

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

# 2021 State Ethics Commission Public Resolutions

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



Included in this publication are:

**State Ethics Commission Public Resolutions including Decisions and Orders, Disposition  
Agreements and Public Education Letters issued in 2021\***

Cite Public Resolutions by name of subject, year, and page, as follows:  
*In the Matter of John Doe, 2021 SEC (page number).*

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

\*No Advisories or Formal Legal Opinions were issued in 2021



## TABLE OF CASES

(By Subject or Respondent from 1979 through 2021)

CASES WITHOUT PAGE NUMBERS WERE NOT PUBLISHED BUT ARE AVAILABLE UPON REQUEST.

<b>Name (Year)</b>	<b>Page</b>	<b>Name (Year)</b>	<b>Page</b>
Abrams, Hal (2003)	1105	Bingham, G. Shepard (1984)	174
Ackerley Communications (1991)	518	Birchall, Charles III (2011)	2398
Adamson, Randy (2007)	2127	Bitzas, George (2009)	2236
Almeida, Victor (1980)	14	Bonavita, Richard (2008)	2140
Alves, Alan (2000)	957	Borstel, Charles (2013)	2468
Amorello, Matthew (2009)	2213	Bossi, Ruthanne (2002)	1043
Anderson, Joan (2009)	2205	Boston Collector-Treasurer's Office (1981)	35
Angelo, Steven (2003)	1144	Boyle, James M. (1989)	398
Ansart, James (1998)	905	Brack, Frederick (2019)	2654
Antonelli, Ralph (1986)	264	Bradley, Christopher (2007)	2086
Antonelli, Rocco J., Sr. (1982)	101	Brawley, Henry A. (1982)	84
Aragona, David (2007)	2091	Breen, Mark A. (1992)	588
Arlos, Peter (2006)	2050	Brennan, James W. (1985)	212
Associated Industries of Massachusetts (1996)	790	Brennan, Maureen (2009)	2238
Atkinson, James (2020)	2691	Brensilber-Chidsey (2007)	2129
Atsalis, Demetrius (2014)	2504	Bretschneider, Richard (2007)	2082
Atstupenas, Ross A. (2002)	1061	Bretschneider, Richard (2011)	2406
Auty, J. Martin (1998)	904	Brewer, Walter (1987)	300
Aylmer, John F. (1990)	452	Briggs, Sherman, Jr. (2013)	2455
Baez, Priscilla (2010)	2290	Brooks, Edward (1981)	74
Bagni, William L., Sr. (1981)	30	Brougham, Harry L. (1999)	934
Bailey, Susan (2010)	2289	Brunelli, Albert R. (1988)	360
Baj, Frank (1987)	295	Buckley, Elizabeth (1983)	157
Baldwin, Charles O. (1990)	470	Buckley, John (2020)	2722
Banas, Vicki (2017)	2601	Buckley, John R. (1980)	2
Banks, Rudy (1992)	595	Bukowski, Paulin J. (1998)	923
Barboza, Joanne (1985)	235	Bump, Suzanne M. (1994)	656
Barletta, Vincent D. (1995)	736	Bunker, David (2003)	1161
Barnes, James (2003)	1154	Buonopane, Angelo R. (2006)	2040
Barranco, John (2014)	2502	Burger, Robert (1985)	216
Barrasso, Kathy (2004)	1190	Burgess, Richard (1992)	570
Bartley, John (1994)	685	Burgmann, Robert (1993)	627
Basile, Alesandro (2014)	2493	Burke, John P. (1987)	323
Bassett, Timothy (2011)	2400	Burke, William A., Jr. (1985)	248
Bates, Stanley (1993)	642	Burlingame, Elliot (1992)	578
Battle, Byron (1988)	369	Burnett, Thomas E. (2004)	1193
Bauer, Wolfgang (1996)	771	Bush, Elaine (1995)	731
Bayko, Andrew (1981)	34	Butters, William (1992)	601
Baylis, Robert (2007)	2093	Byrne, James (2005)	2032
Beals, Lawrence (2020)	2676	Byrnes, Michael (2013)	2458
Beaudry, Francis (1996)	799	Cabral, Francisco (2003)	1101
Becker, Mark (2006)	2062	Cahoon, Kevin (2007)	2114
Bencal, Michael (2006)	2041	Caissie, Jennie (1999)	927
Benevento, Anthony (1993)	632	Caliri, Michael A. (2001)	995
Berlucchi, Stephen (1994)	700	Callahan, Francis (2002)	1044
Bernard, Paul A. (1985)	226	Calo, Robert (1994)	704
Bernstein, Susan P. (2003)	1097	Camandona, Robert (1982)	
Besso, Donald P. (2003)	1148	Campanini, Eileen (2004)	1184
Beukema, John (1995)	732	Campagnone, Joyce (2015)	2562

<b>Name (Year)</b>	<b>Page</b>
Campbell, Thomas (2007)	2108
Capalbo, Kevin (2005)	2028
Caplis, John (2021)	2794
Capman, Mary (2011)	2362
Cardelli, John (1984)	197
Carignan, David (2000)	197
Carnevale, Jeanne (2020)	2685
Caroleo, Vincent (1980)	
Carroll, Ann R. (1983)	144
Carroll, Charles (2021)	2740
Cass, William F. (1994)	665
Cassidy, Peter J. (1988)	371
Cataldo, Edward (2007)	2103
Cataldo, Robert (1996)	793
Celino, David (2010)	2345
Cellucci, Argeo Paul (1994)	688
Cellucci, Joseph D. (1988)	346
Chase, Dana G. (1983)	153
Chatigny, Scott (2021)	2736
Chilik, Thomas A. (1983)	130
Chilik, Thomas (2004)	1164
Chmura, John (1980)	
Choate Group, The (1996)	792
Christianson, Carl G. Jr. (2007)	2117
Christopher, Kathryn (2015)	2568
Churchill, Robert (2000)	965
Cibley, Lawrence J. (1989)	422
Cimeno, Kenneth (1988)	355
Cislak, Thomas E. (2006)	2057
Clancy, Edward J. (2000)	983
Clark, Darryl (2014)	2508
Clark, James (2021)	2749
Clifford, Andrew P. (1983)	
Cobb, Cynthia B. (1992)	576
Coelho, Paul (2004)	1180
Cohen, Alan (2011)	2379
Cokinos, Paul (2007)	2100
Cole, Harold (2004)	1197
Cole, Michael (2010)	2342
Cole, Robert G. (2010)	2339
Cole, Robert G. (2009)	2285
Colella, George (1989)	409
Collas, Andrew (1988)	360
Collett, Thomas (2004)	1179
Collingwood, Jeffrey (2018)	2639
Collins, James M. (1985)	228
Columbus, Robert (1993)	636
Comiskey, Robert (2002)	1079
Commeret, Thomas (2009)	2268
Comtois, Stephen (2020)	2707
Conlon, William (2011)	2382
Connery, James F. (1985)	233
Connors, Brian (2013)	2459
Corbosiero, Guy (2010)	2332
Corbosiero, Guy (2021)	2792

<b>Name (Year)</b>	<b>Page</b>
Cornacchioli, Louis (2003)	1146
Corso, Carol (1990)	444
Corson, Philip T. (1998)	912
Costa, Frank (2001)	1000
Cotter, Donna (2011)	2356
Coughlin, Marguerite (1987)	316
Coughlin, Robert K. (2008)	2195
Counter, Joseph (1980)	
Covington, Gene (2010)	2350
Cox, John F. (1994)	676
Craven, James J., Jr. (1980)	17
Crean, Thomas (2007)	2084
Croatti, Donald (1988)	360
Cronin, Frederick B., Jr. (1986)	269
Crossen, Ralph (2003)	1103
Crossman, David (1992)	585
Cummings, Thomas (1980)	
Cunningham, George (1982)	85
Curtin, Peter (2001)	1024
Daigle, Valorie (2009)	2280
Daly, Joseph (2008)	2143
D'Amico, Michael J. (2002)	1083
D'Arcangelo, Ronald J. (2000)	962
Dean, Daniel (2010)	2352
Dean, Daniel (2010)	2353
DeFeo, Lona (2009)	2229
Deibel, Victoria (2001)	1002
DeLeire, John A. (1985)	236
DeLorie, Richard (2021)	2752
DelPrete, Edmund W. (1982)	87
DeMarco, Robert (2003)	1157
DeMoura, Paul (2010)	2346
DeNucci, A. Joseph (2011)	2391
DeNucci, A. Joseph (2011)	2392
DeOliveira, John (1989)	430
DeRosa, John (2019)	2643
Deschenes, Douglas (2006)	2038
Desrosiers, Yvonne B. (1987)	309
Devlin, William J. (1998)	915
Dewald, John (2006)	2051
Dias, Joao M.V. (1992)	574
Dickinson, Delwin (2013)	2489
DiNatale, Louis (2007)	2131
DiPasquale, Adam (1985)	239
DiPasquale, Julie A. (1996)	852
DiPasquale, Julie A. (1996)	853
DiVirgilio, Dominic (1993)	634
Doherty, Eugene (2012)	2438
Doherty, Henry M. (1982)	115
Doherty, William G. (1984)	192
Donohue, Helen (2020)	2714
Donaldson, Robert (1993)	628
Donlan, Paul (2007)	2107
Donovan, Joseph F. (1999)	949
Dormady, Michael (2002)	1074

<b>Name (Year)</b>	<b>Page</b>
Doughty, Katherine (1995)	726
Doyle, C. Joseph (1980)	11
Doyle, Patricia A. (2000)	967
Dray, David L. (1981)	57
Drew, Edward (2008)	2164
Driscoll, Lawrence (2008)	2137
Duarte, Bruce (2014)	2514
Dubay, Francis H. (2003)	1099
duBois, Pine (2013)	2446
Duggan, Joseph (1995)	729
Dulac, G. Paul (2011)	2384
Dunnet, John (2012)	2422
Duquette, Daniel (2010)	2320
Durant, Karen (2014)	2500
Edwards, Terry (2009)	2248
Egan, Robert (1988)	327
Ellis, David (1999)	930
Emerson, Michael W.C. (1983)	137
Emerson, Michael W.C. (1983)	160
Emilio, Frank A. (1994)	658
Enis, Paul (1996)	779
Erbetta, Robert (2009)	2270
Esdale, John (1981)	
Esposito, Michele (1991)	529
EUA Cogenex (1992)	607
Eunson, Donald (1993)	623
Famolare, Charles III (2012)	2425
Farley, Robert (1984)	186
Farretta, Patrick D. (1987)	281
Felix, Edward (2003)	1142
Fennelly, Edward (2001)	1025
Fischer, Jeffery (2010)	2292
Fisher, Charles (2012)	2424
Fitzgerald, Kevin (1991)	548
FitzPatrick, Malcolm (1990)	482
Flaherty, Charles F. (1990)	498
Flaherty, Charles F. (1996)	784
Flaherty, Joseph (2006)	2048
Flanagan, James (1996)	757
Fleming, David I., Jr. (1982)	118
Fleming, Erik (2021)	2782
Fleming, Thomas (2018)	2631
Flynn, Dennis (1985)	245
Flynn, Peter Y. (1991)	532
Foley, Carole (2001)	1008
Foley, Cornelius J., Jr. (1984)	172
Foley, Martin V. (1984)	
Ford, Robert F. (2004)	1188
Foresteire, Frederick (1992)	590
Foresteire, Frederick (2009)	2220
Forristall, John (1992)	615
Fortes, Robert (2011)	2377
Foskett, Gerry (2016)	2596
Foster, Badi G. (1980)	28
Foster, James (2002)	1082

<b>Name (Year)</b>	<b>Page</b>
Fournier, Jeffrey (2021)	2758
Fowler, Robert A. (1990)	474
Fox, Gloria (2018)	2631
Franck, Kevin (2014)	2514
Fredrickson, Michael (2003)	1156
Fripp, Amy J. (2007)	2090
Fryer, Josef (2005)	2030
Gagne, Armand (1996)	825
Galewski, Robert M. (1991)	504
Galewski, Robert (2007)	2101
Galvin, William (2019)	2672
Gannon, Harry (2006)	2056
Garvey, Robert J. (1990)	478
Gaskins, Mable E. (2001)	1010
Gaudette, Paul (1992)	619
Gaudette, Paul (1999)	952
Geary, James (1987)	305
Giampa, Kelly (2006)	2037
Giannino, Anthony (2007)	2126
Gibney, James (1995)	739
Gillespie, Douglas (2021)	2743
Gillis, Robert (1989)	413
Gilmetti, Fred L. (1996)	836
Giuliano, Patti (2001)	1018
Glodis, Guy (2013)	2448
Gnazzo, Jerold (1995)	748
Goddard Memorial Hospital (1987)	293
Goldman, Nicole (2021)	2734
Goldman, Sachs & Co. (1997)	862
Goodhue, Richard. (2000)	967
Goodsell, Allison (1981)	38
Gorski, Elizabeth (2014)	2520
Gosselin, Marie (2002)	1070
Goudreault, Marjorie (1987)	280
Greeley, John E. (1983)	160
Green, Frank (1994)	714
Griffin, William T. (1988)	383
Griffith, John L. (1992)	568
Grossman, Ruvane E. (2005)	2021
Guertin, David (2007)	2081
Hackenson, Thomas D (2001)	1013
Halle, Leon (2002)	1073
Haluch, Thomas (2004)	1165
Hamel, Therese A. (2006)	2039
Hamilton, Andrew (2006)	2043
Hanlon, John J. (1986)	253
[footnotes published on p. 389 of 1988 <i>Rulings</i> ]	
Hanna, Frederic (1980)	1
Hanna, Robert (2002)	1075
Hansen, Howard (2017)	2604
Harrington, Vera C. (1984)	165
Hart, William (1991)	505
Hartford, Lynwood, Jr. (1991)	512
Hartnett, Jr., James J. (2002)	1084
Hartnett, Jr., James J. (2002)	1085

<b>Name (Year)</b>	<b>Page</b>
Harutunian, Harry K. (2006)	2054
Hatch, Donald (1986)	260
Hatem, Ellis John (1982)	121
Hayes, Kevin (1999)	951
Hebert, Raymond (1996)	800
Hermenau, Arthur (1994)	681
Hewitson, Walter (1997)	874
Hickey, John R. (1983)	158
Hicks, Christopher (2020)	2727
Hicks, Christopher (2020)	2730
Hickson, Paul T. (1987)	296
Higgins, Edward, Jr. (2006)	2064
Highgas, William, Jr. (1987)	303
Highgas, William, Jr. (1988)	334
Hilson, Arthur L. (1992)	603
Hoeg, Edward C. (1985)	211
Hoer, Charles (1979)	
Hoey, Paul (2007)	2098
Hohengasser, Herbert (1998)	922
Honan, Kevin (1994)	679
Hopkins, Wendell R. (1987)	289
Howarth, Robert (1994)	661
Howell, William E. (1991)	525
Howlett, Roger W. (1997)	859
Hubbard, Hugh K. (1999)	933
Hulbig, William J. (1982)	112
Hyde, Stephen, Sr (2014)	2543
Iannaco, Ronald (1994)	705
Inostroza, Albert (2007)	2110
Jackson, Michael (2011)	2404
Jacques, Cheryl (2013)	2480
Jajuga, James (2020)	2696
Jefferson, Thomas (2010)	2303
Jenkins, John (2006)	2058
John Hancock Mutual Life Insurance Co. (1994)	646
Johnson, Walter (1987)	291
Jones, James (2018)	2630
Jones, William G. (1983)	
Jordan, Patrick F. (1983)	132
Joseph, Mark (2012)	2440
Jovanovic, Michael (2002)	1062
Joy, Thomas (1984)	191
Joyce, Kendel (2018)	2634
Joyce, Kevin (2005)	2002
Judd, John (2011)	2394
Karlson, Kenneth (2008)	2134
Kaseta, Steven J. (1997)	865
Keeler, Harley (1996)	777
Kellaher, Gary (2015)	2555
Kelleher, Michael (2003)	1140
Kennedy, Edward J., Jr. (1995)	728
Kennedy, Thomas (2009)	2255
Kenney, Richard (2005)	2006
Keverian, George (1990)	460
Khambaty, Abdullah (1987)	318

<b>Name (Year)</b>	<b>Page</b>
Kiley, Edwin (2001)	1022
Killion, Sylvia (1999)	936
Kincus, David F. (1990)	438
King, John P. (1990)	449
Kingkade, William (2021)	2777
Kinsella, Kevin B. (1996)	833
Koffman, Myron (1979)	
Kokernak, Thomas (2010)	2344
Kominsky, Robert (2003)	1112
Kopelman, David H. (1983)	124
Koval, Joanne (1994)	716
Kuendig, Herbert (1996)	831
Kulian, Jacob (2005)	2005
Kurkjian, Mary V. (1986)	260
LaFlamme, Ernest (1987)	287
LaFrankie, Robert (1989)	394
LaFratta, Paul (2007)	2112
Lahiff, Daniel (2012)	2411
Lally, Joseph P., Jr. (2011)	2401
Lamothe, Blake (2014)	2496
Landy, David (2011)	2407
Langone, Frederick C. (1984)	187
Langsam, Joan (2001)	1029
Lannon, William C. (1984)	208
Lanzetta, Scott (2009)	2278
Lanzetta, Scott (2009)	2278
Larkin, John, Jr. (1990)	490
Laumann, Brian (2010)	2287
Laurel-Paine, Tamarin (2003)	1110
Laurenza, John (2012)	2418
Lavoie, Robert (1987)	286
Lawrence, Charles (1987)	284
LeBlanc, Eugene (1986)	278
Lemire, June (2002)	1080
LeMoine, Eugene (2001)	1028
Lewis, Frank E. (1988)	360
Life Insurance Association of Massachusetts (1997)	879
Life Insurance Association of Massachusetts (2003)	1114
Ligonde, Eril (2011)	2364
Lincoln, Charles (2008)	2188
Ling, Deirdre A. (1990)	456
Lisauskas, Stephen (2010)	2329
Llewellyn, John R. (2005)	2033
Lockhart, Benjamin (1988)	339
Logan, Louis L. (1981)	40
Longo, Kendall (2003)	1095
Look, Christopher S., Jr. (1991)	543
Lozzi, Vincent J. (1990)	451
Lunny, David M. (2006)	2044
Lussier, Thomas (2002)	1076
Lynch, William (2007)	2105
MacDonald, Robert (2018)	2628
MacGilvray, Harold (2018)	2636
MacGilvray, Harold (2018)	2637
Mach, Leonard (1993)	637

<b>Name (Year)</b>	<b>Page</b>
Mackenzie-Betty, Keith (2017)	2617
Magliano, Francis M. (1986)	273
Magliano, Frank (1988)	333
Maglione, Joseph (2008)	2172
Mahoney, Eugene J. (1983)	146
Main, Brian (1997)	877
Malcolm, Stephen (1991)	535
Malone, Marjorie (2012)	2410
Maloney, William J. Jr. (2001)	1004
Manca, Charles J. (1993)	621
Mann, Charles W. (1994)	644
Manning, James (2007)	2076
Mannix, Michael (1983)	
Manzella, Robert (2001)	1036
Mara, Francis G. (1994)	673
Marble, William (1990)	436
Marchand, Francis (2007)	2113
Marchesi, John (1992)	597
Marguerite, Patrick (1996)	773
Marinelli, Linda (1995)	721
Marshall, Clifford H. (1991)	508
Marshall, Clifford H. (1995)	719
Martin, Brian J. (1999)	945
Martin, Frank (1999)	931
Martin, John K. (2002)	1048
Martin, Michael (1982)	113
Martin, Scott (2009)	2273
Massa, John (1998)	910
Massachusetts Candy & Tobacco Distributors (1992)	609
Massachusetts Department of Mental Health (1981)	50
Massachusetts Medical Society (1995)	751
Masse, Kenneth (1980)	
Mater, Gary P. (1990)	467
Matera, Fred (1983)	
May, David E. (1983)	161
Mazareas, James (2002)	1050
Mazzarella, Dean (2012)	2442
Mazzilli, Frank (1996)	814
McCarthy, David F. (2003)	1138
McCarthy, Stephen (2011)	2355
McCormack, Michael (1991)	546
McCormick, James (2014)	2494
McClure, Richard (2013)	2471
McDermott, Patricia (1991)	566
McDonough, Richard (2014)	2503
McGee, Terrence J. (1984)	167
McGinn, Joseph C. (1983)	163
McGovern, Edward (2016)	2590
McGrath, Walter R. (2004)	1186
McKinnon, Richard (2011)	2366
McKinnon, Robert S. (2000)	959
McLean, William G. (1982)	75
McMann, Norman (1988)	379
McNamara, Owen (1983)	150
McPherson, Donald G. (2004)	1182

<b>Name (Year)</b>	<b>Page</b>
Melanson, Norman (1999)	955
Menard, Joan (1994)	686
Michael, George A. (1981)	59
Michienzi, Vincent, Sr. (2017)	2618
Michna, Kenneth (2019)	2669
Middlesex Paving Corp. (1994)	696
Mihos, James C. (1986)	274
Mitchell, Kenneth (2021)	2789
Molla, Francis (1996)	775
Molloy, Francis J. (1984)	191
Molloy, Julie C. (2008)	2140
Molloy, Julie C. (2008)	2141
Mondeau, Marilyn (1996)	781
Mong, Fayette (2019)	2667
Montalbano, Janis (2000)	969
Moore, Brian (2006)	2069
Moore, Elizabeth (2011)	2386
Morency, Robert (1982)	
Morin, Christopher (2021)	2775
Morin, Peter B. (1994)	663
Morley, Hugh Joseph (2004)	1195
Moschetti, Frank (2020)	2725
Moschetti, Kirk (2020)	2719
Moshella, Anthony (1980)	
Muir, Roger H. (1987)	301
Mullen, Kevin (1992)	583
Mullin, Sean G. (1984)	168
Munyon, George, Jr. (1989)	390
Murphy, Edward M. (1997)	867
Murphy, John E. (1996)	851
Murphy, Michael (1992)	613
Murphy, Patrick (2001)	1003
Murphy, Peter (2006)	2070
Murphy, Robert (2015)	2572
Murray, James (2007)	2120
Muzik, Robert (1999)	925
Nadeau, Denis (2018)	2625
Najem, George (1985)	223
Napier, Sharon (2018)	2626
Nash, Kenneth M. (1984)	178
Nelson, David R. (1995)	754
Nelson, George, Jr. (1991)	516
Nelson, Lori (2016)	2595
Nelson, Phillip (2000)	974
Nelson, Robert (2006)	2053
Newcomb, Reginald (2009)	2199
Newcomb, Thomas (1985)	246
Newton, Geoffrey (1995)	724
Newton, Wayne (1994)	652
Nickinello, Louis R. (1990)	495
Nichols, Robert (2015)	2570
Nicolo, Diego (2007)	2122
Nieski, Martin (1998)	903
Niro, Emil N. (1985)	210
Nolan, Thomas H. (1989)	415

<b>Name (Year)</b>	<b>Page</b>
Nolan, Thomas J. (1987)	283
Northeast Theatre Corporation (1985)	241
Norton, Thomas C. (1992)	616
Nowicki, Paul (1988)	365
Nugent, Ernest (2000)	980
Nutter, Benjamin (1994)	710
Nutter, Roland (2019)	2662
O'Brien, Dennis (2013)	2468
O'Brien, George J. (1982)	
O'Brien, John (2012)	2437
O'Brien, John L., Jr. (2017)	2598
O'Brien, John P. (1989)	418
O'Brien, Robert J. (1983)	149
O'Connell, Daniel (2019)	2649
O'Donnell, Michael (2011)	2402
Ogden Suffolk Downs, Inc. (1985)	243
Ohman, John W. (2003)	1108
O'Leary, Rae Ann (1979)	
O'Neil, Matthew (2001)	1039
Oser, Patrick J. (2001)	1991
O'Toole, Edward (1994)	698
O'Toole, Michael (2008)	2165
Owens, Bill (1984)	176
P.A. Landers (2008)	2147
P.J. Keating Co. (1992)	611
P.J. Riley & Co. (2009)	2207
Padula, Mary L. (1987)	310
Palazzola, Olimpia (2008)	2194
Paleologos, Nicholas (1984)	169
Palumbo, Elizabeth (1990)	501
Panachio, Louis J. (1984)	
Parisella, Ralph (1995)	745
Parseghian, Scott (2017)	2621
Partamian, Harold (1992)	593
Partamian, Harold (1996)	816
Pathiakakis, Paul (2004)	1167
Pavlidakes, Joyce (1990)	446
Payson, Raymond (2007)	2124
Pearson, William P. (1995)	741
Pedro, Brian (2002)	1057
Pellicelli, John A. (1982)	100
Pender, Peter (2006)	2046
Penn, Richard (1996)	819
Penn, Richard (1996)	822
Pepoli, Bethann (2009)	2283
Perreault, Lucian F. (1984)	177
Peters, Victor (1981)	
Peterson, Jeffrey (2021)	2755
Peterson, Seth (2015)	2564
Petruzzi & Forrester, Inc. (1996)	765
Pezzella, Paul (1991)	526
Phinney, David L. (2001)	992
Piatelli, Theresa Lord (2010)	2296
Picano, Louis (2011)	2358
Pierce, Richard (2012)	2414

<b>Name (Year)</b>	<b>Page</b>
Pigaga, John (1984)	181
Pignone, Edward (1979)	
Pipczynski, Donald (2019)	2642
Pitaro, Carl D. (1986)	271
Plante, Curtis (2010)	2335
Poirier, Kevin (1994)	667
Poley, Philip (2013)	2462
Pollard, Sharon (2007)	2088
Potaski, Michael (2014)	2507
Pottle, Donald S. (1983)	134
Powers, Michael D. (1991)	536
Powers, Stephen (2002)	1046
Prue, Richard (2014)	2505
Prunier, George (1987)	322
Puccini, Richard (2017)	2620
Quigley, Andrew P. (1983)	
Quinn, Robert J. (1986)	265
Quirk, James H., Jr. (1998)	918
Race, Clarence D. (1988)	328
Rainville, Lucien (1999)	941
Ramirez, Angel (1989)	396
Rankow, Norman (2012)	2435
Rapoza, Stephen (2004)	1187
Rebello, Joseph (2007)	2077
Recore, Jr., Omer H. (2002)	1058
Reed, Mark P. (1997)	860
Reinertson, William (1993)	641
Renna, Robert G. (2002)	1091
Rennie, Robert J. (1984)	
Reynolds, Adelle (2001)	1035
Reynolds, Richard L. (1989)	423
Rhodes, Warren (1983)	
Ricci, Heidi (2011)	2368
Richards, Lowell L., III (1984)	173
Richenburg, Henry (2015)	2551
Riley, Eugene P. (1984)	180
Riley, Michael (1988)	331
Riley, Thomas E., Jr. (2009)	2207
Ripley, George W., Jr. (1986)	263
Risser, Herbert E., Jr. (1981)	58
Rivera, Mark (2010)	2316
Rizzo, Anthony (1989)	421
Robinson, Lee (1995)	750
Rockland Trust Company (1989)	416
Roeder, Harold (2008)	2135
Rogers, John, Jr. (1985)	227
Rogers, Raymund (2002)	1060
Romano, James (2004)	1187
Romeo, Paul (1985)	218
Rosario, John J. (1984)	205
Rose, John (2015)	255
Ross, Michael (2007)	2075
Rostkowski (2006)	2047
Roth, Taylor (2009)	2207
Roth, Taylor (2009)	2250

<b>Name (Year)</b>	<b>Page</b>
Rotondi, Michael H. (2005) .....	2001
Rowan, Daniel (2010) .....	2293
Rowan, Daniel (2010) .....	2294
Rowe, Edward (1987) .....	307
Ruberto, James M. (2008) .....	2149
Ruberto, James M. (2010) .....	2320
Ruffo, John (1995) .....	718
Russo, James (1996) .....	832
Russo, James N. (1991) .....	523
Ryan, Patrick (1983) .....	127
Saccone, John P. (1982) .....	87
Sakin, Louis H. (1986) .....	258
Saksa, Mary Jane (2003) .....	1109
Salamanca, Anthony (1994) .....	702
Sandonato, Francis (1994) .....	707
Sanna, John, Jr. (2003) .....	1160
Sansone, Casper Charles (1997) .....	872
Santos, Stephen (2021) .....	2780
Sawyer, John (2003) .....	1102
Scaccia, Angelo M. (1996) .....	838
Scaccia, Angelo M. (2001) .....	1021
Scafidi, Theodore L. (1988) .....	360
Schumm, Marge (2002) .....	1072
Schmidt, William (2011) .....	2360
Schmidt, William (2011) .....	2361
Scola, Robert N. (1986) .....	388
[note: published in 1988 <i>Rulings</i> ]	
Scott, Jack (2009) .....	2262
Seguin, Roland (1993) .....	630
Serra, Ralph (1983) .....	
Sestini, Raymond (1986) .....	255
Seveney, Richard (2001) .....	1033
Shalsi, Ralph (2001) .....	999
Shane, Christine (1983) .....	150
Sharrio, Daniel (1982) .....	114
Shay, John (1992) .....	591
Sheehan, Robert F., Jr. (1992) .....	605
Sheetz, Brian (2020) .....	2705
Shemeth, William R., III (1999) .....	944
Shiraka, Stephen V. (2004) .....	1163
Silva, John (2009) .....	2202
Silva, Steven (2004) .....	1198
Simard, George (1990) .....	455
Simches, Richard B. (1980) .....	25
Singleton, Richard N. (1990) .....	476
Skorput, Peter (2020) .....	2678
Skorput, Peter (2020) .....	2679
Slaby, William (1983) .....	
Slattery, Joseph (2008) .....	2186
Smith, Alfred D. (1985) .....	221
Smith, Arthur R., Jr. (2000) .....	983
Smith, Bernard J. (1980) .....	24
Smith, Charles (1989) .....	391
Smith, James H. (1991) .....	540
Smith, Jean-Marie (2010) .....	2318

<b>Name (Year)</b>	<b>Page</b>
Smith, Lincoln (2008) .....	2152
Smith, Ross W. (1996) .....	778
Smith, Russell (1993) .....	639
Sommer, Donald (1984) .....	193
Spencer, Manuel F. (1985) .....	214
Snell, Thomas (2015) .....	2588
Speranza, Jack (2009) .....	2246
Stamps, Leon (1991) .....	521
Stanley, Cheryl (2006) .....	2073
Stanton, William J. (1992) .....	580
State Street Bank & Trust Company (1992) .....	582
Stevenson, Mark (2015) .....	2582
St. John, Robert (1990) .....	493
St. Germain, Matthew (2004) .....	1192
Stone, John R., Jr. (1988) .....	386
Stone & Webster Engineering Corp. (1991) .....	522
Story, Elizabeth (2010) .....	2314
Story, Elizabeth (2010) .....	2315
Straight, Matthew (2007) .....	2079
Strong, Kenneth R. (1984) .....	195
Studenski, Paul V. (1983) .....	
Sullivan, Delabarre F. (1983) .....	128
Sullivan, J. Nicholas (2000) .....	963
Sullivan, John P. (1999) .....	937
Sullivan, Paul H. (1988) .....	340
Sullivan, Richard E., Sr. (1984) .....	208
Sullivan, Robert P. (1987) .....	312
Sullivan, William (2006) .....	2060
Sun, Gang (2012) .....	2420
Sunskis, Algird (2013) .....	2471
Sutter, C. Samuel (1999) .....	926
Sweeney, Michael (1999) .....	939
Sweetman, Arthur (1983) .....	
Swift, Jane M. (2000) .....	979
Tarbell, Kenneth (1985) .....	219
Tardanico, Guy (1992) .....	598
Tarmey, Edmund F. (2007) .....	2107
Tetreault, Michael A. (2000) .....	972
Tevald, Joseph S. (2001) .....	1019
The New England Mutual Life Insurance Co. (1994) .....	693
Thomas, Cathie (1999) .....	942
Thompson, Allin P. (1998) .....	908
Thompson, James V. (1987) .....	298
Thornton, Vernon R. (1984) .....	171
Tilcon Massachusetts, Inc. (1994) .....	653
Tinkham, Robert C., Jr. (2006) .....	2035
Tivnan, Paul X. (1988) .....	326
Tocco, Michael (2011) .....	2377
Tompkins, Steven (2015) .....	2567
Tortorici, Walter (2007) .....	2119
Touafek, Katherine (2019) .....	2665
Townsend, Erland S., Jr. (1986).....	276
Trant, Scott (2006) .....	2067
Travis, Philip (2001) .....	1014
Traylor, George (1995) .....	744

<b>Name (Year)</b>	<b>Page</b>
Triplett, James B. (1996) .....	796
Triplett, James B. (1996) .....	796
Triplett, James B. (1996) .....	827
Trodella, Vito (1990) .....	472
Truchart, Paul (2011) .....	2388
Truchart, Paul (2011) .....	2389
Tucker, Arthur (1989) .....	410
Tulimieri, Joseph (2015) .....	2560
Tully, B. Joseph (1982) .....	
Turner, Joseph (2011) .....	2370
Turner, William E., Jr. (1988) .....	351
United States Trust Company (1988) .....	356
Uong, Chanrithy (2005) .....	2013
Vallianos, Peter (2001) .....	1032
Van Tassel, Gary (2006) .....	2071
Villamaino, Vincent (2021) .....	2786
Vidler, Lynn (2020) .....	2700
Viens, Stephanie (2019) .....	2660
Vincent, Mark (2007) .....	2115
Vinton, Barry (2001) .....	1040
Walker, Oscar (2019) .....	2656
Walker, Randall (2019) .....	2657
Wallen, Frank (1984) .....	197
Walley, Kenneth (2001) .....	1037
Walsh, David I. (1983) .....	123
Walsh, Michael P. (1994) .....	711
Walsh, Thomas P. (1994) .....	670
Walsh-Tomasini, Rita (1984) .....	207
Ward, George (1994) .....	709

<b>Name (Year)</b>	<b>Page</b>
Weddleton, William (1990) .....	465
Weissman, Mark (2008) .....	2189
Welch, Alfred, III (1984) .....	189
Whalen, Donald (1991) .....	514
Wharton, Thomas W. (1984) .....	182
Wheeler, Edward (2011) .....	2380
Wheeler, Richard (2009) .....	2252
Whitcomb, Roger B. (1983) .....	
White, Kevin H. (1982) .....	80
White, W. Paul (1994) .....	690
Wilkerson, Dianne (2001) .....	1026
Wilkerson, Dianne (2010) .....	2334
Willauer, Whiting (2011) .....	2395
Williams, Helen Y. (1990) .....	468
Willis, John J., Sr. (1984) .....	204
Wilson, Laval (1990) .....	432
Wilson, Robert (2014) .....	2498
Winsor, Shawn S. (2007) .....	2095
Wong, Diane (2002) .....	1077
Woodward Spring Shop (1990) .....	441
Wormser, Paul M. (2010) .....	2303
Young, Charles (1983) .....	162
Zager, Jeffrey (1990) .....	463
Zakrzewski, Paul (2006) .....	2061
Zeneski, Joseph (1988) .....	366
Zeppieri, D. John (1990) .....	448
Zerendow, Donald P. (1988) .....	352
Zora, Joseph, Jr. (1989) .....	401
Zora, Joseph, Sr. (1989) .....	401

## State Ethics Commission Public Resolutions

Summaries of 2021 Public Resolutions..... *i*

### 2021 Public Resolutions

In the Matter of Nicole Goldman .....	2734
In the Matter of Scott Chatigny .....	2736
In the Matter of Charles Carroll (Final Order) .....	2740
In the Matter of Charles Carroll (Disposition Agreement) .....	2741
In the Matter of Douglas Gillespie .....	2743
In the Matter of James Clark .....	2749
In the Matter of Richard DeLorie .....	2752
In the Matter of Jeffrey Peterson .....	2755
In the Matter of Jeffrey Fournier .....	2758
In the Matter of Christopher Morin .....	2775
In the Matter of William Kingkade .....	2777
In the Matter of Stephen Santos .....	2780
In the Matter of Erik Fleming (Final Order) .....	2782
In the Matter of Erik Fleming (Disposition Agreement) .....	2783
In the Matter of Vincent Villamaino .....	2786
In the Matter of Kenneth Mitchell .....	2789
In the Matter of Guy Corbosiero .....	2792
In the Matter of John Caplis (Final Order) .....	2794
In the Matter of John Caplis (Disposition Agreement) .....	2795



## Summaries of Public Resolutions Calendar Year 2021

### **In the Matter of Nicole Goldman**

The Commission issued a Public Education Letter to former Falmouth Historical Commission and Community Preservation Commission member Nicole Goldman to resolve allegations that she violated the conflict of interest law by acting on behalf of a private nonprofit organization and a private working group in connection with its requests for town funding and support to preserve a 1950s geodesic dome. The conflict of interest law prohibits municipal employees from representing or acting on behalf of anyone other than the municipality in connection with matters in which the municipality is a party or has a direct and substantial interest. The Commission found reasonable cause to believe that Goldman violated this provision when she acted on behalf of the nonprofit and private working group regarding a requested donation from the Historical Commission, the nonprofit's application for CPC funding, and the Historical Commission's decisions on whether to support the CPC funding application and nominate the dome for the endangered historic resources designation. The Commission chose to issue the Public Education Letter to Goldman rather than conduct an adjudicatory proceeding because it determined the public interest would be better served by publicly discussing the application of the conflict of interest law to Goldman's alleged actions to provide public employees in similar circumstances with a clearer understanding of how to comply with the law.

### **In the Matter of Scott Chatigny**

The Commission approved a Disposition Agreement in which Hubbardston Police Officer Scott Chatigny admits to violating the conflict of interest law by submitting fraudulent proposals to the town to steer town construction contracts to his private business, by having a financial interest in the town contracts while employed by the town, and by using his position as a police officer to attempt to obtain a prepayment from the town on one of the contracts. By doing business with the Town while employed as a Town police officer, Chatigny violated the conflict of interest law by having a prohibited financial interest in another contract with the Town. In addition, Chatigny submitted false high bids to the Town in order to drive contracts to his private business. In doing so, Chatigny violated the conflict of interest law by presenting false or fraudulent claims for payment to the Town. Chatigny's deception eliminated competition for town contracts and defeated the town's purpose in seeking multiple quotes. Chatigny also violated the conflict of

interest law when he used his position as a police officer to meet the Town Accountant in the police station conference room while on duty and in uniform in an effort to obtain a prepayment on a Town roofing contract. Chatigny paid a \$10,000 civil penalty for the violations.

### **In the Matter of Charles Carroll**

The Commission concluded an adjudicatory proceeding against Templeton Planning Board member Charles Carroll by approving a Final Order and Disposition Agreement in which Carroll admits to violating the conflict of interest law by participating in Planning Board decisions related to proposals to rezone an area of town where his father owns property. The conflict of interest law prohibits municipal employees from participating as such in matters affecting the financial interests of immediate family members. The Commission found that Carroll violated the law by participating in the Planning Board proposals to rezone an area of the town that included property his father owns. The proposed zoning changes would have allowed greater opportunities to develop the property with fewer restrictions. Carroll paid a \$1,500 civil penalty for the violations and the Commission dismissed the adjudicatory proceeding against him.

### **In the Matter of Douglas Gillespie**

The Commission approved a Disposition Agreement in which former Town of Weston Selectman Douglas Gillespie admits to violating the conflict of interest law by repeatedly participating as a selectman in matters affecting a proposed affordable housing development on property he and his brothers owned, directing that Board of Selectmen meeting minutes be altered to conceal his conflict of interest, and using his selectman position to provide his family an advantage in negotiating a sale of the property. The conflict of interest law bars municipal employees from participating in matters in which they or their immediate family have a financial interest. The Commission found that Gillespie violated the law by participating as a selectman in discussions regarding whether to lift the development restriction for an affordable housing proposal while he and his family members had a financial interest in a competing proposal. He also violated the law when he approved a response to a town resident's email concerning his involvement in affordable housing matters. In addition, the conflict of interest law prohibits public employees from using their official positions for

private gain. The Commission found that Gillespie violated the law by using his selectman position to direct that meeting minutes be altered to conceal his potential conflict of interest law violation and by providing his family members and their attorneys with nearly instant access to emails containing information about opposition, support, and proposals that would compete with their own plan. The conflict of interest law also prohibits public employees from improperly disclosing confidential materials acquired through their official positions or from using such material to further a personal interest. The Commission found that Gillespie violated the law by providing his family members and their attorneys with an email containing confidential legal advice from town counsel. Finally, the Commission found that Gillespie's participation as a selectman in affordable housing matters violated the conflict of interest law by creating the impression that his private connections to a proposed affordable housing development would unduly influence his official actions. Gillespie paid an \$8,000 civil penalty for the violations.

#### **In the Matter of James Clark**

The Commission issued a Public Education Letter to Boston Police Officer James Clark to resolve allegations that he violated the conflict of interest law by creating a false criminal complaint application for his friend's brother, who falsely told his employer that he had missed a day of work due to being arrested. The conflict of interest law prohibits municipal employees from using or attempting to use their official positions to secure for themselves or others valuable unwarranted privileges or benefits that are not properly available to other persons under similar circumstances. The Commission found reasonable cause to believe that Clark violated the conflict of interest law by using his position as a Boston Police Officer to provide his friend's brother with a false application for criminal complaint as an alibi to support his false claims concerning his whereabouts. The Commission chose to issue a Public Education Letter rather than conduct an adjudicatory proceeding because it determined that the public interest would be better served by publicly discussing the application of the conflict of interest law to Clark's alleged actions.

#### **In the Matter of Richard DeLorie**

The Commission approved a Disposition Agreement in which Wellesley Fire Chief Richard DeLorie admits to violating the conflict of interest law by participating in the town's hiring of his son as a firefighter and using his official position to alter the hiring process to favor his son. The conflict of interest law generally prohibits public employees from participating in matters in which they or members of their immediate family have

a financial interest. The Commission found that DeLorie violated the law by participating in the firefighter hiring process by criticizing the interview panel's initial candidate selections, which did not include his son, and the overall process, and by directing the assistant chief to halt the process, praising his son's qualifications, and seeking support from the Board of Selectmen chair and vice chair to appoint his son. In addition, the conflict of interest law prohibits public employees from using their official positions to provide themselves or others with unwarranted privileges or benefits that are not otherwise properly available to them. The Commission found that DeLorie violated the law by improperly using his fire chief position to intervene to have the hiring process halted and redirected to favor his son. DeLorie paid a \$10,000 civil penalty for the violations.

#### **In the Matter of Jeffrey Peterson**

The Commission approved a Disposition Agreement in which Wellesley Assistant Fire Chief Jeffrey Peterson admitted to violating the conflict of interest law by altering the Fire Department's hiring process to favor the fire chief's son and by selecting and interviewing the son of his wife's cousin. The conflict of interest law prohibits public employees from using their official positions to obtain benefits for themselves or others that are not lawfully available to them. The law also requires that public employees avoid creating the appearance of favoritism in their performance of their official duties. The Commission found that Peterson violated the law by altering the hiring process to benefit the fire chief's son and by selecting and interviewing his wife's cousin's son without first filing a written disclosure concerning that relationship. Peterson paid a \$5,000 civil penalty for the violations.

#### **In the Matter of Jeffrey Fournier**

The Commission concluded an adjudicatory proceeding against Jeffrey Fournier, formerly a consultant to the Office of the State Auditor (OSA), by issuing a Final Decision and Order finding that Fournier violated the conflict of interest law by pitching his private company's services to two state agencies in response to the findings of an OSA audit, and by using or attempting to use his position as an OSA consultant to gain access to those agencies to make his sales pitch. The conflict of interest law prohibits state employees, including consultants to state agencies like Fournier who personally provide professional, highly specialized services to state agencies, from representing or acting on behalf of anyone other than the Commonwealth in connection with any matter in which a state agency is a party or

has a direct and substantial interest. In addition, the conflict of interest law prohibits public employees from using or attempting to use their official positions to obtain for themselves or others valuable privileges and other benefits that are not properly available to them or others in similar situations. Fournier violated these prohibitions by contacting the state agencies on behalf of his private company and using or attempting to use his position as an OSA consultant to gain access to pitch his company's services to the two state agencies. Due to mitigating factors, the Commission did not assess a civil penalty against Fournier.

#### **In the Matter of Christopher Morin**

The Commission issued a Public Education Letter to Milford Finance Committee member Christopher Morin after finding reasonable cause to believe Morin violated the conflict of interest law in connection with the sale of surplus town land to the Milford Club, LLC, a private real estate company Morin co-owned. The land was to become part of the site of the Greater Milford Social Club, a private club of which Morin was a founding member. The conflict of interest law prohibits municipal employees from acting as agent for anyone other than the municipality in matters in which the municipality is a party or has a direct interest and also prohibits municipal employees from having a financial interest in municipal contracts. The Commission found reasonable cause to believe Morin violated these prohibitions when he submitted a bid to the town to purchase the parcel, and then signed the purchase and sale agreement on behalf of the Milford Club, LLC, and by having a financial interest in the sale of the surplus town parcel. The Commission chose to resolve the allegations against Morin through the issuance of a Public Education Letter rather than through an adjudicatory proceeding because it determined the public interest would be better served by publicly discussing the application of the conflict of interest law to Morin's alleged actions to provide public employees in similar circumstances with a clearer understanding of how to comply with the law.

#### **In the Matter of William Kingkade**

The Commission issued a Public Education Letter to former Milford Select Board member William Kingkade after finding reasonable cause to believe Kingkade violated the conflict of interest law in connection with the sale of surplus town land to the Milford Club, LLC, a private real estate company. The land was to become part of the site of the Greater Milford Social Club, a private club of which Kingkade was a founding member. The conflict of interest law prohibits municipal employees from participating officially in matters in which they or business organizations of which they are partners have a

financial interest. As Kingkade was a Greater Milford Social Club partner when he participated as a Select Board member in declaring the town parcel as surplus and authorizing its sale, which was of financial interest to the club, the Commission found reasonable cause to believe he violated the conflict of interest law by so participating. In addition, the law prohibits public employees from acting in a manner that creates the appearance that they are likely to act with favoritism or bias in performing an official duty. The Commission found reasonable cause to believe Kingkade violated this prohibition by acting officially concerning the sale of the town parcel given his friendship with a Greater Milford Social Club partner and affiliation with the Greater Milford Social Club. The Commission also found reasonable cause to believe Kingkade violated this prohibition by voting to appoint two friends to town positions. The Commission chose to resolve the allegations against Kingkade through the issuance of the Public Education Letter rather than through an adjudicatory proceeding because it determined the public interest would be better served by publicly discussing the application of the conflict of interest law to Kingkade's alleged actions to provide public employees in similar circumstances with a clearer understanding of how to comply with the law.

#### **In the Matter of Stephen Santos**

The Commission issued a Public Education Letter to Ludlow Department of Public Works Board Chairman Stephen Santos after finding reasonable cause to believe he violated the conflict of interest law by voting to elect himself as DPW Board Chairman while the stipend paid to the Chairman is higher than that paid to other Board members, and by participating in disciplinary matters involving a DPW employee he believed was cooperating with an investigation of him. The Commission found reasonable cause to believe that, by voting to elect himself to the more highly paid Board Chairman position, Santos violated the conflict of interest law's prohibition against municipal employees participating in matters in which they have a financial interest. The Commission found reasonable cause to believe that, by participating in the disciplinary matters involving the DPW employee, given what Santos believed about the DPW employee, Santos violated the conflict of interest law's prohibition against public employees acting in a manner that creates the appearance that they are likely to act with bias when performing their public duties. The Commission chose to resolve the allegations against Santos through the issuance of the Public Education Letter rather than through adjudicatory proceedings because it determined that the public interest would be better served by publicly discussing

the application of the conflict of interest law to Santos' alleged actions in order to provide public employees in similar circumstances with a clearer understanding of how to comply with the law.

#### **In the Matter of Erik Fleming**

The Commission concluded an adjudicatory proceeding against Hardwick Planning Board member Erik Fleming by issuing a Final Order approving a Disposition Agreement in which Fleming admits to violating the conflict of interest law by participating in the Planning Board's approval of a site plan for new construction at a private school where he serves as a member of the Board of Trustees. The conflict of interest law prohibits municipal employees from participating officially in matters in which they know a business organization in which they serve as trustee has a financial interest. The Commission determined that Fleming violated the law by participating as a Planning Board member in approving the private school's site plan by discussing it, voting on it, and signing the board's written decision. Fleming paid a \$5,000 civil penalty for the violation and the Commission dismissed the adjudicatory proceeding against him.

#### **In the Matter of Vincent Villamaino**

The Commission approved a Disposition Agreement in which former Hampden Selectman Vincent Villamaino admits to violating two sections of the conflict of interest law by participating as a selectman in matters involving a country club he belonged to, had done private work for, and resided next to. The conflict of interest law prohibits municipal employees from participating in their official capacities matters in which they or their private businesses have a financial interest. The law also prohibits public employees from acting in a way that makes it appear that they are likely to act with favoritism or bias in their official actions. The Commission determined that Villamaino violated the conflict of interest law when he participated as a selectman in a proposed water and sewer plan and District Improvement Financing proposal that affected the financial interests of both Villamaino and the country club. Given his country club membership, the location of his property next to the club, and the private work his company had done for the club, the Commission also determined that Villamaino violated the conflict of interest law whenever he acted as a selectman in matters related to the country club. While Villamaino could have avoided this second violation by filing a public disclosure describing the circumstances that created the appearance of likely bias, he did not do so. Villamaino paid a \$4,000 civil penalty for the violations.

#### **In the Matter of Kenneth Mitchell**

The Commission approved a Disposition Agreement in which Hanson Selectman Kenneth Mitchell, Sr. admits to violating the conflict of interest law by authorizing town payments to a tree service company he privately worked for, representing his private employer in a matter involving the town, and acting as a selectman to advance a proposal to remove trees on town land while knowing his private employer would likely be hired to do the work. The Commission determined that Mitchell violated the conflict of interest law by participating in matters knowing that his private employer had a financial interest in those matters. The Commission also determined that Mitchell violated the conflict of interest law when the town asked Mitchell's private employer to remove dead trees from a main road, which required access to private property. When the private property owner accused Mitchell's private employer of damaging a waterline, Mitchell represented his private employer in communications with the property owner and the town. The Commission determined that Mitchell violated the conflict of interest law by acting on behalf of someone other than the municipality in connection with a matter in which the municipality had a direct interest. Mitchell paid a \$5,000 civil penalty for the violations.

#### **In the Matter of Guy Corbosiero**

The Commission issued a Public Education Letter to Winchendon Planning Board Chair Guy Corbosiero after finding reasonable cause to believe Corbosiero violated the conflict of interest law by acting on behalf of a private company in connection with its application for a special permit to operate a retail marijuana facility in the town. The Planning Board is the granting authority for special permits to operate marijuana facilities. Corbosiero filed a disclosure with the Board of Selectmen detailing his involvement with the company and its application and disclosed that the company would appear before the Planning Board in connection with its application, but that he would not participate as a Planning Board member in any matter involving the company or retail marijuana. The Commission found reasonable cause to believe Corbosiero violated the conflict of interest law when he acted as the company's representative by addressing the Board of Selectmen in support of the company's application and by signing documents on behalf of the company in connection with a Host Community Agreement between the Town and the company. The Public Education Letter explains that, while Corbosiero did not participate as a Planning Board member in matters involving the company, his private actions on behalf of company nonetheless

violated the conflict of interest law's prohibition against municipal employees privately acting on behalf of anyone other than the municipality in connection with matters involving the municipality. The purpose of this prohibition is to prevent municipal employees from dividing their loyalty between their public employer and private parties. The Commission chose to resolve the allegations against Corbosiero through the issuance of the Public Education Letter rather than through adjudicatory proceedings because it determined that the public interest would be better served by publicly discussing how the conflict of interest law applies to Corbosiero's alleged actions with the expectation that the letter will provide public employees in similar circumstances with a clearer understanding of how to comply with the law.

#### **In the Matter of John Caplis**

The Commission concluded an adjudicatory proceeding against former Templeton Director of Veterans Services John Caplis by issuing a Final Order approving a Disposition Agreement in which Caplis admits to violating the conflict of interest law by submitting a false claim for veterans benefits to the town to improperly reimburse his friend for a building permit fee. The Commission determined that Caplis violated the conflict of interest law by using his official position to obtain a valuable unwarranted benefit for his friend and, by his conduct, acting in a manner that would cause a reasonable person to believe Caplis would unduly favor anyone in the performance of his official duties. Caplis also violated the conflict of interest law by presenting a false or fraudulent claim to his employer for valuable payments or benefits. Caplis paid a \$2,500 civil penalty for the violations and the Commission dismissed the adjudicatory proceeding against him.

---

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

IN THE MATTER OF  
NICOLE GOLDMAN

**PUBLIC EDUCATION LETTER**

January 12, 2021

Nicole Goldman  
c/o Gregory J. May, Esq.  
Nelson Mullins  
One Post Office Square, 30<sup>th</sup> floor  
Boston, MA 02109

Dear Ms. Goldman:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you violated the state conflict of interest law by, while serving as a Town of Falmouth Historical Commission (“Historical Commission”) member and a Town of Falmouth Community Preservation Committee (“CPC”) member, acting as agent for your private nonprofit organization in connection with matters in which the Town of Falmouth had interests. On September 17, 2020, the Commission voted to find reasonable cause to believe that your actions, as described below, repeatedly violated §17(c) of the conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings.

The Commission has determined, however, that, in lieu of adjudicatory proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter. By resolving this matter through this Public Education Letter, the Commission expects that public employees in circumstances similar to those described below will have a clearer understanding of the conflict of interest law and how to comply with it in future conduct.

The Commission and you agree that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission.

**The Facts**

**Background**

The Nautilus Motor Inn and the Dome Restaurant are located on a 5.4 acre parcel (the “Property”) in Falmouth. The restaurant’s dome (the “Dome”) was constructed in or about 1953 by students of R. Buckminster Fuller, a famous architect and inventor. The Property has been vacant for over 10 years. A portion of the Property is located in a designated Historic District.

In or about June 2016, the Town of Falmouth Select Board (“BOS”) appointed you to the Historical Commission. At that time, you were also part of a private working group devoted to preserving the Dome (“Working Group”). The Working Group eventually became the Dome at Woods Hole, Inc. (“Dome at Woods Hole”), a private non-profit corporation you organized to preserve the Dome and create an arts center.

***Request for Historical Commission Donation***

On December 5, 2017, you made an oral request to the Historical Commission that it donate \$350 to an educational travelling exhibit involving the history, structure and importance of the Dome. You requested the donation on behalf of the Working Group. At the suggestion of the Historical Commission chairman, you later submitted the Working Group’s funding request in writing. The Historical Commission did not make the \$350 donation.

On December 11, 2017, you incorporated Dome at Woods Hole and became its president.

***Meeting Regarding Dome at Woods Hole’s CPC Funding Application***

On June 5, 2018, the Historical Commission appointed you as its representative on the CPC.

By email dated June 13, 2018, you arranged on behalf of the Dome at Woods Hole a meeting with the CPC’s administrator and its outside consultant to discuss a proposed application by the private organization for CPC funding. You and the organization planned to use the CPC funding for a Historic Structures Report, a Structural Analysis of the Dome and a program Feasibility Study for Adaptive Re-use of the Dome and Ancillary Structures

(the “Feasibility Study”). You participated in this meeting on behalf of Dome at Woods Hole on June 28, 2018. After the meeting, you sent a packet of documents to the CPC, including a draft Request for Proposals to conduct the Feasibility Study. The draft RFP indicated that you would manage the Feasibility Study.

On August 8, 2018, the Treasurer of the Dome at Woods Hole filed the organization’s application for \$125,000 in CPC funding for “a feasibility study to perform a technical, structural, economic and operational analysis of preserving, restoring and transforming” the Dome into a contemporary cultural center. Your name did not appear on the application.

***Request for Historical Commission Support of Dome at Wood’s Hole’s CPC Funding Application and Request for Historical Commission Nomination of the Dome for Endangered Historic Resources Designation***

On July 17, 2018, you sent an email on behalf of the Dome at Woods Hole to the Historical Commission chairman seeking: (1) Historical Commission support for the Dome at Woods Hole’s CPC funding application, and (2) Historical Commission nomination of the Dome for a Preservation Massachusetts Most Endangered Historic Resources designation. The Historical Commission chairman suggested that you send a letter to the Historical Commission regarding the CPC funding application and suggested content for the letter.

By email dated July 24, 2018, you sent two draft letters on behalf of the Dome at Woods Hole to the Historical Commission chairman. One letter requested endorsement of the Dome at Woods Hole’s CPC funding application and the second letter requested the nomination of the Dome for the endangered historic resources designation. The Historical Commission chairman made further suggestions on the letter seeking support for the CPC funding application. The conflict of interest law implications of your letters were not raised at this time.

On August 7, 2018, you made a presentation to the Historical Commission on behalf of the Dome at Woods Hole. As part of your presentation, you asked the Historical Commission to support the Dome at Woods Hole’s CPC funding application and requested the nomination of the Dome for the endangered historic resources designation. The conflict of interest law implications of your presentation were not raised at this time.

The Historical Commission supported the Dome’s endangered historic resources designation but not the Dome at Woods Hole’s CPC funding application. The Dome at Woods Hole treasurer filed the CPC application for funding on August 8, 2018. The CPC denied the funding request.

The Commission is not aware of any evidence that you personally financially benefitted or that the Town of Falmouth suffered any economic harm from your above-described actions.

You resigned from both the Historical Commission and the CPC in 2019.

**Legal Discussion**

Section 17(c) of the conflict of interest law, G.L. c. 268A, prohibits a municipal employee from, other than in the proper discharge of her official duties, acting as agent or attorney for anyone other than the municipality in relation to any particular matter in which the municipality is a party or has a direct and substantial interest. The purpose of this prohibition is to prevent a municipal employee from dividing her loyalty between her public employer and a private entity.

As an appointed member of the Historical Commission and of the CPC, you were a municipal employee of the Town of Falmouth. As such, you were subject to the restrictions of § 17(c). The Commission found reasonable cause to believe you violated § 17(c) each time you acted on behalf of the Working Group or the Dome at Woods Hole in relation to particular matters in which the Town of Falmouth was a party or had a direct and substantial interest during your service as a member of the Historical Commission and the CPC.

First, when you requested the \$350 donation from the Historical Commission for the travelling Dome exhibit, the Historical Commission decision whether to award the \$350 grant was a particular matter. You acted as agent for the Working Group in relation to that matter by requesting the funds on its behalf from the Historical Commission. Seeking funds from the Historical Commission on behalf of a private organization was not in the proper discharge of your official duties as a Historical Commission member. The Town of Falmouth was a party to and had a direct and substantial interest in the Historical Commission’s decision whether to grant the funding. Therefore, the Commission

found reasonable cause to believe you violated § 17(c) by these actions.

Second, the Dome at Woods Hole’s application for CPC funding was a particular matter. You acted as agent for the Dome at Woods Hole in relation to its application by: (1) initiating and participating in a meeting with the CPC administrator and the outside consultant to discuss the application, and (2) sending a packet of documents to the CPC as a follow up to the meeting. The Town of Falmouth was a party and had a direct and substantial interest in Dome at Woods Hole’s application for CPC funding. Acting as agent for the Dome at Woods Hole in its efforts to secure funding from the CPC was not in the proper discharge of your official duties either as a CPC member or a Historical Commission member. Thus, the Commission found reasonable cause to believe you violated § 17(c) by these actions.

Finally, the Historical Commission’s decisions whether to send letters supporting the Dome at Woods Hole’s CPC funding application and to nominate the Dome for the endangered historic resources designation were particular matters. You acted as agent for the Dome at Woods Hole by: (1) sending emails requesting support to the Historical Commission chairman, (2) drafting letters to the Historical Commission, and (3) making a presentation to the Historical Commission. The Town of Falmouth was a party and had a direct and substantial interest in whether the Historical Commission supported the Dome at Woods Hole’s request for CPC funding and nominated the Dome for the endangered historic resources designation. Acting on behalf of the Dome at Woods Hole was not in the proper discharge of your official duties as an Historical Commission or a CPC member. Therefore, the Commission found reasonable cause to believe you violated § 17(c) by these actions.

**Disposition**

Based upon its review of this matter, the Commission has determined that the public interest would be best served by the issuance of this Public Educational Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Sincerely,

David A. Wilson  
Executive Director

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0001**

**IN THE MATTER OF  
SCOTT CHATIGNY**

**DISPOSITION AGREEMENT**

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

On December 20, 2018, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On June 25, 2020, the Commission concluded its inquiry and found reasonable cause to believe that Chatigny violated G.L. c. 268A, §§ 20, 23(b)(2)(ii) and 23(b)(4).

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

**Findings of Fact**

1. Chatigny has served as a full-time Town of Hubbardston (“Town” or “Hubbardston”) police officer for approximately eleven years.
2. In his private capacity, Chatigny operated Pioneer Services, Inc., a commercial roofing business, from 1990 until 2007, when the Secretary of the Commonwealth dissolved the corporation.
3. In his private capacity, Chatigny has since 2007 owned and operated Oakley Construction,<sup>[1]</sup> which performs residential remodeling. Chatigny’s son works for Oakley Construction.
4. The Slade Building is located on Main Street in Hubbardston and houses several Town offices, including the Town police station.

### ***Wood Doors Installation***

#### **Facts**

5. In May 2016, the Hubbardston Police Chief requested that Chatigny provide an estimate to install two solid core wood doors (“wood doors installation”) in the police station.

6. Chatigny asked his son to develop an estimate for Oakley Construction to install the wood doors. On Oakley Construction letterhead, Chatigny’s son wrote, signed and submitted a proposal of \$1,820 to the Town for the wood doors installation.

7. On or about May 5, 2016, the Town awarded the wood doors installation contract to Oakley Construction in the amount of \$1,820.

8. Shortly after the wood doors installation contract award to Oakley Construction, Chatigny, while on duty in his police uniform, sought prepayment of \$910 from the Town Accountant for the wood doors installation. The Town Accountant refused to make prepayment citing town policy. Notwithstanding Town policy, however, the requested prepayment was subsequently made by other town employees without the Town Accountant’s prior authorization.

9. Chatigny’s son installed the wood doors and Oakley Construction received full payment from the Town for the work.

#### **Conclusions of Law**

##### ***§ 20***

10. Section 20 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 city or town is an interested party of which financial interest he has knowledge or reason to know.

11. As a Hubbardston police officer, Chatigny is a municipal employee of the Town as that term is defined by G.L. c. 268A, § 1(g), because he holds a position in the Town and performs services for the Town.

12. The contract between the Town and Oakley Construction for the installation of the wood doors in the

police station was a contract made by a municipal agency of the Town in which the Town was an interested party.

13. As owner of Oakley Construction, Chatigny had a direct financial interest in the contract between the Town and Oakley Construction for the installation of the wood doors. Chatigny knew he had this financial interest.

14. By, while serving as a Hubbardston municipal employee, having to his knowledge a financial interest in the contract between the Town and Oakley Construction for the installation of the wood doors, Chatigny violated § 20.

### ***Steel Door Installation***

#### **Facts**

15. In November 2016, the Hubbardston Police Chief requested that Chatigny provide an estimate to replace a hollow core wood door with a steel door at the police station (“steel door installation”).

16. The Hubbardston Cable Advisory Committee was to pay for the steel door installation because the Committee would require access to the steel door.

17. On November 8, 2016, the Town Administrator requested that Chatigny provide a “quick write up” of an estimate for the steel door installation and to deliver the write up to the Town Administrator.

18. In response, Chatigny appeared before the Hubbardston Cable Advisory Committee and, as the owner of Oakley Construction, provided a “quick write up” of \$950 to complete the steel door installation.

19. At the November 8, 2016 Cable Advisory Committee meeting, a member of the Committee suggested securing two additional quotes for the steel door installation.

20. In response to the suggestion, the Town Administrator requested that Chatigny obtain two additional quotes for the steel door installation.

21. Chatigny asked his son to develop a formal Oakley Construction proposal for the steel door installation. On Oakley Construction letterhead, Chatigny’s son wrote, signed and submitted a proposal of \$1,275 to the Town for the steel door installation.

22. On or about November 16, 2016, Chatigny drafted and submitted to the Town a written proposal of \$1,425, purportedly on behalf of his defunct company, Pioneer Services, and signed the proposal using the fictitious name “Jason Bergeron.”

23. On or about November 21, 2016, Chatigny provided to the Town a third proposal of \$1,650 for the steel door installation from Fix It All Services, a company operated by a friend and past employee of his.

24. On December 1, 2016, the Town awarded the steel door installation contract to Oakley Construction for \$1,275.

25. Chatigny’s son installed the steel door and Oakley Construction received full payment from the Town for the work.

### **Conclusions of Law**

#### **§ 20**

26. The contract between the Town and Oakley Construction for the installation of the steel door in the police station was a contract made by a municipal agency of the Town in which the Town was an interested party.

27. As the owner of Oakley Construction, Chatigny had a direct financial interest in the contract between the Town and Oakley Construction for the steel door installation. Chatigny knew he had this financial interest.

28. By, while serving as a Hubbardston municipal employee, having to his knowledge a financial interest in the contract between the Town and Oakley Construction for installation of the steel door, Chatigny violated § 20.

#### **§ 23(b)(4)**

29. Section 23(b)(4) prohibits a municipal employee from knowingly, or with reason to know, presenting a false or fraudulent claim to his employer for any payment or benefit of substantial value.<sup>[2]</sup>

30. The Town is Chatigny’s employer.

31. A proposal to do work for payment submitted to a municipality is a claim for a payment or benefit within the meaning of § 23(b)(4).

32. The Oakley Construction and Pioneer Services proposals to install the steel door in the police station submitted to the Town were claims for payment or benefit presented to Chatigny’s employer.

33. The Oakley Construction’s and Pioneer Services’ claims for payment or benefit were of substantial value because the proposals were each over \$50.

34. Chatigny knew the Pioneer Services claim or benefit was false or fraudulent because Pioneer Services was not an existing business and Chatigny intentionally issued the proposal using a fictitious name to hide his fraud.

35. Chatigny submitted the phony higher-priced Pioneer Services proposal to the Town in order to cause the Town to award the steel door installation contract to Oakley Construction at its proposed price. Chatigny’s subterfuge eliminated competition from the process and defeated the Town’s purpose in seeking three quotes for the work.

36. By submitting to the Town a false higher-priced proposal from Pioneer Services for the installation of the steel door than the proposal submitted by Oakley Construction, Chatigny knowingly submitted a false or fraudulent claim to his employer for a payment or benefit of substantial value. By so doing, Chatigny violated § 23(b)(4).

### ***Slade Building Roof Repair***

#### **Facts**

37. In or about December 2016, the Hubbardston Town Administrator requested that Chatigny obtain three bids to repair the roof on the Slade Building (“roof repairs”).

38. Chatigny drafted and submitted an \$11,221 proposal for the roof repairs from his defunct company, Pioneer Services. The December 29, 2016 proposal identified the fictitious “Jason Bergeron” as offering the proposal on behalf of Pioneer Services.

39. Chatigny asked his son to develop an estimate for Oakley Construction to make the roof repairs. On or about January 14, 2017, and on Oakley Construction letterhead, Chatigny’s son wrote, signed and submitted a proposal of \$8,690 to the Town for the roof repairs.

40. The Town accepted Oakley Construction's \$8,690 proposal for the roof repairs on January 31, 2017. Chatigny then sought prepayment of \$4,345 for the roof repairs from the Town Administrator, who referred Chatigny to the Town Accountant.

41. Chatigny requested to meet with the Town Accountant in the police station conference room/lunchroom. Upon the Town Accountant's arrival, Chatigny, who was on duty and in uniform, sought prepayment to Oakley Construction for the roof repairs. The Town Accountant refused to make prepayment citing the Massachusetts General Laws.

42. The Town Administrator cancelled the roof repairs contract with Oakley Construction before any work was performed and the Town did not make any payment to Oakley Construction.

#### **§ 20**

43. The contract between the Town and Oakley Construction for the Slade Building roof repairs was a contract made by a municipal agency of the Town in which the Town was an interested party.

44. As owner of Oakley Construction, Chatigny had a direct financial interest in the contract between the Town and Oakley Construction for the roof repairs. Chatigny knew he had this financial interest.

45. By, while serving as a Hubbardston municipal employee, having to his knowledge a financial interest in the roof repairs contract, Chatigny violated § 20.

#### **§ 23(b)(2)(ii)**

46. Section 23(b)(2)(ii) 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.

47. Chatigny used his official position as a police officer by meeting with the Town Accountant while on duty, in uniform and in the police station conference room/lunchroom, a location to which he had special access as a police officer.

48. Chatigny's meeting the Town Accountant in the police station for the purpose of obtaining prepayment for a

construction job was a use of Chatigny's official position as a police officer for his own private advantage not only because he was on duty, in uniform and at his place of employment, but also because police officers command authority as armed enforcers of the law which can be intimidating or threatening to others.

49. In so acting, Chatigny knew or had reason to know that he was using his official position to secure for himself an unwarranted privilege that was not properly available to him or similarly situated individuals because: (1) having previously attempted to secure a similar prepayment, he was on notice that such prepayments are prohibited; and (2) as a long-time municipal employee, he knew or should have known that the law prohibits public employees from using their official positions for personal business or private gain.

50. The unwarranted privilege was of substantial value because the prepayment Chatigny attempted to secure was over \$50.

51. Therefore, by using his position as a police officer in his attempt to secure prepayment from the Town Accountant to Oakley Construction for the Slade Building roof repairs, Chatigny knowingly or with reason to know used his official position to secure an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, Chatigny violated § 23(b)(2)(ii).

#### **§ 23(b)(4)**

52. The Oakley Construction and Pioneer Services proposals submitted to the Town to perform the Slade Building roof repairs were claims for payment or benefits presented to Chatigny's employer.

53. Chatigny knew the Pioneer Services claim for payment or benefit was false or fraudulent because Pioneer Services was not an existing business and Chatigny intentionally submitted the proposal using a fictitious name to hide his fraud.

54. Chatigny submitted the phony higher-priced Pioneer Services proposal to the Town in order to cause the Town to award the roof repair contract to Oakley Construction at its proposed price. Chatigny's subterfuge eliminated competition from the process and defeated the Town's purpose in seeking three quotes for the work.

55. By submitting to the Town a false higher-priced proposal from Pioneer Services for the Slade Building roof repairs than the proposal submitted by Oakley Construction, Chatigny knowingly submitted a false or fraudulent claim to his employer for a payment or benefit of substantial value. By so doing, Chatigny violated § 23(b)(4).

Josefina Martinez  
Wilbur P. Edwards, Jr.  
Eron Hackshaw

Presiding Officer: Commissioner Josefina Martinez

**FINAL ORDER**

**Resolution**

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

On February 12, 2021, the parties filed a Joint Motion to Dismiss (“Joint Motion”) with a proposed Disposition Agreement requesting that the Commission approve the Disposition Agreement in settlement of this matter and dismiss the adjudicatory proceeding. The Presiding Officer, Josefina Martinez referred the Joint Motion, with the Disposition Agreement, to the full Commission for deliberations on February 18, 2021.

(1) that Chatigny pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$10,000 as a civil penalty for violating G.L. c. 268A, §§ 20, 23(b)(2)(ii) and 23(b)(4); and

In the proposed Disposition Agreement, Respondent Charles Carroll admits that he violated G.L. c. 268A, § 19 by participating as a Planning Board member in the Board’s decisions whether to submit warrant articles to rezone portions of Patriots Road/Route 2A when his father, an immediate family member, had to his knowledge a financial interest in the matters because the proposed zoning change would have rezoned Carroll’s father’s property from the Residential-Agricultural-2 zone to the Highway Business zone.<sup>[1]</sup>

(2) that Chatigny 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.

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

**DATE:** January 13, 2021

<sup>[1]</sup> Scott Chatigny d/b/a Oakley Construction.  
<sup>[2]</sup> “Substantial value” is \$50 or more. 930 CMR 5.05.

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

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 20-0008**

**IN THE MATTER OF  
CHARLES CARROLL**

Parties: Victoria Giuliano, Esq.  
Counsel for Petitioner

Charles Carroll, *pro se*

Commissioners: Maria J. Krokidas, Ch.  
R. Marc Kantrowitz

**WHEREFORE**, the Commission hereby **ALLOWS** the Motion. Respondent’s tendered payment of the \$1,500 civil penalty for violating G.L. c. 268A, § 19 is accepted. Commission Adjudicatory Docket No. 20-0008, In the Matter of Charles Carroll is **DISMISSED**.

**DATE AUTHORIZED:** February 18, 2021

**DATE ISSUED:** February 22, 2021

---

<sup>[1]</sup> G.L. c. 268A, § 19, 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.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 20-0008**

**IN THE MATTER OF  
CHARLES CARROLL**

**DISPOSITION AGREEMENT**

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

On June 20, 2019, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On December 19, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Carroll violated G.L. c. 268A, § 19.

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

**Findings of Fact**

1. Carroll, a resident of the Town of Templeton (“Town”), has served as an unpaid, elected member of the seven-member Town Planning Board (“Planning Board” or “Board”) for approximately nine years.
2. During the relevant period, the population of Templeton was approximately 8,013.
3. Carroll’s father owns, and at all times relevant hereto owned, a single-family house on Patriots Road in

Templeton which is in the Residential-Agricultural-2 zone. Carroll’s father’s house sits on one-quarter of an acre. The Residential-Agricultural-2 zone, according to zoning bylaws passed after the construction of Carroll’s father’s home, requires a minimum lot size of two acres. As such, Carroll’s father’s house has pre-existing, nonconforming status as a single-family house. Carroll’s father rents out the single-family house.

4. At a Planning Board meeting on July 11, 2017, the Board discussed proposing to Town Meeting warrant articles rezoning certain areas of Town, including an area of Patriots Road/Route 2A and an area of Baldwinville Road, to increase the Town’s commercial property tax base. Some Board members stated at the meeting that the Patriots Road/Route 2A area and Baldwinville Road area had a significant number of preexisting non-conforming businesses operating in residential zones.

5. At the July 11, 2017 Planning Board meeting, the Board discussed proposing the rezoning of fifty-three properties, including Carroll’s father’s property, in the area of Patriots Road/Route 2A. At all relevant times, Carroll knew that the area proposed for rezoning included his father’s Patriots Road property.

6. Carroll participated as a Planning Board member in the Board’s July 11, 2017, rezoning discussion by stating that he supported the proposed rezoning and believed that the Board should propose additional rezoning to encourage commercial growth in Town.

7. During the July 11, 2017 Board meeting, a fellow Board member asked the Board Chair how to address the fact that some Board members owned property in the Patriots Road/Route 2A area proposed for rezoning. Carroll stated that his father owned property in the area. The Board Chair stated that Board members could participate if they “did a disclosure.”

8. The Planning Board held a public hearing on the proposed rezoning on September 19, 2017. Carroll did not attend the September 19, 2017 public hearing. The rezoning warrant article, proposing changing the Patriots Road area from the Residential-Agricultural-2 zone to the Highway Business zone, was put on the agenda for the Town Meeting held on November 14, 2017. The rezoning warrant article did not pass at the 2017 Town Meeting.

9. The Highway Business zone requires a minimum lot size of one acre.

10. On November 13, 2018, the Planning Board held a public meeting to discuss submitting to the spring 2019 Town Meeting warrant articles rezoning the same areas of Patriots Road/Route 2A and Baldwinville Road.

11. Carroll participated as a Planning Board member in the Board's November 13, 2018 discussion of the re-submission of the Patriots Road/Route 2A and Baldwinville Road areas rezoning warrant articles to Town Meeting. Carroll stated that he agreed with a proposal that the Board focus on rezoning major arteries with easy access to Route 2 to encourage current and new business, and that he supported anything the Board could do to increase tax revenue.

12. During the November 13, 2018 Planning Board meeting, the Board Chair read aloud from a Town resident's letter to the Board that questioned certain Board members, and/or their family members, including Carroll, owning property in the areas to be rezoned. A second resident, present at the meeting, questioned the Board's repeated attempts to rezone areas where certain members of the Board, and/or their family members, owned property.

13. After multiple Patriots Road/Route 2A-area residents expressed their opposition to rezoning at the November 13, 2018 Board meeting, the Planning Board discussed not including the Patriots Road/Route 2A area in a rezoning recommendation to Town Meeting. The Board then voted to schedule a public hearing on rezoning only the proposed section of Baldwinville Road. Carroll voted in favor of proceeding only as to the Baldwinville Road rezoning proposal.

## Conclusions of Law

### Section 19

14. 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 member<sup>[3]</sup> has a financial interest.<sup>[4]</sup>

15. As a member of the Planning Board, Carroll is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

16. The Planning Board's decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A in 2017 and 2018 were particular matters.

17. Carroll participated in the rezoning particular matters as a Planning Board member by discussing the proposals at the July 11, 2017, and November 13, 2018, Planning Board meetings and by voting in favor of proceeding only as to the Baldwinville Road proposal at the November 13, 2018 Planning Board meeting.

18. Carroll's father is his immediate family member.

19. At the time of his participation as a Planning Board member in the rezoning particular matters, Carroll's immediate family member had to his knowledge a financial interest in the matters because the proposed zoning change would have rezoned Carroll's father's property from the Residential-Agricultural-2 zone to the Highway Business zone. Therefore, although Carroll's father's property is undersized in both the Residential-Agricultural-2 zone and the Highway Business zone, Carroll's father, his tenant, and/or a future purchaser of the property would have the option to operate certain Highway Business permitted uses on the property. As a matter of law, Carroll's father had a financial interest in changes to the zoning of his property.<sup>[5]</sup>

20. The exemption to § 19 stated in § 19(b)(3)<sup>[6]</sup> did not apply because Carroll's father's financial interest in the rezoning proposal was not shared with a substantial segment of the population of Templeton.<sup>[7]</sup>

21. Therefore, Carroll violated § 19 by participating as a Planning Board member in the Board's decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A.

## Resolution

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

- (1) that Carroll pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$1,500 as a civil penalty for violating G.L. c. 268A, § 19; and

(2) that Carroll 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 22, 2021

---

<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> *See, Commission Advisory No. 05-02: "Voting on Matters Affecting Abutting or Nearby Property,"* which states: "Under the conflict of interest law, a property owner is presumed to have a financial interest when...the matter would otherwise alter her property value, rights or use. For example, a property owner is presumed to have a financial interest in zoning changes, variances, nearby subdivision or development approvals, and roadway, sewerage or safety improvements."

<sup>[6]</sup> Section 19(b)(3) of G.L. c. 268A provides that § 19 is not violated if the particular matter involves a

determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

<sup>[7]</sup> Under Commission precedent, a “substantial segment” is ten percent or more of the population. *See*, EC-COI-93-20; EC-COI-92-34. Because fewer than ten percent of Templeton’s population owned property in the area of Patriots Road/Route 2A to be rezoned, Carroll’s father’s financial interest in the rezoning proposal was not shared with a substantial segment of the Town’s population.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0002**

**IN THE MATTER OF  
DOUGLAS GILLESPIE**

**DISPOSITION AGREEMENT**

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

On January 15, 2020, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On February 18, 2021, the Commission concluded its inquiry and found reasonable cause to believe that Gillespie violated G.L. c. 268A, §§ 19, 23(b)(2)(ii), 23(c)(2), and 23(b)(3).

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

**Findings of Fact**

1. Gillespie, a resident of the Town of Weston (“Town”), served as an elected member of the Town’s Select Board (“BOS”) from 1998 through 2019.

2. Gillespie served as BOS Chair from May 2017 through May 2018.

3. Gillespie served as the BOS representative to the Town's Affordable Housing Trust from 2017 through June 2018.

4. Beginning in 2016, the Town sought to increase its affordable housing stock. Specifically, the Town sought to add approximately 275 units of affordable housing.

5. In 2016, the Town began negotiating with Boston Properties concerning a proposed affordable housing development, pursuant to G.L. c. 40B ("c. 40B"), at 133 Boston Post Road, Weston.

6. While the details of the c. 40B proposal were to be negotiated with Boston Properties by the Town Planning Board, the BOS was involved with the proposed development due to an existing development restriction on the 133 Boston Post Road site.

7. The BOS considered placing an article on a future Town Meeting warrant to lift the development restriction on the 133 Boston Post Road site to allow the Boston Properties c. 40B proposal to proceed.

#### ***751-761 Boston Post Road***

8. Privately, Gillespie and his three brothers own approximately 62 acres of land at 751-761 Boston Post Road (the "Carter/Gillespie Property" or "Property") in Weston.

9. The land is held by two trusts. Gillespie is a trustee of the Steer Pasture Realty Trust, while his brother is a trustee of the Woodleigh Farms Trust.

10. In or about December 2017, a local developer ("Developer") informed one of Gillespie's brothers of his interest in purchasing the Carter/Gillespie Property for a housing development with an affordable component pursuant to c. 40B.

11. On or about February 5, 2018, the Developer met with a group of Town officials to propose an affordable housing development on the Carter/Gillespie Property. The Town officials supported the Developer's proposal.

12. Between February 13, 2018 and August 8, 2018, the Developer continued to formulate his proposal pursuant to

c. 40B for the affordable housing development on the Carter/Gillespie Property and to negotiate the purchase of the Property from Gillespie and his brothers.

13. At all relevant times, Gillespie knew that the Developer remained interested purchasing the Carter/Gillespie Property. At all relevant times, Gillespie and his brothers were working toward an agreement under which the Developer would purchase the Property.

#### ***Participation in Boston Properties c. 40B Proposal for 133 Boston Post Road***

14. Between February 13, 2018, and August 8, 2018, Gillespie participated as a BOS member in discussions concerning Boston Properties' c. 40B proposal for 133 Boston Post Road.

15. On February 13, 2018, Gillespie participated in a BOS meeting executive session concerning the Boston Properties proposal by updating the BOS on Boston Properties' progress. Gillespie also participated in the BOS discussion of whether to propose lifting the site's development restriction at the upcoming Town Meeting. Gillespie stated that the Boston Properties proposal alone would not satisfy the Town's goal of developing "diverse affordable housing."

16. During the February 13, 2018 executive session, the BOS also discussed the housing development proposed on the Carter/Gillespie Property, and how that new proposal might counterbalance the Boston Properties proposal. Gillespie participated in the BOS discussion.

17. At the February 27, 2018 BOS meeting, the Planning Board updated the BOS on the status of its negotiations with Boston Properties. Gillespie participated as a BOS member in the discussion of whether to propose lifting the Boston Properties site's development restriction at the upcoming Town Meeting. Gillespie questioned whether there was sufficient time for "proper public education and outreach" before the Town Meeting.

18. At the March 27, 2018 BOS meeting public session, the Planning Board presented the BOS with its recommendations on the Boston Properties proposal. The Planning Board and Boston Properties had not reached agreement as to the size of the proposal. Gillespie participated in the BOS discussion of next steps given the lack of agreement. After public comment on the current

status of negotiations with Boston Properties, Gillespie assured residents that the development restriction question would not be on the upcoming Town Meeting warrant given the lack of agreement about the size of the Boston Properties proposal prior to the BOS vote on the warrant.

19. Following the March 27, 2018 BOS meeting public session, the BOS met in executive session to discuss next steps. Gillespie participated in the BOS discussion and resulting decision to hire a consultant to model the proposed 133 Boston Post Road development at the sizes proposed by the Planning Board and by Boston Properties.

20. At an April 3, 2018 BOS meeting in executive session, Gillespie participated in another discussion of modeling the Boston Properties proposal at both sizes. Gillespie “encouraged the BOS and the Planning Board to keep open communications with Boston Properties about the scope of the project.”

21. On April 9, 2018, Gillespie received an e-mail at his BOS e-mail address from the Boston Properties Senior Project Manager requesting an update on the status of the Boston Properties proposal. Gillespie informed the Project Manager that the BOS had hired consultants to model Boston Properties’ proposed development at two sizes.

22. On June 20, 2018, Gillespie attended the Affordable Housing Trust meeting. He provided the Trust with an update on the status of the Town’s negotiations with Boston Properties.

#### ***Approval of Town Planner’s Response to a Resident’s Complaint***

23. On August 8, 2018, the Developer and the trusts holding the Carter/Gillespie Property signed an agreement giving the Developer the option to purchase the Carter/Gillespie Property (“Option Agreement”).

24. After signing the Option Agreement with the Carter/Gillespie family, the Developer publicly presented his c. 40B proposal for the Carter/Gillespie Property at the September 12, 2018 BOS meeting. Gillespie did not participate in the agenda item including the Developer’s presentation.

25. On September 28, 2018, a Town resident sent an e-mail to the Town Planner expressing concern about the Developer’s proposal for the Carter/Gillespie Property and

questioning Gillespie’s involvement in affordable housing development proposals.

26. The Town Planner sent a proposed response to the resident to Gillespie, at Gillespie’s BOS e-mail address, to ensure that Gillespie “was okay with” the response. Gillespie responded that the proposed response was “ok [sic] with [him]” before the Town Planner sent the response to the resident.

#### ***Change to Meeting Minutes***

27. On October 5, 2018, the Assistant to the Town Manager e-mailed the BOS members the draft minutes of the February 13, 2018 executive session.

28. The minutes referenced a discussion of the Developer’s c. 40B proposal for the Carter/Gillespie Property. The minutes did not indicate that Gillespie recused himself from the discussion.

29. Gillespie responded to the Assistant that there “was no discussion of [the Carter/Gillespie Property] at this meeting.” When the Assistant replied that she would “look into that,” Gillespie responded, “Please just take any reference to [the Property] out of minutes. Any mention by me was not for public consumption because it creates a conflict of interest for me. Bring revised copies to meeting or remove it from consent agenda.” The reference to discussion of the Carter/Gillespie Property was removed from the meeting minutes.

#### ***Additional Participation in c. 40B Matters***

30. At the December 12, 2018 BOS meeting, the Planning Board informed the BOS that Boston Properties had agreed to build a smaller number of units than originally proposed for senior housing at 133 Boston Post Road. Gillespie questioned whether age-restricted units would count toward the Town’s affordable housing index.

#### ***Forwarding BOS Correspondence on c. 40B Matters***

31. After Gillespie and his brother signed the Option Agreement on behalf of the trusts, and the Developer publicly presented his c. 40B proposal for the Carter/Gillespie Property, Gillespie continued to receive e-mails at his BOS e-mail address about the Property and other c. 40B proposals.

32. In October and November of 2018, Gillespie forwarded to his family members and their attorneys two letters from abutters who opposed the Developer's c. 40B proposal for the Carter/Gillespie Property and one letter of support from the Town's Affordable Housing Trust. Gillespie forwarded these e-mails within minutes of receiving them at his BOS e-mail address. Gillespie captioned one of the abutter e-mails "confidential."

33. By contrast, when another developer made an e-mail request to the Town for abutter letters and letters of support concerning that developer's proposal, he received an e-mail response from the Town sixteen days later.

34. In or about November 2018, another developer informed the Town of his proposal to build an affordable housing development pursuant to G.L. c. 40B.

35. Between November 2018 and February 2019, Gillespie received e-mails from the Town Manager about this new c. 40B proposal.

36. Between November 2018 and February 2019, Gillespie forwarded to his family members and their trust attorneys three e-mails about the new c. 40B proposal. The e-mails included details about the new proposal, the Town Manager's thoughts on how the new project might fit in with other affordable housing development proposals in Town, and the timeframe for the new proposal. One of the e-mails stated that it was "early. . . for a giant PUBLIC [sic] discussion." Gillespie added the caption "confidential" to two of the three e-mails and forwarded the two e-mails to his family members and their trust attorneys within minutes of having received them.

#### ***Forwarding Legal Advice***

37. On February 5, 2019, Gillespie received an e-mail from the Town Manager containing legal advice from Town Counsel about the procedure and timeframe for the BOS decision whether to exercise its right of first refusal on the Carter/Gillespie Property's farmland. Gillespie forwarded the e-mail, including the legal advice, to his family members.

38. The Town redacted the legal advice from the e-mail when it provided the e-mail in response to a subsequent public records request by another party.

39. On or about February 21, 2019, the Carter/Gillespie Family signed a purchase and sales agreement with a real

estate company to whom the Developer had assigned his option to purchase the Carter/Gillespie Property.

#### **Conclusions of Law**

##### **Section 19**

40. 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 member<sup>[3]</sup> has a financial interest.<sup>[4]</sup>

41. As a member of the BOS, Gillespie was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

##### ***Participation in c. 40B Matters***

##### ***Lifting of the Development Restriction on the Boston Properties c. 40B Proposal Site***

42. The BOS decision whether to propose the lifting of the development restriction on the Boston Properties 133 Boston Post Road site at an upcoming Town Meeting was a particular matter.

43. Gillespie participated, personally and substantially, in this particular matter by:

- a. updating the BOS members on Boston Properties' progress at the February 13, 2018 BOS meeting;
- b. discussing whether to propose lifting the Boston Properties site's development restriction at the upcoming Town Meeting at the BOS meeting executive session on February 13, 2018, and at BOS meetings on February 27, 2018, and March 27, 2018;
- c. discussing the BOS decision to hire a consultant to model the Boston Properties proposal at two different sizes at the March 27, 2018, and April 3, 2018 BOS meeting executive sessions;
- d. providing an update on the status of the proposal to Boston Properties' Senior Project Manager by e-mail on April 9, 2018;
- e. providing an update on the status of the proposal to the Affordable Housing Trust on June 20, 2018; and
- f. discussing how the Developer's proposal involving the Carter/Gillespie Property would counterbalance the Boston Properties proposal at the BOS meeting

executive session on February 13, 2018, and the BOS meeting on December 12, 2018.

44. Gillespie's brothers are his immediate family members.

45. At the time of his participation as a BOS member in the lifting of the Boston Properties site development restriction particular matter Gillespie and his immediate family members had, to his knowledge, a financial interest in the particular matter because, before and during the time that Gillespie participated as described above, they were negotiating the sale of the Carter/Gillespie Property to the Developer for purposes of an affordable housing development, which would compete with the Boston Properties proposal to fill the approximately 275 units of affordable housing needed in Town.

46. At the time of his participation in the December 12, 2018, BOS meeting, Gillespie and his immediate family members had, to his knowledge, a financial interest in the lifting of the Boston Properties site development restriction particular matter because they had signed an Option Agreement allowing the Developer to purchase the Carter/Gillespie Property for an affordable housing development.

#### ***Approving Response to Resident Complaint***

47. The resident's complaint to the Town Planner about the Developer's proposal involving the Carter/Gillespie Property and Gillespie's involvement in affordable housing discussions was a particular matter.

48. Gillespie participated in this particular matter by approving the Town Planner's response to the resident.

49. At the time of his participation, Gillespie knew that he had a reasonably foreseeable financial interest in a complaint about his conduct as a BOS member.

50. Therefore, Gillespie violated § 19 by repeatedly participating as a BOS member in decisions related to the Boston Properties proposal while his family negotiated the sale of their property to a developer for a competing purpose, and by participating as a BOS member in approving a response to a resident's complaint about his actions.

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

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

#### ***Changing BOS Meeting Minutes***

52. Gillespie received a copy of the draft minutes from the February 13, 2018 BOS executive session in his official capacity as a BOS member.

53. When Gillespie requested that the Town Manager's Assistant remove reference to the discussion of the Carter/Gillespie Property, he did so in his official capacity as a BOS member.

54. Gillespie requested that the reference be removed because it created a conflict of interest for him. Therefore, it was without proper justification and thus, unwarranted.

55. The unwarranted privilege was of substantial value because it removed evidence of a potential conflict of interest law violation.

56. Similarly situated Town board members cannot properly request that meeting minutes remove a statement that creates a conflict of interest.

57. Thus, by using his position as a BOS member to cause the February 13, 2018 executive session meeting minutes to be changed, Gillespie knowingly or with reason to know used his official position to secure an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, Gillespie violated § 23(b)(2)(ii).

#### ***Forwarding Correspondence and Information about c. 40B Matters***

58. Gillespie received e-mails from opponents and supporters of the proposal involving the Carter/Gillespie Property, and e-mails from the Town Manager which included the details and timing of a new affordable housing development proposal because of his position on the BOS.

59. Gillespie's ability to provide to his family members and their attorneys information from opponents and supporters of the proposal involving the Carter/Gillespie

Property, as well as information about a new proposal with the potential to compete with the proposal involving the Property, was a privilege. The ability to provide such information to his family members and their attorneys, without having to ask for it and without having to wait for an official response, was a privilege.

60. Gillespie's use of his official position to provide information, given to him because of his BOS position, to his family members and their attorneys for their private use in the sale of the Carter/Gillespie Property, was unwarranted.

61. The ability of Gillespie's family members and their attorneys to know of opposition to and support of the proposal involving the Carter/Gillespie Property, and to know the details and timing of a new, competing proposal on the horizon, was of substantial value.

62. Similarly situated property owners and developers did not properly have instant access to information about opposition, support, and upcoming proposals that would compete with their own.

63. Therefore, by using his position as a BOS member to forward e-mails containing opposition and support of the project, as well as e-mails about an upcoming proposal that may compete with the proposal involving the Carter/Gillespie Property, Gillespie knowingly or with reason to know used his official position to secure an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, Gillespie violated § 23(b)(2)(ii).

#### **Section 23(c)(2)**

64. Section 23(c)(2) prohibits a public employee from improperly disclosing materials or data within the exemptions to the definition of public records as defined by section seven of chapter four and were acquired by him in the course of his official duties, nor use such information to further his personal interest.

65. Gillespie obtained the February 5, 2019 e-mail containing legal advice from Town Counsel in the course of his official duties as a BOS member.

66. Gillespie forwarded the information to his family members to further his personal interest.

67. The legal advice was within the exemptions to the definition of public records as defined by G.L. c. 4, § 7.

68. Therefore, by forwarding an e-mail containing legal advice from Town Counsel acquired in the course of his official duties to his family members for personal interest, Gillespie improperly disclosed materials or data within the exemptions to the definitions of public records as defined by section seven of chapter four and were acquired by him in the course of his official duties or used to further his personal interest. In so doing, Gillespie violated § 23(c)(2).

#### **Section 23(b)(3)**

69. 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.

#### ***Participation in Boston Properties c. 40B Proposal***

70. By participating as a BOS member in BOS decisions relating to the Boston Properties proposal, while he and his brothers negotiated the sale of the Carter/Gillespie Property to the Developer for an affordable housing development, Gillespie 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 family members and/or the Developer could unduly influence or enjoy Gillespie's favor in the performance of his official duties. Gillespie did not file a disclosure to dispel this appearance of undue influence and favoritism. In so acting, Gillespie violated § 23(b)(3).

#### ***Forwarding Correspondence and Information about c. 40B matters***

71. By forwarding e-mails he received because of his BOS position to his family members and their attorneys,

containing information about opposition and support of the Developer's 40B proposal involving the Carter/Gillespie Property, as well as information about the details and timing of a new affordable housing proposal on the horizon, Gillespie 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 family members could unduly influence or enjoy Gillespie's favor in the performance of his official duties. Gillespie did not file a disclosure to dispel this appearance of undue influence and favoritism. In so acting, Gillespie violated § 23(b)(3).

### Resolution

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

(1) that Gillespie pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$8,000 as a civil penalty for violating G.L. c. 268A, §§ 19, 23(b)(2)(ii); 23(c)(2); and 23(b)(3); and

(2) that Gillespie 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:** March 25, 2021

---

[1] "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).

[2] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental

organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

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

[4] "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.

---

## COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

### IN THE MATTER OF JAMES CLARK

### PUBLIC EDUCATION LETTER

June 30, 2021

James Clark  
c/o Kenneth H. Anderson, Esq.  
Anderson, Goldman, Tobin & Pasciucco, LLP  
50 Redfield Street, Suite 201  
Boston, MA 02122

Dear Mr. Clark:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your capacity as a police officer in the Boston Police Department ("BPD"), violated the state conflict of interest law by providing an Application for Criminal Complaint to a friend of yours, which falsely stated that he had been arrested on July 4, 2016, for his use to explain his whereabouts on July 4, 2016. You cooperated fully with the inquiry.

On May 27, 2021, the Commission voted to find reasonable cause to believe that your actions, as described below, violated section 23(b)(2)(ii) of the conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings. The Commission has determined, however, that, in lieu of adjudicatory

proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter. By resolving this matter through this Public Education Letter, the Commission seeks to ensure that you and public employees in circumstances similar to those described below will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission.

## **The Facts**

### **Background**

You have been a BPD police officer for over twenty-five years. In July 2016, you were assigned as a patrol officer to the Brighton sector.

John Smith<sup>[1]</sup> is your best friend's older brother. You testified that, although you have known Smith "since birth," you have not had a close relationship with him since childhood.

In July 2016, Smith was employed as an MBTA bus driver. On May 13, 2016, Smith entered into a "Last Chance Agreement" with the MBTA. Under the Last Chance Agreement, Smith was subject to "immediate discharge" for any future violation of the MBTA attendance policy.

On July 4, 2016, Smith overslept and missed his MBTA shift. Smith told the MBTA that he had missed work on July 4th because he had been arrested.

On July 11, 2016, Smith provided his MBTA employee union liaison with a document appearing to be an Application for Criminal Complaint to the Brighton District Court purportedly for charges against Smith from an incident on July 4, 2016. On July 12th, Smith received notice from the MBTA of an abeyance of discipline pending the outcome of the criminal matter. MBTA officials quickly learned, however, that no criminal charges had in fact been filed with the court. On July 19, 2016, Smith resigned from his MBTA position in lieu of discharge. Smith admitted that he had overslept and that he

had obtained the Application for Criminal Complaint from you.

### ***The Application for Criminal Complaint***

An Application for Criminal Complaint ("Application") is a one-page document used by police and/or the public to apply for criminal charges from the district courts. It includes information about the accused and the alleged offense. Some courts and police departments have transitioned to an electronic complaint submission system. Members of the public may obtain an Application from the court clerk's office and are required to pay a \$15 filing fee.

The Application in question includes Smith's full name and address under "information about accused," and indicates that Smith was arrested on July 4, 2016, in Brighton. The Application lists a fictitious police officer's name as the complainant and a fictitious police incident report number. The Application lists an offense code and description "Assault & Battery 209A." The Application lists a female victim's name and a place of offense. The form includes an illegible signature and is dated July 5, 2016.

According to Smith, he overslept on July 4, 2016, and was going to lose his job under the Last Chance Agreement. He "brainstormed" a way to save his job and called you to ask whether you could provide something to show he had been arrested. You told him there was nothing you could do, but Smith persisted.

You admitted under oath that you completed and provided the Application to Smith. You testified, however, that you did not know Smith intended to show the form to his employer, the MBTA. You also denied knowledge of Smith's employment with the MBTA or the Last Chance Agreement. Rather, you stated that Smith called you, upset, because he had not returned home on the night of July 4, 2016, and had told his girlfriend that he had been arrested. He asked you for help.

You testified that you received Smith's call while you were at roll call beginning your shift. According to your testimony, you determined that you could give Smith a paper Application because, while the paper forms were "obsolete" having been replaced by online complaint submissions, a civilian would likely not know the difference. The paper Application forms were kept in a closet at the BPD police station where you were at roll call.

You called Smith back and agreed to provide him with an Application to show that he had been arrested on July 4, 2016. You testified that Smith provided you with the information needed for you to complete the Application, including his personal information, the alleged offense, and the name of his ex-girlfriend as the alleged victim. You wrote the information provided by Smith on the Application and added a fictitious officer's name and police report number, as well as a "random" address for the place of offense. You signed the Application with an illegible signature. Smith picked up the Application at your home a few days later.

The Application was never filed with any court, nor was any information associated with the alleged incident entered into any BPD record system.

### **Legal Discussion**

Section 23(b)(2)(ii) of the conflict of interest law, 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 anyone an unwarranted privilege of substantial value not properly available to similarly situated individuals.

As a BPD police officer, you are a municipal employee subject to the conflict of interest law. You admitted that you provided Smith with the completed Application falsely stating that he had been arrested on July 4, 2016. You had access to the paper Application forms, kept in a closet at the BPD station, because of your position as a BPD police officer.

The false Application to support Smith's false claim of arrest on July 4, 2016 was a privilege which you knowingly secured for Smith using your position as a BPD officer. This privilege was unwarranted as a crime had not occurred, an arrest had not been made, and the information contained within the Application was false. The sole legitimate use of a criminal complaint application is to document and present to the court information regarding potential criminal activity. You, by contrast, used the Application to fabricate an alibi for a friend.

The unwarranted privilege you secured for Smith was of substantial value. The Application falsely reporting his

arrest was in fact substantially valuable to Smith as he intended to use it to maintain his paid employment with the MBTA. Even if you were unaware of Smith's true intent, and even if you believed, as you testified, that Smith was going to use the Application to deceive his girlfriend regarding his whereabouts and thereby avoid or solve a domestic problem, you had reason to know, given the urgency and persistence with which he requested it, that the Application was of substantial value to Smith. Indeed, the fact that you agreed to provide the false Application and went to the time and effort to provide it to Smith, with whom you do not have a close relationship, demonstrates that you knew it was substantially valuable to Smith.

This substantially valuable unwarranted privilege was also not properly available to similarly situated individuals because a person seeking to extricate themselves from employment or domestic difficulties cannot properly obtain an official, even if obsolete, application for criminal complaint, from a police station and apparently completed by a police officer, to use as an alibi to support their false claims of their whereabouts at a particular date or time.

Therefore, by providing Smith with the false Application you knowingly used your position as a BPD police officer to secure for Smith an unwarranted privilege of substantial value that was not properly available to similarly situated individuals. Accordingly, the Commission found reasonable cause to believe you violated § 23(b)(2)(ii).

### **Disposition**

Based upon its review of this matter, the Commission has determined that the public interest would be best served by the issuance of this Public Educational Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Sincerely,

David A. Wilson  
Executive Director

---

<sup>[1]</sup> A pseudonym.

---

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0004

IN THE MATTER OF  
RICHARD DELORIE

**DISPOSITION AGREEMENT**

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

On January 15, 2020, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On May 27, 2021, the Commission concluded its inquiry and found reasonable cause to believe that DeLorie violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii).

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

**Findings of Fact**

1. DeLorie, has worked in the Town of Wellesley Fire Rescue Department (“Fire Department”) for over 28 years and has served as the Fire Chief (“Fire Chief”) since 2009.
2. Wellesley Town Meeting voted in November 2011 to remove the Fire Department from Civil Service.
3. In 2012, DeLorie issued General Order #2009-17 (“Hiring Order”) to govern the firefighter hiring process. DeLorie developed the Hiring Order in consultation with members of Wellesley Firefighters Local 1795 (“Union”) and with assistance from the then Wellesley Human Resources Director and the Wellesley Executive Director of General Government Services. The Hiring Order states, in part,

It is the intent of the Town, in implementing a non-civil service hiring procedure, to use selection methods that are free from manipulation and undue

influence in the interests of attracting and selecting candidates as firefighters that meet the needs of the department and community. This goal can only be achieved if all those involved in the process strictly adhere to a set of standard protocols in a fair and transparent process.

4. Under the Hiring Order, a candidate may be considered for interview following receipt of a passing score of 70 on the firefighter entrance examination. The examination scores are used on a pass/fail basis to measure a candidate’s aptitude, and not for ranking purposes.

5. Under the Hiring Order, after an interview of each candidate by an interview panel, the Fire Chief or his designee recommends finalists for appointment by the Board of Selectmen, which is also the Board of Fire Engineers (“BOS/BFE”).

6. In early 2018, the Fire Department had three open entry-level firefighter positions.

7. A private test administrator held a firefighter entrance examination in April 2018.

8. DeLorie’s son took and passed the April 2018 firefighter entrance examination.

9. DeLorie designated Wellesley Assistant Fire Chief Jeffrey Peterson (“Assistant Fire Chief Peterson”) to manage the hiring process consistent with established practice.

10. On July 5, 2018, DeLorie filed a written G.L. c. 268A, § 23(b)(3) disclosure with his appointing authority, the Board of Selectmen, stating, in part,

An immediate family member of the Chief (Son) has taken the Fire Department Entrance exam. While not required by state ethics laws, I will not be participating in any capacity in the review and selection process.<sup>[1]</sup>

11. The Hiring Order also lists “significant hiring considerations,” which it describes as reflecting a “departmental preference.”

12. Such “significant hiring considerations” include: Wellesley residency, current or prior Town of Wellesley employment, military service, gender and ethnicity representation, paramedic or EMT certification or enrollment, special language proficiency, education, prior

firefighting experience, civic awards and/or involvement in community activities.

13. Of the 88 candidates who passed the April 2018 firefighter entrance examination, 27 were identified as being appropriate for “significant hiring consideration.”

14. Out of the 27 individuals identified as being appropriate for “significant hiring consideration,” Assistant Fire Chief Peterson and the Wellesley Human Resources Director (“HR Director”) selected approximately five candidates to interview for the open firefighter positions, including DeLorie’s son.

15. The Union objected to being excluded from observing the firefighter candidate selection process as authorized by the Hiring Order.

16. In response to the Union’s objection, Assistant Fire Chief Peterson and the HR Director added additional candidates to interview.

17. An interview panel consisting of Assistant Fire Chief Peterson, the HR Director and staff, the Union president and a ranking member of the Fire Department interviewed eight candidates on September 17, 2018, and, on that day, selected three candidates to recommend to the BOS/BFE for appointment.

18. Members of the interview panel agreed on the three candidates selected for recommendation to the BOS/BFE for appointment.

19. DeLorie’s son was not among the three candidates selected for recommendation to the BOS/BFE for appointment.

20. Assistant Fire Chief Peterson informed DeLorie of the interview panel’s candidate selections for recommendation to the BOS/BFE for appointment. DeLorie criticized the candidates selected and the failure to interview certain candidates.

21. DeLorie directed Assistant Fire Chief Peterson to halt the hiring process while DeLorie conferred with members of the BOS/BFE.

22. On September 25, 2018, DeLorie contacted the Chair and Vice Chair of the BOS/BFE. DeLorie met in-person with the Chair and communicated with the Vice Chair by telephone and email.

23. In his communications with the BOS/BFE Chair and Vice Chair, DeLorie: (1) criticized the hiring process, (2) criticized the candidates the interview panel had selected to recommend to the BOS/BFE for appointment, and (3) praised his son’s qualifications for a firefighter position and the qualifications of another unsuccessful candidate.

24. The BOS/BFE Chair reminded DeLorie that he had recused himself from the hiring process and told DeLorie that he needed to stay recused from the process.

25. In a September 25, 2018 email to the BOS/BFE Vice Chair, DeLorie expressed particular concern that the interview panel did not consider community involvement in making its candidate selections and stated his strong wish that the BOS/BFE “disrupt the process,” writing, “review the finalists’ applications yourself and I know you will choose from the body of work, volunteerism, community references, character and history that supports selecting the most desirable candidates.”

26. On September 26, 2018, DeLorie sent a follow-up email to the BOS/BFE Vice Chair with a scan of the front page of The Wellesley Townsman from 2003 showing DeLorie and his son, then age 10, helping to serve Thanksgiving meals to seniors. DeLorie sent the email as an example of his son’s community involvement.

27. By email dated October 5, 2018, DeLorie notified the BOS/BFE Chair and Vice Chair that the firefighters Union and Assistant Fire Chief Peterson had “resolved their differences” and had agreed to conduct another round of interviews.

28. The Union did not request a second round of interviews.

29. Human Resources was excluded from the second round of interviews.

30. The second interview focused on community involvement. DeLorie was not part of the second round of interviews.

31. After a second round of interviews, DeLorie’s son was among three candidates selected for recommendation to the BOS/BFE for appointment.

32. The HR Director received notice of the decision and, by email dated October 18, 2018, declined further participation in hiring process.

33. DeLorie forwarded the HR Director's October 18, 2018 email to the Chair and Vice Chair of the BOS/BFE and sought the BOS/BFE's support for the interview panel's and the Assistant Chief's decision.

34. The Chair of the BOS/BFE reminded DeLorie by return email on October 19, 2018, that DeLorie had recused himself from the process.

35. Wellesley Labor Counsel and the BOS/BFE became involved in the firefighter hiring process after the results of the second interviews. An additional firefighter position also became available. The BOS/BFE directed the interview panel to conduct a third round of interviews. DeLorie's son was one of the finalists following a third interview and the BOS/BFE appointed him as a firefighter. DeLorie was not part of the third round of interviews.

36. The starting salary for a Wellesley firefighter is in excess of \$50,000.

## Conclusions of Law

### § 19

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

38. As Fire Chief, DeLorie is a municipal employee as that term is defined by G.L. c. 268A, § 1(g).

39. DeLorie's son is a member of his immediate family.

40. The decision as to whom to recommend to the BOS/BFE for appointment to the open firefighter positions was a particular matter.

41. DeLorie participated, personally and substantially, as Fire Chief and a municipal employee in this particular matter by:

- a. by designating Assistant Fire Chief Peterson to manage the hiring process;
- b. criticizing the interview panel's candidate selections in discussion with Assistant Fire Chief Peterson;

c. directing Assistant Fire Chief Peterson to halt the hiring process;

d. criticizing the hiring process and the interview panel's candidate selections in communications with the Chair and Vice Chair of the BOS/BFE;

e. praising his son's qualifications and that of another unsuccessful candidate in communications with the Chair and Vice Chair of the BOS/BFE; and

f. seeking support from the Chair and Vice Chair of the BOS/BFE for the interview panel's candidate selections, which included DeLorie's son, after a second round of interviews.

42. DeLorie's son had a financial interest in the particular matter of whom to hire as a firefighter because he was a candidate for the entry-level firefighter position and the firefighter position was a paid position.

43. At the time of his participation, DeLorie knew that his son had a financial interest in the particular matter.

44. Therefore, DeLorie violated § 19 by repeatedly participating as Fire Chief in the decision as to whom recommend to the BOS/BFE for appointment to open firefighter positions, while knowing that his son was a candidate for a paid firefighter position.

### § 23(b)(2)(ii)

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

46. The opportunity for DeLorie's son to be selected for recommendation to the BOS/BFE for appointment as a firefighter was a privilege.

47. The privilege was unwarranted because DeLorie halted the hiring process, after the interview panel did not select his son to recommend to the BOS/BFE for appointment after the September 17, 2018 interviews and caused the process to be altered to favor his son.

48. DeLorie knowingly used his official position to halt and redirect the hiring process to his son's advantage after

the interview panel did not select his son by taking the following actions:

- a. requesting that the BOS/BFE “disrupt the process”;
- b. directing Assistant Fire Chief Peterson to halt the process;
- c. contacting the Chair and Vice Chair of the BOS/BFE to criticize the hiring process and the candidates the interview panel had selected to recommend to the BOS/BFE; and
- d. invoking a dispute between Assistant Fire Chief Peterson and the Union that did not exist following the September 17, 2018 interview.

49. This unwarranted privilege was of substantial value<sup>[7]</sup> because the value of securing a compensated entry-level firefighter position exceeded \$50.

50. Having the hiring process halted and redirected in order to secure a second interview and subsequent recommendation for appointment was not properly available to other firefighter candidates.

51. Thus, by using his Fire Chief position to halt and redirect the firefighter hiring process to his son’s benefit, DeLorie knowingly, or with reason to know, used his Fire Chief position to secure for his son an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, DeLorie violated § 23(b)(2)(ii).

**Resolution**

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

- (1) that Richard DeLorie pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$10,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and
- (2) that Richard DeLorie waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the

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

**DATE:** August 5, 2021

<sup>[1]</sup> DeLorie was mistaken when he wrote, “not required by state ethics laws.”

<sup>[2]</sup> None of the exemptions applies.

<sup>[3]</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>[4]</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>[5]</sup> “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

<sup>[6]</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 embraces private interests, which are direct, immediate or reasonably foreseeable. *See, EC-COI-84-98*. The interest can be affected in either a positive or negative manner. *EC-COI-84-96*.

<sup>[7]</sup> Substantial value is \$50 or more. 930 CMR 5.05.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0007**

**IN THE MATTER OF**

**JEFFREY PETERSON**

**DISPOSITION AGREEMENT**

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

On January 15, 2020, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On May 27, 2021, the Commission concluded its inquiry and found reasonable cause to believe that Peterson violated G.L. c. 268A, §§ 23(b)(2)(ii) and 23(b)(3).

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

**Findings of Fact**

1. Peterson, a resident of the Town of Wellesley, has worked in the Town of Wellesley Fire Rescue Department (“Fire Department”) for 36 years and has served as Assistant Fire Chief since 2009.
2. Wellesley Town Meeting voted in November 2011 to remove the Wellesley Fire Department (“Fire Department”) from Civil Service.
3. In 2012, Wellesley Fire Chief Richard DeLorie (“Chief DeLorie”) issued General Order #2009-17 (“Hiring Order”) to govern the firefighter hiring process. The Hiring Order states, in part:

It is the intent of the Town, in implementing a non-civil service hiring procedure, to use selection methods that are free from manipulation and undue influence in the interests of attracting and selecting candidates as firefighters that meet the needs of the department and community. This goal can only be achieved if all those involved in the process strictly adhere to a set of standard protocols in a fair and transparent process.
4. Under the Hiring Order, a candidate may be considered for interview following receipt of a passing score of 70 on the firefighter entrance examination.

5. The Hiring Order also requires an interview panel consisting of “the Fire Chief, Deputy Chief, a representative of the Human Resources Department and such other personnel as the Fire Chief may designate to include,” to interview the candidates.

6. After an interview of each candidate by the interview panel, the Fire Chief or his designee recommends finalists for appointment by the Board of Selectmen, which is also the Board of Fire Engineers (“BOS/BFE”).

7. In early 2018, the Fire Department had three open entry-level firefighter positions.

8. Peterson arranged with a private testing company to administer the firefighter entrance examination in April 2018.

9. Chief DeLorie’s son took and passed the April 2018 firefighter entrance examination.

10. The son of Peterson’s wife’s first cousin, who is also the son of a Wellesley firefighter, passed the April 2018 firefighter entrance examination.

11. Chief DeLorie designated Peterson to manage the hiring process.

12. The Hiring Order also lists “significant hiring considerations,” which it describes as reflecting a “departmental preference.”

13. “Significant hiring considerations” include: Wellesley residency, current or prior Town of Wellesley employment, military service, gender and ethnicity representation, paramedic or EMT certification or enrollment, special language proficiency, education, prior firefighting experience, civic awards and/or involvement in community activities.

14. Of the 88 candidates who passed the April 2018 firefighter entrance examination, Peterson identified 27 individuals as being appropriate for “significant hiring consideration.”

15. Out of the 27 individuals Peterson identified as being appropriate for “significant hiring consideration,” Peterson and the Wellesley Human Resources Director (“HR Director”) selected approximately five candidates to interview for the open firefighter positions, including Chief DeLorie’s son and the son of Peterson’s wife’s first cousin.

16. The Wellesley Firefighters Local 1795 (“Union”) objected to being excluded from the firefighter candidate selection process.

17. In response to the Union’s objection, Peterson and the HR Director added additional candidates to interview.

18. An interview panel consisting of Peterson, the HR Director and staff, the Union president and a ranking member of the Fire Department interviewed eight candidates on September 17, 2018.

19. Peterson did not file a G.L. c. 268A disclosure regarding his participation in the selection and interview of the son of his wife’s first cousin and the seven other competing firefighter candidates.

20. On September 17, 2018, following the interviews of the eight firefighter candidates selected by Peterson and the HR Director, the members of the interview panel agreed on the selection of three candidates to be recommended to the BOS/BFE for appointment as firefighters.

21. Chief DeLorie’s son was not among the three candidates selected for recommendation to the BOS/BFE for appointment.

22. The son of Peterson’s wife’s first cousin was not among the three candidates selected for recommendation to the BOS/BFE for appointment.

23. Peterson informed Chief DeLorie of the interview panel’s candidate selections for recommendation to the BOS/BFE for appointment to the three vacancies. Chief DeLorie criticized the candidates selected and the omission of certain candidates for interview.

24. At Chief DeLorie’s direction, Peterson halted the hiring process while DeLorie conferred with members of the BOS/BFE.

25. Peterson decided to hold a second round of interviews.

26. Peterson decided to exclude Human Resources from the second round of interviews.

27. Peterson focused the second round of interviews on community involvement, and a general discussion with the candidates to gauge their “fit” into the department.

28. Peterson drafted questions for the second round of interviews to elicit Chief DeLorie’s son’s experience in the area of community involvement.

29. After the second round of interviews, Chief DeLorie’s son was among three candidates selected for recommendation to the BOS/BFE for appointment.

30. After the second round of interviews, the son of Peterson’s wife’s first cousin was not among the three candidates selected for recommendation to the BOS/BFE for appointment.

31. After the second round of interviews, the HR Director received notice of the candidates selected for recommendation to the BOS/BFE for appointment and declined further participation in hiring process.

32. Wellesley Labor Counsel and the BOS/BFE became involved in the firefighter hiring process after the results of the second round of interviews. An additional firefighter position also became available. The BOS/BFE directed the interview panel to conduct a third round of interviews. Chief DeLorie’s son was one of the finalists following this third round of interviews, and the BOS/BFE appointed him as a firefighter.

33. The starting salary for a Wellesley firefighter is approximately \$50,000.

## **Conclusions of Law**

### **§ 23(b)(2)(ii)**

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

35. As Assistant Fire Chief, Peterson is a municipal employee as that term is defined by G.L. c. 268A, § 1(g).

36. The opportunity for Chief DeLorie’s son to be interviewed and selected for recommendation to the BOS/BFE for appointment was a privilege.

37. The privilege was unwarranted because, contrary to the Hiring Order, Peterson scheduled a second round of

interviews when the first interview panel did not select Chief DeLorie's son for recommendation to the BOS/BFE for appointment.

38. Peterson knowingly used his Assistant Chief position to secure this unwarranted privilege for Chief DeLorie's son by taking the following actions:

- a. conducting a second round of interviews despite the interview panel being comfortable with the finalists after the first interview;
- b. excluding Human Resources from the second round of interviews; and
- c. focusing the second round of interviews on community involvement, an area in which Chief DeLorie's son had experience, and drafting questions focusing on community involvement that would highlight that experience.

39. This unwarranted privilege was of substantial value<sup>[1]</sup> because the value of securing a compensated entry-level firefighter position exceeded \$50.

40. Conducting a second round of interviews to provide Chief DeLorie's son, whom the interview panel had declined to recommend for appointment, with an opportunity to be re-interviewed and selected for recommendation was not properly available to other firefighter candidates.

41. Therefore, by using his Assistant Fire Chief position to alter the firefighter hiring process to benefit Chief DeLorie's son, Peterson knowingly or with reason to know used his official position to secure for Chief DeLorie's son an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, Peterson violated § 23(b)(2)(ii).

**§ 23(b)(3)**

42. 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.<sup>[2]</sup>

43. In selecting and interviewing the son of his wife's first cousin as a firefighter candidate, Peterson violated § 23(b)(3) by knowingly, or with reason to know, acting in a manner which would cause a reasonable person, knowing the relevant circumstances to conclude that the son of his wife's first cousin could unduly enjoy Peterson's favor in the performance of his official duties as Assistant Fire Chief or that he is likely to act as a result of kinship in the performance of those duties.

**Resolution**

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

- (1) that Jeffrey Peterson 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, §§ 23(b)(2)(ii) and 23(b)(3); and
- (2) that Jeffrey Peterson 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, 2021

<sup>[1]</sup> Substantial value is \$50 or more. 930 CMR 5.05.  
<sup>[2]</sup> Peterson did not file a disclosure.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 20-0002**

**IN THE MATTER OF**

## JEFFREY FOURNIER

Petitioner: Tracy Morong, Esq.  
Victoria Giuliano, Esq.  
Counsel for Petitioner

Respondent: Jeffrey Fournier, *pro se*

Commissioners: Maria J. Krokidas, Chair  
R. Marc Kantrowitz  
Josefina Martinez  
Wilbur P. Edwards, Jr.  
Eron Hackshaw

Presiding Officer: Maria J. Krokidas

### DECISION AND ORDER

#### I. INTRODUCTION

This matter concerns allegations that Respondent Jeffrey Fournier (“Fournier”), a consultant at the Massachusetts Office of the State Auditor (“OSA”), violated G.L. c. 268A, § 4(c) by communicating with the Massachusetts Department of Children and Families (“DCF”) and the Massachusetts Office of the Child Advocate (“OCA”) on behalf of Riscovery, a private business, to pitch the company’s services to those state agencies to use in monitoring Medicaid Management Information System (“MMIS”) data. It is further alleged that Fournier violated G.L. c. 268A, § 23(b)(2)(ii) by using or attempting to use his consultant position at the OSA to gain advantageous access to DCF and OCA for the purpose of promoting Riscovery.

For the reasons set forth below, we find that Petitioner has proved by a preponderance of the evidence that Fournier violated § 4(c) and § 23(b)(2)(ii).

#### II. PROCEDURAL HISTORY

On June 23, 2020, Petitioner initiated these proceedings by filing an Order to Show Cause (“OTSC”) against Fournier.<sup>[1]</sup> Fournier filed an Answer and Supplemental Answer on July 28, 2020 and July 31, 2020, respectively, denying any violation.

An adjudicatory hearing was held on April 26, 2021. Fournier represented himself. Both parties filed post-

hearing briefs. On July 27, 2021, the parties presented closing arguments before the full Commission.

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.

#### III. FINDINGS OF FACT

##### *Fournier’s Work at the OSA*

In November 2011, the OSA issued a Request for Responses (“RFR”) looking for an IT Project Manager. (Respondent’s Exhibit [“R”] 19, p. 3).<sup>[2]</sup> The RFR specified a number of technical mandatory qualifications for the position, such as that the candidate have “experience working in an environment where IT services multiple applications that span many divisions in an organization,” and also required that the candidate have a “minimum of five years’ experience working on projects sponsored by the Commonwealth of Massachusetts.”<sup>[3]</sup> (R 18, p. 3).

After a competitive hiring process, which included a review of applicants’ resumes and follow-up phone calls, the OSA hired Fournier pursuant to its RFR. (R 19, p. 3; R 18). Fournier was specifically hired, in part, due to his prior work experience at the Executive Office of Health and Human Services (“EOHHS”). Prior to his OSA job, Fournier worked for six years at EOHHS as a project manager consultant, where he gained specialized knowledge related to Medicaid data warehousing. (Petitioner’s Exhibit [“P”] 4, p. 2; R 19, pp. 2-3). Fournier understood that his past “similar service was a specific requirement for [his OSA] position.” (Transcript [“Tr.”] 212).

Fournier remained a consultant for the OSA from January 2012 to December 2017. (P 2, p. 2). While at the OSA, Fournier oversaw the development and implementation of a six-year Technology Roadmap that outlined 19 major technology projects, supervised nine full-time employees, hired and managed 24 contracted staff, created project contracts and statements of work, and oversaw bid review and vendor selection. (P 4, p. 1).

From July 1, 2017 through June 30, 2018, Fournier was authorized to work 1,562 hours, or approximately 30 hours per week, at a rate of \$116.61 per hour. (P 6, p. 1). Fournier

worked out of the OSA's offices on the 19th floor at One Ashburton Place and was issued a state-ID card. (P 1, pp. 3-4). Fournier reported to the Chief Information Officer ("CIO") of the OSA and understood his relationship with the OSA to be "direct." (P 1, p. 16).

In November 2015 and November 2016, Fournier signed Acknowledgments of Receipt of the Conflict of Interest Law summary for state employees. (P 8; P 7). Fournier also completed the Conflict of Interest Law online training program for state employees in June 2015 and November 2016. (P 10; P 9).

The OSA hired IT consultants through approved vendors under state contracts. (R 18, p. 1). During all relevant times in 2017, Fournier worked under the ITS63StaffAugCat2 IT Staff Augmentation Lower Overhead contracts, specifically the Category 2B ("Cat2B") statewide contract. (P 6, p. 1). The Cat2B statewide contract is used when a Commonwealth Agency has "independently located an individual ('Resource') they wish to retain," and the individual already has an "employer." (R 24, pp. 1-2). Under the Cat2B contract, the vendor then subcontracts with the individual's "employer." (R 24, p. 2). "The awarded vendor's use of subcontractors is subject to the provisions of the Commonwealth's Terms and Conditions and Standard Contract Form, as well as other applicable terms of this Statewide Contract." (R 24, p. 3). Typically, the hiring agency will first negotiate a pay rate with the individual it wishes to hire, and then allow the individual to choose which Cat2B vendor the individual will work with. (R 24, p. 4).

McInnis Consulting Services, Inc. ("McInnis") served as one of three approved vendors for IT consultants under a Cat2B statewide contract with the Commonwealth and held a contract with the Commonwealth from 2016 through 2021. (P 5; R 24, p. 13). McInnis subcontracts with the individual's "employer" and earns an hourly markup for its services. (R 24, p. 5).

The OSA entered into a Statement of Work ("SOW") with McInnis for Fournier's services. (P 6). The SOW specifically identifies Fournier as the "Consultant" that McInnis shall assign to provide Project Manager – Technical Lead services to the OSA. (P 6, p. 1). The SOW states that Fournier was personally responsible for performing duties including: providing project management recommendations and best practices; managing and/or mentoring OSA resources; facilitating

meetings with business and IT staff, and all levels of management; and transferring knowledge/expertise to others within the OSA and externally. (P 6, p. 1).

The SOW "incorporates all the terms and conditions and hierarchy of documents negotiated under . . . ITS63StaffAugCat2 (the IT Staff Augmentation Lower Overhead contracts) . . . ." (P 6, p. 1). The SOW states: "The Consultant (or Resource) is provided to the Commonwealth Agency ('Office of the State Auditor') in compliance with the terms of the Contract." (P 6, p. 1).

Fournier was a W-2 employee of his own company, Jakal Consulting, Inc. ("Jakal"), which subcontracted with McInnis. (Tr. 216-217; R 29). In 2017, Fournier was paid for his OSA work through McInnis, where "McInnis was paid by the state" and McInnis paid Jakal. (P 1, p. 16; Tr. 216, 251-253; R 48). For tax-reporting purposes, McInnis sent a 1099-MISC form to Jakal. (Tr. 216).

On November 30, 2017, Fournier's supervisor gave Fournier notice that his job would end December 13, 2017. (Tr. 237; P 19, p. 2). "Shortly thereafter," the termination date was extended until January 13, 2018. (P 12, p. 3; Tr. 238).

### *Riscovery*

Fournier and two OSA co-workers, Brian Scheetz ("Scheetz") and Sanjay Shah ("Shah"), formed a company named Riscovery, Inc. ("Riscovery"), which was incorporated on September 15, 2014 in Delaware. (P 1, p. 9; P 27). Fournier was a founding partner and principal of Riscovery. (P 4, p. 1). Riscovery provided risk analysis services. (P 1, p. 10).

### *The DCF Audit*

On December 7, 2017, the OSA released an Official Audit Report of DCF ("Audit Report"). (P 11).

The Audit Report states that DCF "is charged with protecting children from abuse and neglect and strengthening families." (P 11, p. 3 (quoting DCF's website)). OSA found that DCF "does not effectively identify and investigate all occurrences of serious bodily injury to children in its care." (P 11, p. 13). The Audit Report made a recommendation that "DCF should establish policies and procedures that require its staff to routinely monitor MMIS data to ensure that it can identify, and investigate as necessary, medical occurrences that

appear to be critical incidents involving children in its care.” (P 11, p. 14). MMIS is the “claim-processing and data warehouse system used by the Commonwealth’s Medicaid program (MassHealth) and its Children’s Health Insurance Program.” (P 11, p. 7).

DCF responded to the recommendation in the Audit Report: “DCF will determine the feasibility of accessing MassHealth claims data in its MMIS system to identify medical treatment that may indicate a child was abused or neglected and should have been reported to DCF (either by our providers or by mandated reporters such as doctors and hospital staff). Given the fact that this data is claims data and likely several months old by the time it might be available to DCF, any process will serve as an ‘after-the-fact’ quality indicator.” (P 11, p. 15).

The Auditor replied: “In fact, based on OSA’s use of MassHealth data in this and other audits, claim information is typically available to be viewed in MMIS within 2 to 14 calendar days from the date the medical procedure was provided. Moreover, although there may be some lag time between the date of a potential critical incident and the time this information would be available to DCF, we believe it is better to receive this information late and act on it than not to receive it at all.” (P 11, pp. 15-16).

The Audit Report also states that the mission of OCA is “to ensure that every child involved with state agencies in Massachusetts is protected from harm and receives quality services.” (P 11, p. 9 (quoting OCA’s website)). The Audit Report concludes that “DCF does not report all critical incidents affecting children in its care to the Office of the Child Advocate.” (P 11, p. 16).

DCF agreed that its process of reporting critical incidents to OCA “needs to be simplified and streamlined” and stated that “DCF is actively working with the Office of the Child Advocate to develop the specific criteria on which incidents are to be reported as critical incidents in accordance with the requirements of the current law.” (P 11, p. 17). OCA also provided a written response in the Audit Report stating that it was continuing to work on the issue of critical incident reporting with the child serving agencies, including DCF. (P 11, p. 18).

In his consultant role with the OSA, Fournier did not work on the DCF audit. (Tr. 238). He got his first exposure to the results of the Audit Report when it was published on December 7, 2017. (P 1, p. 11).

On that day, Fournier sent an email to his wife stating, “Ya Baby!! We’re in the \$\$\$\$\$\$. Just a matter of time.” (P 13). Fournier included links to two news articles about the audit findings. (P 13). His wife replied, “GREAT! help out those kids [sic]!” (R 52). Fournier explained to an unintended recipient of the email that it was about software “we’ve developed” and were closer to commercializing because the audit results had been published. (P 13).

On December 7, 2017, Auditor Suzanne Bump (“Auditor Bump”) and OSA staff members received an internal email stating that a spokesperson from office of then-Speaker of the House Robert DeLeo (“Speaker DeLeo”) said that Speaker DeLeo was “incredibly upset and troubled by the Auditor’s DCF report,” that “[h]e has long-prioritized DCF and he views protecting vulnerable children as a central mission of state government,” and that his office “has reached out to the Office of the Child Advocate to consider next steps.” (R 34).

On December 11, 2017, the Commissioner of DCF sent an email to “DCF Team Members” containing a “Note from Gov. Charlie Baker,” in which Governor Baker expressed skepticism about the Auditor’s focus on claims data as a primary tool to spot child abuse. (R 6). However, Governor Baker acknowledged that “maybe” there are “opportunities to use claims data as a secondary information tool[,]” and stated that “we will look into that.” (R 6, p. 2).

#### ***Communications with Ryan FitzGerald at DCF***

On or about December 11, 2017, Fournier left a voice message for Ryan FitzGerald (“FitzGerald”), the Chief of Operations and Organizational Improvement for DCF. (P 20). One of the reasons Fournier contacted DCF was that the audit had identified certain issues with DCF. (P 1, p. 12). Fournier’s “hook” was that, while DCF had expressed concern in the Audit Report that claims data could be months old, he could get the claims data within days. (P 1, p. 7). Fournier was “contacting him about something that has to do with my own company” and was not calling FitzGerald as an employee of OSA. (Tr. 240; P 1, p. 14).

In the voicemail, Fournier introduced himself as “a consultant at the State Auditor’s Office” and later repeated it. He also said:

[T]he last six years I've been working as a project manager helping them develop their data warehousing

and risk analytic solutions for auditing as part of their capital bond projects. Myself along with two other individuals at the OSA are the primary architects of the data warehousing and software solution that was used in the recent audit that essentially used the Medicaid data to analyze and report on children at risk. And prior to our work at the OSA, Sanjay Shah, one of the individuals I just mentioned, he and I previously worked at HHS as project PM's on the MMIS data warehouse solution, the new as well as the previous data warehouse. So we know Medicaid data and warehousing quite well. And knowing that the audit was coming to an end and recognizing that there is no market solution available, we have teamed with the OSA's current director of data analytics, Brian Scheetz, who's the actual architect and developer of all the OSA's risk analytics software to re-engineer the audit software to be more DCF focused, more case management and caseworker friendly. And we'd like to show you what we've done on this, specifically the work that we've done on the audit, and how we've translated that or re-constituted that solution to work for DCF to fit your needs, and we were wondering if we might be able to show you a solution and set the time to demonstrate some of our capabilities.... I think we can really help you. It will be much cheaper, much faster than I think anyone has anticipated. We've done this, we know how to do it, and we'd like to show you that solution.

(P 20; Tr. 42, 43).

FitzGerald, due to his position, receives many calls from IT companies pitching products and he "often" does "not" return these calls. (Tr. 51-52). If DCF was interested in a product, "usually the next step would be to refer it to [its] IT folks, and one of our IT people. . . often do[es] a first initial call." (Tr. 52-53).

Fournier's voicemail "struck" FitzGerald as "odd" and "very much like a sales call." (Tr. 44, 45). He was concerned that state employees could be using a tool that was developed for the public audit for their own financial gain. (Tr. 46-47).

FitzGerald used his cell phone to record the voicemail so he could "walk into the other room" and "brought it to some of our leadership team . . . including the commissioner." (Tr. 45, 86). They discussed the possibility

that the Auditor had asked Fournier to call FitzGerald about the audit and offer support. (Tr. 48-50). After discussion, DCF's leadership team decided that FitzGerald should call Fournier back to "hear him out" so as not to appear "non-responsive" if DCF was being offered "this great tool, this great support." (Tr. 49-50).

FitzGerald called Fournier back and made handwritten notes during the call. (Tr. 50-56; P 15). FitzGerald wanted to return Fournier's call promptly so as not to reflect poorly on DCF. (Tr. 51). During the call, Fournier explained his background and experience, including his prior work at EOHHS and his "in-depth knowledge about Medicaid data." (Tr. 54; P 15; P 1, pp. 14-15). They also discussed the background and experience of Fournier's colleagues. (Tr. 54; P 1, p. 14). FitzGerald and Fournier discussed the lag time and "aging of the claims data" that was identified in the Audit Report. (Tr. 58-59). Fournier talked about "how they had refined . . . the tool that had been used in the audit" so "it would be a better tool for social workers." (Tr. 58-60). Fournier's "sales pitch" included an offer to FitzGerald: "[W]e could come and show you some things that we could do and we can reengineer this to make it more DCF friendly and . . . caseworker specific . . ." (P 1, pp. 14-15; Tr. 58-60).

On December 13, 2017, Fournier sent an email to FitzGerald following up on the telephone conversation. (P 16). The email was sent from Fournier's Riscovery email, and it copies his own OSA email address and his Riscovery colleagues at their Riscovery email addresses. (P 16). The email states: "[w]e would like to talk with and show the DCF leadership team what we have done, and what can be done in this space to offer a realistic, affordable, timely solution to this emerging and urgent need." (P 16).

On December 29, 2017, Fournier left a second voicemail for FitzGerald explaining that he has "resigned" from his position at the OSA, has "removed any appearance of a conflict of interest," and "apologize[d] if this has created any uncomfortable situations for anyone." (P 21). Fournier further stated that, if there was still interest on FitzGerald's or DCF's part, "we certainly would be interested in speaking with you and showing you what we've done. And I think you'll be impressed with our capabilities." (P. 21).

A meeting was never held with DCF. (P 12, p. 4; Tr. 65).

#### ***Communications with Melissa Williams at OCA***

Melissa (nee Christiano) Williams (“Williams”) was the Program Coordinator for OCA. (Tr. 93). OCA shares space on the fifth floor of One Ashburton Place with MassHealth, EOHHS, and Executive Office of Elder Affairs (“Elder Affairs”). (Tr. 94). Members of the public do not have access to OCA office space, and a member of the public who wants to contact OCA first would need to speak with the Elder Affairs executive assistant, who would then call to notify Williams that someone from the public wants to contact OCA. (Tr. 95-96). A member of the public who wishes to speak with OCA would be met in the lobby of the fifth floor. (Tr. 95).

In mid-December 2017, Fournier appeared at Williams’ cubicle at OCA. (Tr. 94). She did not get a call from anyone at the Elder Affairs front desk when Fournier approached her workspace. (Tr. 96). Fournier looked at her name tag and asked whether she was Melissa Christiano, the Program Coordinator. (Tr. 104-105). No one was with Fournier when he approached her cubicle. (Tr. 96-97). Williams was “taken off guard,” because OCA does “not receive people from the public or from other state agencies, for that matter, . . . unless there is a meeting,” and Williams was aware of all meetings scheduled for any given day. (Tr. 98).

Fournier identified himself as working for the OSA and asked to set up a meeting with the Child Advocate about a recent audit. (Tr. 96-98). After Fournier left, Williams notified her direct supervisor as well as the Child Advocate that a man from OSA wanted to set up a meeting. (Tr. 98-99).

Fournier spoke with Williams because “she was aware of the audit and could speak for the Child Advocate.” (P 1, p. 15). Fournier did not believe they could get a contract with OCA, but that OCA was aligned with DCF in terms of their mandate to protect children. (P1, p. 15). Fournier “thought if we could get in front of her [the Child Advocate] and DCF at the same time . . . the Child Advocate would be an advocate if she kind of bought into what we were going to prescribe.” (P 1, pp. 15-16).

On December 12, 2017, Fournier sent an email to Williams to follow up. (P 14). He wrote:

As I mentioned, I have been a consultant at the State Auditor’s office for the last six years and a few of us have been working on developing their data warehousing and risk analytic solutions as part of their

Capital Bond technology project. We are the primary architects of the data warehouse and software solutions used in the recent Audit that used Medicaid data to analyze and report on Children at risk. We understand that there are some issues with the period of claims data used in the Audit, but the underlying principle, methodology and ability to assess and identify children at risk through Medicaid Claims data is un-deniably powerful and is a proven approach. We did it and we can do it for claims data that is 2 days old, not two years like it was in the Audit.

Knowinging [sic] that the Audit was coming to an end and recognizing that there is no market solution available, we have re-engineered the Audit Software to be more DCF focused, more Case Management and Case Worker friendly. Every day the case worker would log into the App and see what their assigned children’s risk portfolio looks like with Alerts, Scores, Medical Histories, Notifications, Visualizations, etc. based on days old data. Not weeks, months, or years old.

We have formed a company, Riscovery, Inc., and would like to show you what we’ve done at the State Auditor’s Office and how we have re-constituted the software to work for DCF and fit their needs. We have an affordable, incredibly powerful and effective solution available right now. We were hoping to show the Child Advocate our work so she can be more informed as to the overall validity and capability of this novel approach and our combined abilities to help these children almost immediately. (P 14, pp. 5-6).

Fournier ends the email by expressing interest in “an audience with the Child Advocate . . . to demonstrate the software.” (P 14, pp. 5-6). Fournier sent this December 12 email, as well as additional follow-up emails to Williams dated through December 29, 2017, from his Riscovery email address. (P 14). In an email to Williams on December 13, 2017, he copied his OSA email address as well as his two Riscovery colleagues at their Riscovery email addresses. (P 14, p. 3).

Fournier sent an email to Williams on December 29, 2017 “confirming the meeting on the January 3 with the Child Advocate.” (P 14, p. 1; Tr. 102). Fournier set the meeting up with the Child Advocate with the expectation that at least one of his Riscovery colleagues would be in attendance. (P 14, p. 4). The meeting with the Child

Advocate took place on January 3, 2018. (P 22, p. 3). Williams did not attend the meeting. (Tr. 102).

### ***Reaction to Agency Outreach and Resignation***

On or about December 13, 2017, Secretary Marylou Sudders of EOHHS met with Auditor Bump and “complained about the fact that . . . [Fournier] was trying to sell software back to DCF.” (Tr. 234-235).

On December 21, 2017, OSA’s General Counsel and HR Director spoke with Fournier. (R 49; Tr. 239). OSA’s General Counsel told Fournier he wanted to ask questions about the December 13, 2017 email Fournier sent from his Riscovey email to FitzGerald, on which he cc’d his two other Riscovey colleagues and Fournier’s OSA public email. (R 49). The OSA officials told him: “we’ve got this appearance of a potential conflict of interest between you and DCF with [your two OSA/Riscovey colleagues].” (Tr. 239). During that meeting, Fournier resigned. (Tr. 240; R 49; R 4.1, p. 1).

## **IV. DISCUSSION**

### **A. Burden of Proof**

Petitioner must prove its case and each element of the alleged violations by a preponderance of the evidence. 930 CMR 1.01(10)(o)2. The weight to be attached to any evidence, including evidence concerning the credibility of witnesses,<sup>[4]</sup> rests within the sound discretion of the Commission. 930 CMR 1.01(10)(n)3. In deciding this case, the Commission must make a determination of every issue of fact or law necessary to its Final Decision. 930 CMR 1.01(10)(o)3.

### **B. Fournier’s Status as a State Employee**

An element common to the alleged violations of both § 4(c) and § 23(b)(2)(ii) is whether Fournier, as a consultant for the OSA, was a state employee for purposes of the conflict of interest law during the times relevant in this matter. Petitioner asserts that Fournier was a state employee, which Fournier denies.

The definition of state employee under the conflict of interest law includes any person “performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or

without compensation, on a full, regular, part-time, intermittent or *consultant basis*, including members of the general court and executive council.” G.L. c. 268A, § 1(q) (emphasis added). The scope of the definition is broad and includes “virtually anyone who performs services for the government, including employees or principals of privately-owned businesses.” EC-COI-99-7 (“‘[T]here is virtually no room’ for an argument that the Massachusetts law does not reach independent contractors....”) (citation omitted).

Long-standing Commission precedent holds that, under certain circumstances, where a state agency has a contract with a private entity, such as a corporation or company, an individual who works for the private entity is a state employee for purposes of the conflict of interest law while working on the contract. EC-COI-89-35; *see also* EC-COI-87-19; EC-COI-87-8. The rationale is that if the contract or the circumstances indicate that the state seeks the services of the entity’s employee in particular, the employee should have the same duty of integrity and loyalty to the state as employees who are hired directly by the state.

In order to determine whether an individual is a state employee by reason of a contract between a state agency and a private entity such as a corporation, the Commission examines the five factors below, with no single factor being dispositive.

1. whether the individual's services are expressly or impliedly contracted for;
2. the type and size of the corporation;
3. the degree of specialized knowledge or expertise required of the service. For example, an individual who performs highly specialized services for a corporation which contracts with a public agency to provide those services may be deemed to be performing services directly to that agency;
4. the extent to which the individual personally performs services under the contract, or controls and directs the terms of the contract or the services provided thereunder; and
5. the extent to which the person has performed similar services to the public entity in the past.

EC-COI-89-35; EC-COI-87-19; EC-COI-87-8.<sup>[5]</sup>

Under the circumstances presented here, we conclude that Fournier is a state employee for purposes of G.L. c. 268A by virtue of the contract between McInnis and the state, which includes the SOW. Of significance is that the SOW expressly names Fournier as the individual to provide the services to the OSA. The facts indicate that the OSA, not McInnis, selected Fournier using a competitive hiring process that resulted in Fournier being chosen specifically for his skill-set and qualifications. Furthermore, the services provided under the SOW are not “ministerial or routine services,” but instead are “professional, highly specialized and call for discretion and judgment.” EC-COI-87-8. Fournier personally performed the services as outlined in the SOW. Finally, Fournier worked at the OSA for approximately six years and, prior to that, he worked for six years at EOHHS involving a similar area of expertise. (P 4).

Fournier repeatedly argues that he is an “independent contractor” and not a “state employee.” He points to statutes outside of the conflict of interest law, such as the Commonwealth’s Independent Contractor Law, G.L. c. 149, § 148B. He also points to the SOW, which states: “At no time shall the Resource be considered an employee of the Agency or the Commonwealth, but shall at all times be considered a temporary Resource assigned by the ITS63StaffAug vendor (‘McInnis Consulting Services[,] Inc.’) to the Agency under the Contract as an employee of the Vendor or the Vendor’s Subcontractor.” (P 6, p. 1). He also refers to other documents distinguishing between independent contractors and state employees. (*See, e.g.*, R 14; R 15; R 16).

There are numerous instances, however, in which an individual who is not regarded as a state employee under areas of law such as labor, employment, or taxation, is regarded as a state employee for purposes of the conflict of interest law. For example, while uncompensated board members may not be considered state employees for purposes of employment law, they are “state employees” for purposes of the conflict of interest law.<sup>[6]</sup> The result of the Commission’s five-factor analysis commonly is that a company employee who is not regarded as a state employee in a context outside of the conflict of interest law is regarded as a state employee for purposes of G.L. c. 268A.

Next, Fournier argues that he did not receive adequate notice that he was a state employee for purposes of the

conflict of interest law, but this contention is unpersuasive and unsupported. The evidence shows that he was personally notified by the OSA of his status as a state employee for purposes of the conflict of interest law. In November 2015 and November 2016, he signed Acknowledgments of Receipt of the Conflict of Interest Law summary for state employees. (P 8; P 7; *see also* R 35). Fournier also completed the online Conflict of Interest Law training for state employees in June 2015 and November 2016. (P 10; P 9). As stated in EC-COI-99-7, there is no point in requiring him to read and presumably understand the requirements of the state's conflict of interest law if he is not subject to that law.

Furthermore, the Commission has contemplated the five-factor analysis and how it would apply to an individual who works for a private entity that has a contract with a public agency in decisions and orders, disposition agreements, and opinions,<sup>[7]</sup> as well as *Advisory 06-01: Consultants and Attorneys Who Provide Services to Government Agencies May Be Public Employees Subject to the Conflict of Interest Law* and additional resources issued by the Commission,<sup>[8]</sup> which are available on the Commission’s website. Publicly available precedent addressing a particular standard or issue is one possible form of notice to individuals, particularly where the standard or issue has been frequently addressed or articulated.<sup>[9]</sup>

Finally, Fournier argues that on the dates when he first contacted DCF and OCA, he had no obligations under the conflict of interest law because he had received a notice of termination of his position with the OSA. (Tr. 238). A notice of termination is not the same thing as a termination, however, and did not relieve him of any obligations he had while still working for the OSA.

We find that Petitioner has proven by a preponderance of the evidence that Fournier was a state employee for purposes of the conflict of interest law.

### **C. The Remaining Elements of a § 4(c) Violation**

General Laws c. 268A, § 4(c) provides: “No state employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the commonwealth or a state agency for prosecuting any claim against the commonwealth or a state agency, or as agent or attorney for anyone in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.”

In order to prove a violation of § 4(c), Petitioner must prove that Fournier was a state employee and also that Fournier, while not in the proper discharge of his official duties, acted as agent for someone other than the Commonwealth or a state agency in connection with a particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest.<sup>[10]</sup>

**1. While not in the proper discharge of his official duties**

We find that Fournier’s communications with DCF and OCA were not in the proper discharge of his OSA official duties. Fournier states in his own brief that he “never approached anyone in any official capacity.” (R.Br. 5).

**2. Fournier acted as agent for someone other than the commonwealth or a state agency**

To act as agent “within the meaning of the conflict law is ‘acting on behalf of’ some person or entity, a factor present in acting as spokesperson, negotiating, signing documents and submitting applications.” *In the Matter of Richard L. Reynolds*, 1989 SEC 423, 427 (citation omitted). The evidence supports a finding that Fournier was acting as agent for Riscovery when he communicated verbally and in writing with DCF and OCA.

Fournier’s consistent use of “we” in his email and voicemail communications to DCF and OCA show that Fournier was referring to his Riscovery colleagues and acting as Riscovery’s spokesperson during those communications with the state agencies. As a corporation, Riscovery is a separate legal entity from Fournier. *See Hanson v. Bradley*, 298 Mass. 371 (1937).

As to Fournier’s verbal communications with DCF, the fact that FitzGerald sensed that he was getting a “sales pitch,” and Fournier’s discussion about “the background and experience of his colleagues” indicate that Fournier was acting on behalf of Riscovery and his Riscovery colleagues to pitch the company’s services. (Tr. 50, 54).

As for Fournier’s communications with OCA, Fournier sent an email to Williams on December 12, 2021 from his Riscovery email address in which he refers to Riscovery, and he copies his Riscovery colleagues at their Riscovery email addresses in a subsequent email to Williams. (P 14). In addition, he set up the meeting with the Child Advocate on January 3, 2018 with the understanding that at least one

of his Riscovery colleagues would be in attendance with him. (P 14).

Fournier objects that when he contacted DCF, he was just searching for new employment. He “always felt that as soon as they gave [him] notice on 11/30, that essentially [he] was a free agent.... [His] outreach to DCF was literally trying to get another job.” (Tr. 238). Even if it were the case that Fournier was trying to find a next job opportunity for himself, it does not follow that, at the same time, he could not have acted as agent for someone else, namely Riscovery and his Riscovery colleagues, when communicating with DCF and OCA. Direct employment with DCF or OCA would be a “job,” and so would work that Fournier would obtain by way of acting as agent for Riscovery.

We also have considered Fournier’s contention that Riscovery was not capable of having a state contract.<sup>[11]</sup> A possible implication is that he could not have acted on behalf of Riscovery because it could not get the paid work he sought to get from DCF or OCA. Fournier’s communications with FitzGerald at DCF and with Williams at OCA indicate, however, that he was offering the services of Riscovery and his Riscovery colleagues, regardless of whether a state contract directly with Riscovery could be the result. Even if Riscovery ultimately could not have a contract directly with a state agency, this does not exclude the possibility that it or its members could be paid another way, for example, under the same type of arrangement that Jakal had with McInnis. In any event, it is the act of agency itself that § 4(c) prohibits, and proof of this element does not depend on what does or does not result from the act of agency.

Accordingly, we find that Petitioner has proved by a preponderance of the evidence that Fournier acted as agent for Riscovery in his communications with DCF and OCA.

**3. In connection with a particular matter.**

“Particular matter” is defined as “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).

Upon consideration of the evidence, we agree with Petitioner that the relevant particular matter is the OSA's determination that DCF should monitor MMIS data.

The Commission has concluded that "[e]ach decision or determination made by a state agency" constitutes a "particular matter unless an exemption applies." EC-COI-89-8 (noting the express exclusion of general legislation within the definition of particular matter).

Fournier argues that Petitioner's definition of "particular matter" is "flawed." (R.Br. 6). Specifically, he contends that Petitioner states that the OSA made a "determination" that DCF should monitor MMIS data because "determination" is within the definition of "particular matter" as defined in G.L. c. 268A, § 1(k), but the OSA is not in fact able to make a "determination" about how DCF does its job. (R.Br. 6-8). Rather, Fournier contends that the OSA can only make recommendations and cannot make a "determination" that "DCF should monitor Medicaid data." (R.Br. 6; Tr. 178-179). In support, Fournier notes that, in the Audit Report, when DCF responded to the OSA's Recommendation, "DCF specifically said DCF will determine the feasibility, not the OSA." (R.Br. 7; R 4, p. 15). Fournier argues that the OSA's Recommendation cannot be a "determination" because the OSA does not have the authority to determine what DCF will do.<sup>[12]</sup> (R.Br. 6-8).

While it may be true that the OSA cannot direct what DCF will do, the OSA demonstrably can make its own determination about what DCF should do. Furthermore, the Commission has found that a "particular matter" may include a "recommendation." *See, e.g.,* EC-COI-89-26 (finding that if a former state Committee member approved or "recommended" that state agency funds be invested in a certain way, "that approval or recommendation would be considered a particular matter"); EC-COI-88-21.

We also find that Fournier's communications with DCF and OCA were in connection with the identified particular matter because he was pitching Riscovery's services to enable DCF to monitor MMIS data. It appears that Fournier himself acknowledged that he was contacting DCF in connection with the OSA's determination, since one of the reasons Fournier contacted DCF was that the audit had identified certain issues with DCF. (P 1, p. 12). In his initial voicemail to FitzGerald, Fournier stated he was contacting FitzGerald because, "knowing that the audit was coming to an end and recognizing that there is no market solution

available, we have teamed with the OSA's current director of data analytics... to re-engineer the audit software to be more DCF focused, more case management and caseworker friendly." (P 20). Fournier's touting of a customized solution for DCF and his acknowledgment that one reason he approached DCF was "the audit" shows that Fournier had the expectation that DCF would respond to the OSA's Recommendation. (P 1, p. 12).

Fournier's communications with OCA were also in connection with OSA's determination that DCF should monitor MMIS data. The Audit Report concluded that DCF should monitor MMIS data "in order to ensure that it can identify, and investigate as necessary, medical occurrences that appear to be critical incidents involving children in its care," and that DCF is required to inform OCA when children in DCF care are involved in critical incidents. (P 11, p. 1). Fournier stated that he "wanted to set up a meeting with [the] Child Advocate about a recent audit" when he first approached Williams' cubicle (Tr. 98). In his follow-up email to Williams on December 12, 2017, he referenced "the recent Audit that used Medicaid data to analyze and report on Children at risk," essentially made the same claims about the value of the "underlying principle, methodology and ability to assess and identify children at risk through Medicaid Claims data" that he had made to DCF, and indicated that Riscovery "would like to show you... how we have re-constituted the software to work for DCF and fit their needs." (P 14). He indicated that he approached the Child Advocate in hopes that, "if we could get in front of her and DCF at the same time," they could get her backing when they proposed to DCF "what we were going to prescribe." (P 1, pp. 15-16).

#### ***4. In which the Commonwealth or a state agency is a party or has a direct and substantial interest.***

If any state agency has a direct and substantial interest in, or is a party to, a particular matter, then the prohibitions in § 4 apply, and it "makes no difference whether it is the regular state employee's own state agency or another state agency that has the interest or is a party." EC-COI-98-7. The Commission has found that the Commonwealth has a direct and substantial interest in a particular matter if it would require that public funds be spent, expose the Commonwealth to liability, and if it "implicate[s] government's rights and responsibilities." EC-COI-97-2 (finding that "interests of the Commonwealth would include proceedings affecting the Commonwealth's legal

rights or liabilities, pecuniary interests, property interests or proceedings where the Commonwealth would have a stake in the proceedings”).

Petitioner concludes that “the Commonwealth and/or two state agencies were parties to and had a direct and substantial interest in the monitoring of the MMIS data because such monitoring could help protect children, consistent with the . . . missions” of DCF and OCA. (P.Br. 15). We agree that the OSA, which made the determination that DCF should monitor MMIS data, as well as DCF and OCA, whose practices were the focus of the determination, had a direct and substantial interest in the particular matter.

Fournier argues that, even if the particular matter is the OSA’s determination that DCF should monitor MMIS data, the Commonwealth or a state agency did not have a direct and substantial interest in the matter because the Commonwealth did not pursue this course either at the time Fournier contacted DCF and OCA or during the next three years. (R.Br. 11-12). [D]uring the adjudicatory hearing, he asked FitzGerald about DCF’s interest in the solution he had proposed: “Would you say it was substantial interest in this solution I was proposing?” FitzGerald said, “I would say no. I mean, in terms of where the department likely would be on pursuing it, I think the answer would be no.” (Tr. 74-75). Fournier also asked FitzGerald, “three and a half years after the audit came out, does DCF have any policies or procedures, any systems, any capability to monitor Medicaid claims data on a daily basis to identify children at risk?” FitzGerald testified that he did not know. (Tr. 75). FitzGerald was “not personally aware” of “any policies, procedures, systems capability to monitor Medicaid data within DCF.” (Tr. 76).

In addition, Fournier points to a Public Records request he made on February 5, 2021, requesting “[T]he written DCF policies and procedures, if any, that require its staff to routinely monitor data from the Medicaid Management Information System in order to ensure that they can identify, and investigate as necessary, medical occurrences that appear to be critical incidents involving children in its care.” (R 5). On February 22, 2021, the Records Access Officer for DCF replied, “After a comprehensive search, DCF does not have in its possession any responsive records to your request.” (R 5).

Since the question is whether the particular matter was of direct and substantial interest to DCF and OCA, Fournier’s contention that DCF had little interest in following the

OSA’s Recommendation in the Audit Report is worth considering. However, the fact that DCF did not ultimately establish written policies or procedures for monitoring MMIS data does not necessarily prove that it had no interest in the question about whether to go forward with such monitoring.

The focus must be on the interest that DCF and OCA had in the matter at the time that Fournier approached DCF and OCA about a way to address it. In the Audit Report, though DCF expressed doubt as to the feasibility of monitoring MMIS data and only thought the “process will serve as an ‘after-the fact’ quality indicator,” it nonetheless stated it would “determine the feasibility of accessing MassHealth claims data in its MMIS system to identify medical treatment that may indicate a child was abused or neglected and should have been reported to DCF (either by our providers or by mandated reporters such as doctors and hospital staff).” (P 11, p. 15). The inclusion of the Auditor’s Finding and Recommendation, the Auditee’s Response, and the Auditor’s Reply in the Audit Report also indicates that DCF was expected to respond to OSA’s determination. Furthermore, FitzGerald’s inclination to call Fournier back “prompt[ly]” so as not to appear “non-responsive” if DCF was being offered “this great tool, this great support” by the OSA is a further indication that the OSA’s determination involves both OSA and DCF. (Tr. 49-51).

In addition, the “Note from Gov. Charlie Baker” addressed “To DCF Team Members” further demonstrates that the OSA’s determination was a particular matter that DCF was addressing. Governor Baker’s message, which the Commissioner of DCF relayed to DCF staff members through email, not only expressed how “very skeptical” the Governor was of “the Auditor’s focus on claims data as a primary tool to spot child abuse,” but also provided next steps in response to the OSA’s recommendation: “we will look into” whether there are “opportunities to use claims data as a secondary tool[.]” (R 6). The Governor’s contemplated next steps presumably would be taken by or involve DCF.

Given OCA’s mission to “ensure that every child involved with state agencies in Massachusetts is protected from harm and receives quality services,” OSA’s determination was also a particular matter in which OCA had a direct and substantial interest. (P 11, p. 9). This conclusion is further supported by the statements of the spokesperson from

Speaker DeLeo's office regarding how "incredibly upset and troubled by the Auditor's DCF report" Speaker DeLeo was and how "[t]he Speaker's office has reached out to the Office of the Child Advocate to consider next steps." (R 34).

Accordingly, we find that Petitioner has proved by a preponderance of the evidence that the OSA's determination that DCF should monitor MMIS data was a particular matter of direct and substantial interest to the Commonwealth, DCF, and OCA. As all elements have been proven, we find that Fournier violated § 4(c).

#### **D. The Remaining Elements of a § 23(b)(2)(ii) Violation**

General Laws c. 268A, § 23(b)(2)(ii) provides that "No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know . . . use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value, and which are not properly available to similarly situated individuals."

Thus, in addition to proving by a preponderance of the evidence that Fournier was a state employee, Petitioner must also prove that he knowingly, or with reason to know, used or attempted to use his official position to secure an unwarranted privilege or exemption of substantial value for himself or others which was not properly available to similarly situated individuals in order to establish that Fournier violated § 23(b)(2)(ii).

##### ***1. Fournier knowingly, or with reason to know, used or attempted to use his official position***

After considering the evidence, we find that Petitioner has proven that Fournier knowingly, or with reason to know, used or attempted to use his official position in his communications with DCF and OCA.

We agree with Petitioner's assertion that Fournier "insinuated a connection to the DCF audit and the tools used by the OSA as a hook to obtain business from DCF for Riscovey." (P.Br. 19). The evidence shows that Fournier introduced himself through voicemail and in-person communications with FitzGerald and with Williams as a consultant from the OSA, and he also copied his OSA email address in email communications with both FitzGerald and Williams.<sup>[13]</sup> See *In the Matter of Fayette Mong*, 2019 SEC 2667 (finding that Mong, knowingly, or

with reason to know, used her official position when she sought to arrange for Town inspectors to inspect a house that she wished to privately purchase by repeatedly identifying herself as a prosecutor for a state agency in her spoken and written communications with the Town's Building Division); *In the Matter of Steven Tompkins*, 2015 SEC 2567 (finding that, by identifying himself as "Sheriff" and showing official identification of his public position, a state employee improperly used his official position to secure the removal of a political opponent's campaign signs in violation of § 23(b)(2)(ii)).

In addition, in his first communication with FitzGerald, Fournier stated that he "along with two other individuals at the OSA are the primary architects of the data warehousing and software solution that was used in the recent audit" and that he would like to show FitzGerald "what we've done on this, specifically the work that we've done on the audit." (P 20). He included largely similar language in his e-mail to Williams on December 12, 2017. These statements clearly could suggest that Fournier had had some responsibility for OSA's audit of DCF.

Fournier testified that he did not, in fact, work on the audit. (Tr. 238). If his reference to his OSA work amounted only to "puffery" or suggestion, however, we agree with Petitioner that his invocation of his connection to the tools used on the DCF audit by virtue of his position as an OSA consultant was a use of his official position. In, *In the Matter of Lincoln Smith*, 2008 SEC 2152, we found that where an Assistant Research Director for the Boston City Council misstated that he was a City Councilor and persuaded garage employees to address his claim of damage to his car more quickly than they ordinarily would, his invocation of his employment relationship with the Boston City Council was a use of his official position.

##### ***2. To secure an unwarranted privilege or exemption for himself or others***

The term "unwarranted" is not defined in G.L. c. 268A. The term is defined in *Webster's Third New International Dictionary* as "lacking adequate or official support." *Webster's Third New International Dictionary*, 2514 (2002). "Unwarranted" is further defined in *The American Heritage Dictionary* as "[h]aving no justification; groundless." *The American Heritage Dictionary*, Fifth Edition 1901 (2011). The Commission has interpreted the term consistently with these definitions. See, e.g., EC-COI-

98-2 (citing *Webster's Third New International Dictionary* (1964) and *The American Heritage Dictionary*, Second College Edition (1985)).

The Commission has found that the use of an official position to promote a personal or private interest is unwarranted for purposes of § 23(b)(2)(ii). *See, e.g., In the Matter of Lincoln Smith*, 2008 SEC 2152; *In the Matter of Carole Foley*, 2001 SEC 1008; Public Enforcement Letter 00-3, 2000 SEC 983. A public employee's use of public resources for the benefit or promotion of a private business, including one owned or operated by the public employee, is unwarranted. *See, e.g., In the Matter of Frederick C. Brack*, 2019 SEC 2654; EC-COI-94-3 (finding that reference on a private business card to a certification only obtainable by virtue of a public position is unwarranted); EC-COI-91-6.

The conflict of interest law also does not define "privilege." Privilege is generally defined as "[a] special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty." *Black's Law Dictionary* 1449 (11th ed. 2021). *See also, In the Matter of Frank Costa*, 2001 SEC 1000, 1002 n.1 (quoting *The American Heritage Dictionary* (2nd Coll. Ed.) for the definition of privilege as "[a] special advantage, immunity, permission, right or benefit granted to an individual, class or caste").

In the context of § 23(b)(2), advantageous access to decision-makers may be an unwarranted privilege. The Commission concluded that state Senator Edward J. Clancy used his position to gain access to an *ex parte* meeting with state agency decision-makers to "make a 'pitch'" on behalf of a constituent in order to influence the outcome of an adjudicatory proceeding about whether the constituent could keep his chiropractor's license. Public Enforcement Letter 00-3, 2000 SEC 983, 985-986. The Commission found that, where such *ex parte* meetings would not typically occur, the advantageous access was an unwarranted privilege. *Id.*

The evidence shows that FitzGerald did not follow usual procedure when responding to Fournier's voicemail. FitzGerald often did not return calls from IT companies pitching products – instead, one of DCF's IT staff would typically make the initial call if DCF was interested in a product. (Tr. 52-53). There is also evidence that FitzGerald found Fournier's voicemail so unusual that he had a meeting with leadership at DCF about it. (Tr. 45-49).

Fournier insists, however, that the timeline around his initial voicemail to FitzGerald and subsequent conversation with FitzGerald shows that FitzGerald did not have the meeting he said he had with DCF leadership and is therefore not credible. (Tr. 222). In a letter to the Commission, Fournier discussed "my DCF outreach on December 11th." (P. 19, p. 2). At the hearing, however, Fournier testified that he "did not" leave a voicemail for FitzGerald on December 11. (Tr. 225). In a communication with the Petitioner, Fournier states: "On 12/12/17, I reached out to three DCF officials, I believe, and left a brief voice mail with each, introducing myself, my history with HHS and the SAO, and capacity for a solution." (P 22, p. 2). Fournier introduced his own cell phone records to show that he left his voicemail on December 12 and FitzGerald called back four minutes later, leaving insufficient time for FitzGerald to have met with DCF leadership prior to calling Fournier back. (R 33; Tr. 222).

For his part, FitzGerald testified that Fournier's "voicemail was December 11th, and we spoke on December 12th." (Tr. 50). With regard to the timing, he stated that "this [was] four years ago" and "my exact recollection is a little bit, you know, a little bit unclear." (Tr. 85; see also Tr. 62; Tr. 86-87). He also stated, however, that the sequence of events was "the initial voicemail, my consultation with leadership and then our more substantive call." (Tr. 86).

Fournier's own statements about the timeline are contradictory, and in the end, the most that the evidence about his phone records raises is a concern about the likelihood that a conversation between FitzGerald and DCF leadership could have happened. It does not disprove that such a conversation did occur. Based on the specificity of FitzGerald's testimony regarding the sequence of events, we find credible FitzGerald's statement that he met with DCF leadership, even if the evidence about the timing of the discussion is not conclusive.

We find that the access to DCF which Fournier was able to get by use of his official position at the OSA when pitching the services of his private company, Riscovery, was advantageous, and that it was an unwarranted privilege.<sup>[14]</sup>

Given the evidence in the record, we also find that Fournier gained advantageous access to OCA when pitching the services of Riscovery by using his official position and that such access was an unwarranted privilege. Upon hearing

Fournier identify himself as working for the OSA, Williams “notified both my direct boss as well as the Child Advocate that a man from the State Auditor’s Office wanted to set up a meeting,” which ultimately resulted in a meeting with the Child Advocate. (Tr. 98-99). Petitioner has further shown that it is more likely than not that Respondent gained access to Williams’ cubicle space by identifying himself as a state employee. Williams testified that Fournier’s interaction with her was not consistent with the typical process when a member of the public wishes to contact OCA. Specifically, the member of the public would first need to speak with the Elder Affairs executive assistant, and that person would then call Williams to let her know someone from the public wants to contact OCA. (Tr. 95-96). Fournier, however, appeared at Williams’ cubicle without Williams getting such a call from anyone at the Elder Affairs front desk, and no one was with Fournier when he approached her cubicle. (Tr. 96-97). Williams testified that she was “taken off guard” because OCA “do[es] not receive people from the public or from other state agencies, for that matter.” (Tr. 98).

### 3. Which was of substantial value

Substantial value means having a value of \$50 or more. 930 CMR 5.05; EC-COI-93-14 (“[R]e-affirm[ing] . . . that substantial value is \$50 or more”). The Commission has found, however, that non-monetary or intangible advantages or exemptions may be found to have substantial value. See, *Steven Tompkins*, 2015 SEC 2567 (finding that the posting of a candidate’s political campaign signs in places where they will be seen by the public and lack of the candidate’s opponent’s signs in those same spaces were substantially valuable benefits to the candidate); *In the Matter of Joseph Turner*, 2011 SEC 2370, 2375 (where a foreman for a municipal Department of Public Works, Cemetery and Parks and Trees Division departed from usual procedures to make “pre-need” sale of cemetery plots available to his parents, the “peace of mind of knowing that they would be buried in the Town cemetery” was “not specifically quantifiable,” but was a benefit to his parents “plainly worth \$50 or more”); see also, e.g., EC-COI-81-136 (unpaid faculty appointments constituted something of substantial value which could not be accepted by state employees); EC-COI-93-14 (finding that the term “substantial value” has not been limited to cash gifts and has been interpreted to include . . . intangible benefits such as a desirable faculty appointment, “access to hospital

administrators,” and “use of the state seal to benefit private interests”) (citations omitted).

Fournier argues that “[a] meeting by itself, without any ‘official action’ that follows, has no value. A meeting not held has less. A quick response to meeting not held has even less.” (R.Br. 23).

We disagree. In, *In the Matter of William A. Burke, Jr.* where the term “substantial value” was discussed in the context of § 3(b), the Commission found that substantial value “includes items which lack an immediately ascertainable cash value but which nonetheless possess substantial prospective worth and utility value.” *In the Matter of William A. Burke, Jr.*, 1985 SEC 248, 251. In *Burke*, a member of the Massachusetts Public Health Council (“Council”) was also a consultant for the Lyons Company, which sought to pursue a supplemental life payroll deduction program with hospitals. Burke contacted CEOs at hospitals while the hospitals had significant matters before the Council, introduced himself in some instances as a Council member, and set up meetings with them. Some CEOs stated they ordinarily would not meet with an individual selling insurance and that such a call would be transferred to the personnel or benefits director of the hospital. *Id.* at 250. The Commission concluded that the “access” that Burke “obtained by virtue of his Council membership to the limited time of the [hospital] CEOs for his company’s presentation of its insurance package was of substantial value” because it “enabled the Lyons Company to bypass competition with other insurance agents before subordinate hospital personnel. The logical inference to be drawn is that the opportunity afforded to the Lyons Company to make its insurance presentation directly to a hospital CEO greatly enhanced the chance of a sale.” *Id.* at 251. Whether or not a sale was made was not determinative in the analysis of whether or not the unwarranted privilege was of substantial value.

Furthermore, in the matter involving state Senator Clancy, the *ex parte* meeting that the Senator secured was an unwarranted privilege of substantial value because “the chiropractor’s professional license was at stake in the adjudicatory proceeding.” Public Enforcement Letter 00-3, 2000 SEC 983, 986. “[E]ven in the absence of any evidence that your ‘pitch’ in any way actually helped the chiropractor, . . . the unwarranted privilege of making an *ex parte* argument on behalf of the chiropractor was itself

of substantial value regardless of its ineffectiveness.” Public Enforcement Letter 00-3, 2000 SEC 983, 986 at n.6.

As Petitioner notes, given Fournier’s pay rate of \$116.61 per hour as a consultant, the value of any potential business that Riscovery could obtain with the state would have been greater than \$50. (P.Br. 20, n. 5). We find that Fournier gained advantageous access to his target audience to make a pitch for that business. The evidence shows that Fournier promptly obtained an audience with FitzGerald over the phone, even if not through an in-person meeting, and that the call was advantageous access because FitzGerald does not typically return sales calls himself. Fournier also skirted usual procedures to introduce himself to Williams and set up a meeting with the Child Advocate. We conclude that such access to his target audience’s limited time is of substantial value whether or not the opportunity for business with Riscovery came to fruition.

#### ***4. Which was not properly available to similarly situated individuals***

“Similarly situated individuals” is not defined in the conflict of interest law. Here, the similarly situated individuals would be other individuals or businesses who want to pitch their IT services to DCF or OCA. *See, In the Matter of Lincoln Smith*, 2008 SEC 2152, 2161 (where Smith sought faster attention by garage personnel to repay him for damage to his car because he said he was a City Councilor, “similarly situated individuals would be those individuals who also believed that their cars had been damaged while in the care of [the parking management company]”).

We find that Petitioner has proven by a preponderance of the evidence that other businesses interested in doing business with a state agency could not use an official state title and position and insinuate a connection to a DCF audit and the tools used by the OSA when attempting to obtain business from DCF and OCA.

Because Fournier introduced himself as an OSA employee and insinuated that he had worked on the audit, and because this led FitzGerald and other DCF leadership to have concerns that Fournier could be approaching DCF on behalf of the Auditor, Fournier was able to get a response from DCF that was speedier than other competing businesses could have gotten from DCF, and from a higher-level employee. (Tr. 49, 51-53).<sup>[15]</sup>

Fournier introducing himself as an OSA employee when speaking with Williams also caused Williams to notify her supervisor and the Child Advocate that “a man from the State Auditor's Office” wanted to meet. (Tr. 98-99). The response Fournier received from OCA was more advantageous than other competing businesses could have gotten from the state agency.

For the above-stated reasons, we conclude and find that Petitioner has proved by a preponderance of the evidence that Fournier violated G.L. c. § 23(b)(2)(ii).

#### **V. ORDER**

We have concluded that Petitioner has proven by a preponderance of the evidence that Fournier violated § 4(c) by communicating with DCF and OCA on behalf of Riscovery in an attempt to pitch the company’s services to those state agencies to use in monitoring MMIS data. We further conclude that Fournier violated § 23(b)(2)(ii) by using or attempting to use his consultant position at the OSA to gain access to DCF and OCA for the purpose of promoting his private business.

The public trusts public employees like Fournier to act with integrity when providing service to the government. There were proper ways, consistent with the conflict of interest law, for Fournier to pursue his next paid job. For example, provided that Fournier did not have official authority over, or official dealings with, those at DCF or OCA, he could have submitted a resume, even if unsolicited, to DCF or OCA, which would have provided information about the work he had done at the OSA. Job applicants may always tout their past work experience as a reason to be considered for future employment. As a state employee, however, Fournier could not insinuate that OSA had an interest in having him provide services to DCF or OCA.<sup>[16]</sup>

In addition, had Fournier waited a mere few weeks until his job with OSA had ended, and so long as he did not violate restrictions that apply to former state employees, he could have approached DCF or OCA on behalf of Riscovery.<sup>[17]</sup> He could not act on behalf of another entity in relation to a state matter, however, until he no longer provided service as a state employee.

Regarding the civil penalty, the Commission retains the discretion to adjust the civil penalty in recognition of mitigating or aggravating circumstances in individual cases. *In the Matter of Owen McNamara*, 1983 SEC 150.

The Commission considers the totality of the circumstances when there are reasons for assessing a penalty lower than the statutory maximum. *In the Matter of Daniel Duquette*, 2010 SEC 2320; *In the Matter of C. Joseph Doyle*, 1980 SEC 11; *In the Matter of Henry M. Doherty*, 1982 SEC 115.

Fournier received notice that he was subject to the conflict of interest law. Through conflict of interest law online trainings for state employees and Acknowledgments of Receipt of conflict of interest law summaries for state employees, which he signed, he was made personally aware that he was considered a state employee. The SOW states “[a]t no time” is a Resource an employee of the Agency or the Commonwealth but, as previously articulated, the fact that an individual is not regarded as a state employee under areas of law such as labor, employment, or taxation, does not preclude that individual from being regarded as a state employee for purposes of the conflict of interest law. Though the language in the SOW may, by itself, be a source of confusion, the forms of notice Fournier received should have indicated to him that he, in fact, had obligations as a state employee under the conflict of interest law. He could not close his eyes to the facts that would have informed him of his conflicts. Public Enforcement Letter 00-2, 2000 SEC 969, 971. Fournier ignored his conflict of interest law training and sought new employment or business opportunities for Riscovery by means that are not permissible under the conflict of interest law. Such circumstances ordinarily would lead us to impose a civil penalty.

It appears, however, that Fournier received advice from an attorney at the OSA. Fournier testified during the hearing that he “was told by the acting attorney [sic] . . . that I was freely engaged to [sic] these activities. And until and up to the point where a contract might materialize itself, then I was free to engage in those discussions. And I need not bring anyone involved into it until that manifested itself in something more than a potential meeting.” (Tr. 187-188).<sup>[18]</sup>

Only advice from the State Ethics Commission may be binding on the Commission in an adjudicatory proceeding. G.L. c. 268B, § 3(g). We note, however, that in some instances, we have regarded reliance on advice of government counsel, particularly if incorrect, as a mitigating factor. *See, e.g., In the Matter of Paul T. Hickson*, 1987 SEC 296, 298 (finding that a reduction of

the penalty amount was appropriate given that Respondent, a city employee, relied on incorrect legal advice from the City Solicitor for at least a period of time); *cf. In the Matter of Mark P. Reed*, 1997 SEC 860, 861 n.3. In one instance, the Commission found that a municipal employee’s reliance on his own mistaken interpretation of advice from town counsel was a mitigating factor. *See, In the Matter of Robert Lavoie*, 1987 SEC 286, 287 (reducing penalty where a municipal employee “showed sensitivity” to a conflict issue by seeking advice from an employee of a license-issuing agency and from town counsel and misinterpreted the advice from town counsel by reasons of receiving “bad advice” from the employee).

In Fournier’s case, there was evidence only as to his interpretation of the advice he received from OSA counsel rather than the substance of the advice itself. Given the circumstances, we credit his interpretation of the advice he received and regard such reliance as a mitigating factor.

In addition, while we do not take the result of Fournier’s conduct into account in concluding that he violated § 4(c) and § 23(b)(2)(ii), we may consider the result when assessing a civil penalty. On the evidence presented in this particular case, while Fournier violated the conflict of interest law, he and Riscovery did not accrue any benefit, financial or otherwise. Neither he nor Riscovery obtained any paid work as a result of the violations. No other individual or business was actually barred from pursuing or taking a governmental opportunity by reason of Fournier’s attempt to get future business on behalf of Riscovery. While governmental time and attention was spent on conversations or meetings that should not have occurred under the circumstances, there was no further harm to the public or the Commonwealth. For example, unlike Burke and Senator Clancy, Fournier did not have leverage over the decision-makers whom he approached, and he was not in a position to make future decisions affecting DCF or OCA after improperly using his state position to get advantageous access to them on behalf of Riscovery.

While we do not suggest that, going forward, only situations involving financial gain warrant civil penalties, we find that an assessment of no civil penalty is appropriate on the specific facts of this case.

**DATE AUTHORIZED:** September 15, 2021

**DATE ISSUED:** September 29, 2021

[1] A Motion to Amend was allowed on April 15, 2021 to enable Petitioner to correct a mistaken reference to a statutory provision.

[2] The page number provided in the “PDF document reader” will be used in citations to Fournier’s brief and to electronically-marked exhibits that do not contain page numbers within the document.

[3] Additional requirements included: knowledge and experience with Project Management Methodology; experience with business process consolidation and associated data; experience with workflow; process re-engineering or similar functions; experience using MS Project to schedule and manage complex multi-faceted projects; and experience managing large scale projects. (R 18).

[4] In instances where testimony is contradictory, the Commission must reach a conclusion about whom it finds credible. If the Commission finds that two witnesses providing contradictory testimony as to a required element of the violation are both credible, Petitioner does not meet the preponderance of evidence standard. *In the Matter of Kevin B. Kinsella*, 1996 SEC 833, 835.

[5] *See also, In the Matter of Robert Murphy*, 2015 SEC 2572; *In the Matter of Ruvane E. Grossman*, 2005 SEC 2021. The Commission articulated the five factors as we currently know them in EC-COI-87-8 but considered similar facts in opinions that pre-date EC-COI-87-8. *See, e.g., EC-COI-86-21; EC-COI-80-84.*

[6] A “state employee” who holds a position for which no compensation is provided, such as an uncompensated board member, is a “special state employee.” G.L. c. 268A, § 1(o). Some restrictions in the conflict of interest law apply more leniently to special state employees.

[7] *See, e.g., In the Matter of Robert Murphy*, 2015 SEC 2572 (Decision and Order); *In the Matter of Ruvane Grossman*, 2005 SEC 2021 (Disposition Agreement); EC-COI-89-35; EC-COI-87-19; EC-COI-87-8.

[8] The Commission’s Summary of the Conflict of Interest Law for State Employees contains the following language: “Are you a state employee for conflict of interest law purposes? You do not have to be a full-time, paid state employee to be considered a state employee for conflict of interest purposes. Anyone performing services for a state

agency or holding a state position, whether paid or unpaid, including full- and part-time state employees, elected officials, volunteers, and consultants, is a state employee under the conflict of interest law. An employee of a private firm can also be a state employee, if the private firm has a contract with the state and the employee is a ‘key employee’ under the contract, meaning the state has specifically contracted for her services.”

[9] *See, In the Matter of Rocco J. Antonelli, Sr.*, 1982 SEC 101, 106 (finding that “[t]he Commission has applied the preponderance standard to every adjudicatory proceeding under G.L. c. 268A and G.L. c. 268B since *Craven* and... that these decisions provide sufficient notice of its standard of proof to Respondents such as Mr. Antonelli”).

[10] Fournier argues that § 4(c) only prohibits acting as agent in matters that are taken against the Commonwealth. (R.Br. 6, 25). This argument is without merit. In *Town of Edgartown v. State Ethics Commission*, 391 Mass. 83, 87 (1984), the Supreme Judicial Court held, with regard to §§ 17(a) and 17(c), the municipal counterpart to §§ 4(a) and 4(c): “Had the Legislature intended that these prohibitions be limited to matters in which the municipal employer is an adverse party or has a direct and substantial adverse interest, the Legislature easily could have accomplished that by inserting the word ‘adverse’ before ‘party’ and before ‘interest,’ or by employing some other equally simple language.”

Another argument by Fournier that the limits on communication about particular matters of substantial interest to the state infringes on his First Amendment rights is, likewise, without merit. (R.Br. 12-14); *See, Zora v. State Ethics Commission*, 415 Mass. 640, 651 (1993) (finding that the conflict of interest law “restricts conduct, not speech or expression” and that “[a]ny incidental limitation of First Amendment freedoms is clearly justified by the Commonwealth’s substantial interest in regulating the conduct of public officials[.]”) (internal citations omitted).

[11] In a letter to the State Ethics Commission, Fournier states that “Riscovey Inc. never applied, registered, or was approved for any state contracting or vendor relationship with [the] Commonwealth of Massachusetts, and was never in [a] position to conduct business of any form.” (P 19, p. 3; *see also* P 12, p. 1). Thus, Fournier further states that his “only viable channel for compensation at the Commonwealth was as a sub-contractor with [his] company, JAKAL Consulting, utilizing the same statewide

ITS63, CAT 2B, Staff Augmentation Contracting process, through the same low-overhead vendor, McInnis Consulting Service Inc, that [he] had used for years at the SAO, not through Riscovery.” (P 19, p. 3).

[12] Fournier simultaneously argues that the particular matter is the meeting with DCF that he requested. (R.Br. p. 10). This, however, is beside the point. Petitioner has identified what the particular matter is and must prove it.

[13] There is a factual question about the reason why Fournier included his OSA email address in his email communication with FitzGerald. Fournier testified that the reason he included his OSA email address was that FitzGerald asked that he do so. (Tr. 265). FitzGerald, however, testified that he “do[es] not recall” making such a request. (Tr. 71-72). Nothing rides on the dispute about whether Fournier included the address on his own accord or at FitzGerald’s instruction, however, because there otherwise is sufficient evidence to find that Fournier used his OSA position.

[14] We are not persuaded by Fournier’s argument that the access he got at DCF was not all that advantageous because FitzGerald could not have made a decision about hiring him anyway. In support of his argument, Fournier points to the sworn interview of FitzGerald, during which FitzGerald was asked “And how does that sort of response [to Fournier] compare with the way you would handle any other type of sales pitch from a private company?” FitzGerald responds: “That’s actually not all that different, in the sense that I’m not empowered necessarily on that phone call to make a decision on behalf of the department of whether that meeting will happen or not or whether we really are interested in that potential solution or not.” (R.Br. 23; R 53, p. 47). Even if it were true that FitzGerald is not the ultimate decision-maker, we find that the weight of the evidence shows that the prompt response Fournier received from DCF constituted an unwarranted privilege.

[15] We do not find credible Fournier’s contention that “[t]here are very few individuals, if any” who could be considered similarly situated to him because the qualifications, experience and services he could offer were so specific that other individuals could not have been in a position to offer them to DCF or OCA. (R.Br. 15). Fournier’s argument also fails because we regard similarly situated individuals to be others who are interested in pitching their IT services to DCF or OCA generally, not

only those who would be seeking the specific business Fournier sought.

[16] Guidance on restrictions as it relates to the job search process is detailed in the publicly available *Advisory 15-1: Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment*.

[17] If Fournier were a former state employee, he no longer would be restricted by §§ 4 and 23(b)(2), but he would need to comply with § 5. Section 5(a) permanently prohibits a former state employee from being compensated by, or acting as agent or attorney for, anyone other than the Commonwealth or a state agency in connection with any particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest and in which the former state employee participated at any time as a state employee. Section 5(b) would prohibit a former state employee from appearing personally before any state agency on behalf of anyone other than the Commonwealth or a state agency until one year after the termination of his state employment concerning any particular matter which was a subject of the employee’s official responsibility any time within two years prior to that termination. Fournier’s outreach to state agencies regarding the OSA’s determination regarding DCF would not be prohibited, provided he did not participate in or have official responsibility over the particular matter during his OSA tenure.

[18] In his Answer, Fournier also states that he received advice from OSA’s chief legal counsel: “Mr. Fournier, Mr. Shah, and Mr. Scheetz had multiple conversation [sic] with OSA senior leadership and the OSA chief’s [sic] legal counsel about the formation of Riscovery and its reporting needs. On multiple occasions, witnessed by others, Joanna Quinn indicated there were no reporting requirements Mr. Fournier had as an independent contractor, unless and until, he/Riscovery were in position to get a State contract, but we were free to engage in discussions with any State agency. Mr. Scheetz, as an employee, was in a different position. Multiple times Miss Quinn stated this position.” (Respondent’s Answer, p. 4).

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**IN THE MATTER OF**

**CHRISTOPHER MORIN**

**PUBLIC EDUCATION LETTER**

September 30, 2021

Christopher Morin

Dear Mr. Morin:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you violated the state conflict of interest law by: (1) contracting to purchase town-owned property while serving as a municipal employee; and (2) acting as agent for the Milford Club, LLC, while serving as a municipal employee. You cooperated fully with the inquiry.

On July 29, 2021, the Commission voted to find reasonable cause to believe that your actions, as described below, violated sections 17(c) and 20 of the conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings. The Commission further determined, however, that, in lieu of adjudicatory proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter. By resolving this matter through this Public Education Letter, the Commission seeks to ensure that you and public employees in circumstances similar to those described below will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission.

**The Facts**

You have served on Milford's Finance Committee for approximately eight years, and served as its Chair for approximately four years, including during the relevant time.

On February 26, 2019, you co-founded the Milford Club, LLC ("the Milford Club") and you were a part-owner of the Milford Club during the relevant time. On March 14,

2019, you co-founded the Greater Milford Social Club ("the Social Club").

On April 5, 2019, the Milford Club purchased the former Foggiano Club property at 28 Granite Street, Milford ("the Club Property"), to be the site of the Social Club. During the purchase process, the Milford Club learned from its lender that a structure on the Club Property encroached upon a 0.073 acre parcel of town-owned land at Granite and Railroad Streets ("the Town Parcel"). The lender required the Milford Club to solve the encroachment issue in order to finalize its purchase of the Club Property, by either purchasing the Town Parcel from the town, or seeking a variance from the town, or removing the encroaching structure (a small storage room).

One of the Milford Club owners described the Club Property encroachment situation to Town Counsel. After a survey of town departments reflected no municipal need for the Town Parcel, Town Counsel determined that the Select Board could authorize its sale.

On April 8, 2019, the Select Board voted unanimously to declare the Town Parcel surplus property and offer it for sale by direct disposition to the owners of abutting property. On April 22, 2019, you submitted to the Town Treasurer a bid to purchase the Town Parcel on behalf of the Milford Club. The Town Treasurer accepted the Milford Club's bid. On May 28, 2019, you signed the purchase and sale agreement on behalf of the Milford Club for its purchase of the Town Parcel from the town. On May 31, 2019, you signed an amendment to the purchase and sale agreement on behalf of the Milford Club.

**The Conflict of Interest Law**

**Section 17**

Section 17(c) of G.L. c. 268A 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 relation to any particular matter in which the municipality is a party or has a direct and substantial interest. The purpose of this prohibition is to prevent a municipal employee from dividing her loyalty between her public employer and a private entity.

The sale of the Town Parcel was a particular matter.<sup>[1]</sup> You acted as agent for the Milford Club in relation to that matter

by submitting its bid to purchase the property from the town, and by signing the purchase and sale agreement, and the amendment thereto.<sup>[2]</sup> These actions taken on behalf of the Milford Club were not in the proper discharge of your official duties as Finance Committee Chair. The Town of Milford had a direct and substantial interest in the sale of the Town Parcel. Therefore, the Commission found reasonable cause to believe you violated § 17(c) of the conflict of interest law.

## Section 20

Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest in a contract with the same town other than his original arrangement for employment. This restriction applies to situations in which a municipal employee contracts to purchase goods, services, or property from the town. The purpose of § 20 is to prevent municipal employees from using their position to obtain additional contractual opportunities from their own municipality, and to avoid the public perception that they have an “inside track” on such opportunities.

As a part-owner of the Milford Club, you had a financial interest in its signed contract to purchase the Town Parcel. You knew you had a financial interest in the contract because you signed the purchase and sale agreement on behalf of the Milford Club, and you knew that the contract would allow the Milford Club to complete its purchase of the Club property. Therefore, the Commission found reasonable cause to believe you violated § 20 of the conflict of interest law. Although there are several exemptions to § 20, none of them were applicable to you.

## Disposition

Based upon its review of this matter, the Commission has determined that the public interest would be best served by the issuance of this Public Education Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Sincerely,

David A. Wilson  
Executive Director

---

<sup>[1]</sup> “Particular matter” includes any contract, claim, controversy, decision or determination. G.L. c. 268A, §1(k).

<sup>[2]</sup> “Acting as agent” is defined broadly and includes any form of acting on behalf of another person or entity, including signing documents for submission to a board or department, appearing personally before a committee, and speaking to anyone on behalf of another person or entity.

---

## COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

### IN THE MATTER OF WILLIAM KINGKADE

### PUBLIC EDUCATION LETTER

September 30, 2021

William Kingkade  
c/o Adam Simms, Esq.  
Pierce, Davis & Perritano, LLP  
Boston, MA 02109

Dear Mr. Kingkade:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your capacity as a member of the Milford Select Board, violated the state conflict of interest law by: (1) participating in matters related to the sale of town-owned property for use by the Greater Milford Social Club, of which you are a founding member; and (2) voting to appoint personal friends to Town positions. You cooperated fully with the inquiry.

On July 29, 2021, the Commission voted to find reasonable cause to believe that your actions, as described below, violated sections 19 and 23(b)(3) of the conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings. The Commission further determined, however, that, in lieu of adjudicatory proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter. By resolving this matter through this Public Education Letter, the Commission seeks to ensure that you and public employees in circumstances similar to those described below will have

a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission.

### ***Violations Relating to Sale of Town-Owned Land***

#### **The Facts**

You were a member of Milford's Select Board from April 2015 through April 2021.

On February 26, 2019, the Milford Club, LLC ("the Milford Club") was incorporated in Massachusetts. According to its certificate of organization, the Milford Club's primary activities are the buying and selling of real estate. Christopher Morin is one of the Milford Club's three part-owners. You have been personal friends with Morin for many years and were best man at his wedding.

On March 14, 2019, the Greater Milford Social Club ("the Social Club") was incorporated in Massachusetts. According to its certificate of organization, the Social Club's primary activities are "to operate, manage, and maintain a private member club," and to "make, sell, deal with and in food products... and alcoholic and non-alcoholic beverages." The Social Club also engages in community activities and fundraising for local charities. Neither the Milford Club nor the Social Club were incorporated as not-for-profit corporations.

You are one of twelve founding members of the Social Club. According to the Social Club's Operating Agreement, signed on March 14, 2019, the twelve founding members formed an LLC under which the members' capital contributions consisted of a one-time initiation fee and membership fees, and their liability is limited to their initial capital contributions. The Operating Agreement also provides that net profits and losses are to be allocated in proportion to the founding members' capital contributions. On its seasonal liquor license application dated July 19, 2019, the Social Club's twelve founding members, including you, are listed as having a direct or indirect financial interest in the Social Club.

On April 5, 2019, the Milford Club purchased the former Foggiano Club property at 28 Granite Street, Milford ("the

Club Property"), to be the site of the Social Club. During the purchase process, the Milford Club learned from its lender that a structure on the Club Property encroached upon a 0.073 acre parcel of town-owned land at Granite and Railroad Streets ("the Town Parcel"). The lender required the Milford Club to solve the encroachment issue in order to finalize its purchase of the Club Property, by either purchasing the Town Parcel from the town, or seeking a variance from the town, or removing the encroaching structure (a small storage room).

One of the Milford Club owners described the Club Property encroachment situation to Town Counsel. After a survey of town departments reflected no municipal need for the Town Parcel, Town Counsel determined that the Select Board could authorize the sale of the Town Parcel.

On April 8, 2019, the Town Treasurer appeared before the Select Board to recommend that the Town Parcel be declared as surplus property and offered by sale at a public auction. You made a motion to declare the Town Parcel as surplus. The Select Board unanimously voted in favor of your motion. You participated in the vote on your motion.

You then asked whether the Town Parcel could be sold by direct disposition rather than at a public auction. You stated, "I was there today, and this was of interest to me. Since there's two abutters, but one already is on the land, do we have to go to auction rather than ask them to purchase it?" Town Counsel replied that a direct disposition was lawful.<sup>[1]</sup> You then moved to offer the Town Parcel for sale by direct disposition to the abutters. The Select Board unanimously voted in favor of your motion. You participated in the vote on your motion.

At no time did you publicly disclose that you were a founding member of the Social Club with an interest in the club, that the Milford Club was required by its lending bank to solve the encroachment upon the Town Parcel in order to complete its purchase of Club Property, that the Milford Club was purchasing the Club Property to be the site of the Social Club, or that you had a close personal friendship with one of the Milford Club's co-founders.

#### **The Conflict of Interest Law**

##### **Section 19**

Section 19 of the conflict of interest law prohibits a municipal employee from participating as a municipal

employee in a particular matter in which to his knowledge he or a business organization in which he is serving as officer, director, trustee, partner or employee has a financial interest. Section 19 encompasses any reasonably foreseeable financial interest, whether positive or negative, large or small.

The Select Board decisions to declare the Town Parcel as surplus and to offer it by sale by direct disposition to the abutters were “particular matters” under § 19.<sup>[2]</sup>

The Social Club had a financial interest in the decisions concerning the Town Parcel because the Milford Club, which purchased the Club Property for use by the Social Club, sought to purchase the Town Parcel to resolve its lender’s concern about the Club Property’s encroachment on the Town Parcel.

The Social Club is a business organization for purposes of the conflict of interest law. Although it participates in charitable endeavors, it is primarily a private social club engaged in the selling of food and drinks. It is not incorporated as a not-for-profit corporation. Even if it were, however, it would still be considered a business organization under the conflict of interest law.<sup>[3]</sup> As a founding member of the Social Club, and pursuant to its Operating Agreement, you were a partner in the Social Club.

Accordingly, you were prohibited by § 19 from participating as a Select Board member in the Board’s decisions to declare the Town Parcel as surplus and offer it for sale by direct disposition to the abutters. Nonetheless, you participated in the decisions by moving to declare the Town Parcel as surplus, asking whether the town could offer the Town Parcel by direct disposition to the abutters rather than at a public auction, moving to offer the Town Parcel for sale by direct disposition, and voting in favor of both motions. Therefore, the Commission found reasonable cause to believe you violated § 19 of the conflict of interest law.

### **Section 23(b)(3)**

Section 23(b)(3) of the conflict of interest law prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that he can be improperly influenced in the performance of his official duties, or that he is likely to act or fail to act as a result of

kinship or undue influence of any party or person. Even if a public official is not improperly influenced or does not act with bias, he is still in violation of this section if he gives the appearance of bias, as even an appearance of acting on behalf of private interests, rather than the public interest, harms the confidence in government and the government’s ability to act.

By participating in matters related to the sale of the Town Parcel as described above, the Commission found that a reasonable person could believe that you were improperly influenced in your Select Board duties by your association with the Social Club and/or your close personal relationship with Milford Club part-owner Morin. Therefore, the Commission found reasonable cause to believe you violated § 23(b)(3) of the conflict of interest law.

### **Violation Relating to Appointment of Friends to Town Positions**

#### **The Facts**

On June 20, 2016, the Select Board was presented with three candidates for local building inspector. You moved to appoint Matthew Marcotte to the position. The Select Board unanimously voted to appoint Marcotte to the position. You participated in the vote. In October 2017, the Select Board unanimously voted to appoint Marcotte as Building Commissioner. You participated in the vote.

On July 30, 2018, the Select Board was presented with nine candidates for Labor Counsel. You moved to appoint Patrick Holland. The Select Board unanimously voted to appoint Holland. You participated in the vote.

You testified that in 2016, Marcotte was an “acquaintance” with whom you were “friendly” and knew his family members. When asked how you moved to appoint Marcotte of the three candidates, you testified that he had asked you for your support, that you knew his family, and that you knew he was qualified. You described Holland as a friend. At no time did you file a written public disclosure regarding your relationships with Marcotte or Holland.

#### **The Conflict of Interest Law**

### **Section 23(b)(3)**

By moving to appoint, and voting in favor of appointing, Marcotte, whose family you knew and who had asked you

for your support, and Holland, who you considered a friend, to town positions, the Commission found that a reasonable person could believe that you could be improperly influenced in your Select Board duties by your relationships with Marcotte and/or his family and Holland. Therefore, the Commission found reasonable cause to believe you violated § 23(b)(3).

### Disposition

Based upon its review of this matter, the Commission has determined that the public interest would be best served by the issuance of this Public Education Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed

Sincerely,

David A. Wilson  
Executive Director

---

<sup>[1]</sup> Just prior to its discussion of the Town Parcel, the Select Board had voted to declare certain town-owned property on Bowdoin Drive as surplus and offer it for sale at a public auction. You then moved that the Select Board reconsider its vote as to the Bowdoin Drive property and offer it for sale by direct disposition to the direct abutters, rather than at a public auction. The Select Board unanimously voted in favor of your motion.

<sup>[2]</sup> “Particular matter” includes any contract, claim, controversy, decision or determination. G.L. c. 268A, §1(k).

<sup>[3]</sup> See, EC-COI-07-2. The definition of “business organization” includes non-profit organizations that substantially engage in business activities, such as selling goods and services in exchange for fees. Relevant factors include: 1) whether the organization’s activities include commerce, trade, or other common business activities; 2) whether the activities are engaged in for the organization’s support or profit; 3) whether the activities are regularly engaged in; and 4) whether the activities are a significant rather than *de minimis* part of the organization’s activities.

---

## COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

IN THE MATTER OF  
STEPHEN SANTOS

### PUBLIC EDUCATION LETTER

November 8, 2021

Stephen Santos  
c/o Kevin Corridan, Esq.  
Corridan Law  
521 Grattan Street  
Chicopee, MA 01020

Dear Mr. Santos:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your capacity as a member of the Ludlow Board of Public Works (the “DPW Board”), violated the state conflict of interest law by: (1) participating as a DPW Board member in a vote electing you as Chairman of the DPW Board, a particular matter in which, to your knowledge, you had a financial interest; and (2) creating an appearance of a conflict of interest by participating in disciplinary matters regarding a Ludlow Department of Public Works employee (“the DPW Employee”) who you believed was providing information to a state agency regarding allegations against you.

On May 27, 2021, the Commission voted to find reasonable cause to believe that your actions, as described below, violated the state conflict of interest law, General Laws chapter 268A, sections 19 and 23(b)(3), and authorized adjudicatory proceedings. The Commission has determined, however, that, in lieu of adjudicatory proceedings, the public interest would be best served by issuing this Public Education Letter discussing the facts revealed by the preliminary inquiry and explaining how the conflict of interest law applies to those facts. By resolving this matter with this Public Education Letter, the Commission seeks to ensure that you and other public employees in circumstances similar to those described below will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission.

### **The Facts**

On or about March 21, 2016, you were elected as a member of the DPW Board. DPW Board members receive stipends.

In March 2017, the members of the DPW Board elected you as Chairman. You abstained from the vote. The Chairman's stipend is higher than that of the other members.

In or about April 2017, you confronted the DPW Employee because you believed that the DPW Employee was providing information about you to another DPW Board member supporting allegations against you being investigated by a state agency.

In June 2017, you, as DPW Board Chairman, issued a reprimand to the DPW Employee for failure to follow through on certain DPW Board requests and to publish DPW Board meeting minutes in a timely fashion.

Later in 2017, a public notice for a DPW Board meeting was not posted on time and the meeting had to be rescheduled. The DPW Employee was not at work on the day when the notice needed to be posted and had delegated the responsibility of posting the notice to another employee. You instructed the DPW Director to reprimand the DPW Employee for failing to post the notice.

In December 2017, you, another DPW Board member, and the director of human resources held a meeting regarding the DPW Employee's general job performance. At or shortly before the meeting, you received information which you believed indicated that the DPW Employee had continued to cooperate with a state agency investigation of allegations against you.

On December 29, 2017, you, as the DPW Chairman, sent a letter to the DPW Employee to inform them that the DPW Board had scheduled an executive session meeting to discuss whether the DPW Employee had violated the Town's Personnel Policy, by, among other things, performing non-work related tasks on their work computer.

The DPW Board executive session meeting was held in February 2018. You, as the DPW Board Chairman, participated in the session by discussing what you believed to be infractions committed by the DPW Employee and their past job performance deficiencies. At the conclusion of the meeting, you voted in favor of a motion that the DPW Employee's supervisor evaluate their job performance within sixty days and, if the evaluation concluded that the DPW Employee's performance was unsatisfactory, the DPW Board then vote on whether to suspend the DPW Employee for one week without pay. The DPW Employee was not later disciplined.

In March 2019, you stepped down from the DPW Board.

In June 2020, you were re-elected to the DPW Board. Once you began your term, the Town issued you stipend checks. You did not cash the checks. You did not inform in writing the Treasurer's office that you did not wish to accept the stipend.

According to G.L. c. 41, § 69D, which governs boards of public works, "the members of the board shall, after each election, elect one of their members to act as chairman for the ensuing year." Thus, at its June 9, 2020 meeting, the DPW Board elected a new Chairman. One member nominated you as Chairman and another member nominated John Davis. Davis received three votes and you received two. You cast a vote for yourself. Davis was elected Chairman.

At the August 18, 2020, DPW Board meeting, the Vice-Chair announced that he was stepping down due to health concerns. Another DPW Board member suggested a reorganization of the entire board, including the Chairman position. You voted in favor of reorganization. You were nominated as Chairman and were so elected by a three-to-two vote. You voted for yourself. As Chairman, your annual stipend increased by approximately \$780 over your stipend as a DPW Board member. In September 2020, the Town began to issue checks to you for the higher stipend. You did not cash the checks.

On October 6, 2021 you returned the uncashed stipend checks to the Town. On October 7, 2021, you informed in writing the Town Treasurer that you did not want to accept your stipend while chairman.

### **Legal Discussion**

**Section 19**

Section 19 prohibits a municipal employee<sup>[1]</sup> from participating as such in a particular matter in which, to his knowledge, he has a financial interest. A municipal employee has a financial interest in particular matters that involve his own compensation or employment benefits.

The DPW Board’s election of a new Chairman was a particular matter within the meaning of the conflict of interest law. At the time you voted, you had a direct and immediate financial interest in the election, as your becoming Chairman would increase your annual DPW stipend by approximately \$780.

Therefore, by voting as a DPW Board member to elect yourself Chairman, you participated in a particular matter in which you had a financial interest. Accordingly, the Commission found reasonable cause that you violated § 19 of the conflict of interest law.

**Section 23(b)(3)**

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 with knowledge of the relevant circumstances to conclude that the public employee can be improperly influenced 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.

Whether it was true or not, given that you believed the DPW Employee had provided information supporting allegations against you under investigation by a state agency, a reasonable person with knowledge of the relevant circumstances would have been caused to conclude that you had a bias against the DPW Employee that would improperly influence your actions as the DPW Chairman when you participated in disciplinary matters involving them. Accordingly, the Commission found reasonable cause that you violated § 23(b)(3) of the conflict of interest law by participating as DPW Chairman in the disciplinary matters regarding the DPW Employee.

In addition, whether or not discussion of the job performance, or even discipline, of the DPW Employee was warranted is not relevant to whether you violated § 23(b)(3) because your participation in those matters was in either case inappropriate given that, under the

circumstances, your involvement created the appearance that the DPW Employee was being disciplined because you believed they were providing information to a state agency investigating your alleged actions. Such appearances of bias or undue influence negatively impact public confidence in government as they can cause reasonable persons to conclude that government officials while in their conduct of governmental business are acting in their own self-interest and at the expense of the public. The conflict of interest law requires public employees to ensure that the actions they take in their public capacity are in the public interest and free from the appearance that they are the result of bias, favoritism or undue influence or otherwise made for any reason that is not in the public interest.

**Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with adjudicatory proceedings and civil penalties. Based upon its review of this matter, however, the Commission has determined that the public interest would be best served by the issuance of this educational letter in lieu of adjudicatory proceedings, and that your receipt of this Public Education Letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Sincerely,

David A. Wilson  
Executive Director

---

<sup>[1]</sup> As a member of the DPW Board, you were a municipal employee as defined by G.L. c. 268A, §1(g).

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0006**

**IN THE MATTER OF  
ERIK FLEMING**

Parties: Candies Pruitt, Esq.  
Counsel for Petitioner

Elissa Flynn-Poppey, Esq.  
Counsel for the Respondent

Commissioners: Maria J. Krokidas, Ch.  
R. Marc Kantrowitz  
Josefina Martinez  
Wilbur P. Edwards, Jr.  
Eron Hackshaw

Presiding Officer: Commissioner Josefina Martinez

### **Final Order**

On October 8, 2021, the parties filed a Joint Motion to Approve Disposition Agreement and Dismiss Adjudicatory Matter (“Joint Motion”) with a proposed Disposition Agreement requesting that the Commission approve the Disposition Agreement in settlement of this matter and dismiss the adjudicatory proceeding. The Presiding Officer, Josefina Martinez, referred the Joint Motion with the Disposition Agreement to the full Commission for deliberations on October 20, 2021.

In the proposed Disposition Agreement, Respondent Erik Fleming admits that he violated G.L. c. 268A, § 19 by participating as a Town of Hardwick Planning Board member in the Board’s approval of a site plan for the construction of a new STEM<sup>[1]</sup> building at the Eagle Hill School (“School”), a private non-profit college preparatory school for which he served as trustee, when the School had to the Respondent’s knowledge a financial interest in the matter because site plan approval affected the School’s use of its property and was a prerequisite to securing a building permit to construct the STEM building.<sup>[2]</sup>

The Respondent agrees to pay a civil penalty of \$5,000 and to waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in the Disposition Agreement in this and any other administrative or judicial proceeding to which the Commission is or may be a party. Respondent has tendered the payment of the \$5,000 civil penalty.

In support of the Joint Motion, the parties assert that this matter would be fairly and equitably resolved by the terms set forth in the Disposition Agreement and that the settlement of this matter would be in the interests of justice and in the best interests of the parties and the Commission.

**WHEREFORE**, the Commission hereby **ALLOWS** the Joint Motion. Respondent’s tendered payment of the

\$5,000 civil penalty for violating G.L. c. 268A, § 19 is accepted. Commission Adjudicatory Docket No. 21-0006, *In the Matter of Erik Fleming*, is **DISMISSED**.

**DATE AUTHORIZED:** October 20, 2021

**DATE ISSUED:** November 9, 2021

---

<sup>[1]</sup> Science, Technology, Engineering, and Mathematics.

<sup>[2]</sup> G.L. c. 268A, § 19 prohibits a municipal employee from participating as such an employee in a particular matter in which, *inter alia*, a business organization for which he is serving as an officer, director, trustee, or partner, has a financial interest.

---

## COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0006

IN THE MATTER OF  
ERIK FLEMING

### **DISPOSITION AGREEMENT**

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

On June 25, 2020, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On July 29, 2021, the Commission concluded its inquiry and found reasonable cause to believe that Fleming violated G.L. c. 268A, § 19.

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

#### **Findings of Fact**

1. Fleming, a resident of Hardwick, was at all relevant times an elected uncompensated member of the Town of

Hardwick Planning Board. Fleming has served on the Planning Board for over twenty years.

2. In his private capacity, Fleming is a volunteer trustee of the Eagle Hill School, a private non-profit college preparatory school located in Hardwick for students with diverse learning profiles and learning disabilities. As a member of the Board of Trustees, Fleming advises the Board on new construction and renovations at Eagle Hill School.

3. On April 9, 2018, Eagle Hill School filed an application for site plan approval to construct a new STEM<sup>[1]</sup> building on its campus.

4. Under the Town of Hardwick Zoning Ordinance (“Zoning Ordinance”), site plan approval is a prerequisite to obtaining a building permit for new construction.

5. The Zoning Ordinance requires the Planning Board to open a public hearing on an application for site plan approval within forty-five days of the filing of the application and requires the Planning Board to deliver its written decision within sixty days of the receipt of the application.

6. According to Fleming, he believed that site plan approval required a super majority vote of a quorum of the Planning Board. If so, he was mistaken in his belief.

7. Site plan approval requires a simple majority vote of a quorum of the Planning Board. A quorum of the Planning Board is three of its five members.

8. On May 14, 2018, Fleming sought advice from the Legal Division of the State Ethics Commission as to whether he could participate as a member of the Planning Board in its review of Eagle Hill School’s site plan for its new STEM building.

9. The Legal Division advised Fleming that he was prohibited from participating as a member of the Planning Board in its review of Eagle Hill School’s site plan and, because he was an elected official, no disclosure by him was possible to allow his participation in that review. The Legal Division further advised Fleming that he should abstain entirely from the Planning Board’s review of Eagle Hill School’s site plan.

10. The same day Fleming received advice from the Legal Division, he filed a § 23(b)(3) disclosure form<sup>[2]</sup> with the

Hardwick Town Clerk disclosing his relationship to Eagle Hill School and indicating that “if necessary” he would vote as a Planning Board member on Eagle Hill School’s site plan.

11. On May 15, 2018, the Planning Board opened a public hearing on Eagle Hill School’s application for site plan approval for its new STEM building. There were four Planning Board members present, including Fleming.

12. At the May 15, 2018 Planning Board public hearing, Fleming disclosed his relationship to Eagle Hill School and erroneously invoked the Rule of Necessity. Fleming then participated as a Planning Board member in the board’s discussion concerning the site plan for Eagle Hill School’s new STEM building. The Planning Board continued this discussion at a June 12, 2018 public hearing, at which five Planning Board members, including Fleming, were present, and Fleming again participated in the discussion as a Planning Board member.

13. At the June 12, 2018 public hearing, Fleming voted to approve the site plan for Eagle Hill School’s new STEM building. The Planning Board’s vote to approve the site plan was unanimous. Fleming thereafter signed the Planning Board’s written decision approving the site plan.

### **Conclusions of Law**

14. Except as otherwise permitted,<sup>[3]</sup> § 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>[4]</sup> as such an employee in a particular matter<sup>[5]</sup> in which, to his knowledge, he or a business organization<sup>[6]</sup> in which he is serving as officer, director, trustee, partner or employee has a financial interest.<sup>[7]</sup>

15. As a Planning Board member, Fleming is a municipal employee as that term is defined by G.L. c. 268A, § 1(g).

16. Eagle Hill School, a non-profit organization, is a business organization because it provides educational services for a fee.

17. Fleming is a volunteer uncompensated trustee of Eagle Hill School.

18. Eagle Hill School’s application for site plan approval was a particular matter.

19. Fleming participated in the site plan approval through discussing, voting on and signing the written site plan approval decision as a Planning Board member.

20. Eagle Hill School had a financial interest in the site plan approval because it affected the use of its property and was a prerequisite to securing a building permit to construct the STEM building.

21. Fleming knew Eagle Hill School had a financial interest in the site plan approval because as a trustee he advises the Board on new construction and renovations at Eagle Hill School.

22. Therefore, by participating as a Planning Board member in Eagle Hill School's site plan approval while serving as a volunteer trustee of Eagle Hill School, Fleming violated § 19.

23. The "Rule of Necessity" may be used to permit an elected board member to participate in a matter, in which the member would otherwise be barred by the conflict of interest law from participating, only when the elected board is legally required to act on a matter but lacks enough members for a quorum to take valid official action, solely due to members being disqualified by conflicts of interest from participating in the matter. *Commission Advisory 05-05: The Rule of Necessity*.

24. The Rule of Necessity was unavailable to Fleming to permit him to participate in the Planning Board's review of the Eagle Hill School site plan on May 15 and June 12, 2018, because: (1) on May 15 and June 12, 2018, the Planning Board had a quorum of at least three members without Fleming and was, thus, able to act on the Eagle Hill School matter without him; and (2) the Planning Board was not required to act on May 15, 2018 because that date was less than forty-five days after Eagle Hill School had filed its application for site plan approval for its new STEM building.

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

(1) that Erik Fleming pay to the Commonwealth of Massachusetts, with such payment to be delivered to

the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, § 19; and

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

**DATE:** November 9, 2021

---

[1] Science, technology, engineering and mathematics.

[2] A section 23(b)(3) disclosure form is properly used to disclose an appearance of a conflict of interest. A § 23 disclosure does not permit action in violation of any other section of the conflict of interest law, such as § 19 discussed *infra*.

[3] None of the exemptions applies.

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

[5] "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).

[6] A nonprofit organization is a business organization for conflict of interest purposes if it provides services for a fee. *See*, EC-COI-07-02 (nonprofit that substantially conducts business activities is a "business organization" for conflict of interest purposes).

[7] "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 may be positive or negative. EC-COI-84-96.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION**

**ADJUDICATORY  
DOCKET NO. 21-0008**

**IN THE MATTER OF  
VINCENT VILLAMAINO**

**DISPOSITION AGREEMENT**

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

On January 15, 2020, pursuant to G.L. c. 268B § 4(a), the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Villamaino. On February 18, 2021, the Commission concluded its inquiry and found reasonable cause to believe that Villamaino violated G.L. c. 268A, §§ 19 and 23(b)(3).

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

**Findings of Fact**

1. Villamaino was a member of the Town of Hampden Board of Selectmen (“BOS”) from 2007 to 2019.
2. Villamaino owns a paving company, E.J. Villamaino Landscaping Company, Inc., with a principal place of business in Hampden.
3. GreatHorse is a private membership country club and golf course located in Hampden.
4. Villamaino owns and resides at property that directly abuts GreatHorse.
5. At all relevant times, Villamaino was a member of GreatHorse.

6. Villamaino’s company provided paving services to GreatHorse in April, May, June, August, September, and October 2016; March, April, May, June, July, and September 2017; and May, June, and October 2018.

7. In January 2016, in response to concerns about Villamaino’s participation as a BOS member in matters regarding GreatHorse while he was an abutter to, a club member of and a contractor for GreatHorse, the Commission’s Enforcement Division sent a private Education Letter to Villamaino that warned him that actions by him concerning GreatHorse may violate §§ 19 and 23(b)(3) of the conflict of interest law and advised him to abstain from matters before the BOS involving GreatHorse. Villamaino was advised that the Commission presumes that property owners have a financial interest in any matters affecting abutting or nearby property.

8. The Education Letter also asked Villamaino to attend an in-house conflict of interest law seminar at the Commission, which he did via webinar on February 25, 2016.

9. From 2016 to 2018, Villamaino’s company received the following payments from GreatHorse in connection with paving work performed on the GreatHorse property:

- a. approximately \$43,000 in 2016,
- b. approximately \$140,000 in 2017, and
- c. approximately \$20,000 in 2018.

***GreatHorse’s Water and Sewer Plan***

10. At all relevant times, Hampden relied on private wells and septic systems.

11. On July 5, 2016, GreatHorse representatives appeared before the BOS and presented a plan to connect Hampden to the public water and sewer system in East Longmeadow (“Water & Sewer Plan”).

12. GreatHorse had plans to expand and build 50 units of housing including condominiums.

13. GreatHorse required public water and sewer in order to build housing.

14. On July 5, 2016, Villamaino was present at a BOS meeting during the board’s discussion about the Water &

Sewer Plan and did not recuse himself. The BOS did not vote regarding the Water & Sewer Plan at this meeting.

15. At a BOS meeting on May 22, 2017, Villamaino and other BOS members discussed the Water & Sewer Plan and the potential placement of the water and sewer lines in Hampden.

16. In June 2017, the BOS formed a Water and Sewer Study Group with a stated purpose of being part of the process to help bring public water and sewer lines to Hampden.

17. On June 27, 2017, Villamaino, another BOS member, and a consultant hired by GreatHorse, appeared before the East Longmeadow Town Council regarding the Water & Sewer Plan to propose that East Longmeadow connect its sewer system to Hampden.

18. At a BOS meeting on July 24, 2017, Villamaino participated in a discussion which addressed how Hampden could move forward with the Water & Sewer Plan.

19. On or about August 4, 2017, Hampden submitted a \$2 million MassWorks grant application for the Water & Sewer Plan. The application included a letter of support from GreatHorse's owner outlining the club's plan to invest \$30 million to develop approximately 50 units of housing. According to the letter, "limited water supply and sewage capacity has impeded [GreatHorse's] commercial growth and has impacted our ability to reach our potential."

20. According to the MassWorks application, "[i]n the immediate future [the BOS] will be formulating a District Improvement Financing Plan" to finance the remaining \$2.8 million for the Water & Sewer Plan.

### ***District Improvement Financing***

21. District Improvement Financing (DIF) is an economic tool that promotes redevelopment through public-private partnerships.

22. By establishing a DIF, Hampden would create a funding stream for the Water & Sewer Plan by setting up a process through which Hampden would identify and capture tax revenues that resulted from new private investment in a specific area. These tax revenues are generated by the increase in assessed value that results from the private investment. Hampden could then direct

this stream of incremental tax revenues toward paying off the remainder of the Water & Sewer Plan cost.

23. At a BOS meeting on September 25, 2017, a consultant working with the Water and Sewer Study Group presented a proposed warrant article for the Hampden Special Town Meeting regarding the establishment of a DIF in Hampden that would encompass GreatHorse, as well as certain other businesses and residences.

24. According to the warrant, the DIF was part of "a public/private collaborative process to promote redevelopment in Hampden" and it would enable the Town to pay for the Water & Sewer Plan.

25. At the September 25, 2017 BOS meeting, a GreatHorse consultant told the BOS that the DIF, "will allow the town to improve its infrastructure at a low cost..."

26. At the September 25, 2017 BOS meeting, Villamaino made a motion to approve GreatHorse's proposed DIF article, and the motion passed.

### **Conclusions of Law**

27. As a Hampden Selectman, Villamaino was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

### **Section 19 Violations**

28. 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 has a financial interest.<sup>[3]</sup>

29. A property owner has a presumed financial interest in matters, including but not limited to zoning changes, variances, nearby subdivision or development approvals, and roadway, sewerage, or safety improvements, affecting abutting property unless the property owner rebuts the presumption with competent evidence showing that the matter will not affect the property owner's financial interest.<sup>[4]</sup>

### ***Participation Regarding GreatHorse's Water and Sewer Plan***

30. The BOS's decision to pursue the Water & Sewer Plan originally proposed by GreatHorse by forming the Water and Sewer Study Group, approaching East Longmeadow

for assistance, and seeking funding channels for the project was a particular matter.

31. Villamaino participated as a BOS member in the particular matter of the Water & Sewer Plan by discussing the plan at the May 22, July 5 and July 24, 2017 BOS meetings.

32. As a GreatHorse abutter, Villamaino has a financial interest in matters affecting GreatHorse. Villamaino was aware of this financial interest as he received an Education Letter in 2016 which advised him of it. An improved public water and sewer system, which would enhance the country club, increase its capacity for development, and allow GreatHorse to add additional housing, would have an effect on the value of Villamaino's abutting property.

33. Villamaino also had a financial interest in the Water & Sewer Plan as a paving contractor with a recent history of doing paving for GreatHorse, as it was reasonably foreseeable that the plan, which was originally proposed so that GreatHorse could build additional housing, would create paving needs that Villamaino's company would likely be hired and paid to fulfill.

34. Accordingly, by participating as a BOS member in the particular matter of the proposed Water & Sewer Plan, in which to his knowledge he had a financial interest, Villamaino violated § 19.

#### ***Participation Regarding District Improvement Financing***

35. The BOS's decision to place an article to establish a DIF on the warrant for the Special Town Meeting was a particular matter.

36. Villamaino participated in this particular matter of the DIF as a BOS member by moving to vote to approve the placement of the DIF article on the Special Town Meeting warrant and voting to place the matter on the warrant.

37. As a GreatHorse abutter, Villamaino had to his knowledge a financial interest in the DIF as it would allow GreatHorse to further expand, having a direct impact on the value of nearby property such as Villamaino's residence.

38. Villamaino also had to his knowledge a reasonably foreseeable financial interest in the particular matter of the DIF because the DIF funding would allow GreatHorse to build its planned housing, potentially providing work for

Villamaino's company which had provided paving services to GreatHorse on numerous occasions in 2016 and 2017.

39. Accordingly, by participating as a BOS member in the vote to place the DIF on the warrant for the Special Town Meeting, Villamaino violated § 19.

#### **Section 23(b)(3) Violations**

40. 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.

41. By participating in matters relating to GreatHorse, Villamaino knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, including Villamaino's continuing membership to GreatHorse, the location of his property and the paving work his company had performed for the club, to conclude that GreatHorse could unduly enjoy Villamaino's favor in the performance of his official duties as a BOS member.

42. Although § 23(b)(3) provides that it shall be unreasonable to conclude a public official violated § 23(b)(3) if that 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, Villamaino did not file a disclosure sufficient to dispel the appearance of conflict of interest created by his participation in matters relating to GreatHorse.

43. By so acting, Villamaino violated G.L. c. 268A, § 23(b)(3).

#### **Resolution**

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

1. that Villamaino pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$ 4,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(3); and

2. that Villamaino 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:** November 10, 2021

---

[1] “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).

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

[3] “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*.

[4] *See, Commission Advisory No. 05-02: Voting on Matters Affecting Abutting or Nearby Property.*

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0009**

**IN THE MATTER OF  
KENNETH MITCHELL**

**DISPOSITION AGREEMENT**

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

On February 18, 2021, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On September 15, 2021, the Commission concluded its inquiry and found reasonable cause to believe that Mitchell violated G.L. c. 268A, §§ 17(c) and 19.

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

**Findings of Fact**

1. Mitchell, a resident of the Town of Hanson (“Town”), has served as a member of the Town Board of Selectmen (“BOS”) since 2014.

2. In his private capacity, and during the relevant time, Mitchell served as General Manager of Newcomb’s Tree Services, LLC (“Newcomb”).

3. From 2016 through 2019, Mitchell, as Selectman, signed 23 Town warrants authorizing payments to Newcomb for providing tree cutting and removal services to the Town.

***Waterline Damage***

4. In December 2016, the Town requested that Newcomb remove dead trees from a main road in Town, which required access to private property.

5. The private property owner’s son sent an email to the Town Tree Warden accusing Newcomb of causing damage to a waterline on the property during the tree removal.

6. By email, Mitchell, as Newcomb’s General Manager, asked the Tree Warden to refer the property owner’s son to him [Mitchell] and wrote, “try not to mention my name . . . I may have to have Paul [1] deal with this one because of the conflict of interest but I’ll call him and try first.”

7. In a separate email, Mitchell indicated that he had left messages for the property owner.

8. In March 2017, the Town Water Superintendent sent an email to the Town Administrator asking about Newcomb's plans to address the waterline damage. The Town Administrator forwarded the email to Mitchell along with a request to sign an agreement regarding the waterline repairs.

9. Mitchell, as Newcomb's General Manager, responded by email regarding Newcomb's agreement to have the waterline repaired as follows:

Tell Chip [the Water Superintendent] Newcomb's is going to give him the same courtesy he gave us on Old Pine Drive. They were testing for new wells and he needed tree work done. I called him several times even stop by the water department trying to get someone to meet me over there to show me the scope of work. "Don't worry Kenny I'm not making any decisions right now, you'll get a chance to bid on the job" that was the last time I spoke to the man.

I'll send it over today and you can forward this email too.

### ***Camp Kiwanee Tree Removal***

10. Camp Kiwanee is a 68-acre campground and function venue owned and operated by the Town through its Recreation Commission.

11. At an August 27, 2019 BOS meeting, the Recreation Commission proposed a Town Meeting warrant article to remove trees near the lodge and the beach at Camp Kiwanee ("Camp Kiwanee Tree Removal"). The Town Accountant advised the BOS that the work would cost \$10,000-\$20,000. Mitchell, as a Selectman, made a motion to place the article on the October 2019 Special Town Meeting warrant and voted in favor of his motion.

12. At the October 7, 2019 Special Town Meeting, a member of the BOS moved to have Town Meeting vote on the warrant article in the amount of \$25,000 for the Camp Kiwanee Tree Removal. Mitchell, as a BOS member, seconded the motion.

13. At the time Mitchell, as a Selectman, (1) made the motion to place a warrant article on the October 2019 Special Town Meeting warrant for the Camp Kiwanee Tree

Removal and voted on it, and (2) seconded the motion to have Town Meeting vote on the warrant article in the amount of \$25,000, Mitchell knew it was likely that the Town would hire Newcomb to perform the tree work.

### **Conclusions of Law**

#### **§ 17(c)**

14. Section 17(c) of G.L. c. 268A prohibits a municipal employee from otherwise than in the proper discharge of his official duties acting as agent for anyone other than the municipality in connection with a particular matter<sup>[2]</sup> in which the municipality is a party or has a direct and substantial interest.

15. The decisions as to who would address the waterline damage and how the damage would be addressed were particular matters in which the Town had a direct and substantial interest because the damage allegedly occurred while Newcomb was performing tree removal work on behalf of the Town.

16. By representing Newcomb as its General Manager in communications with the Town and with the private property owner regarding the waterline damage, Mitchell acted as agent for someone other than the Town in connection with a particular matter in which the Town had a direct and substantial interest.

17. Representing and acting as Newcomb's agent regarding the waterline damage was not in the proper discharge of Mitchell's official duties as a Selectman.

18. Therefore, Mitchell violated § 17(c) by acting as agent for Newcomb, which was not otherwise in the proper discharge of Mitchell's official duties as a Selectman, in a particular matter in which the Town had a direct and substantial interest.

#### **§ 19**

19. Except as otherwise permitted,<sup>[3]</sup> § 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>[4]</sup> as such an employee in a particular matter in which, to his knowledge, he or a business organization by which he is employed, has a financial interest.<sup>[5]</sup>

### ***Signing Town Warrants Authorizing Payments to Newcomb***

20. Newcomb is a business organization because it provides tree cutting and removal services for a fee.

21. Mitchell was at all times here relevant employed by Newcomb as its General Manager.

22. The decision to approve Town warrants authorizing payments to Newcomb were particular matters in which Newcomb had a financial interest.

23. Mitchell participated in those particular matters as a Selectman by repeatedly signing Town warrants containing payments to Newcomb.

24. At the time of his participation, Mitchell knew that Newcomb had a financial interest in the approval of the Town warrants containing payments to Newcomb.

25. By, as a Selectman, repeatedly signing Town warrants authorizing payments to his employer Newcomb, Mitchell violated § 19 by participating in particular matters in which, to his knowledge, the business organization by which he was employed had a financial interest.

***Participating in the Camp Kiwanee Tree Removal***

26. The decision to remove trees at Camp Kiwanee was a particular matter.

27. Mitchell participated in that particular matter as a Selectman by (1) making a motion to place an article on the October 2019 Special Town Meeting warrant regarding the Camp Kiwanee Tree Removal; (2) voting in favor of his motion, and (3) seconding a motion to have Town Meeting vote on the warrant article in the amount of \$25,000.

28. At the time of his participation, Mitchell knew that Newcomb had a financial interest in the Camp Kiwanee Tree Removal because he knew it was likely that the Town would hire Newcomb to perform the work.

29. By, as a Selectman, participating in the decision on the Camp Kiwanee Tree Removal, Mitchell participated in a particular matter in which, to his knowledge, the business organization by which he was employed had a financial interest. Thus, Mitchell violated § 19.

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

(1) that Mitchell 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, §§ 17(c) and 19; and

(2) that Mitchell 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:** November 18, 2021

---

[1] Paul Newcomb is owner of Newcomb and Mitchell’s brother-in-law.

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

[3] None of the exemptions applies.

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

[5] “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 may be positive or negative. *EC-COI-84-96*.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION  
IN THE MATTER OF  
GUY CORBOSIERO**

**PUBLIC EDUCATION LETTER**

November 22, 2021

Guy Corbosiero

Dear Mr. Corbosiero:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your capacity as Chair of the Winchendon Planning Board, violated the state conflict of interest law by acting as agent for Toy Town Alternative Health (Toy Town)<sup>[1]</sup> in relation to Toy Town's application for a special permit to operate a retail marijuana business in the Town of Winchendon. You cooperated fully with the inquiry.

On October 20, 2021, the Commission voted to find reasonable cause to believe that your actions, as described below, violated section 17(c) of the state conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings. The Commission further determined, however, that, in lieu of adjudicatory proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter.

By resolving this matter through this Public Education Letter, the Commission seeks to ensure that you and public employees in circumstances similar to those described below will have a clearer understanding of the conflict of interest law and how to comply with it. In particular, the Commission seeks to correct the common misunderstanding that a municipal employee may act privately as agent for someone other than the city or town in a matter involving the municipality without violating G.L. c 268A, § 17, as long as the employee abstains from participating in the matter in their public employee capacity.

The Commission and you have agreed that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have

chosen not to exercise your right to a hearing before the Commission.

**The Facts**

You have served on the Winchendon Planning Board since about 2007 and have been Chair of the Planning Board since about 2015. You continue to serve as Chair. Planning Board members are appointed by the Winchendon Board of Selectmen (BOS) and have been designated by the BOS as special municipal employees.

On May 21, 2018, the Winchendon Town Meeting voted to amend the Town's zoning bylaws to regulate the marijuana industry in Town. The amended bylaws designate the Planning Board as the Special Permit Granting Authority for applicants for a marijuana facility license and require all such facilities to obtain a special permit to operate.

On June 9, 2018, you submitted a signed letter to the Winchendon Town Manager, applying for an Adult Use Marijuana Retail License on behalf of Toy Town, a company you had recently formed with three partners to operate a retail marijuana business in Winchendon.

On June 11, 2018, Winchendon's Director of Planning and Development emailed you that Toy Town's application was selected to move to the next stage in the local licensing process. The Town had received a total of three applications and all three applicants were selected to move on to the next stage.

On June 13, 2018, you filed a disclosure with the BOS detailing your involvement with Toy Town and its application for a retail marijuana license. You stated in your disclosure that: (1) Toy Town would need to appear before the Planning Board for Site Plan Review and a Special Permit; (2) you would not participate as a Planning Board member in any matter involving retail marijuana; and (3) you would recuse yourself as a Planning Board member from any matter dealing with retail marijuana, Toy Town, or any of the principals of the company. Your disclosure was made on a Commission form designed to allow an appointed municipal employee to seek an exemption from § 19 of the conflict of interest law.<sup>[2]</sup>

The Chair of the BOS signed your § 19 disclosure form on July 16, 2018 and wrote on the form the stipulation that you "recuse yourself from the Planning Board whenever

discussions of retail marijuana, including any bylaws or anything related to marijuana, are part of the Planning Board's discussions." No question was raised at the time about you privately acting as agent for Toy Town.

On July 16, 2018, you addressed the BOS in support of Toy Town's application. The BOS voted 5-0 to authorize the Town Manager to enter into a Host Community Agreement with Toy Town. The BOS also voted unanimously to approve the applications from the two other applicants.

On July 16, 2018, you signed a Host Community Agreement Certification Form, certifying that you were an authorized representative of Toy Town.

On July 17, 2018, Winchendon and Toy Town entered into a Host Community Agreement. The document was signed by the Town Manager on behalf of the Town and you on behalf of Toy Town.

While Toy Town entered into a Host Community Agreement with Winchendon, it did not receive approval to operate from the state Cannabis Control Commission. You resigned from Toy Town on August 19, 2020.

Around February 2021, Toy Town Alternative Health, with new business partners, entered into a new Host Community Agreement with the Town. You are not involved with this business.

### **The Conflict of Interest Law**

Your June 13, 2018, disclosure to the Board of Selectman addressed issues under § 19 of the conflict of interest law, G.L. c. 268A, that would have been raised had you acted as a Planning Board member on marijuana retail facility special permits and other matters in which Toy Town, you or your business partners had a financial interest. You abstaining from participating as a Planning Board member in such matters would have resolved these § 19 concerns had these matters come before the Planning Board. However, you acting in your private capacity as agent for Toy Town in relation to its application for a marijuana retail special permit, raised issues under a separate section of the conflict of interest law that could not be avoided by you abstaining from participating in those matters as a Planning Board member. Those issues arose under § 17(c) of the law.

Section 17(c) of the conflict of interest law prohibits a municipal employee from, otherwise than in the proper

discharge of their official duties, acting as agent for anyone other than the city or town in connection with a particular matter in which the same city or town is a party or has a direct and substantial interest. The purpose of this prohibition is to prevent municipal employees from dividing their loyalty between their public employers and private parties.

While § 17(c) applies less restrictively to special municipal employees such as you in your capacity as Planning Board Chair, special municipal employees are still prohibited from acting as agents for anyone other than their employing municipality in relation to matters involving the municipality which are under their official responsibility.<sup>[3]</sup> This provision not only generally prohibits special municipal employees from representing a private party in matters before their own board, but it also prohibits them from representing anyone other than their employing municipality before other municipal boards in matters that are the subject of their official responsibility.

What is frequently misunderstood about § 17(c) is that even if a special municipal employee abstains from participating in their official capacity in a matter over which they have official responsibility, or files a disclosure relating to the matter, the matter is still considered to be under their official authority and, therefore, the employee remains prohibited by § 17(c) from acting as agent for anyone other than the municipality regarding the matter.

Here, the Planning Board had official responsibility over marijuana license applications because the Planning Board was the ultimate authority for granting the special permit required to operate a marijuana business in town under Winchendon's bylaws. Moreover, given that the town regulates marijuana businesses and issues special permits to operate, Winchendon has a direct and substantial interest in marijuana business special permit applications.

When you (1) submitted Toy Town's application for a retail marijuana license to the Town Manager, (2) appeared before the BOS in support of Toy Town's application, and (3) signed, as an authorized representative of Toy Town, both the Host Community Agreement Certification Form and the Host Community Agreement between Toy Town and Winchendon, you acted as agent for Toy Town.<sup>[4]</sup> While you filed the § 19 disclosure form stating that you would not participate as a Planning Board member in matters involving Toy Town, your disclosure did not change the fact that your official responsibilities as a

Planning Board member included the issuance of special permits to marijuana facilities, nor would you abstaining from participating in the issuance of such permits as a Planning Board member eliminate your official responsibility over that issuance. The authority to issue such permits was an inseparable part of your being a Planning Board member that no disclosure or abstention by you could eliminate.

Therefore, the Commission found reasonable cause to believe that you violated § 17(c) of the conflict of interest law by acting as agent for Toy Town in connection with its application for a retail marijuana license.

### Disposition

Based upon its review of this matter, the Commission has determined that the public interest would be best served by the issuance of this Public Education Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Sincerely,

David A. Wilson  
Executive Director

---

<sup>[1]</sup> A Certificate of Organization for a Limited Liability Company was filed by Toy Town Project LLC with the Secretary of the Commonwealth. The name of the business was Toy Town Alternative Health.

<sup>[2]</sup> Section 19 of G.L. c. 268A prohibits municipal employees from participating in a matter in which they have a financial interest. Under § 19(b)(1), appointed municipal employees may participate in such a matter if they first advise their appointing authority of the nature and circumstances of the particular matter, make full disclosure of the financial interest, and then receive, in advance, a written determination made by the appointing authority allowing their participation. In this case, the BOS told you to recuse yourself whenever discussions of retail marijuana are part of the Planning Board's discussions.

<sup>[3]</sup> Specifically, a special municipal employee is prohibited from receiving or requesting compensation and/or acting as agent for private parties in relation to (1) particular matters

in which he has participated as a municipal employee; (2) particular matters which are or within one year have been a subject of his official responsibility; or (3) particular matters pending in a municipal agency in which he is serving. The third provision applies only if the employee has served in the municipal agency for more than 60 days during any period of 365 consecutive days.

<sup>[4]</sup> A special municipal employee 'acts as an agent' by communicating on behalf of a third party or acting as a liaison for a third party. *See, Advisory 88-01: Municipal Employees Acting as Agent for Another Party.*

---

## COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0005

IN THE MATTER OF  
JOHN CAPLIS

### FINAL ORDER

Parties: Tracy Morong, Esq.  
Counsel for Petitioner

John Caplis, *pro se*

Commissioners: Maria J. Krokidas, Ch.  
R. Marc Kantrowitz  
Josefina Martinez  
Wilbur P. Edwards, Jr.  
Eron Hackshaw

Presiding Officer: Commissioner Wilbur P. Edwards, Jr.

### Final Order

On November 29, 2021, the parties filed a Joint Motion to Dismiss ("Joint Motion") with a proposed Disposition Agreement requesting that the Commission approve the Disposition Agreement in settlement of this matter and dismiss the adjudicatory proceeding. The Presiding Officer, Wilbur P. Edwards, Jr. referred the Joint Motion, with the Disposition Agreement, to the full Commission for deliberations on December 15, 2021.

In the proposed Disposition Agreement, Respondent John Caplis, former Town of Templeton (“Town”) Director of Veterans Services, admits that he violated G.L. c. 268A, §§ 23(b)(2)(ii), 23(b)(3) and 23(b)(4).

Caplis admits that he violated § 23(b)(2)(ii) by using his official position as Director of Veterans Services to secure a reimbursement from the Town for a building permit fee for his friend Matthew LeClerc (“LeClerc”).<sup>[1]</sup> Caplis used his position as the Director of Veterans Services by submitting an invoice to the Town for G.L. c. 115 veterans benefits for LeClerc.<sup>[2]</sup> This enabled LeClerc to receive a \$484 reimbursement for a building permit fee. The reimbursement LeClerc received was an unwarranted privilege of substantial value that was not available to similarly situated individuals because G.L. c. 115 benefits are not lawfully available for the reimbursement of building permit fees.

Caplis also admits that he violated § 23(b)(3) by participating as the Director of Veterans Services in matters involving LeClerc, when he had a personal friendship with LeClerc, and had a personal relationship with LeClerc’s relative.<sup>[3]</sup> Caplis 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 LeClerc could unduly enjoy Caplis’s favor in the performance of his official duties as the Director of Veterans Services when he submitted an invoice to the Town for veteran’s benefits to be paid to LeClerc for the reimbursement of a building permit fee.

Finally, Caplis admits that he violated G.L. c. 268A, § 23(b)(4) by submitting an invoice for reimbursement to his employer, the Town, which was a false and fraudulent claim for payment of substantial value.<sup>[4]</sup>

The Respondent agrees to pay a civil penalty of \$2,500 and to waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in the Disposition Agreement in this and any other administrative or judicial proceeding to which the Commission is or may be a party.

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

and the Commission will be served by the Disposition Agreement.

**WHEREFORE**, the Commission hereby **ALLOWS** the Motion. Respondent’s tendered payment of the \$2,500 civil penalty for violating G.L. c. 268A, §§ 23(b)(2)(ii), 23(b)(3) and 23(b)(4) is accepted. Commission Adjudicatory Docket No. 21-0005, *In the Matter of John Caplis* is **DISMISSED**.

**DATE AUTHORIZED:** December 15, 2021

**DATE ISSUED:** December 21, 2021

---

<sup>[1]</sup> G.L. c. 268A, § 23(b)(2)(ii), 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 an unwarranted privilege or exemption of substantial value (\$50 or more) that is not properly available to similarly situated individuals.

<sup>[2]</sup> G.L. c. 115 benefits provide financial assistance for food, housing, clothing, and medical care to veterans and eligible dependents who have limited incomes.

<sup>[3]</sup> G.L. c. 268A, § 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.

<sup>[4]</sup> G.L. c. 268A, § 23(b)(4), prohibits a municipal employee from presenting a false or fraudulent claim to his employer for any payment or benefit of substantial value.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 21-0005**

**IN THE MATTER OF  
JOHN CAPLIS**

**DISPOSITION AGREEMENT**

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

On June 25, 2020, pursuant to G.L. c. 268B § 4(a), the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Caplis. On February 18, 2021, the Commission concluded its inquiry and found reasonable cause to believe that Caplis violated G.L. c. 268A, § 23 subsections (2)(ii), (3), and (4). An Order to Show Cause was filed on September 10, 2021.

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

#### **Findings of Fact**

1. At all relevant times, Caplis was the Director of Veterans Services for the Town of Templeton.
2. Massachusetts General Laws chapter 115 provides financial assistance for food, housing, clothing, and medical care to veterans and eligible dependents who have limited incomes. Massachusetts Department of Veterans’ Services (“DVS”) oversees the Chapter 115 benefits program in partnership with local veterans’ service officers.
3. In order to obtain Chapter 115 benefits for a veteran or other eligible recipient, Caplis, as the Director of Veterans Services, needed to submit an invoice to the Town. The Town would then pay the benefit to the veteran or eligible recipient and the state, via DVS, would reimburse the Town. Caplis was also required to electronically submit each claim for reimbursement to DVS for verification or confirmation of the benefit.
4. Matthew LeClerc (“Matthew”) is the owner of Valley View Farm, located at 179 Barre Road in Templeton. He also owns a two-family home located at Address A and Address B<sup>[1]</sup> on or near Valley View Farm.
5. In late 2016, Matthew began building a structure to be used for business purposes at Valley View Farm without first obtaining from the Town the required building permit. After construction started, the Templeton building

commissioner notified Matthew that a building permit was required for the work.

6. On January 17, 2017, Matthew applied for a building permit for 179 Barre Road with a total project cost of \$10,000. In mid-January 2017, Matthew paid the Town \$484 for the building permit by check drawn from the Valley View Farm account.
7. Prior to Matthew’s payment, Caplis communicated with the Templeton building department staff and requested that Matthew’s building permit fee be waived.
8. The Templeton building department does not have the authority to waive building permit fees.
9. In February 2017, Caplis, as the Director of Veterans Services, submitted an invoice to the Town for Chapter 115 benefits for a \$484 reimbursement payable to “Priscilla LeClerc c/o Matthew LeClerc, 179 Barre Road”.
10. On the invoice, Caplis identified the basis for the \$484 reimbursement request as “medical and prescriptions” but the actual purpose was to reimburse Matthew for the cost of the \$484 building permit.
11. Chapter 115 benefits may not be used to reimburse building permits.
12. Caplis did not follow the standard procedure for Chapter 115 benefits as he did not submit the claim for the \$484 reimbursement to DVS for verification or confirmation of the benefit.
13. In February 2017, Priscilla was eligible to receive Chapter 115 benefits, but Matthew was not eligible to receive Chapter 115 benefits.
14. In February 2017, Caplis was friends with Matthew and involved in a personal relationship with a relative of Matthew’s who lived at Address B.
15. The \$484 reimbursement was placed on the Town warrant and approved by the Templeton Board of Selectmen on February 24, 2017. A \$484 check was subsequently issued to Priscilla.

#### **Conclusions of Law**

16. As the Templeton Director of Veterans Services, Caplis was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

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

17. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use their official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals. Pursuant to G.L. c. 268A, § 23(f), Commission regulation 930 C.M.R. 5.05 defines substantial value as \$50 or more.

18. Chapter 115 veterans' benefits, including reimbursement payments, are a privilege.

19. The \$484 payment to Priscilla by the Town in 2017 to reimburse the building permit fee paid by Michael from the Valley View Farm account was of substantial value and was an unwarranted privilege because Chapter 115 benefits do not include reimbursement for building permit fees.

20. The \$484 reimbursement was not properly available to similarly situated individuals because reimbursement using Chapter 115 benefits is not lawfully available to businesses such as Valley View Farm and reimbursement of building permit fees using Chapter 115 benefits is not lawfully available to anyone.

21. By, as Director of Veterans Services, submitting to the Town the invoice for Chapter 115 benefits in order to have Matthew reimbursed for the building permit fee he had paid, Caplis knowingly used his official position to secure for Matthew the substantially valuable unwarranted privilege of the \$484 reimbursement that was not properly available to similarly situated individuals.

22. In so doing, Caplis violated G. L. c. 268A, §23(b)(2)(ii).

### **Section 23(b)(3) Violation**

23. 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.

24. By submitting to the Town an invoice for veterans benefits to be paid to Priscilla LeClerc c/o Matthew LeClerc in order to provide an unwarranted reimbursement of building permit fees to Matthew, Caplis knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, including Caplis's friendship with Matthew and his relationship with Matthew's relative, to conclude that Matthew could unduly enjoy Caplis's favor in the performance of his official duties as the Director of Veterans Services for the Town of Templeton.

25. By so acting, Caplis violated G.L. c. 268A, § 23(b)(3).

### **Section 23(b)(4) Violation**

26. Section 23(b)(4) prohibits a public employee from knowingly, or with reason to know, presenting a false or fraudulent claim to his employer for any payment or benefit of substantial value.

27. As Director of Veterans Services, Caplis was employed by the Town of Templeton.

28. The February 2017 invoice for the \$484 reimbursement which Caplis submitted to the Town for payment to Priscilla LeClerc c/o Matthew LeClerc was a claim presented to his employer for a payment of substantial value.

29. The February 2017 invoice for reimbursement was a false or fraudulent claim for payment because Caplis represented to the Town that the basis for the reimbursement was "medical prescriptions" for Priscilla LeClerc when, in fact, Caplis submitted the invoice in order to cause the Town to reimburse Matthew LeClerc for a building permit fee he had paid.

30. The February 2017 invoice for reimbursement was also a false or fraudulent claim for payment because Caplis submitted it to the Town knowing that he did not intend to submit a request to DVS to reimburse the Town for the payment.

31. By, as Director of Veterans Services, knowingly, or with reason to know, submitting an invoice for reimbursement to the Town which was a false and fraudulent claim for payment of substantial value, Caplis presented a false or fraudulent claim to his employer for a payment or benefits of substantial value.

32. By so doing, Caplis violated G.L. c. 268A, §23(b)(4).

**Resolution**

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

1. that Caplis pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,500 as a civil penalty for violating G.L. c. 268A, §§ 23(b)(2)(ii), 23(b)(3) and 23(b)(4); and
  
2. that Caplis 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 21, 2021

---

<sup>[1]</sup> Address A and Address B refer to home addresses and as such, are not included as Parties are to refrain from filing with the Commission papers including such information. 930 CMR 1.04(b)(1).







**ADVICE**



**EDUCATION**



**DISCLOSURE**



**ENFORCEMENT**



**COMMISSION MEMBERS**

**Maria J. Krokidas, Chair**  
**Hon. R. Marc Kantrowitz (ret.), Vice Chair**  
**Josefina Martinez**  
**Hon. Wilbur P. Edwards, Jr. (ret.)**  
**Eron Hackshaw**

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