

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

STATE ETHICS COMMISSION

Fiscal Year 2008
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
- ❖ **Matthew N. Kane, Vice-Chairman**
Partner
Donnelly, Conroy & Gelhaar LLP
Boston, MA
- ❖ **Jeanne M. Kempthorne**
Principal
Law Office of Jeanne M. Kempthorne
Salem, MA
- ❖ **Patrick J. King**
Superior Court Judge (retired)
Arbitrator-Mediator
JAMS, Inc.
Boston, MA
- ❖ **David Veator**
Associate
Greenberg Traurig LLP
Boston, MA
- ❖ **M. Tracey Maclin***
Professor of Law
Boston University School of Law
Boston, MA

* Term expired October 2007



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 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 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 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 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 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.

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 and publishes a wide range of educational materials.

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The Enforcement Division 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 2008

The Legislature appropriated \$1,640,650 for the Ethics Commission in FY 2008. Penalties and forfeitures totaling \$89,083 were assessed by the Commission in FY 2008. 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

82% of filers completed their statements of financial interests online

55 formal inquiries concluded

115 education seminars conducted

The Legal Division handled 4,208 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, including the review of 85 advisory opinions issued by municipal counsels and the issuance of one formal Commission Advisory Opinion. A total of 311 disclosures were reviewed. There were 62 requests for advice pending at the end of FY 2008.

During FY 2008, 4,751 elected officials, candidates and public employees in designated major policy-making positions were required to file SFIs with the Commission. All but nine had filed by

the end of the fiscal year. The SFI Division responded to 2,204 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 3,487 people attended the 115 educational seminars conducted by the Public Education and Communications Division in FY 2008.

The Commission's Enforcement Division reviewed 1,012 complaints alleging violations of the conflict of interest and financial disclosure laws in FY 2008. In reviewing these complaints, the staff conducted interviews, obtained additional information and analyzed documents as part of its initial review. The Enforcement Division issued 193 private educational letters, initiated 73 investigations, recommended 38 cases for formal review by the Commission and concluded 55 formal inquiries. The Enforcement Division issued 15 orders to show cause initiating public adjudicatory hearings and negotiated 21 Disposition Agreements. Two adjudicatory hearings were completed, which resulted in decisions and orders, and five other adjudicatory matters were resolved prior to hearings being conducted.

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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 2008, the Commission's Legal Division handled 414 requests for advice through informal letters, and 3,705 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 did not receive any formal advisory opinions requests in FY 2008, but issued one formal opinion that was pending from FY 2007. Copies of prior year's formal advisory opinions are available on the Commission's website or may be obtained from the Ethics Commission.

In FY 2008, 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 2008, more than 66% of the written informal opinion requests 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 reviewed disclosures filed by 311 individuals, a 6% increase

At the end of FY 2008, 66% 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 2008, the Commission reviewed 85 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 311 disclosures, a 6% increase from the previous year; in 70 instances, the filer was contacted and asked to clarify, amend or correct the disclosure.

New Regulation

Effective as of February 2005, the Commission's enabling legislation, G.L. c. 268B, was amended to allow the Commission to promulgate rules and regulations to provide reasonable exemptions from the conflict of interest law. In October 2007, after a public hearing process, 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 payments from the Department of Social Services; and to allow local school committee members to participate in matters involving school fees.



FINANCIAL DISCLOSURE 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 Statements of Financial Interest (“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

4,751 public employees filed SFIs in
FY 2008

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3,895 SFIs were e-filed, an increase
of 5% from FY 2007

Disclosure and Review

In FY 2008, 4,751 public employees, elected officials and candidates were required to file SFIs. The Financial Disclosure 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 2,204 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, so that for FY 2008, 82% of those required to file SFIs did so electronically. This represents a 5% increase from the previous year. A total of 3,895 filers submitted their SFIs electronically in FY 2008.

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 2008, the Commission honored 149 such requests from 60 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 employees who do not file on time may not perform their duties or be paid until they do so.

A total of 123 filers missed the May filing deadlines and 100 filers were sent formal late notices. Of this number, 17 filers became the subject of preliminary inquiries. As of June 30, 2008, 9 filers had not complied with the filing requirements.

Penalties

The Ethics Commission assessed civil penalties totalling \$1,700 on 9 late filers in FY 2008 for violations of the financial disclosure law.



PUBLIC EDUCATION AND COMMUNICATIONS DIVISION

During FY 2008, the Public Education and Communications Division consisted of the chief, a municipal education specialist and an administrative assistant. The municipal education specialist position became vacant in October 2007, and the position has not been filled. The Division Chief position became vacant in December 2007, and was filled in May 2008. 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 3,487 people attended the Commission's 115 seminars during FY 2008. Seminar sponsors included 53 municipalities, with a total of 1,646 attendees; 52 state agencies, with a total of 1,674 attendees; and 10 professional associations, with a total of 311 attendees.

H I G H L I G H T S

115 public education seminars were conducted in FY 2008

Over 3,400 public employees attended seminars in FY 2008

Use of the on-line training program grew by more than 40%

In FY 2008, the Commission 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 newsletter, *The Bulletin*, generally is distributed three times each calendar year. The Commission's *FY 2007 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* for 1978 through 2006 is available at the Commission's office and on the database at the Social Law Library website, www.sociallaw.com. Due to staff vacancies in the Public Education and Communications Division, the 2007 *Rulings* and *The Bulletin* were not distributed in 2008. They will be available shortly.

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Website

The Commission maintains a website on the Internet at www.mass.gov/ethics. The website continues to see significant use: in FY 2008, the website received an average of 5,207 visitors per month, viewing an average of 38,191 pages. An online training program for state employees is available on the Commission's website at <http://db.state.ma.us/ethics/quizMEthics/index.asp>. During FY 2008, use of the online training program by state employees experienced a significant increase, growing from more than 19,000 hits to more than 28,000 hits by the end of the fiscal year. While participation is voluntary, the Commission encourages state agencies to have their employees take the quiz. Completion certificates are available for employees who successfully complete the quiz.

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 2008, the Commission issued 35 press releases, and handled over 400 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 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, an administrative assistant and student interns. The Enforcement Division investigates and, where appropriate, prosecutes violations of the conflict of interest and financial disclosure laws. In FY 2008, the Commission received a total of 1,012 complaints alleging violations of these laws.

CONFLICT OF INTEREST LAW

Complaints

The Enforcement Division received 991 complaints in FY 2008 alleging violations of the conflict of interest law, G.L. c. 268A. In addition, 112 complaints were pending at the beginning of FY 2008 resulting in a

total of 1,103 complaints pending during the year. At the end of FY 2008, 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 193 private educational letters, initiated 73 investigations, recommended 38 cases for formal review by the Commission and concluded 55 formal inquiries. The Enforcement Division issued 15 Orders to Show Cause initiating public hearings and negotiated 21 Disposition Agreements. There were two adjudicatory hearings, which resulted in Decisions and Orders.

H I G H L I G H T S

991 complaints alleging conflict of interest law violations were received in FY 2008

55 formal inquiries were completed in FY 2008

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 2008, the 991 complaints received were from the following sources:

649 from private citizens

24 from media reports

26 generated by Commission staff

235 from anonymous sources

29 from other law enforcement agencies

28 were "self-reports" by public employees

The complaints received involved the following: 697 municipal employees, 124 state employees, 15 county employees, and 31 private individuals or corporations; in 25 instances, the affiliation of subjects was unknown.

The Enforcement Division closed 533 complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. The Enforcement Division consolidated 25 complaints with existing cases and resolved 193 cases with private educational letters. Finally, the Enforcement Division assigned 73 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 10 cases following informal staff investigations. As of June 30, 2008, there were 31 ongoing informal staff investigations.

Formal Inquiries

The Commission authorized a total of 38 formal inquiries in FY 2008 regarding alleged violations of the conflict of interest law. Forty subjects of formal inquiries were municipal officials or employees; 7 were state officials or employees; 2 were county officials or employees; and 5 were private citizens. During FY 2008, Enforcement Division staff completed 55 formal inquiries into alleged violations of the conflict of interest law.

H I G H L I G H T S

15 adjudicatory proceedings were pending at the end of FY 2008

The average penalty in FY 2008:
\$3,775

In 27 instances, the Commission found "reasonable cause" to believe that a violation of the law had occurred, and authorized adjudicatory proceedings. Many of these cases were later resolved through Disposition Agreements. The Commission also issued 13 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Thirteen cases were terminated without a finding, and two formal inquiries were resolved with the issuance of Public Education Letters.

At the end of the fiscal year, the Commission had 15 public hearings pending.

Public Resolutions

In FY 2008, the Commission completed two adjudicatory hearings, which resulted in Decisions and Orders. The Commission also entered into 21 Disposition Agreements involving violations of the conflict of interest law: two with current or former state employees, 18 with municipal officials or employees and 1 with a private organization. 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 forfeitures.



Penalties

The Ethics Commission assessed civil penalties for violations of the conflict of interest law in the total amount of \$83,050, and collected forfeitures of \$4,383 in FY 2008 pursuant to Disposition Agreements. Penalties imposed in FY 2008 averaged \$3,775.

FINANCIAL DISCLOSURE LAW

Complaints

The Commission's Enforcement Division generated 21 complaints in FY 2008 for violations of the financial disclosure law, G.L. c. 268B. In addition, a number of complaints alleging violations of the financial disclosure law were pending at the beginning of FY 2008. Twenty of the complaints received during FY 2008 involved state employees, and 1 involved a county employee.

Resolutions

In FY 2008, the Enforcement Division recommended 22 cases for formal review by the Commission and completed 5 reviews. In 2 instances, subjects entered into Disposition Agreements with the Commission and paid civil penalties. Three matters were terminated by the Commission due to extenuating circumstances.

H I G H L I G H T S

\$1,700 in penalties collected for late filing of Statements of Financial Interests

In FY 2008, 7 subjects either entered into Disposition Agreements with the Commission and paid civil penalties or had their cases terminated by the Commission due to extenuating circumstances.

Seventeen of the cases recommended for formal review during FY 2008 were pending at the end of FY 2008.

Penalties

For FY 2008, the Commission assessed civil penalties on 9 individuals in the total amount of \$1,700 for violations of the financial disclosure law.

ADVICE



EDUCATION

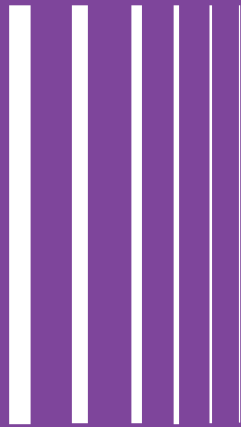


DISCLOSURE



ENFORCEMENT

S T A T E
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