

# STATE ETHICS COMMISSION

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## Annual Report

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*Fiscal Year 2005*

### **Commissioners**

Judge E. George Daher (Ret.), Chairman  
Christine M. Roach, Vice-Chairman  
Christopher D. Moore  
Tracey Maclin  
J. Owen Todd

### **Executive Director**

Peter Sturges

### **Editor**

Carol Carson

## MESSAGE FROM THE CHAIRMAN

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For FY05, the Commission established four main goals, which were (a) performing core functions of advice, guidance, education and enforcement effectively and efficiently, (b) designing and implementing a new ETHOS database system; (c) enhancing professional development of staff with particular focus on adjudicatory proceedings; and (d) continuing its comprehensive revision of its educational materials. This was an ambitious agenda and overall the Commission did a pretty good job.

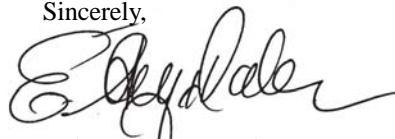
For example, in FY05, the Commission:

- Obtained a significant increase in its FY06 budget, which will make it possible to hire an additional attorney, an intake investigator and a half-time administrative assistant.
- Designed and began implementation of a new Ethos database system, which was a major undertaking of the Commission and required an extraordinary amount of time and effort by the entire staff.
- Received a favorable unanimous decision from the Supreme Judicial Court in *Doe v. State Ethics Commission*.
- Revised several Commission summaries and fact sheets, enhanced the Commission's web site with a new search function and increased the number of seminars by more than 50%, from 65 to 101.
- Implemented a professional development program that included a trial practice session conducted by the Attorney General's training division, mock trials in preparation for adjudicatory hearings and participation in Judge Young's MCLE-sponsored trial advocacy program.
- Increased use of the Commission's electronic filing system to 70%.
- Achieved passage of chapter 399 of the Acts of 2004, which provides the Commission with the authority to promulgate regulations providing reasonable exemptions from the conflict of interest law.

Notwithstanding these accomplishments, the Commission did not achieve all of its goals. For example, the Commission's informal opinion backlog and the timeliness of the Commission's complaint review process both increased. The Commission also did not consider and approve as many formal opinions as planned and it did not complete the revision of all the educational materials or develop an online training program. The Commission's inability to accomplish these goals was probably due to many factors including the unusual amount of litigation and adjudicatory hearings in which the Commission was involved, the demands of developing the Ethos database system and the previous staff reductions, which have taken their toll.

Most importantly, the Commission engaged the services, *pro bono*, of an independent consultant, Francis S. Moran, Jr., to review the needs and operation of the Commission. Mr. Moran was asked to review the Commission's operations, effectiveness, quality of service and leadership. He was given access to all of the Commission's records, interviewed each Commissioner and staff member as well as individuals who have dealt with the Commission. He also attended several meetings of the Commission. It is our hope that his recommendations, which will be presented to the Commission in FY 06, will guide us to provide more efficiency, justice and service to the citizens of the Commonwealth.

Sincerely,



Judge E. George Daher (Ret.)  
Chairman

# INTRODUCTION TO THE ETHICS COMMISSION

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This report covers the activities of the Massachusetts State Ethics Commission during FY 05. It is issued pursuant to §2(l) of Chapter 268B and is intended to serve as an explanation of the Commission's responsibilities and as a record of its major activities during the fiscal year.

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## HISTORY

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Bay State. Massachusetts General Laws c. 268A governs what public employees may do on the job, what they may do after hours or "on the side," and what they may do after they leave public service. It also sets standards of conduct required of all state, county and municipal employees and officials. The law requires that public servants give undivided loyalty to the government for which they work and act in the public interest rather than for private gain. Until the law was revised in 1978, it was enforced solely as a criminal matter under the jurisdiction of the Attorney General and the various local District Attorneys.

In addition to strengthening the conflict of interest statute, Chapter 210 of the Acts and Resolves of 1978 established a financial disclosure law, G.L. c. 268B, requiring public officials, political candidates and certain designated public employees to annually file a statement of their financial interests and private business associations. Chapter 210 also created the State Ethics Commission, and empowered it to interpret and enforce G.L. c. 268A and 268B. The Commission provides free legal advice, education and other information regarding the conflict of interest and financial disclosure laws and serves as the primary civil enforcement agency for these laws.

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## MEMBERSHIP

The non-partisan Commission consists of five members appointed to staggered, five-year terms. Three commissioners are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments and no more than three members of the Commission as a whole may be from the same political party. The commissioners serve part-time and employ a full-time staff. Commissioners are paid on a per diem basis but voted to forego such payments for FY 05 in response to budget cuts.

### FY 2005 Members

**E. George Daher, Chairman**  
Chief Justice (retired)  
Massachusetts Housing Court  
Westwood, MA

**Christine M. Roach, Vice-Chairman**  
Partner  
Roach & Carpenter, PC  
Boston, MA

**Tracey Maclin**  
Professor of Law  
Boston University School of Law  
Boston, MA

**Christopher D. Moore**  
Partner  
Goodwin Procter LLP  
Boston, MA

**J. Owen Todd**  
Partner  
Todd & Weld LLP  
Boston, MA

The Commission staff is made up of four separate divisions, under the supervision of the executive director. The Commission also appoints the General Counsel who is the chief legal officer of the Commission and head of the Commission's Legal Division, which provides free, confidential advice to public employees regarding the legality of proposed activities, advises the Commission during adjudicatory proceedings and represents the Commission in court. The Statements of Financial Interests Division administers the financial disclosure law and audits SFIs filed with the agency. The Communications and Public Education Division conducts free seminars for public employees, maintains the Commission's web site and publishes a wide range of educational materials. The Enforcement Division investigates and publicly prosecutes more serious violations of the laws. It resolves relatively minor violations privately with confidential educational letters.

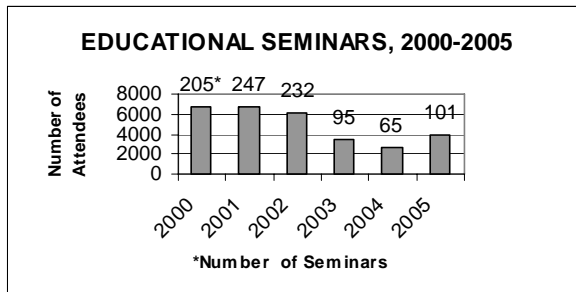
## SUMMARY OF FISCAL YEAR 2005

The Legislature appropriated \$1,265,221 for the Ethics Commission in FY 05, the same amount as the previous year. The FY 05 budget translates to a cost of approximately \$3.55 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.20 for each citizen of the Commonwealth of Massachusetts.<sup>1</sup> The Commission does not retain revenue.

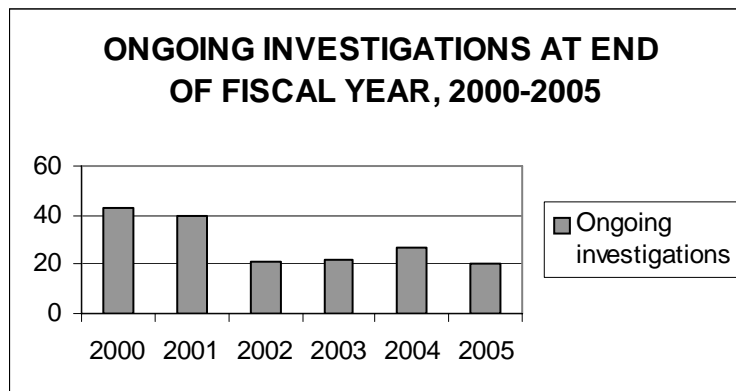
The Legal Division handled 3,780 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 134 advisory opinions issued by municipal counsels, and prepared two formal Commission Advisory Opinions. There were 65 requests for advice pending at the end of FY 05.

During FY 05, 4,386 elected officials, candidates and designated major policy-making public employees were required to file Statements of Financial Interests with the Commission. All but six had filed by the end of the fiscal year. The SFI Division responded to 2,038 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 3,871 people attended the 101 educational seminars conducted by the Communications and Public Education Division in FY 05.



The Commission's Enforcement Division reviewed 1,113 complaints in FY 05. In many instances, the staff conducted interviews, obtained additional information and analyzed documents as part of its initial review. The Division issued 204 private educational letters, initiated 76 investigations and recommended 62 cases for formal review by the Commission. The Division issued four orders to show cause initiating public hearings, negotiated 12 Disposition Agreements, totaling \$55,500 in civil penalties and \$12,565 in forfeitures. There were also six adjudicatory hearings, several of which resulted in decisions and orders.



<sup>1</sup>These costs were calculated using information from the U.S. Census Bureau and the U.S. Department of Labor. The 2004 estimated population for Massachusetts is 6,416,505. The estimated number of state and local employees (county and municipal employees) is 356,800. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

## FISCAL YEAR 2005 VALUES AND GOALS

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The conflict of interest and financial disclosure laws were enacted to promote public confidence in government and in the integrity of the Commonwealth's elected and appointed officials while still attracting talented public servants. The State Ethics Commission's FY 05 Statement of Values and Goals were derived from the fundamental principles codified by the Legislature in Chapters 268A and 268B. The Commission has five major values:

Administration: To cultivate a user-friendly, responsive agency whose primary goal is to ensure the fair and timely administration of the conflict of interest and financial disclosure laws.

Education and Advice: To provide timely and consistent advice, education and information to the Commission, elected and appointed public officials and members of the general public.

Disclosure: To provide accurate public disclosure of the statements of financial interest of elected and appointed officials; to use computer and Internet technology to facilitate the filing of SFIs.

Enforcement: To act as the primary civil law enforcement agency of the conflict and disclosure laws through impartial and timely enforcement of serious violations of these laws.

Legislation: To recommend and promote legislation that helps to clarify, simplify, and further the fundamental values of the conflict and disclosure laws.

In FY 05, the Commission focused on the following goals:

- Perform its core functions of advice, guidance, education and enforcement effectively and efficiently;
- Enhance professional development of staff with particular focus on adjudicatory proceedings, the relevant skills for operating the new ETHOS database system and developing an on-line conflict of interest training program;
- Design and implement a new ETHOS database system; and
- Continue its comprehensive revision of its educational materials

## ADVICE AND OPINIONS

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Individuals covered by G.L. c. 268A and G.L. c. 268B are entitled to receive confidential advice about whether proposed activities are permissible under the laws. The Legal Division consists of a chief, who also serves as the Commission's General Counsel, three attorneys and an administrative assistant. In addition to providing advice, the Legal Division advises the Commission during adjudicatory proceedings and represents the Commission in court.

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### COMMISSION OPINIONS

Opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting individual's conduct, unless the request omits or misstates material facts. The Division tries to answer written requests for advisory opinions within four to six weeks. Most requests for advice are handled over the telephone on the day of the call. In FY 05, the Commission's Legal Division handled 432 requests for advice through informal letters, and 3,358 requests via telephone.

Formal opinions are issued by the Commission. They address new issues and generally take longer to complete. Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions as well as public versions of such opinions with the identifying information deleted. Informal opinions are based on prior formal Commission rulings, issued by an attorney and are not published. The Commission issued two formal advisory opinions in FY 05. Copies of formal advisory opinions are available on the Commission's website or from the Ethics Commission.

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### MUNICIPAL OPINIONS

All conflict of interest opinions issued by city solicitors or town counsel must be filed with the Commission for review to ensure that these opinions are consistent with Commission precedent. The Commission has 30 days to notify the municipal counsel of any objections to an opinion; if there are no objections, the advisory opinion can serve as a legal defense in any subsequent Commission proceeding. A municipal counsel's opinion is legally binding only with respect to the person who requested the opinion, and is not binding if material facts were omitted or misstated by the requestor, if the opinion was not obtained in advance of the relevant action, or if the requestor otherwise acted in bad faith in securing the opinion. In FY 05, the Commission reviewed 134 municipal opinions.

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### LITIGATION

In *John Doe v. State Ethics Commission*, Doe challenged the Commission's authority to issue a summons during a preliminary inquiry. The Supreme Judicial Court unanimously affirmed that the Ethics Commission, under G.L. c. 268B, S. 4, has authority to issue a summons in a preliminary inquiry.

In *State Ethics Commission v. Jane Doe*, the Commission filed a civil action seeking to compel Jane Doe to testify in a deposition in relation to a matter under investigation by the Commission's Enforcement Division. In response, Ms. Doe sought to quash the subpoena. In addition to seeking to quash the summons, Ms. Doe sought discovery prior to testifying.

In *Pina v. State Ethics Commission*, the Commission is defending against a tort claim that a plaintiff was injured through the negligence of a Commission employee. The Office of the Attorney General is representing the Commission.

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### LEGISLATION

The Legislature passed and the Governor signed into law Chapter 399 of the Acts of 2004, *An Act Authorizing the State Ethics Commission to Provide Exemptions from the Conflict of Interest Law*. Following its passage, the Commission sought comments from interested parties regarding the drafting of regulations.

## FINANCIAL DISCLOSURE

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Massachusetts G.L. c. 268B requires the annual disclosure of financial interests and private business associations by all elected officials, candidates and “designated” public employees of state and county governments. “Designated” employees include individuals holding major policy-making positions within their employing agencies. Commission staff are available to assist filers in completing their Statements of Financial Interests.

The Financial Disclosure Division consists of the chief and a financial analyst. The division is responsible for distributing, collecting, reviewing and maintaining statements of financial interests and, in conjunction with the Enforcement Division, ensuring complete and accurate compliance.

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### DISCLOSURE & REVIEW

In FY 05, 4,386 public employees, elected officials and candidates were required to file SFIs. The Financial Disclosure Division reviews every SFI that is filed. The review process takes about nine months. During the review, if a question or a discrepancy arises, the filer is contacted to either clarify or amend his or her SFI. In addition, the division responded to 2,038 telephone inquiries.

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### ELECTRONIC FILING

Electronic filing of SFIs via the internet resulted in 70% of those required to file doing so electronically, which represents an increase of 7% from the previous year. A total of 3,070 filers submitted their statements electronically this year.

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### INSPECTION REQUESTS

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY 05, the Commission honored 587 such requests from 85 sources, including the media, private citizens and law enforcement agencies.

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### LATE FILING

Failure to file on time or to amend an inaccurate or incomplete statement within 10 days of receipt of a formal late notice is a violation of the financial disclosure law. The Commission may levy penalties of up to \$2,000 for each violation. The Commission has adopted the following schedule of penalties:

- 1-10 days late \$ 50
- 11-20 days late \$ 100
- 21-30 days late \$ 200
- 31 days or more \$ 500
- Non-filing of an SFI \$2,000

Penalties for the repeated late submission of an SFI are double that of the schedule above.

In the event a false statement is filed, the Commission may impose additional penalties. In addition, the law provides that employees who do not file may not perform their duties or be paid.

A total of 158 filers missed the May filing deadlines and were sent formal late notices. Of this number, 31 filers became the subject of preliminary inquiries. As of June 30, 2005, only six filers had not complied with the filing requirements.

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### PENALTIES

The Ethics Commission assessed civil penalties totalling \$2,250 paid by 18 later filers in FY 05 for violations of the financial disclosure law. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

## TRAINING AND EDUCATION

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During FY 05, the Communications and Public Education Division consisted of the chief and an administrative assistant who also serves as the Commission's receptionist. The Division provides free educational seminars throughout the state, maintains the Commission's web site and prints educational materials including *The Bulletin* and the *Annual Report*. The Division also serves as the public information office of the Commission and responds to a weekly average of approximately 12 requests for information from the media and from individuals.

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### SEMINARS

The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 3,871 people attended the Commission's 101 seminars during FY 05. Seminar sponsors included 54 municipalities with a total of 2,217 attendees; 34 state agencies with a total of 1,092 attendees; and 13 professional associations with a total of 562 attendees.

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### PUBLICATIONS

The Commission publishes a wide variety of educational materials explaining various provisions of the conflict law and keeps constituents informed of recent rulings. Most of this information is available on the Commission's web site. The Commission's newsletter, *The Bulletin*, is distributed three times annually. The Commission's *FY 04 Annual Report* was distributed electronically during the fiscal year, as were copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The entire set of the Commission's *Rulings* (1978-2003) is available at the Commission's office and the Commission's *Rulings* are also available on the database at the Social Law Library website, [www.sociallaw.com](http://www.sociallaw.com).

The Commission issued four new advisories: ADV-05-01: *Standards of Conduct*; ADV-05-02: *Voting on Matters Affecting Abutting or Nearby Property*; ADV-05-03: *Elected Officials Voting on Budgets and Signing Payroll Warrants that Include Salaries for Family Members*; and ADV-05-04: *Voting on Matters Involving Competitors*.

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### WEB SITE

The Commission maintains a web site on the Internet at [www.mass.gov/ethics](http://www.mass.gov/ethics).

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### MEDIA AND PUBLIC RELATIONS

The Commission responds to inquiries from the media and the public about the Commission and the conflict of interest and financial disclosure laws. In FY 05, the Commission issued 19 press releases and handled over 600 inquiries from the press and the public. The Commission does not confirm or deny that informal opinions have been issued or that investigations are being conducted. It does, however, provide explanations of the law, generally directing individuals with questions to the Commission's web site for additional information.



# ENFORCEMENT

The Enforcement Division consists of a chief, three attorneys, four investigators and an administrative assistant. The division investigates and, where appropriate, prosecutes violation of the conflict of interest and financial disclosure laws.

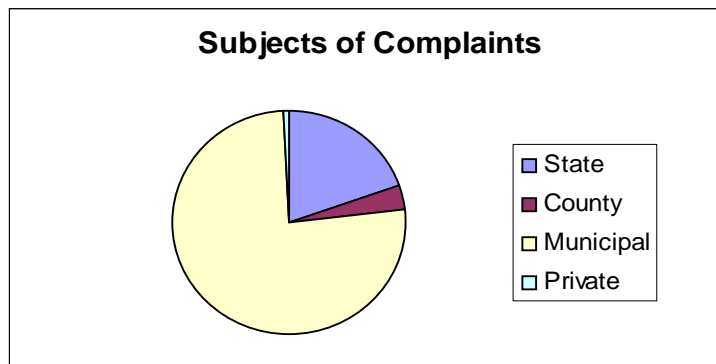
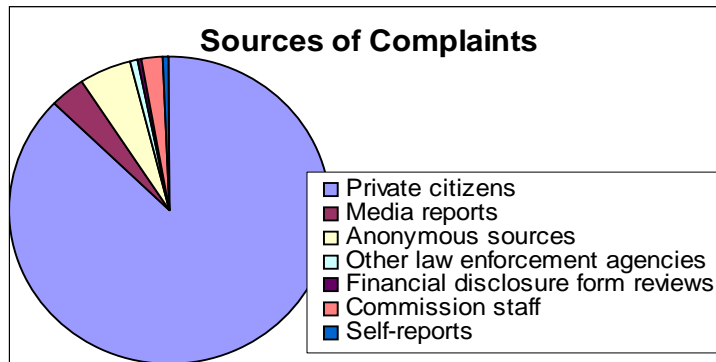
## COMPLAINTS

Anyone may call, write or visit the Commission to make a complaint regarding an alleged violation of the conflict of interest or financial disclosure law. In FY 05, the Enforcement Division received 898 complaints from the following sources:

782 from private citizens	45 from anonymous sources
35 from media reports	8 from other law enforcement agencies
3 from financial disclosure form reviews	20 were generated by Commission staff
5 were "self-reports" made by public employees regarding their own conduct.	

These 898 complaints involved the following subjects: 683 were municipal employees, 177 state employees, 31 county employees and 7 private individuals or corporations.

A total of 1,113 complaints were received or pending in FY 05. In many instances, the staff conducted interviews, obtained additional information and analyzed documents as part of its initial review. The division closed 376 of those complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. The division consolidated 55 with existing cases and resolved 204 cases with private educational letters without any investigation. Finally, the division assigned 76 matters to an attorney/investigator team for further review.



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**STAFF INVESTIGATIONS**

The Commission closed nine cases following informal staff investigations; two were closed because staff determined there was little likelihood that the law had been violated. As of June 30, 2005, there were 20 ongoing informal staff investigations.

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**FORMAL INQUIRIES**

The Commission authorized a total of 62 formal inquiries in FY 05: 30 regarding alleged violations of the conflict of interest law and 32 involving alleged violations of the financial disclosure law. Twenty-four of the subjects of formal inquiries were municipal officials or employees, 37 were state officials or employees and one was a county employee. During FY 05, Enforcement Division staff completed 47 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.

In 29 instances, the Commission found “reasonable cause” to believe that the subject had violated one or both of the laws, and authorized adjudicatory proceedings against the subject; many of these cases were later resolved by Disposition Agreements between the subject and the Commission. The Commission also issued 12 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Two cases were terminated without a finding.

At the end of the fiscal year, the Commission had two public hearings pending; in three additional cases, the Commission had found “reasonable cause” to believe laws had been violated, but had yet to institute the formal hearing process.

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**PUBLIC RESOLUTIONS**

In FY 05, the Commission conducted six adjudicatory hearings, five of which resulted in Decisions and Orders. The Commission also entered into 12 Disposition Agreements involving violations of the conflict of interest law: two with state officials, nine with municipal officials and one with a private individual. In these signed documents, subjects admit violating G.L. c. 268A, and agree to pay civil penalties of up to \$2,000 per violation. In some instances subjects also agree to forfeitures.

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**PENALTIES**

The Ethics Commission assessed civil penalties for violations of the conflict of interest law totalling \$55,500 and collected forfeitures of \$12,565 in FY 05. Penalties and forfeitures collected are deposited in the General Fund, as the Commission does not retain revenue.