

NOV 01 2019

RECEIVED

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

CONFIDENTIAL

In re: Joseph Kilsheimer,

Respondent.

Complaint No. 18-020

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation, filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

**RESPONDENT/COMPLAINANT**

Respondent, Joseph Kilsheimer, serves as Mayor of Apopka. Complainant is Melissa Lynn Touchet of Apopka, Florida.

**JURISDICTION**

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Sections 112.313(6), and 112.3148(8), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on October 18, 2019.

## **ALLEGATION ONE**

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by improperly billing the City of Apopka for expenses, including but not limited to travel and hotel, he and his wife incurred on a trip to Washington, D.C.

### **APPLICABLE LAW**

Section 112.313(6), Florida Statutes, provides as follows:

**MISUSE OF PUBLIC POSITION.** No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.
2. Respondent must have:
  - a) used or attempted to use his or her official position or any property or resources within his or her trust,  
or
  - b) performed his or her official duties.
3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.
4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another

person from some act or omission which was inconsistent with the proper performance of public duties.

### ANALYSIS

Respondent served as Mayor of Apopka from April 2014 through April 2018. (ROI 5) This case revolves around a trip Respondent and his wife took to Washington, D.C. in early 2017. (ROI 2, 4)

On December 28, 2016, James Kirby of the United States Conference of Mayors (USCM), notified Respondent's Executive Assistant, Merry Lovern, that the USCM wanted to present an award and a "DollarWise" grant to Respondent at its 85<sup>th</sup> Winter Meeting to be held in Washington, D.C. from January 17 – 19, 2017.<sup>1</sup> (ROI 4, 6)

On December 30, 2016, Lovern registered Respondent for the conference and reserved a room at the Homewood Suites after she learned that the host hotel (Hilton) had no vacancies. (ROI 7, 10, Exhibit B<sup>2</sup>)

On January 3, 2017, a room at the host hotel became available and was reserved for Respondent by Lovern. (ROI 10, 18, Exhibit B)

On January 12, 2017, Kirby requested Respondent speak at the Council on Metro Economies and New American City meeting on January 17, 2017 regarding Apopka's summer youth program. (ROI 6, 14, Exhibit B)

According to Lovern, Respondent and his wife flew to Washington, D.C. on the afternoon of January 16, 2017. (ROI 11, Exhibit B) Respondent recalled that he and his wife arrived in Washington, D.C. on January 17, 2017. (ROI 6)

---

<sup>1</sup> The Mayor's 2017 budget included funding for the 2017 USCM winter meeting. (ROI 10, 15)

<sup>2</sup> After Respondent's reelection defeat and after the subject complaint was filed, Lovern drafted a timeline of events attached to the Report of Investigation as Exhibit B. (ROI 10)

On January 17, 2017, Respondent spoke at the Council on Metro Economies and New American City meeting. (ROI 11) That day, Lovern received a call from Homewood Suites inquiring whether Respondent would be checking into the hotel. (ROI 7, 10, Exhibit B) She stated that the hotel refused to cancel the reservation and charged the City's credit card for the full amount of \$2,277.05. (ROI 4, 7, 17, Exhibit B)

On January 18, 2017, Respondent flew back to Orlando to chair the City Council meeting in Apopka. (ROI 6) The meeting adjourned late in the evening and Respondent flew back to Washington, D.C. the next morning. (ROI 6, 11)

On January 19, 2017, Respondent attended a luncheon and accepted a USCM grant. (ROI 6, 12) Later in the day, Respondent had meetings, which were coordinated by Lovern, with Senators Bill Nelson's and Marco Rubio's staff regarding Apopka projects. (ROI 6, 11, Exhibit B) In the evening, Respondent attended the USCM Inaugural Reception. (ROI 11, Exhibit B)

According to Respondent and Lovern, Kirby contacted Lovern on January 13<sup>th</sup> and requested that Respondent attend the January 19<sup>th</sup> USCM Inaugural Reception and the Presidential Inauguration on January 20<sup>th</sup> to attend and/or sit with the USCM. (ROI 6, 11, Exhibit B) Kirby could not recall contacting Lovern and asking Respondent to attend the Inaugural Reception; however, he located a copy of an invitation from the USCM, sponsored by the Bank of America, inviting the mayors to an Inaugural Reception from 6 p.m. until 9 p.m. on January 19<sup>th</sup>. (ROI 14, Exhibit C)

John Daniel Reaves, USCM's General Counsel, advised that the USCM is a nonpartisan organization and did not request that any mayors attend the Presidential Inauguration nor did the USCM have reserved seats or hold any events related to the inauguration. (ROI 13)

Respondent's wife incurred airfare in the amount of \$446.40<sup>3</sup> which included seating upgrades. (ROI 9) Respondent did not accept his reimbursements of \$240<sup>4</sup> and provided a check for the difference of \$207.40 payable to the City of Apopka on April 7, 2017 to cover his wife's expenses. (ROI 9, Exhibit A) Respondent also upgraded his seats for all four flights; however, he did not reimburse the City for those extra expenses. (ROI 8)

According to Glenn Irby, Apopka City Administrator during the pertinent time, there is no language in the City's policies that specifically addresses airfare upgrades,<sup>5</sup> but the City-employed traveler should reimburse the City for any upgrades. (ROI 16, Exhibit D) Pam Barclay, City Finance Director during the pertinent time, is not aware of any policy that specifically requires an employee to reimburse the City for airline seating upgrades but opined that it was "common knowledge that those type of extras are not allowed."<sup>6</sup> (ROI 17) According to Barclay, she was notified by a clerk in the Finance Department (Accounts Payable) of Respondent's charge at the Hilton while he was in Washington, D.C. and she assumed that he booked the room at that time. (ROI 17) When she was notified of the charges at the Homewood Suites, Barclay contacted Lovern who said that she would attempt to cancel the reservation and receive a refund for the room charges, but her attempt was unsuccessful. (ROI 17, Complaint pp. 55-56) The Hilton staff was unable to determine when the reservation for the Hilton was booked. (ROI 18)

The Complainant alleges that "Respondent's trip to the USCM meeting had no public purpose and was a ruse to witness the Presidential Inauguration and take a vacation at taxpayers' expense." (ROI 4)

The following is a daily breakdown of expenses incurred by Respondent and his wife.

---

<sup>3</sup> Airfare for wife - \$366.40 and \$80 upgrades to first class = \$446.40. (ROI 9)

<sup>4</sup> Respondent's reimbursements were \$189 in per diem and meals, and \$51 for parking = \$240. (ROI 9)

<sup>5</sup> The City's Administrative Policy contradicts this statement. (Exhibit D)

<sup>6</sup> The City's Administrative Policy states that "travel must be by the most economical class." (Exhibit D)

HOTEL	Jan. 16 – Mon.	Jan. 17 – Tues.	Jan. 18 – Wed.	Jan. 19 – Thurs.	Jan. 20 – Fri.	Jan. 21 – Sat.
	Respondent and wife flew to Wash. DC (seat upgrades for \$80)	USCM Conf.  Respondent was speaker at conference	USCM Conf.  Respondent flew to Orlando <sup>7</sup> (seat upgrade for \$40)  Apopka City Council meeting	USCM Conf.  Respondent flew back to Wash. DC <sup>8</sup> (seat upgrade for \$40)  Respondent attended USMC luncheon  Respondent met with Senators  USCM reception 6-9 p.m.	Presidential Inauguration	Respondent and wife flew to Orlando (seat upgrades for \$80)
Homewood Suites  (All nights charged for non-use)	\$445.41/night	\$445.41	\$445.41	\$445.41	\$445.41	\$2,227.05 TOTAL
Hilton	\$491.21/night	\$491.21	\$491.21  Attributed to Respondent's wife	\$491.21	\$491.21  No public purpose for staying this night	\$2,456.05 TOTAL
Per Diem \$189 TOTAL plus \$51 Parking	\$36	\$21	\$21	\$21	\$69	\$21

(ROI 4-18, Exhibits A, B, C, Complaint pp. 2-5, 10, 46-54)

#### HOTEL CHARGES:

Respondent, as Mayor, had a public purpose to be at the USCM conference in that he was an invited speaker and was also presented an award and grant. (ROI 6, 14) Respondent's travel and related expenses incurred while on official business of the City were authorized pursuant to Section 107.2.1, Administrative Travel Expense Policy, City of Apopka. (Exhibit D) However,

<sup>7</sup> It is unknown why Respondent flew back to attend this Council meeting and why the Vice Mayor could not preside over this meeting in his absence. Without more information, it cannot be said that the expense of roundtrip airfare served a public purpose.

<sup>8</sup> Id.

reimbursement for all of Respondent's lodging is not permitted.<sup>9</sup> (Exhibit D) Respondent should have reimbursed the City for the hotel charge of \$491.21 for the night of January 18<sup>th</sup> when his wife stayed at the hotel without him<sup>10</sup> and the hotel charge of \$491.21 for the night of January 20<sup>th</sup> since the evidence does not support a public purpose for Respondent staying the extra night to attend the Presidential Inauguration. Rather, Respondent and his wife secured a personal, private benefit by attending at the City's expense.

Respondent's assistant, Lovern, took responsibility for forgetting to cancel the Homewood Suites reservation just four days after she made it<sup>11</sup> and alleges that Respondent had no involvement in the matter. (ROI 7, 10, Exhibit B, Complaint p. 52)

#### SEAT UPGRADES ON FLIGHTS

Respondent and his wife received seating upgrades for their air travel for a total of \$80 for his wife and \$160 for Respondent. (Complaint pp. 2, 46-49, 51) Respondent reimbursed the City \$80 for his wife's upgrades but not his own. He should have reimbursed the City an additional \$160 since "[a]ll travel must be by the most economical class. If an employee chooses to travel by other than the most economical class, the employee shall pay any additional costs." Section 107.2.1.1.C.3., Administrative Policy, City of Apopka.

#### PER DIEM

It is likely that the luncheon Respondent attended on January 19<sup>th</sup> was included in the conference registration cost. If so, "[r]eimbursement shall not be paid for any meals included in [the] conference or other registration fees that are paid by the City" and Respondent should

---

<sup>9</sup> "If an employee chooses to take a family member or other guest along on overnight travel, any additional costs shall be paid by the employee." Section 107.2.1.1, Administrative Policies, City of Apopka.

<sup>10</sup> Respondent justified this as a City expense because the Hilton required his reservations to be for the duration of the USCM meeting. (ROI 8)

<sup>11</sup> According to Lovern, she made the Homewood Suites reservation on December 30, 2016 and on January 3, 2017 secured a room at the Hilton. (Exhibit B)

reimburse the City per diem accordingly. Section 107.2.1.1.1.A.2., Administrative Policy. Furthermore, any per diem, incidentals, and expenses incurred by Respondent for his stay in Washington, D.C. on January 20<sup>th</sup> and 21<sup>st</sup> should not have been reimbursed by the City if they were not incurred "strictly for City business." Sections 107.2.1.1 B, C, and D, Administrative Policy; See certification for reimbursement on the City's Travel Expense Report. Such items include but are not limited to additional parking/storage fees at Orlando International Airport for his personal vehicle, taxi fares, tolls, meals, etc. incurred while he was not on official business. (See Complaint p. 10)

Public officials who are authorized to direct the expenditure of public monies bear a particular public responsibility to use or disburse monies only in compliance with the law. Expenditures from public funds by public officials on travel, meals, and lodging while pursuing the public's business are entirely appropriate and lawful. An expenditure is not unlawful simply because the official receives an incidental benefit. See *Blackburn v. State of Florida, Comm'n on Ethics*, 589 So. 2d 431 (1st DCA 1991). Yet here, not all the expenses for which Respondent was reimbursed were authorized by the City's policies nor were all the expenses incurred in the performance of a public purpose. Without further information, at a bare minimum, Respondent should have reimbursed the City \$160 for his seating upgrades, \$491.21 for the hotel room on January 20<sup>th</sup>, and \$17 for airport parking on January 21<sup>st</sup>. Respondent's actions were inconsistent with the proper performance of his public duties and done with an intent to take advantage of an otherwise permissible official event to benefit himself and his wife at the taxpayer's expense.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.



## **ALLEGATION TWO**

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, by failing to report gift(s) he and his spouse received.

### **APPLICABLE LAW**

Section 112.3148(8), Florida Statutes, provides as follows

(8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics on the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section.

Section 112.312(12)(a), Florida Statutes, provides in its relevant part:

"Gift" for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days. . . .

### **ANALYSIS**

The facts are set forth above under Allegation One. Respondent was required to file a CE Form 9, "Quarterly Gift Disclosure" containing a list of gifts which he believed to be in excess of \$100 in value for which compensation was not provided within 90 days of receipt of the gift to reduce the value to \$100 or less. June 30, 2017 was the deadline to file a CE Form 9 for gifts given during the first quarter of 2017.

The Commission on Ethics has concluded that when a public official travels on official agency business paid for by his agency, he has not received a "gift" for purposes of Section

112.3148, Florida Statutes, because he has given his agency quid pro quo. See Rule 34-13.210(2), *Florida Administrative Code*, and CEO 06-27 (citing CEO 01-19, CEO 92-12, and CEO 91-46). Thus, the City's payment of Respondent's *authorized* travel expenses is not a reportable gift to Respondent.

A "gift" of public funds occurs when public money is spent without furthering any governmental interest. Here, the benefit to the public by Respondent and his wife staying extra days in Washington, D.C. to attend the Presidential Inauguration is not discernably beneficial or plainly substantial to the City which he serves. Nor was Respondent's attendance at the festivities within the scope of his official duties.

Since there is no connection between some of the items reimbursed on Friday and Saturday, January 20<sup>th</sup> and 21<sup>st</sup> and the performance of his official duties, to the extent those expenses exceeded \$100, they should have been reported on a quarterly gift disclosure form – CE Form 9 (e.g., seat upgrades).

In regard to Respondent's wife, there is no indication that she has an independent relationship with the City that would motivate the City to pay for her expenses. As such, the Commission views the spouse's travel as an indirect gift to the public official and, to the extent that it exceeds \$100, it must be reported on a quarterly gift disclosure form. See CEO 06-27. The gifts to Respondent's wife would include but not be limited to the hotel room which she solely occupied on January 18<sup>th</sup>, the cost of the hotel room on January 20<sup>th</sup>, and incidental expenses that may have added up to \$100 or more.

The City's payment of \$2,227.05 for a reserved room at the Homewood Suites at the behest of Respondent and his wife appears to be a direct gift to Respondent and an indirect gift to his wife. However, Respondent's assistant, Lovern, took responsibility for forgetting to cancel the

Homewood Suites reservation just four days after she made it.<sup>12</sup> Respondent is not legally culpable for this expenditure but remains responsible for other expenses of the trip. (ROI 7, Exhibit B)


Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

### RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by improperly billing the City of Apopka for travel expenses incurred by himself and his spouse on a trip to Washington, D.C.
2. There is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to report gift(s) he and his spouse received.

Respectfully submitted this 1st day of November, 2019.

  
ELIZABETH A. MILLER  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 578411  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
(850) 414-3300, Ext. 3702

---

<sup>12</sup> According to Lovern, she made the Homewood Suites reservation on December 30, 2016 and on January 3, 2017 secured a room at the Hilton. (Exhibit B)

CEO 06-27 -- December 6, 2006

**GIFT ACCEPTANCE AND DISCLOSURE****CITY PAYING TRAVEL EXPENSES FOR COMPANIONS OF CITY OFFICIALS***To: Name withheld at person's request (Miami Beach)***SUMMARY:**

For purposes of Section 112.3148, Florida Statutes, a city official has received a "gift" when the city pays travel expenses for the official's spouse or other guest to accompany the city official on a city-sponsored trip. Although the definition of "gift" in Section 112.312(12), Florida Statutes, excludes transportation provided to a public officer by an agency in relation to officially approved governmental business, paying the travel expenses of the official's spouse or other guest would be an indirect gift to the city official and would be reportable by the City official on a CE Form 9—Quarterly Gift Disclosure.

**QUESTION:**

Have city officials received a "gift" for purposes of Section 112.3148, Florida Statutes, when their spouse or other guest accompanies them to a foreign art exhibition and where the city pays for the travel expenses of their companion?

Under the circumstances presented, your question is answered in the affirmative.

In your letter of inquiry and supplemental information provided to our staff, we are informed that, at tremendous expense and time commitment, the City has attracted a world-class art exhibit and show to Miami Beach. After extensive study of the art world, the City arranged with the organizers of "Art Basel," held annually in Basel, Switzerland, to exhibit their art show at the Miami Beach Convention Center each December. According to your letter, Swiss Art Basel is considered the most prestigious art festival in the world, and hundreds of exclusive galleries gather at the Swiss Exhibition Center each summer to exhibit and sell their art. Thousands of art collectors, art dealers, artists, curators and art lovers attend the annual meeting place of the art community, which also generates extensive media coverage. You write that when the Art Basel organizers agreed to host the event at the Miami Beach Convention Center, the idea was for the Miami Beach festival to meet the standards and tastes of Swiss art patrons as well as local purveyors of art. In making this a reality and to foster the public purpose of promoting Art Basel Miami Beach, the City established a policy of paying the travel and related expenses for members of the City Commission and the City Manager, as well as one guest for each official, to attend Swiss Art Basel. You advise that the average cost to the City for each City official is \$3,071.00 and the average cost for each guest is \$1,320.00, which primarily represents the guest's airfare. The City has determined that paying the travel expenses for this delegation serves a public purpose by promoting the economic development of the City of Miami Beach.

More particularly, we are advised that while in Switzerland, the City delegation participates in official protocol duties on behalf of the City, including attendance at opening ceremonies, meeting with principals, exhibitors, collectors, and members of the media. You write that "social protocol"

dictates that each City official be accompanied by his or her spouse or significant other. During the exhibition, the City, in partnership with the Miami Beach Convention and Visitors Bureau, maintains an information booth at the entrance to the Swiss Exhibition Center. From that location, the delegation greets visitors, answers questions, and promotes art, culture, education, and business exchange between Miami Beach and Basel. The delegation also meets with trade and tourism representatives working in Switzerland and participates in various briefings and press conferences. These activities add significant value to the City's efforts to encourage Art Basel to continue coming to Miami Beach, you write. With this preface, you ask how the gift law—Section 112.3148, Florida Statutes—affects the payment of travel expenses for the companion of a City official.

Section 112.3148(4), Florida Statutes, prohibits a "reporting individual" from knowingly accepting a gift with a value in excess of \$100 from certain donors. Section 112.3148(8), Florida Statutes, requires a reporting individual to file a quarterly gift disclosure form disclosing allowable gifts worth in excess of \$100. These two provisions only apply to "reporting individuals," which Section 112.3148(2)(d), Florida Statutes, defines to mean persons who file financial disclosure. Since the spouses or guests of the City officials are not "reporting individuals," the gift law does not apply to them. However, we are of the opinion that a City official has received a reportable "gift" when his or her spouse or other guest accompanies the official to Swiss Art Basel and where the City pays for the travel expenses of the companion.

Section 112.312(12), Florida Statutes, contains the following definition of "gift:"

(a) "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including: . . .

7. Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.

8. Food or beverage. . . .

10. Entrance fees, admission fees, or tickets to events, performances, or facilities. . . .

(b) "Gift" does not include: 7. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business. . . .

In a number of opinions, we have concluded that when a public official travels on official agency business paid for by his agency, he has not received a "gift" for purposes of Section 112.3148, Florida Statutes, because he has given his agency quid pro quo. See Rule 34-13.210(2), Florida Administrative Code, and CEO 01-19, CEO 92-12, and CEO 91-46. Based on this precedent, although each City official's travel is estimated to cost over \$3000, we do not view the City's payment of this expense as a gift to the City official.

However, we do not believe this principle applies to the travel of a City official's spouse or guest, which averages \$1320 per person. Instead, we view the spouse or guest's travel as an indirect gift to the public official and, to the extent that it exceeds \$100, it must be reported on a quarterly gift disclosure form. Neither Section 112.312(12)(a)7 nor 112.312(12)(b)7, Florida Statutes, applies to the

transportation provided by the City to spouses or guests because the spouses or guests are not "public officers or employees" of the City. For the same reason, the exception described in Rule 34-13.210(2), Florida Administrative Code, also does not apply since it excludes "travel or expenses incurred in the performance of public duties. . .by a public officer or employee from his or her public agency. . . ." See also CEO 92-33.

Nor do we believe that the spouse or guest provides equal or greater consideration for a trip to Europe to the City by accompanying City officials or by appearing at the Swiss Art Basel events to conform with "social protocol." Instead, we view their company as an indirect gift to the City official since it is the City official who is allowed to designate who will accompany him or her on the trip and because there is no indication that the companions have an independent relationship with the City that would otherwise motivate the City to pay for their travel. See also Rule 34-13.310(6), Florida Administrative Code, for its list of factors to be weighed in determining whether a public official has received an "indirect gift."

In CEO 91-43, we confronted the opposite situation: a state official was invited by her spouse to attend a weekend retreat held by the spouse's law firm, and a member of the firm represented clients before the state official's agency. In that situation, we concluded that the state official had not received a gift from the law firm but, instead, had received a gift from her spouse, which was not prohibited or required to be disclosed. Footnote 10 of CEO 05-5 is more on-point to this situation. There, we noted that a city official had received a reportable gift when the city paid for his or her spouse's admission to a speedway suite.

Accordingly, under the circumstances presented, we conclude that the City's payment of companion travel for City officials is an indirect and reportable gift to City officials on their quarterly gift disclosure form—CE Form 9.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on December 1, 2006 and **RENDERED** this 6th day of December, 2006.

---

Norman M. Ostrau, Chair