in relation to a particular matter in which that municipality is a party or has a direct and substantial interest. According to the Agreement, Cole violated section 17(a) by receiving compensation from the dental office owner for work that required a permit from the Planning Board. Section 17(c) prohibits a municipal employee from, other than in the proper discharge of his official duties, acting as agent for anyone other than the municipality in connection with a particular matter in which the same municipality is a party or has a direct and substantial interest. According to the Agreement, Cole violated section 17(c) by submitting the application to the Planning Board and then presenting the application at a Planning Board meeting. By submitting and presenting the application to the Planning Board, Cole acted as agent for the owner of the dental office.

**In the Matter of Thomas Kokernak-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which Sterling Fire Department Lieutenant Thomas Kokernak ("Kokernak") admitted to violating G.L. c. 268A, the conflict of interest law, in connection with the sale of leather emblem shields for fire department helmets to the Town of Sterling (the "Town"). Pursuant to the Agreement, Kokernak paid a \$500 civil penalty and a \$400 forfeiture of the profit realized from the sale of the products. According to the Agreement, Kokernak and his spouse own F&T Products, a company that markets decorative leather emblem shields for fire helmets. Between 2008 and 2010, the company sold product totaling \$1,683.70 to the Town. Section 20 of the conflict of interest law prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by his municipality, in which the municipality is an interested party, and of which financial interest he knows or has reason to know. By having a financial interest in the sale of leather helmet emblems to the Town by F&T Products, Kokernak violated section 20.

**In the Matter of David Celino-** The Ethics Commission approved a Disposition Agreement ("Agreement") in which state Department of Conservation and Recreation ("DCR") Chief Fire Warden David Celino ("Celino") admitted to violating G.L. c. 268A, the conflict of interest law, when he intervened in a hiring process to fill a DCR firefighter position while two of his friends were applicants for the position. Pursuant to the Agreement, Celino paid a \$500 civil penalty. According to the Agreement, Celino became aware in August 2008 that two of his friends had applied for a District 8 firefighter position. Celino informed the DCR District 8 Warden that he planned to stay out of the hiring process. After first and second round interviews were completed by a screening committee, without Celino's participation, the District 8 Warden recommended a candidate. Neither of Celino's friends was the recommended candidate. Celino learned of the recommendation, and questioned the District 8 Warden about why his friends did not receive second round interviews. Celino also reviewed the applicant interview packets and noted that a newly-enacted policy requiring that a human resources department staff person participate in the interview process was not followed. Celino brought this to the attention of his supervisor and the DCR Director of Administration and Finance. The DCR ultimately decided to repost the position, but the position was not filled due to budget constraints. Celino did not disclose to his appointing authority, the DCR Deputy Commissioner, that he was involved in the matter and that his two friends were applicants for the job. Section 23(b)(3) of the conflict of interest law prohibits a state 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 the facts which would otherwise lead to such a conclusion. According to the Agreement, Celino violated section 23(b)(3) by participating in the hiring process for the District 8 firefighter position while two of his friends were applicants for the position without first filing a disclosure to dispel the appearance of a conflict of interest.

**In the Matter of Paul DeMoura-** The Ethics Commission approved a Disposition Agreement

("Agreement") in which former Dighton Highway Department ("DHD") Superintendent Paul DeMoura ("DeMoura") admitted to violating G.L. c. 268A, the conflict of interest law, by his actions in connection with the hiring of one son to a full-time DHD position, and by hiring another son and the son's girlfriend to seasonal snowplow driver positions. Pursuant to the Agreement, DeMoura paid a \$1,000 civil penalty for the violations. According to the Agreement, in 2005, the Town of Dighton (the "Town") sought to hire two full-time laborer/drivers for the DHD. The Town advertised the vacancies, and two applicants responded, including DeMoura's son Derek. DeMoura interviewed both applicants and recommended that the Board of Selectmen hire both applicants. Derek was hired at a \$47,000 annual salary. The Agreement states that the Board of Selectmen was aware at the time that Derek was DeMoura's son. Also in 2005, DeMoura decided to hire an additional seasonal snowplow driver. He offered the position to his son, Christopher, but Christopher declined the offer. DeMoura then offered the position to Christopher's live-in girlfriend, Lynn Moody ("Moody"), who accepted the position. In or about February 2006, DeMoura became aware that Christopher substituted for Moody and drove the snowplow truck whenever Moody was contacted to work. DeMoura thereafter directly contacted Christopher to plow instead of contacting Moody. Moody was issued Town checks for snowplowing on about 16 occasions from February 2005 until March 2008. Moody used the proceeds from the checks to pay joint living expenses for her and Christopher. According to the Agreement, DeMoura said he had no knowledge that Christopher would be substituting for Moody at the time he hired Moody. In early 2008, DeMoura put Christopher officially on the payroll as a seasonal snowplow driver. Christopher was paid a total of \$50 in that position, and was not rehired the following season. Section 19 of c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he or an immediate family member has a financial interest. According to the Agreement, DeMoura violated section 19 by interviewing his son Derek and the other applicant, and recommending that the Board of Selectmen hire both to full-time laborer/driver positions. DeMoura also violated section 19 by deciding on a number of occasions to allow Christopher to fill in for Moody and perform the snowplow work himself, decisions in which Christopher had a financial interest. DeMoura also violated section 19 by hiring Christopher as a seasonal snowplow driver in 2008. Section 23(b)(2) 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. According to the Agreement, DeMoura violated section 23(b)(2) by using his DHD Highway Superintendent position to allow Moody to remain on the payroll while Christopher performed the work, to complete payroll records to pay Moody although she did not do the work, and to allow Christopher to do the work although he was not authorized to do the work.

**In the Matter of Gene Covington-** The Ethics Commission ("Commission") approved a Disposition Agreement ("Agreement") in which former Somerville Inspectional Services Department ("ISD") Building Inspector Gene Covington ("Covington") admitted to violating the conflict of interest law, G.L. c. 268A, by inspecting construction work performed at his home, by recommending the contractor who performed the work at his home to building permit applicants, and by issuing permits to and inspecting the work of the contractor with whom he had a private business relationship without disclosing that relationship. Pursuant to the agreement, Covington paid a \$5,000 civil penalty. According to the Agreement, contractor Joaquim Correia, Jr., ("Correia") owns JEJ General Contractor, Inc. ("JEJ"). Correia/JEJ performed several home improvement jobs at Covington's residence between 2005 and 2007, for which he was paid \$14,300 by Covington's spouse. Covington's residence was owned by his mother-in-law. In 2006, Covington, as building inspector, conducted the final inspection on one of the roofing work jobs performed by Correia/JEJ at Covington's residence. In addition, the Agreement states that between 2007 and 2008, Covington engaged in the following conduct: on at least five occasions, in violation of ISD policy prohibiting inspectors from recommending contractors, Covington recommended Correia/JEJ to property owners, who then hired Correia for construction work; on six occasions, Covington approved building permit applications and issued permits for properties where Correia was listed as the contractor; and on four occasions, Covington inspected Correia's work. Section 19 of the conflict of interest law prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he or an immediate family member has a financial interest. Covington violated section 19 by conducting the final inspection for the roofing work performed on his residence, which was owned by his mother-in-law, an immediate family member. Section 23(b)(2)

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. By recommending Correia/JEJ to property owners, in violation of ISD policy, Covington repeatedly violated section 23(b)(2). Section 23(b)(3) 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. This section further provides that it shall be unreasonable to so conclude if such employee has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion. By approving building permit applications for, and issuing permits to, Correia/JEJ, and by inspecting Correia/JEJ's work, without disclosing his private dealings with Correia/JEJ to his appointing authority, Covington repeatedly violated section 23(b)(3).

**In the Matter of Daniel Dean-** The Ethics Commission concluded the adjudicatory matter involving City of Lynn (the "City") Board of Health Sanitary Inspector ("Health Inspector") Daniel Dean ("Dean") by approving a Disposition Agreement ("Agreement") in which Dean admitted to violating G.L. c. 268A, the conflict of interest law, and agreed to pay a \$5,000 civil penalty, and by dismissing the adjudicatory hearing. The adjudicatory hearing was initiated by the Commission's Enforcement Division by the filing of an Order to Show Cause on September 7, 2010. In the Agreement, Dean admitted that he repeatedly violated sections 20 and 23(b)(3) of the conflict of interest law by serving as both a Health Inspector and an appointed city constable, and by failing to disclose instances where he conducted inspections on properties owned by parties for whom he had performed private constable services. According to the Agreement, Dean has been a Health Inspector since 2004. He was appointed a constable by the City's Mayor in 2005. In 2006, he was hired by Picano Constable Services, owned by fellow Health Inspector Louis Picano ("Picano") to perform private constable services. From 2006 through 2008, Dean performed constable services for private parties on approximately 193 occasions, for which he was paid a total of approximately \$3,000. In addition, during this time,

on at least six occasions, he conducted inspections in his capacity as Health Inspector on properties owned by parties for whom he performed private constable services. Section 20 of the conflict of interest law prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city, in which the same city is an interested party, of which financial interest the employee has knowledge or reason to know. The Agreement states that Dean violated section 20 on each occasion that he was paid for performing constable services for private parties pursuant to his municipal constable appointment. Section 23(b)(3) of the conflict of interest law 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 employee has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion. The Agreement states that Dean violated section 23(b)(3) on each of the at least six occasions that he conducted health inspections on properties owned by private parties for whom he had performed private constable services pursuant to his municipal constable appointment. Dean did not disclose to his appointing authority that he had previously performed constable services at properties where he was conducting health inspections. According to the Agreement, Dean claimed that Picano did not tell him that Picano had been previously notified by the Ethics Commission that section 20 prohibited Health Inspectors from also holding City constable positions, unless the constable work was part of their Health Inspector duties and they did not receive additional compensation for performing constable services, and that performing health inspections of properties owned by private parties for whom they performed constable services violated section 23(b)(3). Dean claimed that Picano advised Dean that it was proper for Dean to perform constable services.

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0001

IN THE MATTER OF  
BRIAN LAUMANN

**DISPOSITION AGREEMENT**

The State Ethics Commission and Brian Laumann ("Laumann") enter into this Disposition Agreement pursuant to Section 5 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 20, 2009, 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 Laumann. The Commission has concluded its inquiry and, on September 18, 2009, the Commission found reasonable cause to believe that Laumann violated G.L. c. 268A, §§ 23(b)(2) and 23(b)(3).

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

**Findings of Fact**

1. At all relevant times, Laumann was a correction officer at the Norfolk County Sheriff's Office ("NCSO"). As such, Laumann was a county employee as that term is defined by G.L. c. 268A, § 1(d).

2. As a correction officer, Laumann had supervision over inmates.

3. In or about December 2003 and/or early 2004, Laumann offered to purchase inmate Paul McDermott's house ("McDermott's house").

4. Laumann offered to pay off the approximately \$200,000 in outstanding mortgages on McDermott's house and give McDermott's wife \$10,000 to \$20,000 in cash.<sup>1/</sup>

5. In February 2004, Laumann purchased McDermott's house by paying off the approximately \$200,000 in outstanding

mortgages but gave McDermott's wife only \$5,000 at the closing.

6. According to Laumann, he spent approximately \$20,000 in repairs to McDermott's house.

7. In 2003 and 2004, the NCSO regulations prohibited correction officers from contacting or associating with inmates or any member of an inmate's family except as required by the correction officers' assigned duties.

8. Purchasing McDermott's house was not part of Laumann's assigned duties.

9. At the time that he purchased McDermott's house, Laumann knew that Paul McDermott was an inmate of the NCSO.

10. Laumann did not disclose his purchase of McDermott's house to his superiors at the NCSO.

11. On May 24, 2004, Laumann sold McDermott's house for \$289,000.

**Purchase of McDermott's House**

**Conclusions of Law**

Section 23(b)(2)

12. General Laws chapter 268A, § 23(b)(2) prohibits a county 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.<sup>2/</sup>

13. The opportunity to purchase McDermott's house without having to compete on the open market was a privilege.

14. The privilege was unwarranted because (1) it violated the NCSO regulations prohibiting contact or association with inmates or their relatives outside of the employee's assigned duties, and (2) as a correction officer where McDermott was an inmate, Laumann's solicitation of a private commercial relationship with McDermott and/or his wife was inherently coercive.<sup>3/</sup>

15. The privilege was of substantial value because the opportunity to purchase the house without having to compete for it on the open market was a benefit worth \$50 or more.

16. By soliciting this purchase from an inmate under his supervision as a correction officer, Laumann used his official position as a correction officer to secure this unwarranted privilege.

17. The unwarranted privilege was not available to similarly situated individuals.

18. By using his official position as an NCSO correction officer to purchase McDermott's house as described above, Laumann knowingly, or with reason to know, used his official position to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals. Therefore, Laumann violated § 23(b)(2).

19. Section 23(b)(3) prohibits a county 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.

20. Laumann was poised to act in his official capacity regarding Paul McDermott while and after negotiating the purchase McDermott's house.

21. Therefore, Laumann knowingly or with reason to know, acted in a manner that would have caused a reasonable person knowing all of the facts to conclude that Paul McDermott could unduly enjoy Laumann's favor in the performance of his official duties and/or that Laumann was likely to act or fail to act as a result of kinship, rank, position or undue influence of Paul McDermott.

22. By failing to submit a written disclosure to his NCSO superiors that the purchase of McDermott's house was (1) entirely voluntary and, (2) initiated by Paul McDermott, Laumann violated § 23(b)(3). *See Commission Advisory 92-7. See supra note 3.*

Purchase of McDermott's House at Less Than the Agreed Upon Price.

## Conclusions of Law

### Section 23(b)(2)

23. The opportunity to purchase McDermott's house for less than the agreed to price was a privilege.

24. The privilege was unwarranted because Laumann used the power of his position as a correction officer to force McDermott and/or his wife to accept \$5,000, rather than the \$10-\$25,000 that he had agreed to pay.

25. The difference between what Laumann agreed to pay and what he paid was of substantial value, \$50.00 or more.

26. The unwarranted privilege was not available to similarly situated individuals.

27. By using his official position as an NCSO correction officer to pay less than he had promised for McDermott's house as described above, Laumann knowingly, or with reason to know, used his official position to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals. Therefore, Laumann violated § 23(b)(2).

In view of the foregoing violations of G.L. c. 268A by Brian Laumann, 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 Brian Laumann:

(1) that Brian Laumann pay to the Commission the sum of \$ \$6,000 as a civil penalty for violating G.L. c. 268A, §§ 23(b)(2) and (b)(3); and

(2) that Brian Laumann 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:** January 6, 2010

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<sup>1/</sup> There are different recollections as to the amount of the offer but they range from \$10,000 to \$20,000.

<sup>2/</sup> Chapter 268A of the General Laws was amended by 2009 Mass. Acts 28. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A as amended.

<sup>3/</sup> In Commission Advisory 92-7, the Commission recognized the inherently coercive nature of these types of relationships stating: "We now clarify that a public employee's private business relationship with a subordinate employee, a vendor whose contract he supervises, or a person or entity within his regulatory jurisdiction, violates s. 23, unless (1) the relationship is entirely voluntary; (2) it was initiated by the person under the supervisory employee's jurisdiction; and (3) the supervisory employee's public written disclosure under s. 23(b)(3) states facts clearly showing elements (1) and (2). Thus, failure to meet elements (1) or (2) will violate s. 23(b)(2); failure to make the disclosure required by (3) will violate s. 23(b)(3)."

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0005**

**IN THE MATTER OF  
SUSAN BAILEY,**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Susan Bailey ("Bailey") enter into this Disposition Agreement pursuant to Section 5 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 September 18, 2009, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into alleged violations by Bailey of G.L. c. 268A, the conflict of interest law. The Commission has concluded its inquiry

and, on February 19, 2010, found reasonable cause to believe that Bailey violated G.L. c. 268A.

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

**Findings of Fact**

1. Bailey was appointed Palmer Public Schools ("PPS") Director of Food Services in September 2005, and is still employed in that capacity.

2. As Director of Food Services, Bailey's duties include ordering the PPS's food from various vendors.

3. ConAgra Foods, Inc. ("ConAgra") is a packaged-food business and has been a PPS vendor since 2003.

4. Since at least 2006, ConAgra has offered promotions through which its customers could obtain various prizes based on the type and quantity of food purchased.

5. To receive the prizes, customers were required to complete a form indicating (a) the type and quantity of food previously purchased or to be purchased, and (b) the prizes desired.

6. On or about November 15, 2006, Bailey, in her capacity as Food Service Director, completed, signed and submitted two forms to ConAgra on which she noted the type and quantity of PPS food previously purchased from ConAgra and her selection of three iPod Nanos ("iPods") to be received from the company as a result of the purchases.

7. In early 2007, Bailey received the three iPods from ConAgra at her PPS office.

8. The three iPods were the property of the PPS. Bailey, however, did not turn over the iPods to the PPS. Instead, she kept them for her personal purposes.

9. On or about April 3, 2007, Bailey, in her capacity as Food Service Director, completed, signed and submitted one additional form to ConAgra on which she noted the type and quantity of PPS food previously purchased from ConAgra and her selection of three iPods to

be received from the company as a result of the purchases.

10. Shortly thereafter, Bailey received these three additional iPods from ConAgra at her PPS office.

11. These three additional iPods were the property of the PPS. Bailey, however, did not turn over these iPods to the PPS. Instead, she kept them for her personal purposes.

12. Each of the six iPods described above had a retail value of at least \$150 in 2006-2007, for a total value of at least \$900.

### **Conclusions of Law**

13. As Palmer School Department Director of Food Services, Bailey is a municipal employee as defined in c. 268A, § 1(g).

#### *Section 23(b)(2)*

14. Section 23(b)(2) prohibits a public 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 of substantial value not properly available to similarly situated individuals.<sup>1/</sup>

15. The takings by Bailey of the iPods for her personal purposes were privileges.

16. The privileges were unwarranted because the iPods were awarded by ConAgra to the PPS pursuant to school department food orders and, therefore, the iPods did not belong to Bailey.

17. The unwarranted privileges were not properly available to similarly situated individuals.

18. The privileges were of substantial value as evidenced by the fact that the value of each iPod during the relevant time period was at least \$150.

19. Bailey used her official position to obtain these unwarranted privileges by, as PPS Director of Food Services, signing and submitting the promotional forms as the PPS Food Service Director.

20. Therefore, Bailey violated § 23(b)(2).

### **Resolution**

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

- (1) that Susan Bailey pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2);
- (2) that Susan Bailey pay to the Palmer Public Schools the sum of \$900 as payment for the six iPods; and,
- (3) that Susan Bailey 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 the terms and conditions contained in this Agreement.

**DATE:** February 23, 2010

<sup>1/</sup> G.L.c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(i) of G.L. c. 268A, as amended.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0006**

**IN THE MATTER OF PRISCILLA BAEZ**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Priscilla Baez (“Baez”) enter into this Disposition Agreement pursuant to Section 5 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 July 17, 2009, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into Baez' possible violations of the conflict of interest law, G.L. c. 268A. The Commission concluded its inquiry and, on December 18, 2009, found reasonable cause to believe that Baez violated G.L. c. 268A, § 19.

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

### **Findings of Fact**

1. Baez was during the time relevant an elected City of Lawrence School Committee member. As such, Baez was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

2. As of August 21, 2008, Baez' brother was employed by the Lawrence School Department in the position of Urban Affairs Liaison at a salary of \$54,105.

3. On August 21, 2008, the Lawrence School Superintendent sought approval from the School Committee to create the paid position of Special Assistant to the Superintendent ("Special Assistant position").

4. The Superintendent planned to hire Baez' brother into the Special Assistant position and eliminate the Urban Affairs Liaison position.

5. On August 21, 2008, Baez knew that the Special Assistant position was being created for her brother.

6. On August 21, 2008, Baez voted as a School Committee member to approve the Special Assistant position.

7. On September 11, 2008, Baez voted as a School Committee member for final approval and adoption of the Special Assistant position.

8. When Baez voted on August 21 and September 11, 2008, she knew that the salary of the Special Assistant position would be likely higher than the Urban Affairs Liaison position.

9. On September 30, 2008, the Lawrence School Superintendent hired Baez' brother for the Special Assistant position at a salary of \$69,104.

### **Conclusions of Law**

10. Except as otherwise permitted by exemptions to the section,<sup>1/</sup> § 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2/</sup> as such an employee in a particular matter<sup>3/</sup> in which, to his knowledge, he or an immediate family member<sup>4/</sup> has a financial interest.<sup>5/</sup>

11. The request for approval of the Special Assistant position was a particular matter.

12. Baez, as a Lawrence School Committee member, participated in that particular matter by twice voting to approve the job description for the Special Assistant position.

13. Baez' brother is a member of Baez' immediate family.

14. Baez' brother had a financial interest in the particular matter because it involved a paid position that was being created for him with a salary that was likely higher than his Urban Affairs Liaison position.

15. At the time of her participation, Baez knew that her brother had a financial interest in the particular matter.

16. Accordingly, by participating in the particular matter concerning the Special Assistant position that the Lawrence School Superintendent had created for Baez' brother, Baez violated § 19.

In view of the foregoing violation of G.L. c. 268A by Baez, 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 Baez:

1. that Baez pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 19; and,

2. that Baez 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:** February 24, 2010

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<sup>1/</sup> None of the exemptions applies.

<sup>2/</sup> "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).

<sup>3/</sup> "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).

<sup>4/</sup> "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

<sup>5/</sup> "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*.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0007**

**IN THE MATTER OF  
JEFFERY FISCHER**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Jeffrey Fischer ("Fischer") enter into this Disposition Agreement pursuant to Section 5 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 April 17, 2009, 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 Fischer. The Commission concluded its inquiry and, on December 18, 2009, found reasonable cause to believe that Fischer had violated G.L. c. 268A, § 21A.

The Commission and Fischer now agree to the following findings of fact and conclusions of law.

**Findings of Fact**

1. The Plymouth Development Corporation ("PDC") is a legislatively created body designed to, among other charges, develop, manage and operate public facilities and infrastructure necessary to improve the town's economy.

2. In 2005, the PDC hired Central Parking System to manage Plymouth's parking program (the "parking program").

3. As of January 2007, Fischer was a member of the PDC's board of directors.

4. At its meeting of May 22, 2007, the PDC voted (1) not to renew Central Parking System's contract, which was due to expire on June 30, 2007, and (2) to investigate whether it could hire one of its directors to manage the parking program.

5. On June 22, 2007, the PDC's legal counsel requested advice from the Ethics Commission's Legal Division, as to whether a PDC director could accept a temporary position under the supervision of the PDC. The Legal Division advised counsel that under G.L. c.

268A, § 21A, a PDC director would not be eligible for appointment to such a position until at least 30 days after the director had resigned from the PDC.

6. After June 22, 2007, but prior to July 1, 2007, Fischer and the PDC entered into an interim agreement to appoint Fischer as the parking manager of the parking program from July 1, 2007 to September 30, 2007, for \$30,000, payable monthly in \$10,000 installments. Some time after July 1, 2007, Fischer crossed out “July 1, 2007” and wrote “August 1, 2007” on the interim agreement.

7. Fischer resigned from the PDC on June 27, 2007.

8. Fischer served as the interim parking manager from on or about July 1, 2007 to September 30, 2007, and was paid \$30,000 for that service.

**Conclusions of Law**

Section 21A

9. Section 21A of G.L. c. 268A prohibits a former member of a board from being eligible for appointment by such board to any position under the board’s supervision until the expiration of 30 days from the termination of his service as a board member.<sup>1/</sup>

10. By resigning from the PDC on June 27, 2007, Fischer became a former director of the PDC.

11. The interim parking manager position was under the supervision of the PDC.

12. Pursuant to § 21A, Fischer was ineligible for appointment to the interim parking manager position until July 27, 2007, at the earliest.

13. Fischer served as interim parking manager from on or about July 1, 2007 to September 30, 2007.

14. Therefore, Fischer, as a former PDC director, violated § 21A by accepting appointment to the interim parking manager position, a position under the supervision of the PDC, prior to the expiration of thirty days from the termination of his service as a PDC director.

**Resolution**

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

- (1) that Fischer pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A § 21A; and,
- (2) that Fischer 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:** February 25, 2010

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<sup>1/</sup> Section 21A does not apply to a town commission or board member whose appointment or election was first approved at an annual town meeting. Fischer’s appointment was not approved at an annual town meeting.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0002**

**IN THE MATTER OF  
DANIEL ROWAN**

**FINAL ORDER**

On March 29, 2010, the parties filed a Joint Motion to Suspend Proceedings and Accept Proposed Settlement (“Joint Motion”) together with a proposed Disposition Agreement. On March 30, 2010, the Presiding Officer, Commissioner Charles B. Swartwood, III, granted the Joint Motion in part, suspended the adjudicatory hearing scheduled for March 31<sup>st</sup>, and otherwise referred the Joint Motion and the

proposed Disposition Agreement to the full Commission for deliberations on April 16, 2010.

In the proposed Disposition Agreement, Respondent Daniel Rowan admits that he violated G. L. c. 268A, § 23(b)(2) and § 23(b)(3) and agrees to pay a civil penalty of \$1,500. Respondent also agrees 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 payment of the \$1,500 civil penalty. In support of the Joint Motion, the parties assert that the interests of justice, the parties and the Commission will be served by the Disposition Agreement.

WHEREFORE, the Commission GRANTS the Joint Motion. The Disposition Agreement is APPROVED. Respondent's tendered payment of the \$1,500 civil penalty for violating G. L. c. 268A, § 23(b)(2) and § 23(b)(3) is accepted. Commission Adjudicatory Docket No.10-0002, *In the Matter of Daniel Rowan*, is DISMISSED.

**DATE APPROVED:** April 16, 2010

**DATE ISSUED:** April 23, 2010

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0002**

**IN THE MATTER OF  
DANIEL ROWAN**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Daniel Rowan ("Rowan") enter into this Disposition Agreement pursuant to Section 5 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 September 21, 2007, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into alleged violations by Rowan of G.L. c. 268A, the conflict of interest

law. On May 15, 2009, the Commission concluded its inquiry and found reasonable cause to believe that Rowan violated G.L. c. 268A, §§ 23(b)(2) and 23(b)(3).

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

**Findings of Fact**

**County Employment**

1. Rowan was employed by the Plymouth County Sheriff's Department ("PCSD") from January 2005 through May 2007. Rowan was on leave from January 2007 through May 2007 and did not perform work for the PCSD during that period.

2. From January 2005 through December 2006, Rowan performed his duties as the PCSD Fleet Supervisor ("Fleet Supervisor").

3. As Fleet Supervisor, Rowan was responsible for maintaining and servicing more than 100 vehicles and pieces of farm equipment owned by the PCSD. As such, Rowan had the authority to recommend purchases of new vehicles. He also had the authority on his own to purchase certain equipment for vehicles, such as sirens and lights, in an amount up to \$500 for each item.

**Municipal Headquarters, Inc.**

4. Municipal Headquarters, Inc. ("MHQ") is a vendor of vehicles and equipment to municipalities and public agencies, including police, sheriff, and fire departments.

5. MHQ sells new vehicles to municipalities and also purchases from municipalities their used vehicles.

6. Frank Chase ("Chase") is President of MHQ and has been employed by the company for approximately 28 years.

7. During the relevant time period, MHQ had a contract with Plymouth County to provide vehicles and related equipment to the PCSD.

8. Rowan, in his capacity as the Fleet Supervisor, would occasionally purchase vehicle

equipment from MHQ, including, typically, items such as sirens and emergency lights.

9. From January 2005 to March 23, 2006, Rowan, in his capacity as Fleet Supervisor, made a number of equipment purchases from MHQ totaling at least \$2,000.

#### Crown Victoria

10. Starting in or about October 2005, Rowan began telling Chase that he was interested in privately buying a good quality used police car from MHQ for his personal use. Rowan broached the possibility of purchasing such a vehicle several times with Chase.

11. In March 2006, Chase contacted Rowan and advised him that he had a vehicle that Rowan might be interested in. The vehicle was a 1999 Ford Crown Victoria (the "Crown Victoria") previously used by a police chief. Rowan was told that the Crown Victoria had 105,802 odometer miles and a price of \$800.

12. On March 23, 2006, Rowan visited MHQ to view the Crown Victoria. Rowan was satisfied with the vehicle and reached an understanding with Chase that he could buy and take possession of the Crown Victoria that day, and also receive the bill of sale and title that day, but that he could pay for the vehicle later.

13. According to Rowan, some time after taking possession of the Crown Victoria, he gave Chase \$800 in cash as payment for the vehicle. According to Chase, MHQ never received payment for the Crown Victoria.

14. Rowan never filed a disclosure with his appointing authority at the PCSD disclosing his private business relationship with MHQ/Chase.

#### Rowan's MHQ Purchases after Taking Possession of the Crown Victoria

15. From March 23, 2006, through December 2006, Rowan, in his capacity as the Fleet Supervisor, made purchases from MHQ, including purchases of a paint job and emergency lights, which purchases totaled at least \$3,000. In addition, Rowan, as Fleet Supervisor, also had extensive interactions with Chase in or about November/December 2006 regarding a seized engine on a van that MHQ had sold to the PCSD.

## **Conclusions of Law**

16. As the PCSD Fleet Supervisor, Rowan was at all relevant times a county employee as defined in c. 268A, § 1(d).

#### 23(b)(2) Violation

17. Section 23(b)(2) prohibits a public 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 of substantial value not properly available to similarly situated individuals.

18. In *EC-COI-92-7*, the Commission stated that a public employee who has a business relationship with a vendor within his regulatory jurisdiction violates § 23(b)(2) unless (1) the business relationship is entirely voluntary; (2) it was initiated by the vendor; and (3) the employee's public written disclosure under § 23(b)(3) states facts clearly showing elements (1) and (2).

19. As a purchaser of MHQ's products and services in his capacity as the Fleet Supervisor, Rowan had a regulatory relationship with MHQ.

20. Rowan initiated the purchase of the Crown Victoria. It was not initiated by MHQ/Chase, the vendor.

21. Based on the facts as described above, it cannot be established whether the sale by MQH was entirely voluntary.

22. By obtaining the Crown Victoria under the circumstances described above, Rowan used his official position to obtain an unwarranted privilege of substantial value not otherwise available to similarly situated individuals.

23. Therefore, Rowan violated § 23(b)(2).<sup>1/</sup>

#### 23(b)(3) Violation

24. Section 23(b)(3) prohibits a public employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the relevant facts, 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.

25. Rowan, in his capacity as the Fleet Supervisor, had official dealings with MHQ as described above after he took possession of the Crown Victoria on March 23, 2006.

26. When he had official dealings with MHQ as described above after taking possession of the Crown Victoria, Rowan knew, or should have known, that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that MHQ might improperly influence or unduly enjoy his favor in the performance of his official duties, or that he was likely to act or fail to act as a result of kinship, rank, position or undue influence of MHQ.

27. Rowan did not make any disclosure to his appointing authority of the above facts.

28. Therefore, Rowan violated § 23(b)(3).

#### **Resolution**

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

- (1) that Daniel Rowan pay to the Commission the sum of \$1,500 as a civil penalty for violating G.L. c. 268A, §§ 23(b)(2) and 23(b)(3), as noted above; and,
- (2) that Daniel Rowan 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 the terms and conditions contained in this Agreement.

**DATE:** April 23, 2010

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<sup>1/</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended.

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### **COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 07-0013**

#### **IN THE MATTER OF THERESA LORD PIATELLI**

Appearances: Karen Beth Gray, Esq.  
Counsel for Petitioner

Martin K. Leppo, Esq.  
Brian J. Kelly, Esq.  
Matthew Bove, Esq.  
Counsel for Respondent

Commissioners: Charles B. Swartwood, Ch.,  
Jeanne M. Kempthorne, David  
L. Veator, and Patrick J. King<sup>1/</sup>

Presiding Officer: David L. Veator

#### **DECISION AND ORDER**

#### **I. INTRODUCTION**

Petitioner, the Enforcement Division of the State Ethics Commission, alleges that Theresa Lord Piatelli, who at all relevant times was a member of the Board of Governors of Quincy College, a municipal agency, violated the conflict of interest law by actions taken with respect to two of her relatives, her cousin, John Farrell, and her brother, Daniel Lord. Piatelli, an attorney, represented her cousin, John Farrell, in civil and criminal matters. In 2001, as part of a plea bargain, Piatelli asked the President of the College, Sean Barry, to arrange to have Farrell do 200 hours of community service at Quincy College. Petitioner alleges that on June 3, 2002, Piatelli asked President Barry to write a letter to the court misrepresenting that Farrell had completed his community service when in fact he had not completed it. With respect to this latter request, Petitioner alleges that Piatelli violated §§ 17(c), 23(b)(2) and 23(b)(3). Piatelli denies the allegations and contends that she

asked for a letter stating the accurate status of Farrell's community service.

In addition, Petitioner alleges that in the spring of 2003, Piatelli imposed upon President Barry to hire her brother, Daniel Lord, to a position in the College's enrollment department for which he was not qualified. About two months after Barry hired her brother to the position, Lord was transferred from the Quincy campus to the Plymouth campus of the College. Petitioner alleges that Piatelli again imposed upon President Barry to transfer her brother back to the Quincy campus in the position of Allied Health Staff Specialist. Petitioner alleges that in taking these actions, Piatelli violated G.L. c. 268A, §§ 19, 23(b)(2) and 23(b)(3). Piatelli counters that, as a Board of Governors member, she did not engage in any conduct or use her position to seek any advantage for her brother, and she denies the allegations.

## II. PERTINENT PROCEDURAL HISTORY

Petitioner issued the Order to Show Cause in this matter on May 2, 2007. An adjudicatory hearing commenced on March 11, 2009.

On April 1, 2009, Piatelli filed a motion for summary decision dismissing the alleged violations of G.L. c. 268A, § 23(b)(2) and § 23(b)(3) regarding John Farrell. The motion did not seek dismissal of the § 17(c) allegation with regard to Farrell. The Presiding Officer reserved the motion for consideration by the full Commission. *See* 930 CMR 1.01(6)(f). Piatelli renewed the motion at the end of Petitioner's case in chief, and the Presiding Officer again reserved decision.

The adjudicatory hearing concluded on May 26, 2009. A motion to allow Petitioner to file an Amended Order to Show Cause ("Amended OTSC") was allowed on November 4, 2009. The Amended OTSC corrected certain language in the allegations regarding Farrell to conform to the evidence.

In rendering this Decision and Order, each undersigned member of the Commission has considered the testimony, the evidence in the public record and the arguments of the parties.

## III. FINDINGS OF FACT AS TO PIATELLI'S CONDUCT REGARDING HER COUSIN

1. Piatelli was a member of the Quincy College Board of Governors ("BOG") from 1994 to 2006, and its Chair from 1998 forward. The BOG hires and fires the President of the College. Piatelli also is an attorney.

2. John Farrell is Piatelli's first cousin. Farrell retained Piatelli as his attorney in relation to an indictment in the Norfolk Superior Court on criminal charges and in subsequent civil suits from 1997 through 2001. The criminal case was resolved with a plea bargain on January 8, 2001. Among other conditions, the plea bargain included 60 days in the house of correction, which was suspended for two years subject to probation with conditions that included the performance of 200 hours of community service.

3. Piatelli called Sean Barry,<sup>1/</sup> President of Quincy College, from the court and arranged to have Farrell do community service at the College. On January 12, 2001, Piatelli sent a letter to the office of the Massachusetts Attorney General confirming this arrangement.

4. After the court appearance, Piatelli did not hear from Farrell because he was angry about the amount of her legal bill.

5. At the end of May or beginning of June, 2002, John Farrell received a letter from Joan Rockett at the Probation Department of the Norfolk County Superior Court notifying him that he had to appear at the probation department or the court on a specific date. Because he was recovering from back surgery, Cindi Farrell, John's wife, dropped off the letter at Piatelli's office, left a message that John could not make the court appearance and asked Piatelli to get another date. Piatelli called Rockett on June 3, 2002 to ask if she could give Farrell another date. In the same conversation, Rockett asked Piatelli if she knew if Farrell had completed his community service. Piatelli then called Sean Barry at the College.

6. On June 3, 2002, Piatelli sent a letter to Rockett, with a copy to John Farrell. The letter stated: "This is to confirm our telephone conversation of earlier today, wherein you had advised that you were looking for confirmation of Mr. Farrell's community service at Quincy College. I understand from speaking with President Sean Barry that you will be receiving that confirmation within the next few days."

7. Sean Barry wrote a letter on Quincy College stationery dated the same day, June 3, 2002, to Rockett at the Norfolk Superior Court. The letter states, "I understand that Mr. John T. Farrell III has, since February 2001, performed more than 200 hours of service, as community service, to the college on matters related to our technology systems. I understand that this information will be helpful to you."

8. Piatelli received and read the letter from Barry to the court.

9. Farrell did not in fact begin or complete 200 hours of community service at Quincy College, either before June 3, 2002 or at any time thereafter. Farrell had a conversation with Barry in which Barry indicated that his community service would consist of basic set-up of computers and cabling, and that Barry or someone else would get back to him. Farrell left two messages, and received no response. He had one further short phone call with Barry, and no one from the College followed up.

10. Farrell's probation was terminated and the case against him was closed on March 20, 2003.

#### **IV. CONCLUSIONS OF LAW AS TO PIATELLI'S CONDUCT REGARDING HER COUSIN**

A. Piatelli violated § 17 by acting as attorney for her cousin, John Farrell, in seeking certification from the College President about his community service for the College.

Section 17(c) prohibits a municipal employee from acting as attorney for someone other than the municipality in connection with a particular matter in which the municipality or a municipal agency is a party or has a direct and substantial interest. Petitioner has proved that Piatelli violated § 17(c) by acting as attorney for her cousin in seeking certification from President Barry that Farrell had performed community service at the College.

As a BOG member, Piatelli was a municipal employee of the City of Quincy for purposes of the conflict of interest law. Having just spoken to the Probation Department on behalf of Farrell in her capacity as Farrell's attorney, Piatelli continued to act in her capacity as his attorney

when she called President Barry to ask for a letter about Farrell's community service, a condition of Farrell's probation. Piatelli does not dispute that she made that call.

Barry, acting as College President, previously had agreed with Piatelli that Farrell could complete his community service requirement at the College. The College, a municipal agency, was a party to the agreement. In addition, the community service to be performed by Farrell had a value to the College since the College would receive the benefit of his services at no cost. Accordingly, we find that Piatelli, acting as attorney for Farrell, violated § 17 when she represented the interests of her client in seeking certification from Barry of Farrell's community service obligation.

B. Petitioner has not proved that Piatelli violated § 23(b)(2) by her conduct regarding her cousin.

Under § 23(b)(2), a municipal employee may not, knowingly or with reason to know, use or attempt to use his official position to secure for himself or others an unwarranted privilege or exemption of substantial value which is not properly available to similarly situated individuals. Petitioner alleges that Piatelli "told the President to write a letter stating that her cousin had completed the community service at the College, even though her cousin had not yet performed the work." The allegation is that, "by asking her subordinate to write a letter misrepresenting that her cousin had performed community service work at the College, Piatelli knowingly or with reason to know used her BOG chairperson position to secure for her cousin an unwarranted privilege of substantial value that was not properly available to similarly situated individuals."

There is no question that Farrell received an unwarranted privilege. Farrell indisputably never performed the community service, but the letter that President Barry wrote to the probation department indicated that he had completed it.<sup>2/</sup> The false information in the letter enabled Farrell to meet a condition of his probation.

We are unable to find, however, that it was more likely than not that Piatelli asked Barry to misrepresent the facts about Farrell's community service. The only account we have of the request Piatelli made to Barry about the community

service is Piatelli's, and she testified that she told Barry "they're looking for a letter or some confirmation that this has either happened or is going to happen..." Petitioner challenges Piatelli's credibility, contending that Barry would not have written a false statement to the probation department unless Piatelli had asked him to do so. The fact that Barry's statement in his letter to Rockett was untrue and gave Piatelli's client what he needed does not necessarily prove that instead of requesting a status report, Piatelli actually requested what Barry wrote, however. Petitioner has not presented sufficient evidence to persuade us that Piatelli was not credible or that Barry did not give a false report of the actual status of Farrell's community service of his own accord.

Petitioner has not proved by a preponderance of the evidence that Barry made the misrepresentation at Piatelli's instruction, and therefore has not proved a violation of § 23(b)(2) with respect to Piatelli's conduct regarding her cousin. Whether Piatelli was professionally obligated once she received Barry's letter to inquire into whether Farrell had completed his community service is not an issue before this Commission.

C. Petitioner has not proved that Piatelli violated § 23(b)(3) by her conduct regarding her cousin.

Petitioner alleges that, "[b]y asking her subordinate to write a letter misrepresenting that her cousin had performed community service work at the College, Piatelli knowingly or with reason to know acted in a manner which would cause a reasonable person, knowing all the facts, to conclude that her cousin could improperly influence or unduly enjoy her favor in the performance of her BOG duties or that she was likely to act as a result of her relationship with her cousin and/or undue influence from him." (Emphasis added).

Petitioner has not proved that Piatelli violated § 23(b)(3) for two reasons. First, as discussed above, the evidence does not prove that Piatelli asked Barry for a letter misrepresenting that her cousin had performed community service work at the College. Second, there was no evidence that Piatelli performed any official duties as a BOG member in relation to her cousin's community service. While Piatelli served on the BOG, the BOG had never

addressed any issue about anyone's community service at the College. Accordingly, the § 23(b)(3) allegation with respect to Piatelli's conduct as to her cousin was not proved.

D. Respondent's Motion for Summary Decision

In light of the foregoing findings that Petitioner did not prove that Piatelli violated § 23(b)(2) or § 23(b)(3) through her conduct in relation to her cousin, Respondent's Motion for Summary Decision Dismissing the Alleged Violations of G.L. c. 268A, §23(b)(2) and § 23(b)(3) Regarding John Farrell is moot.

**V. FINDINGS OF FACT AS TO PIATELLI'S CONDUCT REGARDING HER BROTHER**

1. In the spring of 2003, Piatelli's brother, Dan Lord, called her because he had seen advertisements for three entry-level positions at Quincy College and wanted to know if it would be a conflict if he were to apply for a job at the college. Piatelli told him that she would find out and get back to him.

2. About a day later, Piatelli called President Barry and asked if it would be a problem for him if her brother were to apply for an entry-level position. Barry had previously told Piatelli that over the years, Daniel Raymondi, who was another member of the BOG and also a City Councilor, had forced him to hire people, including Raymondi's friends, clients and campaign workers, whom Barry considered unqualified. Piatelli told Barry that she "did not want to be perceived as one of those people" who hampered him this way.

3. Piatelli held a position superior to Barry and a leadership position within the Board of Governors, and had joint responsibility for decisions about hiring or firing him as President.

4. Piatelli promoted her brother's interests during the telephone call with Barry by telling Barry that her brother had graduated from Harvard (in fact, he had graduated from the Harvard Extension School), and that he "had the same passion and belief in affordable educational opportunities" that Piatelli herself had.

5. Piatelli's brother's suitability for the enrollment specialist position was a topic of

Piatelli's discussion with Barry, and Barry said that he thought her brother would be "a good fit for the position."

6. After her call with Barry, and at Barry's suggestion, Piatelli called Daniel Raymondi. Raymondi had no responsibility for the hiring process as a fellow member of the BOG, but was influential at the College and in relation to Barry.

7. Piatelli told Raymondi that her brother had recently graduated from Harvard but was having difficulty finding a career, and the college position would be a good fit. Piatelli said she wanted this position badly for her brother, and that she had dedicated an awful lot of time and service on behalf of the college, and her day had come. Piatelli wanted Raymondi to talk to Barry about it.

8. Piatelli also called Thomas DeSantes, who was vice president of marketing and, like Barry, held a position subordinate to Piatelli. DeSantes had responsibilities directly related to the hiring process. DeSantes was "a bit surprised" by the call because it was rare that members of the BOG would call him. According to DeSantes, Piatelli "wanted to discuss her brother's candidacy. She was basically putting in a good word for him telling me that he was a good guy and actually at that time I had learned that he had actually gone or graduated from the college and it had given him a good stepping stone for his education and he wanted to give back and do something for the college." DeSantes told President Barry about this conversation.

9. DeSantes updated the job description, wrote the ad and chose three members of a search committee for the enrollment specialist position. He saw Lord's resume and did not think Lord was qualified for the position.

10. DeSantes had conversations with President Barry at this time. As a result of these conversations, DeSantes and a member of the search committee, Michael Collins, added Lord to the interview pool because they "understood Lord would be getting a position and he had to be part of the process so we could put him in."

11. Beverly Furtado was on the search committee. When Furtado reviewed Lord's resume, and again later when she interviewed Lord, she did not think he was qualified for the

position, and neither did the other members of the search committee, including Michael Collins. In both instances, however, Collins passed him on to the next stage of the hiring process. When Furtado learned from Collins that Lord was related to Piatelli, she understood why they were calling him in.

12. DeSantes interviewed the final candidates. During his interview with Lord, he did not talk about qualifications because "I didn't believe it was relevant because I knew him to be getting the position."

13. The President hired Lord on May 2, 2003. Lord was appointed at a yearly salary of \$32,186.

14. On May 27, 2003, Piatelli, as Chair of the BOG, signed a new employment contract for Barry with a term from July 1, 2003 to June 30, 2007. This contract superseded a previous contract, which was due to expire on June 30, 2004. Because there still was one year left on Barry's contract, the renewal of the contract was voluntary rather than required.

15. Shortly after Lord was hired, DeSantes transferred Lord to an enrollment specialist position on the Plymouth campus because he "didn't want it to be so glaring that the Chair's brother was working on the Quincy campus."

16. There were subsequent communications about transferring Lord back to a position on the Quincy campus. On June 17, 2004, DeSantes wrote a memorandum to Lord to let him know about his transfer status. The memorandum stated, "Due to unforeseen developments and circumstances beyond my control your reassignment to the Quincy campus office of admissions/ advising has been delayed. I anticipate a move in September. In the meantime you shall remain at the Plymouth campus. I apologize for any inconvenience."

17. There is contradictory testimony about whether Lord even sought a transfer back to the Quincy campus. DeSantes testified that he "knew from Lord" that Lord wanted to move from Plymouth to Quincy. He also testified that Collins, who handled new postings, told him that Lord had been letting him know he wanted to move. The first statement is vague and undetailed; the second is totem pole hearsay. Lord, for his part, testified that he never had any

communications with DeSantes, Barry or Piatelli about wanting to be moved to the Quincy campus, and that “it just came as a surprise to me” when he received DeSantes’ June 17, 2004 memorandum talking about the transfer.

18. A memorandum dated July 26, 2004 to Lord stated that Lord would be transferred to the Quincy campus in October 2004. The memorandum stated further, “I want to stress the need for you to indulge me this time and to apply no further pressure upon me regarding your assignment.” While DeSantes testified that he wrote the memorandum, DeSantes’ assistant secretary testified that he told her at the time that Barry was the actual author.

19. On February 28, 2005, Barry notified Lord that he would be reassigned to the Allied Health Office at the Quincy campus, effective April 4, 2005. This was a new position.

## **VI. CONCLUSIONS OF LAW AS TO PIATELLI’S CONDUCT REGARDING HER BROTHER**

### **A. Piatelli violated § 23(b)(2) by using her superior position as BOG Chair to influence the College president to hire her brother.**

Petitioner alleges that by asking the College President, a subordinate, to hire her brother, Piatelli knowingly or with reason to know used her position as Chair of the BOG to secure a position at the College for her brother. Allegedly, this was an unwarranted privilege not properly available to similarly situated individuals because Lord got the job despite the fact that a search committee and a hiring manager determined that he was not qualified for the position. We agree that Piatelli violated § 23(b)(2) with regard to the hiring of her brother.

#### *1. Municipal employee*

It is undisputed that, at all relevant times, Piatelli was a member of the Board of Governors of Quincy College, and therefore a municipal employee for purposes of the conflict of interest law.

#### *2. Knowing use of position*

Piatelli’s own statements about her conversation with Barry provide sufficient basis

for a finding that Piatelli knowingly used her position as a BOG member to influence Barry to give a job to her brother. After learning from her brother of his interest in the Quincy college positions, Piatelli contacted President Barry and advocated for her brother’s candidacy by telling him of her brother’s educational achievements and goals. Piatelli acknowledged that Barry stated during the conversation that her brother would be “a good fit for the position,” indicating that his fitness was a subject of discussion between them. Piatelli’s admitted reference during her conversation with Barry to Raymondi’s behavior in forcing Barry to hire unqualified people makes it clear that she was conscious of her superior position and the influence she had as a BOG member in relation to Barry.

Furthermore, the context in which this conversation took place was that Barry had an even greater incentive than usual to cater to the BOG members’ wishes: as Piatelli knew, Barry’s upcoming contract renewal made it unlikely that he would fail to take her wishes into account. In sum, the evidence amply demonstrates that Piatelli knowingly used her position as Chair of the BOG to influence Barry’s decision about hiring her brother.

#### *3. Unwarranted privilege*

The evidence also shows that as a result of Piatelli’s use of her position, her brother received an unwarranted privilege. Although a search committee and DeSantes considered Piatelli’s brother not to be qualified for the position of enrollment specialist, he nonetheless was interviewed and hired, thereby obtaining an unwarranted privilege.

#### *4. Substantial value of privilege*

Appointment to the enrollment specialist position was a privilege, and the privilege was of substantial value, i.e., worth \$50 or more. See *Comm. v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976), *EC-COI-89-32*.

#### *5. Privilege not properly available to similarly situated individuals.*

Collins, DeSantes and, apparently, Barry kept Lord in consideration and Barry eventually hired him despite the fact that he was considered unqualified for the position. This was an

advantage that other unqualified applicants did not receive.

In sum, Petitioner has met the burden of proving that Piatelli violated § 23(b)(2) by using her position as BOG Chair to impose upon Barry to hire her brother.

B. Petitioner did not prove that Piatelli violated § 23(b)(2) with regard to the transfer of her brother.

Petitioner alleges that Piatelli used her position by repeatedly asking President Barry and Vice President DeSantes to transfer her brother back to the Quincy campus. Petitioner alleges that Lord consequently received an unwarranted privilege of substantial value not properly available to similarly situated individuals because when Barry transferred him back to a position in the Allied Health Office at higher pay, the transfer was not on the merits of his application or performance, but as a result of Piatelli's position and advocacy.

Where witnesses on both sides are credible, the Petitioner has not satisfied the preponderance of the evidence standard. "The Petitioner cannot prevail 'if the question is left to guess, surmise, conjecture or speculation, so that the facts established are equally consistent [with no violation as with a violation]'. *In re Kinsella*, 1996 SEC 833, 835, quoting *Tartas' Case*, 328 Mass. 585 (1952). If the Commission finds that some testimony was credible and some was not credible, the Commission is required to provide a reason or explanation for so finding. *Kinsella*, 1996 SEC at 835.

The evidence that Piatelli advocated for her brother's transfer is either slight or insufficiently reliable, and it is contradicted by Piatelli. Raymondi testified that he knew from Barry, DeSantes, other individuals and Piatelli that Piatelli had conversations with Barry at the time "about her brother's employment at Quincy College." This was the only evidence that Piatelli spoke with Barry. Raymondi's testimony constitutes double hearsay, and does not even include anything anyone told him about what Piatelli purportedly said to Barry. Piatelli, meanwhile, testified that she refused to speak with Barry about the transfer.

Raymondi testified that Piatelli participated in a vote on the budget to create a retention

position and told him her brother would be a good fit for the position, but Raymondi could not remember the name of the position or who got the position. Piatelli testified that she was not present for any votes of the BOG involving her brother's position or department. No documentary evidence was introduced about the vote. Raymondi's testimony was too vague and unspecific to be reliable, and is not more credible than Piatelli's denial that she voted.

With regard to the two memoranda from DeSantes about Lord's transfer, the reference in the July 26, 2004 memorandum to "pressure" is to pressure imposed by Lord. The memorandum makes no reference to pressure imposed by Piatelli. DeSantes explained that, by "pressure," DeSantes meant that "it was another way of me letting him know that I really didn't have a hand in it and I just wanted it to stop." This comment, as well, is about pressure from Lord rather than Piatelli. The credibility of DeSantes' statement about pressure on him is undermined by his former secretary's detailed testimony that it was Barry, not DeSantes, who wrote the "pressure" memorandum. The memorandum, whose authorship is in doubt, does not prove by a preponderance of the evidence that Piatelli used her position to secure a transfer for her brother.

DeSantes testified that in the fall of 2004 or winter of 2005, he received a call from Piatelli, who wanted to know why the President had not moved her brother. His testimony about this one telephone call is contradicted, however, by Piatelli's statements that it was DeSantes who initiated any conversation they had about her brother's transfer, and that she told DeSantes she was not interested in discussing her brother's employment.

On balance, the evidence with regard to Lord's transfer is contradictory, and there is insufficient reason to credit Petitioner's witnesses rather than Piatelli's. Petitioner has not proved by a preponderance of the evidence that Piatelli used her position to influence Barry to transfer her brother back to a job on the Quincy campus.

C. Petitioner has not proved that Piatelli violated § 19 through her conduct regarding her brother.

Section 19 prohibits a municipal employee from participating "as such an employee" in a

particular matter if an immediate family member has a financial interest in the matter. In G.L. c. 268A, § 1(j), “participate” is defined to mean “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.” Under § 19(b)(1), an appointed municipal employee may file a disclosure and seek authorization from his appointing authority to exercise his responsibility or authority as he ordinarily would, notwithstanding a financial interest.

Petitioner alleges that Piatelli violated § 19 by asking the College President to hire her brother. A § 19 violation, however, requires participation as a municipal employee in agency action or a particular matter. Piatelli testified that the authority of the BOG “is limited to policy making decisions only, not day-to-day operations of the college.” Although she used her clout as a BOG member in her conversation with Barry, and violated § 23(b)(2) by doing so as discussed above, she was not acting on behalf of the BOG or with its authority when she touted her brother’s qualifications for an entry-level position.<sup>3/</sup>

Piatelli’s involvement in the hiring process was limited to at most three conversations in which she spoke about her brother’s Harvard degree and passion for public service with Barry and DeSantes, who had responsibility for the hiring process, and Raymondi, who did not. While she clearly communicated her preference and will be held accountable for using her position to influence Barry’s hiring decision, as a BOG member she made no decisions and played no part in the College’s formal process of determining the qualifications for the enrollment specialist position, screening or interviewing applicants or making the final selection. Accordingly, we find that her conduct did not amount to substantial participation as a municipal employee in agency action or a particular matter.

Petitioner also alleges that Piatelli violated § 19 by asking Barry and DeSantes to transfer her brother back to the Quincy campus. As already discussed above, the evidence is not sufficient to prove by a preponderance of the evidence that she advocated for the transfer. In addition, while Raymondi testified that Piatelli took action as a

BOG member by voting to create a position for her brother in the budget, that evidence, as stated previously, was insufficiently reliable to prove a violation.

D. Petitioner has not proved that Piatelli violated § 23(b)(3) through her conduct regarding her brother.

Petitioner alleges that by asking her subordinates to hire and transfer her brother, Piatelli knowingly or with reason to know acted in a manner that would cause a reasonable person, knowing all the facts, to conclude that her brother could improperly influence or unduly enjoy her favor in the performance of her BOG duties or that she was likely to act or fail to act as a result of her sibling relationship with her brother and/or undue influence from him.

Section 23(b)(3) requires that a municipal employee file a disclosure prior to performing official duties if the circumstances suggest a potential for favoritism or influence when the official duties will be performed. As discussed above, although Piatelli improperly used her position to influence her brother’s hiring in violation of § 23(b)(2), Piatelli performed no official duties as a BOG member with regard to the hiring of the enrollment specialist. Because she had no official duties, she had no obligation to alert the public that she could perform her official duties free of favoritism or influence. Piatelli therefore did not violate § 23(b)(3) by failing to file a disclosure when her brother applied for the job. There was also no reliable proof that she performed any official duties as a BOG member with regard to her brother’s transfer.

**VII. PENALTIES**

At the time of Piatelli’s violation of § 17, the maximum civil fine allowed in that provision was \$2,000 per violation. For her violation of § 17(c) by acting as attorney for her cousin, John Farrell, in seeking certification from the College President with respect to community service Farrell was to perform for the College, we assess the full penalty and order a fine in the amount of \$2,000.

Pursuant to G.L. c. 268B, § 4(j)(3), a maximum civil penalty of \$2,000 was provided for a violation of § 23(b)(2). For her violation of § 23(b)(2) by using her position as a BOG

member to influence her subordinate, President Barry, to hire her brother, Piatelli is ordered to pay \$2,000. The total penalty therefore is \$4,000.

**DATE AUTHORIZED:** April 16, 2010  
**DATE ISSUED:** April 26, 2010

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<sup>1/</sup> Commissioner Paula Finley Mangum did not participate in this matter.

<sup>2/</sup> Sean Barry died on November 16, 2006. He previously had given a sworn statement to the Enforcement Division. A motion to exclude his testimony was allowed on September 12, 2008, and both parties presented their cases without reference to his statements.

<sup>3/</sup> Piatelli has objected extensively to the introduction of Barry's letter on the grounds that it is inadmissible hearsay. The letter, which contained undoubtedly false statements, was not introduced for the truth of the matter asserted by Barry, however, but rather for the purpose of showing that Barry wrote the letter to the probation department.

<sup>4/</sup> Compare *In the Matter of George Najemy*, 1984 SEC 223 (assistant city solicitor participated as a municipal employee in a particular matter in which he had a financial interest where, with respect to a transaction in which he would become the new owner of certain real estate, he wrote a letter for a city committee on legal department stationery to instruct the assistant city treasurer to deposit a draft for insurance proceeds into an escrow account for eventual release to the new owner.)

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 09-0008**

**IN THE MATTER OF  
PAUL M. WORMSER AND  
THOMAS JEFFERSON**

Appearances: Mark Walter, Esq.  
Counsel for Petitioner

Paul M. Wormser, *pro se*

Michael J. Long, Esq.  
Counsel for Respondent Thomas  
Jefferson

Commissioners: Jeanne M. Kempthorne,  
David L. Veator, Patrick N. King,  
Paula Finley Mangum<sup>1/</sup>

Presiding Officer: Jeanne M. Kempthorne

**DECISION AND ORDER**

**I. INTRODUCTION**

Public school districts bear the weighty responsibility of determining whether and how they can address the needs of students requiring special education, and, if they cannot, whether public funds will be used to pay for alternative private education. These decisions necessarily require careful assessments in order to ensure that a student has an appropriate educational program and that limited public funding resources are committed fairly and responsibly.

Harvard Elementary School Committee member, Paul Wormser, having grown increasingly dissatisfied with the special education services recommended by Individual Education Program teams, unilaterally transferred his child from the public school district to a private school. The evidence in this adjudicatory hearing persuades us that Wormser and his subordinate, Superintendent Thomas Jefferson, violated G.L. c. 268A, § 23(b)(2) by using their official positions to engage in an unusual process that was not available to other parents of special needs students in order to secure for Wormser, at public expense, reimbursement of \$30,000 of the cost of his child's private school tuition.

We also conclude that Jefferson violated § 23(b)(3) by participating in negotiations with Wormser, his superior, without publicly disclosing that he was engaged in a financial negotiation with a school committee member. In addition, we find that Wormser violated § 23(b)(3) by failing to disclose that he was negotiating his tuition reimbursement claim with Jefferson while he participated in the school committee's evaluation of Jefferson's performance.

**II. PROCEDURAL HISTORY**

Petitioner filed separate Orders to Show Cause against James Doe (Paul Wormser), former member of the Harvard Elementary School Committee, and John Doe (Thomas Jefferson), superintendent of the Harvard Public Schools, on April 30, 2009.

The two cases were consolidated at the request of the parties on September 15, 2009.

Petitioner filed a Motion to Impound along with both Orders to Show Cause, seeking to have a closed hearing on the grounds that federal and state law prohibited disclosure of school records that would identify a student. The motion was denied on November 6, 2009, on the grounds that the interests of the public in open Ethics Commission hearings outweighed the privacy interest protected by the laws requiring confidentiality of school records. As a result of the decision, the identity of the parties was made public.

An adjudicatory hearing was held on November 12 and 13, 2009.

### III. FINDINGS OF FACT

#### A. Special education procedures

1. For a student to receive special education services, teachers, parents and others who work with a student meet to determine whether the child should be evaluated. The criteria for eligibility for special needs education services are that (1) the student has a diagnosed disability, (2) the student is not making effective academic progress, and (3) the disability is the reason that the student is not making effective progress.

2. An Individual Education Program (“IEP”) team is convened to determine if the student is eligible for special education services. In the Harvard public school system, the team typically consists of a general education teacher, the student’s parents, the student’s needs evaluators and a special education teacher. On occasion, the special education director or the superintendent attends IEP team meetings.

3. If the student is determined to be eligible, the team develops an IEP, essentially a contract among the school district, the parents and the student, identifying the services that the student will receive. The IEP includes services

to be provided both by general education teachers and by special education teachers. Team meetings are held annually to draft a new IEP, and every third year a new evaluation is performed to see if the student remains eligible. Parents also may ask to convene a team meeting at any time.

4. When a parent disagrees with an IEP, the school notifies the state Bureau of Special Education Appeals (“BSEA”). The BSEA then sends the parents a packet that includes a document which notifies parents of their rights. In 2005, it was called the Notice of Procedural Safeguards. It states,

The Department of Education encourages you to first attempt to resolve the matter with local school district officials. Contact your school principal, your Administrator of Special Education, or your superintendent to ask for assistance.

The Notice also includes information about requesting mediation or a hearing at the BSEA. Mediations can be requested at any time. Settlement conferences may be held after a request for hearing has been filed.

5. When a team determines that a student’s needs cannot be met within the district, the district is required to find an appropriate placement for the student. If the IEP team decides that an out-of-district placement is appropriate, the public school district pays 100% of the costs related to the placement.

6. Charles Horn was the special education director for the Harvard public schools from 2002 to 2008 and the out-of-district placement director for five years. Only the team could decide whether a student warranted an out-of-district placement, and Horn had no authority to override the team’s decision. Horn could decide, however, on the appropriateness of a placement.

7. The Department of Education (“DOE”) had a list of approved schools with set tuition rates. Horn would place a student in an unapproved school only if he could not find an approved placement.

8. Parents who unilaterally withdraw a student from a public school and place the student in a private school may request tuition

reimbursement from the public schools. The Notice of Procedural Safeguards advises that a parent who wants the school district to pay the private school tuition is required to give notice to the school either at a team meeting or in written form at least 10 business days before removing the child from the public school program. Federal regulations provide that a public school can reduce or deny reimbursement if a parent fails to provide such notice and requires parents to state their intention to enroll their child in private school at public expense. 34 CFR § 300.403(d)(1)(i).

9. Notice to the school prior to removal of a child gives the school a chance to conduct an evaluation and convene a team meeting or to file for a hearing with the BSEA.

10. Under federal regulations, a court or hearing officer may require a school district to reimburse the parents for the cost of enrolling a child with a disability in a private school if the court or hearing officer finds that the school district has not made a free, appropriate public education (FAPE) available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. 34 CFR § 300.403(c). The Notice of Procedural Safeguards informs parents of the need to prove their case at a due process hearing and provides that if they are successful, “the Bureau of Special Education Appeals hearing officer may require the school district to use public funds to pay for your child’s private school placement.” There is a two-year limit on retroactive reimbursement.

#### B. The 2004-2005 school year

11. Wormser served on the Harvard Elementary School Committee from April, 2004 to February, 2007. He was its chair during the 2004-2005 school year and until early April of 2006. The school committee was the appointing authority for the superintendent.

12. Mirhan Keoseian was superintendent during the 2004-2005 academic year. Wormser, as school committee chair, had regular weekly or biweekly meetings with Keoseian about general school business. At the end of several of these meetings, he raised concerns about special education services being provided to Wormser’s child at the Bromfield School pursuant to an IEP. As the year progressed, Wormser told Keoseian several times that they needed to send the student

out of district and wanted the Harvard school district to bear part of the cost. Keoseian consistently told Wormser that there were policies and procedures in place and that he had to bring the matter back to the student’s IEP team.

13. Keoseian’s understanding was that a superintendent had no authority to overrule an IEP team. During his tenure, he never had done so.

#### C. Removal of Wormser’s child from the Harvard public schools

14. An IEP meeting for Wormser’s child was scheduled for June 4, 2005. On June 3, 2005, Wormser’s wife, Helen, sent an e-mail cancelling the meeting and notifying the school district that the Wormsers were withdrawing their child from the Bromfield School and enrolling the child in Cushing Academy. The e-mail did not include any request for reimbursement of tuition.

15. Wormser’s child attended Cushing Academy beginning in the 2005-2006 academic year.

16. Cushing Academy was not a school approved by the DOE.

#### D. District-wide special education concerns

17. Jefferson took over as superintendent on July 1, 2005.

18. At the time, special education services in the school system generally, and in the Bromfield School particularly, were under criticism for significant systemic deficiencies. According to Jefferson, at Bromfield, “they had two tracks, fast and faster ... high powered academics with less supporting services available to struggling learners.”

19. In the early 2000s, the New England Association of Schools and Colleges found that, particularly in the Bromfield School, the district had problems with general education teachers incorporating modifications and accommodations for special education students. Jefferson was concerned about “a lack of buy-in” from the regular education teachers, particularly at the Bromfield School.

20. A 2002 coordinated program review (“CPR”) conducted by the DOE found 33 violations of special education protocol, including “inconsistent implementation of accommodations and modifications to students in the ninth through twelfth grade,” a lack of written notices required to be sent to parents at key junctures, and a failure to send representatives to team meetings who had authority to make decisions about expending the school district’s resources. A midcycle review completed in March, 2005 indicated that 20 of the 33 deficiencies had not been corrected. On July 13, 2005, about two weeks after Jefferson began his job as superintendent, the DOE cited “serious findings of persistent noncompliance particularly with special education laws” and threatened to withhold funding until the issues were addressed. Working together with the special education director, Jefferson immediately took steps to address the problems.

E. Jefferson’s approvals of Wormser’s requests for reimbursement

21. As school committee chair, Wormser had regular meetings, biweekly or more frequently, with Jefferson to discuss school business, as he had done with Keoseian. At the end of these meetings, Wormser asked Jefferson about reimbursing him for the cost of the Cushing Academy tuition.

22. On November 3, 2005, Wormser e-mailed Horn asking him to meet about an independent evaluation of his child that had been done and “to discuss how we can partner on providing [our child] the services that [our child] is now receiving.” To Horn, the “partner” language meant Wormser would be looking for reimbursement.

23. Horn agreed to meet on November 14, 2005, but noted that a team meeting would have to be held in order to consider the evaluation for determining the need to amend the district’s proposed IEP. A team meeting was scheduled for January 17, 2006.

25. There was a possibility that the Wormsers were going to bring their child back in to the public school system, so they needed an appropriate IEP in place. The IEP team concluded that placement at the Bromfield School was appropriate.

26. Nobody from Cushing attended the IEP meeting on January 17, 2006. Jefferson found this absence “procedurally confusing.” He also stated that “a deficiency in the process” was that the team did not include a single individual from the Harvard public schools who had taught or observed Wormser’s child or had consulted with anyone from Cushing. The student’s placement at Cushing was not discussed.

27. There was no discussion at the meeting on January 17, 2006 about reimbursement of the Cushing Academy tuition.

28. Jefferson had conducted a survey of parents who had removed their children from the public school district. On February 22, 2006, Helen Wormser sent a response to Jefferson’s out-of-district survey that identified concerns about the services her child had been receiving at the Bromfield school. In February, 2006, Jefferson met with Paul Wormser and reviewed Harvard’s IEP, evaluations, report cards and records regarding his child’s abilities and academic progress at Cushing. At some point, he checked Cushing’s website.

29. Jefferson acknowledged that accommodations and modifications included in the IEP for Wormser’s child were the types of accommodations and modifications which, based on the CPR and mid-cycle review, were not being fully carried out by the Harvard staff.

30. Jefferson received an e-mail dated March 6, 2006 from Wormser indicating that the Wormsers wanted to seek reimbursement of their child’s private school tuition. Jefferson informed Wormser that he wanted to consult with the executive director of a special education collaborative.

31. In a letter to Horn dated April 26, 2006, Wormser requested either reimbursement of the academic program annual cost at Cushing, \$19,000, or the expense that would have been incurred to provide services to his child in-district, \$15,000.

32. Wormser did not file a request for a due process hearing at the BSEA with regard to his request for reimbursement.

33. Horn conveyed Wormser’s request to Jefferson. Horn told Jefferson that he opposed

the placement of Wormser's child at Cushing. Horn objected because the IEP team at its most recent meeting in January felt they had come up with an appropriate in-district program for the student. He also told Jefferson that the Cushing Academy was not approved by the Department of Education and that if the IEP team developed a placement out of district, it would be to an approved school.

34. Horn also objected to the reimbursement because the school would be making a direct reimbursement to a school committee member, which would be difficult to explain because ordinarily they only made direct reimbursements for a summer service that the school cannot provide. Jefferson nonetheless instructed Horn to go ahead with the reimbursement.

35. Jefferson did not file a § 23(b)(3) disclosure prior to considering or approving Wormser's requests for reimbursement.

36. After Wormser requested reimbursement, Jefferson did not call another IEP team meeting and did not ask Horn to do so. He did not speak with members of the IEP team for Wormser's child or anyone at Cushing.

37. On May 22, 2006, Horn notified the district's special education attorney of the superintendent's request to draft an agreement reimbursing the Wormsers in the annual amount of \$15,000 for educational expenses beginning July 1, 2006.

38. The superintendent typically signs settlement agreements for the special education department because he is representing the school district.

39. When the first draft of the reimbursement agreement with Wormser came back from the school district's special education attorney on June 5, 2006, Jefferson's name was in the signature block. Before it was sent to Wormser, Jefferson asked Horn to put Horn's name on it instead of Jefferson's.

40. On June 8, 2006, by e-mail, Jefferson informed the Wormsers that he had approved a letter that would come from Horn regarding partial payment for their child's placement. Horn followed up with a letter to Wormser dated

June 19, 2006. A draft agreement sent on June 19, 2006 provided reimbursement of \$15,000 per year for the 2006-2007 and 2007-2008 school years.

41. A week later, on June 26, 2006, Wormser signed an evaluation of Jefferson's performance during the 2005-2006 school year. Willie Wickman, who replaced Wormser as chair in early April, 2006, prepared a composite evaluation representing the input of all five committee members, including Wormser. As a result of his performance evaluation, Jefferson received a yearly increase.

42. Wormser did not file a § 23(b)(3) disclosure before taking part in Jefferson's performance evaluation.

43. On July 11, 2006, Wormser responded to the draft agreement by writing a letter to Horn requesting reimbursement for the 2005-2006 school year as well, with a contingency for the 2008-2009 school year. Jefferson approved the addition of the 2005-2006 school year, and Horn sent Wormser another draft agreement.

44. Again, on August 15, 2006, Wormser wrote to Horn requesting an amendment including a contingency for reimbursement for his child's senior year. In an e-mail to Horn, Jefferson referred to these as "friendly amendments."

45. The attorney's final draft of the agreement dated September 18, 2006 again included Jefferson's name in the signature block. The final agreement dated September 26, 2006, however, was signed by Horn.

46. The final agreement provided for reimbursement of \$15,000 for the 2005-06, 2006-07 and 2007-08 school years, with a contingency for payment of \$15,000 for the 2008-09 school year.

47. Wormser received two checks for \$15,000 each for the 2005-2006 and 2006-2007 school years on October 2 and November 22, 2006. No further payments were made under the agreement because the Wormsers moved out of the district.

#### **IV. CONCLUSIONS OF LAW REGARDING WORMSER**

A. Wormser violated § 23(b)(2) by using his position as school committee member to secure \$30,000 in reimbursement through direct negotiations with his subordinate.

Petitioner alleges that, in violation of G.L. c. 268A, § 23(b)(2), Wormser knowingly or with reason to know, used his position as a school committee member to secure from Jefferson, his subordinate, an unwarranted privilege for himself that was not in compliance with procedural requirements and not available to similarly situated parents of special education students who had unilaterally removed their children from the school district. Wormser asserts that he made clear that he was dealing with the superintendent in his capacity as a parent, and that in approaching the superintendent, he was only doing the same thing that parents were encouraged to do.

**1. Undisputed elements**

With regard to the elements of a § 23(b)(2) violation, it is undisputed that, as a school committee member, Wormser was a municipal employee for purposes of the conflict of interest law at the time of the relevant events. In receiving \$30,000 from the school district, Wormser also indisputably secured a privilege of substantial value, i.e., having a value greater than \$50. *See Comm. v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976), *EC-COI-89-32*.

**2. Use of position**

The Commission has long recognized that because the relationship between a superior and a subordinate is inherently coercive, a superior will violate § 23(b)(2) by requesting something of personal benefit and of substantial value from a subordinate. *See In re Foresteire*, 2009 SEC 2220. For this reason, the Commission has found that a superior may not use his position to enter into a private business relationship with a subordinate, even one that is financially beneficial to the subordinate, unless the subordinate initiates the contact, the arrangement is voluntary on both sides, and the superior files a public disclosure explaining these facts. *See EC-COI-92-7*. The same principle is relevant here, where Wormser approached Jefferson directly about making a significant personal financial arrangement with him.

The evidence shows that Wormser repeatedly took advantage of official access that he had as school committee chair to superintendents under his authority to make them focus attention on his personal requests for tuition reimbursement. Both Keoseian, the prior superintendent, and Jefferson testified that Wormser repeatedly brought up concerns about, first, his child's educational needs, and, later, tuition reimbursement issues at the end of regular meetings in the superintendents' office about school district business. Wormser paid little heed to Keoseian's instruction that proper procedures had to be followed. The Commission finds that repeatedly bringing up a personal financial matter at the end of meetings about school business was an improper use of Wormser's official position – notwithstanding Wormser's claim to be changing "hats" at the end of the meetings. *See In re Travis*, 2001 SEC 1014, 1016 (Chairman of the Legislature's joint banking committee violated § 23(b)(2) where he solicited a philanthropic donation from bank executives at the end of a meeting in which banking matters were discussed).

While both Wormser and Jefferson testified that Wormser did not coerce Jefferson into making a deal or threaten punitive action if a deal was not struck, actual coercion of a subordinate need not be demonstrated to prove a § 23(b)(2) violation. The use of position by a superior where there is a danger of coercion is sufficient to establish a violation. *See EC-COI-92-7* ("... even if in fact no abuse occurs, the possibility that the public official may have taken unfair advantage of the situation can never be completely eliminated.").

**3. Knowingly or with reason to know**

Wormser did not shed his official position when, at the end of official meetings, he asked the superintendent to consider his personal request. Under similar circumstances, the Commission sent a Public Enforcement Letter to a city councilor who, after being told that the Department of Public Works would not pick up construction debris, persisted in calling the DPW about removing such debris from a two-family rental property she owned in Lawrence until finally the DPW superintendent drove to the site and ordered a crew to remove it. *See In re Marie Gosselin*, 2002 PEL 1070. The Commission explained that the city councilor's conduct "constituted a 'knowingly or with reason to

know' use or attempted use of your councilor position to request the debris pick up." *Id.* The Commission commented that her conduct would be interpreted by the staff as an implicit invocation of her official position, particularly where she persisted in asking the DPW to pick up the debris notwithstanding that the DPW informed her that their policy prohibited it, and where she, along with five other city councilors, had the power to affect the DPW budget and remove senior DPW personnel.

Similarly, Wormser had the power along with the other school committee members to evaluate and remove the superintendent, and in fact participated in an evaluation of Jefferson contemporaneously with his direct requests to Jefferson for reimbursement. The Commission finds that Wormser knowingly or with reason to know used his position to secure reimbursement from Jefferson because he knew that Jefferson was his subordinate, and he repeatedly made requests for reimbursement for Jefferson's consideration after being instructed that he instead should follow ordinary procedures.

Wormser contends that he simply took advantage of an alternative available to all parents of special education students since the Notice of Procedural Safeguards urges parents to "first attempt to resolve the matter with local school district officials," including the superintendent. By reason of serving as a school committee member, however, Wormser had obligations under the conflict of interest law that other parents of special education students did not have. In choosing among the available alternatives, he had the obligation to avoid using his official position to impose upon his subordinate to arrange a personally beneficial financial arrangement. Like all other parents, Wormser could have requested an additional IEP meeting, filed an appeal with the BSEA, filed a notice with the DOE program resolution department, or filed a court case. These alternatives would have included third parties in the decision about his reimbursement and would not have caused him to have a conflict of interest. The fact that these alternatives were more expensive or less expedient than informal negotiations with his subordinate was not a justification for ignoring the requirements of § 23(b)(2).

#### **4. Unwarranted privilege not properly available to similarly situated individuals**

Horn's reasons for opposing reimbursement and Jefferson's apparent reluctance to sign the agreements with Wormser demonstrated that, as a practical matter, negotiations with the superintendent about reimbursement of private school tuition was an unusual procedure that was not properly available to parents of special education students. The evidence strongly indicates that by reason of his school committee position, Wormser was able to get special consideration from the superintendent of his request for reimbursement and to resolve it by extraordinary means. This evidence will be addressed in greater detail below in the discussion about Jefferson's conduct.

By reason of the deviation from usual procedure, we find that the privilege Wormser received -- an agreement for reimbursement of as much as \$60,000 in private school tuition, and actual receipt of \$30,000 -- was unwarranted. In reaching this conclusion, we do not decide whether his child's special needs merited placement outside the public school district or whether the amount of reimbursement promised to Wormser was appropriate. Rather, we find that the reimbursement was unwarranted because of the procedure that was followed, without making any determination about the propriety of the result reached.

#### **B. Wormser violated § 23(b)(3) by failing either to disclose his negotiations with Jefferson about reimbursement before participating in an evaluation of Jefferson's job performance or to recuse himself.**

Petitioner alleges that Wormser violated § 23(b)(3) by performing his official duties as a school committee member in connection with Jefferson's performance evaluation after Jefferson had approved an agreement to provide Wormser with private school tuition reimbursement. Petitioner alleges that these were circumstances in which a reasonable person, with knowledge of all the relevant facts, could conclude that Jefferson could unduly enjoy Wormser's favor or influence him in the performance of his official duties. Wormser counters that there was no favoritism toward Jefferson when he participated in evaluating Jefferson's performance during the 2005-2006 year as a result of Jefferson's approval of reimbursement.

The evidence shows that Willie Wickman, then chair of the school committee, compiled input from each of the school committee members and prepared a written evaluation of Jefferson's performance during the 2005-2006 school year based on the input, and that the school committee, including Wormser, signed the evaluation on June 26, 2006. It is reasonable to infer that Wormser's participation in the evaluation commenced some time before he signed the document.

By March 6, 2006, Wormser already had notified Jefferson in writing that he intended to seek reimbursement, and by June 19, 2006, he had received a letter indicating that Jefferson had approved a draft agreement providing for two years of reimbursement at \$15,000 per year. A reasonable person readily could conclude that Wormser would show favoritism toward Jefferson when evaluating his job performance if Wormser was in the midst of requesting and receiving approvals from Jefferson of thousands of dollars of payments.

Wormser could have complied with § 23(b)(3) either by filing a disclosure of the facts that could lead a reasonable person to conclude that he might show favoritism to Jefferson or be influenced by him, or by recusing himself from performing his official duties as a school committee member with regard to Jefferson's evaluation. Wormser testified that he could not disclose facts about the agreement he was negotiating with Jefferson and also protect his child's privacy consistent with laws requiring confidentiality of school records and prohibiting the release of personally identifiable information<sup>21</sup> about a student.

Federal regulations require states to have policies and procedures in effect to ensure that public agencies in the state involved in education comply with requirements protecting the confidentiality of personally identifiable information collected, used or maintained by the schools. 34 CFR § 300.123. The fact that a child attends a school, however, is a fact known to many people. In addition, the regulations, which primarily govern what information schools may release from school records, clearly do not prohibit parents from publicly discussing their children's educational needs and placement generally with third parties. Even with respect to information over which the schools have control, both federal and state law provide for disclosure

of school records or personally identifiable information from a student record with the consent of the student's parent. See 34 CFR § 300.622(a); 603 CMR 23.07(4).

Consequently, Wormser had the authority to disclose general circumstances regarding his child if he needed or chose to do so. If he wished to maintain the privacy of personally identifiable information regarding his child, he could have disclosed that he had received or was seeking approval from the superintendent of reimbursement of private school tuition at the time he had the task of evaluating the superintendent's performance.

In any event, if Wormser chose not to file a disclosure, his obligation under § 23(b)(3) was to recuse himself from participating in Jefferson's performance evaluation, and he failed to do so. Accordingly, we find that Wormser violated § 23(b)(3).

## **V. CONCLUSIONS OF LAW REGARDING JEFFERSON**

### **A. Jefferson violated § 23(b)(2) by deviating from ordinary procedure to secure reimbursement of \$30,000 of private school tuition costs for his superior.**

Petitioner alleges that Jefferson, by failing to engage in an appropriate inquiry and otherwise failing to follow proper special education procedures, knowingly used his position as superintendent of the Harvard public school district to secure for Wormser, who was his appointing authority and supervisor, reimbursement of the cost of private school tuition. Petitioner alleges that the reimbursement paid to Wormser as a result of this process was an unwarranted privilege of substantial value not properly available to other parents of Harvard public school students. Jefferson counters that he followed authorized procedure and negotiated with Wormser in his capacity as a parent without taking his school committee position into account.

#### **1. Undisputed elements**

Again, there is no dispute that Jefferson, as superintendent, was a municipal employee or that the privilege Wormser received was of substantial value.

## **2. Knowing use of position**

The evidence indicates that Jefferson exercised his authority to provide reimbursement to Wormser over the objection of the special education director and through a procedure that, if not unprecedented, was far from typical. The process consisted of speaking to Wormser and reviewing evaluations and records regarding Wormser's child. The student's IEP team had recommended a public school placement. Jefferson's predecessor, Keoseian, indicated that he had never overridden the recommendation of a student's IEP team, but Jefferson did not even consult the IEP team before approving reimbursement of both past and future tuition at Cushing. Despite noting that the IEP team meeting was deficient because no Harvard public school teachers familiar with Wormser's child had attended, and despite observing that it was "procedurally confusing" because nobody from Cushing Academy had attended, Jefferson did not speak with any teacher who had taught the student, either in the public school district or at Cushing, and he did not call another IEP team meeting. The placement was at an unapproved school, whereas Horn and the team ordinarily selected only approved schools.

Jefferson instructed Horn to change Jefferson's signature block to Horn's, saying that "it wouldn't look right." Jefferson's apparent attempt on two occasions to avoid accountability for signing the reimbursement agreement with Wormser indicates that Jefferson himself was conscious that the process he followed with Wormser was a deviation from ordinary procedure.

## **3. Unwarranted privilege**

In precedent, the Commission has found that deviation from the usual procedure by which a privilege is granted may be the basis for finding that a privilege was unwarranted.<sup>3/</sup> Based on the facts outlined above, we find that the process Jefferson followed was objectively unusual and that the reimbursement granted by means of this process was unwarranted.

In this regard, we credit Horn's testimony that paying direct reimbursement to a school committee member was a departure from ordinary procedure. Horn testified that he thought this was a complex and unusual case not because of the student's disability, but because

"there were other factors going on in that we weren't following process and there was an appearance that something was happening behind the scenes." According to Horn, what made it complex and unusual was "how it was being handled in-house."

Like Wormser, Jefferson points to the Notice of Procedural Safeguards as proof that negotiations between parents and local officials, including the superintendent, were not only allowed but encouraged. Neither the Notice of Procedural Safeguards nor the testimony of any witness suggests that a superintendent has authority to override an IEP team's decision about placement, disregard the IEP team procedure and make a unilateral decision, based only on his own cursory assessment of limited written information, to provide direct reimbursement to a parent who is also the superintendent's superior. Horn's testimony makes clear that, at least during his tenure in the Harvard Public School district, reimbursement of private school tuition had not previously been paid to any parent by means of a process of this type.

Jefferson argues that evidence regarding another contemporaneous matter indicates that Wormser would have been entitled to a similar result anyway, whether he negotiated directly with Jefferson or instead followed the BSEA hearing and mediation procedures. On July 26, 2006, the Harvard school district reached an agreement to reimburse a former school committee member for a unilateral placement. Like Wormser, the former school committee member had transferred an immediate member of her family to an unapproved private school after an IEP team recommended placement in the Harvard public schools. The parent proceeded to mediation at the BSEA, and the parties' attorneys negotiated an agreement reimbursing tuition for four school years. Jefferson contends that, by comparison with this case, the process he followed with Wormser saved the district money with respect to both the amount reimbursed and attorneys' fees. As additional support, Jefferson points to Horn's testimony that the settlement for \$15,000 for Wormser's child was the lowest settlement they otherwise had in Harvard for out-of-district placements.

These arguments which focus on the result rather than the process miss the point. By deviating from proper procedure, Jefferson gave

Wormser easier access to special education money than other parents of special needs students were able to enjoy. The unwarranted privilege was that *any* of the reimbursement to Wormser was received by way of an unusual deviation from routine, and one that was made only for Wormser.

#### **4. Privilege not properly available to similarly situated individuals**

The only other evidence about a parent who received reimbursement from the Harvard public schools after unilaterally removing a student from the district was about a former school committee member who followed usual procedures. Apart from the interaction with Wormser, there was no evidence of any other instance in which Jefferson or any other Harvard superintendent negotiated a resolution directly with a parent about private school tuition reimbursement. On the basis of the evidence, we find that the process by which Jefferson reached the agreement under which the school paid Wormser \$30,000 was not available to similarly situated parents of special education students in the Harvard public school district.

Jefferson points to significant evidence that when he took over as superintendent, special education was in crisis in the district and particularly in the Bromfield School which Wormser's child had attended. Jefferson touts his direct negotiations about Wormser's request for reimbursement as an individualized response in the midst of this crisis. The general crisis excuse would be convincing only if Jefferson paid individual attention to each one of the special education students affected by the crisis. There was no evidence that the general crisis caused Jefferson to break from routine to attend to the financial concerns of any other parent of a special needs student but Wormser.<sup>4/</sup>

B. Jefferson violated § 23(b)(3) by performing official duties with regard to reimbursing Wormser for private school tuition without filing a disclosure explaining that he was negotiating directly with his superior.

As previously discussed, Horn's objections to the process that Jefferson followed, and Jefferson's instructions to substitute Horn's signature for his own signature prove that both Horn and Jefferson had actual concerns at the

time of Jefferson's negotiations with Wormser about an appearance that Jefferson was showing favoritism toward his superior. On the basis of the evidence, with regard to § 23(b)(3), we agree with Petitioner that a reasonable person, with knowledge of all the relevant facts about the informal negotiations between Jefferson and Wormser regarding reimbursement, could conclude that Wormser, Jefferson's superior, could unduly enjoy his favor or influence him in the performance of his official duties. Prior to commencing the negotiations, Jefferson filed no disclosure as § 23(b)(3) required him to do.

Jefferson argues that he could not file a § 23(b)(3) disclosure because he would violate strict federal and state laws prohibiting him from disclosing personally identifiable information about a student. In particular, he contends that he could not identify Wormser because it would provide information from which it would be possible to identify Wormser's child. In favor of his position, Jefferson cites testimony by Attorney Terri Williams Valentine, Education Specialist in the Center for Special Programs at the Department of Elementary and Secondary Education (formerly, the DOE), that there was no way that a school official could report to a town official concerning the diagnosis or the educational placement of a student in a manner that could identify the student.

We find, however, that Jefferson's meticulous compliance with the laws concerning student confidentiality did not excuse his total disregard for the requirements of the conflict of interest law. First, as previously stated, the fact that a child attends a school is not confidential, but rather is known to many members of the public. Second, Jefferson's own witness, Attorney Valentine, conceded that she was not aware of any statute or regulation that would have prohibited Jefferson from satisfying the requirements of § 23(b)(3) by filing a disclosure stating that a school committee member had approached him to discuss tuition reimbursement, without identifying the school committee member. Jefferson has failed to explain how such a § 23(b)(3) disclosure would disclose a school record or personally identifiable information about Wormser's child. In any event, if he was convinced that he could not file a § 23(b)(3) disclosure without violating the student's privacy rights, Jefferson could have declined to engage directly in informal negotiations with Wormser and left Wormser

with the entirely viable option of following the procedures available to all parents.

## VI. PENALTIES

At the time that Wormser engaged in the conduct that violated § 23(b)(2) and § 23(b)(3), the conflict of interest law provided for a maximum penalty of \$2,000 for a violation of each section. Based on our finding that he violated both sections of the law, we assess a civil penalty against Wormser of \$4,000.

For Jefferson's violations of § 23(b)(2) and § 23(b)(3), Jefferson is ordered to pay a civil penalty of \$4,000.

**DATE AUTHORIZED:** April 16, 2010

**DATE ISSUED:** April 28, 2010

<sup>1/</sup> Commission Chair Charles B. Swartwood III abstained from participating in this matter.

<sup>2/</sup> Pursuant to 34 CFR § 300.32, "Personally identifiable" means information that contains –

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

<sup>3/</sup> See *In re Diane Wong*, 2002 SEC 1077 (MBTA's Assistant General Manager for Organization secured an unwarranted privilege for her son-in-law where, after an initial review by an RFP review committee, she unilaterally selected his firm absent further input from the committee); *In re Robert Hanna*, 2002 SEC 1075, 1075-176 (submission of bid that Highway Surveyor for the Town of Brimfield sought and obtained from a contractor after the deadline was "an unwarranted privilege as it was offered after the deadline and/or it was an unwarranted exemption as it deviated from and was an attempt to circumvent the proper bidding procedure."); *In re Ronald J. D'Arcangelo*, 2000 SEC 962 (requests by chief of probation for "consideration" by clerk magistrate with regard to motor vehicle citations issued to his relatives

or friends were for an unwarranted privilege; dismissal based on such requests was not properly available to similarly situated individuals facing similar penalties).<sup>4/</sup> By analogy, and with reference back to the *Gosselin* matter cited earlier, concerns would be raised under § 23(b)(2) if a city councilor called the Department of Public Works when the garbage collection system was in crisis and said, "I'm not wearing my city councilor hat now, I'm wearing my homeowner hat, and I need to have my trash picked up," and the DPW superintendent organized a special garbage pick-up only for the city councilor.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0004**

**IN THE MATTER OF  
ELIZABETH STORY**

Appearances: Karen Beth Gray, Esq.  
Counsel for Petitioner

Elizabeth Story, *pro se*

Commissioners: Charles B. Swartwood,  
III, Ch., Jeanne M. Kempthorne, David L.  
Veator, Patrick J. King, Paula Finley Mangum

**FINAL ORDER**

On May 14, 2010, the parties filed a Joint Motion to Suspend Proceedings, Accept Proposed Settlement and Dismiss the Case ("Joint Motion") along with a proposed Disposition Agreement, requesting that the Commission approve the Disposition Agreement in settlement of this matter and dismiss this adjudicatory proceeding. The Presiding Officer, David L. Veator, referred the Joint Motion, with the Disposition Agreement, to the full Commission for deliberations on May 21, 2010.

In the proposed Disposition Agreement, Respondent Elizabeth Story admits that she violated G.L. c. 268B, § 5 and agrees to pay a civil penalty of \$500. Respondent further agrees 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 \$500 civil penalty.

In support of the Joint Motion, the parties assert that the proposed Disposition Agreement is consistent with the Commission's schedule of penalties imposing fines for Statements of Financial Interests filed more than ten days after receipt of a Formal Notice of Lateness. The parties further assert that the interests of justice, the parties and the Commission will be served by the Disposition Agreement.

WHEREFORE, the Commission hereby ALLOWS the Joint Motion. The Disposition Agreement is APPROVED. Respondent's tendered payment of the \$500 civil penalty for violating G.L. c. 268B, § 5 is accepted. Commission Adjudicatory Docket No. 10-0004, *In the Matter of Elizabeth Story*, is DISMISSED.

**DATE AUTHORIZED:** May 10, 2010

**DATE ISSUED:** June 8, 2010

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0004**

**IN THE MATTER OF  
ELIZABETH STORY**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Elizabeth Story ("Story") enter into this Disposition Agreement pursuant to Section 5 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).

The State Ethics Commission is authorized to enforce G.L. c. 268B, the Financial Disclosure Law, and in that regard to initiate and conduct adjudicatory proceedings. On October 16, 2009, the Commission found reasonable cause to believe that Story violated G.L. c. 268B, § 5, and

authorized the initiation of adjudicatory proceedings.

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

1. Story served as a Department of Elementary and Secondary Education Fiscal Officer for more than 30 days in 2008. As a Department of Elementary and Secondary Education Fiscal Officer, Story was a state employee as that term is defined in G.L. c. 268A, § 1.

2. In accordance with G.L. c. 268B and 930 CMR 2.00, Story's position of Department of Elementary and Secondary Education Fiscal Officer was designated as a major policy-making position for calendar year 2008. As such, Story was required to file a Statement of Financial Interests ("SFI") for calendar year 2008 by May 1, 2009, in accordance with G.L. c. 268B and 930 CMR 2.00.

3. Story was notified of her obligation to file an SFI for calendar year 2008.

4. Story did not file an SFI on or before May 1, 2009.

5. On May 4, 2009, the Commission sent by first class mail a Formal Notice of Lateness ("Notice") to Story. The Notice advised Story that her SFI had not been filed and was, therefore, delinquent. The Notice further advised Story that failure to file her 2008 SFI within 10 days of receipt of such Notice would result in the imposition of civil penalties. [The Commission allows three days for receipt of the Notice if sent by first class mail.] Therefore, the SFI was required to be filed by May 18, 2009.

6. Story did not file an SFI with the Commission until June 25, 2009.

7. Story's failure to file an SFI within 10 days of receiving the Notice was a violation of G.L. c. 268B, § 5.

8. General Laws c. 268B, § 4 authorizes the Commission to impose a civil penalty of up to \$2,000 for each violation of c. 268B.<sup>1/</sup> The Commission has adopted two schedules of penalties imposing fines for SFIs filed more than 10 days after the receipt of the Notice.

**For first time late submission of an SFI:**

1-10 days delinquent: \$50  
11-20 days delinquent: \$100  
21-30 days delinquent: \$200  
31 days or more: \$500  
Non-filing: \$2000

**For the repeated late submission of an SFI:**

1-10 days delinquent: \$100  
11-20 days delinquent: \$200  
21-30 days delinquent: \$400  
31 days or more: \$1000  
Non-filing: \$2000

9. This is the first time Story submitted her SFI late.

10. Story's SFI was more than 31 days late and based on the Commission's fine schedule for first time late submission of an SFI, the fine is \$500.

In view of the foregoing violation of G.L. c. 268B, § 5 by Story, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Story:

- (1) that Story pay to the Commission the sum of \$500 as a civil penalty for violating G.L. c. 268B, § 5; and
- (2) that Story 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:** June 8, 2010

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<sup>1/</sup> During the time relevant, General Laws c. 268B authorized the Commission to impose a civil penalty of up to \$2,000 for each violation of c. 268B. General Laws c. 268B has since been amended by c. 28 and c. 105 of the Acts of 2009. Among other amendments, the maximum civil penalty has been increased to \$10,000.

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, SS. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0009

IN THE MATTER OF  
MARK RIVERA

**DISPOSITION AGREEMENT**

The State Ethics Commission and Mark Rivera ("Rivera") enter into this Disposition Agreement pursuant to Section 5 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 18, 2009, 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 Mark Rivera. On May 21, 2010, the Commission concluded its inquiry and found reasonable cause to believe that Rivera had violated G.L. c. 268A, § 23.

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

**Findings of Fact**

1. Rivera was, during the time relevant, the Lawrence School Department's Urban Affairs Liaison and then, the Special Assistant to Lawrence School Superintendent Wilfredo Laboy ("Superintendent Laboy").

2. LexisNexis is a searchable database of public and non-public records.

3. In or about December 2007, the Lawrence School Department (the "School Department") obtained a LexisNexis account in order to access the LexisNexis database.

4. The School Department paid \$120 monthly for this access.

5. As the Urban Affairs Liaison and the Special Assistant to the Superintendent, Rivera, along with one other School Department employee, was authorized by LexisNexis to

access the LexisNexis database through the School Department account. This authorized access was for legitimate School Department purposes only, such as locating parents who had moved out of the school district without informing the School Department and for contacting parents and students regarding attendance issues.

6. From 2007-2009, Rivera repeatedly misused his School Department authority to access the LexisNexis database through the School Department's account to conduct hundreds of searches of non-public information on individuals, including state and local elected officials, professional athletes and Hollywood celebrities, for his own private purposes, and, according to Rivera, to some extent for the private purposes of Superintendent Laboy.

#### **Conclusions of Law**

7. Section 23(b)(2)<sup>1/</sup> 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.

8. As the Urban Affairs Liaison and the Special Assistant to the Superintendent, Rivera was a municipal employee as that term is defined by G.L. c. 268A, § 1(g).

9. Access to the LexisNexis database was a benefit, and, therefore a privilege.

10. The privilege was unwarranted because it involved the use of public resources for a private purpose.

11. This privilege was of substantial value because the School Department paid \$120 monthly to access the LexisNexis database.

12. Rivera was an officially authorized user of the School Department's LexisNexis account. But for this authorization, he would not have had the above-described access to the LexisNexis database. Therefore, by using this authorization to access the non-public information described above, Rivera used his official position to secure this unwarranted privilege for himself and Superintendent Laboy.

13. This privilege was not properly available to similarly situated individuals.

14. Thus, by using his official positions as the Urban Affairs Liaison and the Special Assistant to the Superintendent to conduct hundreds of searches of non-public information on individuals, including state and local elected officials, professional athletes and Hollywood celebrities over a 2-year period, Rivera knowingly, or with reason to know, repeatedly used his positions to obtain an unwarranted privilege of substantial value for himself and Superintendent Laboy, which was not properly available to similarly situated individuals. Therefore, Rivera repeatedly violated § 23(b)(2).

In view of the foregoing violations of G.L. c. 268A by Rivera, 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 Rivera:

- (1) that Rivera pay to the Commission the sum of \$5,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 23(b)(2); and
- (2) that Rivera 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:** June 14, 2010

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<sup>1/</sup> General Laws chapter 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A as amended.

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0010

IN THE MATTER OF  
JEAN-MARIE SMITH

**DISPOSITION AGREEMENT**

The State Ethics Commission and Jean-Marie Smith ("Smith") enter into this Disposition Agreement pursuant to Section 5 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 July 17, 2009, 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 Smith. On November 20, 2009, the Commission concluded its inquiry and found reasonable cause to believe that Smith violated G.L. c. 268A, § 23(b)(2).

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

**Findings of Fact**

1. Smith has been employed by the Town of Hanson Council on Aging for 13 years. At all relevant times, Smith was the Hanson Council on Aging Director of Elder Affairs.

2. The Town of Hanson operates the Hanson Senior Center (the "Center").

3. The Center provides a variety of services to seniors, including a day program of social activities, as well as assistance with scheduling medical visits, arranging for housing, and other support services. The Center's clients are town residents aged 55 or older.

4. An 84 year old man (the "Client") was one of the Center's clients. He was a regular, daily visitor to the Center, dating back to before Smith started working there. The Center maintained a file on the Client that outreach workers could access that included emergency

contacts, medications, as well as financial information.

5. The Client's file contained contact information for his adult daughter, who lived in western Massachusetts. It was Smith's understanding that the Client was estranged from the daughter.

6. Smith, in her capacity as the Director of Elder Affairs, would occasionally see the Client at the Center and would check on him to see if he was eating properly and taking care of himself.

7. In June 2007, Smith observed that the Client's appearance and behavior had deteriorated significantly. She sent him a letter on Center letterhead about his unruly conduct at the Center.

8. Some time later in June 2007, Smith, accompanied by her boyfriend, visited the Client at his residence. Smith determined that the Client needed to be hospitalized and she called an ambulance. The Client was then hospitalized.

9. While the Client was in the hospital, Smith solicited advice from a town official about whether she could act as the Client's private agent concerning financial matters. The town official consulted with town counsel, who advised that Smith could not act as the Client's private agent. The town official communicated that advice to Smith.

10. In July 2007, upon the Client's hospital discharge, Smith moved the Client into a nursing home in a nearby town, without first contacting the Client's daughter or informing any town official of her actions. Smith arranged to have her boyfriend sign the paperwork required to admit the Client into the nursing home.

11. At about the same time, and notwithstanding the advice she had received, Smith offered to assist the Client with his financial affairs. The Client accepted Smith's offer.

12. Thereafter, on July 10, 2007, Smith and the Client changed the mailing address of the Client's savings account at a local bank to Smith's home address. On July 11, 2007, Smith and the Client withdrew the entire account balance of \$17,155 in cash from the Client's savings account, but did not close the account.

Smith and the Client used \$8,455 to pre-pay the Client's burial services at a funeral home. Smith and the Client also opened and deposited \$1,500 into a separate burial account, and listed the Client and Smith's boyfriend as co-owners on that account. Smith brought the remaining cash, approximately \$7,000, to her home.

13. In August 2007, Smith arranged to have her boyfriend apply as the Client's representative for MassHealth<sup>1/</sup> benefits for the Client. MassHealth approved the application. The Client's costs for staying at the nursing home were covered in part by MassHealth, as well as by the Client's Social Security and Veterans Administration ("VA") benefits. The Client's VA benefits were direct-deposited into his savings account.

14. Thereafter, a Center employee contacted the Client's daughter to inform her that Smith had moved the Client to a nursing home. In response, the Client's daughter phoned Smith, who confirmed to the Client's daughter that she had moved the Client to a nursing home in a nearby town. Smith did not tell the Client's daughter that she had taken control over the Client's financial matters.

15. In April 2008, Smith arranged to have herself added as a co-owner of the Client's savings account.

16. From February 2008 through May 2009, Smith, sometimes accompanied by the Client, made several additional cash withdrawals, totaling \$10,548, of the Client's VA income from the Client's savings account.

17. According to bank records, Smith withdrew a total of \$27,703 from the Client's savings account between July 2007 and May 2009. According to Smith, she did not use any of the Client's money for herself or her boyfriend, but instead used the funds to pay for the Client's expenses. There are, however, no receipts or other records documenting the expenditure of approximately \$2,500 of the withdrawn funds. As to the \$2,500 for which there is no documentation of the purpose for which it was spent, Smith was only able to orally justify expenditures for approximately \$1,000. If Smith's oral representations are to be accepted, then \$1,500 is still unaccounted for.

18. The Client died May 4, 2009. At the time, prepayments totaling \$1,566 remained in the Client's nursing home account. Smith arranged to have the nursing home issue a check in that amount to the funeral home for the purchase of a cemetery monument for the Client. The cost of the cemetery monument was \$1,000. At Smith's direction, the funeral home used the \$566 in excess funds remaining after the purchase of the monument to make a donation in the Client's name to the Hanson Council on Aging.

19. Smith arranged to have the Client's daughter receive the remaining funds in the Client's savings account.

### **Conclusions of Law**

20. As the Hanson Director of Elder Affairs, Smith was at all times relevant to this matter a municipal employee as defined in G.L. c. 268A, § 1.

#### Section 23(b)(2)

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

22. The ability to access and expend the Client's funds was a benefit, and as such a privilege.

23. Through her contacts with the Client as Director of Elder Affairs, Smith obtained the Client's trust and reliance on her advice, which in turn resulted in the Client's willingness to allow Smith to act as his financial agent. In other words, Smith used her official position as Director of Elder Affairs to access and spend the Client's funds.<sup>3/</sup>

24. Smith's ability to access and spend the Client's funds was an unwarranted privilege because there was no oversight of her expenditure of the Client's funds nor did Smith keep adequate records documenting such expenditures. It was also unwarranted because it was against town counsel's advice.

25. This privilege was of substantial value because it involved access to and the expenditure of \$50 or more.

26. This privilege was not properly available to similarly situated individuals.

27. Therefore, by accessing and spending the Client's funds without oversight and without keeping adequate records documenting such expenditures, all as described above, Smith knowingly or with reason to know used her official position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

28. In imposing a civil penalty, the Commission recognizes that Smith asserts that her efforts were solely intended to assist the Client, and she asserts that she used none of the Client's funds for anyone other than the Client. The facts described above, however, raise troubling concerns. Smith's access to the Client's funds was secured through Smith's fiduciary relationship with the Client. Smith was told not to become the Client's financial agent, yet she did so anyway. Smith actively concealed her involvement by using her boyfriend's name on various financial documents. Smith did not inform the Client's daughter that Smith had become the Client's financial agent. Smith spent the Client's funds without oversight and without keeping adequate records documenting expenditures. Finally, Smith never disclosed her private involvement with the Client to town officials. Based on the totality of these facts, a civil penalty is warranted.

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

- (1) that Smith pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2); and
- (2) that Smith 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:** June 15, 2010

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<sup>1/</sup> The MassHealth program provides comprehensive health insurance — or help in paying for private health insurance — to more than one million Massachusetts children, families, seniors, and people with disabilities.

<sup>2/</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended.

<sup>3/</sup> The Client entrusted his finances and care to Smith not because of an independent friendship — they had a limited relationship prior to June 2007 — but because of Smith's position as Elder Affairs director.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 08-0014**

**IN THE MATTER OF  
JAMES M. RUBERTO AND  
DANIEL DUQUETTE**

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

Leonard H. Cohen, Esq.  
Counsel for Respondent James  
M. Ruberto

Anthony A. Froio, Esq.  
Yixin H. Tang, Esq.  
Counsel for Respondent Daniel  
Duquette

Commissioners: Charles B. Swartwood, III, Ch.,  
Jeanne M. Kempthorne, David L. Veator, Patrick  
J. King and Paula Finley Mangum

Presiding Officer: Commissioner Patrick J. King

**DECISION AND ORDER**

Petitioner filed Orders to Show Cause (“OTSC”) on June 26, 2008, against Respondents James M. Ruberto (“Ruberto”), the Mayor of the City of Pittsfield (“City”), and Daniel Duquette (“Duquette”), owner of the New England College Baseball League (“NECBL”) team, the Berkshire Dukes (“Dukes”). The OTSC allege that Duquette violated G.L. c. 268A, § 3(a) by offering to sell two tickets to Game 2 of the 2004 World Series at face value to Ruberto, and that Ruberto, a municipal employee, violated G.L. c. 268A, §§ 3(b), 23(b)(2) and 23(b)(3) by accepting that offer at a time when he and Duquette were negotiating the Berkshire Dukes’ move to play at the City’s Wahconah Park. The proceedings in these matters were consolidated pursuant to 930 CMR 1.01(6)(g).

An evidentiary hearing was held on April 6, 2010 and April 7, 2010.<sup>1/</sup> At the hearing, the parties made opening statements and introduced evidence through witnesses and exhibits. All parties filed briefs.<sup>2/</sup> The parties presented closing arguments to the Commission on June 18, 2010.<sup>3/</sup>

The Commission began its deliberations in executive session on this matter on June 18 and continued deliberations on July 16, 2010.<sup>4/</sup> In rendering this Final Decision and Order, each undersigned member of the Commission has considered the testimony, the evidence in the public record, and the arguments of the parties.

## **I. FINDINGS OF FACT**

1. There is a long history of minor league baseball in the City. Its historic Wahconah Park is mentioned in the Baseball Hall of Fame. For the 2004 baseball season, Wahconah Park did not have a baseball team and was in need of significant repair.

2. In January 2004, Ruberto was sworn in as the City’s Mayor. He made it one of his top priorities to bring professional minor league baseball back to Wahconah Park.

3. In early 2004, Ruberto contacted Jim Bouton, a former Major League Baseball player from Berkshire County, to discuss bringing a professional team to Wahconah Park.

4. Bouton and his partners (“Bouton Group”) proposed to invest \$1,500,000 in Wahconah Park. The Bouton Group planned to renovate Wahconah Park and to bring a professional team from the Canadian American League (“Can-Am”)<sup>5/</sup> to play there beginning in the Spring of 2005.

5. In early 2004, while Ruberto was negotiating with the Bouton Group, Duquette contacted Ruberto about the possibility of bringing the Dukes, an NECBL team, to the City. Ruberto and Duquette did not have a personal relationship. However, Duquette and Ruberto had previously met one time at a UNICO (an Italian American charitable organization) dinner in 2003, where they sat at the same table. Ruberto attended the dinner with Duquette’s aunt and uncle, who went to school with Ruberto and were close friends with him.

6. The Dukes had previously played home games in the Town of Hinsdale at the Duquette Sports Academy (“Academy”). Duquette wanted to bring the Dukes to the City to attract a larger audience.

7. Ruberto told Duquette that the City was looking for a professional team, rather than an NECBL team.

8. In the summer of 2004, Duquette received complaints from his neighbors about the lights used at the Academy. Duquette then contacted Ruberto again about the possibility of the Dukes moving to the City. Ruberto again told Duquette that he was looking for a professional team, not an NECBL team.

9. Negotiations between the Bouton Group and the City continued through September 2004. Ruberto was the lead negotiator on behalf of the City. The negotiations concluded without a deal being reached during the first week of October 2004.

10. In early October 2004, Duquette read in The Berkshire Eagle newspaper that negotiations between the City and the Bouton Group had failed. He contacted Ruberto again to see if he was interested in the Dukes moving to the City. During their telephone conversation, Ruberto told Duquette that he is an avid Boston Red Sox fan and that his life-long dream was to see the Red Sox play in the World Series at Fenway Park. At the time of their discussion, it was not

clear whether the Red Sox would be in the 2004 World Series because the regular baseball season had not yet ended.

11. Ruberto told Duquette the City was looking for a professional team and was not interested in an NECBL team. At this time, Ruberto had been in contact with Myles Wolf ("Wolf"), the Commissioner of the Can-Am League, and had asked Wolf to help him find a Can-Am team for the City.

12. On October 14, 2004, Duquette sent an e-mail to Ruberto stating: "thanks for your interest in the Dukes and the NECBL at Wahconah Park. I am looking forward to speaking with you in depth about this when you are in a position to proceed." At the time he sent the e-mail, Duquette understood that Ruberto would not entertain the idea of the Dukes moving to the City unless Ruberto was unable to find a Can-Am team.

13. Eight days later, on Friday, October 22, 2004, Duquette unexpectedly had two extra tickets to Game 2 of the 2004 World Series ("Tickets"). Duquette called Ruberto to offer him the opportunity to buy the Tickets.

14. Duquette and Ruberto were both aware that 2004 World Series tickets were "hard to come by." Duquette, who was the General Manager of the Boston Red Sox from 1994 to 2002, and a season ticket holder in 2004, had ten to twelve tickets to Games 1 and 2 of the 2004 World Series.

15. Ruberto did not ask Duquette why he had offered him the Tickets.

16. Duquette sold the Tickets to Ruberto because he knew that Ruberto was "a big Red Sox fan." He also wanted to build a relationship with him and understood that a good relationship with Ruberto could lead to "many good things," including various benefits for the Academy and the Dukes.

17. Ruberto accepted Duquette's offer to purchase the Tickets at face value. Ruberto wrote a check to Duquette for their face value of \$380. The seats were located along the first base line, outfield side, lower box.

18. Duquette did not believe that he could charge Ruberto more than face value for the

Tickets because he believed that this would violate laws related to scalping. Duquette and Ruberto both understood that Duquette could not give the Tickets to Ruberto for free. However, they both believed that they were complying with the conflict of interest law and scalping laws by selling and purchasing the Tickets at face value.

19. Matthew Freedman, who is the Director of Purchasing at Ace Ticket Worldwide Incorporated, testified that there was an "incredible demand" for tickets to Game 2 of the 2004 World Series. The average per ticket price for a good seat was \$2,000 to \$3,000 per ticket. The Tickets purchased by Ruberto from Duquette were for very good seats.

20. On October 25, 2004, the day after Game 2, Ruberto's Assistant and the City Solicitor exchanged e-mails about the location of Ruberto's seats at the game and about being excited "to do business with Dan Duquette."

21. In late October or early November, Ruberto realized that there was little or no possibility of a Can-Am League moving to the City. In early November, Ruberto started to look into the possibility of an NECBL team playing at Wahconah Park.

22. Ruberto asked the City's Director of Community Services, Jim McGrath ("McGrath"), and the Chairman of the Parks Commission, Gene Nadeau ("Nadeau"), to investigate license agreements between other baseball teams and communities who hosted teams. Ruberto also asked Nadeau to look at how much it would cost the City to operate Wahconah Park. On November 9, 2004, McGrath e-mailed Ruberto to inform him that he had completed the research and asked Ruberto whether he wanted to meet. Ruberto responded the same day and stated "Let's meet. This is top priority."

23. McGrath found that NECBL teams paid host cities between \$1.00 and \$6,000 a season. Both the Parks Commission and Ruberto felt it was important that an NECBL team should not cost the City any money.

24. From November 2004 to March 2005, Ruberto, Duquette and members of the Parks Commission discussed bringing the Dukes to the

City. These negotiations were difficult and at times highly contentious.

25. On March 7, 2005, the Parks Commission, Ruberto and Duquette reached a deal. The deal included a one-year lease for the Dukes to play at Wahconah Park. Duquette agreed to pay \$300 per game plus a \$10,000 licensing fee. The City denied Duquette's request to control how the per-game and licensing fees were spent. In addition, the concession contract was publicly bid.<sup>6/</sup> This deal was favorable to the City.

## II. Discussion

### A. G.L. c. 268A, § 3(a) Allegations Against Duquette

In relevant part, § 3(a) prohibits an individual from directly or indirectly giving, offering or promising anything of substantial value to any municipal employee for or because of any official act performed or to be performed by such an employee. In order to establish a violation of § 3(a) against Duquette, Petitioner must prove by a preponderance of the evidence that he (1) directly or indirectly gave, offered, or promised anything of substantial value to Ruberto, (2) for or because of any official act, (3) performed or to be performed by Ruberto.

We find that Petitioner has proved by a preponderance of the evidence that Duquette violated § 3(a).

#### 1. *Duquette's Offer to Sell the Tickets to Ruberto was an Offer of Something of "Substantial Value."*<sup>7/</sup>

Duquette argues that his offer to sell the Tickets to Ruberto at face value was not an offer of something of substantial value.<sup>8/</sup> Petitioner argues that a reasonable person who wanted to attend Game 2 of the 2004 World Series would pay \$50 or more over the face value (\$190.00 per ticket) to purchase the Tickets. Matthew Freedman ("Freedman"), the Director of Purchasing at Ace Ticket Worldwide Incorporated, testified that: there was an "incredible demand" for tickets to Game 2 of the 2004 World Series; the average per ticket price for a "good seat" was \$2,000 to \$3,000 per ticket; and the Tickets Ruberto purchased from Duquette were "top quality tickets."

In Commission Advisory No. 04-01 entitled *Free Tickets and Special Access to Event Tickets* ("Advisory"), issued on January 15, 2004, the Commission specifically stated that the opportunity to purchase tickets not available to the general public may be a special benefit or privilege of substantial value. According to the Advisory, "[t]he fundamental question, in each case, is whether a reasonable person wishing to attend the event would pay \$50 or more over face value to purchase the ... tickets that the public official is being provided the opportunity to purchase at face value."<sup>9/</sup> It also specifically addresses issues that arise under the conflict of interest law when World Series tickets are offered to public officials for purchase at face value: "conflict of interest concerns would be raised if tickets to a major sporting event such as ... a World Series game were offered to public officials/employees to purchase at face value" because "[s]uch tickets are limited in number and not readily available to the general public for purchase at face value."

Based on Freedman's testimony, we are persuaded that a reasonable person wishing to attend Game 2 of the 2004 World Series would pay \$50 or more over face value (\$190) to purchase the Tickets. There is sufficient evidence that Tickets to Game 2 of the 2004 World Series, which were similar in quality to the Tickets Ruberto received from Duquette, sold for between \$2,000 and \$3,000 per ticket. Therefore, we find that Duquette's offer to sell the Tickets for the face value ticket price was an offer of something of substantial value.

#### 2. *Duquette offered to sell the Tickets to Ruberto "for or because of an official act" Ruberto performed or would perform.*<sup>10/</sup>

The crux of this case hinges on whether Duquette offered to sell the Tickets to Ruberto "for or because of any official act" Ruberto performed or would perform. The Supreme Judicial Court has held that "it is necessary to establish a link between a gratuity and an official act."<sup>11/</sup> Pursuant to *Scaccia*, to establish a violation of § 3 there must be "proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action, such as holding a hearing on proposed legislation that, if passed, could benefit the giver of the gratuity."<sup>12/</sup> In *Scaccia*, the Court vacated the § 3 violation because the administrative record contained "no

findings, and no evidence in the record, that the gratuities influenced any specified official act by Scaccia.” See also *Sun-Diamond Growers of California*, 526 U.S. at 405 (holding that the gratuity statute was not satisfied by a showing that a gratuity was given “to build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now and in the future”).

In analyzing whether a gratuity was given “for or because of an official act performed,” the Commission “will weigh the totality of all of the circumstances surrounding the gratuity, drawing reasonable inferences from the circumstances.”<sup>13/</sup> The Commission may consider such factors as the subject matter of the pending matter and its impact on the giver, the outcome of particular votes, the timing of the gift, or changes in a voting pattern.<sup>14/</sup> The Commission has previously concluded that there is insufficient proof to establish a § 3 violation where the Petitioner has not identified any specific past, present or future action for or because of which the gift was offered, even where the gift was offered with the intent to “foster generalized good will.” *In re LIAM 2003 SEC 528*. Because the Supreme Judicial Court stated in *Scaccia* that “only a one-way nexus need be established for a gratuity violation,” the Commission stated in *LIAM* that “the relevant issue here is the intent of *LIAM* in giving the gratuities, not the intent of the public officials who accepted the gratuities.” *Id.*

On one hand, Duquette contends that he did not offer the Tickets to Ruberto for or because of any specific official act Ruberto performed or would perform as Mayor, but rather merely with the intent to create generalized goodwill with Ruberto. Duquette contacted Ruberto about the Dukes moving from Hinsdale to Pittsfield near the time when he offered to sell the Tickets to Ruberto. Ruberto told Duquette that the City was not interested in an NECBL team at the time because he was still trying to find a professional team to play in Pittsfield. Duquette maintains that the October 14, 2004 e-mail he sent to Ruberto establishes that no negotiations or decision regarding the Dukes had occurred. The e-mail did not refer to any specific official act, or to any decision Ruberto had already made. Duquette also argues that Petitioner has only provided evidence of an inchoate proposal for Duquette to move the Dukes to Pittsfield around the time he sold the Tickets to Ruberto, which is

insufficient to establish linkage under *Scaccia*.<sup>15/</sup> Duquette also maintains that there was nothing repeated, planned or targeted about his sale of the Tickets to Ruberto. Duquette did not discuss any official actions with Ruberto during the sale of the Tickets. In addition, Duquette provided at least ten individuals other than Ruberto with 2004 World Series tickets. Duquette also maintains that he and Ruberto were personal acquaintances, who first met in 2003 through Duquette’s aunt and uncle who were close friends of Mayor Ruberto.

In contrast, Petitioner argues that Duquette approached Ruberto and offered to sell the Tickets to Ruberto at face value because he knew that Ruberto would be involved in any discussion to bring a baseball team into Pittsfield. Petitioner maintains that Duquette sold the Tickets to Ruberto at face value, with the intent to influence Ruberto’s official actions regarding the licensing agreement and the concession stand agreement (“Agreements”).<sup>16/</sup> Petitioner contends that Duquette was aware that he needed Ruberto’s backing as Mayor to obtain those Agreements.<sup>17/</sup> Petitioner asserts that there is a sufficient link, as required under *Scaccia* and *LIAM*, between Duquette’s offer to sell the Tickets to Ruberto and Ruberto’s official actions because the Agreements allowed the Dukes to play in the City; Ruberto was not interested in the Dukes moving to the City in early 2004; Duquette offered the Tickets to Ruberto around the time Duquette made his third attempt to interest Ruberto in the Dukes’ move; the Tickets had a face value of \$190.00 each, but a street value of \$2000 - \$3,000 each; the gift was targeted to Ruberto; there was no reciprocity; and Duquette was not lacking in sophistication.

Although it is a close question, based on all of the evidence, we conclude that the Petitioner has established that Duquette offered to sell the Tickets to Ruberto with the intent to influence Ruberto’s official actions regarding the Agreements and the Dukes move to Pittsfield. The Tickets were extremely valuable and highly sought after. Duquette could have offered to sell the Tickets to any number of Red Sox fans. Duquette specifically offered to sell the Tickets to Ruberto because he knew that Ruberto’s lifelong dream was to see the Red Sox play in the World Series at Fenway Park, and he knew that offering the Tickets to Ruberto could lead Ruberto to help him to obtain license and

concession agreements and to bring the Dukes to Pittsfield. Duquette understood that Ruberto's support of the license and concession agreements were essential in order for the Dukes to move to Pittsfield. There is no evidence that Duquette had a social relationship with Ruberto, nor is there any evidence of any reciprocity. We therefore find, based on the totality of the circumstances, that Petitioner has established by a preponderance of the evidence that Duquette intended to offer the Tickets to Ruberto to influence future actions Ruberto would take as Mayor related to the Agreements and the Dukes' move to Pittsfield.

*B. G.L. c. 268A, § 3(b) Allegations Against Ruberto*

In relevant part, § 3(b) prohibits a municipal employee from directly or indirectly receiving anything of substantial value for or because of any official act performed or to be performed by such employee. In order to establish a violation of § 3(b) against Ruberto, Petitioner must prove by a preponderance of the evidence that he (1) was a municipal employee,<sup>18/</sup> (2) directly or indirectly received anything of substantial value from Duquette,<sup>19/</sup> (3) for or because of any official act, (4) performed or to be performed by Ruberto.

We find that Petitioner has proved by a preponderance of the evidence that Ruberto violated § 3(b).

The key issue here is whether Ruberto received the Tickets from Duquette "for or because of any official act" Ruberto performed or would perform. As discussed above, to establish a violation of § 3 there must be "proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action, such as holding a hearing on proposed legislation that, if passed, could benefit the giver of the gratuity."<sup>20/</sup>

Ruberto contends that he did not receive the Tickets for or because of an official act performed or to be performed. The Mayor told Duquette that the City was not interested in an NECBL team at the time because he was still trying to find a professional team to play in Pittsfield. Ruberto contends that there is no evidence that his future official actions were influenced by the fact that he purchased the Tickets from Duquette. Ruberto did not consider

negotiating with Duquette about the Dukes' move to Pittsfield until he had exhausted all other possibilities of finding a professional team. Ruberto was only interested in beginning negotiations with Duquette when he realized that he would not be able to find a professional team to play in Wahconah Park. Further, when negotiations between Duquette and the City began, Ruberto engaged in contentious bargaining with Duquette and obtained a favorable contract for the City.

Petitioner asserts that there is a sufficient link, as required under *Scaccia* and *LIAM*, between Ruberto's receipt of the Tickets from Duquette and Ruberto's official actions because the Agreements that Ruberto participated in negotiating on behalf of the City allowed the Dukes to play in the City. Petitioner maintains that Ruberto intended to be influenced by the Tickets because: (1) Ruberto mentioned to Duquette that he wanted to attend the Red Sox World Series while discussing the Dukes' move to Pittsfield with Duquette; (2) Ruberto directed the City's Director of Community Services, James McGrath, to research other communities' experiences with NECBL teams and when McGrath obtained the information, Ruberto informed him that it was a "top priority"; and (3) the day after the game, the City Solicitor told Duquette via e-mail that he was excited "to do business with Dan Duquette."

Although it is a close question, based on all of the evidence, we find that the Petitioner has established that Ruberto received the Tickets from Duquette to influence Ruberto's official actions regarding the Agreements, and Ruberto intended to receive the Tickets for or because of official acts he performed or would perform in the future related to the Dukes move to Pittsfield. Ruberto told Duquette that his life-long dream was to see the Red Sox play in the World Series at Fenway Park. Although Duquette had repeatedly asked Ruberto to consider moving the Dukes, to Pittsfield, Ruberto did not consider this until shortly after he received the Tickets from Duquette. Although Ruberto ultimately negotiated a deal that was favorable to the City, this does not negate the § 3(b) violation. Despite negotiating a mutually beneficial deal between Duquette and the City, Ruberto nevertheless received the Tickets for or because of official acts he performed in the future related to the Dukes. Therefore, we find that Petitioner has

established by a preponderance of the evidence that Ruberto violated § 3(b).

C. G.L. c. 268A, § 23(b)(2) and § 23(b)(3) Allegations Against Ruberto

*I. Section 23(b)(2)*

Section 23(b)(2) prohibits municipal 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. In order to establish a violation, Petitioner must prove by a preponderance of the evidence that: (1) Ruberto was a municipal employee;<sup>21/</sup> (2) who knowingly or with reason to know used or attempted to use his official position; (3) to secure an unwarranted privilege or exemption<sup>22/</sup> for himself or others; (4) which was of substantial value;<sup>23/</sup> (5) which was not properly available to similarly situated individuals.

We must first determine whether Ruberto knowingly, or with reason to know used or attempted to use his official position as Mayor to obtain the opportunity to purchase the Tickets from Duquette. Ruberto claims that Duquette offered him the Tickets because he is a Red Sox fan, not because of his position as Mayor. Further, Ruberto maintains that he and Duquette had been acquaintances since 2003, when they were introduced by Duquette's aunt who is a good friend of Ruberto's. Ruberto also notes that Duquette gave away or sold ten tickets to the 2004 World Series games. On the other hand, Petitioner maintains that Ruberto was only communicating with Duquette because Duquette had proposed to move the Dukes to Pittsfield. In addition, Petitioner contends that Ruberto knew that he was being offered the opportunity to purchase the Tickets at face value because he was the Mayor of Pittsfield.

Based upon the following evidence we find that that Ruberto knowingly, or with reason to know used or attempted to use his official position as Mayor to obtain the opportunity to purchase the Tickets from Duquette. We find that Ruberto and Duquette did not have a personal social relationship. Ruberto and Duquette were communicating because Duquette wanted to bring the Dukes to Pittsfield. As Mayor of the City, Ruberto was in a position to

either help Duquette obtain a deal with the City, or to prevent a deal from being reached. Based on the evidence provided, it is reasonable to infer that Ruberto either knew or should have known that the Tickets were offered to him because of his position as Mayor.

Next, we must determine whether Ruberto's receipt of the Tickets was an unwarranted privilege. Ruberto argues that purchasing the Tickets from Duquette at face value was not an unwarranted privilege, but rather an arm's-length transaction. Petitioner asserts that the opportunity to purchase the Tickets at face value was a privilege. This privilege was unwarranted because there was no reasonable justification for Ruberto to obtain such a privilege. The Commission has previously concluded that an "unwarranted privilege" is one that is "[l]acking adequate or official support" or "having no justification; groundless." See *EC-COI-98-2*. Although Duquette and Ruberto were acquaintances, they did not have a social relationship. In October 2004, they were communicating with each other because Duquette wanted to move the Dukes to Pittsfield. Therefore, we find that there was no reasonable justification for Ruberto to receive the opportunity to purchase the Tickets at face value from Duquette and that this was an unwarranted privilege.

Finally, we must determine whether the opportunity to purchase the Tickets at face value was an unwarranted privilege of substantial value that was not properly available to similarly situated individuals. Ruberto contends that tickets to Game 2 of the 2004 World Series were available at face value to the general public. He states that tickets were available to 39,000 other individuals who attended the game. Ruberto also maintains that the Petitioner has failed to establish that the Tickets were not available to the general public without engaging in scalping activities. On the other hand, Petitioner argues that in this case, similarly situated individuals, were Red Sox fans who reside in Pittsfield. We find that there was an "incredible demand" for tickets to Game 2 of the 2004 World Series and the Tickets Ruberto purchased from Duquette were of top quality. Accordingly, we find that tickets to Game 2 of the 2004 World Series, similar to the tickets Duquette sold to Ruberto, were not properly available for purchase at face value to individuals similar to Ruberto; either

Red Sox fans in Pittsfield, or Mayors of other municipalities.

We find, that Petitioner has established by a preponderance of the evidence that Ruberto was a municipal employee who knowingly or with reason to know used or attempted to use his official position to secure an unwarranted privilege for himself which was of substantial value which was not properly available to similarly situated individuals.

## 2. Section 23(b)(3)

Section 23(b)(3) prohibits a municipal employee from knowingly or with reason to know acting in a manner that would cause a reasonable person having knowledge of the relevant circumstances to conclude that any person could improperly influence or unduly enjoy his favor in the performance of his official duties or that he was likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3) further provides that “[i]t shall be unreasonable to so conclude if such . . . 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.” In order to establish a violation, Petitioner must prove by a preponderance of the evidence that: (1) Ruberto was a municipal employee; (2) who knowingly, or with reason to know, acted in a manner; (3) which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude; (4) 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.

Ruberto knowingly acted as Mayor in matters affecting Duquette and the Dukes shortly after Duquette sold Ruberto the Tickets at face value. By so participating, Ruberto knowingly or with reason to know, acted in a manner which would cause a reasonable person, knowing of all the relevant circumstances, to conclude that Duquette can improperly influence the performance of Ruberto’s official duties. Ruberto did not file a disclosure pursuant to 23(b)(3) stating that Duquette sold him the Tickets prior to participating in the matters

affecting Duquette and the Dukes. Therefore, we find that Petitioner has established by a preponderance of the evidence that Ruberto violated G.L. c. 268A, § 23(b)(3).

To comply with G.L. c. 268A, Duquette should not have sold the Tickets to Ruberto and Ruberto should not have purchased the Tickets from Duquette. Rather, Duquette should have sold the Tickets to someone other than Mayor Ruberto and Ruberto should not have purchased the Tickets at face value from someone with whom he had recently had official dealings and with whom he would likely have future official dealings with respect to a specific identifiable issue of public concern – whether Duquette’s NECBL team would play in Pittsfield and under what terms. The fact that Ruberto drove a hard bargain and in fact was not influenced by the gift does not alter the fact that he had every reason to know that, but for Duquette’s interest in getting the Dukes to Pittsfield, Ruberto would not have been selling him prime seats at a World Series Red Sox game.

## III. ORDER

We have concluded that Respondent Daniel Duquette violated G.L. c. 268A, § 3(a) and Respondent James M. Ruberto violated G.L. c. 268A, §§ 3(b), 23(b)(2) and 23(b)(3). On balance, considering the totality of the circumstances in this particular case, we find that a civil penalty is not appropriate for the following reasons.

First, although we have concluded that there is a sufficient nexus between Duquette’s sale the Tickets to Ruberto and Ruberto’s receipt of the Tickets, to establish violations of § 3(a) and 3(b), we acknowledge that it is a very close question whether Duquette offered the Tickets to Ruberto for or because of a specific official act or actions, or merely to obtain generalized goodwill with the Mayor. In addition, at the time Duquette offered the Tickets to Ruberto, he did not believe that Ruberto was interested in discussing the Dukes’ move to Pittsfield, because Ruberto had made it clear that he wanted a professional minor league team to play at Wahconah Park rather than an NECBL team, such as the Dukes. Further, there is no evidence that Ruberto was influenced by the Tickets in his negotiations with Duquette regarding the Dukes’ move to Pittsfield. Rather, the negotiations between Ruberto and Duquette

were contentious and resulted in a deal that was favorable to the City.

Second, Advisory 04-01, which specifically explains that conflict of interest issues would be raised “if tickets to a major sporting event such as [a] ... World Series game were offered to public officials/employees to purchase at face value” because “[s]uch tickets are limited in number and not readily available to the general public for purchase at face value,” and that “it is not necessary that a public official/employee initially solicit the opportunity to purchase the tickets. It may be sufficient if he accepts the special access to the tickets offered as a result of his official position,” was issued less than a year before Duquette sold the Tickets to Ruberto. We are persuaded that Ruberto, who was a newly elected Mayor in 2004 and Duquette, who was not a public employee, were not aware of Advisory 04-01 in October 2004. There is also evidence that Duquette did not believe that he could charge Ruberto more than face value for the Tickets because he believed that this would violate laws related to scalping. Duquette and Ruberto both understood that Duquette could not give the Tickets to Ruberto. However, Duquette and Ruberto believed that they were complying with both the conflict of interest law and scalping laws by selling and purchasing the Tickets at face value.

**DATE AUTHORIZED:** July 16, 2010

**DATE ISSUED:** July 26, 2010

**Dissent In Part (Charles B. Swartwood III, Chairman)**

I concur with the majority’s reasoning in finding that Respondent Daniel Duquette violated G.L. c. 268A, § 3(a); that Respondent James M. Ruberto violated G.L. c. 268A, §§ 23(b)(2) and 23(b)(3); and that Respondent Ruberto’s violation be resolved without a civil penalty. However, I do not agree with the majority’s resolution of Respondent Duquette’s violation. I would have imposed a civil penalty as I believe that Duquette offered the Tickets to Ruberto to influence his future actions concerning the Dukes’ move to Pittsfield. Respondent Daniel Duquette’s action in this matter was intentional and as such is deserving of a civil penalty.

**Dissent In Part (Patrick J. King)**

I respectfully disagree with the Commission’s finding that the Petitioner has established that Ruberto accepted the Tickets “for...any official act or act within his official responsibility...to be performed by him” in violation of G.L. c. 268A, § 3(b). I found Ruberto’s testimony credible that he did not intend to be influenced and was not, in fact, influenced by the Tickets. Ruberto only considered Duquette’s proposal as a last resort when he found that there was no professional baseball team interested in moving to Pittsfield. His negotiations concerning Duquette’s proposal makes it clear to me that the only interest he was promoting was the City’s. I agree with the remainder of the Commission’s decision.

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<sup>1/</sup> 930 CMR 1.01(9)(b).

<sup>2/</sup> 930 CMR 1.01(9)(k).

<sup>3/</sup> 930 CMR 1.01(9)(e)(5).

<sup>4/</sup> G.L. c. 268B, § 4(i); 930 CMR 1.01(9)(m)(1)-

<sup>5/</sup> It was previously known as the Northeast League.

<sup>6/</sup> Although the concession contract was publicly bid, Duquette’s company, DDD Baseball, partnered with Rick Murphy and won the concession contract.

<sup>7/</sup> Anything worth \$50 or more is of “substantial value” for purposes of § 3. *Life Insurance Association of Massachusetts, Inc. v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

<sup>8/</sup> Respondents maintain that in establishing the “substantial value” element, Petitioner should be required to prove that either they would have bought or sold the Tickets at a higher but illegal price or they would have relied on the higher, illegal price to calculate the value of the Tickets.

<sup>9/</sup> The Advisory further states that:: In addressing this question, the Commission will examine a variety of factors including, but not limited to, the following: *Demand* - there is a demand for the tickets that increases their value beyond the face value; the event is generally recognized as a highly desirable major event or considered a unique opportunity or providing for a limited engagement. *Ticket Availability* - the ticket is not available to the general public, the event is sold out or only limited, less-desirable

seats remain available. *Alternative Sources to Purchasing Tickets* - the price at which the general public may purchase a ticket is more than \$50 over the face value as indicated by prices posted by ticket agencies or on-line auction services. *Multiple Ticket Availability* - the cost of purchasing the total number of tickets is \$50 or more over the face value on the tickets as measured above. *Access* - the avoidance of a cumbersome or time consuming ticket distribution process such as first-come, first serve or waiting in line.

<sup>10/</sup> “Official act” is “any decision or action in a particular matter . . .” G.L. c. 268A, § 1(h).

<sup>11/</sup> *Scaccia*, 431 Mass. 351, 355 (2000).

<sup>12/</sup> *Id.* at 356.

<sup>13/</sup> *In re LIAM* 2003 SEC 528.

<sup>14/</sup> *Scaccia* at 357. *See also, In re LIAM* 2003 SEC 528, finding that in determining whether a gratuity was given “for or because of an official act performed,” the Commission may consider whether the gift was aberrational conduct for the giver; the nature, amount and quality of the gift; whether the gift was a business expense for the giver; to whom was the gift targeted; whether there was reciprocity; the existence of personal friendship; sophistication of the parties; and whether the gift is part of a repetitive occurrence. “We will consider whether the gratuity was given substantially, or in large part was motivated by, the requisite intent to influence a present or future official act of the public official or to reward a past action.” *Id.*

<sup>15/</sup> The Court in *Scaccia*, 431 Mass. at 356-57, noted that “there must be proof of linkage to a particular official act. . . . To hold otherwise would mean that any time a regulated entity became aware of any inchoate government proposal that could affect its interests, and subsequently provided something of value to a relevant official, it could be held to violate the gratuity statute in the event that the inchoate proposal later appeared in a more concretized form.”

<sup>16/</sup> Ruberto and his staff negotiated and drafted a licensing agreement for the Dukes to play in Pittsfield. Ruberto, Duquette and the Pittsfield Parks Commission entered into a licensing agreement on March 7, 2005. Duquette and

Ruberto also negotiated the process for the Dukes to control the concession stand.

<sup>17/</sup> In Duquette’s October 14, 2004 e-mail to Ruberto, Duquette noted, “[t]hanks for your interest in the Dukes and the NECBL at Wahconah Park. I am looking forward to speaking with you in depth about this when you are in a position to proceed.”

<sup>18/</sup> There is no dispute that as the Mayor of Pittsfield, Ruberto was, at all relevant times, a municipal employee within the meaning of G.L. c. 268A.

<sup>19/</sup> As previously discussed, we have concluded that the Tickets were of substantial value.

<sup>20/</sup> *Scaccia*, 431 Mass. at 356.

<sup>21/</sup> It is not disputed that Ruberto was at all relevant times a municipal employee.

<sup>22/</sup> The OTSC alleges that Ruberto obtained an unwarranted privilege, not an unwarranted exemption. Accordingly, we address only the unwarranted privilege issue.

<sup>23/</sup> As discussed above, we find that the opportunity to purchase the Tickets at face value was something of substantial value.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0012**

**IN THE MATTER OF  
STEPHEN LISAUSKAS  
DISPOSITION AGREEMENT**

The State Ethics Commission and Stephen Lisauskas enter into this Disposition Agreement pursuant to Section 5 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 May 15, 2009, 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 Lisauskas. The

Commission has concluded its inquiry and, on November 20, 2009, found reasonable cause to believe that Lisauskas violated G.L. c. 268A, § 23.

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

#### **Findings of Fact**

1. The Springfield Finance Control Board (“SFCB”) was a state agency created by an act of the Massachusetts Legislature in 2004. The mission of the SFCB was to resolve the financial emergency in the city and to restore financial stability to the city.

2. The SFCB, with the approval of the Secretary of Administration and Finance, appoints all SFCB employees.

3. Lisauskas was appointed the SFCB deputy director in June 2006 and became executive director in July 2007. Previously, Lisauskas was the Town of Natick deputy town administrator.

4. In September 2006, Lisauskas organized a committee (the “Committee”), of which he was a member, to find a new brokerage firm to manage the City of Springfield’s (the “City”) approximately \$100 million in cash investments. The Committee, with Lisauskas participating, invited three firms to interview. One of those invited was the Albany, New York office of Merrill Lynch (“Merrill Lynch Albany”).

5. Lisauskas had a friendship with Carl Kipper, a Merrill Lynch Albany broker/vice president. Lisauskas and Kipper had socialized regularly when Lisauskas lived in the Albany area, and they kept in contact by phone and email thereafter.

6. Lisauskas orally disclosed a relationship with Kipper to the Executive Director of the SFCB and members of the Committee. The Committee members were not aware that Lisauskas and Kipper had a friendship. Lisauskas filed no written disclosures with the Committee or with his appointing authority about his relationship with Kipper.

7. Lisauskas informed the Committee members that he had worked with Kipper, an investment specialist from Merrill Lynch Albany, planning various investments for the Town of Natick while Lisauskas was Natick’s deputy town administrator.

8. Kipper had made a proposal to the Town of Natick that had not been approved. Kipper had no public investment experience in Massachusetts. Neither Kipper nor Merrill Lynch Albany had ever managed any money for the Town of Natick.

9. Lisauskas typed up the questions to be asked of each brokerage firm during the Committee interviews. The questions had been decided upon by consensus of the Committee. Lisauskas provided Kipper with information about the questions to prepare him for the interview. This information was not provided by Lisauskas to the other brokerage firms interviewing for the City’s business.

10. The interviews of the three brokerage firms took place in November 2006. Lisauskas participated extensively in the interview process.

11. Immediately following the interviews, the Committee, with Lisauskas participating, decided to give to Merrill Lynch Albany to invest on behalf of the City approximately 60% of the City’s investment cash and to split the rest between the other two competing firms. Later that day, Lisauskas called Kipper to give him the news. The City began transferring funds to Merrill Lynch Albany shortly thereafter.

12. Massachusetts law places restrictions on the types of investments in which public monies can be invested. In the late summer of 2007, the City learned that Merrill Lynch Albany had invested approximately \$13 million of the City’s investment cash in risky, mortgage-backed securities that were not on the so-called “legal list” of investments, and that those securities had lost nearly all of their value.

13. The Office of the Attorney General of Massachusetts announced in late January 2008 that Merrill Lynch Albany had agreed to reimburse the City \$13.7 million to cover the City’s investment losses as well as its legal fees.

## Conclusions of Law

14. As the SFCB deputy director, Lisauskas was at all times relevant to this matter a “state employee” as defined in G.L. c. 268A, § 1.

### Section 23(b)(2)

15. Section 23(b)(2) of G.L. c. 268A prohibits a state 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.<sup>1/</sup>

16. Being selected as a brokerage firm to invest the City’s money was a privilege.

17. Lisauskas knowingly or with reason to know used his official position to secure for Kipper and Merrill Lynch Albany, Merrill Lynch Albany’s selection as a brokerage firm to manage the City’s investment money by, in his capacity as SFCB deputy director, (a) informing the Committee members that he had worked with Kipper, an investment specialist from Merrill Lynch Albany, planning various investments for the Town of Natick while Lisauskas was Natick’s deputy town administrator, when Kipper had only made a proposal to the Town of Natick that had not been approved, Kipper had no public investment experience in Massachusetts, and neither Kipper nor Merrill Lynch Albany had ever managed any money for the Town of Natick; (b) providing Kipper with information to prepare him for the November 2006 interview; and (c) then participating extensively in the interview process and the decision to have Merrill Lynch Albany invest on behalf of the City approximately 60% of the City’s investment cash.

18. The privilege was unwarranted because it was awarded, at least in substantial part, based on inaccurate information, and through a process that gave Merrill Lynch Albany an unfair advantage.

19. This privilege was of substantial value because the fees to be earned by Kipper and Merrill Lynch Albany exceeded \$50.

20. This unwarranted privilege was not properly available to similarly situated

individuals (i.e., other companies vying for the ability to invest a share of the \$100 million cash investment and earn fees for such investment).

21. Therefore, by, in the manner described above, using his official position as the SFCB deputy director to secure for Kipper and Merrill Lynch Albany, Merrill Lynch Albany’s selection as the brokerage firm to invest the City’s money, Lisauskas knowingly or with reason to know used his official position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

### Section 23(b)(3)

22. Section 23(b)(3) of G.L. c. 268A prohibits a state 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.

23. By participating in his capacity as SFCB deputy director in the above-described brokerage interviews and in the decision to award Merrill Lynch Albany \$60 million in cash investments while his friend, Kipper, was a vice-president/broker for Merrill Lynch Albany, Lisauskas 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 Kipper could unduly enjoy his favor in the performance of his official duties. Lisauskas did not file any § 23(b)(3) disclosure to dispel this appearance of impropriety. Therefore, in so acting, Lisauskas violated § 23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Lisauskas, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the

following terms and conditions agreed to by Lisauskas:

- (1) that Lisauskas pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2);
- (2) that Lisauskas pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(3); and
- (3) that Lisauskas 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:** July 27, 2010

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<sup>1/</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0013**

**IN THE MATTER OF  
GUY CORBOSIERO**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Guy Corbosiero (“Corbosiero”) enter into this Disposition Agreement pursuant to Section 5 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 19, 2010, 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 Corbosiero. On June 18, 2010, the Commission

concluded its inquiry and found reasonable cause to believe that Corbosiero violated G.L. c. 268A.

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

**Findings of Fact**

1. At all relevant times, Corbosiero was an appointed member of the Town of Winchendon (“Town”) Planning Board (“Planning Board”).

2. In 2008, the Winchendon Housing Authority (“WHA”) sought zoning relief in order to create more affordable housing in the Town. The WHA approached the Planning Board agent, who drafted a warrant article (“Article”) that would create an “affordable housing overlay district” (“Overlay District”). The Overlay District would allow the WHA to create a total of 130 new housing units on five properties in town.

3. One of the properties, known as “The Poland School,” is across the street from the house owned by Corbosiero’s sister and her husband (“House”). A second Overlay District property, known as Parcel 113, is a block away from the House.

4. The creation of overlay districts requires approval by town meeting. In spring 2008, the WHA sought Planning Board support for the Overlay District, with the intent of having the Planning Board recommend the Article at the May 2008 town meeting. During a discussion of the Overlay District at the April 15, 2008 Planning Board meeting, Corbosiero, in his capacity as a Planning Board member, spoke against the Overlay District and voted not to recommend the Article to town meeting. The WHA subsequently withdrew its plan to bring the Overlay District to town meeting. In spring 2009, the WHA again sought Planning Board support for a revised version of the Article, to be considered at the May 2009 town meeting. At the April 21, 2009 Planning Board meeting, Corbosiero, in his capacity as a Planning Board member, said he “vehemently” opposed the Overlay District and moved to not recommend the Article. Corbosiero and another Planning Board member voted in favor of his motion, another member voted against it, and one member abstained. Thus, Corbosiero’s motion

carried, and the Planning Board did not recommend the Article to town meeting.

### Conclusions of Law

5. As a Winchendon Planning Board member, Corbosiero was at all relevant times a municipal employee as defined in G.L. c. 268A, § 1.

6. Except as otherwise permitted by exemptions to the section,<sup>1/</sup> § 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2/</sup> as such an employee in a particular matter<sup>3/</sup> in which, to his knowledge, he or an immediate family<sup>4/</sup> member has a financial interest.<sup>5/</sup>

7. The Planning Board's decision on whether to support the Overlay District was a particular matter.

8. Corbosiero, as a Planning Board member, participated in the particular matter on two occasions by discussing and voting on both occasions on the Overlay District.

9. Corbosiero's sister is a member of Corbosiero's immediate family.

10. Under the conflict of interest law, a property owner is presumed to have a financial interest in matters affecting abutting and nearby property. This presumption may be rebutted by evidence clearly negating the presumed financial interest. See Commission Advisory 05-02: Voting on Matters Affecting Abutting or Nearby Property. Corbosiero's sister had a financial interest in the particular matter because the Overlay District involved properties that were, respectively, across the street and a block away from her property, the House.

11. At the time of his participation, Corbosiero knew that his sister had a financial interest in the particular matter.

12. Accordingly, by participating in the particular matter concerning the Overlay District, which involved properties that were, respectively, across the street and a block away from his sister's House, Corbosiero violated § 19.

In view of the foregoing violations of G.L. c. 268A by Corbosiero, the Commission has

determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Corbosiero:

- (1) that Corbosiero pay in accordance with the appendix to this Agreement attached hereto and incorporated herein to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that Corbosiero 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:** July 28, 2010

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<sup>1/</sup> None of the exemptions applies.

<sup>2/</sup> "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).

<sup>3/</sup> "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).

<sup>4/</sup> "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

<sup>5/</sup> "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.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0014**

**IN THE MATTER OF  
DIANNE WILKERSON**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Dianne Wilkerson (“Wilkerson”) enter into this Disposition Agreement pursuant to Section 5 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).

The State Ethics Commission is authorized to enforce G.L. c. 268B, the Financial Disclosure Law, and in that regard to initiate and conduct adjudicatory proceedings. On October 16, 2009, the Commission found reasonable cause to believe that Wilkerson violated G.L. c. 268B, § 5, and authorized the initiation of adjudicatory proceedings.

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

1. Wilkerson served as a state senator for more than 30 days in 2008. As a state senator, Wilkerson was a public official as that term is defined in G.L. c. 268A, § 1.

2. As such, Wilkerson was required to file a Statement of Financial Interests (“SFI”) for calendar year 2008 by May 26, 2009, in accordance with G.L. c. 268B.

3. Wilkerson was timely notified of her obligation to file an SFI for calendar year 2008

4. Wilkerson did not file an SFI on or before May 26, 2009.

5. On May 27, 2009, the Commission sent

by first class mail a Formal Notice of Lateness (“Notice”) to Wilkerson. The Notice advised Wilkerson that her SFI had not been filed and was, therefore, delinquent. The Notice further advised Wilkerson that failure to file her 2008 SFI within 10 days of receipt of such Notice would result in the imposition of civil penalties. The Commission allows three days for receipt of the Notice if sent by first class mail. Therefore, the SFI was required to be filed by June 10, 2009.

6. Wilkerson did not file an SFI with the Commission until February 3, 2010.

7. Wilkerson’s failure to file an SFI within 10 days of receiving the Notice was a violation of G.L. c. 268B, § 5.

8. General Laws c. 268B, § 4 authorizes the Commission to impose a civil penalty of up to \$2,000 for each violation of c. 268B.<sup>1/</sup> The Commission has adopted two schedules of penalties for SFIs filed more than 10 days after the receipt of the Notice.

**For first time late submission of an SFI:**

1-10 days delinquent: \$50  
11-20 days delinquent: \$100  
21-30 days delinquent: \$200  
31 days or more: \$500  
Non-filing: \$2000

**For the repeated late submission of an SFI:**

1-10 days delinquent: \$100  
11-20 days delinquent: \$200  
21-30 days delinquent: \$400  
31 days or more: \$1000  
Non-filing: \$2000

9. This is the first time Wilkerson submitted her SFI late.

10. Wilkerson’s SFI was more than 31 days late and, based on the Commission’s fine schedule for first time late submission of an SFI, the fine is \$500.

In view of the foregoing violation of G.L. c. 268B, § 5 by Wilkerson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Wilkerson:

- (1) that Wilkerson pay in accordance with the appendix to this Agreement attached hereto and incorporated herein to the Commission the sum of \$500 as a civil penalty for violating G.L. c. 268B, § 5; and
- (2) that Wilkerson 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 and the appendix hereto.

**DATE:** July 28, 2010

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<sup>1/</sup> During the time relevant, General Laws c. 268B authorized the Commission to impose a civil penalty of up to \$2,000 for each violation of c. 268B. General Laws c. 268B has since been amended by c. 28 and c. 105 of the Acts of 2009. Among other amendments, the maximum civil penalty has been increased to \$10,000.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0014**

**IN THE MATTER OF  
DIANNE WILKERSON**

**APPENDIX TO  
DISPOSITION AGREEMENT**

In conjunction with the Disposition Agreement (“the Agreement”) between the State Ethics Commission and Dianne Wilkerson (“Wilkerson”) resolving this matter, in which Wilkerson has agreed to pay a civil penalty of \$500 for violating G.L. c. 268B, § 5, the parties further agree that Wilkerson will pay to the Commission the sum of \$500 as follows:

- (1) The collection of the \$500 civil penalty is being deferred until such time as Wilkerson has the ability to pay.

- (2) Wilkerson will, beginning on January 10, 2011, and on or before January 10<sup>th</sup> of each year thereafter until such time as the \$500 plus accrued interest is fully paid, provide the Commission with a financial statement prescribed by the Commission showing Wilkerson’s financial assets and liabilities and affirmatively certifying to the Commission her inability to pay all or part of the \$500 plus accrued interest. Should Wilkerson be incarcerated, her obligation to provide the above financial statements would begin three months after her release and then annually beginning on January 10<sup>th</sup> of each year thereafter as indicated above.

- (3) Wilkerson will pay the \$500, plus accrued (simple) interest calculated at an annual rate of 12 percent, accruing from the date this Agreement is approved by the Commission.

In the event that Wilkerson fails to make any report or payment as agreed to above, the Commission, in its sole discretion, may take any and all actions to collect the unpaid balance of the civil penalty, plus the amount of any accrued interest, as well as the reasonable costs and attorneys’ fees associated with such collection, including, but not limited to, the costs of any litigation.

**DATE:** July 28, 2010

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0015**

**IN THE MATTER OF  
CURTIS PLANTE**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Curtis Plante (“Plante”) enter into this Disposition Agreement pursuant to Section 5 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 January 15, 2010, 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 Plante. On April 16, 2010, the Commission concluded its inquiry and found reasonable cause to believe that Plante violated G.L. c. 268A.

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

### ***Public Safety Building Project Subcontract***

#### **Findings of Fact**

1. At all relevant times, Plante was an elected member of the Town of Bolton (the "Town") Board of Selectmen ("BOS"). BOS members are "special municipal employees" because the Town has a population of 10,000 or less.<sup>1/</sup>

2. Plante is vice president and treasurer of Bradford Site Development Corporation ("Bradford"), a construction firm. Plante receives a weekly salary from Bradford.

3. In early 2008, the Town contemplated constructing a new public safety building (the "Building"). The BOS appointed a building committee (the "Committee") to finalize the design and budget and to select a general contractor. Plante was not a member of the Committee, but he provided input on the design and budget.

4. In early fall 2008, Plante, on behalf of Bradford, filed bids with several general contractors to perform site development work for the Building. One of the general contractors was Salem-based Groom Construction.

5. At the BOS meeting on December 4, 2008, the BOS discussed and voted to accept the Committee's recommendation to contract with Groom Construction as the general contractor for the construction of the Building. Prior to the discussion and vote, Plante recused himself and left the room, citing "a possible conflict of interest." After the vote, the BOS, on behalf of the Town, entered into a contract with Groom Construction under which Groom Construction would be the general contractor for the Building (the "Contract").

6. The BOS subsequently approved, with Plante abstaining, the warrant articles authorizing payments on the Contract.

7. On February 2, 2009, Plante, on behalf of Bradford, signed a \$700,000 contract (the "Subcontract") with Groom Construction to perform the site development work for the Building.

8. The Subcontract was a substantial source of revenue for Bradford. A significant portion of Plante's salaried compensation was derived from the Subcontract.

#### **Conclusions of Law**

9. As a BOS member in a town with a population of 10,000 or less, Plante was at all times relevant to this matter a special municipal employee as defined in G.L. c. 268A, § 1.

#### Section 20

10. Section 20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by his municipality, in which the municipality is an interested party, and of which financial interest he knows or has reason to know.

11. The Contract was made by the Town. The Town was an interested party in the Contract.

12. Plante had an indirect financial interest in the Contract because Bradford had the Subcontract, and a significant portion of Plante's salaried compensation was derived from the Subcontract.

13. Plante had knowledge of this financial interest at or shortly after the time the Subcontract was executed.

14. Therefore, Plante violated § 20 by having an indirect financial interest in a contract made by his municipality, in which the municipality was an interested party, and of which financial interest he knew or had reason to know.<sup>2/</sup>

#### Section 17(a)

15. Section 17(a) prohibits a municipal employee, other than as provided by law for the proper discharge of his official duties, from

requesting or receiving compensation from anyone other than the same municipality in relation to a particular matter in which that municipality is a party or has a direct and substantial interest.

16. A special municipal employee is subject to § 17(a) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving.

17. The Contract was a particular matter.

18. The Contract was a subject of Plante's official responsibility as a BOS member, as the BOS signed the Contract on behalf of the Town on December 4, 2008.

19. The Town was a party to the Contract.

20. The compensation Plante requested on February 2, 2009, and subsequently received from Bradford for performing work on the Subcontract, was in relation to the Contract.

21. Plante's request for compensation for the work to be performed on the Subcontract was not provided by law for the proper discharge of his official duties.

22. The compensation was in relation to a particular matter, the Contract, which within one year had been the subject of Plante's official responsibility as a BOS member.

23. Therefore, by, as a special municipal employee, other than as provided by law for the proper discharge of his official duties, requesting compensation from Bradford in relation to the Contract, which within one year had been the subject of his official responsibility, Plante violated § 17(a).

### ***The Change Order***

#### **Findings of Fact**

24. During excavation work for the Building, Bradford encountered boulders, the removal of which was not part of the Subcontract. On February 18, 2009, Plante, on behalf of Bradford, appeared before the Committee to explain the situation and request a

change order. At the same meeting, the Committee subsequently voted to recommend the change order, which increased the Subcontract by \$48,444.

25. The BOS subsequently approved, with Plante abstaining, the warrant article with the change order, thereby increasing the Subcontract by \$48,444.

#### Section 17(a)

26. The Contract was a particular matter.

27. The Contract was a subject of Plante's official responsibility as a BOS member, as the BOS signed the Contract on behalf of the Town on December 4, 2008.

28. The Town was a party to the Contract.

29. Plante appeared before the Committee on February 18, 2009, on behalf of Bradford to explain and request the \$48,444 change order. The compensation Plante received as a salaried employee from Bradford for appearing before the Committee as Bradford's representative to explain and request the change order was in relation to the Contract.

30. Plante's receipt of compensation for appearing before the Committee as Bradford's representative to explain and request the change order was not provided by law for the proper discharge of his official duties.

31. The compensation was in relation to a particular matter, the Contract, which within one year had been the subject of Plante's official responsibility as a BOS member.

32. Therefore, by, as a special municipal employee, other than as provided by law for the proper discharge of his official duties, receiving compensation from Bradford for appearing before the Committee as Bradford's representative to explain and request the change order, which was in relation to the Contract, which within one year had been the subject of his official responsibility, Plante violated § 17(a).

#### Section 17(c)

33. Section 17(c) prohibits a municipal employee from, otherwise than in the proper discharge of his official duties, acting as agent

for anyone other than the same municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

34. A special municipal employee is subject to § 17(c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving.

35. The Contract was a particular matter.

36. The Contract was a subject of Plante's official responsibility as a BOS member, as the BOS signed the Contract on behalf of the Town on December 4, 2008.

37. The Town was a party to the Contract.

38. Plante appeared before the Committee on February 18, 2009, as Bradford's representative to explain and request the \$48,444 change order. Thus, Plante acted as agent for Bradford for the change order, which was in connection with the Contract.

39. Plante's actions as agent for Bradford were not in the proper discharge of his official duties.

40. Plante's actions as agent were in connection with a particular matter, the Contract, which within one year had been the subject of Plante's official responsibility as a BOS member.

41. Therefore, by, as a special municipal employee, acting as agent for Bradford to explain and request the change order, otherwise than in the proper discharge of his official BOS duties, in connection with the Contract, which within one year had been the subject of his official responsibility, Plante violated § 17(c).

### ***Bradford's Complaint to BOS***

#### **Findings of Fact**

42. On August 15, 2009, Plante drafted and sent a letter on Bradford stationery to the Bolton town administrator complaining about a town employee's conduct with respect to Bradford's work on the Subcontract (the "Complaint").

After the town administrator interviewed numerous witnesses and interested parties, the BOS met in executive session on September 3, 2009, and on September 17, 2009, to discuss the Complaint. Plante, in his capacity as an officer of Bradford, spoke at both executive sessions regarding the Complaint.

43. At the October 21, 2009 BOS meeting, Plante again appeared as an officer of Bradford and participated as such in the discussion of the Complaint.

44. The BOS voted on October 21, 2009, to dismiss the Complaint.

#### **Conclusions of Law**

##### *Section 17(a)*

45. The BOS's decision on how to address the Complaint (the "Decision") was a particular matter in which the Town had a direct and substantial interest.

46. The Decision was a subject of Plante's official responsibility as a BOS member, as the matter was before the BOS on September 3, 2009, September 17, 2009, and October 21, 2009.

47. Plante represented Bradford before the BOS on September 3, 2009, September 17, 2009, and October 21, 2009, concerning the Complaint. The compensation Plante received as a salaried employee from Bradford for appearing before the BOS on September 3, 2009, September 17, 2009, and October 21, 2009, was in relation to the Decision.

48. Plante's receipt of compensation in relation to the Decision was not provided by law for the proper discharge of his official duties.

49. The compensation was in relation to a particular matter, the Decision, which within one year had been the subject of Plante's official responsibility as a BOS member.

50. Therefore, by, as a special municipal employee, other than as provided by law for the proper discharge of his official duties, receiving compensation from Bradford for appearing before the BOS on September 3, 2009, September 17, 2009, and October 21, 2009, in relation to the Decision, which was the subject of

his official responsibility as a BOS member, Plante violated § 17(a).

Section 17(c)

51. The Decision was a particular matter in which the Town had a direct and substantial interest.

52. Plante represented Bradford before the BOS on September 3, 2009, September 17, 2009, and October 21, 2009, concerning the Decision. Thus, Plante acted as agent for Bradford in connection with the Decision.

53. Plante's actions as agent for Bradford were not in the proper discharge of his official duties.

54. The Decision was a subject of Plante's official responsibility as a BOS member, as the matter was before the BOS on September 3, 2009, September 17, 2009, and October 21, 2009.

55. Plante's actions as agent were in connection with a particular matter, the Decision, which within one year had been the subject of Plante's official responsibility as a BOS member.

56. Therefore, by, as a special municipal employee, acting as agent for Bradford concerning the Complaint, otherwise than in the proper discharge of his official BOS duties, in connection with the Decision, which within one year had been the subject of his official responsibility, Plante violated § 17(c).

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

- (1) that Plante pay to the Commission the sum of \$10,000 as a civil penalty for repeatedly violating G.L. c. 268A, §§ 17(a), 17(c) and 20; and
- (2) that Plante 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:** July 29, 2010

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<sup>1/</sup> A selectman in a town that has a population of 10,000 or fewer is considered a "special municipal employee" for the purposes of the conflict law. *See* § 1(n).

<sup>2/</sup> As a special municipal employee, Plante could have sought an exemption from § 20 by filing a statement with the town clerk fully disclosing his financial interest in the contract and by having the BOS, without Plante's participation, approve the exemption. *See* § 20(d). He did not do so.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0003**

**IN THE MATTER OF  
ROBERT COLE**

Appearances: Karen Beth Gray, Esq.  
Counsel for Petitioner

James D. Baldassini, Esq.  
Counsel for Respondent

Commissioners: Charles B. Swartwood, III, Ch.,  
Jeanne M. Kempthorne, David L. Veator and  
Paula Finley Mangum<sup>1/</sup>

Presiding Officer: Commissioner Patrick J. King

**DECISION AND ORDER**

Petitioner issued an Order to Show Cause (OTSC) on February 17, 2010, against Respondent Robert G. Cole (Cole), the former Director of Toll Operations of the Massachusetts Turnpike Authority. The OTSC alleges that Cole violated § 5 of G.L. c. 268B, the Financial Disclosure Law, when he failed to file a Statement of Financial Interests (SFI) for calendar year 2008 (2008 SFI). Cole

subsequently filed his 2008 SFI on March 22, 2010.

When Cole failed to file an Answer to the OTSC, Petitioner filed a Motion for Summary Decision. The Presiding Officer issued an order requiring him to file an Answer by April 12, 2010, or to otherwise show cause why a summary decision should not be entered against him. On April 12<sup>th</sup>, Cole filed a Response admitting all the allegations in the OTSC with the exception that he failed to file his 2008 SFI.

A pre-hearing conference was held on April 30, 2010. Subsequently, on May 5, 2010, the parties filed Stipulations of Fact and Law (Stipulations) with three (3) attached exhibits. In the Stipulations, the parties agreed that the only remaining issue was the assessment of the civil penalty. The parties waived a hearing, the filing of briefs and closing arguments on that sole issue, leaving the matter of the civil penalty to the Commission's discretion.<sup>2/</sup>

## **I. Findings of Fact**

The Commission finds the following facts by a preponderance of the evidence.

1. In August 2000, Cole began serving as the Director of Toll Operations for the Massachusetts Turnpike Authority (Authority).

2. Cole served as the Director of Toll Operations for more than 30 days in 2008. In that position, he was a state employee as that term is defined in G.L. c. 268A, § 1.

3. In accordance with G.L. c. 268B and 930 CMR 2.00, Cole's position of Director of Toll Operations for the Authority was designated as a major policy-making position for calendar year 2008. As such, he was required to file an SFI for calendar year 2008 (2008 SFI) by May 1, 2009, pursuant to G.L. c. 268B and 930 CMR 2.00.

4. Cole was notified of his obligation to file his 2008 SFI.

5. He did not file a 2008 SFI on or before May 1, 2009.

6. On May 4, 2009, the Commission sent Cole a Formal Notice of Lateness (Notice) by first class mail. The Notice advised him that his

2008 SFI had not been filed and was therefore, delinquent and further, that his failure to file within 10 days of receipt of the Notice - - May 18, 2009<sup>3/</sup> - - would result in the imposition of civil penalties. It also informed Cole of the Commission's fine schedule for first time and repeated late submission of an SFI.

7. He failed to file his 2008 SFI within 10 days after receipt of the Notice.

8. Cole filed his 2008 SFI on March 22, 2010.

9. He filed his 2007 SFI late for which he was ordered by the Commission to pay a \$500 civil penalty pursuant to its Ruling and Order on Motion for Summary Decision issued December 17, 2009.

10. Cole was terminated from his position at the Authority on March 7, 2008.

11. His elderly mother was living with him at all relevant times. She was diagnosed with leukemia in approximately 2002. Her illness became increasingly severe as she underwent various treatments to combat the progress of the cancer. She received hospice services at Cole's house for the last months of her life.

12. The last two years of his mother's illness, until her death on February 23, 2009, put a severe strain on Cole and his wife who were her primary caregivers.

13. Cole is 56 years old and has limited educational experience. He has been unable to find employment since his termination from the Authority. His unemployment compensation ended in 2010.

14. Cole has no current income. On the May 14, 2010 Financial Statement attached to his Affidavit, he lists \$0 as his total gross monthly income and total monthly expenses of \$2,242. Cole also lists his gross income for the prior year of 2009 as \$56,724 from unemployment and pension withdrawals.

15. His wife is the sole support of their family.

## **II. Discussion**

Section 5(c) of G.L. c. 268B, the Financial Disclosure Law, requires every public employee<sup>4/</sup> to file annually an SFI for any year in which they are public employees for thirty (30) days or more. 930 CMR 2.01. It further requires that on or before May 1<sup>st</sup> of each year, a public employee file an SFI for the preceding calendar year. The purpose of the filing requirement is to provide a means of achieving “the legitimate goal of assuring the people of [the] ‘impartiality and honesty of public officials.’” Opinion of the Justices to the Senate, 375 Mass. 795, 807 (1978) quoting § 1 of the proposed new G.L. c. 268B.

Here, it is undisputed that Cole did not comply with the statute. He did not file his 2008 SFI by May 1, 2009. In addition, he failed to file within 10 days of receiving the Formal Notice of Lateness. Section 5 of G.L. c. 268B provides in relevant part that the “[f]ailure of a reporting person to file [an SFI] within ten days after receiving [a Formal Notice of Lateness] . . . is a violation.”

The elements necessary to establish that Cole violated § 5 are as follows: (1) Cole was a public official or employee as defined by G.L. c. 268B during the year in question (2008); (2) he was notified in writing of his delinquency and the possible penalties for failure to file his 2008 SFI; and (3) he did not file an SFI within 10 days of receiving notice of delinquency. *See, e.g., In Re Smith*, 1985 SEC 221, 222; *In Re Owens*, 1984 SEC 176, 176. Based on his Response and the Stipulations, we find that Cole violated § 5.

During the relevant time period, the Commission was authorized by § 4(j)(3) of G.L. c. 268B to impose a civil penalty of up to \$2,000 for each violation.<sup>5/</sup> The Commission has established two separate schedules of penalties for SFIs filed more than 10 days after receipt of a Formal Notice of Lateness: one for the first time late submission, and a schedule of more substantial penalties for repeated late submission. Because Cole’s 2007 SFI was filed late, the repeated late submission schedule is applicable.<sup>6/</sup> Although Cole was required to file his 2008 SFI by May 18, 2009, in accordance with the Formal Notice of Lateness, he did not file until March 22, 2010, more than 31 days late. Pursuant to the applicable schedule, the penalty would be \$1,000.

Here, there is a dispute as to the appropriate penalty. Cole argues that as a result of the mitigating circumstances detailed in his Affidavit and due to his continued unemployment and lack of resources, any penalty should be waived. Petitioner argues that the penalty should be \$1,000 with no mitigation, although it does not oppose a payment plan.

The Commission has the discretion to adjust a civil penalty in recognition of mitigating or aggravating circumstances in individual cases. *See In Re Smith*, 1985 SEC at 222; *In Re Sullivan*, 1983 SEC 128, 130. Here, it is appropriate for the Commission to exercise its discretion for the following reasons.

During the period when Cole would have been gathering and reviewing the material and information needed to prepare his 2008 SFI, his mother was living with him. Since her diagnosis with leukemia in 2002, her illness became increasingly severe as she underwent various treatments. The last two years of her illness, including her receipt of hospice services, until her death on February 23, 2009, Cole and his wife served as his mother’s primary caregivers. Caring for a terminally ill family member is the type of event that can fully consume an individual’s time and energy. *See In Re DeLuca*, Adjudicatory Docket No. 630 (January 18, 2002) (“obvious strain accompanying ... divorce and custody proceedings” are mitigating factors in assessing civil penalty for late filed SFI).

In addition, Cole, who is 56, and has limited educational experience, has been unable to find employment since his termination from the Authority several years ago. *See In Re McNamara*, 1983 SEC 150, 152 (reduction in penalty in recognition that respondent had been unemployed for approximately five months). His unemployment compensation ended earlier in 2010. As represented in his Affidavit and accompanying financial information, he has no income of any sort and monthly expenses of \$2,242. His wife serves as the sole support of their family.

The obvious strain accompanying his mother’s illness and his role as her primary caregiver, coupled with his unemployment for over two years and lack of income from other sources, are factors that the Commission finds in mitigation in assessing the civil penalty to be imposed on Cole. In light of these mitigating

factors, a penalty substantially less than the \$1,000 penalty set forth in the schedule is appropriate.

### III. Order

Pursuant to the authority granted to it by G.L. c. 268B, § 4(j)(3), the Commission finds that Respondent Robert G. Cole violated G.L. c. 268B, § 5 when he failed to timely file his 2008 SFI and hereby orders Cole to pay a civil penalty of two hundred and fifty dollars (\$250). Cole is further ordered to pay this penalty, without interest, to the State Ethics Commission on or before six (6) months after issuance of this Decision and Order.

**DATE AUTHORIZED:** July 16, 2010

**DATE ISSUED:** August 12, 2010

#### **Dissent in Part – Charles B. Swartwood III, Chairman**

I concur with the majority's finding that Respondent Robert G. Cole violated G.L. c. 268B, § 5 when he failed to timely file his 2008 SFI. However, I do not agree with the amount of the civil penalty assessed by the majority. I would have imposed a higher civil penalty.

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<sup>1/</sup> Commissioner King did not participate in the deliberations.

<sup>2/</sup> On May 28, 2010, the Presiding Officer issued an Order on Assessment of Civil Penalty Submissions requiring the parties to submit written memoranda on the remaining issue. Both parties filed memoranda. Cole also filed an Affidavit dated May 28, 2010.

<sup>3/</sup> The Commission allows three days for the receipt of a Notice if sent by first class mail.

<sup>4/</sup> During the relevant time period, public employee was defined as "any person who holds a major policymaking position in a governmental body." G.L. c. 268B, § 1(o).

<sup>5/</sup> The 2009 amendment to G.L. c. 268B, increasing the penalty to \$10,000, is not applicable to Cole.

<sup>6/</sup> During the relevant time period, that schedule was as follows: 1-10 days late (\$100); 11-20 days late (\$200); 21-30 days late (\$400); 31 days

or more late (\$1,000); non-filing of an SFI (\$2,000).

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### COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0020

IN THE MATTER OF  
MICHAEL COLE

#### DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Michael Cole ("Cole") pursuant to Section 5 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 January 20, 2010, 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 Cole. On April 16, 2010, the Commission concluded its inquiry and found reasonable cause to believe that Cole had violated G.L. c. 268A, § 17.

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

#### **Findings of Fact**

1. Cole was, during the relevant time, a Town of Eastham (the "Town") Planning Board member. Planning Board members had not been designated as special municipal employees.

2. Cole is president of Cape Associates, Inc. ("Cape Associates"), a construction company located in the Town.

3. In Spring 2005, Cole, as Cape Associates' president, agreed to build a 250 square foot addition (the "Addition") to a dental office located in the Town (the "Dental Office"). The plans for the Addition were prepared by a designer and a professional land surveyor.

4. In order to obtain a building permit to construct the Addition, the Dental Office's owner needed a special permit from the Planning Board to comply with the town's commercial site plan approval bylaw.

5. On March 9, 2005, Cole submitted a special permit application for the Addition (the "Application") to the Planning Board on behalf of the Dental Office's owner.

6. At a May 11, 2005 Planning Board hearing, Cole stepped down from the Planning Board and presented the Application to the Planning Board on behalf of the Dental Office's owner.

7. The Planning Board voted to approve the Application, six in favor and none against. Cole did not participate in the vote.

8. Cape Associates received \$56,950 for the work in connection with the construction of the Addition.

### **Conclusions of Law**

#### Section 17(a)

9. Section 17(a) prohibits a municipal employee, other than as provided by law for the proper discharge of his official duties, from requesting or receiving compensation from anyone other than the same municipality in relation to a particular matter in which that municipality is a party or has a direct and substantial interest.

10. As a Planning Board member, Cole was at all times relevant to this matter a municipal employee as defined in G.L. c. 268A, § 1(g). At the relevant time, Cole had not been designated as a special municipal employee under § 1(n) of the statute.

11. The decision to approve the Application was a particular matter.

12. Because the Application involved a special permit issued by the Planning Board, the Town had a direct and substantial interest in that particular matter.

13. The compensation Cole requested and received from the Dental Office's owner for

constructing the Addition was in relation to the Board's decision to approve the Application.

14. This compensation was not as provided by law for the proper discharge of Cole's duties.

15. By acting as described above, Cole violated § 17(a).

#### *Section 17(c).*

16. Section 17(c) prohibits anyone, other than in the proper discharge of his official duties, from acting as agent for anyone other than the town in connection with a particular matter in which the same town is a party or has a direct and substantial interest.

17. As stated above, the decision to approve the Application was a particular matter; and, because the Application involved a special permit issued by the Planning Board, the Town had a direct and substantial interest in that particular matter.

18. By submitting and presenting the Application, Cole acted on behalf of the Dental Office's owner as the owner's agent.

19. Cole acted on behalf of the Dental office's owner in connection with the Board's decision to approve the Application.

20. Cole's actions as agent were not in the proper discharge of Cole's official duties.

21. Therefore, by acting as described above, Cole violated § 17(c).

In view of the foregoing violations of G.L. c. 268A by Cole, 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 Cole:

- (1) that Cole pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, §§ 17(a) and 17(c); and
- (2) that Cole 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:** September 16, 2010

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0021**

**IN THE MATTER OF  
THOMAS KOKERNAK**

**DISPOSITION AGREEMENT**

The State Ethics Commission and Thomas Kokernak (“Kokernak”) enter into this Disposition Agreement pursuant to Section 5 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 June 18, 2010, 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 Kokernak. On September 10, 2010, the Commission concluded its inquiry and found reasonable cause to believe that Kokernak violated G.L. c. 268A.

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

**Findings of Fact**

1. At all relevant times, Kokernak was a lieutenant in the Town of Sterling (“Town”) Fire Department (“SFD”).
2. As an SFD lieutenant, Kokernak is a municipal employee as defined in G.L. c 268A, § 1(g).
3. Kokernak and his wife own and operate F&T Products, a company that markets decorative leather emblem shields for the front of fire helmets.

4. Between 2008 and 2010, the Town issued payments totaling \$1,683.70 to F&T Products for the purchase of emblem shields. (Town invoices show purchases of \$240 on September 8, 2008; \$1,140 on February 18, 2009; and \$303.70 on February 25, 2010, from F&T Products.)

5. Kokernak’s profit on F&T Products’ sale of products to the Town was \$400.

6. F&T Products no longer sells products to the Town.

**Conclusions of Law**

7. Section 20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by his municipality, in which the municipality is an interested party, and of which financial interest he knows or has reason to know.

8. Each of the above described sales of products to the Town by F&T Products was a contract.

9. Each of the contracts was made by the Town, and the Town was an interested party in each of the contracts.

10. Kokernak knew he had a financial interest in each of the contracts.

11. There are a number of exemptions in § 20, but none are applicable here.

12. Therefore, as a municipal employee, by on three occasions knowingly having a financial interest in a contract made by the Town in which the Town was an interested party, Kokernak violated § 20.

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

- (1) that Kokernak pay to the Commonwealth of Massachusetts, with such payment delivered to the

Commission, the sum of \$500 as a civil penalty for violating G.L. c. 268A, § 20;

- (2) that Kokernak pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$400 as a civil forfeiture of the profit he earned in selling products to the Town; and
- (3) that Kokernak 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:** September 21, 2010

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0022**

**IN THE MATTER OF  
DAVID CELINO**

**DISPOSITION AGREEMENT**

The State Ethics Commission (the "Commission") and David Celino ("Celino") enter into this Disposition Agreement pursuant to Section 5 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 19, 2010, 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 Celino. The Commission has concluded its inquiry and, on July 16, 2010, found reasonable cause to believe that Celino violated G.L. c. 268A.

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

**Findings of Fact**

1. At all relevant times, Celino has been the Chief Fire Warden for the Department of Conservation and Recreation ("DCR"). As such, Celino has authority over the entire DCR Bureau of Forest Fire Control. Celino's appointing authority is the DCR Deputy Commissioner.

2. In August 2008, there was an opening for a firefighter in DCR District 8 ("District 8"). The ultimate responsibility for hiring decisions for firefighters in the Bureau of Forest Fire Control rested with Celino and the DCR Commissioner.

3. Celino reviewed the list of applicants for the District 8 firefighter position and noted that two of the candidates were his friends. Celino met with his subordinate, the District 8 warden, to discuss the firefighter hiring process. Celino told the District 8 warden that he was going to stay out of the hiring process.

4. A screening committee, without Celino's participation, conducted first and second interviews and ultimately recommended a candidate for the District 8 firefighter position. The recommended candidate was not one of Celino's friends.

5. Upon learning of the recommendation, Celino informed the District 8 warden that he had issues with the recommended candidate, and questioned why his friends did not receive second-round interviews.

6. Celino subsequently reviewed the interview packets, and determined that the process did not fully comply with a newly instituted DCR hiring policy mandating that a human resources staff member participate in the interview process. Celino brought his concern about the hiring process to his supervisor and the DCR Director of Administration and Finance. He did not disclose his friendship with two of the candidates for the firefighter position to his appointing authority, the DCR Deputy Commissioner.

7. Ultimately, Celino's supervisors decided to repost the position. The position, however, was not filled due to budget constraints.

**Conclusions of Law**

8. As the DCR Chief Fire Warden, Celino was at all times relevant to this matter a state employee as defined in G.L. c. 268A, § 1.

9. Section 23(b)(3) of G.L. c. 268A prohibits a state 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.

10. By participating, in his capacity as DCR Chief Fire Warden, in the hiring process for the District 8 firefighter position, while two friends of his were candidates for the position, Celino 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 two friends could unduly enjoy his favor in the performance of his official duties. Celino did not file any § 23(b)(3) disclosure to dispel this appearance of impropriety. Therefore, in so acting, Celino violated § 23(b)(3).

11. Celino argues that it was incumbent on him as the Chief Fire Warden to point out to his supervisors the procedural irregularity in the hiring process - the absence of a human resources staff member participating in the interview process. It is unclear, however, whether Celino's motive was to ensure procedural regularity or the hiring of one of his friends. In any event, even assuming Celino was obligated to raise the procedural issue, he was also obligated to disclose that two of his friends were candidates for the position.

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

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

- (2) that Celino 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:** September 23, 2010

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**COMMONWEALTH OF  
MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0023**

**IN THE MATTER OF  
PAUL DEMOURA**

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Paul DeMoura (“DeMoura”) enter into this Disposition Agreement pursuant to Section 5 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 September 18, 2009, 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 DeMoura. On June 18, 2010, the Commission concluded its inquiry and found reasonable cause to believe that DeMoura violated G.L. c. 268A.

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

**Findings of Fact**

1. DeMoura was the Town of Dighton (“Town”) Highway Department (“DHD”) Superintendent from 1988 to July 31, 2008, when he retired. As such, DeMoura was a municipal employee as that term is defined in G.L. c. 268A, § 1.

2. As the DHD Superintendent, DeMoura had the authority to hire temporary workers, such as seasonal snowplow operators. As to permanent DHD employees, DeMoura had the authority to recommend who should be hired, subject to the Board of Selectman's approval.

3. DeMoura has two sons, Derek and Christopher.

#### Derek ("Derek") DeMoura

4. In 2005 the Town sought to fill two full-time DHD laborer/driver vacancies. The Town placed an advertisement in a local paper. Only two prospective candidates applied for the positions, one of whom was Derek.

5. As the DHD Superintendent, DeMoura interviewed both applicants and then recommended both be appointed as DHD employees by the Board of Selectmen ("BOS").

6. The BOS hired Derek at an annual salary of \$47,000. When the BOS hired Derek, its members knew that Derek was DeMoura's son. The BOS also approved hiring the other candidate.

7. Derek worked as a DHD laborer/driver from 2004 until 2009.

#### Christopher ("Chris") DeMoura

8. As the DHD Superintendent, DeMoura had the authority to unilaterally hire part-time seasonal employees.

9. In February 2005, the DHD needed an additional part-time snowplow driver ("Driver").

10. At that time, DeMoura first offered the Driver job to Chris, but Chris was not initially interested. At the time of this offer, Chris and Lynn Moody ("Moody") were in a dating relationship and living together. DeMoura asked Moody if she wanted the Driver job. She said she did, and DeMoura hired Moody for the job.

11. Moody, however, never worked as a Driver for the DHD. Rather, whenever she was called to snowplow, Chris filled in for her.

12. Some time after DeMoura hired Moody, but no later than February 2006, DeMoura observed that Chris was driving the snowplow

truck, not Moody. From the time he first saw Chris plowing instead of Moody, DeMoura was aware that Chris was doing the work for the Town, not Moody. Thereafter, instead of calling Moody, DeMoura regularly called Chris in to work when he needed another Driver.

13. DeMoura did not prepare or complete the paperwork required to put Chris on the payroll instead of Moody, and he did not see any need to do so. According to DeMoura, he did not care who did the plowing as long as "there was someone in the seat."

14. DHD payroll records prepared and signed by DeMoura and submitted to the Town accountant indicate that between February 2005 and March 2008, Moody was paid a total of \$2,755.17 for snowplow driving on approximately 16 occasions. Internal DHD records maintained by DeMoura, and not sent to the Town accountant, however, indicate that DeMoura, under the impression that Moody was initially doing the driving, credited Moody for the work on the first seven of those 16 occasions. Beginning in February 2006, however, when DeMoura learned that Chris was doing the driving rather than Moody, DeMoura credited Chris for the snowplowing on the next nine occasions, totaling \$1,066.27 in pay.

15. When Moody received her DHD paychecks for the snowplowing, she applied the proceeds from those checks to cover her and Chris' joint living expenses.

16. According to DeMoura, he had no knowledge that, at the time he hired Moody, Chris would be driving the plow truck for her.

17. In or about early 2008, DeMoura had Chris complete the paperwork necessary to put Chris on the DHD payroll as a Driver. DeMoura then put Chris officially on the DHD payroll as a Driver.

18. Chris remained on the DHD payroll as a Driver through March 2008, earning a total of only approximately \$50 as a Driver. He was not rehired the following winter season.

### **Conclusions of Law**

#### Derek

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

20. DeMoura's decision in 2005 to hire Derek as a full-time DHD driver was a particular matter.

21. DeMoura participated in that particular matter as the DHD Superintendent by interviewing the two candidates for the two openings, and by recommending that Derek and the other candidate be hired.

22. As DeMoura's son, Derek is a member of DeMoura's immediate family.

23. Derek had a financial interest in the particular matter because the decision involved awarding a job paying \$47,000 per year.

24. At the time of his participation, DeMoura knew that Derek had a financial interest in the particular matter.

25. Accordingly, by participating in the particular matter concerning Derek, DeMoura violated § 19.

26. That the BOS knew that Derek was DeMoura's son when it approved DeMoura's recommendation is a mitigating factor, but not a defense.<sup>6/</sup>

#### Chris

#### **Section 19**

27. DeMoura's first decision, which he made no later than in February 2006, to allow Chris to fill in for Moody as a Driver was a particular matter. Therefore, DeMoura made a new decision each time he allowed Chris to fill in for Moody.

28. DeMoura participated in these decisions by, as the DHD Superintendent, unilaterally making them.

29. As DeMoura's son, Chris is a member of DeMoura's immediate family.

30. Chris had a financial interest in these decisions because the payments earned from this work were used to cover Chris and Moody's joint living expenses.

31. At the time DeMoura participated in these decisions, he knew that it was reasonably foreseeable that Chris would financially benefit from being allowed to fill in for Moody as a Driver.

32. Accordingly, by participating in these decisions concerning Chris as described above, DeMoura repeatedly violated § 19.

33. In addition, the decision in 2008 to put Chris on the payroll was a particular matter in which Chris had a financial interest.

34. DeMoura participated in that decision by, as DHD Superintendent, unilaterally making the decision.

35. DeMoura knew that Chris had a financial interest in that decision.

36. Accordingly, by participating in that 2008 decision to put Chris on the payroll, DeMoura violated § 19.

#### **Section 23(b)(2)**

37. Section 23(b)(2) of G.L. c. 268A prohibits a state 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.<sup>7/</sup>

38. DeMoura used his official position by, as the DHD Superintendent, allowing Moody from February 2006 through March 2008, to remain on the payroll as a Driver while Chris was doing the driving, and by, for that same time period, submitting payroll records to the Town Treasurer indicating that Moody was doing the driving when, in fact, Chris was doing the driving.

39. Being hired and retained on the payroll as a Driver was a privilege.

40. This privilege was of substantial value because the Driver position was a paid position.

41. As to Moody, the privilege was unwarranted from two perspectives. First, it involved retaining Moody on the payroll and compensating her for work she did not perform. Second, it involved Chris doing work for the Town that was not properly authorized.

42. This unwarranted privilege was not properly available to similarly situated individuals.

43. By allowing an arrangement by which (1) his son Chris' girlfriend was retained on the payroll as a Driver, but DeMoura would call in his son Chris to do the driving, and (2) the town paycheck for the driving would be issued to the girlfriend, DeMoura knowingly or with reason to know used his official position to obtain an unwarranted privilege of substantial value for his son and/or his son's girlfriend that was not properly available to other similarly situated individuals. Therefore, in so acting, DeMoura violated § 23(b)(2).

In view of the foregoing violations of G.L. c. 268A by DeMoura, 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 DeMoura:

- (1) that DeMoura pay to the Commonwealth of Massachusetts, with delivery of the payment to the Commission, the sum of \$1,000<sup>8/</sup> as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2); and
- (2) that DeMoura 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 28, 2010

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<sup>1/</sup> None of the exemptions applies.

<sup>2/</sup> "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).

<sup>3/</sup> "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).

<sup>4/</sup> "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

<sup>5/</sup> "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*.

<sup>6/</sup> For DeMoura to properly participate in Derek's hiring, DeMoura would have had to obtain a determination from his appointing authority, the BOS, that his participation was acceptable notwithstanding Derek's financial interest in the matter. *See* § 19(b)(1), which provides: It shall not be a violation of this section if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee

<sup>7/</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended.

<sup>8/</sup> The relatively small fine reflects in part that on September 24, 2010, DeMoura entered into a

consent judgment with the Office of the Attorney General in which he paid a total of \$5,690.81 in restitution and civil penalties for violations of G.L. c. 12, § 5B (False Claims Acts), which violations involved in part the same claims for Driver payments as are described in the present Disposition Agreement.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0024**

**IN THE MATTER OF  
GENE COVINGTON**

**DISPOSITION AGREEMENT**

The State Ethics Commission (the “Commission”) and Gene Covington (“Covington”) enter into this Disposition Agreement pursuant to Section 5 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 September 18, 2009, 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 Covington. The Commission has concluded its inquiry and, on July 16, 2010, found reasonable cause to believe that Covington violated G.L. c. 268A.

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

**Findings of Fact**

1. During the relevant time period, Covington was a City of Somerville Inspectional Services Division (“ISD”) building inspector. As part of his duties, Covington was responsible for issuing building permits and performing inspections in Somerville.

2. Covington and his wife reside at a home in Somerville (the “House”) which is owned by Covington’s mother-in-law.

3. Joaquim Correia, Jr. (“Correia”) owns JEJ General Contractor, Inc. (“JEJ”), a company that provides construction services.

4. On four occasions between June 2005 and September 2007, Correia/JEJ performed home renovation/improvement work at the House. The projects involved roof stripping and repair; replacement of stairs; masonry work; and replacing a kitchen sink and base cabinets. Covington’s wife paid Correia a total of \$14,300 for this work from a joint account she holds with Covington.

5. In or about 2006, Covington performed the final inspection of the roofing work Correia/JEJ performed at the House.

6. ISD policy prohibits inspectors from recommending contractors. Nevertheless, on at least five occasions between 2007 and 2008, Covington, in his capacity as an ISD inspector, recommended Correia/JEJ to property owners in need of a contractor. These property owners subsequently hired Correia/JEJ.

7. On six occasions between 2007 and 2008, Covington, in his capacity as an ISD inspector, approved building permit applications on which Correia/JEJ was the listed contractor, and subsequently issued building permits to Correia/JEJ.

8. On four occasions between 2007 and 2008, Covington, in his capacity as an ISD inspector, performed inspections of projects completed under permit by Correia/JEJ.

**Conclusions of Law**

9. As an ISD inspector, Covington was a municipal employee as defined in G.L. c. 268A, § 1.

**Section 19**

10. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>1/</sup> as such an employee in a particular matter<sup>2/</sup> in which, to his knowledge, he or an immediate family<sup>3/</sup> member has a financial interest.<sup>4/</sup>

11. The decision to sign off on the final inspection of the roofing work performed on the House was a particular matter.

12. Covington participated in this particular matter by, as an ISD inspector, signing off on the final inspection.

13. Covington's mother-in-law is a member of Covington's immediate family.

14. Covington's mother-in-law had a financial interest in the particular matter because the roofing work was performed on her property, and she paid for the work.

15. Covington knew of his mother-in-law's financial interest when he signed off on the inspection.

16. Accordingly, by so participating in this particular matter, Covington violated § 19.

Section 23(b)(2)

17. Section 23(b)(2) 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.<sup>5/</sup>

18. By, on five occasions in his capacity as an ISD inspector, recommending Correia/JEJ to property owners in need of a contractor, Covington knowingly used his official position as an ISD inspector.

19. A contractor recommendation from an ISD inspector was a benefit and, therefore, was a privilege.

20. This privilege was of substantial value because the recommendation was likely to and did in fact result in Correia/JEJ obtaining work.

21. The privilege was unwarranted because ISD policy prohibits inspectors from recommending contractors.

22. This unwarranted privilege was not properly available to similarly situated individuals.

23. By, on the five above-described occasions, using his official position as an ISD inspector to recommend Correia/JEJ to property

owners in need of a contractor, Covington knowingly or with reason to know used his official position to obtain an unwarranted privilege of substantial value for Correia/JEJ that was not properly available to other similarly situated individuals. Therefore, in so acting, Covington repeatedly violated § 23(b)(2).

Section 23(b)(3)

24. 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 the facts which would otherwise lead to such a conclusion.

25. By, as an ISD inspector, approving building permit applications for, and issuing building permits to Correia/JEJ, and performing inspections of projects completed under permit by Correia/JEJ, as described above, all while Covington had recently had significant private business dealings with Correia/JEJ, Covington, 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 Correia/JEJ could unduly enjoy Covington's favor in the performance of his official duties and/or that Covington was likely to act or fail to act as a result of kinship or undue influence of Correia/JEJ. Covington did not file any § 23(b)(3) disclosure to dispel this appearance of impropriety. Therefore, in so acting, Covington repeatedly violated § 23(b)(3).

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

- (1) that Covington 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, §§ 19, 23(b)(2) and 23(b)(3); and

- (2) that Covington 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:** December 2, 2010

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<sup>1/</sup> 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).

<sup>2/</sup> 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).

<sup>3/</sup> Immediate family means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

<sup>4/</sup> 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*.

<sup>5/</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0017**

**IN THE MATTER OF  
DANIEL DEAN**

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

Mark DeJoie, Esq.  
Counsel for Respondent

Commissioners: Charles B. Swartwood, III, Ch.,  
David L. Veator, Patrick J. King, Paula Finley  
Mangum and Martin F. Murphy

Presiding Officer: Paula Finley Mangum

**ORDER**

On November 18, 2010, the parties filed a Joint Motion to Suspend Proceedings, Accept Proposed Disposition Agreement and Dismiss Proceedings (Joint Motion) along with a proposed Disposition Agreement, requesting that the Commission approve a Disposition Agreement in settlement of this matter and dismiss these adjudicatory proceedings. The Presiding Officer, Paula Finley Mangum, referred the Joint Motion, with the Disposition Agreement, to the full Commission for deliberations on December 17, 2010.

In the Disposition Agreement, Respondent, Daniel Dean, admits that he violated G.L. c. 268A, § 20 and § 23(b)(3) and agrees to pay a civil penalty of \$5,000. Respondent further agrees 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 proceedings to which the Commission is or may be a party. Respondent has tendered the payment of the \$5,000 civil penalty.

In support of the Joint Motion, the parties assert that the interests of justice, the parties and the Commission will be served by the Disposition Agreement. The parties further assert that the Disposition Agreement will fairly and equitably resolve this matter and obviate the need for a hearing in this case, thus saving the

resources and time of all participants.

WHEREFORE, the Commission hereby ALLOWS the Joint Motion. The Disposition Agreement is approved. Respondent's tendered payment of the \$5,000 civil penalty and forfeiture is accepted. Commission Adjudicatory Docket No. 10-0017, *In the Matter of Daniel Dean*, is dismissed.

**DATE AUTHORIZED:** December 17, 2010

**DATE ISSUED:** December 20, 2010

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY DOCKET NO. 10-0017**

**IN THE MATTER OF  
DANIEL DEAN**

**DISPOSITION AGREEMENT**

This Disposition Agreement is entered into between the State Ethics Commission ("Commission") and Daniel Dean ("Dean") pursuant to Section 5 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 July 17, 2009, 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 Dean. On February 19, 2010, the Commission concluded its inquiry and found reasonable cause to believe that Dean had violated G.L. c. 268A, §§ 20 and 23(b)(3).

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

**Findings of Fact**

1. Dean has been a City of Lynn ("City") Board of Health Sanitary Inspector ("BOH Inspector") since August 15, 2004.

2. The City's Mayor appointed Dean a constable in April 2005. Dean's term expired in March 2008.

3. In or about April 2006, Dean was hired by fellow BOH Inspector Louis Picano to perform private constable services.

4. Prior to hiring Dean to perform private constable services, Picano had been put on written notice by the Commission that (1) G.L. c. 268A, § 20 prohibited BOH Inspectors from holding both BOH Inspector and City constable positions unless their work as constables was part of their BOH Inspector duties and they did not receive additional compensation for performing constable services; and (2) performing BOH inspections of properties owned by private parties for whom he had performed constable services violated G.L. c. 268A, § 23(b)(3).

5. According to Dean, Picano did not inform Dean of these restrictions but instead advised that it was proper for Dean to perform constable services.

6. From 2006 through March 2008, Dean, through Picano Constable Services, performed at least 193 constable services in the City for private parties, including serving notices to quit, summary process complaints, 48-hour notices to vacate and physical evictions.

7. Picano Constable Services charged fees for constable services ranging from \$40-65 for notices to quit, summary process complaints and 48-hour notices to vacate, and \$100 for physical evictions.

8. From 2006 through March 2008, Dean earned an average of \$12.00 for each constable service he performed.

9. From 2006 through 2008, Dean earned approximately \$3,000 in total for performing constable services for private parties through Picano Constable Services.

10. On at least six occasions between 2006 and March 2008, Dean performed inspections as a BOH Inspector on properties owned by private parties for whom he had performed constable services.

**Conclusions of Law**

Section 20

11. 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.

12. As a BOH Inspector, Dean was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

13. Dean's constable appointment was a contract made by the City through the Mayor in which the City was an interested party.

14. Dean had a financial interest in his constable appointment contract each time that he accepted payment for his constable services to private parties.

15. Dean knew or had reason to know of his financial interests in the constable appointment contract.

16. Therefore, Dean, while being a BOH Inspector, violated § 20 on each occasion that he received payment for his constable services to private parties pursuant to his constable appointment contract made by the City, in which the City was an interested party.

*Section 23(b)(3).*

17. 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.

18. On at least six occasions, Dean, in his capacity as a BOH Inspector, inspected properties owned by private parties for whom he had performed constable services.

19. Each time Dean performed official BOH inspections for private parties for whom he had performed constable services, Dean, knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that those property owners could improperly influence or unduly enjoy Dean's favor in the performance of his official duties. Dean did not file any disclosures to dispel these appearances of impropriety. In so acting, Dean repeatedly violated G.L. c. 268A, § 23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Dean, 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 Dean:

- (1) that Dean 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 repeatedly violating G.L. c. 268A, §§ 20 and 23(b)(3); and
- (2) that Dean 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:** December 20, 2010

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ADVICE



EDUCATION



DISCLOSURE



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**One Ashburton Place, Room 619**

**Boston, MA 02108**