

In the Matter of

Marsha Kaiser,

Respondent

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Before the
State Ethics Commission
Complaint No. C-8-06

ORDER

Having reviewed at a meeting on May 18, 2006 the preliminary investigation report of Staff Counsel, and having considered the Stipulation of Settlement Agreement of Staff Counsel and the Respondent (attached hereto and made a part of), we decided that the complaint may be dismissed and that the dismissal is not contrary to the purposes of the Public Ethics Law, Md. Code Ann., State Gov't §15-403 (Supp. 2004), it is therefore

ORDERED, that Respondent is reprimanded based on her admission of violating Section 15-602 of the Public Ethics Law; and it is further

ORDERED, that this Order and the Stipulation of Settlement Agreement are public documents and shall be transmitted to the Secretary of the Maryland Department of Transportation and the Director of the Office of Legislative Audits.

STATE ETHICS COMMISSION

Date: May 31, 2006

By:

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Julian L. Lapidus, Chairman
for the State Ethics Commission

COPIES PROVIDED TO:

M. Peter Moser, Esquire
Attorney for Respondent

Jennifer K. Allgair, Staff Counsel

In the Matter of	*	Before the
Marsha Kaiser	*	State Ethics Commission
Respondent	*	
	*	C-8-06
	*	

STIPULATION OF SETTLEMENT

This Agreement made this 12th day of May, 2006, by and between Marsha Kaiser (herein "the Respondent") and Jennifer K. Allgair, Staff Counsel to the State Ethics Commission.

WITNESSETH

WHEREAS, the State Ethics Commission (hereinafter "the Commission") is an executive agency of the State of Maryland established for the purpose of enforcing the Maryland Public Ethics Law (Md. Code Ann., State Gov't Title 15 (Supp. 2005), hereinafter "the Ethics Law").

WHEREAS, beginning in September 1998 and ending in July 2005, the Respondent was employed as Director of the Office of Systems Planning and Evaluation ("OSPE") of the Maryland Department of Transportation ("MDOT"); and she was defined as a public official of the State subject to the conflict of interest and financial disclosure provisions of the Ethics Law.

WHEREAS, on February 2, 2006, the Commission issued a complaint against the Respondent alleging that the Respondent violated § 15-501 of the Ethics Law by participating in her official capacity in matters between 1999 and 2004 in which her spouse's employer was also a party. The complaint also alleged that the Respondent failed to timely file her annual financial disclosure statements for calendar years 2000, 2001, and 2002 in violation of §§ 15-601 and 15-602 of the Ethics Law.

WHEREAS, the Commission staff conducted interviews of MDOT employees and the Respondent, as well as reviewed documents provided by the Respondent's counsel and MDOT officials. The Commission staff also reviewed documents obtained by the Office of Legislative Audits during their 2005 Special Review of MDOT and matters relevant to the Respondent.

WHEREAS, in 1998 the company employing Respondent and Respondent's spouse (sometimes referred to as "the Company") had several proposals pending to perform services (as contractor or as subcontractor) for MDOT pursuant to Requests for

Bids. While the proposals were pending, in June or July 1998, MDOT officials called Respondent and asked her to apply for employment as Director of OSPE, the MDOT office which was to administer the services contracts. After several interviews, the Secretary of MDOT offered her the position in August 1998.

WHEREAS, the Respondent, both before and after applying for the position, disclosed to officials at MDOT her past employment with the Company and her spouse's continued employment with the Company. Shortly after her employment with MDOT began, MDOT officials and the Respondent sought advice from the State Ethics Commission regarding potential restrictions on her position as Director of OSPE.

WHEREAS, at all times relevant to this matter, the Respondent's spouse was employed by the Company. Beginning in July 1999, ten (10) months after Respondent began employment at MDOT, the Company commenced performing services for MDOT as a subcontractor to one or more prime contractors awarded successive contracts to perform multi-year services for MDOT.

WHEREAS, Section 15-501 of the State Ethics Law prohibits a State employee or official from participating in any matter in which the employer of a qualifying relative has a specific interest. Section 15-102(n) of the Ethics Law defines a "qualifying relative" as a spouse, parent, child or sibling. Through its published opinions, the State Ethics Commission has defined a "matter" as a "any proceeding, application, submission, request for ruling, or other determination, contract, claim, case or other such particular matter" (Opinion No. 80-17).

WHEREAS, the Commission's published opinions recognize that a State employee and the employee's spouse may be permitted to work together on policy or similar general issues without the State employee's recusing himself or herself under § 15-501 of the Ethics Law (Opinion No. 85-8).

WHEREAS, in 1998, after the Respondent began working as Director of OSPE, the Chairman of the Consultant Screening Committee in consultation with the Respondent and an Assistant Attorney General assigned to MDOT ("MDOT Counsel"), requested written advice from the Commission (i) whether the selection of the Company as a prime contractor or a subcontractor performing services for MDOT would conflict with State ethics laws; (ii) if such selection would present a problem, the selection panel wanted to know what steps should be taken to avoid a conflict; and (iii) whether there would be any restrictions in the role of the Director of OSPE, even though the contract could be awarded to a firm in which she had no interest.

WHEREAS, in December 1998, the Commission through its General Counsel, provided written advice to the Respondent and MDOT addressing the Company becoming a contractor or subcontractor with MDOT and the employment restrictions applicable to the Respondent under the Ethics Law if the Company were to become a contractor or subcontractor with MDOT. The Commission concluded that, under the Ethics Law, neither Respondent's prior relationship with the Company nor her spouse's

continued employment at the Company would bar the selection of the Company to contract or subcontract with MDOT. The Commission also advised that the Respondent could not participate in any way in the selection process as to the contracts in which her spouse's employer would be involved. The Commission further advised that if the spouse's employer, or a prime contractor with which the Company was affiliated, were to be selected during the procurement process, the Respondent must be removed from the process of supervising or monitoring that project, including general discussions, meetings and supervision of others responsible for the contract/project. The Commission's Counsel, in her December 1998 advice letter, confirmed her understanding that reassignment of the activity is administratively feasible for the agency. The Commission advised the Respondent and the agency that reassignment should be made to an individual in a position parallel to the disqualified staff-person, or to a supervisor of the individual. The Commission further advised that the Respondent's disqualification should be in writing and communicated to any agency personnel involved in the project or activity, in order to be sure that other staff were aware that the Respondent was not to be consulted regarding the matter.

WHEREAS, in May 1999, after receiving written advice from the Commission, MDOT staff in consultation with MDOT Counsel prepared and issued a memo directed to OSPE staff and senior MDOT officials regarding "Administration of OSPE Consultant Contractors" to be applied if, as by then was expected, the Company employing Respondent's spouse were to perform services under the then pending contract proposals. The MDOT memo outlined that:

(i) [Respondent] agreed to remove herself from any involvement in the selection of the consultants, and will not participate in any way in the administration and supervision of those who are responsible for these two contracts for the purpose of the administration of these contracts, (ii) these duties will be assigned to the MDOT Contract Administrator specially assigned to OSPE for these contracts and this individual will be responsible for all matters related to these contracts; (iii) the OSPE staff and MDOT officials were advised not to include [Respondent] in general discussions or meetings regarding the performance of the contractors on these two contracts. The staff was advised that it was permissible to discuss with [Respondent] necessary activities in support of the work of the office, (iv) the OSPE staff was further advised by the agency that if they were unsure about when to involve [Respondent] or if they had any matters to discuss concerning these two contracts, they should speak to the OSPE Contract Administrator or any of the OSPE managers.

WHEREAS, from July 1999, when contracts were awarded under which the Company employing Respondent's spouse was a subcontractor, until March 2005, Respondent performed her duties as Director of OSPE under the staffing structure established by MDOT officials after receiving the Commission's December 1998 advice.

WHEREAS, the Respondent participated in matters involving her spouse's employer by interacting with her spouse and other representatives of her spouse's employer on two separate projects in 2003. The Respondent was involved in the two projects by direction of the MDOT Secretary and/or Deputy Secretary and under their supervision. The Respondent's involvement in these matters was inconsistent with the advice previously provided to MDOT officials and to her by the State Ethics Commission in 1998. The Respondent, as part of her duties as OSPE Director, accompanied by employees of the Company including her spouse, also met with her counterparts in another State department and discussed policy issues. As part of her duties as OSPE Director, the Respondent also reviewed the general results to be obtained through consultants, including work, which was assigned by employees at OSPE to the Company that employed her spouse.

WHEREAS, the Office of Legislative Audits ("OLA") conducted a Special Review of MDOT in 2005 and issued a report on its findings in May 2005. Some of the findings contained in the Audit Report related to the Respondent and allegations of her participation in State matters involving her spouse's employer. The MDOT Secretary responded to the auditors' findings in a May 10, 2005 letter, which was included in the May 2005 OLA Report and stated in part:

"It was evident from the outset that the required duties of [Respondent's] position at the Department and [Respondent's] areas of expertise overlapped with the areas of expertise offered by [the Company] for whom [Respondent's] spouse was employed which was also the company from which [Respondent] had been recruited. It was foreseeable that [Respondent] would participate and supervise employees in various projects involving the spouse's company. In fact, if that had not been intended to be permissible, there would have been no point in the Department hiring [Respondent.]"

WHEREAS, in the MDOT Secretary's May 10, 2005 response to the Audit Report, the MDOT Secretary acknowledged that he and/or the Deputy Secretary of the agency directed the Respondent's involvement in the two above-mentioned specific assignments to projects in 2003 involving the Respondent's spouse's employer. These directives were made without seeking additional review or advice from the Ethics Commission. The May 10, 2005 letter read in part:

"The specific assignments to the Senior Management Official's spouse's company appear, at this point, to have been the direct result of directives given to the Senior Management Official from the Department Secretary or Deputy Secretary, based on policy initiatives of the new Administration and her expertise recognized by the Department Secretary and Deputy Secretary, as well as outside stakeholders."

WHEREAS, the MDOT Secretary's May 10, 2005 response to the Audit Report, also noted that procedures established by the agency following the December 1998 advice from the Ethics Commission were not in full compliance with the Commission's advice and that agency officials may not have fully appreciated the Commission's advice at that time. The MDOT Secretary noted further that the agency did not have any formal procedures in place to monitor the advice given to the Respondent or the interagency modifications and policies instituted in response to the 1998 advice by the Commission.

WHEREAS, Sections 15-601 and 15-602 require that State employees identified as public officials file an annual financial disclosure statement and disclose information related to a spouse's employment and whether the employee's spouse works for an entity that does business with or is regulated by a State agency.

WHEREAS, in April 2000 for the 1999-year, the Respondent was identified as being required to file an annual financial disclosure statement. The Respondent timely filed her 1999 financial disclosure statement, which the Commission received on April 24, 2000, disclosing that her spouse was a project manager for the Company, which did business with MDOT. The Respondent agrees that she failed to timely file her 2000, 2001 or 2002 financial disclosure statements. On April 14, 2004, Commission staff sent a letter to the Respondent advising her that the Commission had not received the 2000, 2001 and 2002 financial disclosure statements and that her 2003 financial disclosure statement was due on April 30, 2004. The Respondent timely filed her 2003 financial disclosure statement on April 27, 2004. The Respondent disclosed that her spouse's employer did business with MDOT in her 2003 financial disclosure statement.

WHEREAS, on August 23, 2004, the Commission received the Respondent's 2000, 2001, and 2002 financial disclosure statements. On all three financial disclosure statements, she disclosed that her spouse's employer did business with MDOT. The Respondent timely filed her 2004 financial disclosure statement on April 29, 2005. The Respondent resigned from State service on July 15, 2005 and timely filed her financial disclosure termination statement on September 2, 2005.

WHEREAS, effective on the Commission's acceptance of the terms of the Stipulation of Settlement Agreement, the Respondent waives confidentiality requirements of the Ethics Law with respect to this Agreement and the Order of the Commission and acknowledges that the Commission will transmit a copy of this Agreement to the Secretary of the Department of Transportation and the Office of Legislative Audits.

WHEREAS, the Respondent has voluntarily entered into this Stipulation of Settlement Agreement.

NOW THEREFORE, in consideration of the agreements herein contained, and effective on the Commission's acceptance of the terms of this Stipulation of Settlement ("Agreement"), the Respondent and Jennifer K. Allgair, Staff Counsel agree as follows:

1. Respondent violated Section 15-602 of the Ethics Law in that she did not timely file her 2000, 2001 and 2002 financial disclosure statements. The Commission will issue an official reprimand to the Respondent effective the date of the Commission's acceptance of the Agreement.
2. Respondent agrees that her participation in OSPE projects involving the Company that was her spouse's employer, either directly or through the supervision of other employees in her department, as part of her responsibilities as OSPE Director, was not consistent with advice by the State Ethics Commission in December 1998.
3. The Commission will transmit a copy of the Agreement and the Final Order to the Secretary of the Department of Transportation, pursuant to § 15-407 of the Ethics Law, and to the Office of Legislative Audits. The Agreement is not subject to the confidentiality provisions of the Ethics Law, provided it is accepted by the Commission; but otherwise it is and shall remain confidential.
4. If the Commission accepts the Agreement, the Respondent waives any formal proceedings and hearing in this matter.
5. Upon execution of this Agreement by the Respondent, Staff Counsel will recommend that the Commission suspend further Complaint proceedings against the Respondent and recommend further that the Commission issue a Final Order consistent with the terms of this Agreement.
6. In the event that the Commission declines to accept this Agreement, both the Respondent and Staff Counsel are relieved of their respective obligations hereunder; and neither this Agreement nor any admission it may contain shall be admissible in any subsequent proceeding of the Commission.
7. The Respondent and Staff Counsel are entering into this agreement for the sole purpose of resolving the matters arising under the Commission's Complaint and for no other purpose.

IN WITNESS WHEREOF, Marsha Kaiser and Jennifer K. Allgair, Staff Counsel, State Ethics Commission, have hereunto set their hands.

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Jennifer K. Allgair, Staff Counsel
State Ethics Commission
9 State Circle, Ste. 200
Annapolis, Maryland 21401

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Marsha Kaiser

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

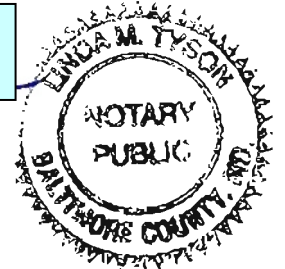
M. Peter Moser, Counsel for the Respondent
Piper Rudnick Gray Cary US LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600

State of
County of

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Marsha Kaiser who made oath on this 11th day of May, 2006 in due form of law that the matters and facts hereinabove set forth are true to the best of their knowledge, information and belief and it is their voluntary acts that each individual executed this document for the purposes set forth herein.

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Notary Public



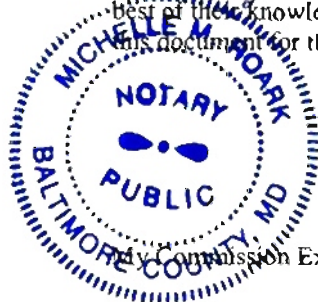
My Commission Expires: 3/1/07

State of Maryland
County of Baltimore

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Jennifer K. Allgair, Staff Counsel who made oath on this 12th day of May, 2006 in due form of law that the matters and facts hereinabove set forth are true to the best of their knowledge, information and belief and it is their voluntary acts that each individual executed this document for the purposes set forth herein.

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Notary Public



My Commission Expires: 8/1/06

Accepted by the Commission,

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Julian L. Lapidus, Chairman
For the Commission

Date: 5-18-06