

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

Fiscal Year 2006 Annual Report

MASSACHUSETTS STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
617-727-0060
www.mass.gov/ethics



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- ❖ **Matthew N. Kane**
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Roach & Carpenter, P.C.
Boston, MA

*(Term expired: September 2005)



MESSAGE FROM THE EXECUTIVE DIRECTOR

In October 2005, the Commission received a report, *The Massachusetts State Ethics Commission -- Needs and Opportunities*, from consultant Francis S. Moran, Esq. For almost a year, Mr. Moran devoted on a *pro bono* basis hundreds of hours of his time meeting with each commissioner and member of the staff and reviewing the office's operations, procedures and case files. The result of Mr. Moran's hard work was a comprehensive report designed to make the Commission's operations more efficient and effective. After thoroughly reviewing the report, the Commission adopted the vast majority of the report's recommendations.

The report concluded that:

H I G H L I G H T S

Moran's report concluded that the Commission has not "pulled its punches" by being too soft on the public officials it is meant to scrutinize.

- ❖the Commission is fulfilling its statutory mandate but is hobbled by inefficient staff procedures;
- ❖inadequate funding from the Administration and Legislature is hampering the Commission's operations and progress;
- ❖the Commission has **not** "pulled its punches," by being too soft on the public officials it is meant to scrutinize;
- ❖the staff is hard working, committed to the Commission's mission and produces fair, equitable, high quality work; however, it conducts excessive internal review and strives for inordinate perfection, contributing to its backlog;
- ❖the staff needs to significantly increase its educational seminars throughout the Commonwealth and should work closely with state and municipal leaders to provide incentives to attend educational seminars, or make them compulsory;
- ❖the five-member Commission should develop ways, through strategic planning, to address their responsibilities more effectively without overlapping with staff responsibilities.

The report recognized the funding for FY 2006 by the Legislature and approved by the Governor of three new positions, an attorney to provide advice to public officials, an intake investigator to process complaints and a part-time receptionist to re-establish full-time phone coverage, which was reduced as a result of budget cuts in 2002. It also called for funding two additional positions – an additional attorney for the Enforcement Division and a full-time public education specialist to increase the Commission's outreach efforts.

In December 2005, the Commission adopted the report's recommendations and by the end of FY 2006 had already implemented most of the report's recommended changes. These changes have included streamlining the process for providing advice, reviewing complaints and conducting investigations in order to process requests for advice and investigations of complaints in a more timely manner and eliminating multiple staff reviews of matters before the Commission. As a result, the Commission is now better able to deliver, in Mr. Moran's words, "a higher quality of justice and service."

The Commission and the Commonwealth owe a debt of gratitude to Frank Moran for his generosity, dedication and service.

Sincerely,



Peter Sturges
Executive Director

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INTRODUCTION TO THE ETHICS COMMISSION

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.

HIGHLIGHTS

The Commission was established in
1978

The Commission consists of five
members serving staggered
five- year terms

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.

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.

COMMISSION STAFF

The Commission staff is made up of 22 employees in four separate divisions, under the supervision of the executive director, who is appointed by the Commission.

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.

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SUMMARY OF FISCAL YEAR 2006

The Legislature appropriated \$1,446,441 for the Ethics Commission in FY 2006. The FY 2006 budget translates to a cost of approximately \$4 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.23 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 4,016 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, including 128 advisory opinions issued by municipal counsels and seven formal Commission Advisory Opinions. A total of 264 disclosures were reviewed. There were 57 requests for advice pending at the end of FY 2006.

H I G H L I G H T S

73% of filers completed their statements of financial interests online

Record number of complaints: 1,043

4% increase in number of individuals who received advice

During FY 2006, 4,638 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 1,343 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 3,755 people attended the 110 educational seminars conducted by the Communications and Public Education Division in FY 2006.

The Commission's Enforcement Division reviewed 1,043 complaints about violations of the conflict of interest and financial disclosure laws in FY 2006. In many instances, the staff conducted interviews, obtained additional information and analyzed documents as part of its initial review. The Division issued 384 private educational letters, initiated 128 investigations and recommended 61 cases for formal review by the Commission. The Division issued two orders to show cause initiating public hearings and negotiated 16 Disposition Agreements. There were also three adjudicatory hearings, one of which resulted in a decision and order.

¹These costs were calculated using information from the U.S. Census Bureau and the U.S. Department of Labor. The 2005 estimated population for Massachusetts is 6,398,743. The estimated number of state and local employees (county and municipal employees) is 360,700. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

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FISCAL YEAR 2006 GOALS AND OBJECTIVES

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 2006 Statement of Values and Goals were derived from the fundamental principles codified by the Legislature in Chapters 268A and 268B. The Commission's goals include:

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.

H I G H L I G H T S

ETHOS, the Commission's electronic case management system was successfully implemented

Revisions to the Commission's educational advisories were completed

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.

In FY 2006, the Commission focused on a number of objectives including:

- Perform its core functions of advice, guidance, education and enforcement effectively and efficiently;
- Design and implement a new ETHOS database system; and
- Continue its comprehensive revision of its educational materials

As the annual report documents, the Commission made significant progress achieving its goals and objectives in FY 2006.



ADVICE AND OPINIONS

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, four 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. In FY 2006, in response to the report of consultant Francis S. Moran, the Legal Division instituted a number of efficiencies such as conducting fewer internal reviews, producing more concise opinions and offering to individuals the choice of written or oral advice.

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 2006, the Commission's Legal Division handled 432 requests for advice through informal letters, and 3,449 requests via telephone and office visits.

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 seven formal advisory opinions in FY 2006. Copies of formal advisory opinions are available on the Commission's website or from the Ethics Commission.

H I G H L I G H T S

The Commission reviewed disclosures filed by 264 individuals

The number of outstanding requests at the end of the fiscal year decreased 56% in comparison to the previous year

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 2006, the Commission reviewed 128 municipal opinions.



ADVICE AND OPINIONS

Disclosures

Each year, the Commission receives disclosures required by several sections of the conflict of interest law from state and county officials. This year, for the first time, these disclosures, which are available to the public, were reviewed for completeness and accuracy before they were filed. The Commission reviewed 264 disclosures; in 43 instances, the filer was contacted by the Commission and asked to clarify, amend or correct the disclosure.

Litigation

In *State Ethics Commission v. Jane Doe*, Jane Doe appealed the Superior Court's decision compelling her to testify in a deposition in relation to a matter under investigation by the Commission's Enforcement Division. This matter is pending in the Appeals Court. Materials in this matter are impounded in order to preserve the confidentiality of an ongoing investigation, as required by statute.



FINANCIAL DISCLOSURE

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.

H I G H L I G H T S

Only six individuals have not filed statements of financial interests.

812 statements of financial interests were reviewed by the public and members of the media

Disclosure and Review

In FY 2006, 4,638 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 1,343 telephone inquiries.

Electronic Filing

Electronic filing of SFIs via the internet resulted in 73% of those required to file doing so electronically, which represents an increase of 3% from the previous year. A total of 3,385 filers submitted their statements electronically this year.

Inspection Requests

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY 2006, the Commission honored 812 such requests from 84 sources, including the media, private citizens and law enforcement agencies.



FINANCIAL DISCLOSURE

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 139 filers missed the May filing deadlines and were sent formal late notices. Of this number, 18 filers became the subject of preliminary inquiries. As of June 30, 2006, only six filers had not complied with the filing requirements.

Penalties

The Ethics Commission assessed civil penalties totalling \$4,750 paid by 39 late filers in FY 2006 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

During FY 2006, the Communications and Public Education Division consisted of the chief, an administrative assistant and a part-time receptionist. The Division provides free educational seminars throughout the state, maintains the Commission's web site and prints educational materials. The Division also serves as the public information office of the Commission and responds to a weekly average of approximately 14 requests for information from the media and from individuals.

Seminars

The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 3,755 people attended the Commission's 110 seminars during FY 2006, including six seminars that were broadcast on local access cable television. Seminar sponsors included 60 municipalities with a total of 1,996 attendees; 35 state agencies with a total of 1,321 attendees; and 15 professional associations with a total of 438 attendees.

In FY 2006, the Commission instituted an educational outreach program to municipalities from which the Commission received the most complaints. Forty municipalities – 11% of the state's 351 communities – generate 40% of the complaints received by the Commission. The Commission conducted educational seminars that provided information about the conflict of interest law and the role of the Commission in enforcing the law in all but four of those communities by the end of FY 2006.

Publications

H I G H L I G H T S

The number of seminars provided by the Commission increased 9% over the previous year

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 2005 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* (1978-2005) is available at the Commission's office and on the

database at the Social Law Library website, www.sociallaw.com.

The Commission issued two new advisories, [ADV-05-05: The Rule of Necessity](#) and [ADV-06-01: Consultants and Attorneys who Provide Services to Government Agencies May be Public Employees Subject to the Conflict of Interest Law](#), updated its [Summary of the Conflict of Interest Law for Selectmen](#), issued primers on [Former State Employees](#) and [Financial Interests in Contract for State Employees](#) and issued a memorandum to municipalities regarding [special municipal employee status](#). The Commission also completed sets of primers on the law for both state and municipal officials. These primers are available on the Commission's [educational materials page](#).



TRAINING AND EDUCATION Web Site

The Commission maintains a web site on the Internet at www.mass.gov/ethics. Use of the web site continues to grow: in FY 2006, the average number of daily visits to the site increased by 18%. In FY 2006, the Commission developed an online training program for state employees that is available on the Commission's website at http://db.state.ma.us/ethics/quiz_MEthics/index.asp.

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 2006, the Commission issued 19 press releases and handled nearly 750 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, an administrative assistant and two student interns. The division, investigates and, where appropriate, prosecutes violations of the conflict of interest and financial disclosure laws. In FY 2006, the Commission reviewed a total of 1,043 complaints alleging violations of these laws. In FY 2006, in response to the report of consultant Francis S. Moran, the Enforcement Division instituted a number of efficiencies such as conducting fewer internal reviews in order to resolve more matters in a more timely manner.

CONFLICTS OF INTEREST

Complaints

The Enforcement Division received 1,021 complaints in FY 2006 alleging violations of the conflict of interest law, G.L. c. 268A. In addition, 417 complaints were pending at the beginning of FY 2006 resulting in a total of 1,442 complaints pending during the year. At the end of FY 2006, only 95 complaints were pending. In many instances the staff conducted interviews, obtained additional information and analyzed documents as part of its additional review. The Division issued 384 private educational letters, initiated 128 investigations and recommended 61 cases for formal review by the Commission. The Division issued two orders to show cause initiating public hearings and negotiated 16 Disposition Agreements. There were also three adjudicatory hearings, one of which resulted in a decision and order.

H I G H L I G H T S

15% increase in number of complaints received

20 % less time to complete enforcement actions

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 2006, the complaints received were from the following sources:

705 from private citizens

55 from media reports

4 generated by Commission staff

225 from anonymous sources

12 from other law enforcement agencies

24 were "self-reports" by public employees

The complaints received involved the following subjects: 899 municipal employees, 144 state employees, 15 county employees and 63 private individuals or corporations.

The Enforcement Division closed 774 complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. The division consolidated 69 complaints with existing cases and resolved 384 cases with private educational letters without any investigation. Finally, the division assigned 128 matters to an attorney/investigator team for further review. The remaining complaints were carried over to the new fiscal year.

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ENFORCEMENT

Staff Investigations

The Commission closed 20 cases following informal staff investigations; eight were closed because staff determined there was little likelihood that the law had been violated. As of June 30, 2006, there were 43 ongoing informal staff investigations.

Formal Inquiries

The commission authorized a total of 59 formal inquiries in FY 2006 regarding alleged violations of the conflict of interest law. Forty-eight of the subjects of formal inquiries were municipal officials or employees; nine were state officials or employees and two were county employees. During FY 2006, Enforcement Division staff completed 41 formal inquiries into alleged violations of the conflict of interest law.

In 16 instances, the Commission found “reasonable cause” to believe that the subject had violated the law, 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 13 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Sixteen cases were terminated without a finding.

At the end of the fiscal year, the Commission had one public hearing pending.

Public Resolutions

H I G H L I G H T S

13% increase in amount of penalties collected in FY 2006

The average penalty in FY 2006: \$4,779

In FY 2006, the Commission conducted three adjudicatory hearings, one of which resulted in a Decision and Order. The Commission also entered into 16 Disposition Agreements involving violations of the conflict of interest law: two with state officials, 13 with municipal officials and one with a private individual. In these signed documents, subjects admitted violating G.L. c. 268A, and agreed to pay civil penalties of up to \$2,000 per violation. In some instances subjects also agreed to pay reimbursements for forfeitures.

Penalties

The Ethics Commission assessed civil penalties for violations of the conflict of interest law totalling \$53,500, collected forfeitures of \$22,362 and a reimbursement of \$1,112 in FY 2006. Penalties and forfeitures collected are deposited in the General Fund, as the Commission does not retain revenue.



ENFORCEMENT

STATEMENTS OF FINANCIAL INTERESTS

Complaints

The Commission's Enforcement Division generated 22 complaints in FY 2006 for violations of the financial disclosure law. In addition, a number of complaints alleging violations of the financial disclosure law were pending at the beginning of FY 2006. The 22 complaints received during FY 2006 involved 21 state employees and one county employee.

Resolutions

In FY 2006, the Division recommended 18 cases for formal review by the Commission and completed 30 reviews. In 25 instances, the Commission found "reasonable cause" to believe that the subject had violated the law and authorized adjudicatory proceedings against the subject. Many of these cases were later resolved by Disposition Agreements between the subject and the Commission. Five cases were terminated without a finding. At the end of the fiscal year, the Commission had one public hearing pending.

H I G H L I G H T S

\$4,750 in penalties collected
for late filing of
statements of financial interests

In total, the Division closed 44 matters involving allegations of violations of the financial disclosure law: 21 were terminated because of mitigating circumstances, two with decisions and orders, and 21 with Disposition Agreements.

Penalties

The Commission assessed penalties for violations of the financial disclosure law totalling \$4,750. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

ADVICE



EDUCATION

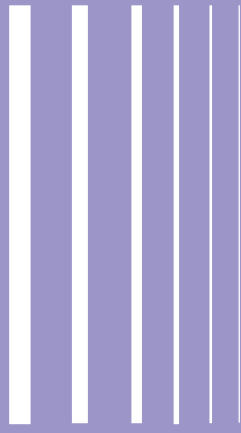


DISCLOSURE



ENFORCEMENT

S T A T E
E T H I C S
C O M M I S S I O N



M A S S A C H U S E T T S

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