

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

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Advisory 15-1: Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment 924

Advisory 15-1: Avoiding Conflicts of Interest While Seeking a New Job and After Leaving Public Employment

Introduction

This Advisory¹ explains how the conflict of interest law, G.L. c. 268A, applies to public employees when they seek new jobs, and after they leave their public jobs.

A public employee seeking a new job has conflict of interest restrictions on his job search only if his responsibilities in his public position affect or involve the potential employer. A job-seeking public employee who has no responsibility for anything related to the potential employer has no issues under the conflict of interest law in connection with his job search. However, if the public employee is responsible for matters involving the potential employer, or has dealings in his public position with the potential employer, the conflict of interest law will impose restrictions to prevent the public employee from using his position to improve his employment prospects, and also to prevent the public employee from favoring the potential employer's interest over the public interest, or from even appearing to do so.

Part I of this Advisory explains how the conflict of interest law applies to public employees as they seek new jobs. It begins with a short description of the applicable sections of the law, and then explains how the law applies to the various stages of a job search. Part I is arranged chronologically to address the following topics as they may arise during a job search:

- Beginning a job search and gathering general information (Subpart A)
- Initiating contact with people concerning possible openings (Subpart B)
- Applying for publicly advertised jobs (Subpart C)
- Talking with a potential employer about working for that employer (Subpart D)
- Getting and accepting a job offer (Subpart E)
- Not getting, or declining, a job offer (Subpart F)

Part II of this Advisory explains how the conflict of interest law applies to former public employees after they leave public employment.

I. Seeking New Employment

The conflict of interest law does not prohibit public employees from seeking new jobs in areas in which they gained experience while in their public jobs, or from getting new jobs with persons and entities with whom they had contact in their public jobs. A public employee seeking new employment with persons or entities who have no connection with his official responsibilities is not prohibited by the conflict of interest law from seeking such employment. The law only imposes restrictions on public employees seeking new employment when there is, in fact, the potential for conflicts of interest, because the public employee has official responsibility for matters involving the potential employer, or has official dealings with the potential employer.

First, G.L. c. 268A, § 23(b)(2) prohibits public employees from asking for or accepting anything worth \$50 or more, which is given to them because of their official positions, and from using or attempting to use their official positions to secure unwarranted privileges worth \$50 or more for themselves or others.² This section of the law prohibits public employees from initiating discussions about future employment, other than general information gathering as described in Subpart A below, with those currently under their official authority, or with whom they have official dealings, because initiating such discussions is a use of one's position that is inherently coercive. Public employees who wish to initiate discussions about a specific unadvertised job opportunity with such persons or entities should first seek to have their duties involving those persons or entities reassigned, as further discussed below in Subpart B.

Second, G.L. c. 268A, § 23(b)(3) provides that a public employee may not act in a manner which would cause a reasonable person to conclude that any person can improperly enjoy the employee's favor in the performance of his or her official duties, or that the employee is likely to act or fail to act as a result of anyone's undue influence. When a public employee has official dealings with a potential employer, the public employee's impartiality may reasonably be questioned, as it may appear that the public employee would put the potential employer's

interests ahead of the public interest. Such an appearance of a conflict may arise at various points during and after a job search, and may be eliminated by making a written disclosure of the facts, as explained further below in Subpart B. This type of disclosure is often required at the very early stages of

a public employee's job search. It may also be required after employment discussions have terminated if the public employee is going to take official actions regarding the potential employer, as explained below in Subpart F.

Third, there is a strict rule that prohibits public employees from participating in matters in which a potential future employer has a financial interest. Specifically, public employees may not "participate" in any "particular matter" if "any person or organization" with whom they are "negotiating" or have "any arrangement concerning prospective employment" has a financial interest in the matter. If a state or county employee's duties would otherwise require him to participate in any such particular matter, he must make a written disclosure, which is a public record, and must be filed with his appointing authority and with the State Ethics Commission ("Commission"). An employee who has made such a disclosure must abstain from participating in the matter unless and until his appointing authority gives him written permission to participate. Disclosures filed with the Commission are listed on the Commission's website. A municipal employee in that situation can either abstain from participating or file a disclosure and obtain his appointing authority's written approval if he seeks to participate, because the statutory language applicable to municipal employees is different from that applicable to state and county employees. *G.L. c. 268A, §§ 6, 13, and 19*. These requirements are explained further below in Subpart D.

While the Commission is sensitive to the potential difficulties public employees may experience in making the required disclosures to their appointing officials regarding their efforts to obtain new employment, these requirements are intended to protect the public interest from being compromised by actual or apparent conflicts of interest between one's public duties and one's private efforts to obtain new employment.

The remainder of Part I of this Advisory explains how these principles apply during the various stages of a job search.

A. Beginning A Job Search and Gathering General Information

Job seekers, including public employees, often begin a job search by gathering information. As part of that process, they may seek to speak with persons with general information about possible opportunities in a particular field, as a preliminary to identifying specific available positions. Job seekers may seek to

have such conversations with professional and social acquaintances, and also with persons whom they have never met, or whom they know only through social media. Public employees are not prohibited from contacting persons under their official authority, or with whom they are having official dealings, for the purpose of gathering general information about possible opportunities either in a particular field, or within a particular company. Asking for information about general opportunities from those under one's official authority or with whom one has official dealings is not prohibited by § 23(b)(2), because such a request is not inherently coercive and does not give the public employee an unwarranted privilege of substantial value.

While a public employee may ask a person under his official authority, or with whom he is having official dealings, for general information about possible opportunities within that person's company, the public employee may not go further and ask that person to give him a job, or create a job for him. The next section of this Advisory explains how a public employee who wishes to approach a person or entity under his official authority, or with whom he is having official dealings, to discuss a specific unadvertised employment opportunity should proceed.

Example: Permissible requests for general information about possible opportunities at a particular company: "What opportunities are out there in my field?" "How can I go about finding jobs in my field?" "Do you know whether other companies in your field are hiring?"

Example: Inquiries about specific employment opportunities that cannot be addressed to someone under a public employee's official authority, or with whom he is having official dealings: "Do you have a job for me?" "Could your company create a position for me?" "Do you have a management job for me?" "Do you have a Vice President of Marketing job for me?"

A public employee's request for general information about possible opportunities made to someone under his official authority or with whom he is having official dealings may result in the public employee learning that a specific job which has not been publicly advertised is available with the person he has contacted, or that person's employer. If the public employee decides to pursue that opportunity, he will need to make a written disclosure pursuant to § 23(b)(3) prior to taking any action in his official capacity that would involve or affect the prospective

employer, to dispel the appearance of a conflict of interest. The disclosure should include specific facts as to how the general discussion turned into a discussion of a specific opportunity. In addition, § 23(b)(2) requires that the public employee act objectively and without bias in the matter involving or affecting the prospective employer. Once the prospective employer shows any interest in hiring the public employee, such as by scheduling an interview with the public employee or otherwise expressing interest in discussing his qualifications, a state or county employee will have to abstain from participating in his public capacity in any matter in which his duties would otherwise require him to participate and in which the company has a financial interest, and will have to make a further disclosure of any such matter. Municipal employees may either abstain or file a disclosure and obtain the approval of their appointing authorities, if they seek to participate in the matter. These disclosure and abstention requirements, which are pursuant to G.L. c. 268A, §§ 6, 13, and 19, are triggered when the prospective employer has a matter pending before the public employee, and are explained in more detail below in Subpart D.

A public employee's request for general information about possible opportunities made to someone under his official authority or with whom he is having official dealings may also result in offers of specific assistance from the person under his official authority or with whom he is having official dealings, beyond simply discussing general information with the public employee. For example, the person contacted by the public employee may offer to recommend the public employee for a particular position with a different employer or may offer to introduce the public employee to others who may be hiring or who may have information about other job opportunities. If the person whom the public employee called voluntarily offers unprompted assistance, and if the public employee accepts that offer, he should make a written disclosure of those circumstances pursuant to § 23(b)(3) before acting officially in any matter involving that person. This disclosure is needed to eliminate any appearance that his official action might be influenced by that assistance. The public employee, however, may not ask the person under his official authority or with whom he is having official dealings to do anything to assist him in pursuing employment opportunities, because such a request would be inherently coercive, and, therefore, would amount to a prohibited use of one's official position.

B. Initiating Contact with People Concerning Possible Openings

The conflict of interest law does not generally prohibit public employees from contacting potential employers as part of a job search, but it does restrict public employees from initiating discussions about future employment with persons and entities who are either under their official authority, or with whom they have official dealings. Specifically, § 23(b)(2) of the conflict of interest law, which prohibits the use of one's official position to ask for or accept anything of substantial value, prohibits public employees from initiating such discussions, because doing so is a use of position that is inherently coercive, and therefore violates § 23(b)(2).

A public employee who wishes to approach a person or entity under his official authority, or with whom he is having official dealings, to discuss a specific unadvertised employment opportunity, should first seek to have his duties involving those persons or entities reassigned, as discussed below. A public employee who wishes to respond to a public advertisement of a job by a person or entity under his authority, or with whom he is having official dealings, may do so, but will need to make a disclosure, as discussed below in subpart C.

A public employee has official authority over: his subordinates and their subordinates³; vendors and consultants to his agency whose contracts he manages, or whose contracts are supervised by his subordinates⁴; and persons and businesses whose permits or licenses he participates in issuing⁵ or who are subject to his inspection power.⁶ Such a public employee should not initiate discussions about a specific future job with, or submit an unsolicited resume or employment application to, anyone in these categories. He also should not initiate such discussions with, or submit an unsolicited resume or employment application to, anyone with whom he is having official dealings, if that person or entity may be directly and significantly affected by the public employee's actions in a pending or anticipated matter.⁷ These restrictions apply to a public employee who is having official dealings with employees of another public agency. These restrictions also apply to the use of social media to initiate discussions about a future job: public employees should not send messages regarding prospective employment directly via social media to persons and entities under their official authority or with whom they are having official dealings, nor

should they upload unsolicited resumes or applications to social media accounts of such persons or entities, or otherwise target them through social media communications.

Example: A Fire Chief with authority to inspect and approve smoke detector systems before certificates of occupancy can be issued for newly-constructed houses may not seek private work with a contractor engaged in constructing new homes that will be subject to the inspection requirement, because the contractor is under the Fire Chief's official authority.

Example: A City Councilor may not approach a permit applicant to seek employment while the permit application is pending before the City Council, because he is having official dealings with the permit applicant. Once the permit application is no longer pending and the City Council will not take any action concerning that application, the City Councilor may approach the former applicant to seek employment.

Example: A budget analyst at the state Executive Office for Administration and Finance who is analyzing a state agency's budget request may not approach the state agency about seeking employment. Once the analyst no longer has anything related to the agency's budget pending before him, he may approach the agency to seek employment. Even though both of the agencies in this example are state agencies, the budget analyst may not initiate discussions about a specific future job with another state agency while he is having official dealings with that state agency and that agency may be directly and significantly affected by his actions.

Example: An Assistant Attorney General litigating a case for the Commonwealth may not approach a law firm which represents another party in that case to seek employment, because she is having official dealings with that law firm.

Given these restrictions, a public employee who wishes to approach a person or entity under his official authority, or with whom he is having official dealings, about employment with that person or entity, should first ask his public agency whether it is possible to reassign his duties regarding that person or entity. If those duties are reassigned, the public employee may then approach that person or entity to discuss future employment. The reassignment of such duties should be documented in writing. The public employee should inform the prospective

employer that his responsibilities have been reassigned when approaching that person or entity to eliminate any inherent pressure that such a contact might otherwise create.

Example: A state employee who is the contract manager for a contract between his agency and a consulting company may not approach any employee or official of the consulting company about possible employment with that company. The state employee may ask his public agency to reassign his public duties regarding the company. If those duties are reassigned, he then may approach the company to discuss private employment, after informing the company that he no longer has official authority over that company.

If it is not possible for a public employee to have her duties related to a potential employer reassigned, then the public employee may not approach that potential employer to seek employment, unless the potential employer has publicly advertised a position, as discussed in the next section.

C. Applying for Publicly Advertised Jobs

If an employer has advertised or posted a potential employment opportunity or has inquired whether a public employee has an interest in working for the employer, the conflict of interest law will not bar the public employee from pursuing that opportunity.

If the public employee has official authority over the potential employer, or may have official dealings with the potential employer, the public employee may still respond to the employer's advertisement, posting, inquiry, or social media recruitment effort. In this situation, the employer, not the public employee, has initiated the contact, so the public employee is not using his official position to create the employment opportunity. Responding to an employer's advertisement, posting or inquiry is not inherently coercive. Prior to taking any official action as a public employee that would involve or affect the prospective employer, however, the public employee will need to make a written disclosure of the circumstances, and then must act fairly and objectively.

A public employee who has sent a resume to a potential employer in response to the employer's job posting or inquiry and is waiting to see if the employer is interested in meeting or talking with him about that posting or inquiry will need to file a disclosure pursuant to § 23(b)(3) prior to acting

officially in a matter involving that potential employer, to dispel any appearance that he will tend to favor the potential employer in his official dealings with that employer.⁸ Such a disclosure does not require any action on the part of the employee's appointing authority, but an appointing authority who receives such a disclosure may choose to reassign the public employee's duties involving the potential employer to another employee.

Example: A public employee's job involves inspecting certain types of businesses. She may not approach employees of those businesses to discuss a specific job opening with those businesses. However, if one of those businesses advertises a job opening, the public employee may respond to that advertisement. She must file a § 23(b)(3) disclosure before taking any official action involving or affecting that business (and may need to take further steps if the potential employer agrees to talk to her, as discussed below in Subpart D).

Example: A public employee who supervises a vendor's contract is asked by her counterpart at the vendor whether she is interested in talking about possible employment with the vendor. No specific position is discussed. The public employee may email her resume to her counterpart, but must file a § 23(b)(3) disclosure before taking any official action concerning the vendor or the contract (and may need to take further steps if the potential employer agrees to talk to her, as discussed below in Subpart D). If the public employee does nothing in response to the inquiry from the vendor's employee, no disclosure is required.

Example: A state employee advises the head of her agency on policy decisions. She submits her resume to an advocacy group that has taken a position on a policy matter that will come before her agency. Because it could appear that she will be biased in favor of the advocacy group's position, an appearance of a conflict of interest will arise when she makes a recommendation about that policy matter. Before making such a recommendation, which she should do only if she is able to be objective about the matter, she should make a § 23(b)(3) disclosure to the agency head to eliminate that appearance of a conflict. The agency head may take no action, or may ask a different employee to make a recommendation concerning the policy matter. (The public employee may need to take further

steps if the potential employer agrees to talk to her, as discussed below in Subpart D.)

A public employee who has official responsibility over, or official dealings with, a potential employer, and who has applied for an advertised position with that potential employer and has disclosed the relevant facts as just described, must then take care to act objectively and without bias in all matters involving or affecting the prospective employer, as required by § 23(b)(2). If the company responds to the public employee's application and schedules an interview with the public employee, or otherwise expresses interest in discussing his qualifications, a state or county employee must abstain from participating in his public capacity in any matter in which the company has a financial interest, and the state or county employee must file a written disclosure with his appointing authority and with the State Ethics Commission if he would ordinarily be required to participate in the matter. Municipal employees may either abstain or make a disclosure if they seek to participate in the matter. The requirements that apply when a potential employer has a financial interest in a matter before a public employee, which are imposed by G.L. c. 268A, §§ 6, 13, and 19, are discussed in more detail below in Subpart D.

D. Talking With a Potential Employer About Working for That Employer

A public employee's job search often will proceed to the point where the public employee is interested in a potential employer, and the potential employer is also interested in the public employee. If the public employee's position does not give her any authority over the potential employer, and the public employee never has dealings with the potential employer in the public employee's official role, then the public employee is not barred from pursuing that employment opportunity, and is not required to file any disclosures. However, if the public employee may be called on to handle matters involving that potential employer in his or her current public position, then the public employee should read this section of this Advisory, which explains how the conflict of interest law applies at this stage of a job search.

A public employee may not participate in his official capacity in any "particular matter" in which "any person or organization" with whom he is "negotiating" or has "any arrangement concerning prospective employment" has a financial interest. G.L. c. 268A, §§ 6, 13, and 19. These terms are

explained below. A public employee may also be required to disclose the matter in writing. State and county employees whose duties would otherwise require them to participate in such a matter must abstain from participation, and must also notify in writing both the Commission and their appointing official (if they have one) of the nature and circumstances of the particular matter, and make full disclosure of the financial interest affected.⁹ Legislators, board members, and others whose duties generally do not require them to participate in, or delegate the duty to participate in, a particular matter, may simply abstain. Municipal employees must abstain from participating in the matter or must make a written disclosure to their appointing official and obtain permission in writing to participate before doing so.¹⁰ For purposes of making these disclosures, the appointing official is the official (or board or other group of officials) with the authority to appoint the employee, and is not necessarily the employee's immediate supervisor. In many public agencies, the appointing official to whom such disclosures should be made will be the head of the agency, or his or her designee for such purpose, rather than the employee's manager.

Elected public employees do not have an appointing official, and, therefore, they may not participate in particular matters affecting the financial interests of persons or organizations with which they are negotiating for prospective employment.

Once a disclosure that a public employee's potential employer has a financial interest in a pending matter has been made to an appointing official, the responsibility shifts to that appointing official to determine how to handle the matter. If the appointing official makes a written determination that the financial interest is not so substantial as to be likely to affect the integrity of the services that the public expects from the employee, then the appointing official may give the public employee written permission to participate in the matter. State and county appointing officials must file such determinations with the Commission and give a copy to the employee; municipal appointing officials must retain such determinations. Disclosures and determinations are public records and must be maintained as such.

A public employee who receives his appointing authority's written permission to participate in a particular matter, notwithstanding his potential employer's financial interest in the matter, may participate in the matter, provided that he can be fair and impartial in doing so. Section 23(b)(2) requires

that public employees use objective criteria in carrying out their official duties, and ignore any considerations arising from their private relationships. *EC-COI-96-1; 95-11; 92-36; 92-1; 86-3.*

Example: A Fire Department employee with expertise in sprinkler systems has applied to work for a company that installs sprinkler systems. The company has told him that they would like to discuss his qualifications further. The Town Administrator asks the employee's advice about what requirements to include in a Request for Proposals (RFP) to replace the Town Hall sprinkler system. It is likely that the prospective employer will respond to the RFP. The Fire Department employee may not participate in advising the Town Administrator until he has disclosed in writing his potential employer's financial interest in the matter to the Fire Chief, his appointing official, and only if he has received written permission to participate in that matter.

What kinds of potential employers are covered by this prohibition?

The term "person" includes individuals, corporations, societies, associations, and partnerships.¹¹ The term "organization" includes corporations, business trusts, estates, partnerships, associations, two or more persons having a joint or common interest, and any other legal or commercial entity, as well as federal, state, and local governmental agencies and subdivisions.¹² The Internal Revenue Service, the federal Environmental Protection Agency, and the U.S. Department of Justice would each be considered an organization for purposes of this prohibition.¹³ A public employee who is negotiating or has any arrangement concerning future employment with another public agency is subject to this prohibition. In short, this is a broad prohibition that covers every kind of potential employer.

When does this prohibition begin to apply?

The prohibition does not begin to apply until the parties are "negotiating" or have "any arrangement" concerning future employment. For purposes of the conflict of interest law, these terms have a broader definition than they do in ordinary usage. Under the conflict of interest law, "negotiating" employment does not require both parties to be sitting down at a table to discuss an offer of employment, or terms and conditions of employment. Rather, for conflict of interest purposes, "negotiating" employment begins earlier, when there is mutual interest in the possibility of the public employee's going to work for the

potential employer. That is, when both sides have expressed an interest in the other, for example, by arranging for discussions or scheduling an interview (in person or otherwise), the public employee will be deemed to be “negotiating” prospective employment.¹⁴ As soon as both sides have indicated to the other that they are interested in a possible employment relationship, even before a meeting takes place or a job offer is made, the public employee is “negotiating” for prospective employment for purposes of the conflict of interest law. Examples of such situations, drawn from Commission precedent, are given below. At this point, the public employee must abstain from participating in particular matters in which that potential employer has a financial interest and must file the required disclosure if the public employee’s duties would otherwise require her to participate in those matters.

A public employee is not “negotiating” prospective employment merely because the public employee has posted a resume or similar summary of professional experience to the employee’s personal social media account, or because the public employee is gathering general information about possible opportunities. Likewise, the fact that a person or organization has viewed a public employee’s resume on that employee’s social media account, or has sent an unsolicited message, including one containing a job offer, to the employee, does not mean that they are “negotiating,” because there is not yet mutual interest in the possibility of the public employee’s going to work for that person or entity. However, if the employee responds to such a message with anything other than a rejection, the employee and the person or entity will be considered to be “negotiating” employment, and the restrictions explained in this subpart will apply.

Example: A public employee who applied online and interviewed for a posted position was required to abstain from participating in particular matters in which the potential employer had a financial interest, although he was not hired until three months later.¹⁵

Example: A public employee who emailed his resume to a potential employer, indicating that he was “looking for a job,” and had a discussion with an employee of the potential employer about the title, work assignments, and compensation he would receive if he were hired, was required to abstain from participating in particular matters in which the potential employer had a financial interest, although he

had not yet been invited for or completed an interview, and no offer had yet been made to him.¹⁶

Example: A public employee who discussed the possibility of her being employed by a company and discussed the type of work she would do if hired was required to abstain from particular matters in which the company had a financial interest.¹⁷

Example: A public employee who had made an oral agreement to perform work for a company was required to abstain from particular matters in which the company had a financial interest.¹⁸

Example: A public employee who responded affirmatively to a potential employer’s inquiry regarding whether he might be available for a position and arranged to meet with its representatives would be required to abstain from particular matters in which the potential employer had a financial interest.¹⁹

Discussing general opportunities does not trigger the prohibition, but discussing a particular opportunity with a potential employer will if there is mutual interest. Persons seeking a new job often gather information about possible opportunities by meeting with professional or social acquaintances to discuss general opportunities in a professional field, or contacting persons who may have such information via social media and other means. As explained above in Subpart A, discussions about general opportunities as part of such an information-gathering process are not prohibited. However, if, in the context of a general discussion, a potential employer inquires about a public employee’s interest in a position with that potential employer, the public employee expresses interest, and they arrange for further discussions, even if no specific position is yet under discussion, then the public employee has started negotiating for future employment with the prospective employer, and must abstain from participating in matters in which that potential employer has a financial interest.

What are “particular matters”? The conflict of interest law prohibits public employees from participating in “particular matters” in which a potential employer has a financial interest. “Particular matter” is a term that is broadly defined by the conflict of interest law to include judicial or other proceedings, applications, submissions, requests for rulings or other determinations,

contracts, claims, controversies, charges, accusations, arrests, decisions, determinations, and findings.

However, enactment of general legislation by the General Court and home rule petitions are expressly excluded from the definition of a “particular matter.”²⁰ Therefore, a public employee is not prohibited by §§ 6, 13, or 19 from participating in the enactment of general legislation, or in a home rule petition, in which a potential employer has a financial interest. Nevertheless, the public employee may have to file a disclosure pursuant to § 23(b)(3) to dispel the appearance of a conflict of interest. Enactment of general legislation or a home rule petition may include drafting or reviewing proposed legislation.

Example: A state agency employee has reviewed draft legislation to address an issue. A nonprofit group that is advocating on the same issue has posted a job opening online. If the state agency employee applies for the job and the nonprofit group invites her for an interview, the state agency employee is not prohibited from continuing to work on the draft legislation, because it is not a “particular matter.” However, she should make a written disclosure of the circumstances to her appointing authority pursuant to § 23(b)(3), as explained further above.

E. Getting and Accepting a Job Offer

When a public employee has successfully applied for and been offered a new job, has accepted the offer, and is finishing up his last few weeks in his public position, he is, at this point, considered to have an “arrangement concerning prospective employment” with the new employer. The public employee, therefore, is subject to the prohibition against participating in his official capacity in any “particular matter” in which the new employer has a financial interest. The requirements of disclosure and abstention described above in Subpart D apply to such a public employee while he remains in his public position.

F. Not Getting, or Declining, a Job Offer

Not every job search ends with an offer and acceptance of a position. A public employee may express interest in and/or apply for a new position and not be offered that position, or may receive an offer but decide not to accept it. An appearance of a conflict may arise in these circumstances if a matter involving that potential employer then comes before the public employee for official action, since,

depending on the circumstances, the public employee’s impartiality may be open to question. Whether the public employee should make a disclosure in that context pursuant to § 23(b)(3) to dispel the appearance of a conflict will depend on the circumstances in which the discussions or negotiations were terminated and how long ago they occurred. If job discussions with a prospective employer terminated shortly before a public employee is assigned a matter involving the prospective employer, or the circumstances otherwise suggest that the public employee will not be able to be objective, then the public employee should disclose that fact to his appointing official. Alternatively, the public employee may simply abstain from taking any action affecting or involving the person or entity with whom discussions or negotiations have ended, thereby avoiding any appearance of a conflict. If the discussions or negotiations were removed enough in time such that no reasonable person would think that the public employee would favor (or disfavor) such person or entity for that reason, then no disclosure is required before taking any action. If a public employee does not believe he can be objective in these circumstances, then he should abstain from acting in matters involving that person or entity.

II. Restrictions After Leaving Public Employment

Public employees seeking new employment should understand that the conflict of interest law will place some restrictions on what they can do in a new job. The law does not prohibit public employees from using experience that they gained while in a public job for a new employer, or from getting new jobs working with or for persons and entities with whom they had contact in their public jobs (subject to the restrictions explained above in Part D). However, the law does restrict former public employees from working for new employers on “particular matters” that they worked on, or had responsibility for, in their public jobs.²¹ Additional restrictions apply to: the use of confidential information; partners of former public employees; lobbying by former state employees; and, for certain former public employees, working for or owning part of a gaming licensee.

“Forever ban.” The broadest restriction on former public employees applies to particular matters in which the public employee participated personally and substantially in his public position. A public employee has a lifetime ban (the so-called “forever ban”) on being compensated by, or acting on behalf of, a new employer, in connection with any particular matter in which he participated personally and

substantially in his former public job. He can never become involved in that same matter after leaving public service for anyone other than his former public employer.²² A public employee need not have been the ultimate decision-maker in a matter for the forever ban to apply. He will be subject to the forever ban if he participated in discussions about the decision or gave advice or made a recommendation about that decision, and he will not be able to work on that same matter for a new employer.²³ However, participation that is merely ministerial and not part of the decision-making process, such as, for example, mailing a letter, will not be considered personal and substantial, and the forever ban will not apply.²⁴

Example: A former public employee worked on contracts for certain types of services between her public agency and various vendors. She did not seek employment with any vendor while in her public position. After she leaves her public job, the former public employee can go to work for one of those vendors, and she can work on contracts involving the same types of services that she worked on before, but she cannot work on any specific contract that she participated in as a public employee. After the term of any such contract expires, she can work on a newly procured contract between the vendor and her former agency, even if it is similar in subject matter or terms to the expired contract.

Example: A former public employee who made recommendations about regulations or bylaws to her public agency is prohibited from working for a private organization to challenge the validity of those regulations or bylaws.

A former municipal or county employee who goes back to work for the same city or county will not be subject to the “forever ban,” because she will not be working on matters she worked on earlier for someone other than her former public employer, which is what the “forever ban” prohibits. The same principle permits a former state employee to go on working on a state project that he worked on in an earlier state job for a different state agency. However, a former public employee may not continue to work on a project that he worked on for one level of government when he takes a new job with a different level of government (such as a former municipal employee who wants to work on the same project that he worked on for the city in his new state job), because, in that situation, the employee is not continuing to work for his same former public employer.

Example: A public employee retires. His former public employer (the state, the county, or the municipality, depending on whether he was a state, county, or municipal employee) wants to contract with him to work as a consultant to finish work on several matters. (If the contract is not with him but with his new employer, he should be named as a “key employee” under the contract to avoid conflict of interest issues.) This is not prohibited by the conflict of interest law, because he is continuing to work for his former public employer, and, thus, there is no conflict of interest. The forever ban prohibits working for someone other than the former public employer on matters in which the public employee participated.

Example: The head of operations for a school department works on a project to build a new high school. Subsequently, he retires from the school department, and is elected to the School Committee. He is not prohibited from working on the same project as a member of the School Committee, because he is continuing to work for the same former public employer (the municipality).

“One-year cooling off period.” A public employee may have official responsibility over particular matters in which she does not participate. A manager has official responsibility over all the particular matters worked on by her subordinates. A public employee who abstains from participating in a matter, or delegates it to someone else, or simply does not get around to working on it, still has official responsibility for that matter.²⁵ A former public employee who had official responsibility over a particular matter during the two years before she left public service may not communicate in person or in any other way with her former public employer about that matter on behalf of someone else for one year after her departure from public service.²⁶ This restriction is referred to as the “one-year cooling off period.” The one-year restriction applies to communications by a former public employee with her former public employer -- that is, the entire state, county, or municipal government, not just the particular agency in which she served -- on behalf of a new employer (or anyone else) about matters over which the employee had official responsibility during the two years prior to leaving her public job.

The one-year cooling off period means that, for one year after he leaves his state position, a former state employee cannot talk to, meet with, or otherwise

communicate on behalf of someone else with, any state employees about any particular matters that were under his responsibility at his former state job during the two years before he left. The same restriction applies to former county employees with respect to communications with employees of the formerly employing county, and former municipal employees with respect to communications with employees of the formerly employing city or town. The broader a former public employee's official responsibility was in his prior job, the more matters will be subject to the one-year cooling off period.²⁷

During the one-year cooling off period, a former public employee is not prohibited from engaging in discussions with his new colleagues about matters over which he had official responsibility in his public position, as long as he does not disclose any confidential information in doing so, and is also not prohibited from receiving compensation from a new employer to work on such matters, so long as he does not communicate, in person or in writing, with any agency of the state (if he worked for a state agency), the county (if he worked for a county), or the city or town (if he worked for a municipality). The former public employee remains subject to the "forever ban" discussed above for matters in which he participated personally and substantially.

Example: The former chief of staff in a municipal office was responsible for personnel and procurement matters and, in addition, other matters assigned to him by the head of the agency. After he leaves his position, he may not communicate on behalf of a new employer, or anyone else, with the city or any city employee about any matters for which he had official responsibility or which were assigned to him during his last two years in his position, for one year.

Example: A former state employee worked for an agency that awards grants to nonprofit corporations and other entities and was in charge of the division that made decisions about grant applications. In that role, he had official responsibility for all grant decisions, though he did not participate in all of them. The former state employee now wishes to work as a consultant to nonprofit corporations, including those that applied for grants from his former agency. He cannot contact his former agency, or any other state office or employee, on behalf of any nonprofits concerning any grant awarded by his former agency during the last two years that he worked there, for one year after his departure.

However, as to new grant applications announced by the agency after his departure, which were never under his official responsibility, he can contact the agency on behalf of a nonprofit, even if a year has not yet elapsed since his departure.

Confidential information. Former public employees may not accept employment or engage in professional activity that will require them to disclose confidential information that they learned in their public jobs. They are also prohibited from improperly disclosing or using such non-public information.²⁸ Information is confidential if it is unavailable to the general public, and would not be produced by the public agency in response to a public records request.²⁹

Examples of information that former public employees have been required to maintain as confidential after leaving a public position include internal agency evaluation standards,³⁰ information regarding a public employer's bargaining strategy in collective bargaining negotiations,³¹ information gained as legal counsel to a public agency,³² and data developed during a public board's executive sessions.³³

A former public employee who neither participated in nor had official responsibility for a particular matter may still be prohibited from doing work on that matter for a new employer if the work would require him to disclose confidential information that he gained in his prior position. For example, an attorney who learned of his public client's litigation strategy might be unable to represent a private client in a new matter, if the private representation would require him to disclose his knowledge of the public agency's litigation strategy.³⁴

Partners of former public employees. A former public employee's partners have a one-year restriction on doing anything that the former public employee cannot do pursuant to the "forever ban." This means that the partners of a former public employee may not, for one year after the public employee's departure from her public position, work for anyone other than the former public employer (that is, the state, the county, or the municipality that employed the former public employee) on any particular matter in which the former public employee participated personally and substantially in her former public job.³⁵

The restrictions on partners of former public employees apply to members of formal partnership

agreements, and also to individuals who enter into common business ventures, even if they have not entered into a formal partnership agreement. The restrictions on partners also apply to individuals who create a public appearance of a partnership, for example by linking their names on a letterhead, business cards, and business listings. The substance of the relationship is what counts, not the term that the parties use to describe their relationship.³⁶

The restrictions that the conflict of interest law imposes on partners of former public employees do not apply to members of professional corporations.³⁷ Attorneys who are “of counsel” at law firms are not considered to be partners of other members of the firm.³⁸ For that reason, an attorney employed by a public agency who wishes to change jobs and work for a law firm organized as a partnership and that has a law practice involving public agencies may wish to consider becoming “of counsel” to the firm for his first year, rather than partner, so that the firm’s partners are not subject to the partner restrictions under the conflict of interest law.

Lobbying restrictions on former state employees.³⁹

Former state employees are prohibited from lobbying their former offices for one year after departing from state service on behalf of anyone other than the state.⁴⁰ A former state employee’s former office is: the agency he worked for; any other governmental body within that agency; and the employees of that agency or those agencies.⁴¹

Example: A former state legislator or legislative employee may not lobby the General Court of the Commonwealth of Massachusetts (both branches) and its members and employees for one year after leaving state service on behalf of anyone other than the state.

Example: A former Governor or employee of the Governor’s office may not lobby the Governor’s office and its employees and the Governor for one year after leaving state service on behalf of anyone other than the state, but is not restricted from lobbying other Executive Offices or agencies.

Example: A former employee of an Executive Office may not lobby the Executive Office by which he was employed, all divisions and departments of that Executive Office, all state agencies within that Executive Office, and the employees of that office and those divisions, departments, and agencies on behalf of anyone other than the state for one year after leaving

state service, but is not restricted from lobbying the Governor, the Governor’s office, other Executive Offices or their agencies.

Example: A former employee of a state agency may not lobby that state agency, any governmental bodies located organizationally within that agency, and the employees of that agency on behalf of anyone other than the state for one year after leaving state service, but is not restricted from lobbying the Governor or the Governor’s office, other state agencies within the same Executive Office as the former employing agency, or other executive branch agencies.

Example: A former employee of an independent state authority that is placed within an executive office, but not subject to supervision or control by that executive office, may not lobby the independent state agency for one year after leaving state service on behalf of anyone other than the state, but is not restricted from lobbying the executive office.

Prohibited lobbying of an executive branch agency includes compensated acts involving communications to promote, oppose or influence an agency decision about legislation, standards, rates, rules, and regulations, and policy and procurement decisions.⁴² Prohibited lobbying of the Legislature includes acts to promote, oppose or influence legislation.⁴³ Both types of prohibited lobbying also include acts to influence municipal decisions, when those acts are intended to carry out a common purpose with executive lobbying at the state level, i.e., when the local lobbying is coordinated with the executive lobbying at the state level.

Example: A former employee of an Executive Office leaves and joins a company that provides services. For one year after his departure from state service, he may not contact his former office seeking to market his firm’s services, because that would be an attempt to influence a procurement decision by his former office, and is prohibited executive lobbying.

Example: A former state legislator leaves his position and joins a nonprofit corporation with an interest in certain types of legislation. The former legislator cannot lobby his former colleagues in either chamber, or any employee of either for one year after his departure from state service.

Participation in enactment or implementation of gaming legislation.

Former state, county and municipal employees who participated in the enactment or implementation of general legislation on expanded gaming, Chapter 194 of the Acts of 2011 and G.L. c. 23K, cannot become officers or employees of, or acquire a financial interest in, an applicant for a gaming license, for one year after leaving public employment. They also cannot acquire a gaming license for one year after leaving public employment. Former employees of the Massachusetts Gaming Commission are also subject to additional restrictions. G.L. c. 23K, § 3(q) and (r).

Example: A former legislative aide who worked on the legislation to expand gaming in the Commonwealth cannot work for a casino for one year after leaving his state position.

Example: A municipal Planning Board member who voted on whether to approve a site plan for a proposed casino cannot work for a casino for one year after leaving the Planning Board.

* * * * *

This Advisory is intended to summarize the State Ethics Commission’s advice concerning compliance with the conflict of interest law and is informational in nature. It is not a substitute for advice specific to a particular situation, nor does it mention every aspect of the law that may apply in a particular situation. Public employees can obtain free, confidential advice about the conflict of interest law from the Commission’s Legal Division by submitting an electronic request on our website, www.mass.gov/ethics, by calling the Commission at (617) 371-9500 and asking to speak to the Attorney of the Day, or by submitting a written request for advice to the Commission at One Ashburton Place, Room 619, Boston, MA 02108, Attn: Legal Division.

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¹ This Advisory updates and replaces Advisory 90-01, Negotiating for Prospective Employment.

² G.L. c. 268A, §§ 23(b)(2)(i) and (ii); 930 CMR 5.05.

³ EC-COI-95-9, 92-7, 84-61; *In Re Piatelli*, 2010 SEC 2296, 2301-2; *In Re Wormser*, 2010 SEC 2304, 2309-2311; *In Re Foresteire*, 2009 SEC 2220; *In Re Galewski*, 2007 SEC 2101; *In Re Corson*, 1998 SEC

912, 913; *In Re Garvey*, 1990 SEC 478; *In Re Lannon*, 1984 SEC 208.

⁴ EC-COI-95-9, 92-7, 90-9, 82-124; *In Re Rowan*, 2010 SEC 2293; *In Re Keverian*, 1990 SEC 460, 462; *In Re White*, 1982 SEC 80 (involved predecessor sections to § 23(b)(2) and 23(b)(3)).

⁵ *In Re Hamilton*, 2006 SEC 2043; *In Re Parisella*, 1995 SEC 745; *In Re Zeppieri*, 1990 SEC 448.

⁶ *In Re Singleton*, 1990 SEC 476, 477; *In Re Bagni*, 1981 SEC 30 (predecessor sections to §§ 23(b)(2) and 23(b)(3)).

⁷ EC-COI-12-1, 93-23, 84-61; *In Re Tocco*, 2011 SEC 2377; *In Re Bretschneider*, 2007 SEC 2082; *In Re Travis*, 2001 SEC 1014; *In Re Corson*, 1998 SEC 912; *In Re Trodella*, 1990 SEC 472; *In Re Antonelli*, 1982 SEC 101, 110; *In Re Craven*, 1980 SEC 17, aff’d 390 Mass. 191, 202 (1983).

⁸ Appointed public employees file such disclosures with their appointing officials; members of the General Court file such disclosures with the House or Senate clerk or the Commission; elected state or county employees file them with the Commission; elected municipal employees file them with the municipal clerk; elected regional school committee members file them with the clerk or secretary of the committee.

⁹ G.L. c. 268A, §§ 6, 13.

¹⁰ G.L. c. 268A, § 19.

¹¹ G.L. c. 4, § 7.

¹² EC-COI-92-3.

¹³ Each separate federal agency is considered a separate organization for purposes of this prohibition. EC-COI-92-3.

¹⁴ *In Re Poley*, 2013 SEC 2462; *In Re Esposito*, 1991 SEC 529, 530.

¹⁵ *In Re Dickinson*, 2013 SEC 2489.

¹⁶ *In Re Poley*, 2013 SEC 2462.

¹⁷ *In Re Esposito*, 1991 SEC 529, 530.

¹⁸ *In Re Hatch*, 1986 SEC 260.

¹⁹ EC-COI-82-8.

²⁰ *G.L. c. 268A, § 1(k)*.

²¹ “Particular matter,” as explained earlier, includes judicial or other proceedings, applications, submissions, requests for rulings or other determinations, contracts, claims, controversies, charges, accusations, arrests, decisions, determinations, and findings, but not general legislation or home rule petitions. *G.L. c. 268A, § 1(k)*.

²² *G.L. c. 268A, §§ 5(a), 12(a), and 18(a)* provide that former state, county, and municipal employees, respectively, may not act as agents or attorneys for, or directly or indirectly receive compensation from, anyone other than their former public employer, in connection with any particular matter in which they participated as public employees, and which is of concern to their former public employer. For former state employees, this applies to particular matters in which the Commonwealth or any state agency is a party or has a direct and substantial interest; for former county employees, this applies to particular matters in which the county or any county agency is a party or has a direct and substantial interest; for former municipal employees, this applies to particular matters in which the city or town is a party or has a direct and substantial interest.

²³ *G.L. c. 268A, § 1(j)*, “participate” means to participate “personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.”

²⁴ *EC-COI-89-7*.

²⁵ Official responsibility is defined by the statute as “direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.” *G.L. c. 268A, § 1(i)*. Official responsibility exists where there is authority to act, whether or not it is exercised. *EC-COI-99-2, 92-36*. Authority to act may be determined from areas assigned by statute, regulation, job description, or delegation of authority, *EC-COI-99-7, 99-6*, including assignment by one’s superior, *EC-COI-88-11*.

²⁶ Specifically, former state employees may not, for one year, appear personally before any state agency as an agent, or attorney, for anyone other than the state, in connection with any particular matter in which the Commonwealth, or any state agency, is a

party, or has a direct and substantial interest, and which was under the former state employee’s official responsibility within two years prior to his departure from state service. *G.L. c. 268A, § 5(b)*. The same restrictions apply respectively to county and municipal employees with respect to appearances before county or municipal agencies, in particular matters in which the county, or the city or town, is a party, or has a direct and substantial interest, *G.L. c. 268A, §§ 12(b) and 18(b)*.

²⁷ *EC-COI-90-11*.

²⁸ *G.L. c. 268A, § 23(c)* provides that current and former employees may not accept employment or engage in any business or professional activity which will require them to disclose confidential information gained by reason of their official position or authority. It further provides that former public employees may not improperly disclose materials or data required to be kept confidential by the Public Records law and acquired in the course of official duties, nor may they use such information to further their personal interests.

²⁹ *EC-COI-97-1, 92-18, 91-14, 89-7*.

³⁰ *EC-COI-90-06*.

³¹ *EC-COI-92-21, 87-21*.

³² *EC-COI-91-1, 87-26*.

³³ *EC-COI-92-40*.

³⁴ *EC-COI-90-11*.

³⁵ Specifically, *G.L. c. 268A, §§ 5(c), 12(c), and 18(c)* provide that partners of former state, county, and municipal employees respectively may not knowingly engage, during a period of one year following the termination of the former employee’s public employment, in any activity which the former employee himself is prohibited from engaging in by §§ 5(a), 12(a), and 18(a).

³⁶ *EC-COI-84-78*.

³⁷ *EC-COI-93-24*.

³⁸ *EC-COI-89-31, 89-7, 84-78*.

³⁹ The Secretary of the Commonwealth is responsible for the general regulation of lobbying and the requirements applicable to executive and legislative agents.

⁴⁰ Former state employees or elected officials, including former members of the General Court, may not act as legislative or executive agent, as defined by G.L. c. 3, § 39, for anyone other than the Commonwealth or a state agency, before the governmental body with which they were associated, within one year after leaving their former positions. The statute uses the terms “act as legislative or executive agent” rather than the term “lobbying.”

⁴¹ *930 CMR 7.00.*

⁴² G.L. c. 3, § 39, definitions of “executive agent” and “executive lobbying.”

⁴³ G.L. c. 3, § 39, definitions of “legislative agent” and “legislative lobbying.”

TABLE OF CASES

(By Subject or Respondent from 1979 through 2015)

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

Name (Year)	Page	Name (Year)	Page
Abrams, Hal (2003)	1105	Bonavita, Richard (2008)	2140
Ackerley Communications (1991)	518	Borstel, Charles (2013)	2468
Adamson, Randy (2007)	2127	Bossi, Ruthanne (2002)	1043
Almeida, Victor (1980)	14	Boston Collector-Treasurer's Office (1981)	35
Alves, Alan (2000)	957	Boyle, James M. (1989)	398
Amorello, Matthew (2009)	2213	Bradley, Christopher (2007)	2086
Anderson, Joan (2009)	2205	Brawley, Henry A. (1982)	84
Angelo, Steven (2003)	1144	Breen, Mark A. (1992)	588
Ansart, James (1998)	905	Brennan, James W. (1985)	212
Antonelli, Ralph (1986)	264	Brennan, Maureen (2009)	2238
Antonelli, Rocco J., Sr. (1982)	101	Brensilber-Chidsey (2007)	2129
Aragona, David (2007)	2091	Bretschneider, Richard (2007)	2082
Arlos, Peter (2006)	2050	Bretschneider, Richard (2011)	2406
Associated Industries of Massachusetts (1996)	790	Brewer, Walter (1987)	300
Atsalis, Demetrius (2014)	2504	Briggs, Sherman, Jr. (2013)	2455
Atstupenas, Ross A. (2002)	1061	Brooks, Edward (1981)	74
Auty, J. Martin (1998)	904	Brougham, Harry L. (1999)	934
Aylmer, John F. (1990)	452	Brunelli, Albert R. (1988)	360
Baez, Priscilla (2010)	2290	Buckley, Elizabeth (1983)	157
Bagni, William L., Sr. (1981)	30	Buckley, John R. (1980)	2
Bailey, Susan (2010)	2289	Bukowski, Paulin J. (1998)	923
Baj, Frank (1987)	295	Bump, Suzanne M. (1994)	656
Baldwin, Charles O. (1990)	470	Bunker, David (2003)	1161
Banks, Rudy (1992)	595	Buonopane, Angelo R. (2006)	2040
Barboza, Joanne (1985)	235	Burger, Robert (1985)	216
Barletta, Vincent D. (1995)	736	Burgess, Richard (1992)	570
Barnes, James (2003)	1154	Burgmann, Robert (1993)	627
Barranco, John (2014)	2502	Burke, John P. (1987)	323
Barrasso, Kathy (2004)	1190	Burke, William A., Jr. (1985)	248
Bartley, John (1994)	685	Burlingame, Elliot (1992)	578
Basile, Alesandro (2014)	2493	Burnett, Thomas E. (2004)	1193
Bassett, Timothy (2011)	2400	Bush, Elaine (1995)	731
Bates, Stanley (1993)	642	Butters, William (1992)	601
Battle, Byron (1988)	369	Byrne, James (2005)	2032
Bauer, Wolfgang (1996)	771	Byrnes, Michael (2013)	2458
Bayko, Andrew (1981)	34	Cabral, Francisco (2003)	1101
Baylis, Robert (2007)	2093	Cahoon, Kevin (2007)	2114
Beaudry, Francis (1996)	799	Caissie, Jennie (1999)	927
Becker, Mark (2006)	2062	Caliri, Michael A. (2001)	995
Bencal, Michael (2006)	2041	Callahan, Francis (2002)	1044
Benevento, Anthony (1993)	632	Calo, Robert (1994)	704
Berlucchi, Stephen (1994)	700	Camandona, Robert (1982)	
Bernard, Paul A. (1985)	226	Campanini, Eileen (2004)	1184
Bernstein, Susan P. (2003)	1097	Campagnone, Joyce (2015)	2562
Besso, Donald P. (2003)	1148	Campbell, Thomas (2007)	2108
Beukema, John (1995)	732	Capalbo, Kevin (2005)	2028
Bingham, G. Shepard (1984)	174	Capman, Mary (2011)	2362
Birchall, Charles III (2011)	2398	Cardelli, John (1984)	197
Bitzas, George (2009)	2236	Carignan, David (2000)	197

Name (Year)	Page
Caroleo, Vincent (1980)	
Carroll, Ann R. (1983)	144
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
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
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
Collins, James M. (1985)	228
Columbus, Robert (1993)	636
Comiskey, Robert (2002)	1079
Commeret, Thomas (2009)	2268
Conlon, William (2011)	2382
Connery, James F. (1985)	233
Connors, Brian (2013)	2459
Corbosiero, Guy (2010)	2332
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

Name (Year)	Page
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
DePrete, 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
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
Donaldson, Robert (1993)	628
Donlan, Paul (2007)	2107
Donovan, Joseph F. (1999)	949
Dormady, Michael (2002)	1074
Dougherty, 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

Name (Year)	Page
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
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
Foster, Badi G. (1980)	28
Foster, James (2002)	1082
Fowler, Robert A. (1990)	474
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
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
Gillis, Robert (1989)	413
Gilmetti, Fred L. (1996)	836

Name (Year)	Page
Giuliano, Patti (2001)	1018
Glodis, Guy (2013)	2448
Gnazzo, Jerold (1995)	748
Goddard Memorial Hospital (1987)	293
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
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
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
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
Hoey, 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

Name (Year)	Page
Iannaco, Ronald (1994)	705
Inostroza, Albert (2007)	2110
Jackson, Michael (2011)	2404
Jacques, Cheryl (2013)	2480
Jefferson, Thomas (2010)	2303
Jenkins, John (2006)	2058
John Hancock Mutual Life Insurance Co. (1994)	646
Johnson, Walter (1987)	291
Jones, William G. (1983)	
Jordan, Patrick F. (1983)	132
Joseph, Mark (2012)	2440
Jovanovic, Michael (2002)	1062
Joy, Thomas (1984)	191
Joyce, Kevin (2005)	2002
Judd, John (2011)	2394
Karlson, Kenneth (2008)	2134
Kaseta, Steven J. (1997)	865
Keeler, Harley (1996)	777
Kellaheer, 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
Kiley, Edwin (2001)	1022
Killion, Sylvia (1999)	936
Kincus, David F. (1990)	438
King, John P. (1990)	449
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

Name (Year)	Page
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
Mach, Leonard (1993)	637
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

Name (Year)	Page
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
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
Melanson, Norman (1999)	955
Menard, Joan (1994)	686
Michael, George A. (1981)	59
Middlesex Paving Corp. (1994)	696
Mihos, James C. (1986)	274
Molla, Francis (1996)	775
Molloy, Francis J. (1984)	191
Molloy, Julie C. (2008)	2140
Molloy, Julie C. (2008)	2141
Mondeau, Marilyn (1996)	781
Montalbano, Janis (2000)	969
Moore, Brian (2006)	2069
Moore, Elizabeth (2011)	2386
Morency, Robert (1982)	
Morin, Peter B. (1994)	663
Morley, Hugh Joseph (2004)	1195
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
Najemy, George (1985)	223
Nash, Kenneth M. (1984)	178
Nelson, David R. (1995)	754
Nelson, George, Jr. (1991)	516
Nelson, Phillip (2000)	974
Nelson, Robert (2006)	2053
Newcomb, Reginald (2009)	2199

Name (Year)	Page
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
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
O'Brien, Dennis (2013)	2468
O'Brien, George J. (1982)	
O'Brien, John (2012)	2437
O'Brien, John P. (1989)	418
O'Brien, Robert J. (1983)	149
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
Partamian, Harold (1992)	593
Partamian, Harold (1996)	816
Pathiakias, 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, Seth (2015)	2564
Petruzzi & Forrester, Inc. (1996)	765
Pezzella, Paul (1991)	526

Name (Year)	Page
Phinney, David L. (2001)	992
Piatelli, Theresa Lord (2010)	2296
Picano, Louis (2011)	2358
Pierce, Richard (2012)	2414
Pigaga, John (1984)	181
Pignone, Edward (1979)	
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
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)	2552
Ross, Michael (2007)	2075
Rostkowski (2006)	2047

Name (Year)	Page
Roth, Taylor (2009)	2207
Roth, Taylor (2009)	2250
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
Sanna, John, Jr. (2003)	1160
Sandonato, Francis (1994)	707
Sansone, Casper Charles (1997)	872
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
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
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
Smith, Lincoln (2008)	2152
Smith, Ross W. (1996)	778

Name (Year)	Page
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
Townsend, Erland S., Jr. (1986)	276
Trant, Scott (2006)	2067
Travis, Philip (2001)	1014
Traylor, George (1995)	744
Triplett, James B. (1996)	796
Triplett, James B. (1996)	796
Triplett, James B. (1996)	827

Name (Year)	Page
Trodella, Vito (1990)	472
Truehart, Paul (2011)	2388
Truehart, 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
Vincent, Mark (2007)	2115
Vinton, Barry (2001)	1040
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
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
Zeppieri, D. John (1990)	448
Zeneski, Joseph (1988)	366
Zerendow, Donald P. (1988)	352
Zora, Joseph, Jr. (1989)	401
Zora, Joseph, Sr. (1989)	401

**State Ethics Commission
Enforcement Actions
2014**

Summaries of 2015 Enforcement Actions	<i>i</i>
In the Matter of Henry Richenburg	2551
In the Matter of John Rose	2552
In the Matter of Gary Kellaher	2555
In the Matter of Aspden, Frizado, Pereira and Silvia.....	2557
In the Matter of Joseph Tulumieri	2560
In the Matter of Joyce Campagnone	2562
In the Matter of Seth Peterson	2564
In the Matter of Steven Tompkins	2567
In the Matter of Kathryn Christopher	2568
In the Matter of Robert Nichols	2570
In the Matter of Robert Murphy	2572
In the Matter of Mark Stevenson	2582
In the Matter of Wettlaufer, Kennedy, Peterson, Arnold and Johnson	2585
In the Matter of Thomas Snell	2588

Summaries of Enforcement Actions Calendar Year 2015

In the Matter of Henry Richenburg

The Commission approved a Disposition Agreement in which Henry Richenburg, a member of the Salisbury Board of Selectmen admitted to violating the conflict of interest law by his actions as Selectman in connection with the BOS's consideration and approval of an application for a license to operate a poultry business submitted by Richenburg's son-in-law. Richenburg paid a \$2,500 civil penalty. In March 2013, Richenburg's son-in-law filed an application for a general license with the BOS to operate a poultry business to raise and sell poultry and eggs. The business was located both adjacent to, and on a portion of, Richenburg's property. The property adjacent to Richenburg's property is owned by Richenburg's daughter and son-in-law. On March 25, 2013, the BOS tabled its consideration of the application, pending approval of the application from the Board of Health. Once Board of Health approval was obtained, the BOS, on June 10, 2013, unanimously voted to approve the license application. Richenburg participated as a Selectman in the decisions to table the application and then to approve the application. Richenburg also signed the license along with the other BOS members. At the time he participated in these matters, Richenburg knew that both he and his daughter, a member of his immediate family, had a financial interest in the proposed poultry business. His daughter had a financial interest because she was directly involved in the poultry business and owned property on which the poultry business was to operate; Richenburg had a financial interest because he was an abutter to the business and a portion of his property was being used to operate the business. Richenburg violated section 19 by voting to table consideration of the license application on March 25, 2013, and by voting to approve the license on June 10, 2013. Richenburg's actions taken in connection with his son-in-law's application for a poultry licensing violated section 23(b)(3) because they created the appearance of a conflict of interest, as a reasonable person would conclude that Richenburg's son-in-law could unduly enjoy Richenburg's favor in the performance of his duties as Selectman.

In the Matter of John Rose

The Commission voted to find reasonable cause to believe that John Rose, the Chief of the Oak Bluffs

Fire-Emergency Medical Services Department, violated section 19 of the conflict of interest law by participating in the hiring and supervision of his immediate family members. The Commission chose to resolve this matter through the issuance of a Public Education Letter rather than through an adjudicatory hearing because the Commission recognized that in certain areas of public service, such as fire and police departments, there is a strong family tradition in which many members of the same family pursue the same type of employment and frequently work together or for each other. The Board of Selectmen appointed Rose as the Ambulance Department Chief in 2006, as the temporary Chief of the Fire-EMS Department in 2012 when the Ambulance Department merged with the Fire Department, and then as the permanent Chief of the Fire-EMS Department in 2013. From 2006 through 2013, Rose hired and supervised all personnel under his command, including signing payrolls and assigning work schedules. From 2009 through 2013, Rose participated, as Chief of the Ambulance or Fire-EMS Departments, in hiring and supervising his brother, his two sisters and his daughter. In June 2011, Rose submitted a written disclosure to the BOS in which he disclosed his participation as Ambulance Department Chief in matters involving his family members. Rose requested a written determination from the BOS to allow him to participate in hiring and supervising family members. The BOS Chair signed the determination without bringing the matter to the full board for review and approval. Rose was informed in September 2013 that his disclosure/determination was defective. Rose filed a new written disclosure that included a memorandum detailing his family members' employment and Rose's participation in hiring and supervising these family members. On December 5, 2013, the BOS provided a written determination to Rose authorizing him to participate in supervisory and payroll matters affecting immediate family members, but requiring him to abstain from participating in matters relating to promotions and appointments of immediate family members, unless specifically authorized to do so by the BOS.

In the Matter of Gary Kellaheer

The Commission approved a Disposition Agreement in which Rutland Department of Public Works

Superintendent Gary Kellaher admitted to violating the conflict of interest law by hiring his son into a seasonal DPW position without posting the position. Kellaher paid a \$2,500 civil penalty. In 2011, Kellaher asked the Board of Selectmen chairman to allow him to hire his son, a DPW on-call snow plow operator, to fill a vacant full-time seasonal position with the DPW. Although the BOS chairman directed Kellaher to post the position in accordance with the town's standard hiring procedure, Kellaher did not do so. Kellaher's son was the sole applicant and did not have to compete against other applicants for the job. The BOS chairman, assuming that Kellaher had posted the position as directed, allowed Kellaher to hire his son without first bringing the matter to the full BOS for its consideration and approval. Kellaher's son held the seasonal position from December 2011 until July 2013, when the BOS appointed him to a full-time DPW laborer position. Although Kellaher posted the laborer position, his son had an advantage over other potential applicants because he already held the seasonal full-time position with the DPW. Kellaher violated section 23(b)(2)(ii) by using his position as DPW Superintendent to hire his son without first posting the position, thereby securing for his son an unwarranted privilege of substantial value.

In the Matter of Maryellen Aspden, James Pereira, Raymond Frizado and Richard Silvia

The Commission voted to find reasonable cause to believe that Somerset Recreation Commission members Maryellen Aspden, James Pereira, Raymond Frizado and Richard Silvia violated the conflict of interest law by requesting that the Recreation Department Director hire their family members for summer jobs with the Recreation Department and/or by approving the summer jobs lists in 2012 and 2013 that included those family members or others with whom they had private relationships. The Commission chose to resolve the matter by issuing a Public Education Letter rather than through an adjudicatory hearing in order to provide other public employees in similar positions and circumstances with a clearer understanding about how to comply with the conflict of interest law. In 2012, both Aspden and Pereira requested that the Recreation Director hire their respective stepchildren for summer jobs with the Recreation Department. The Director complied with the requests and placed both names on the summer jobs lists for 2012 and 2013. The summer jobs lists were then submitted to the Recreation Commission for approval. Aspden and Periera voted to approve the lists in both 2012 and 2013. In March 2013, Frizado placed his name at the top of the summer jobs applications of his two

grandchildren, one of whom also happened to be Silvia's godchild, in order to flag his personal connection to them for the Recreation Director. The Recreation Director proceeded to include one of Frizado's grandchildren on the 2013 summer jobs list, but not the second grandchild. At the April 23, 2013 Recreation Commission meeting, Frizado asked the Recreation Director to include the second grandchild on the list. The Recreation Director complied with his request, and, at that meeting, Frizado and Silvia then voted to approve the 2013 summer jobs lists. On May 2, 2013, after consulting with Town Counsel, the Recreation Commission rescinded its April 23rd vote on the summer jobs list, and instead approved an amended list that did not include the name of Frizado's second grandchild. Frizado then abstained from voting to approve the summer jobs list that included his grandchild, and Aspden and Periera abstained from voting on the recommendations to hire their stepchildren. Silvia voted on the recommendation to hire his godchild, Frizado's grandchild. The Commission found reasonable cause to believe that Aspden and Periera violated section 19 by voting to approve the summer jobs lists in 2012 and 2013 that included the names of their respective stepchildren. The Commission found reasonable cause to believe that Frizado violated section 23(b)(2)(ii) by attempting to have his second grandchild placed on the 2013 summer jobs list. The Commission found reasonable cause to believe that Frizado and Silvia violated section 23(b)(3) by voting to approve the summer jobs list in 2013 that included Frizado's first grandchild, who was also Silvia's godchild. Frizado and Silvia could have avoided violating section 23(b)(3) if, prior to voting to approve the 2013 list, they had made public disclosures about their relationships with the applicants.

In the Matter of Joseph Tulimieri

The Commission approved a Disposition Agreement in which Joseph Tulimieri, the former Executive Director of the Cambridge Redevelopment Authority, admitted to violating the conflict of interest law by increasing his own compensation on five separate occasions. Tulimieri paid a \$37,500 civil penalty and was required to also make restitution to the CRA in the amount of \$21,245. Tulimieri served as the CRA Executive Director from 1978 until January 1, 2011. He reported to the five-member CRA Board. On February 10, 2010, Tulimieri took two actions to increase his own compensation. He approved 3% pay raises for all staff, including himself, retroactive to July 1, 2009, and he converted his \$10,000 travel allowance into salary, retroactive to January 1, 2010. Both actions were taken without first obtaining the

approval of the CRA Board. These actions increased Tulumieri's compensation from \$198,114 to \$214,100. The CRA Board subsequently ratified these pay increases at its March 17, 2010 meeting. In November 2010, Tulumieri, without first obtaining Board approval, authorized an additional 3% pay raise for all staff, including himself. This action increased Tulumieri's compensation from \$214,100 to \$220,479. When Tulumieri retired from the CRA on January 1, 2011, he received a payout for his accrued and unused vacation and compensatory time based upon an annualized rate of pay of \$220,480. After his retirement, Tulumieri, without seeking Board approval, continued to work as Executive Director on a part-time basis at an hourly rate of pay of \$113.07, which was based on his rate of pay at retirement. Tulumieri claimed that he did not seek Board approval for the November 2010 pay raise, or for his decision to hire himself as the part-time Executive Director after his retirement, because the Board did not have a valid quorum of the five members available. On September 27, 2012, Tulumieri resigned from the CRA. By participating as Executive Director in particular matters in which he knew that he had a financial interest, Tulumieri violated section 19 on five separate occasions. Tulumieri received \$21,245 in unauthorized compensation as a result of his actions, and he agreed to make restitution in that amount to the CRA, in addition to paying the civil penalty of \$37,500.

In the Matter of Joyce Campagnone

The Commission approved a Disposition Agreement in which Joyce Campagnone, a Methuen City Councilor who is also a full-time paid employee of the Greater Lawrence Sanitary District, admitted to violating the conflict of interest law by having a prohibited financial interest in a municipal contract. Campagnone paid a \$1,000 civil penalty for the violation and made restitution to the City of Methuen in the amount of \$4,000. Campagnone is a full-time paid employee at the GLSD, a regional municipal sanitary district that includes several cities and towns, including the City of Methuen. For purposes of the conflict of interest law, the GLSD is a municipal agency of the City of Methuen and of each of its other member municipalities. Therefore, by virtue of her employment with the GLSD, Campagnone is a municipal employee of Methuen (as well as of each of the other member municipalities). Campagnone was elected to the Methuen City Council in 2010. As a City Councilor, Campagnone is a municipal employee of Methuen. Councilors are paid a \$400 monthly stipend. Campagnone was a municipal employee, both as a GLSD employee and as a City Councilor. An exemption to section 20 allows a

municipal employee to also serve as a member of the City Council, provided that she does not receive compensation for more than one office or position. Under this exemption, the municipal employee is allowed to choose which compensation she will receive. On January 22, 2014, the Commission's Enforcement Division notified Campagnone that she was prohibited by section 20 from receiving compensation as a full-time GLSD employee and from also receiving the monthly stipend from the City Council. Specifically, Campagnone was informed that, under the so-called "City Councilor's exemption," she could continue to hold both positions as long as she accepted compensation from only one position and complied with the exemption's other restrictions. Although Campagnone was instructed in January 2014 to comply with the conflict of interest law within 30 days, she continued for the next ten months to receive her GLSD compensation as well as the monthly City Council stipends in the total amount of \$4,000.

In the Matter of Seth Peterson

The State Ethics Commission voted to find reasonable cause to believe that Massachusetts State Police Trooper Seth Peterson violated the conflict of interest law by using his position as a State Trooper to intervene with a tow company to have a family member's tow charge reduced, and to deprive the Tow Company of work to which it would have been entitled, and by participating in an inspection of the Tow Company, which ultimately resulted in the temporary removal of the company from the regional State Police tow lists. The Commission chose to resolve the matter by issuing a Public Education Letter rather than through an adjudicatory hearing because the State Police took disciplinary action against Peterson by imposing a forfeiture of 15 vacation days, at a cost to Peterson of approximately \$5,500. Peterson was the Station Tow Officer working out of the State Police-Yarmouth Barracks. In July 2011, Peterson's cousin was involved in a traffic accident on Route 6, within the jurisdiction of the State Police-Bourne Barracks. The cousin incurred a tow charge of \$354. Peterson then took the following actions concerning the Tow Company: he visited the Tow Company while in uniform and driving his State Police vehicle and informed the Tow Company manager that he was investigating a complaint of overcharging without revealing, until asked, that the matter involved a family member; he submitted a report to his State Police superiors in March 2012 concerning his inspection of four tow companies on the State Police tow list in which he found several violations by the Tow Company; he bypassed the Tow Company on a call in May 2012

by contacting another company on the tow list out of rotation, thereby depriving the Tow Company of work to which it was entitled; and he participated in an inspection of the Tow Company in June 2012 and found issues or violations with the Tow Company which resulted in the Tow Company being temporarily removed from all regional State Police tow rotation lists. The Commission concluded that there was reasonable cause to believe that Peterson violated section 23(b)(2)(ii) by using his position as a State Trooper to intervene with the Tow Company on behalf of a family member to have the tow charge reduced, and then to bypass the Tow Company on the tow rotation list. The Commission concluded that there was reasonable cause to believe that Peterson violated section 23(b)(3) by participating in the inspections of the Tow Company without first disclosing that he previously attempted to have a tow charge for a family member reduced.

In the Matter of Steven Tompkins

The Commission approved a Disposition Agreement in which Steven Tompkins, the Suffolk County Sheriff, admitted to violating the conflict of interest law in 2013 by identifying himself as Sheriff when asking eight business owners in his district to take down his opponent's campaign signs that were displayed in their shops. Tompkins paid a \$2,500 civil penalty for the violation. In 2013, Tompkins went to eight retail shops in Roxbury that were displaying campaign signs for Douglas Bennett, Tompkins' 2014 campaign opponent. The signs all read, "Vote for Sheriff Bennett." At each of the shops, Tompkins orally identified himself as Sheriff and displayed his official identification. He then requested that each business owner remove Bennett's campaign signs. All of the business owners complied with Tompkins' request. Tompkins violated the conflict of interest law by using his official position as Sheriff to secure the removal of his opponent's campaign signs. The removal of his opponent's signs upon his request was an unwarranted privilege of substantial intangible value, which personally benefitted Tompkins as a candidate for Sheriff.

In the Matter of Kathryn Christopher

The Commission issued an Order allowing a Joint Motion to dismiss the adjudicatory proceeding involving Kathryn Christopher, a former Home Care Coordinator for the Town of Belmont Council on Aging. The Commission's Enforcement Division initiated the adjudicatory proceeding in July 2010 by issuing an Order to Show Cause alleging that Christopher repeatedly violated several sections of the conflict of interest law. Specifically, the OTSC alleged that Christopher repeatedly violated the

conflict of interest law by: (1) coordinating services for an elderly COA client and selecting herself to provide those services to the Client for private compensation; (2) accessing the Client's funds and assets to pay for Christopher's personal and family expenses; and (3) using those funds and assets for the benefit of Christopher and her family. In allowing the Joint Motion and dismissing the proceeding, the Commission states that Christopher was criminally indicted in September 2011 for conduct that related to the actions alleged in the OTSC, and that the Commission's adjudicatory proceeding was stayed pending resolution of the criminal case. In March 2015, Christopher was convicted of one criminal charge, obtaining a signature by false pretense, and was sentenced to a term of probation for 5 years. As a condition of her probation, Christopher is prohibited from working with the elderly or being employed by an elder services provider or acting as a care giver for anyone over age 65. The parties asserted that dismissal of the adjudicatory proceeding is in the interests of justice and merited because the conduct for which Christopher was convicted and sentenced directly relates to the adjudicatory proceeding; an additional civil penalty is not warranted because the judge imposed stringent conditions of probation that appropriately punish Christopher for her conduct; Christopher was fired by the COA in 2007 when the allegations first came to light; Christopher has incurred over \$100,000 in legal expenses relating to the probate of the Client's estate and the civil and criminal actions; Christopher relinquished her rights under the Client's 2004 last will and testament which had named her as a beneficiary; and as a result of her criminal conviction and conditions of probation, Christopher has been terminated from her employment providing care to the elderly.

In the Matter of Robert Nichols

The Commission issued a Final Order on Summary Decision and Civil Penalty concluding the adjudicatory proceeding involving Robert Nichols, a former member of the Board of Selectmen of the Town of Blandford. The Commission's Enforcement Division initiated the adjudicatory proceeding in February 2015 by issuing an Order to Show Cause. Although the deadline for filing an Answer to the Order to Show Cause was extended several times, Nichols did not file an Answer, and the Petitioner moved for a default judgment. The Commission entered Summary Decision for the Petitioner Enforcement Division and ordered Nichols to pay a \$12,500 civil penalty for violating sections 19, 20 and 23(b)(2) of the conflict of interest law. Nichols was held liable for the following acts alleged in the

Order to Show Cause: Nichols was the owner and operator of Nichols International LLC, d/b/a Berkshire Consulting. In his capacity as a Selectman, Nichols misrepresented to his fellow Selectmen that the Town's engineering consultant, Tighe and Bond, was unavailable to repair a culvert and portion of Hiram Blair Road, and committed the Town to a contract with Berkshire Consulting, which he falsely described as his "former employer." Nichols himself did the work under the contract. Berkshire Consulting issued an invoice to the Town for \$12,150.50, and Nichols deposited the check from the Town into a Berkshire Consulting bank account on November 22, 2011. The Commission found that Nichols violated section 19 because he participated as a Selectman in selecting Berkshire Consulting to do work on the culvert, work in which he and Berkshire Consulting, his private employer, had a financial interest. The Commission found that Nichols violated section 20 because he had a financial interest in the \$12,150.50 that the Town paid to Berkshire Consulting under the contract. The Commission ruled that Nichols violated section 23(b)(2)(ii) by using his position as Selectman to secure an unwarranted privilege of substantial value -- \$12,150.50 -- for himself or others by misrepresenting the unavailability of Tighe and Bond to work on the project and by mischaracterizing his relationship with Berkshire Consulting to his fellow Selectmen. The Commission ordered Nichols to pay civil penalties of: \$5,000 for violating section 19; \$5,000 for violating section 20; and \$2,500 for violating section 23(b)(2)(ii). Although Nichols had reimbursed the Town the \$12,150.50 as the result of a different proceeding, the Commission concluded, "Civil penalties are appropriate because Nichols accomplished his objective of directing Town money to himself by means of active deception as well as concealment of facts of vital importance."

In the Matter of Robert Murphy

The Commission issued a Decision and Order concluding the adjudicatory proceeding involving Robert Murphy, a former consultant to the Town of Canton Conservation Commission. The Commission found that Murphy violated sections 17(a) and 23(b)(3) of the conflict of interest law, and ordered Murphy to pay a civil penalty of \$10,000. The adjudicatory proceeding was initiated by the Commission's Enforcement Division issuing of an Order to Show Cause in July 2014. Murphy served as the ConCom consultant for 22 years. From July 1, 2008 until June 30, 2014, Murphy provided consultant services pursuant to two contracts the Town executed with Danena, Inc. During the relevant time period, Murphy was the President and

sole officer and employee of Danena. Murphy's duties as consultant under the Town contracts included reviewing all permit applications and plans filed with the ConCom for completeness and for compliance with the Wetland's Protection Act and/or the Town's by-law/regulations, and making recommendations to the ConCom about whether to approve the applications. In addition, from 2010 through 2011, Murphy operated M&M Engineering, a company that provided engineering and survey services to property owners and developers. He received compensation for the work he performed on behalf of M&M Engineering providing services to private clients in the Town. From 2010 through 2012, M&M Engineering prepared and filed eight permit applications and plans with the ConCom for properties in the Town. In each instance, Murphy hired and assisted subcontractors to complete the permit applications and plans. The private developers and property owners paid M&M Engineering for the work. Murphy, in his capacity as the ConCom consultant, reviewed each of those permit applications and plans submitted by M&M Engineering for completeness and regulatory compliance, and made recommendations to the ConCom about whether to approve them. Murphy did not disclose to the Board of Selectmen or the ConCom, either orally or in writing, his relationship with M&M Engineering. The ConCom learned of Murphy's connection to M&M Engineering in August 2012 when it was discovered that a plan had been twice submitted to the Town Zoning Board of Appeals, once under Danena, Inc., and then with "M&M Engineering on it." During the period in which Murphy served as the ConCom consultant pursuant to the Town contracts with Danena, he was a "municipal employee" for purposes of the conflict of interest law. Murphy violated section 17(a) when he received compensation from someone other than the Town in relation to particular matters in which the Town was a party and had a direct and substantial interest. Murphy violated section 23(b)(3) when, as the Town's ConCom consultant, he knowingly or with reason to know, reviewed and acted on applications and plans submitted by M&M Engineering, on behalf of its private clients, while he was its operator. The Commission ordered that Murphy pay a \$5,000 civil penalty for violating section 17(a), and a \$5,000 civil penalty for violating section 23(b)(3).

In the Matter of Mark Stevenson

The Commission approved a Disposition Agreement in which Mark Stevenson, the former Chairman of the Town of Marshfield Conservation Commission, admitted to violating the conflict of interest law by

referring to his ConCom position and stating that there would not be any complications with a marine construction project while discussing his contracting company's prospective bid on a construction project with project officials, and by participating as a ConCom member in an enforcement order issued for the project after his company did not receive the contract, without disclosing his company's unsuccessful bid for work on the project. Stevenson paid a \$2,500 civil penalty for violating two sections of the law. Roht Marine, a marina located in the Town, was undergoing significant renovation and construction. On January 28, 2013, Stevenson, a marine engineer and owner of Offshore Marine, a marine contracting company, met with the owner of Roht Marine and with the building designer and general contractor of the Project to discuss Offshore Marine's bid to install new pilings in connection with the Project. During the first few minutes of their conversation, Stevenson talked at length about the ConCom, causing both the owner and the building designer to initially believe that Stevenson was at the marina as a representative of the ConCom on an official visit. As the conversation continued, they learned that Stevenson was at the marina to look at the site in order to submit an estimate for the pilings work. Stevenson continued to talk about his work on the ConCom and stated that although the Project work was sensitive, there would not be any complications because he was the chairman of the ConCom and had been in business for a long time. The owner of Roht Marine and the Project general contractor were concerned that Stevenson would use his ConCom position to adversely impact the Project if Offshore Marine was not selected to perform the pilings work. Stevenson did submit an estimate for his company to do the pilings work, but the owner of Roht Marine selected a different company to do the work. On March 19, 2013, the ConCom issued an Order of Conditions for the project that outlined the requirements for the septic system, lockers and restrooms. Stevenson did not participate in this matter. By summer 2013, construction had begun on the foundation for a structure that was part of the Project. On July 18, 2013, Stevenson determined that the ConCom had not granted approval for the structure, and that an Enforcement Order should issue requiring Roht Marine to cease construction immediately. Stevenson contacted the ConCom Agent to discuss the matter. He then drafted an Enforcement Order, had Town Counsel review it, arranged for the police department to serve it on Roht Marine, and contacted the Town Building Commissioner to report that unauthorized work was being performed at Roht Marine, and that an Enforcement Order had issued. At the July 30, 2013

ConCom meeting during which the Enforcement Order was discussed, Stevenson recused himself from participating in the discussion. The ConCom voted to require Roht Marine to obtain a new Notice of Intent for the project. Stevenson resigned from the ConCom on August 20, 2013. On October 22, 2013, the ConCom approved changes that had been made to the Project and closed the Enforcement Order. Stevenson violated section 23(b)(2)(ii) by referring to his ConCom membership and stating that there would not be any complications with the Project because he was the ConCom chairman, while he was discussing his company's bid for private work. Stevenson violated section 23(b)(3) by taking various actions relating to the Enforcement Order against Roht Marine after his company had unsuccessfully sought the pilings work on the Project, thereby creating the appearance of a conflict of interest. Because Stevenson failed to file a written disclosure with his appointing authority of his company's unsuccessful bid prior to his actions in connection with the July 18, 2013 Enforcement Order, he did not dispel this appearance of a conflict.

In the Matter of James Wettlaufer, Michael Kennedy, Christian Peterson, Lynn Arnold and Brian Johnson

On March 19, 2015, the Commission voted to find reasonable cause to believe that Town of Holland Board of Selectmen members James Wettlaufer, Michael Kennedy, Christian Petersen and Lynn Arnold violated the conflict of interest law by authorizing the use of Town funds to pay for Town Highway Surveyor Brian Johnson's private civil lawsuit against a local blogger. The Commission also voted to find reasonable cause to believe that Johnson violated the conflict of interest law by receiving payment of the legal fees in his private civil lawsuit. Rather than authorizing adjudicatory proceedings, the Commission chose to resolve the matter by issuing a Public Education Letter because the Town has been reimbursed in full and there is a question as to whether the BOS members relied on advice of counsel. On February 19, 2011, Johnson participated in a local ice-fishing derby on a Town lake. Local blogger Peter Frei's home is located on the lake. Frei regularly publishes articles on his blog that are critical of Town officials generally, and of Johnson and his family in particular. An altercation between Frei and Johnson ensued at the ice-fishing derby, which Frei secretly audio-recorded. Johnson subsequently asked Wettlaufer, then Chairman of the BOS, what the Town could do to prevent Frei from "harassing" him. Johnson believed he had a viable claim against Frei for secretly recording him. Wettlaufer said that he would bring the matter to the

other BOS members. Shortly thereafter, Wettlaufer told Johnson that the Town would pay Johnson's legal fees to pursue his civil action against Frei, concluding that Frei would not have harassed Johnson but for his status as a public official, and that such an action could discourage Frei from continuing litigation against the Town and its officials. On June 9, 2011, Johnson filed a civil complaint against Frei for illegal wiretapping based on Frei's recording of the confrontation during the ice-fishing incident. Frei filed a number of counterclaims against Johnson. At different times during 2011 through 2013, Wettlaufer, Kennedy, Petersen and Arnold authorized payment of Town funds in the total amount of \$23,023 to Special Town Counsel Tani Sapirstein for her representation of Johnson in his private lawsuit against Frei. Wettlaufer, Kennedy, Petersen and Arnold violated section 23(b)(2)(ii) by authorizing the use of Town funds to pay for Johnson's private civil lawsuit against Frei. Johnson violated section 23(b)(2)(i) by receiving payment of the legal fees in his private civil lawsuit for or because of his official position. Selectmen Wettlaufer, Kennedy, Petersen and Arnold voluntarily reimbursed the Town \$23,023 from their personal funds.

In the Matter of Thomas Snell

The Commission approved a Disposition Agreement in which Thomas Snell, a member of the West Bridgewater Zoning Board of Appeals, admitted to violating the conflict of interest law by participating as a ZBA member in granting variances for two properties while knowing that he had a financial interest in those matters. Snell paid a \$6,500 civil penalty for violating the conflict of interest law. Snell owns and operates Tom Snell Construction and Excavating, a sole proprietorship that performs excavation and demolition work for property owners and developers. On May 17, 2010, Snell provided the owner of a property located on Forest Street in West Bridgewater cost estimates totaling \$11,500 to demolish an existing structure and for site work to prepare the site for construction of a log home. The Forest Street property owner and Snell have known each other for over 20 years and are friendly. On March 31, 2011, the West Bridgewater Building Inspector determined that the property required a variance from the ZBA because the proposed log home would be larger than the existing nonconforming structure on the lot. Sometime between March 31, 2011 and May 3, 2011, the property owner filed an application with the ZBA for a variance. On May 3, 2011, the ZBA held a hearing on the application. Snell voted as a ZBA member to grant the variance and signed the ZBA decision granting the variance. At the time Snell voted as a

ZBA member to grant the variance, he knew it was likely that he would perform the demolition and site work if the ZBA granted the variance. Snell subsequently performed the demolition and site work, and received payment from the property owner. In 2012, a local developer wanted to raze an existing structure and build a single-family home on a lot located on Maolis Avenue in West Bridgewater. In fall 2012, Snell gave the local developer verbal "ballpark" estimates to demolish the existing structure and for the excavation work required to prepare the site for construction of the single-family home. The developer and Snell had a 12-year working relationship where Snell regularly performed site work for the developer. In October 2012, the developer filed an application with the ZBA for variances to raze the existing structure and to construct the single family home. On December 11, 2012, the ZBA held a hearing on the application. Snell made the motion to grant the variances, voted to grant the variances, and signed the ZBA decision granting the variances. At the time he voted to grant the variances, Snell knew it was likely that he would perform the demolition and site work if the ZBA granted the variance. Snell performed the demolition and site work, and received payment from the developer. Snell knew that if the ZBA granted the variances, he would likely perform the demolition and site work on the Forest Street and Maolis Avenue lots and receive payment for that work. Accordingly, by participating as a ZBA member in the decisions to grant the Forest Street and Maolis Avenue variances, Snell twice violated § 19.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 15-0002

IN THE MATTER OF
HENRY RICHENBURG

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission ") and Henry Richenburg ("Richenburg") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented -to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 16, 2014, 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 November 20, 2014, the Commission concluded its inquiry and voted to find reasonable cause to believe that Richenburg violated G.L. c. 268A, §§ 19 and 23(b)(3).

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

Findings of Fact

1. Richenburg is a member of the Salisbury Board of Selectmen ("BOS"). As such, Richenburg is a "municipal employee" as that term is defined in G.L. c. 268A, § 1.

2. On March 14, 2013, Richenburg's son-in-law filed an application with the town for a general license to operate a business to raise and sell poultry and eggs (the "poultry business") on property adjacent to Richenburg's property. Richenburg's son-in-law and daughter owned that property. Although not stated in the application, Richenburg's son-in-law's intention was to operate the poultry business in part on property owned by Richenburg. Richenburg understood that to be the case.

3. On the application, Richenburg's son-in-law identified himself as the sole proprietor; however, Richenburg's daughter was directly involved in the daily operation of the poultry business. Richenburg

was aware of his daughter's involvement in the poultry business.

4. On March 25, 2013, Richenburg's son-in-law's license application came before the BOS. Richenburg advised the BOS that the Board of Health ("BOH") must approve the license prior to the BOS acting on the application. The BOS, including Richenburg, then unanimously voted to table consideration of the application until BOH approval was obtained.

5. On May 7, 2013, Richenburg's son-in-law obtained BOH approval for the poultry business.

6. On June 10, 2013, the BOS, including Richenburg, voted unanimously to approve Richenburg's son-in-law's license. Richenburg and the other BOS members signed the license.

7. Richenburg's daughter and son-in-law thereafter operated the poultry business on both Richenburg's and their property.

8. In January 2014, the BOS renewed Richenburg's son-in-law's license for the poultry business; Richenburg was aware of the conflict of interest issues and did not participate in that matter.

9. In April, 2014, the BOS granted Richenburg's son-in-law an amended license for the poultry business, changing the business address to Richenburg's property; Richenburg did not participate in that matter.

Conclusions of Law

Section 19

10. Except as otherwise permitted,¹ § 19 of G.L. c. 268A prohibits a municipal employee from participating² as such an employee in a particular matter³ in which, to his knowledge, he or an immediate family member⁴ has a financial interest.

11. Richenburg's son-in-law's license application for the poultry business was a particular matter.

12. Richenburg participated in this particular matter as a BOS member on two occasions by: (1) on March 25, 2013, voting to table consideration of the application until BOH approval was obtained; and (2) on June 10, 2013, voting to approve and then signing the license for the poultry business.

13. Richenburg had a financial interest in the application as the poultry business was to operate: (1) on property abutting his property, see *Advisory 05-02: Voting on Matters Affecting Abutting or Nearby Property*; and (2) in part on Richenburg's property.

14. Richenburg's daughter is a member of Richenburg's immediate family.

15. Richenburg's daughter had a financial interest in the application for the poultry business license as she was directly involved in the poultry business and owned property on which the poultry business was to operate.

16. At the times he participated as described above, Richenburg knew that both he and his daughter had a financial interest in the particular matter.

17. Therefore, Richenburg violated § 19 each time he participated as a BOS member on the application for a license for the poultry business in which both he and his daughter had a financial interest.

Section 23(b)(3)

18. 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 employee has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion. Such disclosure must be made before taking any official action.

19. Richenburg's conduct violated § 23(b)(3) in two respects. First, as a BOS member, on March 25, 2013, Richenburg voted to table consideration of his son-in-law's poultry business license application until BOH approval was obtained. Second, on June 10, 2013, Richenburg voted to approve and then signed the license for the poultry business, despite his son-in-law's interest in the business. In so doing, Richenburg created the appearance of a conflict of interest, and behaved in a manner that would cause a reasonable person to conclude that his son-in-law could unduly enjoy Richenburg's favor in the performance of his official duties.

20. Richenburg did not file a disclosure to dispel this appearance of a conflict of interest. Therefore, in so acting, Richenburg violated G.L. c. 268A, § 23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Richenburg, 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 to which Richenburg has agreed:

- (1) that Richenburg pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of Two Thousand Five Hundred Dollars (\$2,500) as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(3); and
- (2) that Richenburg 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 3, 2015

¹ None of the exemptions in § 19 applies.

² "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(g).

³ "Particular matter" is defined, in part, as "any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision [or] determination" G.L. c. 268A, § 1(k).

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

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
JOHN ROSE**

PUBLIC EDUCATION LETTER

March 16, 2015

Mr. John Rose
c/o John M. Collins, Esq.
Collins & Weinberg
47 Memorial Drive
Shrewsbury, MA 01545

Re: Public Education Letter: Municipal
Employment; Hiring and Supervising Immediate
Family Members

Dear Mr. Rose:

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that you, in your capacity as the Oak Bluffs Ambulance Squad Chief, and subsequently as the Oak Bluffs Fire-Emergency Medical Services ("EMS") Department Chief, violated Section 19 of the conflict of interest law, G.L. c. 268A. Specifically, the preliminary inquiry focused on the claim that you had participated in the hiring and supervision of four members of your immediate family between 2009 and 2013. Based on the staff's investigation, the Commission voted on December 18, 2014 to find reasonable cause to believe that you violated G.L. c. 268A, § 19.

Rather than authorizing an adjudicatory proceeding against you, the Commission has determined that the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts. The Commission expects that by resolving this matter publicly through a Public Education Letter, you and other public employees in similar positions and circumstances will have a clearer understanding of, and ability to comply with, the conflict of interest law.

The Commission and you have agreed that there will be no formal proceeding against you in this matter, and you have chosen not to exercise your right to a hearing before the Commission.

Facts

In 2006, the Town of Oak Bluffs (the "town") made the Ambulance Department an independent department, and the Board of Selectmen appointed you Ambulance Chief. In April 2012, the town merged the Ambulance Department and Fire Department (renamed the "Fire-EMS Department"),

and the Board of Selectmen appointed you temporary Fire Chief. You became permanent Fire Chief in May 2013. In your town positions, first as Ambulance Chief and then as Fire Chief, you have been the appointing authority for all positions under your command. As Ambulance Chief, and then as Fire Chief, you supervised, respectively, all Ambulance Department and Fire-EMS Department employees, assigned work schedules, and signed payrolls.

Four members of your immediate family (a brother, two sisters and a daughter) were employees of the Ambulance Department and are employees of the Fire-EMS Department. As Ambulance Chief, and then as Fire Chief, you supervised each of your family members, including approving all work schedules and payroll sheets, from 2009- 2013.¹ In addition, as Ambulance Chief, you participated in the hiring process for part-time seasonal positions and appointed your sister to one such position in 2009-2010. You also participated as Ambulance Chief in the hiring process for, and appointed that same sister to, a permanent full-time position in December 2010. Also as Ambulance Chief, you appointed a second sister to a call Emergency Medical Technician ("EMT") position in July 2009; and you participated in the hiring process for, and appointed that sister to, a seasonal position in 2010-2012. Finally, as Fire Chief, you participated in the hiring process for, and appointed that sister to, a permanent full-time position in 2013. As Ambulance Chief, you appointed your daughter to a call EMT position in June 2011; in 2012-2013, as Fire Chief, you selected the interview committee which recommended the appointment of your daughter to a seasonal position in 2012-2013, and you appointed that daughter to that position.

In June 2011, for the first time, you submitted a written disclosure pursuant to G. L. c. 268A, § 19(b)(1) to the Board of Selectmen (your appointing authority) regarding your participation as Ambulance Chief in matters involving your family members, and requested a written determination from the Board allowing you to participate in the hiring and/or supervision of your family members. You disclosed your immediate family members' employment with the Ambulance Department, and that you, as Ambulance Chief, approved all work schedules and payroll sheets, including those of your family members. Your disclosure states:

As Ambulance Chief, I have direct supervision over employees of the department. Presently, we employ several of my family members on the

department. These employees were hired based on merit under the same guidelines as all other employees. When dealing with Administrative issues such as hiring, firing, disciplinary action and promotions etc. the decisions are made by the Officers of the Department which include myself and two Lieutenants.

The Chair of the Board of Selectmen signed your § 19(b)(1) determination request in July 2011, but did so without first bringing the matter to the full board for consideration and approval. In September 2013, after becoming aware that there were deficiencies in your July 2011 disclosure and determination, you filed a new § 19(b)(1) disclosure and determination request with the Board of Selectmen. You also provided the Board of Selectmen a memorandum that outlined the history of your family members' employment with the town and your involvement in their hiring and supervision. The Board of Selectmen reviewed the matter and provided you with a written determination on December 5, 2013, which allows you to participate as Fire Chief in the daily supervision and payroll matters of your family members but requires you to abstain from participating in any promotions or appointments of your immediate family members, unless specifically authorized to do so by the Board of Selectmen.

Legal Discussion

Municipal Employee

As both Ambulance Chief and Fire Chief, you were and continue to be a "municipal employee" as that term is defined in G.L. c. 268A, § 1 (g).

Section 19

Section 19, in relevant part, prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he, or a member of his immediate family,² has a financial interest. This section is intended to address the concern that the objectivity and integrity of municipal employees may be compromised if they act on matters affecting the financial interests of people or businesses with whom they are closely related or affiliated. A municipal employee may avoid violating § 19 if, before participating in the matter, the municipal employee advises his appointing authority in writing of the nature and circumstances of the particular matter, makes full disclosure of his or his family member's financial interest, and receives a written determination from his appointing authority that the interest is not so substantial as to be

deemed likely to affect the integrity of the services which the municipality may expect from the employee. The employee is prohibited from participating in the matter unless and until the employee receives such a determination from his appointing authority.

Decisions made in hiring and supervising Fire-EMS Department employees are particular matters. As Ambulance Chief and Fire Chief, you personally and substantially participated in these particular matters by choosing selection committees, making appointments, and/or approving work schedules and payroll sheets. These decisions involved your immediate family members (a brother, two sisters and a daughter). You were aware that your immediate family members had a financial interest in these matters because they directly involved their employment and compensation. Therefore, the Commission found reasonable cause to believe that you violated § 19. *See Commission Advisory 86-02, "Nepotism."*

As discussed above, as an appointed municipal employee, you were required by § 19(b)(1) to have made a written disclosure to the Board of Selectmen, your appointing authority, and to have abstained from participating unless you received a written determination which would have allowed your participation despite your immediate family members' financial interest. Prior to June 2011, you failed to do so before participating in these particular matters. In June 2011, you made a written disclosure to, and sought a written determination from, the Board of Selectmen pursuant to § 19(b)(1). The Board of Selectmen took no action, and did not provide you with a written determination allowing you to participate in the matters that were the subject of your disclosure. In December 2013, you properly secured a § 19(b)(1) determination from the Board of Selectmen and have complied accordingly.

Disposition

The law presumes that a conflict of interest is created whenever a public employee participates in a particular matter in which his immediate family member has a financial interest, unless the employee's appointing authority, after being informed of all of the relevant facts, determines in writing that the conflict of interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee and allows the public employee to participate in the matter. Your participation as Ambulance Chief and Fire Chief in the hiring and

supervision of your immediate family members as Ambulance Department and Fire-EMS Department employees created a conflict of interest between your public duties and your private family relationships. Absent a written determination by your appointing authority to the contrary, the law presumes that you cannot be fair and objective in making hiring and supervisory decisions regarding members of your immediate family, and, therefore, prohibits you from doing so.

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation.³ The Commission, however, is not unsympathetic to the fact that you attempted to comply with the law in 2011 by making a disclosure and seeking a determination from your appointing authority, and notes that you have fully complied with the law since 2013. Moreover, the Commission believes that your situation is not unique, and that other employees in similar situations would greatly benefit from the explanation of the law provided in this letter, and, therefore, has decided to resolve this matter by way of a Public Education Letter rather than through an adjudicatory process. In particular, we note that within certain areas of public service, such as fire and police departments, there is a strong family tradition in which many members of the same family pursue the same type of employment and frequently work together or for each other. In those circumstances, where conflict of interest issues are likely to arise, it is crucial that the employees and their appointing authorities understand and comply with the restrictions imposed by the conflict of interest law. Compliance with the law is an important means of ensuring that the hiring and other processes in such agencies are conducted fairly and objectively, and of promoting public confidence in the integrity of the services provided by such public agencies.

Very truly yours,

Karen L. Nober
Executive Director

¹ You hired and/or supervised your family members prior to 2009, but because of our six-year statute of limitations, we are not addressing any conflict of interest violations that may have occurred prior to 2009 .

² "Immediate family" is defined as the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1 (e).

³ A civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes).

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 15-0003**

**IN THE MATTER OF
GARY KELLAHER**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Gary Kellaher ("Kellaher") enter into this Disposition Agreement, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 20, 2014, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kellaher. On December 18, 2014, the Commission concluded its inquiry and found reasonable cause to believe that Kellaher violated G.L. c. 268A, § 23.

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

Findings of Fact

1. Kellaher, a resident of Fiskdale, Massachusetts, was at all relevant times the Town of Rutland Department of Public Works ("DPW") Superintendent. The Rutland Board of Selectmen ("BOS") is the appointing authority for the DPW and relies on Kellaher, as Superintendent, to make recommendations for appointments.
2. In late 2011, the DPW had an opening for one paid full-time seasonal position.
3. The Town of Rutland's standard hiring process was to post open positions.

4. Without following the standard hiring process, Kellaheer asked the BOS Chairman if Kellaheer could hire his son to the seasonal position.

5. At the time, Kellaheer's son was an on-call snowplow operator for the DPW.

6. The BOS Chairman directed Kellaheer to post the seasonal position.

7. Kellaheer did not post the seasonal position and consequently his son was the only applicant for the position.

8. The BOS Chairman gave Kellaheer permission to hire his son to the seasonal position. However, the BOS Chairman did so without first bringing the matter to the full BOS for consideration and approval, believing that Kellaheer had posted the position as directed.

9. Kellaheer's son began work in the seasonal position on December 5, 2011, and continued to work in this position until July 1, 2013.

10. As a seasonal employee, Kellaheer's son earned \$14 per hour, without benefits, and worked 40 hours per week.

11. Being in the seasonal position gave Kellaheer's son an advantage over other potential job applicants to obtain a full-time permanent DPW laborer position in July 2013. When that position became available, Kellaheer posted the position and the full BOS approved the hiring of his son.

Conclusions of Law

12. 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.

13. As the DPW Superintendent, Kellaheer was a "municipal employee," as that term is defined in G.L. c. 268A, § 1(g).

14. The opportunity to secure the paid full-time seasonal position was a privilege.

15. The privilege was unwarranted because Kellaheer chose not to post the seasonal position, contrary to the Town's standard hiring process, and despite the

directive from the BOS Chairman to do so. As a result of Kellaheer's decision not to post the seasonal position, Kellaheer's son did not have to compete for the position, and gained an advantage in subsequently obtaining a full-time permanent DPW laborer position. The facts in this case are similar to *In re Christianson*, 2007 SEC 2117 (Disposition Agreement \$5,000 civil penalty), a matter involving Kellaheer's predecessor, who violated § 23(b)(2) by, among other actions, obtaining permission to hire his son into a full-time, permanent operator/laborer position in the DPW sewer department without first posting the position, and without informing the BOS that he had not posted the position.

16. The unwarranted privilege was of substantial value¹ because it allowed Kellaheer's son to obtain full-time seasonal employment at \$14 per hour for approximately a year and a half.

17. This unwarranted privilege was not properly available to similarly situated individuals because, due to Kellaheer's decision not to post the seasonal position, his son was the only applicant.

18. By hiring his son without posting the seasonal position, Kellaheer used his official DPW Superintendent position to secure this unwarranted privilege for his son.

19. Thus, by using his official position as the DPW Superintendent to hire his son without posting the position, Kellaheer knowingly, or with reason to know, used his official position to secure for his son an unwarranted privilege of substantial value not properly available to similarly situated individuals in violation of § 23(b)(2)(ii).

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

(1) that Gary Kellaheer pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of two thousand five hundred dollars (\$2,500) as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and

(2) that Gary Kellaheer 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: April 22, 2015

[The Ethics Commission issued a correction on April 23, 2015. The disposition agreement incorrectly stated that Kellaher had asked the Chairman of the Rutland Board of Selectmen for approval to hire his son in late 2011. In fact, Kellaher had asked for approval from Leroy C. Clark, a member of the Board of Selectmen, not the Chairman, at the time.]

¹ Substantial value” is \$50.00 or more. 930 CMR 5.05.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
MARYELLEN ASPEDN
RAYMOND FRIZADO
JAMES PEREIRA
RICHARD SILVIA**

PUBLIC EDUCATION LETTER

April 27, 2015

Ms. Maryellen Aspden
c/o Matthew M. Aspden, Esq.
1026 County Street
Somerset, MA 02726

Mr. Raymond Frizado
c/o Joseph P. Fingliss, Jr.
469 Locust Street- PO Box 1141
Fall River, MA 02722-1141

Mr. James Pereira
[Home Address]
Somerset, MA 02726

Mr. Richard Silvia
c/o Arthur D. Frank, Esq.
209 Bedford Street, Suite 402
Fall River, MA 02720

Re: Public Education Letter: Municipal
Employment; Summer Jobs; Voting on Immediate
Family

Dear Mrs. Aspden and Messrs. Frizado, Pereira and Silvia:

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that each of you, in your capacity as a Somerset Recreation Commissioner, violated the conflict of interest law, G.L. c. 268A. The preliminary inquiry focused on allegations that in 2012 and/or 2013, you voted to approve summer jobs hiring lists that included your family members and/or individuals with whom you had undisclosed private relationships.

On February 19, 2015, the Commission voted to find reasonable cause to believe that you violated G.L. c. 268A. Rather than authorizing adjudicatory proceedings against you, however, the Commission has determined that the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts. The Commission expects that by resolving this matter publicly through a Public Education Letter, you and other public employees in similar positions and circumstances will have a clearer understanding of, and ability to comply with, the conflict of interest law.

The Commission and you have agreed that there will be no formal proceedings against you in this matter, and you have chosen not to exercise your rights to a hearing before the Commission.

Commissioners Aspden and Pereira

The Somerset Recreation Department is overseen by a Director. The five-member Recreation Commission is the Director’s appointing authority. Recreation Commissioners are elected positions.

The summer jobs offered by the Town are paid positions. The jobs include, but are not limited to, lifeguards, maintenance workers, waterfront ticket collectors, all-day summer camp counselors, hip-hop dance and cheerleading teachers. Summer workers earn between \$8-\$14/hour for 10-12 weeks. The required minimum age for summer workers is 15 years old.

The Director’s duties include reviewing summer job applications, interviewing applicants and generating a list of recommended summer hires for the Recreation Commission’s approval. Occasionally, Recreation Commissioners suggest that the Director consider certain individuals for hire or “picks” before the Director generates her list of recommended summer hires.

In 2012, Commissioner Aspden told the Director that her stepson would be home for the summer and it would be “nice” if he could get a summer job. Because Commissioner Aspden’s stepson had previously worked for the Recreation Department, and because the Director thought he was “pretty good,” the Director placed him on the 2012 and 2013 summer lists, which she was recommending for approval by the Recreation Commission.

In 2012, Commissioner Pereira suggested to the Director that his stepdaughter would be a “great fit” for a job in the summer camp and that it would be “great” if the Director could get his stepdaughter into that program. The Director interviewed Pereira’s stepdaughter and placed her on the 2012 and 2013 summer lists.

In April 2012 and April 2013, the Recreation Commission, including Commissioners Aspden and Pereira, voted unanimously to hire everyone on the 2012 and 2013 summer lists, including Commissioner Aspden’s stepson and Commissioner Pereira’s stepdaughter.

Legal Discussion

Municipal Employee

As Recreation Commissioners, Aspden and Pereira were and continue to be “municipal employees,” as that term is defined in G.L. c. 268A, § 1(g).

Section 19

Section 19 prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he, or a member of his immediate family, has a financial interest. “Immediate family” is defined as the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e). Section 19 addresses the concern that the objectivity and integrity of municipal employees will be compromised if they act on matters affecting the financial interests of people with whom they are closely related or affiliated. While appointed officials may obtain an exemption under § 19(b)(1),¹ this option is not available to elected officials, such as the members of the Recreation Commission. Therefore, elected officials must completely abstain from participating in particular matters in which their immediate family members have financial interests.

Commissioners Aspden’s and Pereira’s stepchildren are “immediate family” under the conflict of interest

law. The decision to hire summer workers was a particular matter. Commissioners Aspden and Pereira participated in that particular matter in 2012 and 2013 by voting to approve the summer lists that included their stepchildren.² Their stepchildren had financial interests in the summer jobs because the jobs were paid positions. Commissioners Aspden and Pereira knew that their stepchildren had financial interests in the summer jobs because the positions involved employment and compensation. Therefore, the Commission found reasonable cause to believe that in 2012 and 2013, Commissioners Aspden and Pereira violated § 19. *See Commission Advisory 86-02, “Nepotism.”*

Commissioners Frizado and Silvia

In March 2013, Commissioner Frizado identified his grandchildren, A and B,³ as his summer jobs picks by writing his name at the top of their summer jobs applications. Commissioner Frizado’s grandchild A is also Commissioner Silvia’s godchild. The Director placed grandchild A on the 2013 summer list but rejected grandchild B.

The Recreation Commission held a regularly scheduled meeting on April 23, 2013. When the topic of the summer hires came up, Commissioner Frizado said he wanted grandchild B to obtain a summer job. The Director responded that she would hire grandchild B. Commissioner Frizado went on to state,

Let’s be honest, we’re all here elected officials, you got friends or relatives whatever. That’s what we’re supposed to do, you know what I mean? That’s what we’re supposed to do.

The Recreation Commission, including Commissioners Aspden, Frizado, Pereira and Silvia, voted 4-1 to approve the 2013 summer list, as amended with the addition of grandchild B, whom the Director had initially rejected. The list included Commissioner Frizado’s grandchild A (also Commissioner Silvia’s godchild), and, as stated in the previous section, Commissioners Aspden’s and Pereira’s stepchildren.

On May 2, 2013, after consulting with Town Counsel, the Recreation Commission took the following actions: (1) rescinded its April 23, 2013 vote to approve the 2013 summer list; and (2) voted on a revised list that did not include grandchild B. Commissioner Frizado abstained from voting on the recommendation to hire grandchild A. Commissioners Aspden and Pereira abstained from

voting on the recommendations to hire their stepchildren. Commissioner Silvia again voted on the recommendation to hire his godchild.

Legal Discussion

Section 23(b)(2)(ii)

Section 23(b)(2)(ii) prohibits a municipal employee from using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions, which are of substantial value and are not properly available to similarly situated individuals. As stated earlier, Recreation Commissioners are municipal employees. Being hired for a summer position was a privilege, which Commissioner Frizado attempted to secure for grandchild B. The privilege was unwarranted because it was obtained by way of coercion; Frizado pressured his subordinate, the Director, to hire his grandchild. Frizado used his Recreation Commission position in his attempt to secure this unwarranted privilege for grandchild B.

While the Recreation Commission ultimately did not hire grandchild B in the summer of 2013, had grandchild B been hired, grandchild B would have received a privilege of substantial value because summer workers earned approximately \$8-\$14 per hour for 10-12 weeks. Similarly situated individuals were other candidates for summer jobs. Such jobs would not be properly available to those individuals through coercion or pressure. Therefore, the Commission found reasonable cause to believe that Commissioner Frizado violated § 23(b)(2)(ii).

Section 23(b)(3)

Section 23(b)(3)⁴ prohibits a public employee from acting in a manner that would create the appearance of a conflict of interest. Grandchild A is Frizado's grandchild and Silvia's godchild. A reasonable person viewing all the facts would conclude that Commissioners Frizado and Silvia, by voting to approve the 2013 summer list, gave preferential treatment to grandchild A because of kinship.

Commissioners Silvia and Frizado could have avoided the appearance of a conflict of interest by each making an oral disclosure at the Recreation Commission meeting before taking any action as to godchild/grandchild A. Alternatively, Commissioners Silvia and Frizado could have each filed written disclosures with the town clerk, prior to taking any action as to godchild/grandchild A.

Disposition

A conflict of interest arises whenever a public employee acts on matters involving family members. A conflict of interest occurs when a public employee participates in a particular matter in which his or her immediate family has a financial interest. The law presumes that you cannot be fair and objective in making hiring decisions regarding members of your immediate family, and therefore, prohibits you from doing so. Likewise, the appearance of a conflict of interest arises when a public employee acts officially on matters that affect other family members or individuals with whom the public employee has private relationships. The public employee can avoid the appearance of a conflict of interest by making a public disclosure. The abuse of one's public position, such as when a public employee uses his or her official position to secure an unwarranted privilege of substantial value for a family member, is also a conflict of interest. Your participation as Somerset Recreation Commissioners in the hiring of family members for summer jobs created a conflict of interest, or the appearance of a conflict of interest, between your public duties and your private family relationships.

We want to make clear that the nepotism provisions of the conflict of interest law make no distinction between youth summer jobs and permanent full-time positions held by adults. Throughout Massachusetts, young people seek summer jobs in the communities where they live. The Commission therefore believes that the situations involving the locally elected Somerset Recreation Commission are not unique; other municipal employees in similar situations may benefit from the explanation of the law provided in this letter.

While the Commission has decided to resolve this matter by way of a Public Education Letter rather than through an adjudicatory process, the Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation.⁵

Very truly yours,

Karen L. Nober
Executive Director

¹ An appointed municipal employee may avoid violating § 19 if, before participating in the particular matter, the municipal employee advises his

appointing authority in writing of the nature and circumstances of the matter, makes full disclosure of his or his family member's financial interest, and receives a written determination from his appointing authority that the interest is not so substantial as to be deemed likely to affect the integrity of the services, which the municipality may expect from the employee.

² We further note that although their approaches to the Director were not aggressive, Commissioners Aspden and Pereira also participated in the decision to hire their stepchildren by recommending them for summer jobs.

³ We have used pseudonyms to protect the privacy of the family members involved.

⁴ 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, 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.

⁵ A civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes).

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 15-0004**

**IN THE MATTER OF
JOSEPH TULIMIERI**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Joseph Tulimieri ("Tulimieri") enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order

enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On January 18, 2013, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tulimieri. On June 28, 2013, the Commission concluded its inquiry and found reasonable cause to believe that Tulimieri violated G.L. c. 268A, § 19.

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

Findings of Fact

1. The Cambridge Redevelopment Authority ("CRA") is a redevelopment authority created in 1955 to administer urban renewal projects that involved, among other things, transforming the Kendall Square area and fostering economic development.

2. Tulimieri served as the CRA's full-time Executive Director from 1978 until January 1, 2011.

3. Chapter 121B of the Massachusetts General Laws and the CRA's bylaws state that the CRA will have a five-member board (the "Board"). Four of the members are appointed by the City Manager subject to confirmation by the Cambridge City Council; the fifth member is appointed by the Massachusetts Department of Housing and Community Development.

4. According to the bylaws, the CRA Executive Director, who also functions as the Board's Secretary, serves as an ex-officio, non-voting member of the Board.

5. Board members serve staggered five-year terms. Chapter 121B of the Massachusetts General Laws allows members whose terms have expired to serve as holdover members until replaced by a duly appointed successor.

6. The bylaws define a quorum as three members of the Board present and voting.

7. According to the bylaws, the compensation of the Executive Director is determined by the Board.

8. On February 10, 2010, Tulimieri, acting in his capacity as Executive Director, implemented his unilateral decision to award a three percent (3%) across the board salary increase retroactive to July 1, 2009 to staff, including himself. As a result,

Tulimieri's salary was increased from \$198,114 to \$204,057. Tulimieri did not seek or obtain Board approval for this pay increase at that time.

9. Also on February 10, 2010, Tulimieri, acting in his capacity as Executive Director, implemented his unilateral decision to convert his \$10,000 travel allowance to salary. As a result, Tulimieri's salary was increased from \$204,100 to \$214,100, retroactive to January 1, 2010. Tulimieri did not seek or obtain Board approval for this pay increase at that time.

10. Based on the materials provided to the Board for use at the CRA's March 17, 2010 meeting, it appears that the Board approved certain personnel actions, including voting to retroactively approve the salary increases referenced in paragraphs 8 and 9 above.

11. In November 2010, Tulimieri, acting in his capacity as Executive Director, implemented his decision to award a three percent (3%) across the board salary increase to all staff, including himself. As a result, Tulimieri's salary was increased from \$214,100 to \$220,479. Tulimieri claims that he did not seek or obtain Board approval for these pay increases at the time due to the absence of a quorum.

12. Tulimieri retired from the CRA on January 1, 2011, and received a payout for his accrued and unused vacation and compensatory time. The terms of Tulimieri's payout were detailed in Tulimieri's employment contract, which had been originally approved by the Board in 1999. Tulimieri's payout for his accrued vacation and compensatory time was based on his rate of pay as of December 2010, which he had unilaterally increased for himself to an annualized rate of \$220,480.

13. After his January 2011 retirement as the full-time CRA Executive Director, with some general awareness on the part of the Cambridge City Manager, Tulimieri unilaterally decided to continue as the Executive Director in a part-time capacity (12 hours per week) at an hourly rate of pay at \$113.07 (which corresponds to his rate of pay at retirement), which equaled an annualized part-time rate of pay of \$78,617. Tulimieri claims that he did not seek or obtain Board approval to continue to work part-time at this rate of pay due to the absence of a quorum.

14. On September 27, 2012, Tulimieri resigned from the CRA.

15. Tulimieri received \$21,245¹ in unauthorized compensation as a result of his actions, as described above.

Conclusions of Law

Section 19

16. Except as otherwise permitted by § 19 of G.L. c. 268A,² § 19 prohibits a municipal employee from participating³ as such an employee in a particular matter⁴ in which, to his knowledge, he has a financial interest.⁵

17. As Executive Director of the CRA, Tulimieri was a municipal employee.

18. The following were particular matters: (1) Tulimieri's decision in February 2010 to increase his annual salary from \$198,114 to \$204,057, retroactive to July 1, 2009; (2) his decision in February 2010 to increase his annual salary to \$214,057, effective January 1, 2010; (3) his decision in November 2010 to increase his annual salary to \$220,479; (4) his decision in or about December 2010 to base the amount of his payout for accrued and unused vacation and compensatory time on the higher rate of pay he previously approved for himself; and (5) his decision after retirement from the CRA to commence a part-time schedule as CRA Executive Director based on the higher rate of pay that he had previously approved for himself.

19. Tulimieri participated as Executive Director in each of these particular matters by making the above-described decisions related to his compensation.

20. Tulimieri had a financial interest in each of these particular matters because each one involved his compensation or an employment benefit.

21. When he participated as Executive Director in each of these particular matters, he knew he had a financial interest in each particular matter.

22. Accordingly, by participating as Executive Director in particular matters in which he knew that he had a financial interest, Tulimieri violated § 19 on five separate occasions.

Resolution

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

- (1) that Tulumieri pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of Thirty-Seven Thousand, Five Hundred Dollars (\$37,500) as a civil penalty for five (5) violations of G.L. c. 268A, § 19;
- (2) that Tulumieri make restitution to the CRA in the amount of Twenty-One Thousand, Two Hundred Forty-Five Dollars (\$21,245), which represents the amount of unauthorized compensation he received as a result of violating § 19, with such payment to be delivered to the Commission; and
- (3) that Tulumieri waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: June 23, 2015

¹ The amount of the unauthorized compensation is calculated as follows: The last hourly pay rate approved by the Board (in March 2010) was \$109.79. Tulumieri was paid \$5,874.36 more than the amount of his Board-approved pay for the period July 2009 through 2010, based on his self-approved increases in his rate of pay. In calculating his payout for accrued time, Tulumieri used a self-approved higher pay rate of \$113.07 per hour. As a result, Tulumieri's payout was inflated by \$11,445. The CRA also paid Tulumieri an additional \$3,925.80 for his part-time work from 2011 until his resignation in 2012.

² None of the exemptions apply.

³ "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).

⁴ "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).

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 can be affected in either a positive or negative way. *EC-COI-84-96*.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 15-0005**

**IN THE MATTER OF
JOYCE CAMPAGNONE**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Joyce Campagnone ("Campagnone") enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On September 18, 2014, 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 November 20, 2014, the Commission concluded its inquiry and voted to find reasonable cause to believe that Campagnone violated G.L. c. 268A, § 20.

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

Findings of Fact

1. Campagnone is a compensated full-time employee of the Greater Lawrence Sanitary District ("GLSD"), a regional municipal sanitary district, which includes several cities and towns, including the City of Methuen. For purposes of the conflict of interest law, the GLSD is a municipal agency of the City of Methuen (and of its other member municipalities). As an employee of the GLSD, Campagnone is a municipal employee of each of the

member municipalities, including the City of Methuen.

2. In 2010, Campagnone, while serving as a compensated full-time GLSD employee, was elected as a member of the Methuen City Council. As a City Councilor, Campagnone is a Methuen municipal employee. Methuen City Councilors are paid a monthly stipend of approximately \$400.

3. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party, of which financial interest the employee has knowledge or reason to know, except as specifically provided in the section.

4. One of the exemptions to § 20, referred to as the “city councilor’s exemption,” permits a municipal employee to also hold the elected office of city councilor, subject to several restrictions, including the following:

No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

5. By letter dated January 22, 2014, the Enforcement Division informed Campagnone that § 20 prohibited her from receiving compensation as a full-time employee of the GLSD and also receiving a \$400 monthly stipend for her service as a Methuen City Councilor. The letter informed Campagnone that, as a Methuen City Councilor, she is a municipal employee of the City of Methuen. The letter also informed Campagnone that, as an employee of a regional municipal sanitary district, she is considered to be a municipal employee of each of the member municipalities. The Enforcement Division informed Campagnone that in order to comply with § 20, she could avail herself of the city councilor’s exemption, which would allow her to hold both positions if she complied with the exemption’s restrictions, including forgoing her monthly stipend as a city councilor. Campagnone was instructed to provide documentation of her compliance with § 20 to the Enforcement Division within thirty days.

6. Campagnone did not provide such documentation to the Enforcement Division. Further, after being notified about her non-compliance with § 20, Campagnone, while receiving her GLSD

compensation, continued to receive the \$400 monthly stipend as a city councilor from February 2014 through November 2014, receiving a total amount of \$4,000 in stipends. Since December 2014, Campagnone has forgone the \$400 monthly stipend for her service as a city councilor.

Conclusions of Law

7. As a GLSD employee, Campagnone is a “municipal employee,” as defined by G.L. c. 268A, § 1, of each of the municipalities that are members of the sanitary district, including the City of Methuen. As a City Councilor, Campagnone is a municipal employee of the City of Methuen. For purposes of G.L. c. 268A, § 20, Campagnone’s GLSD position and her City Councilor position are positions or offices held in the City of Methuen.

8. Except as specifically permitted by § 20 of G.L. c. 268A, a municipal employee is prohibited from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party, of which financial interest the employee has knowledge or reason to know.

9. Campagnone’s employment with the GLSD is a contract with a municipal agency of the City of Methuen for purposes of the conflict of interest law. As a compensated GLSD employee, Campagnone had, to her knowledge, a financial interest in her employment with the GLSD.

10. When Campagnone became a City Councilor, her financial interest in her compensation as a GLSD employee raised an issue under § 20. To retain that financial interest without violating § 20, Campagnone needed to comply with the city councilor’s exemption. Under that exemption, she could receive compensation for either her GLSD position or her City Council position, but not both. Even after being notified by the Enforcement Division that she was not in compliance with § 20, Campagnone did not comply with the city councilor’s exemption, but instead continued to receive both her GLSD compensation and her City Councilor’s stipend through November 2014. Therefore, she violated § 20.

11. Campagnone claims that she was not aware that she could not be compensated for her service in both her GLSD position and her position as City Councilor until she was so notified by the Enforcement Division on January 22, 2014. Nevertheless, Campagnone continued to accept the

monthly stipend for her service as a City Councilor from February 2014 through November 2014, receiving payments totaling \$4,000.

Resolution

In view of the foregoing violations of G.L. c. 268A by Campagnone, 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 to which Campagnone has agreed:

- (1) that Campagnone pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of One Thousand Dollars (\$1,000) as a civil penalty for violating G.L. c. 268A, § 20;
- (2) that Campagnone make restitution to the City of Methuen in the amount of Four Thousand Dollars (\$4,000), which amount represents the total amount of the monthly city councilor stipends Campagnone continued to receive for 10 months (February 2014 to December 2014) after being notified by the Enforcement Division on January 22, 2014, of the § 20 violation, with such payment to be delivered to the Commission; and
- (3) that Campagnone waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: July 28, 2015

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
SETH PETERSON**

PUBLIC EDUCATION LETTER

July 29, 2015

Massachusetts State Police Trooper Seth Peterson
c/o Richard Rafferty, Esq. and Greg Benoit, Esq.
Eden & Rafferty
238 Shrewsbury Street

2564

Worcester, MA 01604

Re: Public Education Letter: Use of Public Position

Dear Trooper Peterson:

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that you, in your capacity as a Massachusetts State Police ("State Police") Trooper, violated Sections 23(b)(2)(ii) and 23(b)(3) of the conflict of interest law, G.L. c. 268A. A potential conflict of interest arises whenever a public employee acts on matters involving family members. The abuse of one's public position, such as when a public employee uses his official position to secure an unwarranted privilege of substantial value for a family member, is a conflict of interest. Moreover, public employees who use their official positions to retaliate against someone else for their own personal satisfaction also violate the conflict of interest law.

Specifically, the preliminary inquiry focused on the claims that you attempted to use your position as a State Trooper as follows: (1) to have your family member's tow bill reduced; (2) to take punitive actions against the tow company involved, including depriving the company of work to which it would have been entitled; and (3) by participating in the inspection of the tow company which ultimately resulted in the temporary removal of the company from the regional State Police tow lists. Based on the Enforcement Division staff investigation, the Commission voted on May 21, 2015 to find reasonable cause to believe that you violated G.L. c. 268A, §§ 23(b)(2)(ii) and 23(b)(3).

Rather than authorizing an adjudicatory proceeding against you, the Commission has determined that the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts. The Commission chose to resolve this matter through this Public Education Letter because the State Police took disciplinary action against you by imposing a forfeiture of 15 vacation days at a cost to you of approximately \$5,500.

The Commission and you have agreed that there will be no formal proceeding against you in this matter, and you have chosen not to exercise your right to a hearing before the Commission.

Facts

Attempt to Have Your Family Member's Tow Fee Reduced

At all times relevant, you were the Tow Officer for the State Police Yarmouth Barracks. As Tow Officer, you served as a liaison for both State Police troopers and the general public when dealing with tow companies.¹ As part of your duties, you worked with local tow companies on the State Police list and were generally responsible for ensuring that they were in compliance with the State Police tow service agreement.

On July 17, 2011, your cousin was involved in an accident on Route 6 in the jurisdiction of the State Police Bourne Barracks. A tow company on the State Police list ("Tow Company X") responded to a call from the State Police Bourne Barracks and used two tow trucks to tow your cousin's vehicle to the tow company's location. The tow charge to your family member was \$353.90.

Approximately three weeks after the July 17, 2011 towing of your cousin's vehicle, you travelled to Tow Company X in your State Police cruiser. You wore your State Police uniform. You informed Tow Company X's manager that you were responding to a complaint of overcharging with respect to a July 17, 2011 tow of a vehicle. You did not immediately reveal that you were referring to your family member's tow bill. The manager was aware that you were the Yarmouth Barracks Tow Officer, and asked why you, and not an officer from the Bourne Barracks, had responded to the complaint. You answered that you had done so because the Yarmouth Barracks is closer to Hyannis than the Bourne Barracks. This was not a true statement; you were there solely on behalf of your family member. The manager retrieved the tow slip for the incident and noticed that the last name of the customer was the same as yours. The manager asked you if you were related to the customer, and you acknowledged that the customer was your family member. You then told the manager that you did not agree that two tow vehicles were required at the scene, and stated that the manager had overcharged your family member. The manager offered to take an additional \$100 off your family member's bill and told you that she could come by to collect the money. Neither your family member nor anyone on her behalf ever collected the \$100 discount.

May 31, 2012 Passing Over of Tow Company X

The State Police tow list works in a rotation, and the Yarmouth Barracks had three tow companies on its list, including Tow Company X. State Police policy requires that the tow companies be contacted on a rotating basis in order to ensure that each company

has a fair and equal opportunity to obtain business. On May 31, 2012, in response to a call, you, as the Tow Officer, skipped over Tow Company X on the rotation, and directly contacted another tow company on the rotation. This deprived Tow Company X of business to which it was entitled under State Police Policy.

Participation in Inspections of Tow Company X

The tow service agreement between the local tow companies and the State Police states that the State Police Station Commander/Station Tow Officer shall annually inspect all tow trucks and storage facilities. Additional inspections may be conducted without notice during normal business hours. The State Police Towing General Order (TRF-09) states that State Police personnel shall conduct random inspections and may suspend, terminate and/or place on probation any tow company consistent with the Tow Service Agreement.

In March 2012, you submitted a report to your State Police superiors concerning inspections of four local tow companies on the State Police rotation list. You found several issues and/or violations at Tow Company X. In May 2012, a State Police Major informed all Yarmouth Barracks tow companies (which included Tow Company X) that audits/inspections would be conducted pursuant to the tow service agreement. In June 2012, you participated in these inspections with a State Police Lieutenant. You and the Lieutenant found several issues and/or violations at Tow Company X. In July 2012, the Lieutenant recommended to the Major that Tow Company X be removed indefinitely from all State Police lists, based on the infractions noted above. On August 9, 2012, the Major directed that Tow Company X be removed from the State Police lists. [Tow Company X has since been reinstated on to the State Police lists.]

The Lieutenant and the Major were unaware that you had complained to the tow company manager about a private matter involving your family member while you also participated in the inspections. You did not file any disclosures revealing your prior interaction with Tow Company X on behalf of your family member before participating in the inspections of Tow Company X.

State Police Internal Investigation and Disciplinary Action

The State Police conducted a comprehensive investigation and made factual findings that are

consistent with our independent review of the matter. The State Police concluded that you violated State Police policies and procedures, and took disciplinary action against you by imposing a forfeiture of 15 vacation days at a cost to you of approximately \$5,500.

Legal Discussion

Municipal Employee

As a State Police Trooper, you are a “state employee” as that term is defined in G.L. c. 268A, § 1(q).

Section 23(b)(2)(ii)

Section 23(b)(2)(ii) of G.L. c. 268A prohibits a state employee from, knowingly or with reason to know, using or attempting to use his official position to secure for anyone an unwarranted privilege of substantial value not properly available to similarly situated individuals. The Commission has concluded that there is reasonable cause to believe you violated this provision of the conflict of interest law in two respects: (1) by using your position as a State Police Trooper to intervene in a dispute involving a tow company under your jurisdiction on behalf of a family member to attempt to reduce a tow charge; and (2) by using your position to deprive the tow company of business by skipping over it on the State Police tow rotation list.

First, you used your position as a State Police Trooper to pressure Tow Company X to refund your family member for a tow fee that you believed was too high. You appeared in uniform at Tow Company X, and told the manager that you were responding to a complaint of overcharging with respect to the July 2011 towing of a vehicle. Because you sought a reduction of the cost of the tow services for a family member, and it is not clear that the tow charge was excessive, the discount was an unwarranted privilege. See *EC-COI-93-6* (police may not solicit in uniform or offer decals). The \$100 reduction in the tow fee that the manager offered, under pressure, was of substantial value. Similarly situated individuals, other drivers involved in motor vehicle accidents needing tow services, would not have a police officer available to renegotiate a tow fee on their behalf in such a manner. See *In re Basile*, 2014 SEC 2493 (Suffolk County Sheriff’s Office Captain paid \$1,000 civil penalty for violating § 23(b)(2)(ii) by meeting with his tenants to demand a rent increase, while in uniform, and while accompanied by a uniformed correctional officer, who was visibly armed with a gun, pepper spray, and baton). Therefore, based on

these facts, the Commission found reasonable cause to believe that you violated § 23(b)(2)(ii).

Second, on May 31, 2012, in response to a call for assistance seeking a tow, you ignored State Police policy and protocol and bypassed the tow company involved in your family member’s dispute, and directly contacted a different tow company for the tow. State Police policy required that you use the next qualified tow company on the tow list. On this occasion, Tow Company X would have been entitled to respond to this tow. By doing so, you improperly denied Tow Company X the business and tow fees to which it was entitled under the tow agreement with the State Police. See *In re Malone*, 2012 SEC 2410 (Commission found that public employees who use their official positions to retaliate against someone else for their own personal satisfaction violate § 23(b)(2)(ii)). Therefore, the Commission found reasonable cause to believe that you violated § 23(b)(2)(ii).

Section 23(b)(3)

The Commission also found reasonable cause to believe that you violated § 23(b)(3) by participating in inspections of the tow company without disclosing your prior dispute with the tow company involving your family member’s tow fees. Section 23(b)(3) of G.L. c. 268A prohibits a state employee from acting in a manner that creates the appearance that the state employee can be unduly influenced or would act with undue favor towards anyone in the performance of his official duties. This subsection’s purpose is to deal with appearances of conflict of interest and, in particular, appearances that public officials have given some people preferential treatment. This subsection further provides the appearance of impropriety can be avoided if the employee discloses publicly all of the relevant circumstances that would otherwise create the appearance of conflict.

By participating in the inspections of Tow Company X when you had intervened in a billing dispute with that company on behalf of your family member, you created the appearance that your family could influence you to not act impartially in your official responsibilities toward the tow company. That the tow company was found in violation of several provisions of the tow contract during your inspections could be viewed as retaliatory. The Commission found reasonable cause to believe that you violated § 23(b)(3) by acting in a manner that would cause a reasonable person knowing all of the facts to conclude that your family could improperly

influence or unduly enjoy your favor in the performance of your official duties.

Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation. In resolving this matter with a Public Education Letter, the Commission recognizes that the State Police took significant disciplinary action against you. The Commission has decided to defer to the administrative action taken by the State Police in this situation and not pursue this matter in an adjudicatory hearing. Although the matter has been appropriately addressed by your employer, the conduct in question nevertheless warrants a public resolution.

Very truly yours,

Karen L. Nober
Executive Director

¹ You have since been removed as Tow Officer.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 15-0006**

**IN THE MATTER OF
STEVEN TOMPKINS**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Steven Tompkins (“Tompkins”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 22, 2014, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tompkins. On June 18, 2015, the Commission concluded its inquiry and found reasonable cause to believe that Tompkins violated G.L. c. 268A, § 23(b)(2)(ii).

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

Findings of Fact

1. In January 2013, Governor Deval Patrick appointed Tompkins Interim Suffolk County Sheriff.
2. The Suffolk County Sheriff’s Department (“Sheriff’s Department”) is primarily responsible for the custody and control of sentenced inmates and pretrial detainees. The Sheriff’s Department oversees the Suffolk County Jail, the House of Correction, and the Suffolk County Community Corrections Center. Deputy Sheriffs serve process and the Sheriff’s Department officers occasionally work traffic details. The Sheriff’s Department does community outreach and creates partnerships with criminal justice agencies, community-based organizations, schools, community health agencies and faith communities.
3. Tompkins ran for and won election as Sheriff in 2014.
4. In 2013, more than one year before the election, Douglas Bennett (“Bennett”) announced that he was running against Tompkins for Sheriff. Bennett placed campaign signs at various street-level retail shops in Eggleston Square in Roxbury which read, “Vote for Sheriff Bennett.”
5. In August 2013, Tompkins went to approximately eight of the retail shops where Bennett had placed his signs, orally identified himself as Sheriff and showed his official identification to the proprietors. Tompkins asked the proprietor of each shop to take down Bennett’s campaign signs, and each proprietor complied with his request.

6. Tompkins claims that he asked the proprietors to take down the Bennett campaign signs because, according to Tompkins, they incorrectly implied that Bennett was the present Suffolk County Sheriff.

Conclusions of Law

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

8. As Interim Suffolk County Sheriff, Tompkins was a "state employee," as that term is defined in G.L. c. 268A, § 1(q).

9. By orally identifying himself as Sheriff, and showing the proprietors his official identification when he asked them to take down his opponent's campaign signs, Tompkins knowingly, or with reason to know, used his official position as Sheriff to secure the removal of those signs.

10. Having his opponent's campaign signs removed from the retail shops in Egleston Square upon his request was a privilege which personally benefitted Tompkins as a candidate for election as Sheriff. Because no public official running for election is entitled by law to have an opponent's campaign signs removed from local private businesses upon his or her request, this privilege was unwarranted and not properly available to similarly situated individuals.

11. The posting of a candidate's political campaign signs in places where they will be seen by the public, such as in retail shops as described above, is of "substantial value."¹ Likewise, the lack of an opponent's campaign signs is a substantially valuable benefit to a candidate. Accordingly, the removal of his opponent's campaign signs from the Egleston Square retail shops was for Tompkins an unwarranted privilege of substantial value that was not properly available to similarly situated individuals.

12. Thus, by using his position as Sheriff to cause the Egleston Square retail shop proprietors to take down his opponent's campaign signs, Tompkins knowingly, or with reason to know, used his official position to obtain an unwarranted privilege of substantial value for himself, which was not properly available to other similarly situated individuals, in violation of § 23(b)(2)(ii).

Resolution

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

- (1) that Tompkins pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of Two Thousand Five Hundred Dollars

(\$2,500) as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and

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

DATE: September 23, 2015

^{1/} Substantial value is \$50 or more. See *Ellis*, 1999 SEC 930 (city councilor violated §23(b)(2) by coercing constituent to take down opponent's campaign signs). As the Commission in *Ellis* observed:

A campaign sign advocating the election of a certain candidate posted in public view potentially increases the likelihood that that candidate will be elected. Similarly, the lack of such campaign signs backing the candidate's opponent is of benefit to that candidate. Consequently, in the Commission's view, such postings (or the prevention of such postings by an opponent) involve items of substantial intangible value within the meaning of §23(b)(2). As the Supreme Court said in *In City of Ladue v. Gilleo*, 114 S.Ct. 2038, 2045 (1994), as to residential signs in political campaigns:

[S]mall [political campaign] posters have maximum effect when they go up in the windows of homes, for this demonstrates that citizens of the district are supporting your candidate - an impact that money can't buy. [fn. 12, p. 2045 citing D. Simpson, *Winning Elections: A Handbook in Participatory Politics* 87 (rev. ed. 1981).]

Similarly, in this matter, the campaign signs placed on the walls of small local businesses for public view also demonstrated that the citizens of the district supported Tompkins' opponent for Sheriff.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 10-0011**

**IN THE MATTER OF
KATHRYN CHRISTOPHER**

Commissioners: Dortch-Okara, Ch., Trach, Quinlan,
Mills

Presiding Officer: Commissioner William J. Trach

ORDER

This adjudicatory proceeding commenced on July 7, 2010, with the filing of an Order to Show Cause (“OTSC”) against Respondent Kathryn Christopher, the former Home Care Coordinator for the Council on Aging (“COA”) in the Town of Belmont (“Town”). The OTSC alleged that Christopher repeatedly violated G.L. c. 268A, §§ 17(a),¹ 19,² 23(b)(1),³ 23(b)(2)⁴ and 23(b)(3)⁵ by (1) coordinating services for an elderly COA client (“Client”) and selecting herself to provide those services to the Client for private compensation; (2) accessing the Client’s funds and assets to pay for Christopher’s personal and family expenses; and (3) using those funds and assets for the benefit of Christopher and her family. Christopher filed an Answer on July 29, 2010, denying most of the factual assertions in the OTSC and denying all of the alleged violations.

On September 15, 2011, Superior Court indictments were handed down charging Christopher with four felony offenses related to the actions alleged in the OTSC. Based on the pendency of the criminal case, Christopher, Petitioner and/or both moved and received a number of stays of the adjudicatory hearing pending the outcome of the criminal case. As a result of the trial of the criminal case in March 2015, Christopher was convicted on one criminal charge, obtaining a signature by false pretense, under G.L. c. 266, § 31, and was sentenced to a term of probation for five years. As a condition of her probation, she is prohibited from working with the elderly or being employed by an elder services provider or acting as a care giver for any person over 65.

On August 3, 2015, pursuant to 930 CMR 1.01(6)(a),⁶ the parties filed a Joint Motion to Dismiss the Proceedings (“Joint Motion”). In their Joint Motion, the parties assert that dismissal of the adjudicatory proceeding is in the interests of justice and merited for the following reasons. The conduct for which Christopher was convicted and sentenced directly relates to the adjudicatory proceeding. In addition, because the judge imposed stringent conditions of probation that appropriately punish Christopher for her conduct, an additional civil

penalty imposed by the Commission would not be warranted.⁷ Since 2007, Christopher has incurred over \$100,000 in legal expenses relating to the probate of the estate and the related civil and criminal actions. As a result of her criminal conviction and conditions of probation, Christopher has been terminated from her employment providing care to the elderly and is presently unemployed. She relinquished her rights under the Client’s 2004 last will and testament which had named her as a beneficiary. Finally, in 2007, after the allegations regarding her relationship with the Client were first made, she was fired from her position with the Town’s COA.

WHEREFORE, the Commission **ALLOWS** the Joint Motion. Commission Adjudicatory Docket No. 10-00111, *In Re Kathryn Christopher*, is hereby dismissed.

DATE AUTHORIZED: September 16, 2015

DATE ISSUED: October 6, 2015

¹ Section 17(a) prohibits a municipal employee, otherwise than as provided by law for the proper discharge of official duties, from directly or indirectly receiving or requesting compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

² Section 19 prohibits a municipal employee from participating in a particular matter in which, to his knowledge, he or an immediate family member, has a financial interest.

³ Section 23(b)(1) prohibits a municipal employee from knowingly or with reason to know, accepting other employment involving compensation of substantial value (\$50 or more), the responsibilities of which are inherently incompatible with the responsibilities of his public office.

⁴ Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know, using or attempting to use his official position to secure for himself or others an unwarranted privilege or exemption of substantial value (\$50 or more) which is not properly available to similarly situated individuals.

⁵ Section 23(b)(3) prohibits a municipal employee from knowingly or with reason to know, acting in a

Nichols violated § 23(b)(2)(ii) by using his position as a selectman to secure an unwarranted privilege of substantial value -- \$12,150.50 -- for himself or others by misrepresenting the unavailability of Tighe and Bond and mischaracterizing his relationship to Berkshire Consulting to his fellow Selectman.

Finally, Nichols violated § 20 because, while serving on the Select Board, he knowingly had a financial interest in a contract made by the Select Board with Berkshire Consulting, a company he owned and operated.

Civil penalty

For violations of § 19, § 23(b)(2) or § 20, the Commission may assess a civil penalty of not more than \$10,000 for each violation. G.L. c. 268B, § 4(j)(3). Where the Commission finds pursuant to an adjudicatory proceeding that a Respondent has acted to his economic advantage, the Commission may order the violator to make restitution to an injured third party and also may require the violator to pay the Commission on behalf of the municipality damages in the amount of the economic advantage or \$500, whichever is greater. G.L. c. 268A, § 21(b). The statute explicitly states that this remedy shall be “in addition to” any civil penalty imposed under G.L. c. 268B, § 4(j)(3). G.L. c. 268A, § 21(c).

At the hearing on July 16, 2015, Petitioner proposed a penalty of \$22,500, representing \$7,500 per violation. The Commission was made aware that, as a result of criminal proceedings, Nichols already had reimbursed the Town of Blandford for the \$12,150.50 that he had deposited in Berkshire Consulting’s account. In determining a civil penalty, the Commission has considered Respondent’s Memorandum Addressing Disposition, which makes arguments in opposition to Petitioner’s proposed penalty of \$22,500.

Addressing the consequences for Nichols’ violations, the Commission takes into consideration that Nichols has reimbursed the Town for the full amount that it paid to Berkshire Consulting, and also that the Town got the benefit of the work that Nichols and Berkshire Consulting did on the bid specifications for the Project. The statute governing Commission adjudicatory proceedings explicitly enables the Commission to assess civil penalties in instances where reimbursement also has been required, however, and such an outcome is called for in this case in light of the misrepresentations that Nichols

made to his fellow Selectman and the Town about the unavailability of a rival engineering consultant to work on the Project and about his own relationship to Berkshire Consulting. Nichols not only knowingly committed the Town to a contract with his own company instead of the Town’s usual consultant, but he also affirmatively misrepresented that he no longer had an affiliation with his own company. Civil penalties are appropriate because Nichols accomplished his objective of directing Town money to himself by means of active deception as well as concealment of facts of vital importance.

CONCLUSION

Accordingly, Summary Decision is entered in favor of the Petitioner, and the Commission assesses the following civil penalties to be paid by the Respondent: \$5,000 for his violation of G.L. c. 268A, § 19, \$5,000 for his violation of § 23(b)(2)(ii), and \$2,500 for his violation of § 20.

DATE AUTHORIZED: September 16, 2015

DATE ISSUED: October 14, 2015

¹ Commissioner Martin F. Murphy did not participate with regard to this Order.

² Nichols has not filed an Answer to the Order to Show Cause although, through a series of orders, the opportunity to do so was extended several times. An Answer was due on February 24, 2015. A series of orders extended this date first to April 10, 2015, then to May 19, 2015. The Commission voted to enter Summary Decision in favor of the Petitioner on May 21, 2015, and an Order dated June 3, 2015 scheduled the hearing on the civil penalty for June 18, 2015. Nichols did not file any formal motions for continuances, but sent informal requests by e-mail requesting continuances on the grounds that he sought to retain counsel who would not be available until August, 2015. In an Order dated June 18, 2015, the Commission continued the hearing on the civil penalty from June 18, 2015 to July 16, 2015 and ruled that if Nichols filed an Answer by July 1, 2015 and a formal written motion to vacate the entry of Summary Decision by no later than July 8, 2015, the Commission would entertain the motion to vacate at the hearing on July 16, 2015. The Order held that no further postponements of the hearing would be granted on the basis that Nichols did not have counsel or that his counsel was unavailable to attend the hearing. On July 15, 2015, Nichols again requested a continuance on the grounds that counsel would not be

available until August and that he was in Washington, D.C. Consistent with its prior order, the Commission denied Nichols' request for the continuance on July 16, 2015. Through July 16, except for appearing at one pre-hearing conference by telephone, Nichols has shown little respect for this Commission's adjudicatory process and repeatedly has failed to file necessary pleadings and to appear for hearings of which he had ample notice.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION
ADJUDICATORY
DOCKET NO. 14-0007**

**IN THE MATTER OF
ROBERT MURPHY**

DECISION AND ORDER

Appearances: Candies Pruitt-Doncaster
Counsel for Petitioner

Robert Murphy, *Pro Se*

Commissioners: Murphy, Trach and Quinlan^{1/}

Presiding Officer: Commissioner Martin F. Murphy

I. Introduction & Allegations

This matter concerns allegations that between 2010 and 2012, Robert Murphy, a consultant to the Town of Canton ("Town") Conservation Commission, repeatedly violated two sections of G.L. c. 268A: § 17(a),^{2/} when, as the President and owner of M&M Engineering, Inc., ("M&M Engineering"), he received private compensation for his work in preparing eight permit applications, assisting M&M Engineering contractors in drafting plans and hiring contractors to present proposals for those private projects to the Conservation Commission, which were particular matters in which the Town had a direct and substantial interest and which compensation was not received by Murphy as provided by law for the proper discharge of his official Conservation Commission consultant duties; and § 23(b)(3)^{3/} when, as the Conservation Commission consultant, and while serving as the President and owner of M&M Engineering, he reviewed plans and applications prepared by M&M

Engineering, thereby 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 M&M Engineering could unduly enjoy his favor in the performance of his official duties, without filing a written disclosure with his appointing authority to dispel this appearance of impropriety.

II. Procedural Background

This matter commenced on July 17, 2014, with Petitioner's issuance of an Order to Show Cause alleging that Murphy repeatedly violated G.L. c. 268A, §§ 17(a) and 23(b)(3) between 2010 and 2012. Murphy responded to the Order to Show Cause on August 7, 2014, denying the alleged violations. On May 13, 2015, the adjudicatory hearing in this matter was held before Commissioner Murphy. Forty-seven agreed-upon documents were admitted as exhibits, including stipulations of fact and law. Petitioner called Debra Sundin as its only witness. Murphy called no witnesses.^{4/} Both parties made closing arguments before Commissioner Murphy at the conclusion of the adjudicatory hearing and subsequently filed briefs.

In rendering this Decision and Order, each undersigned member of the Commission either was present at the hearing or has read the hearing transcript, and all have considered the testimony of the witness at the adjudicatory hearing, the evidence in the record and the arguments of the parties.

III. The Stipulated and Otherwise Undisputed Facts^{5/}

Town Contracts with Danena, Inc.

The Town's Conservation Commission administers the state Wetlands Protection Act and the local by-law as well as the Town's storm water by-law. From July 1, 2008 through June 30, 2011, and from July 1, 2011 through June 30, 2014, Danena, Inc. ("Danena") was under two successive three-year contracts with the Town, acting by and through its Board of Selectmen and/or its Town Administrator, to provide consulting services to the Conservation Commission ("Town Contracts"). Exhibits 2 & 3. Danena's Massachusetts office address was listed as P.O. Box 387, North Easton, MA 02356, in the Town Contracts.

From 2010 through 2012, Murphy was Danena's President and its sole officer and employee. Murphy is a 49% owner of Danena. Its majority owner, the

Murphy Family Nominee Trustee, of which Murphy is Trustee, owns 51% of the company. Murphy signed both Town Contracts on behalf of Danena.

The Town Contracts, each of which identified Murphy as the primary provider of services thereunder, described the consultant's duties as follows:

Investigates, monitors and makes recommendations to the Conservation Commission on matters involving wetland protection within the Town in accordance with the Massachusetts General Laws Chapter 140, Sec. 8C and the Town's Wetland By-laws and regulations. Provides support, preparation/participation at scheduled Conservation Commission Meetings. Telephone consultation and site evaluation are also required on a regular basis.

Murphy's duties, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, also included: (1) reviewing all permit applications and plans filed with the Conservation Commission for completeness; (2) reviewing all such permit applications and plans for compliance with the Wetlands Protection Act and/or the Town's by-laws/regulations ("regulatory compliance"); and (3) making recommendations to the Conservation Commission.

Murphy served as the Town's conservation consultant (also referred to as the "Conservation Agent"⁶⁾) for 22 years, until the fall of 2012. During the relevant time period, this service was provided under the Town Contracts. As the Conservation Agent or consultant, Murphy would take the applications for wetlands permits as well as local by-law permits, review them for accuracy and for compliance with state and local by-laws, and then provide a recommendation to the Conservation Commission as to what to do with them, for example, whether to issue the permit, deny the permit or request more information. The Conservation Commission needed a Conservation Agent or consultant to serve as its technical expert in matters relating to wetlands and storm water management because none of its members had that expertise.

Article 2.3 of the Town Contracts further provided that:

Robert Murphy is a principal in Danena Inc.[,] a company that does civil engineering and MGL, Chapter 268A, Section 17 will prevent Mr.

Murphy from acting as an agent for any party other than the Town in which the Town has a direct and substantial interest. Therefore Mr. Murphy will not personally act as an agent for a third party.

Murphy's duties as Conservation Agent and/or consultant did not require him to receive compensation from anyone other than the Town to prepare permit applications for filing with the Conservation Commission.

M&M Engineering

From 2010 through 2011, Murphy operated M&M Engineering, a company that provided engineering and survey services to property owners and developers. In 2011, M&M Engineering was incorporated under the laws of the State of Delaware. Exhibits in the record, including documents submitted to the Conservation Commission,⁷ give M&M Engineering's address as P.O. Box 194, South Easton, MA 02375.

When Murphy accepted payment for services provided by M&M Engineering, he deposited the money into M&M Engineering's bank account. Murphy was the sole signatory on that account. M&M Engineering's bank records (Exhibit 43) list its address as P.O. Box 387, North Easton, MA 02356, on the bank statements as well as its checks, which is also Danena's Massachusetts office address for purposes of the Town Contracts.

From 2010 through 2012, M&M Engineering prepared Notices of Intent ("permit applications") and plans for approval by the Conservation Commission. Each of those permit applications and plans prepared by M&M Engineering and filed with the Conservation Commission for approval was a particular matter. The Town was a party to and had a direct and substantial interest in those particular matters because the Conservation Commission was its permit-granting authority. Murphy received compensation for the work he performed on behalf of M&M Engineering in relation to the permit applications and plans filed with the Conservation Commission for approval.

Murphy did not inform or tell the Board of Selectmen, the Conservation Commission or its Chair, Debra Sundin, either orally or in writing, about his relationship with M&M Engineering. In August 2012, the Conservation Commission learned of his connection to M&M Engineering when one of its members and the alternate to the Town's Zoning

Board of Appeals (“ZBA”), discovered that a plan which was twice submitted to the ZBA, was first submitted under Danena and then submitted with “M&M Engineering on it.”

From 2010 through 2012, M&M Engineering prepared and filed permit applications and plans with the Conservation Commission for its approval for the following properties: (1) 194 Neponset Street; (2) Lot 1 Old Sheppard Street; (3) 41 Plymouth Street; (4) 756 Turnpike Street; (5) 169 Mechanic Street; and (6) 43 Bolivar Street Lots 2, 3 and 4. The private developers and property owners involved in these projects paid M&M Engineering for its work.

194 Neponset Street

In March 2010, Murphy, as operator of M&M Engineering, gave a developer an estimate of \$2,600 to prepare, file and present a permit application and plans for approval by the Conservation Commission for property located at 194 Neponset Street, where the developer proposed to raze an existing structure and build a new single-family dwelling. Murphy, as operator of M&M Engineering, hired a subcontractor to draft plans for filing with the Conservation Commission and assisted the M&M Engineering subcontractor by adding the single-family dwelling detail to the 194 Neponset Street plans. M&M Engineering filed the permit application and plans with the Conservation Commission.

The developer paid M&M Engineering for work performed in relation to the 194 Neponset Street permit application and plans. Murphy, as operator of M&M Engineering, accepted payment from the developer and deposited the funds in M&M Engineering’s bank account, which Murphy controlled. Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the 194 Neponset Street permit application and plans that M&M Engineering filed with the Conservation Commission for approval.

Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed the 194 Neponset Street permit application and plans for completeness and regulatory compliance, and made recommendations to the Conservation Commission. In 2010, the Conservation Commission issued an Order of Conditions for 194 Neponset Street.

Lot 1 Old Sheppard Street

In 2010, the owner of Lot 1 Old Sheppard Street proposed to construct a single-family home on the lot and hired M&M Engineering to prepare a permit application and plan and to file them with the Conservation Commission for approval. In the summer of 2010, Murphy, as operator of M&M Engineering, hired a subcontractor to draft the Lot 1 Old Sheppard Street plan for filing with the Conservation Commission, assisted the M&M Engineering subcontractor by adding the house and the septic system details to the plan and prepared the Lot 1 Old Sheppard Street permit application for filing with the Conservation Commission. M&M Engineering filed the permit application and plan with the Conservation Commission.

The owner paid M&M Engineering for work performed in relation to the Lot 1 Old Sheppard Street permit application and plan. Murphy, as operator of M&M Engineering, accepted payment from the developer and deposited the funds in M&M Engineering’s bank account, which he controlled. Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the Lot 1 Old Sheppard Street permit application and plan M&M Engineering filed with the Conservation Commission for approval.

Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed the Lot 1 Old Sheppard Street permit application and plan for completeness and regulatory compliance and made recommendations to the Conservation Commission. On July 21, 2010, the Conservation Commission issued an Order of Conditions for Lot 1 Old Sheppard Street.

41 Plymouth Street

In May 2011, Murphy, as operator of M&M Engineering, gave a developer an estimate of \$4,250 to prepare and file a Storm Water and Land Disturbance permit application and plans with the Conservation Commission for property located at 41 Plymouth Street, where the developer proposed to demolish an existing four-family dwelling and construct seven condominiums. Murphy, as operator of M&M Engineering, prepared the 41 Plymouth Street permit application for filing with the Conservation Commission, hired subcontractors to prepare the plans and to present those plans to the Conservation Commission at a public hearing, assisted the subcontractors in preparing the plans by adding the sediment and erosion control details to the

plans and dug the test pits to calculate the ground water elevations (which details were added to the plans). In October 2011, M&M Engineering filed the permit application and plans with the Conservation Commission.

The developer paid M&M Engineering a total of \$7,225, which included payment for drafting and filing the 41 Plymouth Street permit application and plans and presenting them to the Conservation Commission, and filings with the ZBA. Murphy, as operator of M&M Engineering, accepted the \$7,225 and deposited the funds in M&M Engineering's bank account, which he controlled. Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the 41 Plymouth Street permit application and plans that M&M Engineering filed with the Conservation Commission for approval.

The M&M Engineering subcontractor Murphy hired to present the 41 Plymouth Street permit application and plans to the Conservation Commission, presented the documents at an October 19, 2011 public hearing. Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed the 41 Plymouth Street permit application and the plans for completeness and regulatory compliance and made recommendations to the Conservation Commission. Specifically, during the October 19, 2011 public hearing, he recommended to the Conservation Commission that a sediment filter be added to the permit. The Conservation Commission accepted Murphy's recommendation and issued the permit on October 19, 2011.

756 Turnpike Street

In 2011, a developer proposed to repair a septic system at 756 Turnpike Street. The developer hired M&M Engineering to prepare a permit application and plans for filing with the Conservation Commission. Murphy, as operator of M&M Engineering, hired a subcontractor to prepare and present the plans for 756 Turnpike Street to the Conservation Commission, assisted the subcontractor in preparing the plans by adding septic system details to the plan and by digging the test pits to calculate the ground water elevations, (which details were added to the plans). Murphy, as operator of M&M Engineering, also prepared the 756 Turnpike Street permit application for filing with the Conservation Commission. M&M Engineering filed the permit

application and plans with the Conservation Commission.

The M&M Engineering subcontractor Murphy hired to present the permit application and plans to the Conservation Commission, presented the documents at a September 21, 2011 public hearing. Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed the 756 Turnpike Street permit application and plans for completeness and regulatory compliance and made recommendations to the Conservation Commission. The Conservation Commission issued an Order of Conditions for 756 Turnpike Street on September 21, 2011.

In November 2011, Murphy, as operator of M&M Engineering, issued an invoice for \$2,750 to the developer for preparing the permit application and septic plan, conducting existing conditions survey, soil exams and a percolation test. The developer paid M&M Engineering for work performed in relation to the 756 Turnpike Street permit application and plans. Murphy, as operator of M&M Engineering, accepted the payment and deposited the funds in M&M Engineering's bank account, which Murphy controlled. Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the 756 Turnpike Street permit application and plans that M&M Engineering filed with the Conservation Commission for approval.

169 Mechanic Street

In January 2011, Murphy, as operator of M&M Engineering, gave a developer an estimate of \$3,100 to prepare, file and present a permit application and plans for approval by the Conservation Commission for property located at 169 Mechanic Street, where the developer proposed to construct a duplex dwelling. Murphy, as operator of M&M Engineering, prepared the 169 Mechanic Street permit application for filing with the Conservation Commission, hired a subcontractor to prepare the plans and to present those plans to the Conservation Commission, assisted the subcontractor in preparing the plans by adding a house to the existing conditions plan and dug the test pits to calculate the ground water elevations (which details were added to the plans). M&M Engineering filed the permit application and plans with the Conservation Commission in March 2011. Murphy, as operator of M&M Engineering, drafted a March 16, 2011 letter to the abutters of the 169 Mechanic Street property

advising them of the filing of the permit application and plans.

The developer paid M&M Engineering for work performed in relation to the 169 Mechanic Street permit application, plans and abutters' letter. Murphy, as operator of M&M Engineering, accepted the payment and deposited the funds in M&M Engineering's bank account, which Murphy controlled. Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the 169 Mechanic Street permit application and plans that M&M Engineering filed with the Conservation Commission for approval.

Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed the 169 Mechanic Street permit application and plans for completeness and regulatory compliance and made recommendations to the Conservation Commission. On April 6, 2011, the Conservation Commission issued the permits for 169 Mechanic Street.

43 Bolivar Street Lots 2, 3 and 4

The developer of property located on Lots 2, 3 and 4 Bolivar Street proposed to construct two-family dwellings on each lot. In 2011, Murphy, as operator of M&M Engineering, hired subcontractors to draft plans and to present those plans to the Conservation Commission and assisted the subcontractors in preparing the Lots 2, 3 and 4 Bolivar Street plans by adding grading and structure details to the plans. M&M Engineering filed the permit applications for Lots 3 and 4 Bolivar Street on November 23, 2011.

In 2012, Murphy, as operator of M&M Engineering, prepared permit applications for Lot 2 Bolivar Street for filing with the Conservation Commission. M&M Engineering filed the permit application for Lot 2 Bolivar Street on February 23, 2012. The developer paid M&M Engineering for work performed in relation to the Lots 2, 3 and 4 Bolivar Street permit applications and plans. Murphy, as operator of M&M Engineering, accepted the payment and deposited the funds in M&M Engineering's bank account, which Murphy controlled. Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the Bolivar Street permit application and plans that M&M Engineering filed with the Conservation Commission for approval.

The M&M Engineering subcontractor Murphy hired to present the Lots 3 and 4 Bolivar Street permit applications and plans to the Conservation Commission, presented the documents at a December 7, 2011 public hearing. In addition, the M&M Engineering subcontractor Murphy hired to present the Lot 2 Bolivar Street permit application and plans to the Conservation Commission, presented the documents at a March 7, 2012 public hearing. Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed the Lots 2, 3 and 4 Bolivar Street permit applications and plans for completeness and regulatory compliance and made recommendations to the Conservation Commission. The Conservation Commission issued permits for Lots 3 and 4 Bolivar Street on December 7, 2011 and for Lot 2 Bolivar Street on March 7, 2012.

IV. Burden of Proof

To prove a violation of G.L. c. 268A, § 17(a), Petitioner must demonstrate that: (1) Murphy was a municipal employee; (2) who directly or indirectly received compensation from someone other than the Town; (3) in relation to a particular matter in which the Town was a party or had a direct and substantial interest; (4) otherwise than as provided by law for the proper discharge of his official duties. To prove a violation of G.L. c. 268A, § 23(b)(3), Petitioner must demonstrate that: (1) Murphy was a municipal employee; (2) who knowingly, or with reason to know; (3) acted 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. Proof of Murphy's timely written disclosure of the relevant circumstances to his appointing authority would avoid a violation of § 23(b)(3).

Petitioner must prove each of these required elements for each violation by a preponderance of the evidence. 930 CMR 1.01(10)(o)2; *In Re Jacques*, 2013 SEC 2480, 2487; *In Re Maglione*, 2008 SEC 2172, 2173. The weight to be attached to any evidence in the record, including evidence concerning the credibility of a witness, rests within the sound discretion of the Commission. 930 CMR 1.01(10)(n)3. *In Re Jacques*, 2013 SEC at 2487; *In Re Maglione*, 2008 SEC at 2173.

V. Analysis of the Evidence

A. *The Common Element: Murphy's Status as a Municipal Employee*

The one element common to both alleged violations of § 17(a) and § 23(b)(3) is whether Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, was a municipal employee for purposes of the conflict of interest law. Petitioner asserts that he was a municipal employee which Murphy denied on the basis that the Town Contracts were with Danena.

Municipal employee is defined broadly in the conflict of interest law as “a person performing services for or holding an office, position, employment or membership in a municipal 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.” G. L. c. 268A, § 1(g). The Town Contracts which provided for the rendering of consulting services to the Conservation Commission were between the Town and Danena. During the relevant time period, Murphy was Danena’s only officer, as its President, as well as its only employee. Employees of a company do not become municipal employees simply because the company has a contract with a municipality or a municipal agency. In certain situations, however, when a company contracts with a municipality or a municipal agency, an employee, officer or partner of the company who actually performs services for the municipality or municipal agency may be considered a municipal employee for purposes of the conflict of interest law.

We have developed and applied a multi-factor analysis for determining whether a particular individual performing the services in such a situation is a municipal employee. The factors we consider include, but are not limited to, the following: (1) whether the individual's services are expressly or impliedly contracted for; (2) the type and size of the company; (3) the degree of specialized knowledge or expertise required of the service; (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; and (5) the extent to which the person has performed similar services to the municipality or municipal agency in the past. No one factor is dispositive; rather we will balance all of the factors based on the totality of the circumstances. *EC-COI-92-13; 89-6; Advisory 06-01 – Consultants and Attorneys Who Provide Services to*

Government Agencies May be Public Employees Subject to the Conflict of Interest Law.

There is substantial evidence in the record as to each of these five factors to support the conclusion that Murphy was a municipal employee. First, he was specifically named in the Town Contracts as the primary provider of services (thus, the Town specifically selected Murphy to provide the contracted-for services). Second, during the relevant time period between 2010 and 2012, Danena had only one employee - - Murphy. Third, he functioned as the Conservation Commission’s technical expert on wetlands and storm water concerns, providing specialized knowledge and expertise the members of the Conservation Commission lacked. Fourth, Murphy personally reviewed all permit applications and plans for completeness and regulatory compliance and made recommendations to the Conservation Commission as to whether to issue or deny a permit or request additional information. Finally, he served as a consultant to the Conservation Commission for twenty-two years. Accordingly, we find that Petitioner has proved this element by a preponderance of the evidence.

B. *The Remaining Elements of a § 17(a) Violation*

1. *Direct or Indirect Receipt of Compensation From Someone Other Than the Town*

Compensation is defined as “any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.” G.L. c. 268A, § 1(a). The parties have stipulated to this element as to all the properties described above in Section III, by agreeing, that as to each one, Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to each property’s permit application and plans that M&M Engineering filed with the Conservation Commission for approval.^{8/} In addition, we note that Exhibit 43 includes ten M&M Engineering checks payable to Murphy and signed by him on behalf of M&M Engineering,^{9/} although there is no further evidence indicating the reason for those payments. Based on Murphy’s stipulations, we find that Petitioner has proved this element by a preponderance of the evidence.

2. *In Relation to a Particular Matter in Which the Town was a Party or Had a Direct and Substantial Interest*

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, [and] finding.” G.L. c. 268A, § 1(k). Submissions and applications that require the approval of a municipal agency are particular matters in which the municipality has a direct and substantial interest. *EC-COI-93-15*.

The parties have stipulated that from 2010 through 2012, M&M Engineering prepared and filed permit applications and plans with the Conservation Commission for approval, that each of the permit applications and plans prepared by M&M Engineering and filed with the Conservation Commission for approval were particular matters, and that the Town was a party to and had a direct and substantial interest in those particular matters because the Conservation Commission was its permit-granting authority. As noted above, the parties have further specifically stipulated that Murphy received compensation from an entity or individual other than the Town for the work he performed on behalf of M&M Engineering in relation to the permit applications and plans, described in Section III above, which were filed with the Conservation Commission for approval.¹⁰ We find that Petitioner has proved this element by a preponderance of the evidence.

3. *Otherwise Than as Provided By Law for the Proper Discharge of Official Duties*

The inclusion in § 17(a) of the qualifying phrase, “otherwise than as provided by law for the proper discharge of official duties,” results in the section prohibiting a municipal employee from directly or indirectly receiving or requesting compensation from anyone other than his municipal employer in relation to any particular matter in which his municipal employer is a party or has a direct and substantial interest *unless it is provided by law* that the employee may receive such compensation from a non-municipal source *for the proper discharge of his official duties as a municipal employee*. In *EC-COI-03-1*, when construing § 4(a), the state employee cognate to § 17(a), we concluded that “the legislature intended, in drafting § 4(a), to allow state employees to collect private compensation provided by law for the proper discharge of their official duties *as state employees*.” (*emphasis in original*).¹¹

For instance, an example of private compensation not prohibited by § 17(a) would be a fee paid by a resident to a municipal inspector, such as a Board of

Health agent, for conducting an inspection or serving as an observer to an event, such as a percolation test, pursuant to a duly-enacted municipal by-law providing for such compensation. This element of a § 17(a) violation may be established either by proof that no law authorized the municipal employee’s receipt of the compensation or that the compensation was not received by the municipal employee for the proper discharge of his official municipal duties.

In attempting to meet its burden of proof on this element, Petitioner relies on Conservation Commission Chair Sundin’s “No” answer provided in response to Petitioner’s question as to whether “[Murphy’s] duties as a conservation agent and/or consultant require[d] him to receive compensation from anyone other than the [T]own to prepare permit applications for filing with the Conservation Commission.” The relevant question, however, is not whether Murphy’s official duties *required him to receive private compensation* for his private work, but rather whether Murphy’s official duties required him to prepare permit applications and plans on behalf of private parties for filing with the Conservation Commission and whether any law permitted him to accept compensation from private parties for doing so. Because Sundin’s testimony does not answer those questions, it is therefore necessary to consider whether this element is otherwise established by the evidence in the record.

The record contains substantial evidence that the payments made by the private parties to M&M Engineering, which were received by Murphy, were payments for private engineering services provided by that entity through its consultants and its operator, Murphy. The payments were made in response to M&M Engineering’s estimates and invoices for services of the type commonly known to be provided to private parties by private engineers and not by government officials and employees. There is no evidence in the record that the private payments were made to Murphy for or because of the performance of any official duty (whether or not in the proper discharge of that duty), as the Town’s Conservation Agent or consultant.

In his defense, Murphy relies on Article 2.3 of the Town Contracts, each of which provided as follows: “MGL, Chapter 268A, Section 17 will prevent Mr. Murphy from acting as an agent for any party other than the Town in which the Town has a direct and substantial interest. Therefore Mr. Murphy will not personally act as agent for a third party.” From this, he argues that he did not violate this element (or any other element) of § 17(a), because Article 2.3 only

expressly prohibited his acting as agent for parties other than the Town (which he asserts he did not do), and not his doing compensated work for those parties (not involving his acting as agent), as an employee of Danena and that the Town was aware of his private work. This argument is unsupported by both the law as well as the facts in the record.

We note that Article 2.3 failed to include the restriction in § 17(a) which prohibited Murphy, while a municipal employee, from receiving compensation directly or indirectly from someone other than the Town in relation to a particular matter in which the Town was a party or has a direct and substantial interest unless otherwise authorized by law for the proper discharge of his official duties as the Conservation Commission consultant. Although Murphy asserts that the Conservation Commission wanted him as part of his duties to help applicants comply with the Wetlands Protection Act and the Town's wetlands by-law, he does not argue, nor is there any evidence in the record to support the conclusion that, Murphy believed that the proper discharge of such duties required him, *as the operator of M&M Engineering*, to prepare and provide estimates for work that needed to be done, to hire subcontractors to do that work, to do some of the work needed for the plans himself and then to have the applicants pay M&M Engineering (directly) and Murphy (indirectly) for such work.

As a matter of law, the Town could not eliminate the restriction on the receipt of private compensation under § 17(a) simply by a provision in a contract. Rather, Murphy's job duties and responsibilities would need to have been expanded to include such work and, in addition, as noted above, the Town would have needed to adopt a duly-enacted by-law that would allow him to accept private compensation from private parties for properly performing such work as part of his official duties. As far as the record reflects, neither of these things occurred.

Moreover, Murphy's argument that Article 2.3 permitted him to work for Danena and further that his work for Danena was well-known, is unsupported by the facts in the record as well as his own behavior. As he stipulated, Murphy's work, which is the subject of the alleged violations, was done as the operator of M&M Engineering, not as a principal of Danena. Although he asserts that Danena operated as Danena Engineering Associates as well as M&M Engineering and that his private work was well-known, the record supports the exact opposite conclusions. Danena and M&M Engineering used different addresses when dealing with the Town. In addition, the documents

that M&M Engineering prepared and submitted to the Conservation Commission included in the record^{12/} did not indicate that Murphy had participated in preparing the documents. Murphy did not orally or in writing inform the Board of Selectmen, the Conservation Commission or its Chair, Sundin, about his relationship with M&M Engineering. Rather, as Sundin, whose testimony we credit, stated, she and the other members of the Conservation Commission only learned of Murphy's connection to M&M Engineering when one of its members and the alternate to the ZBA, discovered that a plan which was twice submitted to the ZBA, was first submitted under Danena and then submitted with "M&M Engineering on it." Prior to that time, Sundin, who testified that she had known Murphy for fifteen years and that they were friends, was unaware of his connection to, or relationship with, M&M Engineering.

Furthermore, in his November 12, 2012 letter and narrative to the Chair of the Town's Board of Selectmen regarding the situation, Murphy, in fact, admitted that he "misinterpreted" the Town Contracts: "Prior to entering into contracts for services in [Town], I read the contract between the Town and Danena. I now know that I misinterpreted the disclosure portion of the contract. The problem was compounded by my lack of good judgment in not having our counsel review the contract." Exhibit 41. He further admitted that he had had a "lapse in judgment." *Id.* Murphy explained that M&M Engineering was started to provide a company name for an out-of-work friend to work under, and that Danena, which is and was a 50% owner of M&M Engineering, provided his friend with space in its Easton office and equipment usage. He further explained that in September 2011, his friend was able to solve his financial problems and retire and it was at that time, that Danena took over the operations of M&M Engineering. *Id.*

As such, Murphy could not have had any reason to expect that the Town would have knowledge of, or be aware of, his connection to M&M Engineering when some of the conduct at issue in this matter was undertaken *prior* to September 2011, the date he states that Danena took over its operations.^{13/} Moreover, the September 2011 time frame is *after* the termination of the first Town Contract (Exhibit 2), which ended on June 30, 2011, as well as *after* the execution of the second Town Contract (Exhibit 3) on August 23, 2011.^{14/} Accordingly, we find that Petitioner has proved by a preponderance of the evidence that Murphy's compensation was not "as

provided by law for the proper discharge of official duties.”

C. The Remaining Elements of a § 23(b)(3) Violation

1. Knowingly or with reason to know

The conflict of interest law does not define the terms knowingly or with reason to know. In *In Re Foresteire*, 2009 SEC 2220, 2225, we noted that the phrase knowingly has been defined to include “in a knowing manner . . . with awareness, deliberateness, or intention” and reason to know as “indicat[ing] or denot[ing] that the actor has, within his knowledge, facts from which a reasonable person of ordinary prudence and intelligence might infer the existence of a certain fact in question.” (*citations omitted*).

The parties stipulated that, as to each permit application and plan submitted by M&M Engineering to the Conservation Commission for the properties described in Section III above, Murphy, as the Danena employee identified under the Town Contracts to provide services to the Conservation Commission, reviewed them for completeness and regulatory compliance and made recommendations to the Conservation Commission about those permit applications and plans. They further stipulated that Murphy personally worked on those permit applications and plans filed by M&M Engineering on behalf of private developers and hired subcontractors to prepare and present the plans before the Conservation Commission. In addition, the permit applications had the words, “Prepared by M&M Engineering” on them (Exhibits 9, 14, 23, 26, 31-33), while the plans had “M&M Engineering” on them (Exhibits 8, 13, 16, 20, 22, 25, 29 & 30).

Under these circumstances, Murphy knew or had ample reason to know, that when reviewing those documents as the consultant to the Conservation Commission under the Town Contracts, he was acting officially on permit applications and plans for a company which he operated and further, that he had personally worked on some of those documents. Moreover, his decision to act officially in these situations could not be said to be accidental, but rather, was deliberate. Based on the substantial evidence in the record, his failure to disclose his relationship to M&M Engineering to the Town or the Conservation Commission, including its Chair Sundin, combined with his silence even as subcontractors he had hired as the operator of M&M Engineering, presented projects to the Conservation Commission at public hearings which he attended

and during which he made certain recommendations, supports a finding that he acted with awareness, deliberateness and intention. Accordingly, we find that Petitioner has proved this element by a preponderance of the evidence.

2. Acted 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 parties have stipulated to the facts that Murphy received compensation from someone other than the Town, for the work he performed as the operator of M&M Engineering, to prepare permit applications and plans for submission to the Conservation Commission for properties as described in Section III above and that he was making recommendations as the Conservation Commission consultant to the Conservation Commission on whether to approve those plans and applications. Murphy asserts that because all of the “over [1,200] permit applications for projects” in Town that came before the Conservation Commission while he was a consultant were ultimately approved, and because the Conservation Commission had wanted him to work with applicants to help them comply with the regulations, a person could not be led to conclude that he was unduly influenced by, or unduly favored, M&M Engineering when he, in his capacity as the Conservation Commission consultant under the Town Contracts, reviewed and commented on their proposals.

We do not find Murphy’s argument persuasive. Even if every project permit application was ultimately approved, a reasonable person having knowledge of the facts that some of those applications and plans Murphy was reviewing as the Conservation Commission consultant were prepared by a company he operated, that he had hired subcontractors to do some of that work, that he personally did some of the work on those applications and plans, that the subcontractors he hired on behalf of M&M Engineering presented the applications and plans to the Conservation Commission at meetings that he attended as its consultant and on which he made recommendations, and that he was paid privately to do so, would conclude that M&M Engineering could unduly enjoy his favor in the performance of his official duties.

Moreover, Murphy does not argue, nor is there any evidence in the record, that he made a disclosure under § 23(b)(3) such as to avoid a violation of § 23(b)(3). Indeed, all the relevant evidence in the record, including Sundin's testimony and excerpts from Murphy's sworn interview,^{15/} is that he failed to disclose his connection to M&M Engineering until after it was discovered by the Conservation Commission in August 2012. Accordingly, we find that Petitioner has proved this element by a preponderance of the evidence.

VI. Conclusion

Petitioner has proven by a preponderance of the evidence that as the Town's Conservation Commission consultant, Murphy was a municipal employee who violated G.L. c. 268A, § 17(a) when he received compensation from someone other than the Town in relation to particular matters in which the Town was a party and had a direct and substantial interest, which compensation was not otherwise provided by law for the proper discharge of his official duty. Petitioner has further proven by a preponderance of the evidence that as the Town's Conservation Commission consultant, Murphy was a municipal employee who violated G.L. c. 268B, § 23(b)(3) when, as the Conservation Commission consultant, he knowingly, or with reason to know, reviewed and acted on matters involving applications and plans submitted by M&M Engineering on behalf of its private clients while he was its operator, thereby causing a reasonable person to conclude that M&M Engineering could unduly enjoy his favor in the performance of his official duties.

VII. Order

Having concluded that Robert Murphy violated G.L. c. 268A, §§ 17(a) and 23(b)(3), the State Ethics Commission hereby **ORDERS** him to pay a civil penalty of \$5,000 for violating § 17(a), and \$5,000 for violating § 23(b)(3), for a total civil penalty of \$10,000.

DATE AUTHORIZED: October 21, 2015

DATE ISSUED: October 27, 2015

^{1/} Because Chairman Dortch-Okara and Commissioner Mills did not participate in all the deliberations in this matter, they are not signatories to this Decision and Order.

^{2/} Section 17(a) provides that no municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

^{3/} Section 23(b)(3) provides that no municipal employee shall knowingly, or with reason to know, act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such employee has disclosed in writing to his appointing authority 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.

^{4/} When asked by the Presiding Officer during the adjudicatory hearing if he wanted to present any evidence, Murphy responded: "No." In addition, although the Presiding Officer explained to him the difference between a statement under oath and a closing statement, Murphy elected only "to make a closing statement, not under oath."

^{5/} This section includes the numerous stipulations of fact and law agreed to by the parties pursuant to 930 CMR 1.01(9) and set forth in Exhibits 45 & 46, as well as other undisputed facts established by the evidence in the record.

^{6/} Although Murphy denied holding the position of "Conservation Agent," the Conservation Commission minutes submitted as agreed-upon exhibits (Exhibits 11, 15, 17, 24, 34 & 35) identified him as such.

^{7/} See Exhibits 7, 9, 12, 14, 18, 19, 21, 23, 26-27, 31-33, 36, 37 & 39.

^{8/} Murphy asserted in his Response [to] Order to Show Cause and/or brief that: he was a salaried employee of Danena; the amount of his salary did not increase or decrease, with no bonuses paid, during the time period alleged; he did not receive any additional compensation for any project; the sole source of funding for his salary was the provision of

contracted services to the Town; all compensation he received was from Danena; and Danena had control over M&M Engineering's bank account. We do not credit these assertions, however, given the lack of evidence in the record to support them as well as Murphy's subsequent agreement to stipulations regarding his receipt of compensation from someone other than the Town. In any event, even if the compensation for the projects went to Danena, Murphy stipulated that he was an owner of Danena (49%), in addition to being the Trustee of the Murphy Family Nominee Trustee, the only other owner of Danena (51%). Section 17(a) prohibits both the direct and indirect receipt of compensation. *See, e.g., EC-COI-93-15* (selectman, who was part owner of engineering and surveying corporation, advised he would be prohibited from receiving compensation for his work in preparing documents to be submitted to a town agency in addition to receiving compensation derived from those matters from corporation for work done by other employees).

^{9/} Those checks are as follows: 12/7/11 - \$1,500; 12/12/11 - \$1,000; 12/15/11 - \$1,200; 2/2/12 - \$1,500; 2/4/12 - \$600; 3/1/12 - \$1,000; 3/8/12 - \$1,500; 3/22/12 - \$1,600; 5/10/12 - \$1,000; and 5/25/12 - \$1,000.

^{10/} We note that although in his Response [to] Order to Show Cause, Murphy appeared to argue that his compensation by Danena was not *in relation to* the particular matters alleged, he subsequently entered into the above-discussed stipulations and did not otherwise offer evidence for the record to support this argument.

^{11/} We further explained our construction of the qualifying language as follows: "We believe that reading the exception to apply to compensation for state employees discharging their official duties *as state employees* effectuates the purpose of the statute, namely to ensure an employee's undivided loyalty to the Commonwealth. If a constable who is also a state employee may accept statutory fees from non-state parties for private matters in which the Commonwealth or a state agency has an interest or is a party, his loyalties will be divided. This concern does not develop where a law permits state employees to be compensated by a non-state party for doing his state job. In such a case, the employee's sole loyalty remains with the Commonwealth." *EC-COI-03-1 (emphasis in original)*.

^{12/} *See, e.g., Exhibits 9, 14, 23, 25 & 31-33.*

^{13/} For example, his work on the plans and applications for 194 Neponset Street and Lot 1 Old Sheppard Street was done in 2010.

^{14/} Murphy's brief also references certain facts which he contends establish public knowledge of his private activities, but which are not included in the record. Although we are mindful of the fact that Murphy appeared *pro se* in this matter, to the extent that he relies on facts not included in the record, we may not consider them when rendering our decision, particularly when Murphy declined to present any evidence and did not provide any statement under oath at the adjudicatory hearing. *See* 930 CMR 1.01(10)(h) ("All evidence . . . which is to be relied upon in making a Final Decision, must be offered and made part of the record.")

^{15/} Exhibit 1 at Excerpt 11.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 15-0008**

**IN THE MATTER OF
MARK STEVENSON**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Mark Stevenson ("Stevenson") enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On February 20, 2014, the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Stevenson. *See* G.L. c. 268B, § 4(a). On September 16, 2015, the Commission concluded its inquiry and found reasonable cause to believe that Stevenson violated G.L. c. 268A, §§ 23(b)(2)(ii) and (b)(3).

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

Findings of Fact

1. Stevenson served on the Marshfield Conservation Commission (the "ConCom") from 2007 until August 2013.

2. Stevenson is a marine engineer and owner of Offshore Marine, a marine contracting company.

January 28, 2013 Conversation at Roht Marine

3. Roht Marine is a marina located in Marshfield. In January 2013, Roht Marine was undergoing significant renovation and construction (the "Roht Marine Project"). The general contractor determined that new pilings¹ would have to be installed and he asked Stevenson to provide an estimate of the cost of the work.

4. On January 28, 2013, Stevenson met the general contractor at Roht Marine to look at the work that would be required and to discuss the project. Stevenson and the general contractor had not previously met. Stevenson and the general contractor spent about 15 minutes discussing the work. According to Stevenson, it was during this discussion that Stevenson first told the general contractor that he was on the ConCom.

5. Shortly thereafter, the owner of Roht Marine (the "owner"), along with a Roht Marine employee and the building designer for the Roht Marine Project, joined Stevenson and the general contractor on the dock to discuss the project for about 15 more minutes. None of the individuals present knew Stevenson prior to this interaction.

6. During the first few minutes of their conversation, Stevenson talked at length about the ConCom, causing the owner and the building designer to both initially believe that Stevenson was at the marina as a representative of the ConCom on an official visit. As the conversation continued, they learned that Stevenson was at the marina to look at the site in order to submit an estimate for the pilings work for the Roht Marine Project.

7. During that conversation, Stevenson stated that the pilings removal and installation work was complicated because it would require the use of a barge which would have to be brought in through the waterways and under bridges, and because the project involved protected land. Stevenson continued to talk about his work on the ConCom and stated that although the work was sensitive, there would not be any complications because he was the chairman of the ConCom and had been in business for a long time.

8. Based on Stevenson's statements during their January 28, 2013 meeting, the owner and the general contractor were concerned that Stevenson would use his ConCom position to adversely impact the Roht Marine Project if Offshore Marine was not selected to perform the pilings job.

9. Stevenson submitted an estimate for Offshore Marine to do the pilings job. Nevertheless, at the end of February 2013, the owner selected a contracting company other than Offshore Marine to perform the pilings work.

July 18, 2013 Enforcement Order

10. On March 19, 2013, the ConCom issued an Order of Conditions for the Roht Marine Project that outlined requirements for the septic system, lockers and restrooms. Stevenson did not participate in this matter.

11. By summer 2013, Roht Marine had begun constructing the foundation for a structure on its property as part of the Roht Marine Project. On July 18, 2013, Stevenson determined that the ConCom had not granted approval for the structure and that the ConCom should issue an Enforcement Order requiring Roht Marine to cease construction immediately.

12. It is typically the ConCom agent who issues Enforcement Orders, but in his absence, one ConCom member is authorized to do so. The ConCom's protocol is to then have the matter addressed by the full board at the next ConCom meeting. On this occasion, the ConCom agent was on vacation and Stevenson telephoned the ConCom agent to discuss the matter.

13. Later on July 18, 2013, Stevenson drafted an Enforcement Order against Roht Marine. Stevenson emailed a draft of the Enforcement Order to Town Counsel for review. The draft Order had a line for Stevenson's signature as the ConCom representative. Town Counsel reviewed the draft, made changes, and suggested that the Marshfield Police Department serve the Enforcement Order on Roht Marine.

14. Sometime thereafter on July 18, 2013, after obtaining the ConCom agent's authorization by telephone, the ConCom administrative assistant signed the ConCom agent's name. She placed her initials next to the signature on the Enforcement Order. Stevenson did not sign it.

15. Stevenson brought the Enforcement Order to the Marshfield Police Department and it was then served by a police officer on the owner of Roht Marine.

16. Stevenson then went to the Marshfield Building Commissioner's office to report that unauthorized construction work was being performed at Roht Marine and to inform the office that an Enforcement Order had issued.

17. The Roht Marine Project was discussed at the July 30, 2013 ConCom meeting, at which time Stevenson recused himself. As there was considerably more work being done than what had been proposed in the original Notice of Intent, including the construction of a patio and a separate building for restrooms, the ConCom voted 5-0, with Stevenson not participating in the vote, to require a new Notice of Intent for the project.

18. On August 20, 2013, Stevenson resigned from the ConCom.

19. The owner of the Roht Marine Project stated that once he learned that a permit was necessary for the additional work, he took action to ensure he was in compliance with the law. On October 22, 2013, the ConCom approved the changes to the Roht Marine Project and closed the Enforcement Order.

Conclusions of Law

20. As a ConCom member, Stevenson was a "municipal employee" as that term is defined in G.L. c. 268A, § 1(g).

January 28, 2013 Conversation at Roht Marine

Section 23(b)(2)(ii)

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

22. While discussing his company's bid for private work, Stevenson referred to his ConCom membership and stated that there would not be any complications with the project because he was the ConCom chairman. Stevenson in effect made his ConCom membership part of his pitch to Roht Marine to hire his company for the pilings job. By so doing, Stevenson knowingly, or with reason to know,

attempted to use his official position as a ConCom member to secure the pilings job for his company, Offshore Marine.

23. The opportunity to obtain the pilings job and compensation for himself and/or Offshore Marine was a privilege of substantial value.

24. Had Stevenson obtained the pilings job, it would have been an unwarranted privilege because of his use of his official position to secure it.

25. This unwarranted privilege was not properly available to similarly situated individuals, as no contractor seeking to secure the pilings job would have been lawfully able to leverage a public position in an attempt to obtain the work.

26. Therefore, by, acting in the manner described above, Stevenson knowingly or with reason to know used or attempted to use his official ConCom position to secure for himself or for his company, Offshore Marine, the pilings job from Roht Marine, which was an unwarranted privilege of substantial value, not properly available to other similarly situated individuals, thereby violating § 23(b)(2)(ii).

July 18, 2013 Enforcement Order

Section 23(b)(3)

27. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion. Such disclosure must be made before taking any official action.

28. After having unsuccessfully sought the pilings work on the Roht Marine Project using his ConCom position in early 2013 as described above, Stevenson: (1) initiated the July 18, 2013 Enforcement Order against Roht Marine; (2) contacted the ConCom agent about the matter; (3) drafted the Enforcement Order and emailed it to Town Counsel for review; (4) signed the initial draft Enforcement Order as the ConCom member representative; (5) arranged for

service of the Enforcement Order by the police department; and (6) reported the unauthorized construction at Roht Marine to the Building Commissioner. Stevenson did not file a disclosure with his appointing authority of his recent unsuccessful private dealings with Roht Marine prior to taking these actions in connection with the July 18, 2013 Enforcement Order.

29. Stevenson 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 the Roht Marine and/or its owner could improperly influence Stevenson in the performance of his official duties or that he is likely to act or fail to act as a result of such undue influence. Stevenson did not file a disclosure with his appointing authority revealing his prior bid on the Roht Marine Project to dispel this appearance of a conflict of interest. Therefore, Stevenson violated G.L. c. 268A, § 23(b)(3).

Resolution

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

- (1) that Stevenson pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of Two Thousand Five Hundred Dollars (\$2,500) as a civil penalty for violating G.L. c. 268A, §§ 23(b)(2)(ii) and (b)(3); and
- (2) that Stevenson waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: October 29, 2015

¹ A piling is a vertical structural element of a deep foundation, driven deep into the ground at the building site.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
JAMES WETTLAUFER
MICHAEL KENNEDY
CHRISTIAN PETERSON
LYNN ARNOLD
BRIAN JOHNSON**

PUBLIC EDUCATION LETTER

November 30, 2015

James Wettlaufer
Michael Kennedy
Christian Peterson
c/o Thomas Kiley, Esq.
Cosgrove, Eisenberg and Kiley, P.C.
One International Place, Suite 1820
Boston, MA 02110-2600
and c/o Anthony Traini, P.C.
56 Pine Street, Suite 200
Providence, RI 02903-2819

Lynn Arnold
c/o Thomas Kenefick, Esq.
73 Chestnut Street
Springfield, MA 01103

Brian Johnson
c/o Linda J. Thompson, Esq.
Thompson & Thompson, P.C.
1331 Main Street
Springfield, MA 01103

Re: Public Education Letter: Public Resources;
Private Litigation

Dear Ms. Arnold and Msrs. Wettlaufer, Kennedy,
Peterson and Johnson:

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that each of you violated the conflict of interest law, G.L. c. 268A. The preliminary inquiry focused on allegations that from 2011 through 2013, Town of Holland Selectmen Arnold, Wettlaufer, Kennedy and Peterson authorized the expenditure of Town funds to pay Special Town Counsel Tani Sapirstein \$23,023 to represent Town Highway Surveyor Brian Johnson in a private civil lawsuit against local blogger Peter Frei. The Commission also considered whether Highway Surveyor Johnson's solicitation and receipt of Town funds to pay for his private lawsuit were because of his official position, and therefore in violation of the conflict of interest law.

On March 19, 2015, the Commission voted to find reasonable cause to believe that each of you violated G.L. c. 268A. You sought reconsideration and submitted memoranda to the Commission. Thereafter, the Commission affirmed its reasonable cause determination. Rather than authorizing adjudicatory proceedings against you, however, the Commission chose to resolve this matter through this Public Education Letter because the Town has been reimbursed in full and there is a question as to whether you relied on advice of counsel.

In addition, other public employees will benefit from a public discussion of the facts revealed by the preliminary inquiry, and an explanation of how the Commission will apply Chapter 268A to the facts. Specifically, the conflict of interest law is intended to prevent conflicts between private interests and public duties, and therefore the law does not allow public resources, such as town funds, to be used for private purposes. Notwithstanding the arguments you advance to the contrary, whether the public employee sincerely believes such use promotes the greater good is irrelevant. It is a violation of the conflict of interest law, and a misuse of one's public position, to use public resources to fund a private lawsuit to deter future lawsuits and to solicit or receive such funding because of one's position.¹

The Commission and you have agreed that there will be no formal proceedings against you in this matter, and you have each chosen not to exercise your right to a hearing before the Commission. Selectmen Arnold, Wettlaufer, Kennedy and Petersen have voluntarily reimbursed the Town for the legal fees paid to Special Town Counsel Sapirstein from their personal funds, in the total amount of \$23,023.

I. Facts

Peter Frei is a Town of Holland resident who operates *The Holland Blog 01521.com*. Frei regularly publishes articles on his blog that are critical of Town of Holland officials generally, and of Highway Surveyor Brian Johnson and his family, in particular. Significant animosity exists between Frei and Johnson, which began several years ago over a zoning dispute. Johnson's father, Earl Johnson, was a member of the Planning Board at the time. The longstanding feud between Frei and Johnson's family is well known in the Holland community. Frei has also filed a number of lawsuits against the Town and its employees in their individual capacities, and has appealed various Town administrative decisions.

On February 19, 2011, a local club sponsored an ice-fishing derby on Holland's Lake Hamilton. Highway Surveyor Johnson and his friends participated in the derby. Johnson was on his own time, drinking alcohol and barbecuing with friends. Frei's home is located on the lake. An altercation between Frei and Johnson ensued, which Frei secretly audio-recorded.

Highway Surveyor Johnson asked Selectman Wettlaufer, then Chairman of the BOS, what the Town could do to prevent Frei from "harassing" him. Johnson believed he had a viable claim against Frei for secretly recording him. Selectman Wettlaufer said that he would bring the matter to the other BOS members. Shortly thereafter, Wettlaufer told Johnson that the Town would pay Johnson's legal fees to pursue his civil action against Frei, concluding that Frei would not have harassed Johnson but for his status as a public official, and that such an action could discourage Frei from continuing litigation against the Town and its officials.

On June 9, 2011, Johnson filed a civil complaint in Palmer District Court against Frei for illegal wiretapping based on Frei's recording of the confrontation during the ice-fishing incident.² Special Town Counsel Sapirstein represented Johnson in his private civil lawsuit. Frei counterclaimed against Johnson alleging assault, assault and battery, defamation, libel and slander, intentional and negligent infliction of emotional distress, abuse of process, obstruction of justice and civil rights violations. Following a 2 ½ day jury trial, on February 26, 2013, the jury awarded Johnson \$100 on his claim that Frei had illegally recorded him in violation of the state wiretapping statute. The Court awarded Johnson \$8,455 in attorney's fees plus \$95.21 in costs. The jury awarded Frei \$1,500 on his civil rights claim and \$100 on his defamation claim against Johnson. The Court awarded Frei \$16,024.65 in attorney's fees plus \$1,522.01 in costs. These cases, and the attorney's fee awards, are currently on appeal.

At different times during the period of 2011 through 2013, Selectmen Arnold,³ Wettlaufer, Kennedy and Petersen authorized the Town to pay Special Town Counsel Sapirstein for her representation of Highway Surveyor Johnson in his private civil lawsuit against Frei, acting on their belief that Frei had secretly recorded the ice derby encounter because of Johnson's status as a public official. The Selectmen also funded Johnson's private lawsuit against Frei because they hoped that the lawsuit would deter Frei

from filing future lawsuits against the Town and its employees. The Selectmen authorized payment of \$23,023 in legal fees to Special Town Counsel Sapirstein to represent Johnson in his private civil lawsuit.

II. Legal Discussion

Selectmen Arnold, Wettlaufer, Kennedy and Petersen

Section 23(b)(2)(ii) of the conflict of interest law 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 of substantial value, which are not properly available to similarly situated individuals. Interpreting that language, the Ethics Commission has stated that a privilege is “unwarranted” when it is “lacking adequate or official support,” or has “no justification” or is “groundless.” *EC-COI-98-2*.

Selectmen Arnold, Wettlaufer, Kennedy and Petersen violated G.L. c. 268A, § 23(b)(2)(ii) by authorizing the use of Town funds to pay for Highway Surveyor Johnson’s private civil lawsuit against Frei because there was no legal basis for that authorization.

Selectmen Arnold, Wettlaufer, Kennedy and Petersen are “municipal employees,” as defined by G.L. c. 268A, § 1(g), because they each hold elected office in a municipal agency.

The payment of Johnson’s legal fees was a privilege. The privilege was unwarranted because there was no legal justification for using public funds to pay for a private civil lawsuit. Moreover, the Commission does not accept that the aim of deterring future lawsuits against the Town is a legitimate justification for this expenditure of Town funds.

The privilege, the payment of legal fees by the Town, was of substantial value because the fees totaled \$23,023. Selectmen Arnold, Wettlaufer, Kennedy and Petersen knowingly used their positions to authorize the use of Town funds to pay Johnson’s legal fees in Johnson v. Frei, a private civil action. Other public employees who have disputes with local residents do not have the public coffers at their disposal to fund their private lawsuits. Therefore, the privilege secured for Johnson by the Selectmen was not available to similarly situated individuals.

Highway Surveyor Brian Johnson

Section 23(b)(2)(i) prohibits a municipal employee from knowingly, or with reason to know, soliciting or receiving anything of substantial value for himself, which is not otherwise authorized by statute or regulation, for or because of his official position. Highway Surveyor Johnson violated G.L. c. 268A, § 23(b)(2)(i) by receiving payment of the legal fees in his private civil lawsuit for or because of his official position.

As the elected Highway Surveyor, Johnson is a “municipal employee,” as defined by G.L. c. 268A, § 1(g), because he holds an elected office in a municipal agency.

Johnson received payment of his legal fees in his private civil action against Frei as authorized by the Selectmen. Payment for the legal services Johnson received was of substantial value because the cost of those services totaled \$23,023.

Payment of Johnson’s legal fees was not authorized by statute or regulation. Johnson was the plaintiff in a private civil lawsuit against Frei, which arose out of a confrontation that occurred while Johnson was off duty on personal time. There was a purely private dispute steeped in mutual, longstanding antipathy. There was no legitimate public purpose for the Town to fund Johnson’s lawsuit against Frei for secretly recording Johnson. The incident did not relate to Johnson’s duties as Town Highway Surveyor, and his role in the incident was entirely that of a private party.

III. Disposition

Citizens have the right to petition the courts and bring legal actions against Town officials. It is for the courts to determine whether those lawsuits are meritorious. While Town resources may be used to defend public employees in connection with actions taken in their capacities as public officials, Town resources may not be used to fund private lawsuits in an effort to interfere with the exercise of citizens’ rights.

Very truly yours,

Karen L. Nober
Executive Director

¹ While the Commission has decided to resolve this matter by way of a Public Education Letter, rather

than through an adjudicatory process, the Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation.

² Brian Johnson v. Peter Frei, Palmer District Court, Civil Action No. 1143CR293.

³ Selectman Arnold was elected to the BOS in 2012, a year after the BOS first authorized the Town to pay Special Town Counsel Sapirstein for her representation of Highway Surveyor Johnson in his private civil lawsuit against Frei. From her election in 2012 through 2013, Selectman Arnold approved payments to Special Town Counsel Sapirstein for Johnson's legal fees.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 15-0009**

**IN THE MATTER OF
THOMAS SNELL**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Thomas Snell ("Snell") enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On April 17, 2014, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On September 16, 2015, the Commission concluded its inquiry and found reasonable cause to believe that Snell violated G.L. c. 268A, § 19.

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

Findings of Fact

1. Snell, a resident of West Bridgewater, was at all relevant times a member of the West Bridgewater Zoning Board of Appeals ("ZBA").

2. Snell owns and operates Tom Snell Construction and Excavating ("Snell Construction"), a sole proprietorship.

3. Snell Construction performs excavation and demolition work for private property owners and developers.

Forest Street

4. In 2010, the owner of a property located on Forest Street in West Bridgewater discussed his plans to build a log home with Snell. The Forest Street property owner and Snell have known each other for over 20 years and are friendly.

5. On May 17, 2010, Snell gave the property owner a cost estimate of \$4,600 to demolish an existing structure on the property and \$6,900 for site work to prepare the site for construction of the log home.

6. On March 31, 2011, the West Bridgewater Building Inspector determined that the Forest Street property required a variance from the ZBA because the proposed home would be larger than the existing nonconforming structure on the lot.

7. After March 31, 2011, but before May 3, 2011, the owner of the Forest Street property filed an application with the ZBA for a variance to raze the existing structure on the lot and to construct a larger home.

8. On May 3, 2011, the ZBA held a hearing on the application. Snell voted as a ZBA member to grant the variance and signed the ZBA decision granting the variance.

9. At the time Snell voted as a ZBA member to grant the variance to allow the property owner to raze the existing structure and to construct the log home on the Forest Street lot, he knew it was likely that he would perform the demolition and site work if the ZBA granted the variance.

10. Snell performed the demolition and site work, and received payment from the property owner in the total amount of \$11,500.

Maolis Avenue

11. In 2012, a local developer wanted to raze an existing structure and build a single-family home on a lot located on Maolis Avenue in West Bridgewater.

12. In fall 2012, Snell gave the local developer verbal “ballpark” estimates for the demolition of the existing structure and the site work required to prepare for construction of the single-family home. The Maolis Avenue developer and Snell had a 12-year working relationship where Snell regularly performed site work for the developer.

13. The Maolis Avenue lot was nonconforming. In October 2012, the private developer filed an application with the ZBA for variances to raze and to construct the single family home.

14. On December 11, 2012, the ZBA held a hearing on the application. Snell made the motion to grant the variances, voted to grant the variances, and signed the ZBA decision granting the variances.

15. At the time he voted to grant the variances to allow the private developer to raze the existing structure and to construct the single family home on the Maolis Avenue lot, Snell knew it was likely that he would perform the demolition and site work if the ZBA granted the variance.

16. On December 21, 2012, Snell gave the private developer written cost estimates of \$6,300 to demolish the existing house on the Maolis Avenue lot and \$5,400 for a separate proposal to perform the site work.

17. Snell performed the demolition and site work, and received payment from the private developer in the total amount of \$11,700.

Conclusions of Law

18. Section 19 of G.L. c. 268A generally prohibits a municipal employee from participating¹ as such an employee in a particular matter² in which, to his knowledge, he has a financial interest.³

19. As a ZBA member, Snell was a “municipal employee,” as that term is defined in G.L. c. 268A, § 1(g).

20. The ZBA decisions whether to grant variances for the Maolis Avenue and Forest Street lots were particular matters.

21. Snell participated as a ZBA member in each of these particular matters by voting to grant the variances.

22. At the time of his participation, Snell knew he had a reasonably foreseeable financial interest in each

of these particular matters. Specifically, Snell knew that if the ZBA granted the variances, he would likely perform the demolition and site work on the Forest Street and Maolis Avenue lots and receive payment for that work.

23. Accordingly, by participating as a ZBA member in the decisions to grant the Forest Street and Maolis Avenue variances, Snell twice violated § 19.

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

- (1) that Snell pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of Six Thousand Five Hundred Dollars (\$6,500) as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that Snell 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 28, 2015

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.*

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT



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