

PASSAIC VALLEY WATER COMMISSION SPECIAL MEETING OF
SEPTEMBER 17, 2014
(OPEN SESSION)

C O M M I S S I O N E R S P R E S E N T :

GLORIA KOLODZIEJ, President

JEFFREY LEVINE, Vice-President

MENACHEM BAZIAN, Treasurer

CRYSTAL A. CLEAVES, Secretary

THOMAS P. DeVITA

RIGO SANCHEZ (Absent)

RUSSELL GRADDY

A L S O P R E S E N T :

JOSEPH A. BELLA, Executive Director

GEORGE T. HANLEY, Counsel

YITZ WEISS, Comptroller

JAMES J. GALLAGHER, Personnel Director

LOUIS AMODIO, Administrative Secretary

PRESENTER:

MATTHEW A. STRUCK, Public Entity Department Manager,
Brown & Brown

1 PRESIDENT KOLODZIEJ: I'm going to call
2 this work session meeting together. I would
3 appreciate your attention because we only have
4 about an hour to go through this very important
5 subject.

6 I've just been advised that Commissioner
7 Sanchez will not be here today.

8 We have our stenographer here, so this
9 will all be put down in written fashion so those
10 that are not here will be able to avail themselves
11 of a written copy of everything that transpired
12 today.

13 Roll call.

14 MR. AMODIO: Roll call.

15

16 (Roll call was taken, all Commissioners
17 present respond in the affirmative. Commissioner
18 Cleaves is not present yet. Commissioner Sanchez
19 is absent)

20

21 MR. AMODIO: The time is 10:39.

22 You have a quorum.

23 Will you please rise.

24 Commissioner Graddy...

25 All of the requirements of the Open Public

1 Meetings Act have been met.

2 PRESIDENT KOLODZIEJ: This is a work
3 session. It's open to the public, so if any
4 member of the public comes in they're welcome to
5 sit down and learn all about ethics.

6 I'd like to welcome Matthew Struck from
7 the firm of Brown & Brown. His title is Public
8 Risk Advisor. So that's important.

9 And I would ask my colleagues,
10 Commissioner DeVita has put a lot of time into
11 this. I know he's already been to an ethics
12 session. So if it's all right with all of you, I
13 would like him to be the facilitator for us this
14 morning.

15 Do you have a problem, Tom?

16 COMMISSIONER DeVITA: No, not at all.

17 PRESIDENT KOLODZIEJ: I don't think
18 anybody else does, so I'm going to turn the
19 meeting over to him.

20 MR. STRUCK: All set.

21 I thank the Commission very much for the
22 ability to come in, at the request of Tom DeVita
23 and some of the other individuals here. This is
24 actually something that's available yearly for
25 public officials throughout the State if you're

1 attached to the MEL/JIF system which Passaic
2 Valley Water Commission is.

3 First a couple of slides here. I do have
4 some kind of commentator notes here that are given
5 as an advisory from the JIF to specifically
6 follow.

7 Before I get into that. Let me pass
8 around a sign-in sheet just so I have some
9 documentation that I can forward over to the JIF
10 so that they have, you know, noted in their file
11 who was present to attend from Passaic Valley
12 Water Commission.

13 The first couple of slides here are kind
14 of a background or a primer on the MEL/JIF system.
15 I'm not going to kind of harp on these too much.
16 But essentially, the MEL/JIF system was put in
17 place in the early '80s. It was developed because
18 we went through a very hard market where insurance
19 coverage was either extremely expensive or
20 completely unavailable for a couple of entities,
21 not just in New Jersey, but nationwide at a
22 certain point. So the MEL/JIF system sought to
23 kind of combine the purchasing power and the
24 resources of the public entities in New Jersey to
25 develop these joint insurance funds, et cetera,

1 these groups purchasing insurance and partly
2 self-insurance their own risk to kind of make
3 those costs more manageable.

4 In concert with that, they also saw that
5 claims were an extremely large portion of the
6 costs associated with public entities insuring
7 themselves and so the other mandate besides just
8 securing insurance coverage was also going to be
9 to try and drive down the overall costs of claims
10 for public entities within the State and that was
11 going to have a compounding, positively
12 compounding effect for all the members that
13 decided to sign into the system.

14 So as you see here, you had about
15 \$400 million in claims. Workers' comp accounts
16 were about 50 percent of that. Liability in
17 general is about 40 percent. And ten percent was
18 property.

19 As you can imagine, ten percent is a
20 little bit larger from 2011 and 2012 with the
21 natural disasters and catastrophes that we had to
22 put up with.

23 The specific focus, because workers' comp
24 was a, you know, 50 percent share of all the
25 claims, was this idea of lost time accident

1 frequency, getting workers back to work or not
2 losing them from service because there was all
3 kinds of trickle down costs and compounding costs
4 that are associated with, you know, losing the
5 workers due to on-the-job injuries.

6 So this just gives you a timeline of where
7 we've come from and as of 2012, where we are at
8 currently with the lost time. As you see, it's
9 over a 50-percent reduction. But that being what
10 it is, there's still work to be done to kind of
11 drive some of those costs out of the system.

12 The MEL system also prides itself on a lot
13 of training or proactive training. So there are
14 on-line courses available through the MEL/JIF and
15 through the MEL Safety Institute that provides a
16 lot of these courses. They still provide the
17 typical DVDs and VHSS that employees can take out
18 and view on their own, but there's this move to
19 this more satellite training through on-line, web
20 base training and whatnot. And this just kind of
21 gives you a general idea of what some of the
22 topics that are covered; lifting, office safety,
23 fire safety, driving, blood borne pathogens and
24 whatnot.

25 All right. There's also a managers

1 training that's in a beta test phase. It's to get
2 managers and supervisors to be a little bit more
3 cognizant of their role as managers and
4 supervisors, not just getting the day-to-day
5 operational stuff done and scheduling things like
6 that, but it draws in a lot of other leadership
7 type concepts; things like identifying possible
8 employment practices claims. You know, when to
9 elevate an issue or how to address an issue where
10 it's an employee versus another employee. Whether
11 it's a potential, you know, a write up or a
12 disciplinary action and kind of making them more
13 aware of the really, the human part of managing
14 and supervising.

15 So that's actually a three-day program.
16 It happens a couple of times a year. There are
17 separate signups. And I know I've been
18 coordinating with some of the other administrators
19 here at Passaic Valley Water Commission to get the
20 employees kind of involved in that program.

21 All right. There's also some local
22 official training, some power points that are
23 available on the MEL/JIF website. If you look up
24 on the top left-hand corner, the website address
25 is just www.njmel.org. This is the main site for

1 a number of different things, but if you look on
2 the top bar of the website itself that Local
3 Officials tab is actually a drop down. There's a
4 lot of different kind of subsections in there
5 where you can go and get power point presentations
6 that tell you what the JIF is, how it operates,
7 certain risk management concepts and practices
8 that you can include in any public entity and
9 actually, most any organization in general. So if
10 you're involved in other organizations throughout
11 the state, you can actually take some of that
12 information back there.

13 There is a specific employment practices
14 section on here. This is another focus, driving
15 focus of the MEL/JIF. A long time ago the MEL/JIF
16 decided that most of their employment practices;
17 hiring, firing, discrimination claims, you know,
18 wrongful termination, that kind of thing, they
19 basically took care of those claims inhouse. They
20 were almost all completely self-insured. That's
21 actually gone off to a private carrier now because
22 there were some large claim issues that kind of
23 mounted and had some very negative price pressures
24 for that line of coverage and so they specifically
25 have an employment practices section where you can

1 go and get some basic information on employment
2 practices and kind of keeping down those claims or
3 getting out in front of them just in case.

4 Then the last piece of this kind of update
5 or introduction to the MEL/JIF system is this idea
6 of having an employment practices program in
7 place, including an employee manual, policies and
8 procedures, you know, certain types of template
9 programs that should be in place for the
10 administration and for anyone who's involved in
11 the administration or the entity.

12 We do have a compliant program here at
13 Passaic Valley Water Commission. Working hand in
14 hand with George Hanley to make sure that's taken
15 care of every two years. You have to essentially
16 recertify. Make sure that you're looking at your
17 documentation over again and make sure that you're
18 taking into account some of the recommendations
19 throughout that two-year period to update your
20 program, update your policies and procedures, and
21 whatnot. This is the checklist that they have you
22 fill out in order to make sure that that happens.
23 And basically, the end result of that is that you
24 end up getting a discount on your deductibles and
25 your co-insurance. If there is a claim, it ends

1 up costing you less out of pocket as a member of
2 the MEL/JIF by having the compliant program.

3 They do offer a couple of things, again,
4 more on-line training, management webinars that
5 are available.

6 And then also is the second circled item
7 you see on the presentation is the MEL help line
8 which Passaic Valley Water Commission does have
9 two individuals who have access to that. It's
10 essentially an 800 number that you can call to get
11 employment practices, I'll call it consultation
12 from a law firm, that will actually within 24
13 hours get back to you if you have an issue with an
14 employee, prospective issue, something that you
15 think might turn into a claim. You can bring that
16 to them and they'll give you a legal response that
17 you can then kind of include in your decision
18 making process. It turns out you can move forward
19 with that specific issue.

20 All right. Are there any specific
21 questions with respect to that introduction to the
22 MEL/JIF system?

23 Yes, sir?

24 MR. HANLEY: Just quick. You had three
25 categories here in the early screen. One is

1 called - quote - "liability" - end quote. I
2 assume that is personal injury.

3 MR. STRUCK: Liability would include
4 general liability; so that would be bodily injury
5 and property damage. It would include, think of
6 that as slips, trips, and falls. You know, every
7 so often you have a defect in the sidewalk or
8 something.

9 MR. HANLEY: Tort liability.

10 MR. STRUCK: Tort liability, auto
11 liability. It would also include things like
12 employment practices liability.

13 MR. HANLEY: That's in that category as
14 well?

15 MR. STRUCK: Correct. Anything that's not
16 considered workers' comp or property damage.

17 Yes, ma'am?

18 PRESIDENT KOLODZIEJ: The comment made
19 being applicable for the discount. We have just
20 put together an employee manual. I understand
21 that you have met with our supervisors to go over
22 some of the issues that were on those slides. So
23 does that make us eligible already or do we still
24 have some more things we need to do before we're
25 eligible?

1 MR. STRUCK: You actually have to have
2 been in compliance. There has been not a full
3 fledged employee manual in place, but you have had
4 documentation appropriate to say you have a
5 program in place, at least.

6 PRESIDENT KOLODZIEJ: Okay.

7 MR. STRUCK: And so you have been a
8 conforming member and you will continue to be a
9 conforming member as long as every two years we go
10 back to that checklist and make sure that we're
11 kind of reevaluating everything and making
12 everything up to date.

13 PRESIDENT KOLODZIEJ: That's good news.
14 Thank you.

15 You're the facilitator.

16 COMMISSIONER DeVITA: When we attend a
17 couple of these ethics seminars, we're eligible
18 for a discount on our insurance. Does this count
19 since we're here?

20 MR. STRUCK: I'm going to send that
21 sign-in. We're technically over the date that
22 they look for this to happen. Typically, the date
23 is some time in the earlier portion of the year,
24 usually, in May and sometimes they push it back to
25 April. So if any of the Commissioners that

1 attended that training during that period of time
2 were eligible, you got that discount. That came
3 off of the liability portion of your insurance
4 premiums. Yes.

5 COMMISSIONER BAZIAN: Two questions: I
6 attended a training with the State. Actually, I
7 did it on-line. Does that count?

8 MR. STRUCK: They typically like to have
9 it be their training, whether it be through this
10 kind of subject matter or at the very least with
11 one of the joint insurance fund attorneys
12 overseeing the training. I could find out. If
13 you had a, like, a course overview of what you
14 attended, I could submit that to them and see if
15 they would take that as a qualification for that
16 discount.

17 COMMISSIONER BAZIAN: It was the standard.
18 The State offers an on-line. I took that State
19 course.

20 MR. STRUCK: Okay.

21 COMMISSIONER BAZIAN: The State has their
22 own website.

23 MR. STRUCK: You have my e-mail address on
24 there. Send me a note on that and make sure that
25 I have just a reminder or a refresher to go back

1 to them and see if that qualifies, because then it
2 comes down to making sure you have enough
3 documentation to show that you attended and
4 everything like that. I'll see if they'll take
5 that as well.

6 COMMISSIONER BAZIAN: Louie, you have that
7 documentation, right?

8 MR. AMODIO: I have to look.

9 COMMISSIONER BAZIAN: The other question
10 is: Is there a benefit to retaking this on a
11 regular basis?

12 MR. STRUCK: The benefit is actually
13 yearly, yes. So you can take this training every
14 single year and each year any one of the
15 Commissioners and then up to, I believe, two of
16 the senior administrators for the Commission can
17 take it and you'll get up to \$250 per member that
18 ends up, you know, taking that training. So it is
19 beneficial.

20 PRESIDENT KOLODZIEJ: Question: So
21 because we're probably not going to qualify
22 because this is too late to do that, but if we are
23 sent a schedule of when these classes will occur,
24 whichever Commissioners choose to go or whichever
25 of our administrative people that choose to go,

1 that would benefit, because I believe it was two
2 years ago that we went, Commissioner DeVita? So,
3 obviously, nobody's gone this year unless somebody
4 has from Administration, Joe, I don't know.

5 Has anybody from Administration taken
6 advantage of this? No.

7 All right. So all we need from Brown &
8 Brown is a list of what those classes will be for
9 2015 and we'll ask for volunteers. If there's
10 anybody, great. If there's not, then I guess \$250
11 a person isn't that important. But that will be
12 our decision.

13 MR. STRUCK: Okay. All right. Moving
14 onto the meat and potatoes is the ethics portion
15 of the presentation.

16 This just gives you a basic definition for
17 the purposes of this course material what ethics
18 means to the MEL/JIF system. Essentially, the
19 discipline dealing with what is good and bad and
20 with moral duty and obligation.

21 It's very general wording. I think in all
22 walks of life, a very relative, I'll call it a
23 moving target. There's a lot of belief systems
24 that goes into what makes something considered
25 ethical, you know, when faced with an ethical

1 choice, which direction to move.

2 And so, again, ethics in this general
3 sense, you know, you can look at it as something
4 that's black and white or something that is moral
5 versus immoral. But the truth of matter is that
6 throughout time, you know, ethics has always been
7 something that is relative to the circumstance and
8 relative to the individual that's basically facing
9 the ethical dilemma, as it would be.

10 The line between ethical and unethical
11 behavior is constantly shifting. Consequences of
12 crossing the line are becoming more severe. So
13 how do you determine where the line is?

14 In New Jersey, the legal line is defined
15 by the Local Government Ethics Law and related
16 criminal and civil statutes. Similar statutes for
17 Board of Eds and all local officials should read
18 the law and be current with this ethics law.

19 Now, consequences for crossing the line
20 are varied and multiple. Can be fines, punitive
21 damages, jail, probation, verdicts, fees, and loss
22 of public trust or respect.

23 I would think the last one is actually the
24 most, how should I put it, the most costly in
25 terms of any of those. A lot of those are going

1 to be individual type penalties, but when it comes
2 down to is the lost of public trust and respect is
3 something that can actually global breach in terms
4 of one of these issues.

5 COMMISSIONER DeVITA: I remember there
6 being discussion about litigation by employees for
7 harassment or whatever and some of the employees
8 may or may not have gotten an award, a small
9 award, 25, \$30,000. But the legal fees were
10 hundreds of thousands of dollars and there were
11 cases where the employee got like \$500 and the
12 attorney got \$250,000 for services. That's a
13 huge, huge consideration.

14 MR. STRUCK: It is. It is.

15 And, again, you know, ethical dilemmas or
16 situations come up in all walks of life. Every
17 single day each one of us goes through an ethical
18 situation pretty much or at least a decision
19 making process that can potentially lead to
20 something with ethical ramifications.

21 But the issue that you're talking about is
22 fee shifting. Fee shifting cases are whenever you
23 have an employment practices claim that
24 specifically focuses on discrimination against a
25 protected class of individual, whether it be race,

1 religion, sexual preference, or any of the
2 background kind of characteristics and qualities.
3 That is actually a growing issue because, again,
4 there are a lot of those cases where there's \$500
5 in damages and then the claimant's attorney can
6 charge basically whatever they want towards legal
7 fees and as long as they can substantiate it, that
8 gets thrown into the mix.

9 That's actually a good example of an
10 ethical situation where sometimes it's tough to
11 choose whether or not to fight that case or to
12 kind of, you know, settle and make it go away,
13 because on one hand you have a precedent set, if
14 you do kind of, you know, settle that case out of
15 court and essentially give some hush money to a
16 somewhat marginal claim or you see it through to
17 the end and try and make a stand and say: Look,
18 we're not in the wrong here. And what's
19 unfortunate is we're going to have to have, I
20 think, some statutory change in terms of how those
21 cases are dealt with in the future. That actually
22 is a very good example of an ethical dilemma that
23 faces a lot of public entities currently.

24 The next slide is kind of the fuel or the
25 inspiration for certain kind of ethical complaints

1 that might arise, whether it be, you know,
2 politics, whether it be personal bad feelings or
3 ill will or business competition or more of a
4 private industry influence and leverage to attack,
5 you know, contested governmental actions.

6 The end result here is that pretty much
7 anything can feed into an ethical dilemma for
8 someone who is in the public trust or in the
9 public position. So it's always important to be
10 vigilant of not just the decisions that are made,
11 but also, you know, what's fueling this decision,
12 what's the inspiration.

13 How do I know what's ethical? Just at the
14 very onset, just the gut test, if you will, you
15 know, does it feel right. If it feels like
16 there's something that doesn't seem correct about
17 the way something is transpiring or the direction
18 that specifically the Commission is taking or any
19 elected body, it might be time to step back and
20 say: Hey, let's reevaluate this just to make sure
21 at the end of the day we feel like it's moving in
22 the correct direction and, you know, trust your
23 instinct. If it feels like it's wrong, it
24 probably is; maybe not on the whole, but maybe at
25 least a portion of it needs to be.

1 All right. When is acting under the
2 advice of an attorney a valid defense? There's a
3 concept called "safe harbor" where under the
4 circumstances you have a legal defense if you act
5 under the advice of an attorney. So as long as
6 the attorney is not an inclusion, and they could
7 be considered an outside disinterested party, you
8 actually have some defense and some backup to make
9 sure that if they're making a decision, you know,
10 there's some protection or some coverage there in
11 making that.

12 To be eligible for the safe harbor
13 defense, the advice must be received prior to the
14 action. The individual who offered the advice
15 possessed authority or responsibility with regard
16 to ethical issues. Simply relying on your
17 personal attorney or friend is not sufficient. So
18 the attorney has to have some level of expertise
19 in the area. The individual seeking advice made
20 full disclosure of all pertinent facts and
21 circumstances, meaning that the attorney has to
22 give their advice not in a black hole but, you
23 know, where they know kind of all the moving
24 pieces and the individual complied with the
25 advice, including all of the restrictions,, that's

1 an important piece. You can't take a portion of
2 that legal advice and then the rest of it kind of
3 let fall by the wayside. You have to comply.

4 Yes, sir?

5 COMMISSIONER BAZIAN: I would assume that
6 in order to use this defense, you have to have the
7 advice in writing?

8 MR. STRUCK: That's correct. Now, from a
9 legal standpoint "in writing" is a relative term.
10 So, I believe, I have seen like e-mailed opinions
11 and George might be able to give a better kind of
12 backup on this. But I have seen e-mailed opinions
13 go into the public record as something that's been
14 used.

15 Is that?

16 MR. HANLEY: Yeah, e-mails is writing.

17 MR. STRUCK: Okay. But, yes, at the end
18 of the day, and even if a verbal, you know,
19 communication would be permissible. I'm always
20 someone who errs on the conservative side and I
21 would say get it in writing, specifically, if it
22 has to do with legal advice that's kind of leading
23 to making an overall decision, you know.

24 PRESIDENT KOLODZIEJ: Can I just followup
25 on that?

1 Obviously, this is an area that I'm
2 thinking is most appropriate to our employees.
3 What's gotten me a little bit puzzled here is:
4 It's hard to anticipate when an act is going to
5 come about, so I'm assuming that as an employee if
6 there's been a history of a certain action that I
7 am kind of subjected to, I have a redress to go to
8 my union or my boss or whatever to address that.

9 But if I'm getting no results from that
10 end, then I guess what I would do is to go to an
11 attorney, give them the history, and then, say,
12 the next time this happens, would that qualify for
13 that period of before the app happens? Because
14 there's a history is I'm trying to set the
15 scenario for. And then just waiting for the next
16 time, because I know that that next time is going
17 to come and having gone through all those other
18 resources getting no relief.

19 So that would qualify me, the employee,
20 for the protection I need to do this safe harbor,
21 you know, principle.

22 MR. STRUCK: Well, as a specific employee,
23 safe harbor doesn't necessarily apply to someone
24 who is in the employ of a public entity. Safe
25 harbor really is focused on those elected or

1 appointed officials that are kind of guiding that
2 public entity, you know, guiding the decision
3 making process on a whole.

4 From an employee standpoint, you know,
5 someone who is, even if they're a senior level
6 manager or an administrator, I would say that from
7 a legal standpoint, they have a requirement to go
8 kind of through that chain of command.

9 I would take that step forward and say
10 that from the Commission's perspective, if there's
11 something that continually comes up as an issue,
12 the first time it might be just kind of a point
13 issue and, you know, we don't necessarily have to
14 kind of spend a ton of time on it, just kind of
15 address it as it is. If it now happens a second
16 or third time, that continues to be an issue,
17 that's going to be an issue where you might want
18 to take some proactive action to get ahead of it.
19 Whether or not you draw a line in the sand and
20 say: Look, this is the way it was done, from this
21 point in time on, this is the way we're going to
22 do it.

23 A lot of those employment practices claims
24 that are harassment and discrimination issues,
25 there were several points in that chain where the

1 administration or the senior level decision makers
2 could have chosen a line in the sand and said: We
3 heard you. We're going to make a change from this
4 point on, put it in writing and then actually back
5 it up with action to make sure that it's taken
6 care of in that fashion.

7 Safe harbor really is important from the
8 standpoint of, if you have a question that comes
9 before you personally or before this Commission
10 and it doesn't meet that gut test where you feel
11 like, you know what, there's some moving parts
12 here where I kind of have to get my ducks in a
13 row, it always makes sense to go and at least get
14 some legal advice on it in order to make sure that
15 you're using all of your resources to get to that
16 final decision.

17 It also helps to document your thought
18 process as well; to put that in some kind of
19 record to, you know, just so someone from the
20 public doesn't think that you're just kind of
21 making up a decision and shooting from the hip, if
22 you will. They're going --

23 PRESIDENT KOLODZIEJ: You just raised a
24 whole other issue. I was looking at this from a
25 stance of an employee and you said, if I heard you

1 correctly, that as policymakers if these things
2 are brought to our attention, then we have the
3 right through our personnel committee to address
4 those and perhaps put policies -- all right. You
5 want to answer that?

6 MR. GALLAGHER: Well, Commissioners, I
7 just want to let you know, I mean, I just want to
8 kind of feed back on what Matt said.

9 PRESIDENT KOLODZIEJ: Please jump in.

10 MR. GALLAGHER: Inaction is the worst
11 thing that can happen. Once you become aware of
12 it, I mean, I usually go right to George and
13 George and I had many conversations about, even
14 what I consider being mundane issues, I usually
15 try to balance it off George or Joe. But inaction
16 is where we would get in the most trouble.

17 Once you're aware of a situation, an
18 action has to be taken, even if the action is just
19 reviewing it and deciding that no action is
20 needed, there needs to be some documentation. And
21 I think we're very good at getting that, George
22 and I. I think we have a very good working
23 relationship with the employees.

24 We've had a number of cases where it's
25 been vetted and it's been reviewed and determined

1 that no action is needed. And we've gone the
2 other where we've taken corrective action with
3 employees.

4 But I think that the real issue here is no
5 action is the worst.

6 PRESIDENT KOLODZIEJ: Right. Which is
7 made clear to our employees and I've only
8 remembered twice in the time since I've been here
9 where employees have felt that they haven't gotten
10 where they should be, so they have asked to come
11 before us and present their case directly to us,
12 in which case we listen and then we take the
13 appropriate action. So I think I got that
14 straight.

15 COMMISSIONER DeVITA: And I would assume
16 that it's advisable when these discussions take
17 place to have a paper trail of discussions so
18 there's a record that it was brought to our
19 attention and what happened and that's done.

20 MR. STRUCK: Yes.

21 MR. GALLAGHER: Yes.

22 MR. HANLEY: We over the years developed
23 a, as Jim said, a reasonable working relationship,
24 where it's appropriate and necessary, we will call
25 in an employment, whoever's in line in the

1 rotation, to help us. And we also do our own
2 internal investigations with our chief
3 investigator. You know, because one of the things
4 in prior years that was less than variable is the
5 fact that although the supervisor or whoever might
6 do something, they need to be trained how to
7 document what they do and we work on that whenever
8 it comes up. We try to educate them too. If you
9 have a particular problem, number one, report it
10 to Jim and/or Joe and we always make sure Joe is
11 included on anything that's significant. And the
12 documentation is critical.

13 And in fairness to the supervisors,
14 they're not trained in this. That's not their
15 job. You know, I mean, it is, but it isn't. So
16 anyway, we try to improve that process
17 substantially over the years.

18 PRESIDENT KOLODZIEJ: I have a
19 hypothetical, and if it's not appropriate here you
20 just tell me when it will be appropriate.

21 It seems to me that suppose there's an
22 incident where an employee comes to one of our
23 Commissioners here. Now, as I understand our
24 relationship to administration, we are not
25 permitted to step out of the scope of a policy

1 maker into the day-to-day operations. But now an
2 employee is so frustrated that they're bringing
3 their particular complaint, which we don't even
4 know if founded or unfounded. Under the standard
5 of the ethics law, what is my obligation? How
6 would I handle a situation like that?

7 MR. STRUCK: You're correct in that
8 there's actually two kinds of issues that play or
9 two kinds of roles, I would call them.

10 Your role as a Commissioner is to kind of
11 abide by that delegation of duties between the
12 Commission and the administration.

13 And then there's also what I would think
14 of as more of a civil law or more of a legal
15 stance in that, you know, any member of the
16 Commission as well as any manager or senior
17 supervisor administrator of the Commission...

18
19 (Whereupon, Commissioner Cleaves is
20 present at 11:15 a.m.)

21
22 MR. STRUCK: Which you have something
23 brought to you, the burden is that something be
24 done about it.

25 Like Jim said, inaction is pretty much the

1 worst case scenario.

2 Now, it's tough because sometimes, this is
3 a perfect example of an ethical dilemma, sometimes
4 you have to kind of at the very least brush up
5 against that dividing line between what your role
6 is written down versus, you know, what the
7 perception of the role is in order to kind of
8 address these issues.

9 My advice in that particular case would be
10 to raise the issue with administration, but not
11 necessarily with specifics. Something to kind of
12 make sure that something has been discussed and do
13 it in generality. And say: Look, have you talked
14 to this employee. They raised an issue to me.
15 You know, have they gone through the normal chain
16 of command.

17 There is in place a complaint procedure.
18 So the first issue is they might be shortcutting
19 that complaint procedure in order to, you know,
20 think that they can take it right to the top and
21 have something done about it. The first thing you
22 want to make sure is they're going through that
23 and you're reinforcing that procedure because one
24 of the worst things that you can do is write
25 something down as far as a policy and procedure

1 and then completely break from that knowingly.

2 The first thing you want to make sure is
3 that they're actually going through that
4 procedure. If they are, it may end up finding its
5 way to this open forum and, you know, that's the
6 one thing that I would say in response to that
7 employee is say: Have you followed that complaint
8 procedure. And if they have, then as I understand
9 it, they have an avenue to eventually get to a
10 higher power, so to speak, within the organization
11 to voice their concerns and voice their
12 complaints.

13 PRESIDENT KOLODZIEJ: Okay. So my
14 obligation is to take that in a general fashion to
15 administration which in this case would be Mr.
16 Bella, because in my understanding of our chain of
17 command here, I under no circumstances, unless
18 it's authorized by Mr. Bella, have any business
19 being in the day-to-day which means talking to
20 that supervisor and questioning him or the
21 employee. This is my first and only effort of
22 initiating something on behalf of an employee who
23 feels he's not being heard on any other level.

24 MR. STRUCK: I would agree.

25 PRESIDENT KOLODZIEJ: Now, going one step

1 further, going back to that Safe Harbor Act. So
2 now I'm reassuring the employee - this is all
3 hypothetical, Crystal - I'm reassuring the
4 employee that: Look, I'm taking you seriously.
5 I'm going to do what I'm allowed to do under the
6 level of the law and I'm going to bring this to
7 Mr. Bella. But if this continues and you feel
8 that this continues, I'm going to let you know
9 about this safe harbor principle. And if you feel
10 that this is going to be a continued, whatever
11 you're terming it, harassment or discrimination or
12 whatever, then you're not to come back to me
13 because I can't help you anymore, you're to really
14 take advantage of what this safe harbor, you know.

15 MR. STRUCK: Safe harbor is more for the
16 individuals within this room. An employee is
17 guided more so from a civil standpoint.

18 PRESIDENT KOLODZIEJ: All right. So if I
19 feel I'm being harassed or discriminated against,
20 I'm the one that should worry about hiring my
21 attorney if I think this is going to continue is
22 that what you're saying?

23 MR. STRUCK: Really what safe harbor --

24 MR. HANLEY: Safe harbor is a defensive
25 thing and has to do with your conduct.

1 PRESIDENT KOLODZIEJ: As a Commissioner.

2 MR. HANLEY: I think this, what you're
3 discussing now the disciplinary process is a
4 totally different type of process.

5 PRESIDENT KOLODZIEJ: Okay. Okay.

6 MR. HANLEY: Whereby, and correct me if
7 I'm wrong, if you disagree, like the hypothetical
8 you used an employee comes to you, I do think you
9 have some kind of affirmative duty and the first
10 resort is to report it to the administration.
11 Thereafter, it's out your hands except that you're
12 entitled to a substantive response from the
13 administration as to what was done.

14 MR. STRUCK: I would agree.

15 PRESIDENT KOLODZIEJ: Under any
16 circumstances, am I permitted to deal directly
17 with any department head and verbalize to that
18 department head that I really think you handled
19 this really terribly and yeah, I reported it to
20 Mr. Bella, but you know what, you know, I'm
21 disturbed, I'm disturbed that you can show
22 discrimination or I'm concerned that... Under any
23 circumstances are any of these Commissioners
24 allowed, myself included, permitted to do that?
25 Would we be in violation of the ethics standard?

1 MR. STRUCK: I don't think you necessarily
2 would be in violation of the ethics standard, but
3 from a liability standpoint, I might actually
4 refrain from kind of circumventing the chain of
5 command or the chain of communication in any one
6 of these situations, mostly, because once you have
7 that information, I mean, the question is once you
8 have that information, now, how are you going to
9 handle it? Are you going to bring it into an open
10 meeting? Are you going to, you know, use it to
11 kind of put pressure on that supervisor or that
12 manager to kind of change their way? I mean,
13 that's a rabbit hold that begins to get worse as
14 opposed to fix the problem.

15 So I would say that the most direct route
16 would be to stay within the chain of command. If
17 the chain of command or chain of communication
18 breaks down and those responsibilities kind of
19 fall apart, there's a much larger conversation
20 that has to be had more than just an individual
21 employee issue or an individual employment issue.
22 And so I think that venue would probably be the
23 most for the Commissioners in order to kind of
24 discuss that issue. But I think, you know, put in
25 place, trust the system until it shows that, you

1 know, it's broken down or something needs to be
2 addressed in order to fix the system in which case
3 you can go back and reapply that fixed procedure
4 or chain of command in order to evaluate that.

5 COMMISSIONER DeVITA: Just so I
6 understand. So if one of us goes to whoever here,
7 supervisor, you know, you better do this, you
8 better... We're not necessarily committing an
9 ethics violation, but we're creating civil
10 liability?

11 MR. STRUCK: Yes. I mean, from my
12 standpoint, you would be opening yourselves up to
13 kind of a, not necessarily specifically a claim, I
14 mean, you could be opening yourselves up to a
15 claim as well because now all of a sudden instead
16 of just one employee having a harassment claim,
17 now you might have a manager or their supervisor
18 also kind of filing.

19 COMMISSIONER DeVITA: The supervisor would
20 be within their rights to file a claim.

21 MR. STRUCK: Correct. I mean, you can
22 file a claim on anything you want. But from my
23 standpoint, really, as an elected official, me
24 personally, I would want to kind of immunize
25 myself from those situations until they're

1 presented to me in an open forum and that way, I
2 mean, just from a simple standpoint, it gives you
3 coverage from the point of the fact the multiple
4 folks weighing in on it giving their opinion and
5 then eventually probably voting on it. But also,
6 like I said, once you have that information, all
7 you're going to do with kryptonite, it's one of
8 those things you're damned if you do, damned if
9 you don't. Once you have it, because you're
10 probably going to have an ethical issue, it's a no
11 win situation once you have that information.

12 COMMISSIONER DeVITA: We probably
13 shouldn't deal with a supervisor one on one rather
14 go to Joe Bella, the administrator.

15 MR. STRUCK: I would trust the
16 administration in place to take care of it. Like
17 I said, unless the experience is that there's some
18 kind of broader breakdown in the communication
19 chain, I think that then would come to the
20 appointed body, the elected body and then you fix
21 what needs to be fixed and then go back out again.

22 Now, safe harbor specifically, I will tell
23 you that later on in this presentation, focuses on
24 conflicts of interest, when it comes to decision
25 making. So not specifically just with employee

1 issues or administrative issues and the chain of
2 command, but also in terms of contract awards.
3 When it comes to, you know, determining, you know,
4 which projects to involve the Commission in or
5 what issues should be fast tracked versus things
6 that should be tabled. There's a whole host of
7 things that are discussed later on. We may not
8 get to them, but there's some scenarios in there
9 where you can say: Yes or no; this is ethical;
10 this isn't ethical. A lot of them deal with what
11 your role is here for the Commission versus what
12 your role is maybe elsewhere on another elected or
13 appointed body, private business, your personal
14 life, anything like that.

15 So safe harbor really comes into play with
16 those ethical dilemmas, because when it comes time
17 to make a decision, usually, typically, you have a
18 heads up on when those decisions are going to come
19 down the pike and you can have some proactive
20 advice given to you before you end up taking
21 action.

22 PRESIDENT KOLODZIEJ: I don't want to
23 belabor this, but I just want to bring up a
24 concrete example just from the explanation that
25 you gave.

1 I'm sensing that we did the correct thing,
2 maybe a little bit backward, but we did the
3 correct thing. Very often, in a closed session
4 it's not uncommon, and lately, we had at least one
5 serious issue with racial slurs. And if I
6 recollect the incident carefully or correctly, it
7 didn't come from administration, it came from one
8 of our Commissioners. We took it seriously. We
9 immediately, that meeting, sent it right back to
10 where it should go to administration who then
11 dealt with the situation and dealt with it just as
12 we would have wanted them to deal with it; quickly
13 and in a manner that's befitting, such as a
14 grievance situation.

15 So, you know, I'm reassured that that
16 Commissioner did the right thing even though he
17 may have been so upset that he didn't think to go
18 to Joe first, he was so aggrieved by the situation
19 he came into closed session. It worked out fine.
20 But we were perfectly within the letter of the
21 law.

22 MR. STRUCK: I would agree. I would
23 agree.

24 PRESIDENT KOLODZIEJ: Got it.

25 MR. GALLAGHER: One of the things I think

1 that they're harping on is the issue about the
2 employees are protected by a number of the laws
3 against discrimination on the federal side.
4 There's quite a bit more. Those are the ones that
5 protect the employees, so the employees have a
6 number of rights under those and that's what we
7 try to, when I go to George, those are usually,
8 you know, if the employee's being harassed by
9 whomever, whether it's a supervisor, to someone
10 from the outside, we have to take all those
11 seriously.

12 PRESIDENT KOLODZIEJ: Okay.

13 MR. STRUCK: Okay. So now, from a
14 legislative standpoint, this has "Government", but
15 it's basically, you know, most all public entities
16 that are funded through, you know, government
17 monies and considered public entities, they have
18 the duty to both provide their citizens with
19 standards by which they may determine whether
20 public duties are being faithfully performed,
21 meaning, you have the duty to let the public know
22 by what standards the performance of your job role
23 should be measured, so to speak. And then to
24 apprise their officers and employees of the
25 behavior which is expected of them while

1 conducting their public duties. So not just the
2 measuring stick, but also, you know, how to
3 basically measure up while you're performing those
4 duties.

5 Local Government Ethics Statute: Who must
6 comply? Local government officers or employees
7 under the jurisdiction of the Local Finance Board.

8 The statement's very broad. It covers
9 anyone who's elected, employed, or appointed. So
10 regardless of how you found your way into those
11 positions, it applies.

12 Basic prohibition: No local government
13 officer or employee or member of the immediate
14 family shall have an interest in a business
15 organization or engage in any business transaction
16 or professional activity which is in substantial
17 conflict with the proper discharge of his duties
18 and the public interest.

19 So this can potentially come up often
20 with, you know, outside roles and responsibilities
21 and involvement in business. And really a lot of
22 these issues can be diffused by, you know,
23 abstaining from a vote or a conversation that has
24 to do with something that might arise that's a
25 conflict of interest that might conflict with your

1 role in private business or somewhere outside of
2 these walls, but might enter into these walls via,
3 just a perfect example, you know, the contract
4 awardees and whether it a be a RFP or RFQ response
5 that needs to be adjudicated or judged for quality
6 and winning that eventual contract.

7 PRESIDENT KOLODZIEJ: Can I just back up
8 on that one?

9 This Commission is excellent on
10 identifying conflicts of interest because on any
11 given claims list you're going to hear one or two
12 Commissioners saying: I abstain, blah, blah,
13 blah.

14 But I guess my concern is we have a yearly
15 session in which we award contracts for services.
16 And we diligently go through every one of those.
17 Now, what specifically would preclude me from
18 voting on any one of these people on this list
19 that either is my personal attorney or I've done
20 business with in the past insuring my company's
21 business? What am I obligated to tell my
22 colleagues at that session that we may not be
23 aware of, because, you know, I didn't do business
24 with him. I stopped two years ago. I stopped
25 using that insurance company.

1 MR. STRUCK: Sure.

2 PRESIDENT KOLODZIEJ: So where is my
3 yardstick on what I need to let my colleagues know
4 as to my relationship for anyone on that given
5 list that we're diligently going through.

6 MR. STRUCK: As a general guideline, I
7 would say that first, in terms of abstaining from
8 or abstaining from the final vote on any one of
9 those issues, I would say any one of those
10 situations where you have a direct interest.
11 Meaning, you personally or one of your immediate
12 family members, I think that warrants abstaining
13 from that process.

14 I think once you go beyond that point,
15 again, it's going to be a gut issue as far as how,
16 you know, personally involved you are in those
17 decisions or those conversations, at least. But
18 at the very least, make it public. Disclose that
19 relationship. Disclose that, you know, that
20 previous relationship that may not exist anymore
21 or, you know, could exist in the future, you don't
22 know. But at the very least, you can and, again,
23 certainly elected appointed officials choose to
24 take the very conservative route and they'll
25 pretty much abstain on almost anything that seems

1 like it's going to be a conflict and you might
2 have a little bit more comfort with saying: Look,
3 I've disclosed my direct or indirect relationship
4 with this other entity, I can move forward and
5 vote.

6 Something that might also be of interest
7 would be whether you are the deciding vote in that
8 process. So that, again, is going to be more of a
9 gut reaction or a gut call to try and, you know,
10 use your decision making process in that to
11 determine how you're going to proceed.

12 PRESIDENT KOLODZIEJ: One point of
13 clarification. When you say "immediate family
14 members", I've never used this lawyer, but my
15 brother does. What does the law specify as
16 immediate family members that would put me in the
17 situation of being in a conflict of interest? In
18 this case, what we're reviewing.

19 MR. STRUCK: If you're going to have an
20 immediate financial interest is the big one. So
21 if your brother or a member of the firm and the
22 firm were to have a financial gain, that would be
23 a major conflict.

24 If your brother just so happens to be a
25 client of the attorney, there's not really a

1 direct, you know, kind of benefit from that
2 circumstance.

3 PRESIDENT KOLODZIEJ: Okay.

4 MR. STRUCK: So, yeah, I mean, it's very
5 much going to be -- a lot of this is judged on the
6 financial.

7 PRESIDENT KOLODZIEJ: So that's really the
8 key. The other things don't matter. Not only my
9 brother, but other things that the law defines as
10 being any one of my family members who will have a
11 direct financial benefit from whoever I'm voting
12 on on this list is really something that I should
13 learn that I should recuse myself from.

14 MR. STRUCK: We can go a little further
15 into the hypothetical.

16 PRESIDENT KOLODZIEJ: No, no, no. I just,
17 we go through this session every --

18 MR. STRUCK: No, that's okay. I think
19 it's a good piece of learning that can happen from
20 it. It doesn't necessarily just have to be
21 financial.

22 PRESIDENT KOLODZIEJ: Oh, okay.

23 MR. STRUCK: Or at least directly
24 financial in the sense of, you know, your
25 brother's an attorney within the firm. If you're

1 looking at using a law firm, just for instance,
2 okay, I'll pick on the lawyers --

3 PRESIDENT KOLODZIEJ: Everybody picks on
4 Mr. Hanley.

5 MR. STRUCK: But say you're approached by
6 anyone who says: If you give me this contract, if
7 you're instrumental in getting me this contract, I
8 can help your brother by doing X, Y, Z, you know.
9 You give me this construction contract, I'll do
10 his sidewalk for free. It's not exactly a direct
11 monetary, you know, benefit, but it does, to me,
12 that would not pass the personal --

13 COMMISSIONER DeVITA: It sounds kind of
14 blatant, doesn't it?

15 MR. STRUCK: It does. It does fall into
16 the realm of not necessarily a direct financial
17 benefit to an immediate family member but at the
18 end, it has that quality.

19 PRESIDENT KOLODZIEJ: But it would fit in
20 under the areas of things that we should avoid
21 simply. I mean, I don't picture anybody here
22 doing that, but, you know, it's nice to hear that
23 the law was established to make sure that
24 somebody's not using our position here, you know,
25 we're not doing it for personal gain, but I want

1 to take care of my family but good luck proving
2 it. That's another thing.

3 But anyway, thank you for that
4 clarification.

5 MR. STRUCK: No problem.

6 COMMISSIONER GRADDY: May I propose a
7 hypothetical?

8 Let's assume that there's a situation
9 where your brother or relative or somebody is
10 interested in a contract. And as a Commissioner,
11 okay, you lobby or you talk as much as you can.
12 Okay. To see that guy or girl or lady's accepted,
13 but yet when it comes to the vote around the
14 table, you abstain. You do all the necessary
15 things that you should do, but abstain when the
16 vote come. How does that --

17 MR. STRUCK: Again, that's going to be a
18 gray area. I would be very measured in how much
19 lobbying is done. If you have personal
20 information regarding that firm from a
21 professional standpoint, again, you have to
22 disclose. Personally, I would disclose my
23 relationship to that, you know, that one
24 organization to the group and put it on the
25 record.

1 kind of to the point as opposed to more opinion
2 based kind of comments or adding to the
3 conversation in that stand. I don't think you
4 necessarily have to recuse yourself from the
5 conversation, but I think you definitely have to
6 kind of balance the extremes that are going on.

7 COMMISSIONER DeVITA: I disagree. I do.
8 I just think the way you put it was not just
9 expressing an opinion. You're lobbying for
10 somebody; it's a relative, it's this, that.
11 You're talking to everybody. I think that goes a
12 little beyond an opinion, just the way he said it.

13 MR. STRUCK: How it was posed, I would
14 agree with you. I would say from the onset I
15 would try and be straightforward about it. You
16 know, if a question comes up, well, you know, do
17 they do employment law, you could say for a matter
18 of fact: Yes, I know they do employment law and
19 they have, you know, this lawyer and that lawyer
20 that addresses that. I don't see an issue with
21 that, having that kind of information, especially
22 disclosing that you are kind of an authority on
23 what they do.

24 So if you stay out of the realm of
25 opinion, then I think you kind of balance that.

1 MR. HANLEY: I was going to say another
2 useful distinction that I found, especially with
3 the gray areas, is the concept I'm sure you know
4 called, it's not a conflict but an appearance of
5 conflict.

6 And, again, under the appearance, you can,
7 theoretically, you can vote, but sometimes
8 discretion is the better part, particularly, if
9 your vote is not the tie breaking vote or a
10 decision has to be made.

11 But first of all, even in your appearance,
12 it should be disclosed to everybody. But
13 secondly, unless there's some very strong reason
14 why your vote is needed, personally, I mean, this
15 is for my, I would say: Look, I don't know that I
16 have a conflict or appearance, but I'm going to
17 recuse myself anyway just to keep the appearance
18 of the decision making beyond reproach.

19 COMMISSIONER DeVITA: Just because you use
20 somebody's services doesn't mean you have to --

21 MR. HANLEY: Yeah, I think that's a good.
22 Or the other thing that came to mind because it's
23 come up, you know, when you practice law for 35
24 years, you know, I've had, I don't know how many
25 clients over the years and maybe I represented

1 somebody once 15 years ago. I mean, I would have
2 no problem voting on that. I would still disclose
3 that, but unless there's some kind of continuing
4 relationship.

5 COMMISSIONER BAZIAN: I want to get a
6 little grayer for a second. Let's go out of the
7 realm of family and let's talk about friends or
8 other situations where reasoning may be more
9 personal than objective/business.

10 I could think of several different
11 examples where a Commissioner could theoretically
12 attempt to influence a decision. I just want to
13 know if this falls under ethics law. I'll give
14 you a couple of examples.

15 Suppose somebody I know, a friend, friend
16 of a relative, whatever, is up for a job with the
17 Commission. Okay. Discounting, assuming that
18 you're disclosing, okay, a fellow Commissioner
19 says one thing, staff says another. So I need to
20 represent both. Since the Commissioners brought
21 up hires, theoretically, a person can lobby for
22 people, where does that fall?

23 And then perhaps going into, going to
24 staff, be it Personnel Director or Executive
25 Director and say: I would like this person to be

1 on the short list for whatever. Ultimately, that
2 would be hiring.

3 We can have similar issues with regards to
4 discipline. Okay. Somebody's being disciplined,
5 Commissioner says: Hey, this is my friend. A
6 friend, not getting into relatives. Where does
7 that fall in the line of the ethics?

8 MR. STRUCK: I would say from the overall,
9 you know, smell test or gut test, I would say that
10 that's a major, or at least an ethical issue to
11 kind of lobby for someone to get them onto the
12 short list in terms of a position or kind of
13 getting them some special consideration, something
14 like that.

15 It's, again, it's not a direct relative,
16 but then from George's standpoint, that kind of,
17 you know, that perception of a conflict of
18 interest or perception --

19 MR. HANLEY: I think there was another
20 concept here too.

21 No one is entitled to "favorable
22 treatment" no matter who they are. They're
23 entitled to fair treatment and to be held at the
24 same standard that any other job applicant would
25 be held. So asking for the quote - "favor" - is

1 inappropriate in and of itself, forget about who
2 they are.

3 COMMISSIONER BAZIAN: So let me, and that
4 applies to hiring and discipline and anything like
5 that?

6 MR. STRUCK: Yes, anything like that.

7 COMMISSIONER BAZIAN: So next question:
8 Assume for a moment that I know somebody, a
9 person. Okay. To submit their resume to the
10 personnel department, is that a conflict?

11 MR. STRUCK: As long as it's: Please
12 consider this person for the position. You know,
13 put them in the pile or, you know.

14 COMMISSIONER BAZIAN: Yeah, "I know this
15 person personally. Don't know if anything is
16 available. But if you wouldn't mind taking a look
17 at the resume, if it's appropriate, consider them
18 for a position." Where does that fall?

19 MR. STRUCK: I wouldn't necessarily see
20 that as a large conflict.

21 MR. HANLEY: Well, again, what I would do
22 is tell them put it in.

23 COMMISSIONER DeVITA: Let them file.

24 MR. STRUCK: You always have that option.
25 Again, a lot of these things are going to be, you

1 know, the gut check, kind of feeling your gut
2 instincts. If there's an avenue for them to send
3 it in and there's a system that everyone else
4 uses --

5 MR. HANLEY: For example.

6 MR. STRUCK: I would say going against
7 that system.

8 MR. HANLEY: For example, what you're
9 talking about here and I don't think there's
10 anything wrong with it is with summer interns.
11 It's open now. Each Commissioner has the ability
12 to recommend, I don't know, whatever, and they
13 have a written policy. I don't think there's
14 anything wrong with it.

15 PRESIDENT KOLODZIEJ: That's the
16 difference, in my opinion. We worked very hard to
17 get a written policy. But like you say, the
18 advice to us Commissioners when we know somebody's
19 out there and really good and probably could serve
20 this organization, no, I'm not going to take it
21 down there, you go down to personnel and you bring
22 it.

23 And then for us to say, if personnel asks,
24 you know, sometimes when they say, who refers you,
25 there's nothing wrong if you know that person to

1 put my name on that and saying: Yes, I taught
2 that young man in high school and he's very
3 capable. You know, if you want to put me down for
4 a reference. Many of my former students asked me
5 if they can use my name for a reference, I don't
6 think anybody here, but there's nothing wrong with
7 that. But I'm right out in the open right on that
8 thing, but that person has come to personnel and
9 brought that application, not me saying I'm doing
10 this for so and so because I think he's so great.

11 COMMISSIONER GRADDY: Thank you for the
12 conversation. I think this discussion is very
13 healthy.

14 Again, I'm concerned about, you know,
15 knowing somebody that you recommend. I don't
16 think there's anything wrong with that, but I do
17 think that it's wrong to go around and lobby and
18 talk to other Commissioners: I favor such and
19 such a person, cooperation, so when you vote,
20 please vote for them. And then when it comes to
21 you and then you abstain and the rest vote. This
22 is a gray area and I think we should really look
23 at it. Okay.

24 PRESIDENT KOLODZIEJ: I love your gut
25 instinct and I share your gut instinct.

1 MR. HANLEY: I'm just thinking of a, not
2 a -- a different aspect. Let's say you're on the
3 personnel committee and you have four resumes. I
4 don't think there's, and, again, I would disclose,
5 you know, whatever relationship you have. But I
6 don't think there's anything wrong with arguing
7 that Mary Jones to me, looking at the resume,
8 clearly has the best qualifications. She has a
9 Ph.D and, you know, something I can't pronounce.
10 I don't think there's anything wrong with that.

11 PRESIDENT KOLODZIEJ: That's appropriate,
12 because that's what the personnel committee does.
13 Usually, administration brings recommendations to
14 them. They thoroughly vet this. They're looking
15 at recommendations that are listed on a sheet.

16 But as Commissioner Graddy said, there's a
17 difference between talking about that in committee
18 and then leaving committee and hitting up the four
19 of us and saying: This is going to be on the
20 agenda and, you know, I would appreciate it if you
21 do me a favor and vote for so and so.

22 COMMISSIONER CLEAVES: It's like lobbying
23 for the votes before the vote is actually taken to
24 make sure that that person gets the vote, but then
25 once you know that the votes are there, you can

1 abstain from that vote. That's what it is.

2 COMMISSIONER BAZIAN: Let me ask another
3 question. I don't know if there's any duty, but
4 I'm curious. Suppose I as a Commissioner go over
5 to, and I'm just going to call by name, Jim,
6 because he's our director, and I say: Jim, I want
7 this guy hired or I'm going to do whatever I can
8 to get you fired. Clearly, a violation. Okay.
9 What is Jim's responsibility under the law?

10 MR. STRUCK: Jim's responsibility, one, is
11 to remain unwavering in that decision that has to
12 be made and to make the best decision.

13 But from that standpoint, there's also a
14 chain of communication that exists within the
15 organization to kind of address that issue as well
16 and could he bring it higher in the organization
17 because it might be one of those situations and
18 it's not to pass judgment on any of the
19 Commissioners or anyone else on the elected body,
20 but sometimes it's an emotional charged thing and
21 something gets out or someone is asking for help
22 adamantly, so you feel an emotional, at least a,
23 kind of vesting in that that could happen.

24 But ultimately, it's up to the
25 administration to, one, make the decision that's

1 best for the organization; and then, two, if an
2 issue is that egregious, it needs to be addressed
3 in the chain of command.

4 COMMISSIONER DeVITA: Question: Something
5 happened, it goes to our Executive Director. He
6 thinks it's egregious. Where does he go?

7 MR. STRUCK: I would bring it to the
8 elected body.

9 MR. HANLEY: Appointed.

10 MR. STRUCK: Sorry, appointed. I use them
11 interchangeably. This presentation sees a lot.

12 COMMISSIONER DeVITA: He brings it to the
13 entire Board?

14 MR. STRUCK: I would. If that is laid out
15 within your organization the next step in the
16 chain of communication, that's the step I would
17 take.

18 MR. GALLAGHER: If I can interject an
19 important factor. Once it's brought to the
20 attention of anyone, whether it be a Commissioner,
21 Joe, the employee now enjoys a certain degree of
22 immunity because you can't take any action against
23 the employee because any action now is subject to
24 the employee, the employee says: You know,
25 Commissioner Bazian came to me and demanded this

1 and told me I would get fired. And I mention it
2 to Joe, even in passing, even in passing, if in
3 fact, even in passing, I know for personnel, even
4 if it's mentioned to me in passing, like the
5 employee says: Please don't tell anybody else. I
6 don't want that Commissioner or I don't want that
7 person coming after me again. We have an
8 obligation to move forward on it.

9 We have to do an investigation and we have
10 to determine the facts. And at that point, the
11 employee is, I don't want to say immune to, but
12 has a great deal of protection under the authority
13 of the Conscientious Employee Act that the
14 employee is, if you're going to take any
15 discipline, any action against them, I'd probably
16 counsel you against it, because at that point, the
17 employee has now made a claim. And if that claim
18 can be substantiated, even in general terms, we're
19 obligated to protect the employee.

20 PRESIDENT KOLODZIEJ: All right.

21 Question: I certainly approve of the
22 Whistleblower Act. I really do. And I've had
23 experience with that in my years in government.

24 What I'm sitting here with a moral dilemma
25 is that that same information comes to me, comes

1 to me as a Commissioner, what is my chain of
2 command? Obviously, whoever's coming to me in
3 this total frustration, obviously, doesn't trust
4 administration. And, you know, nothing personal
5 here, but what moral obligation do I have to give
6 that employee the competence that, you know, there
7 are things in place to protect you?

8 MR. STRUCK: There are. I would be,
9 again, I would be cognizant of not getting too
10 involved in the situation. Really, the obligation
11 is to put that back within the chain of
12 communication.

13 If they're not -- say they have an
14 issue -- say the problem is with their manager or
15 supervisor, direct manager or supervisor, they
16 don't necessarily have to go to that individual to
17 raise that issue. There's someone else within the
18 administration that you can then direct them to in
19 order to go to. So somehow it has to get back
20 within that chain, for multiple reasons, not just
21 from an ethical standpoint, but from an employment
22 practices liability standpoint in terms of whether
23 or not one employee is being treated differently
24 than another.

25 From the standpoint of, as soon as that

1 employee makes you aware of that, if they feel
2 like that was, you know, enough indication to the
3 organization in general, the law basically holds
4 out that they have raised an issue. They have
5 given to someone higher up within the
6 organization.

7 The problem is that you're not necessarily
8 in place to act directly on that and remedy the
9 situation the way it's laid out in policies and
10 procedures. And from an employment practice and
11 liability standpoint, if you have those policies
12 and procedures in place, again, written down, it's
13 up to everyone within the organization to try and
14 make that stick and to reinforce that chain of
15 communication, that, you know, grievance process,
16 whether it be a hearing or it has to go up the
17 chain of command and go to see someone else before
18 it finds its way in front of the Commission. That
19 kind of, you know, X, Y, Z or A, B, C of the
20 policies and procedures needs to be followed as
21 closely as possible.

22 So if it falls in your lap and it's
23 outside of that chain, it needs to be put back
24 into that chain of communication as quickly as
25 possible.

1 PRESIDENT KOLODZIEJ: Then my redress will
2 be to watch that chain of command and watch how it
3 plays out to be sure that everything has been done
4 by our chain of command.

5 MR. STRUCK: Yeah.

6 PRESIDENT KOLODZIEJ: I can walk away with
7 a clear conscience, saying --

8 MR. STRUCK: Like George said before, you
9 can raise that issue and ask for a written or
10 formal response to say: Yes, this is being
11 handled.

12 PRESIDENT KOLODZIEJ: Okay. So I can tell
13 my colleagues that I was concerned about this. I
14 turned it over to Joe. And maybe if we set a
15 policy that when that does happen that way, that
16 it comes back to us so that we know how it was
17 addressed within our chain of command.

18 MR. STRUCK: Yes.

19 COMMISSIONER DeVITA: Seems to be we
20 should have policies in effect, written policies,
21 for those specific situations, yes?

22 MR. STRUCK: The more specific you make
23 it, you kind of get handcuffed, because you only
24 have answers for those specific situations. I
25 would think the chain of communication, the

1 grievance process, the recording process, all of
2 that should be laid out generally, you know, with
3 enough specifics so that we know where to go and
4 when; but generally, so that you're not handcuffed
5 by, you know, for instance, this particular
6 situation, do this, this, this situation.

7 COMMISSIONER DeVITA: Reporting the
8 grievance is clear, where --

9 PRESIDENT KOLODZIEJ: In their handbook.
10 In their handbook.

11 COMMISSIONER DeVITA: For somebody to come
12 to us?

13 MR. STRUCK: Again, if it falls within
14 your lap but it's outside of that silo or however
15 that communication tree works, we need to work
16 immediately to put it back into that process.

17 COMMISSIONER DeVITA: Okay.

18 MR. GALLAGHER: Commissioner, just so you
19 understand, one of the more important things under
20 the Conscientious Employee Act, again, is the
21 employee has to be protected. One of the things
22 we do, and I think we do very well, is that we
23 protect that it remains anonymous, the employee
24 remains anonymous because that eliminates the
25 potential for redress.

1 PRESIDENT KOLODZIEJ: Yes. Excellent.

2 MR. GALLAGHER: Usually, a department head
3 or whoever figures out who the person is, but we
4 don't ever provide the name. And as a matter of
5 fact, that's always been one of the complaints
6 with people who have been investigated is: I want
7 to know the who, what, and where. They're not
8 entitled to it. We go out of our way to protect
9 the employee.

10 PRESIDENT KOLODZIEJ: We're going to run
11 into a little problem here because we have a
12 public meeting called for 12:00.

13 I really appreciate the time you've given
14 here and I think all of us have a clear
15 understanding of how we should treat these
16 situations that we may run across.

17 Is there anything that we really -- is
18 everything in here?

19 MR. STRUCK: Everything is within the
20 handout. The back half is pretty much all these
21 kind of hypothetical scenarios. What's good is
22 we had a bunch of them that came up, that's almost
23 always the case where they come up during the
24 conversation. Anything that we didn't cover,
25 please feel free to go through.

1 PRESIDENT KOLODZIEJ: And we can call you
2 directly?

3 MR. STRUCK: Yes.

4 PRESIDENT KOLODZIEJ: If we have any
5 specific question in regard to our experience or
6 things that we're still concerned about from our
7 gut.

8 MR. STRUCK: Most definitely.

9 COMMISSIONER DeVITA: I think it was
10 great. Thank you very, very much.

11 PRESIDENT KOLODZIEJ: All right.
12 Absolutely.

13 All right. Colleagues, we're going to
14 reconvene at 12:00.

15
16 (Whereupon, the proceedings concluded at
17 11:57 a.m.)

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C E R T I F I C A T E

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