

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of the Application of

SUFFOLK COUNTY ETHICS COMMISSION,

Index No. 30161/10

Petitioner,

to compel compliance with a subpoena duly
issued and served on

CHERYL A. FELICE,

**REPLY AFFIRMATION
IN SUPPORT OF
PETITION AND IN
OPPOSITION TO
CROSS-MOTION**

Respondent.
-----X

STEVEN G. LEVENTHAL, an attorney admitted to practice in the courts of this state,
affirms under penalty of perjury that:

1. I am special counsel to the Suffolk County Ethics Commission (the
“Commission”) and, as such I am familiar with the facts and circumstances of this matter; I make
this affirmation based on my personal knowledge except where stated to be on information and
belief and, as to those matters, I believe them to be true.

2. The facts are more fully set forth in the Verified Petition dated August 30, 2010,
and in my affirmation of the same date.

3. On January 26, 2010, in my presence, the subpoena that is the subject of this
action was authorized by a unanimous vote of three members of the Commission, and the vote
was duly recorded by the Secretary to the Commission. A redacted copy of the record made by
the Secretary to the Commission is attached as exhibit “A”.

4. If the Court deems it necessary or proper to review an un-redacted copy of the
subpoena and a copy of the instant complaint pending before the Commission, it is respectfully

requested that these documents be disclosed to the Court only, and that they be examined *in camera* in order to protect the confidentiality of the information respectively set forth therein.

5. In paragraphs “14” and “15” of the affirmation of Gary Silverman, Esq., dated September 13, 2010, respondent admits that the subject former County employee was engaged by the Association of Municipal Employees (the “AME”) to provide it with consulting services.

6. Respondent further admits in a footnote to paragraph “3” of Mr. Silverman’s affirmation that the former County employee has been employed by the AME since December, 2008.

7. Notwithstanding respondent’s opinion that the Suffolk County Code of Ethics (the “Code of Ethics”) did not prohibit the former County employee from providing the AME with consulting services (Silverman affirmation, Point I), it is the duty of the Commission to interpret the Code of Ethics and apply its interpretation of the Code to the facts as developed through investigation subject, of course, to judicial review.

8. In In re Grand Jury Subpoenas Dated January 20, 1998, 995 F. Supp. 332 (E.D.N.Y. 1998), the Eastern District declined to recognize a common law privilege shielding conversations between union officials and members on matters of union concern, and noted that “the inability of New York’s executive and legislative branches to reach agreement on the costs and benefits of a union privilege strongly cautions against this court finding that such a privilege shall now be enshrined in common law.”

9. The Grand Jury Court further observed that “[t]he only support for movant’s claim that some privilege should shield the confidential communications of union officials and union members is found in those cases that have held it to be an unfair labor practice for an employer to seek to question a union representative about statements made by an employee who

the representative was assisting in an internal disciplinary proceeding.” In re Grand Jury Subpoenas Dated January 20, 1998, 995 F. Supp. 332, 336 (E.D.N.Y. 1998) *citing* City of Newburgh v. Newman, 70 A.D.2d 362, 365-66, (3d Dept. 1979); Seelig v. Shepard, 152 Misc. 2d 699, 700 (Sup. Ct. N.Y. Co. 1991)

10. The Grand Jury Court found that the “movant had not demonstrated that society’s interest in encouraging confidential communications between union members and its representatives is so strong so as to outweigh its interest in having all relevant evidence of criminal conduct explored”, and found “no union privilege to bar the examination of a subpoenaed witness before the grand jury.” In re Grand Jury Subpoenas Dated January 20, 1998, 995 F. Supp. 332, 337 (E.D.N.Y. 1998).

11. Similarly, here, society’s interest in encouraging confidential communications between union members and its representatives is not so strong so as to outweigh its interests in having all relevant evidence of unethical conduct explored, and the court should find no union privilege to bar the examination of a subpoenaed witness before the Commission.

12. Respondent’s erroneous speculation concerning the Commission’s motives in investigating the pending complaint is unfounded, and is belied by the deliberate manner in which the Commission has proceeded, since March, 2009, without any rush to judgment.

WHEREFORE, petitioner demands judgment and an order compelling Cheryl A. Felice to appear before the Suffolk County Ethics Commission at a hearing to be held at the Office of the County Attorney, H. Lee Dennison Building, 100 Veterans Memorial Highway, 6th Floor, Hauppauge, New York on September 22, 2010 at 4:00 P.M., and at any adjourned or recessed date of the hearing, to give testimony and produce documents as set forth in the Subpoena, for

\$50.00 in costs pursuant to CPLR §2308(b), dismissing the cross-motion in its entirety, and for such other and further relief that the Court deems proper.

Dated: Roslyn, New York
September 16, 2010



Steven G. Leventhal

EXHIBIT A

SUFFOLK COUNTY ETHICS COMMISSION



**MINUTES
OF THE
SUFFOLK COUNTY ETHICS COMMISSION**

January 26, 2010

Present: **Thomas G. Nolan, Esq., Chairman**
 Michael C. Kennedy, Esq., Commissioner
 Dr. Joseph A. Laria, Commissioner

 Daina Sindone, Secretary to the Executive Director
 Steve Leventhal, Special Counsel

This meeting convened at 4:15 p.m.

Tom Nolan, Chairman of the Ethics Commission made a motion to enter into Executive Session on the grounds that the matters to be discussed involved personnel matters, including, but not limited to the employment history of a person and/or matters that may lead to the promotion, demotion, discipline, suspension, dismissal or removal of a particular person and to receive legal advice from special counsel. The Motion was then seconded by Commissioner Joseph Laria.

The Commission then went into Executive Session at 4:16 P.M.

Steve Leventhal, Special Counsel to the Ethics Commission discussed with the Commission the Matter [REDACTED] regarding the Inquiry of [REDACTED] and [REDACTED] post employment activities. After discussion the Commissioners voted and unanimously agreed for Mr. Leventhal to obtain a Subpoena Duces

Tecum and Subpoena Cheryl Felice, President of AME for testimony and documents pertaining to contracts with [REDACTED] regarding to the complaint. The Commissioners also asked Mr. Leventhal to send [REDACTED] a Notice of Hearing.

Executive Session ended and Meeting subsequently adjourned at 4:30 P.M.

Respectfully submitted,

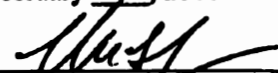
Daina Sindone, Secretary to the Executive Director on behalf of
Alfred M. Lama, Executive Director

AML/dls

The MINUTES of the January 26, 2010 MEETING of the ETHICS COMMISSION are hereby
ACCEPTED:

Dated: Hauppauge, N.Y.

February 2, 2010


Thomas G. Nolan, Chairman


Michael C. Kennedy, Commissioner


Joseph A. Laria, Commissioner

AFFIDAVIT OF SERVICE

