

STATE ETHICS COMMISSION

Annual Report

Fiscal Year 2004

Commissioners

Judge E. George Daher (Ret.), Chairman
Elizabeth J. Dolan
Tracey Maclin
Christine M. Roach
J. Owen Todd

Executive Director

Peter Sturges

Editor

Carol Carson

MESSAGE FROM THE CHAIRMAN

Last year, Governor Romney honored me with my appointment as Chairman of the State Ethics Commission. His appointment has given me an opportunity to work with a wonderful group of Commissioners and a dedicated and talented staff. Rather than highlight particular accomplishments of the past fiscal year, the details of which are set forth in this report, I would like to talk about the purpose of the Commission, where the Commission has been, where it is going and what it needs to do its job.

The State Ethics Commission was given a difficult task when it was created by the Legislature in 1978 to oversee the conflict of interest and financial disclosure laws. These two laws were enacted to promote public confidence in government and in the integrity of the Commonwealth's elected and appointed officials while still attracting talented and dedicated public servants. This simple directive is also a profoundly challenging one that the Commissioners and their staff take most seriously.

Four years ago, the Commission's budget, which even then was small, was \$1,548,550; today the budget is \$1,265,221, a 20% reduction. As a result, the Commission's staff has gone from 26 to 19. We have lost two attorneys, an investigator, a municipal training specialist, the Director of Administrative Services and three support staff.

The Commission and its staff have nonetheless achieved significant accomplishments. For example, the Commission has implemented a state of the art electronic filing system - now used by almost 65 percent of filers. We have also substantially improved our educational materials and Web site and made progress addressing advisory opinion and case backlogs.

Perhaps the most significant change that we have implemented is a more vigorous enforcement agenda that includes Commissioner participation in the review of complaints, more extensive investigations, enforcement of Commission summonses and an increased number of adjudicatory proceedings.

This State Ethics Commission remains deeply committed to the fundamental goals of the conflict of interest and financial disclosure law that it is empowered to administer and enforce and that have been articulated in our past annual reports. Looking to the Fiscal Year 05 and beyond, we intend to continue to focus performing the Commission's core functions of advice, guidance, education and enforcement as effectively and efficiently as possible.

To accomplish this goal we are taking a number of steps including conducting an independent internal review of the needs and operation of the Commission. We are in the process of designing and implementing a new ETHOS database system that will bring our system into the 21st century. We also plan to complete the Commission's comprehensive revision of its educational materials. In addition, if House 5113, which provides the Commission with a limited regulatory power, becomes law we will provide for reasonable exemptions or safe harbors to better help elected and appointed official comply with the law. Finally, with the help from many individuals, we are implementing a rigorous professional trial program for the staff's attorneys.

Sincerely,

A handwritten signature in black ink, appearing to read "E. George Daher", with a stylized flourish at the end.

Judge E. George Daher (Ret.)
Chairman

INTRODUCTION TO THE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY 04. It is issued pursuant to §2(1) of Chapter 268B and is intended to serve as an explanation of the Commission's responsibilities and as a record of its major activities during the fiscal year.

HISTORY

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Bay State. 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 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.

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 annually file a 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.

MEMBERSHIP

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. Commissioners are paid on a per diem basis but voted to forego such payments for FY 04 in response to budget cuts.

FY 2004 Members

E. George Daher, Chair
Chief Justice (retired)
Massachusetts Housing Court
Westwood, MA

Elizabeth J. Dolan
Superior Court Judge (retired)
Harwich, MA

Tracey Maclin
Professor of Law
Boston University School of Law
Boston, MA

Christine M. Roach
Partner
Roach & Carpenter, PC
Boston, MA

J. Owen Todd
Partner
Todd & Weld LLP
Boston, MA

The Commission staff is made up of four separate divisions, under the supervision of the executive director. 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 Division administers the financial disclosure law and audits SFIs filed with the agency. The Communications and Public Education Division conducts free seminars for public employees, maintains the Commission's web site and publishes a wide range of educational materials. The Enforcement Division investigates and publicly prosecutes more serious violations of the laws. It resolves relatively minor violations privately with confidential educational letters.

SUMMARY OF FISCAL YEAR 2004

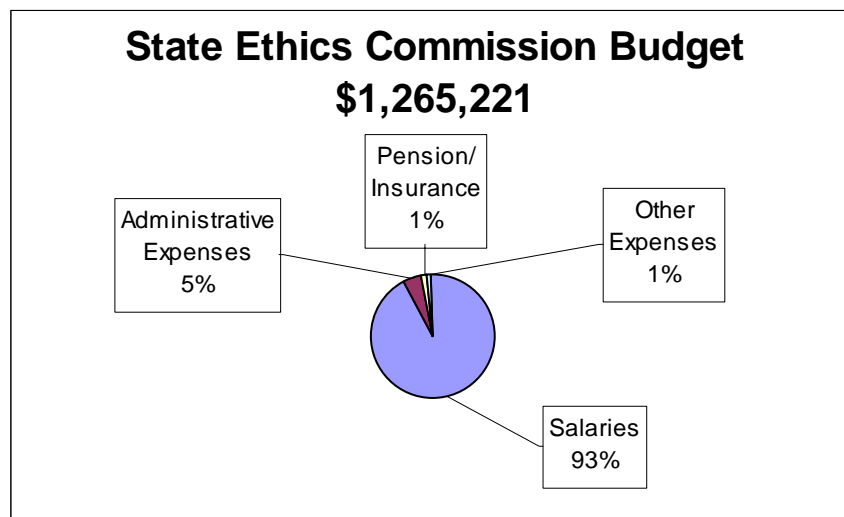
The Legislature appropriated \$1,265,221 for the Ethics Commission in FY 04, the same amount as the previous year. The FY 04 budget translates to a cost of approximately \$3.47 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.20 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 3,772 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 136 advisory opinions issued by municipal counsels, and prepared eight formal Commission Advisory Opinions. There were 88 requests for advice pending at the end of FY 04.

During FY 04, 4,711 elected officials, candidates and designated major policy-making public employees were required to file Statements of Financial Interests with the Commission. All but two had filed by the end of the fiscal year. The SFI Division responded to 2,451 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 2,636 people attended the 65 educational seminars conducted by the Communications and Public Education Division in FY 04.

The Commission's Enforcement Division reviewed 1,005 complaints in FY 04, issued 217 private educational letters, initiated 93 investigations and recommended 60 cases for formal review by the Commission. The Division issued eight orders to show cause initiating public hearings, negotiated 22 Disposition Agreements, totalling \$37,350 in civil penalties. There were also 10 adjudicatory hearings, several of which resulted in decisions and orders.



¹These costs were calculated using information from the U.S. Census Bureau and the U.S. Department of Labor. The 2003 estimated population for Massachusetts is 6,433,402. The estimated number of state and local employees (county and municipal employees) is 364,500. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

FISCAL YEAR 2004 VALUES AND GOALS

The conflict of interest and financial disclosure laws were enacted to promote public confidence in government and in the integrity of the Commonwealth's elected and appointed officials while still attracting talented public servants. The State Ethics Commission's FY 04 Statement of Values and Goals were derived from the fundamental principles codified by the Legislature in Chapters 268A and 268B. The Commission has five major values:

Administration: To cultivate a user-friendly, responsive agency whose primary goal is to ensure the fair and timely administration of the conflict of interest and financial disclosure laws.

Education and Advice: To provide timely and consistent advice, education and information to the Commission, elected and appointed public officials and members of the general public.

Disclosure: To provide accurate public disclosure of the statements of financial interest of elected and appointed officials; to use computer and Internet technology to facilitate the filing of SFIs.

Enforcement: To act as the primary civil law enforcement agency of the conflict and disclosure laws through impartial and timely enforcement of serious violations of these laws.

Legislation: To recommend and promote legislation that helps to clarify, simplify, and further the fundamental values of the conflict and disclosure laws.

To achieve these values, the Commission adopted three primary goals:

- Perform its core functions, as effectively and efficiently as possible
- Complete a comprehensive revising of its educational materials
- Seek passage of legislation providing for limited regulatory authority and, if enacted, promulgate regulations implementing the new law

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, three 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 Division tries to answer written requests for advisory opinions within four to six weeks. Most requests for advice are handled over the telephone on the day of the call. In FY 04, the Commission's Legal Division handled 388 requests for advice through informal letters, and 3,384 requests via telephone.

Formal opinions are issued by the Commission. They address new issues 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, issued by an attorney and are not published. The Commission issued eight formal advisory opinion in FY 04. Copies of formal advisory opinions are available on the Commission's website or from the Ethics 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 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 requestor, if the opinion was not obtained in advance of the relevant action, or if the requestor otherwise acted in bad faith in securing the opinion. In FY 04, the Commission reviewed 136 municipal opinions.

LITIGATION

In *John Doe v. State Ethics Commission*, Doe challenged the Commission's authority to issue a summons during a preliminary inquiry. The Superior Court ruled that the Ethics Commission, under G.L. c. 268B, § 4, has authority to issue a summons in a preliminary inquiry. Doe has filed a notice of appeal of this decision. The papers in this case are impounded.

In *Vineyard Conservation Society et.al. v. State Ethics Commission*, the Superior Court affirmed a Commission formal opinion declaring that the Commission's formal opinion "was not arbitrary, capricious, unsupported by substantial evidence, an abuse of discretion, a violation of the governing statute, or a violation of the plaintiff's state and federal constitutional rights." The Court declined to reach the issue of whether, for purposes of G.L. c. 268A, § 19, VCS was a "business organization" because the plaintiffs did not properly present the issue to the Commission in the first instance.

In *Luongo v. Massachusetts Board of Bar Overseers, Client's Security Board, State Ethics Commission, Michael Fredrickson, and Laurie Aaron*, the plaintiff, Lorraine Luongo, challenged a Commission Disposition Agreement. Luongo subsequently agreed to dismiss the lawsuit with prejudice prior to a Superior Court hearing on the Commission's motion to dismiss. In this matter, the Commission worked closely with the Office of the Attorney General who represented the Commission.

In the cases of *Commonwealth v. Jones* and *Commonwealth v. Tran*, both involving first degree murder, a defense attorney subpoenaed documents allegedly in the control of the Commission and subject to the confidentiality provisions of G.L. c. 268B, § 3 and § 4. The Office of the Attorney General, on behalf of the Commission, moved to quash the subpoenas based on the strict confidentiality requirements of these provisions. Two separate Superior Court judges, without *in camera* review, quashed the subpoenas as they related to the alleged Commission documents.

In *Pina v. State Ethics Commission*, the Commission is defending against a tort claim that a plaintiff was injured through the negligence of a Commission employee. The Office of the Attorney General is representing the Commission.

LEGISLATION

The Commission continued its review of the conflict of interest and financial disclosure laws for the purpose of drafting legislation to simplify and clarify both statutes. In August 2003, at the request of the Commission, Governor Mitt Romney filed House Bill 4113, "An Act Authorizing the State Ethics Commission to Provide Exemptions from the Conflict of Interest Law."

On September 29, 2003, Commission Chairman Augustus F. Wagner, Jr., Vice-Chairman Christine M. Roach, Executive Director Peter Sturges, General Counsel Diane M. Meibaum, former Commissioner R. Michael Cassidy, John Montgomery, Esq., Chairman of the 1995 Special Commission on Ethics, City Solicitors and Town Counsel Association President James Toomey, Leonard Kopelman, Esq. of Kopelman and Paige, Massachusetts Municipal Association Executive Director Geoffrey C. Beckwith, Massachusetts Association of School Committees Executive Director Glenn S. Koocher, Common Cause Massachusetts Executive Director Pamela H. Wilmot, Chief George J. DiBlasi (Ret.), Executive Director of the Massachusetts Chiefs of Police Association, testified in support of the bill before the Joint Committee on State Administration. Attorney General Thomas F. Reilly and City of Boston Corporation Counsel Merita A. Hopkins submitted letters of support. There was no testimony in opposition.

The bill was pending in the Joint Committee on State Administration.

FINANCIAL DISCLOSURE

Massachusetts G.L. c. 268B requires the annual disclosure of financial interests and private business associations by all elected officials, candidates and “designated” public employees of state and county governments. “Designated” employees include individuals holding major policy-making positions within their employing agencies. Commission staff are available to assist filers in completing their Statements of Financial Interests.

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

DISCLOSURE & REVIEW In FY 04, 4,711 public employees, elected officials and candidates were required to file SFIs. The Financial Disclosure Division reviews every SFI that is filed. The 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 2,451 telephone inquiries. The number of inquiries has increased in the last two years due to filers seeking electronic filing assistance.

ELECTRONIC FILING Electronic filing of SFIs via the internet resulted in 63% of those required to file doing so electronically. A total of 2,952 filers submitted their statements electronically this year, which represents an increase of almost 10% from the previous year.

INSPECTION REQUESTS Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY 04, the Commission honored 480 such requests from 70 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 may not perform their duties or be paid.

A total of 153 filers missed the May filing deadlines and were sent formal late notices. Of this number, 20 filers became the subject of preliminary inquiries. As of June 30, 2004, only two filers had not complied with the filing requirements.

PENALTIES The Ethics Commission assessed civil penalties totalling \$3,000 in FY 04 for violations of the financial disclosure law including one filer who paid twice the civil penalty for the repeated late filing of her statements. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

TRAINING AND EDUCATION

During FY 04, the Communications and Public Education Division consisted of the director and an administrative assistant who also serves as the Commission's receptionist. The Division provides free educational seminars throughout the state, maintains the Commission's web site and prints educational materials including *The Bulletin* and the *Annual Report*. The Division also serves as the public information office of the Commission and responds to a weekly average of approximately ten 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 2,636 people attended the Commission's 65 seminars during FY 04. Seminar sponsors included 13 municipalities with a total of 697 attendees; 30 state agencies with a total of 1,028 attendees; and 22 professional associations with a total of 911 attendees.

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 web site. The Commission's newsletter, *The Bulletin*, is distributed three times annually. The Commission's *FY 03 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* (1978-2003) is available at the Commission's office and the Commission's *Rulings* are also available on the database at the Social Law Library website, www.sociallaw.com.

The Commission issued two new advisories, *ADV-04-01: Free Tickets and Special Access to Event Tickets* and *ADV-04-02: Gifts and Gratuities*.

WEB SITE The Commission maintains a web site on the Internet at www.mass.gov/ethics which was updated during FY 04 by renumbering and reorganizing the Commission's Educational Materials as part of a project to revise and update all of its publications and add new ones.

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 04, the Commission issued 25 press releases and handled almost 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. It does, however, provide explanations of the law, generally directing individuals with questions to the Commission's web site for additional information.

ENFORCEMENT

The Enforcement Division consists of four attorneys, four investigators and an administrative assistant. The division investigates and, where appropriate, prosecutes violation of the conflict of interest and financial disclosure laws.

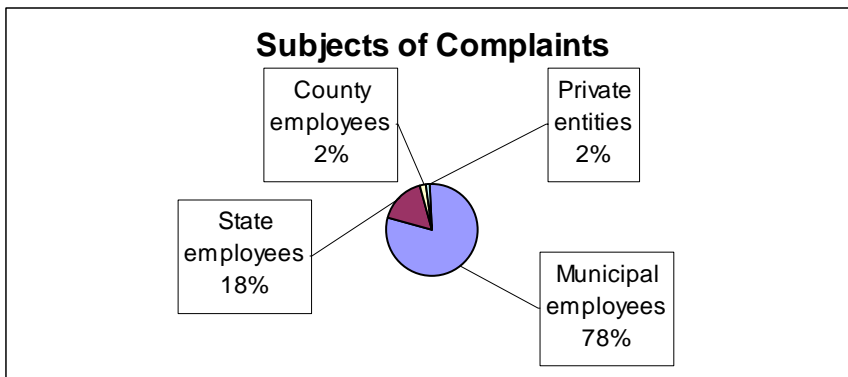
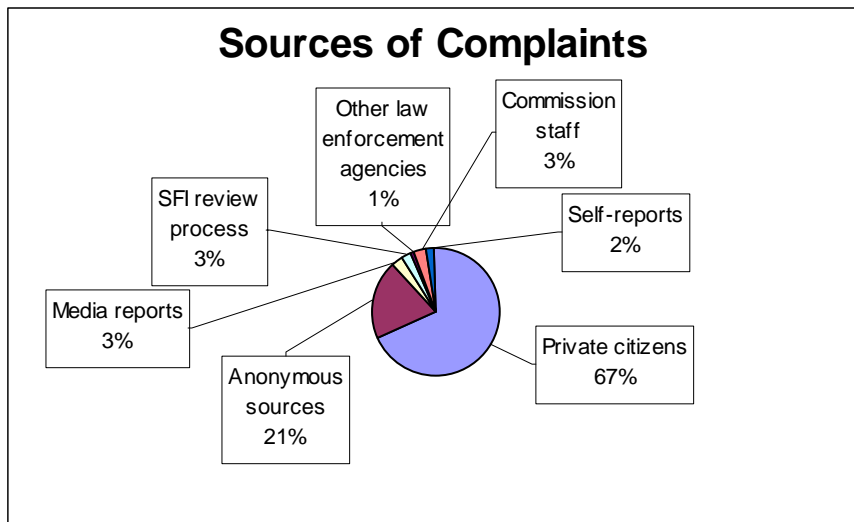
COMPLAINTS

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 04, the Enforcement Division received 910 complaints from the following sources:

67.5% from private citizens 20.5% from anonymous sources
 3% from media reports 1% from other law enforcement agencies
 3% from financial disclosure form reviews 3% were generated by Commission staff
 2% were "self-reports" made by public
 employees regarding their own conduct.

These 910 complaints involved the following subjects: 78.5% were municipal employees, 18% state employees, 2% county employees and 1.5% private individuals or corporations.

A total of 1,005 complaints were received or pending in FY 04. The division closed 42.5% of those complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. The division consolidated 5% with existing cases and resolved 22% with private educational letters without any investigation. Finally, the division assigned 9% to an attorney/investigator team for further review.



STAFF INVESTIGATIONS

The Commission closed 26 cases following informal staff investigations: 15 were closed because the situation was one in which a private educational letter was appropriate and 11 were closed because staff determined there was little likelihood that the law had been violated. As of June 30, 2004, there were 27 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 60 formal inquiries in FY 04: 35 regarding alleged violations of the conflict of interest law and 25 involving alleged violations of the financial disclosure law. Thirty of the subjects of formal inquiries were municipal officials or employees and 30 were state officials or employees. During FY 04, Enforcement Division staff completed 33 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.

In 26 instances, the Commission found “reasonable cause” to believe that the subject had violated one or both of the laws, and authorized adjudicatory proceedings against the subject; many of these cases were later resolved by Disposition Agreements between the subject and the Commission. The Commission also issued five confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Four cases were terminated without a finding.

At the end of the fiscal year, the Commission had two public hearings pending; in three additional cases, the Commission had found “reasonable cause” to believe laws had been violated, but had yet to institute the formal hearing process.

PUBLIC RESOLUTIONS

In FY 04, the Commission conducted 10 adjudicatory hearings, several of which resulted in Decisions and Orders. The Commission also entered into 21 Disposition Agreements: eight with state officials, 11 with municipal officials, one with a county official and one with a private individual. In these signed documents, subjects admit violating G.L. c. 268A or 268B, and agree to pay civil penalties of up to \$2,000 per violation. In some instances subjects also agree to forfeitures.

PENALTIES

The Ethics Commission assessed civil penalties for violations of the conflict of interest law totalling \$35,000 and collected forfeitures of \$6,080 in FY 04. Penalties and forfeitures collected are deposited in the General Fund, as the Commission does not retain revenue.