

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 14-0010

IN THE MATTER

OF

KEVIN FRANCK

ORDER TO SHOW CAUSE

1. The State Ethics Commission is authorized to enforce G.L. c. 268B, the Financial Disclosure Law, and in that regard to initiate and conduct adjudicatory proceedings.

2. On July 16, 2014, the Commission found reasonable cause to believe that Kevin Franck violated G.L. c. 268B, § 5 and authorized the initiation of adjudicatory proceedings.

3. Franck, a resident of Boston, began serving as the Executive Office of Labor and Workforce Development's Director of Communications on February 18, 2013. Franck is no longer serving as the Executive Office of Labor and Workforce Development's Director of Communications.

4. While he served as the Executive Office of Labor and Workforce Development's Director of Communications, Franck was a state employee as that term is defined in G.L. c. 268A, § 1.

5. In accordance with G.L. c. 268B and 930 CMR 2.00, Franck's position was designated as a "major policymaking position" for calendar year 2013. A major policy making position includes the head of a division, bureau or other Major Administrative Unit within a

governmental body. *See* 930 CMR 2.02 (d). Massachusetts law, specifically, General Laws chapter 268B, requires that an individual holding a major policymaking position in a state agency must file a Statement of Financial Interests (“SFI”) with the Commission for the *prior* calendar year within thirty (30) days after becoming a public employee *and* on an annual basis thereafter.

6. As Director of Communications at the Executive Office of Labor and Workforce Development, Franck was required to file an SFI for calendar year 2012 in accordance with G.L. c. 268B and 930 CMR 2.00.

7. The Commission’s regulations further provide that an agency is required to submit, to the Commission, the name of any new public employee within its jurisdiction with ten (10) days of his or her beginning employment. *See* 930 CMR 2.00. Notice is provided by the agency to the Commission by use of the “New Public Employee Acknowledgment of Obligation to File Annual Statements of Financial Interests with State Ethics Commission” form (“New Public Employee Form”).

8. Franck signed the New Public Employee Form on April 4, 2013. His, employer, The Executive Office of Labor and Workforce Development, did not provide it to the Commission until May 6, 2014 – more than one year after he commenced his employment. However, despite the agency’s untimely forwarding of the New Public Employee Form, it had earlier included Franck’s name on its SFI filer Designation List, which it submitted to the Commission on December 19, 2013. It was during the process of reviewing the agency’s Designation List that Commission staff recognized that Franck had not filed an SFI for calendar year 2012 as required

9. The Commission subsequently informed Franck of his obligation to file an SFI for

calendar year 2012 and that it was due on or before March 14, 2014. Because the Commission did not receive timely notice of Franck's obligation to file an SFI from his agency, Franck's SFI for 2012 was not required to be filed until on or before March 14, 2014. Franck did not timely file an SFI on or before March 14, 2014 as required.

10. On April 4, 2014, the Commission sent by regular and certified mail a Formal Notice of Lateness ("Notice") to Franck. The Notice advised Franck that his SFI had not been filed and was, therefore, delinquent. The Notice further advised Franck that failure to file his 2012 SFI within 10 days of receipt of the Notice would result in the imposition of civil penalties. The Commission allows three days for receipt of the Notice if sent by first class mail. Therefore, Franck would not have incurred a civil penalty if he had filed his SFI by April 17, 2014.

11. Franck filed an SFI with the Commission on May 15, 2014, several weeks after the deadline.

12. Because Franck failed to timely file his SFI after receiving the Notice, he violated G.L. c. 268B, § 5.

13. General Laws c. 268B, § 4 authorizes the Commission to impose a civil penalty of up to \$10,000 for each violation of c. 268B. The Commission has adopted the following civil penalty schedule for SFIs filed more than 10 days after the receipt of the Notice.

1-10 days late	\$100
11-20 days late	\$200
21-30 days late	\$300
31-40 days late	\$400
41-50 days late	\$500
51-60 days late	\$600
61-70 days late	\$700
71-80 days late	\$800
81-90 days late	\$900
91-100 days late	\$1,000
101- 110 days late	\$1,100
111-120 days late	\$1,200

121 days to the day before an Order to Show Cause is issued	\$1,250
The date an Order to Show Cause is issued to the day before a Decision and Order is issued by the Commission	\$2,500
The date a Decision and Order is issued by the Commission	Up to \$10,000

14. Franck's SFI was 28 days late. Based on the Commission's fine schedule for late submission of an SFI, the civil penalty is \$300.

WHEREFORE, Petitioner asks that the Commission:

- a) find that Kevin Franck violated G.L. c. 268B, § 5 by failing to file his 2012 SFI within ten (10) days of receiving the Formal Notice of Lateness; and
- b) impose a \$300 civil penalty pursuant to G.L. c. 268B, § 4(j) and the Commission's civil penalty schedule.

Respectfully submitted,
Petitioner State Ethics Commission
By its attorney,

Date: September 17, 2014

/s/ Karen Beth Gray
Karen Beth Gray
Enforcement Division Deputy Chief
State Ethics Commission
One Ashburton Place, Room 619
Boston, MA 02108
(617) 371-9500
BBO# 554775