



**MA POLICE ASSOCIATION**

# **POLICE AND PENSION FORFEITURES**

MA Police Association | Plymouth, Massachusetts



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# OUR PENSION FORFEITURE STATUTE

- Chapter 32, Section 15(4) *Forfeiture of pension upon misconduct.* -- In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty-eight, inclusive... (Emphasis supplied)



# A TALE OF TWO CO-CONSPIRATORS

3. Essex County employed Mr. [Harry] Coppola from 1980 to 1986. He was appointed Special Sheriff in Essex County in or about 1986. (Ex. 1)
4. Mr. Coppola pleaded guilty in the U.S. District Court for the District of Massachusetts to making Payments to Reward or Influence a Public Official. He signed a plea agreement on September 17, 1996 in which he agreed to plead guilty to Count II of the indictment. He admitted that he and Essex County Sheriff Charles Reardon from "1987 until at least the end of 1993 ... aided and abetted by each other and others, did corruptly solicit, demand, accept and agree to accept things of value from individuals and entities involved in serving legal process in Essex County ... intending to be influenced and rewarded..." in violation of 18 U.S.C ss. 666 (a) (B) and 2. (Ex. 3) - Findings of Fact 3 & 4, Essex County Retirement Board & Coppola v. PERAC & Lynn Retirement Board, CR-99-725 (7/14/2000) (Emphasis supplied)



# TWO CO-CONSPIRATORS

## Charles Reardon

- Pled guilty to soliciting, demanding, accepting and agreeing to accept things of value from individuals involved in serving legal process in Essex County
- Pled guilty only to crimes committed *before* January 12, 1988
- Kept his pension

## Harry Coppola

- Pled guilty to soliciting, demanding, accepting and agreeing to accept things of value from individuals involved in serving legal process in Essex County
- Pled guilty to crimes committed *after* January 12, 1988
- Forfeited his pension



# GAFFNEY

- Gaffney v. Retirement Board of Shrewsbury, 423 Mass 1, 1996.
- SJC rejected Gaffney's argument that Section 15(4) operate only in cases re: violations of highly specialized crimes
- *“The substantive touchstone intended by the General Court is criminal activity connected with the office or position.”*



## GAFFNEY (Cont'd.)


- *“Yet it is also apparent that the General Court did not intend pension forfeiture to follow as a sequelae of any and all criminal convictions. Only those violations related to the member's official capacity were targeted. Looking to the facts of each case for a direct link between the criminal offense and the member's office or position best effectuates the legislative intent of § 15(4).”*



# BULGER

- State Board of Retirement v. Bulger, 446 Mass. 169 (2006).
- Clerk-Magistrate of the Juvenile Court pled guilty to two counts of perjury and two counts of obstruction of justice in connection with grand jury testimony involving his brother, a fugitive from justice






## BULGER (Cont'd.)

*“At the heart of a clerk-magistrate's role is the unwavering obligation to tell the truth, to ensure that others do the same through the giving of oaths to complainants, and to promote the administration of justice. When Bulger committed the crimes of perjury and obstruction of justice, he violated the fundamental tenets of the code and of his oath of office, notwithstanding his contention that such misconduct occurred in the context of what was arguably a personal matter.” (Emphasis supplied)*






## GAFFNEY & BULGER

- Is the criminal offense related to the member's office or position?
- Does it violate an oath taken by the member, or a code of conduct prescribed for those in the member's office or position?
- Does it violate a "fundamental tenet" of the member's occupation?



# PERRYMAN

- Robert Perryman, et al. v. School Committee of Boston, 17 Mass. App. Ct. 346, (1983).
- Two teachers indicted for welfare fraud
- **Question:** Whether a teacher's off duty conduct resulting in misconduct constitutes misconduct in office?
- **Answer:** Depends upon whether that conduct violated the special trust inherent in that office

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- Although a position of special public trust imposes additional obligations on certain public employees, an act resulting in an indictment is not, per se, a breach of that trust. There must be a direct relationship between the activity and the trust before the conduct in question can be said to constitute misconduct in office within the comprehension of [G.L. c. 268A, § 25](#).



# McHATTON

- As the Supreme Judicial Court wrote in [Attorney Gen. v. McHatton](#), 428 Mass. 790, 793-794, 705 N.E.2d 252 (1999), quoting from [Police Commr. of Boston v. Civil Service Commn.](#), 22 Mass.App.Ct. 364, 371, 494 N.E.2d 27 (1986):
- *“Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”*  
(Emphasis in original)



# BRODERICK

- Broderick v. Police Commissioner of Boston, 386 Mass. 33 (1975).
- Ninety off duty police officers went to Rhode Island to participate in “Law Day” celebrations
- Some of these officers did not behave appropriately at the hotel in which they were staying



## BRODERICK (*Cont'd.*)

- *'Relating to' implies more than matters taking place on duty; we think it extends to matters of and concerning an individual's fitness for public service. We decline to hold that the commissioner must close his eyes to what might constitute outrageous, even illegal, conduct on the part of police officers under his command on the principle that the conduct took place when the officer was off duty.*






# FALMOUTH

- Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796 (2004).
- Officer suspended for ten days for “conduct unbecoming an officer and untruthfulness”
- Officer had confronted his ex-wife’s live-in boyfriend at a rink during his son’s hockey practice, threatening the boyfriend, launching a *“profane tirade, yelling vulgarities and various insults, all within the earshot of children and their parents.”* Matters escalated outside the rink.



# TYLER

- Retirement Board of Maynard v. Tyler, 83 Mass. App.Ct. 109 (2013) (Application for further appellate review denied by SJC on 5/2/2013).
- Firefighter in Maynard
- For a number of years, had been sexually abusing young boys
- Among the victims, the son of a fellow firefighter



*“We recognize the essential roles firefighters play, extinguishing fires and protecting life and property. G.L.c. 48, Section 42. Although Tyler knew his victims through his fellow firefighters, his offenses were nonetheless personal in nature, occurring outside the firehouse while Tyler was not on duty. Moreover, there was no evidence that Tyler used his position, uniform, or equipment for the purposes of his indecent acts, nor were the acts committed on department property.”*



## THE DISSENT IN TYLER

*“Here, Tyler was sentenced to prison for repeatedly sexually abusing young victims, the very type of criminal behavior he was required by law to report. His convictions are directly related to his position as a firefighter and EMT because they demonstrate a violation of the public's trust as well as a repudiation of his official duties.”*



# MANDATORY REPORTER


In denying further appellate review the SJC stated: *“We express no view on the merits of the point raised in the dissenting opinion in the Appeals Court concerning the defendant's status as a mandatory reporter. That point was not raised by the parties in the trial court or on appeal, and was not addressed by the Appeals Court majority. The question of the significance, if any, of a pensioner's status as a mandatory reporter of the crimes he is alleged to have committed remains open.”* (Emphasis added)



# ACCETTA

- Joseph Accetta, Jr. v. PERAC and Springfield Retirement Board, Hampden District Court, Docket No. 0423-CV-1965.
- Police officer on leave shoots and kills a man during a struggle at bar in West Springfield.
- Indicted for first degree murder, he claimed self defense
- Convicted of manslaughter
- Unclear if service revolver used



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- Springfield Retirement Board granted pension, but PERAC reversed that decision
  - Accetta argued that under Gaffney, his actions did not bear a direct link to his office or position
  - District Court: This is not a case about misappropriation of funds from a city department by its superintendent



## ACCETTA (Cont'd.)

- *“Accetta was convicted of a crime that involved the laws he had sworn to uphold. He not only swore to uphold these laws, but as a police officer was held to a higher standard of conduct. Therefore, his conviction under those very laws that he swore to uphold can be classified very easily as misconduct which requires his pension be forfeited...”*




# DURKIN

- Durkin v. Boston Retirement Board, 83 Mass. App. Ct. 116 (2012) SJC denied review 464 Mass. 1107 (2013).
- Boston police officer becomes intoxicated while in possession of his service firearm
- While drunk, shoots a fellow police officer in the hip
- Pleads guilty to assault and battery by means of a dangerous weapon



## DURKIN *(Cont'd.)*

*“It cannot be gainsaid that police officers, who are extensively trained in the use of firearms, and who carry their service revolvers with them while off-duty, have a high degree of responsibility to which the public deserves and demands adherence. Simply, an officer who consumes an excess amount of alcohol and uses his service revolver to shoot, without any justification whatsoever, a fellow officer from a distance of a few feet away has sadly breached that trust. “*



*“This violation was directly related to his position as a police officer as it demonstrated a violation of the public's trust as well as a repudiation of his official duties. Clearly, at the heart of a police officer's role is the unwavering obligation to protect life, which Durkin himself recognized at his hearing. His extreme actions violated the integrity of the system which he was sworn to uphold. The board and the District Court judge acted properly in concluding that Durkin's pension is forfeited.”*



# A TALE OF TWO PUBLIC EMPLOYEES

## PAUL SPRAT

- Paul = police officer for the Town of Quabbin
- 3 minutes older than Darren
- Date of membership = April 8, 1988
- Lives with wife and 3 kids in the Town of Capulet, 35 miles west of Quabbin

## DARREN SPRAT

- Darren = DPW worker for the Town of Quabbin
- 3 minutes younger than Paul
- Date of membership = April 8, 1988
- Lives with wife and 3 kids in the Town of Capulet, 35 miles west of Quabbin





# RIPPED FROM THE HEADLINES

- Police Chief in Quabbin
- Resident of Capulet
- Convicted of two counts of “assault & battery” after beating on his wife at their residence in Capulet
- The Retirement Board of Quabbin holds a hearing to determine if he should forfeit his pension



## ***NOT* RIPPED FROM THE HEADLINES**

- Head of the DPW in Quabbin
- Resident of Capulet
- Convicted of two counts of “assault & battery” after beating on his wife at their residence in Capulet
- The Retirement Board of Quabbin processes his request for superannuation in the normal course of business



# ILLINOIS

- *Cullen vs. Retirement Board*, 271 Ill. App.3d 1105, 649 N.E.2d 454 (1995)  
(the job description of a Chicago police officer does not include murder, so member keeps pension)




## ILLINOIS

- *Devoney vs. Retirement Board*, 199 Ill.2d 414, 769 N.E. 932 (2002) (police officer loses pension for participating in an off-duty insurance fraud scheme)



# FLORIDA

- DeSoto v. Hialeah Police Pension Fund Bd. of Trustees, District Court of Appeal of Florida, 3<sup>rd</sup> District, August 20, 2003.
- Police officer commits a wide variety of crimes during a six month suspension
- Officer appealed board's forfeiture of his pension, because the crimes of which he was convicted occurred while he was on suspension and thus could not be related to his duties as a police officer



## DESOTO (Cont'd.)

- *We agree with the trial court that this evidence was sufficient to meet the statutory requirement of a nexus between the crimes charged against the public officer and his or her duties and/or position. As the board noted, the conspiracies involved in the planning of the robberies and the agreement to protect the drug shipment occurred outside the period of DeSoto's suspension. Additionally, DeSoto clearly violated his duty as a public officer to safeguard the public faith in his office. Although suspended for a period of time, DeSoto remained a public servant. We, therefore, affirm the board's conclusion that DeSoto's conviction warranted the forfeiture of his pension rights.*



# THE FINAL FRONTIER

