

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

Fiscal Year 2007 Annual Report

MASSACHUSETTS STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
617-371-9500
www.mass.gov/ethics



Commissioners

- ❖ **E. George Daher, Chairman**
Chief Justice (retired)
Massachusetts Housing Court
Westwood, MA
- ❖ **M. Tracey Maclin, Vice-Chairman**
Professor of Law
Boston University School of Law
Boston, MA
- ❖ **Jeanne M. Kempthorne**
Principal
Law Office of Jeanne M. Kempthorne
Salem, MA
- ❖ **Matthew N. Kane**
Partner
Donnelly, Conroy & Gelhaar LLP
Boston, MA
- ❖ **David Veator**
Associate
Greenberg Traurig LLP
Boston, MA
- ❖ **J. Owen Todd***
Partner
Todd & Weld LLP
Boston, MA

*Term expired: October 2006



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 file an annual 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 24 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 2007

The Legislature appropriated \$1,553,994 for the Ethics Commission in FY 2007. The FY 2007 budget translates to a cost of approximately \$4.10 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.24 for each citizen of the Commonwealth of Massachusetts.¹ Penalties and forfeitures totaling \$88,400 were assessed by the Commission. Penalties and forfeitures collected are deposited in the General Fund, as the Commission does not retain revenue.

The Legal Division handled 4,372 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, including 97 advisory opinions issued by municipal counsels and nine formal Commission Advisory Opinions. A total of 292 disclosures were reviewed. There were 8 requests for advice pending at the end of FY 2007.

H I G H L I G H T S

77% of filers completed their statements of financial interests online

85 formal inquiries concluded

9% increase in number of individuals who received advice

During FY 2007, 4,510 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 1,285 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 3,788 people attended the 109 educational seminars conducted by the Communications and Public Education Division

in FY 2007.

The Commission's Enforcement Division reviewed 1,024 complaints about violations of the conflict of interest and financial disclosure laws in FY 2007. In many instances, the staff conducted interviews, obtained additional information and analyzed documents as part of its initial review. The Division issued 244 private educational letters, initiated 74 investigations, recommended 65 cases for formal review by the Commission and concluded 85 formal inquiries. The Division issued 10 orders to show cause initiating public hearings and negotiated 30 Disposition Agreements. There was also one adjudicatory hearing, 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 2006 estimated population for Massachusetts is 6,437,193. The estimated number of state and local employees (county and municipal employees) is 379,200. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.



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.

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 weeks. Most requests for advice are handled over the telephone on the day of the call. In FY 2007, the Commission's Legal Division handled 442 requests for advice through informal letters, and 3,775 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 nine formal advisory opinions in FY 2007. Copies of formal advisory opinions are available on the Commission's website or from the Ethics Commission.

In FY 2007, through the institution of a number of efficiencies, the Legal Division eliminated its backlog of opinion requests older than 45 days and significantly improved its written response time. At the end of FY 2007, over 95% of the written informal opinion requests received a response in less than 30 days.

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 2007, the Commission reviewed 97 municipal opinions.

H I G H L I G H T S

The Commission reviewed disclosures filed by 292 individuals, a 10% increase

The number of outstanding requests at the end of the fiscal year decreased from 57 in FY 2006 to 8 in FY 2007



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. These disclosures, which are available to the public, are reviewed for completeness and accuracy before they are filed. The Commission reviewed 292 disclosures, 10% more than the previous year; in 54 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. On January 22, 2007, the Massachusetts Appeals Court in *State Ethics Commission v. Jane Doe* upheld the Commission's issuance of a summons to Doe. The Court also stated that there was not prejudice to Doe in the action of the Enforcement Division Chief to narrow the scope of the original summons. Finally, the Appeals Court ruled that Doe was not entitled to discovery in the Superior Court summons enforcement action. Materials in this matter were impounded in order to preserve the confidentiality of an ongoing investigation, as required by statute.

In *State Ethics Commission v. Louis A. Mandarini, Jr.*, the Commission filed a complaint in Suffolk Superior Court to enforce an order that Mandarini pay a \$100 civil penalty for failing to timely file his 2003 Statement of Financial Interests (SFI). After Mandarini paid the penalty in December 2006, the parties filed a Stipulation of Dismissal.



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 one individual did not file a statement of financial interests.

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

Disclosure and Review

In FY 2007, 4,510 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 1,285 telephone inquiries.

Electronic Filing

Electronic filing of SFIs via the internet resulted in 77% of those required to file doing so electronically, which represents an increase of 4% from the previous year. A total of 3,471 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 2007, the Commission honored 289 such requests from 88 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 91 filers missed the May filing deadlines and were sent formal late notices. Of this number, three filers became the subject of preliminary inquiries. As of June 30, 2007, only one filer had not complied with the filing requirements.

Penalties

The Ethics Commission assessed civil penalties totalling \$2,900 paid by 14 late filers in FY 2007 for violations of the financial disclosure law.



TRAINING AND EDUCATION

During FY 2007, the Communications and Public Education Division consisted of the chief, a municipal training specialist, 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 3,788 people attended the Commission's 109 seminars during FY 2007, including 10 seminars that were broadcast on local access cable television. Seminar sponsors included 49 municipalities with a total of 1,730 attendees; 49 state agencies with a total of 1,605 attendees; and 11 professional associations with a total of 453 attendees.

In FY 2007, the Commission continued its 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 in FY 2006. 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 many of those communities during FY 2007.

H I G H L I G H T S

Twenty-eight cities and towns - 8% of the state's 351 communities - generated one-third of the complaints received by the Commission and were asked to host an educational seminar

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 2006 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* (1978-2006) is available at the Commission's office and on the database at the Social Law Library website, www.sociallaw.com.



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 2007, the average number of visitors per month increased 23% over the previous year. In FY 2007, the Commission began promoting 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. During FY 2007, use of the online training program by state employees experienced a significant increase, growing from 600 hits to over 19,000 by the end of the fiscal year.

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 2007, the Commission issued 39 press releases, more than double the number released the previous year, and handled nearly 700 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.

Over 2,100 email subscribers belong to one or more of the Commission's email lists and regularly receive information from the Commission including press releases and notice of the availability of the Commission's publications.

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 2007, the Commission reviewed a total of 1,024 complaints alleging violations of these laws.

CONFLICTS OF INTEREST

Complaints

The Enforcement Division received 1,024 complaints in FY 2007 alleging violations of the conflict of interest law, G.L. c. 268A. In addition, 171 complaints were pending at the beginning of FY 2007 resulting in a total of 1,195 complaints pending during the year. At the end of FY 2007, only 112 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 244 private educational letters, initiated 76 investigations, recommended 65 cases for formal review by the Commission and concluded 85 formal inquiries. The Division issued 10 orders to show cause initiating public hearings and negotiated 30 Disposition Agreements. There was also one adjudicatory hearing, which resulted in a decision and order.

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 2007, the 1,024 complaints received were from the following sources:

H I G H L I G H T S

15% increase in number of complaints received

20 % less time to complete enforcement actions

691 from private citizens
53 from media reports
5 generated by Commission staff

215 from anonymous sources
24 from other law enforcement agencies
36 were "self-reports" by public employees

The complaints received involved the following subjects: 759 municipal employees, 130 state employees, 16 county employees, 32 private individuals or corporations; in 87 instances, the affiliation of subjects was unknown.

The Enforcement Division closed 642 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 244 cases with private educational letters without any investigation. Finally, the division assigned 76 matters to an attorney/investigator team for further review. The remaining complaints were carried over to the new fiscal year.



ENFORCEMENT

Staff Investigations

The Commission closed 22 cases following informal staff investigations. As of June 30, 2007, there were 24 ongoing informal staff investigations.

Formal Inquiries

The Commission authorized a total of 65 formal inquiries in FY 2007 regarding alleged violations of the conflict of interest law. Forty-five of the subjects of formal inquiries were municipal officials or employees; 16 were state officials or employees; one was a county employee; seven were private entities and the affiliation of five subjects was unknown. During FY 2007, Enforcement Division staff completed 83 formal inquiries into alleged violations of the conflict of interest law.

In 45 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 16 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Twenty-one cases were terminated without a finding.

At the end of the fiscal year, the Commission had seven public hearings pending.

Public Resolutions

H I G H L I G H T S

37% increase in amount of penalties collected in FY 2007

The average fine in FY 2007: \$3,963

In FY 2007, the Commission conducted one adjudicatory hearing, which resulted in a Decision and Order. The Commission also entered into 30 Disposition Agreements involving violations of the conflict of interest law: one with a state official, 21 with municipal officials and one with a county official. 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 \$87,500, collected forfeitures of \$30,300 and reimbursements of \$1,100 to third parties in FY 2007.



ENFORCEMENT

STATEMENTS OF FINANCIAL INTERESTS

Complaints

The Commission's Enforcement Division generated three complaints in FY 2007 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 2007. The three complaints received during FY 2007 involved state employees.

Resolutions

In FY 2007, the Division recommended eight cases for formal review by the Commission and completed eight reviews. In six 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. The subjects of three other cases signed disposition agreements and paid a civil penalty.

H I G H L I G H T S

\$2,900 in penalties collected
for late filing of
statements of financial interests

In total, the Division closed eight matters involving allegations of violations of the financial disclosure law: five were terminated because of mitigating circumstances, two with decisions and orders, and one with a Disposition Agreement.

Penalties

The Commission assessed penalties for violations of the financial disclosure law totalling \$2,900.

ADVICE



EDUCATION

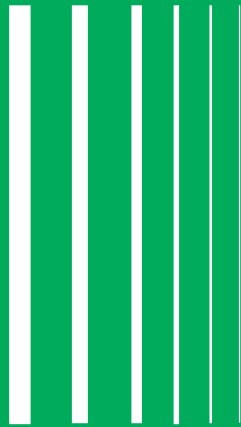


DISCLOSURE



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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