

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 12-0011

IN THE MATTER

OF

RICHARD McCLURE

ORDER TO SHOW CAUSE

1. The State Ethics Commission ("Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On April 20, 2012, the Commission (a) found reasonable cause to believe that Richard McClure repeatedly violated G.L. c. 268A, § 17(c), and (b) authorized the initiation of adjudicatory proceedings.

FACTS

3. McClure, an attorney, is a sole practitioner based in the Town of Chelmsford (the "Town").

4. On August 17, 2010, McClure, acting as a private attorney on behalf of four Chelmsford residents, filed in Land Court a complaint ("the Fair Street Lawsuit") against two Chelmsford residents regarding a property dispute. On October 27, 2010, McClure amended the lawsuit to include the Town as a defendant. The lawsuit alleged, among other things, that in 1994 the Town unlawfully took by eminent domain an easement on Fair Street in Chelmsford.

5. On April 5, 2011, McClure was elected to the Town Planning Board and

was sworn into that office on April 13, 2011.

6. On April 13, 2011, McClure received a copy of the summary of the conflict of interest law.

7. On April 21, 2011, the town clerk received a letter from McClure stating that McClure was representing several registered Town voters regarding an effort to recall the Board of Selectman ("BOS"). In the letter, McClure disputed the town clerk's interpretation of the town charter regarding the deadline for returning signed recall petitions.

8. On April 22, 2011, McClure, in his capacity as a private attorney, filed suit against the Town in Middlesex Superior Court, listing ten plaintiffs by name and referencing an additional unnamed 328 Town voters ("the Recall Lawsuit"). The lawsuit alleged, among other things, that the town clerk violated the section of the Town charter regarding recall elections.

9. On May 6, 2011, a Superior Court judge allowed a motion disqualifying McClure from representing any party other than himself in the Recall Lawsuit. This decision was based on the court's determination that McClure had committed "a knowing violation of the conflict of interest law enunciated in G.L. c. 268A, Section 17(c)" by, as a municipal employee, representing the plaintiffs in the Recall Lawsuit. McClure appealed the decision, but his appeal was later denied.

10. On June 20, 2011, McClure completed the State Ethics online conflict of interest law training program.

11. On October 6, 2011, a Land Court judge allowed a motion to disqualify

McClure from the Fair Street Lawsuit. This decision was based on the court's determination that McClure, as a municipal employee, had a conflict of interest in representing the plaintiffs.

LAW

12. As a Chelmsford Planning Board member, McClure is a municipal employee as defined by G.L. c. 268A, § 1.

13. Section 17(c) of G.L. c. 268A prohibits a municipal employee, otherwise than in the proper discharge of official duties, from acting as agent or attorney for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

14. The Fair Street Lawsuit and the Recall Lawsuit were particular matters.

15. The Town was a party to and/or had a direct and substantial interest in each of those particular matters.

16. By his actions as described above in representing the plaintiffs in both the Fair Street Lawsuit and the Recall Lawsuit after McClure had become a Planning Board member, McClure, otherwise than in the proper discharge of official duties, acted as an attorney for someone other than the Town in connection with particular matters in which the Town was a party and/or had a direct and substantial interest. By doing so, McClure repeatedly violated § 17(c).

WHEREFORE, Petitioner asks that the Commission:

1. find that Richard McClure repeatedly violated G.L. c. 268A, § 17(c) as described above; and
2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully Submitted,

**Petitioner State Ethics Commission
By its attorney,**



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