

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

STATE ETHICS COMMISSION

Fiscal Year 2009
Annual Report

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



Commissioners

- ❖ **Charles B. Swartwood, III, Chairman**
United States District Court Chief Magistrate Judge (ret.)
Arbitrator-Mediator
JAMS, Inc.
Boston, MA
- ❖ **E. George Daher, Chairman***
Chief Justice (ret.)
Massachusetts Housing Court
Westwood, MA
- ❖ **Matthew N. Kane, Vice-Chairman**
Partner
Donnelly, Conroy & Gelhaar LLP
Boston, MA
- ❖ **Jeanne M. Kempthorne**
Principal
Law Office of Jeanne M. Kempthorne
Salem, MA
- ❖ **David L. Veator**
Associate
Greenberg Traurig LLP
Boston, MA
- ❖ **Patrick J. King**
Superior Court Judge (ret.)
Arbitrator-Mediator
JAMS, Inc.
Boston, MA

* Term expired October 2008



INTRODUCTION TO THE STATE ETHICS COMMISSION

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Commonwealth. 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 for 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 that they 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.

H I G H L I G H T S

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 state and county 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.

MISSION STATEMENT

The mission of the State Ethics Commission is to foster integrity in public service in state, county and local government, to promote the public’s trust and confidence in that service, and to prevent conflicts between private interests and public duties. The Commission strives to accomplish this mission by conducting ongoing educational programs, providing clear and timely advice, and fairly and impartially interpreting and enforcing the conflict of interest and financial disclosure laws.

COMMISSION STAFF

The Commission staff is made up of 22 employees who work 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.

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The Statements of Financial Interests (“SFI”) Division administers the financial disclosure law and audits SFIs filed with the agency. The SFI division chief also serves as the Commission’s chief financial officer and is responsible for the Commission’s budgetary and payroll functions.

The Public Education and Communications Division conducts free seminars for public employees, maintains the Commission’s website, handles media relations and publishes a wide range of educational materials.

The Enforcement Division receives and investigates complaints of alleged violations of c. 268A and c. 268B, and publicly prosecutes the more serious violations. It resolves relatively minor violations privately with confidential education letters.

SUMMARY OF FISCAL YEAR 2009

The Legislature appropriated \$1,782,433 for the Ethics Commission in FY 2009. Penalties and forfeitures totaling \$58,150 were assessed by the Commission in FY 2009. All penalties and forfeitures collected by the Commission are deposited in the state’s General Fund, as the Commission does not retain revenue.

H I G H L I G H T S

83% of filers completed their statements of financial interests online

24 formal inquiries concluded

123 public education seminars conducted

The Legal Division received 3,590 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, including the review of 87 advisory opinions issued by municipal counsels and the issuance of one formal Commission Advisory Opinion. A total of 534 disclosures filed to comply with the conflict of interest law were received by the Legal Division in FY 2009. There were 25 requests for advice pending at the end of FY 2009.

During FY 2009, 4,552 elected officials, candidates and public employees in designated major policy-making positions were required to file SFIs with the Commission. Electronic filing of SFIs

increased to 83% of all filers. While 152 filers missed the May deadline, all but 22 had filed by the end of the fiscal year. The SFI Division responded to more than 2,300 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 4,670 people attended the 123 educational seminars conducted by the Public Education and Communications Division in FY 2009.

The Commission’s Enforcement Division reviewed 1,083 complaints either received during FY 2009, or pending at the beginning of FY 2009, alleging violations of the conflict of interest and financial disclosure laws. In reviewing these complaints, the staff conducted interviews, obtained additional information and analyzed documents as part of its initial review. The Enforcement Division issued 158 private educational letters, initiated 52 investigations, recommended 24 cases for formal review by the Commission and concluded 24 formal inquiries. The Enforcement Division issued 5 Orders to Show Cause initiating public adjudicatory hearings and negotiated 10 Disposition Agreements. Eleven adjudicatory hearings were completed, which resulted in Decisions and Orders.

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LEGAL DIVISION

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, a deputy chief, three staff 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 Legal Division seeks 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 2009, the Commission's Legal Division handled 358 requests for advice through informal letters, and 3,249 requests via telephone and office visits.

Formal opinions are issued by the Commission. They address issues for which there is no clear Commission precedent 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, are issued by a staff attorney, and are not published. The Commission issued one formal opinion in FY 2009. Formal advisory opinions are available on the Commission's website or may be obtained from the Commission.

In FY 2009, the Legal Division responded to all written opinion requests within 45 days. At the end of FY 2009, 245 out of 358 written opinion requests, or 68%, received a response in less than 30 days.

The law requires that the Commission keep confidential whether anyone has sought or received legal advice from the Commission.

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

H I G H L I G H T S

The Commission received disclosures filed by 534 individuals, an increase of more than 60% from FY 2008

At the end of FY 2009, 68% of the written informal opinion requests received a response in less than 30 days



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 requester, if the opinion was not obtained in advance of the relevant action, or if the requester otherwise acted in bad faith in securing the opinion. In FY 2009, the Commission reviewed 87 municipal opinions.

Disclosures

Each year, the Commission receives from state and county officials disclosures required by several sections of the conflict of interest law. These disclosures, which are available to the public, are reviewed for completeness and accuracy by the Commission's Legal Division before they are filed. Legal Division staff reviewed 534 disclosures, a 60% increase from the previous year; in about 100 of these instances, the filer was contacted and asked to clarify, amend or correct the disclosure.

Regulations

Under the Commission's enabling legislation, G.L. c. 268B, the Commission can promulgate rules and regulations to provide reasonable exemptions from the conflict of interest law. The Commission promulgated 930 CMR 5.00, a regulation providing for exemptions from certain sections of the conflict of interest law. Exemptions were created to allow public employees to receive gifts, benefits, awards, honoraria, payment for travel and admission; to allow state employees to receive certain payments from the Department of Social Services; and to allow local school committee members to participate in certain matters involving school fees. Chapter 28 of the Acts of 2009 expanded the regulatory authority and directed the Commission to create exemptions in specified areas. The Legal Division is currently drafting regulations to comply with that directive, and revising the Commission's regulations more generally.

Electronic Document Filing Program and Form Scheduling Order

In August 2008, the Commission adopted a new form scheduling order and implemented an electronic document filing program for adjudicatory proceedings. The form scheduling order was designed to eliminate delays and improve schedule predictability and ensure that adjudicatory hearings occur within the 90 days allowed by 930 CMR 1.01(9)(b). The electronic document filing program is voluntary, and it allows parties to file documents electronically instead of in paper form.



STATEMENTS OF FINANCIAL INTERESTS DIVISION

Massachusetts G.L. c. 268B requires that all state and county elected officials, candidates for state office and “designated” state and county employees annually disclose their financial interests and private business associations. “Designated” employees are those individuals who hold major policy-making positions within their employing agencies. Commission staff are available to assist filers in completing their Statement of Financial Interests (“SFIs”).

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

H I G H L I G H T S

4,552 public employees were required to file SFIs in FY 2009

83% of SFIs were e-filed, an increase of 1% from FY 2008

Disclosure and Review

In FY 2009, 4,552 public employees, elected officials and candidates for office were required to file SFIs. The SFI Division reviews every SFI that is filed, and this 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 more than 2,300 telephone inquiries.

Electronic Filing

In 2001, the Commission launched an electronic filing application for SFIs. That year, 40% of filers filed their SFIs electronically. The percentage of electronic filings has increased steadily each year; in FY 2009, 83% of those required to file SFIs did so electronically. This represents a 1% increase from the previous year. A total of 3,764 filers submitted their SFIs electronically in FY 2009.

Inspection Requests

SFIs are public records and are available for inspection at the Commission office. While any individual may inspect and obtain a copy of any SFI filed with the Commission, the law requires that filers be notified whenever their SFIs have been reviewed. As a result, SFIs can only be provided upon completion of an inspection request form and production of valid identification. During FY 2009, the Commission honored 141 such requests from 46 sources, including the media, private citizens and law enforcement agencies.



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, pursuant to G.L. c. 268B section 5(e), employees who do not file on time may not perform their duties or be paid until they do so. For the first time, the Commission notified the employing agencies of employees who failed to file by the May 1, 2009 deadline. As a result, all but 31 former public employees who had not filed by the deadline filed their SFIs by May 15th.

A total of 152 filers missed either the May 1, 2009 deadline for appointed public employees, or the May 26, 2009 deadline for elected public officials. In total, only 22 filers had to be sent formal late notices. Of this number, 17 filers failed to file within the 10 day grace period after receiving a formal late notice, and those matters were referred to the Enforcement Division.

Penalties

In FY 2009, 9 late filers were assessed civil penalties by the Ethics Commission totalling \$1,150 for violations of the financial disclosure law.

PUBLIC EDUCATION AND COMMUNICATIONS DIVISION

During FY 2009, the Public Education and Communications Division consisted of the chief, special counsel and an administrative assistant. The division provides free educational seminars throughout the state, maintains the Commission’s website and develops educational materials. The division also serves as the public information office of the Commission and responds to a weekly average of approximately 10 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 4,670 people attended the Commission’s 123 seminars during FY 2009. Seminars were provided to 35 municipalities, with a total of 1,062 attendees; 37 state agencies, with a total of 1,439 attendees; and 17 professional associations whose membership consists of municipal employees, with a total of 833 attendees. The Commission also conducted 13 seminars for the Governor’s Office and the Legislature, with a total of 770 attendees; 13 seminars in connection with the Inspector General’s Massachusetts Certified Public Procurement Officer certification program, with a total of 370 attendees; and 7 seminars held at the Commission offices, with a total of 159 attendees.

H I G H L I G H T S

123 public education seminars were conducted in FY 2009

Over 4,600 public employees attended seminars in FY 2009, a 30% increase from the previous year

Use of the on-line training program continued to increase

In FY 2009, the Commission also continued its educational outreach program to municipalities from which the Commission received the most complaints. 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.

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 website. The Commission’s FY 2008 Annual Report was distributed electronically during the fiscal year. Due to limited resources, the Commission has not been able to issue the annual compilation of the Commission’s public actions, *State Ethics Commission Rulings*, since the 2006 actions. Commission *Rulings* for 1978 through 2006 are available at the Commission’s office and on the database at the Social Law Library website, www.sociallaw.com. As resources become available, the *Rulings* for 2007, 2008 and 2009 will be issued.



Website

The Commission maintains a website at www.mass.gov/ethics. The website continues to see significant use: In FY 2009, the website received an average of 4,192 visitors per month. In May 2009, through the invaluable assistance of the state's Information Technology Division and its Mass.Gov team, the Commission deployed a new portalized website that has a look that is consistent with state agency websites within Mass.Gov. The Commission's website is now searchable and contains a variety of information on the conflict of interest and financial disclosure laws, including educational materials, legal opinions, and enforcement actions. The public can now confidentially request legal advice, submit complaints, or file Statements of Financial Interests through the website.

In FY 2009, an online training program for state employees was available on the Commission's website at <http://db.state.ma.us/ethics/quizMEthics/index.asp>. Participation was voluntary, and use of the online training program by state employees continued to increase during FY 2009. Completion certificates are available for employees who complete the training program.

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 2009, the Commission issued 23 press releases, and handled over 500 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 due to strict confidentiality requirements imposed on the Commission by statute. It does, however, provide general explanations of the law, often directing individuals with questions to the Commission's website 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 notices of the availability of the Commission's publications.



ENFORCEMENT DIVISION

The Enforcement Division consists of a chief, a deputy chief, two staff attorneys, five investigators and an administrative assistant. The Enforcement Division investigates and, where appropriate, prosecutes violations of the conflict of interest and financial disclosure laws. In FY 2009, the Commission received a total of 881 complaints alleging violations of these laws.

CONFLICT OF INTEREST LAW

Complaints

The Enforcement Division received 864 complaints in FY 2009 alleging violations of the conflict of interest law, G.L. c. 268A. In addition, 202 complaints were pending at the beginning of FY 2009 resulting in a

total of 1,066 complaints pending during the year. At the end of FY 2009, 239 complaints were pending. In many instances, the staff conducted interviews, obtained additional information and analyzed documents as part of its additional review. The Enforcement Division issued 158 private educational letters, initiated 52 investigations, recommended 24 cases for formal review by the Commission and concluded 24 formal inquiries. The Enforcement Division issued 5 Orders to Show Cause initiating public hearings and negotiated 10 Disposition Agreements. There were 11 adjudicatory hearings concluded in FY 2009, which resulted in Decisions and Orders.

H I G H L I G H T S

864 complaints alleging conflict of interest law violations were received in FY 2009

24 formal inquiries and 11 adjudicatory matters were completed in FY 2009

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. Complaints can also be submitted through the website. In FY 2009, complaints were received from the following sources:

571 from private citizens

4 from public agencies

10 generated by Commission staff

236 from anonymous sources

6 from other law enforcement agencies

37 were "self-reports" by public employees

The complaints received involved the following: 637 municipal employees, 144 state employees, 8 county employees, and 44 private individuals or corporations; in 31 instances, the affiliation of subjects was unknown.

The Enforcement Division closed 622 complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not warrant continued investigation. The Enforcement Division consolidated 59 complaints with existing cases and resolved 158 cases with private educational letters. Finally, the Enforcement Division assigned 52 matters to an attorney/investigator team for further review. The remaining complaints were carried over to the new fiscal year.

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Confidentiality

Matters under review by the Commission's Enforcement Division are confidential. The Commission cannot confirm the nature or existence of a complaint or investigation, and must keep the identities of all complainants confidential. If, after a "preliminary inquiry" investigation by Enforcement Division staff, the Commission finds that there is reasonable cause to believe that the conflict of interest law has been violated, the matter will be resolved publicly, either through a disposition agreement, public education letter, or adjudicatory hearing.

Staff Investigations

The Commission closed 17 cases following informal staff investigations. As of June 30, 2009, there were 37 ongoing informal staff investigations.

Formal Inquiries

The Commission authorized a total of 24 formal inquiries in FY 2009 regarding alleged violations of the conflict of interest law. Ten subjects of formal inquiries were municipal officials or employees; 9 were state officials or employees; 1 involved a county employee; 1 subject was unidentified; and 3 were private citizens. During FY 2009, Enforcement Division staff completed 24 formal inquiries into alleged violations of the conflict of interest law.

H I G H L I G H T S

6 adjudicatory proceedings were pending at the end of FY 2009

The average penalty assessed by the Commission in FY 2009:
\$3,800

In 5 instances, the Commission found "reasonable cause" to believe that a violation of the law had occurred and authorized adjudicatory proceedings. Three cases were later resolved through Disposition Agreements. The Commission also issued 3 confidential compliance letters, advising subjects of their violations and explaining the consequences of future misconduct. Fourteen cases were terminated, and one formal inquiry was resolved with the issuance of two public education letters.

At the end of the fiscal year, the Commission had 6 public adjudicatory hearings pending.

Public Resolutions

In FY 2009, the Commission completed 11 adjudicatory hearings, which resulted in Decisions and Orders. The Commission also entered into 10 Disposition Agreements involving violations of the conflict of interest law: Three with current or former state employees, and 7 with current or former municipal officials or employees. In these agreements, subjects admitted to violating G.L. c. 268A, and agreed to pay civil penalties of up to \$2,000 per violation.



Penalties

In FY 2009, the Ethics Commission assessed civil penalties for violations of the conflict of interest law in the total amount of \$57,000 pursuant to either Disposition Agreements or Decisions and Orders. Penalties imposed in FY 2009 averaged \$3,800.

FINANCIAL DISCLOSURE LAW

Complaints

The Commission's Enforcement Division generated 17 complaints in FY 2009 for violations of the financial disclosure law, G.L. c. 268B. In addition, 17 complaints alleging violations of the financial disclosure law were pending at the beginning of FY 2009. Fifteen of the complaints generated during FY 2009 involved state employees, and 2 involved county employees.

Resolutions

H I G H L I G H T S

\$1,150 in penalties collected for late filing of Statements of Financial Interests

In FY 2009, the Enforcement Division recommended 17 SFI matters for formal review by the Commission. In addition, 15 formal reviews were pending at the beginning of FY 2009. In 9 instances, subjects entered into Disposition Agreements with the Commission and paid civil penalties. Nine other matters were terminated by the Commission due to extenuating circumstances. Thirteen formal reviews were pending as of June 30, 2009.

One Order to Show Cause was issued alleging a violation of the financial disclosure law.

Two SFI cases were terminated by the Commission due to extenuating circumstances prior to any formal review.

Penalties

In FY 2009, 9 individuals were assessed civil penalties by the Commission in the total amount of \$1,150 for violations of the financial disclosure law.

ADVICE



EDUCATION

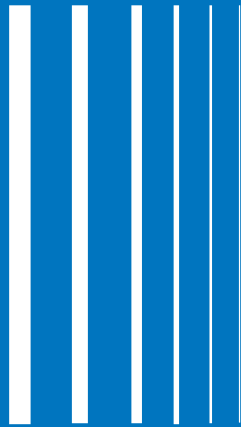


DISCLOSURE



ENFORCEMENT

S T A T E
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