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APR 23 2014

EXECUTIVE  
ETHICS COMMISSION

No. 13-EEC-006

BARRY MARAM, )  
Respondent. )

This cause is before the Executive Ethics Commission on petitioner's motion for approval of proposed settlement agreement.

WHEREFORE, the Executive Ethics Commission grants petitioner's motion for approval of proposed settlement agreement and approves the parties proposed settlement agreement. The Commission further authorizes the public disclosure of this order and the settlement agreement, including exhibits A-E.

SO ORDERED.

Date: April 23, 2014

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APR 15 2014

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

EXECUTIVE ETHICS COMMISSION

Ricardo MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,

Petitioner,

v.

Barry MARAM,

Respondent.

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No. 13-EEC-006

NOTICE OF FILING

To:

See attached service list

PLEASE TAKE NOTICE that on April 15, 2014, we caused the attached **Settlement Agreement** in the above-captioned matter, with attached exhibit, to be filed in three sub-parts with the Executive Ethics Commission of the State of Illinois, a copy of which is hereby served upon you.

LISA MADIGAN  
Illinois Attorney General

By: \_\_\_\_\_

Francis Neil MacDonald  
Assistant Attorney General  
Office of the Illinois Attorney General  
Special Litigation Bureau  
100 West Randolph Street, 11th Floor  
Chicago, IL 60601

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on April 15, 2014, he served on the persons identified in the attached Service List, by electronic mail, in three parts, and U.S. Mail or hand delivery (as indicated) in a single part, a copy of the **Settlement Agreement** in the above-captioned matter, with attached exhibits.

\_\_\_\_\_  
Francis Neil MacDonald

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

Ricardo MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,

Petitioner,

v.

Barry MARAM,

Respondent.

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No. 13-EEC-006

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APR 15 2014  
EXECUTIVE  
ETHICS COMMISSION

**PETITIONER'S MOTION FOR APPROVAL  
OF PROPOSED SETTLEMENT AGREEMENT**

Illinois Attorney General Lisa Madigan, on behalf of Petitioner Ricardo Meza, the Executive Inspector General for the Agencies of the Illinois Governor ("OEIG") hereby submits to the Illinois Executive Ethics Commission ("EEC" or "Commission") Petitioner's Motion for Approval of Proposed Settlement Agreement, along with a signed copy of the Parties' proposed Settlement Agreement, attached hereto as Exhibit 1.

In support of this Motion, Petitioner states as follows:

**I. APPLICABLE STATUTE**

1. In 2009, the Illinois General Assembly amended the Illinois State Officials and Employees Ethics Act ("Ethics Act"), 5 ILCS 430/1-1 *et seq.*, by adding Subsection 5-45(h) to the Ethics Act's Revolving Door prohibitions. That amendment became effective on August 18, 2009. *Id.* § 5-45(h).

2. Section 5-45(h) expanded the Ethics Act's revolving door prohibition by creating an absolute ban that, under certain circumstances, prohibits high ranking State officials and similar State employees from accepting employment or compensation from a prospective employer. As enacted, Section 5-45(h) of the Ethics Act states:

The following officers, members, or State employees shall not, within a period of



one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more *involving* the officer, member, or State employee's State agency, . . . *regardless of whether he or she participated personally and substantially* in the award of the State contract or contracts . . . in question:

- 1) members or officers;
- 2) members of a commission or board created by the Illinois Constitution;
- 3) persons whose appointment to office is subject to the advice and consent of the Senate;
- 4) *the head of a department*, commission, board, division, bureau, authority, or other administrative unit within the government of this State;
- 5) chief procurement officers, State purchasing officers, and their designees whose duties are directly related to State procurement; and
- 6) chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors.

*Id.* (emphasis added); *see also id.* § 1-5 (“Definitions”).

3. Under the Ethics Act’s penalties provisions, the Commission is authorized to “levy an administrative fine for a violation of Section 5-45 of this Act of up to 3 times the total annual compensation that would have been obtained in violation of Section 5-45.” *Id.* § 50-5(a-1).

## **II. SUMMARY OF FACTS**

4. Respondent served as the Director for the Illinois Department of Healthcare and Family Services (“DHFS”) from February 2003 until April 15, 2010, when he left State employment to accept an employment opportunity with a private, Chicago-based law firm, as described more fully below.

5. In 2006 and 2007, State taxpayers filed a series of complaints against then-Governor Rod Blagojevich, Respondent, and other State defendants, all in their official

capacities, seeking to prohibit these defendants from expanding, funding, and operating the State's children's health insurance program. *Caro ex rel. State of Illinois v. Blagojevich*, No. 2007-CH-34353 (Cir. Ct. Cook Cty. Nov. 26, 2007). In October 2008, the law firm of Shefsky & Froelich ("Shefsky") was retained by the Office of the Governor to represent Governor Blagojevich, Respondent, and the other State defendants in the *Caro* matters.

6. The contract between the Office of the Governor, on behalf of DHFS, and Shefsky was effective October 24, 2008 through June 30, 2009, and was renewed by the Office of the Governor for an additional year through June 30, 2010 (respectively, the "FY09 Shefsky Contract" and the "FY10 Shefsky Contract"). Each of the Shefsky Contracts authorized payments to Shefsky of up to \$150,000.00 per fiscal year, and identified the Office of the Governor as the "coordinating agency" responsible for receiving all invoices and allocating costs among the agencies. More particularly, each of the Shefsky Contracts provided that:

[f]or the purposes of this CONTRACT, the Office of the Governor shall be the coordinating AGENCY, will receive all invoices and billing and payment questions, and may direct an allocation of payment obligations to other State of Illinois agencies that receive benefits of the services rendered under this CONTRACT. Such allocation shall be pursuant to the coordinating AGENCY's assessment of the other State of Illinois agencies uses of and benefits from the services rendered.

*Id.*

7. Pursuant to the Shefsky Contracts, the Office of the Governor and DHFS directed an "allocation of payment obligations," in the form of two intergovernmental agreements ("IGAs"), under which DHFS agreed to pay a portion of the legal fees incurred by Shefsky in connection with the *Caro* litigation. Both agreements were signed by DHFS employees on Respondent's behalf, as DHFS Director: the first IGA was signed on January 5, 2009 (the "FY09 IGA") by Respondent's former Chief of Staff; the second was signed on June 30, 2009 (the "FY10 IGA") by Respondent's administrative assistant. Each IGA was executed prior to the

August 18, 2009, effective date of the Ethics Act amendment referenced above. Under the FY09 IGA and the FY10 IGA, DHFS agreed to pay 50% of the total cost of legal services rendered by Shefsky in the *Caro* matter.

8. On or about March 12, 2010, Respondent was informed by the Office of the Governor that he was going to be replaced as DHFS Director. Prior to his departure from DHFS, Respondent sought guidance from the DHFS Ethics Officer regarding post-separation restrictions, if any, on accepting an offer of employment as an attorney with a law firm. Respondent did not, however, identify or disclose the names of any specific firms that he might be considering.

9. On April 6, 2010, the DHFS Ethics Officer advised Respondent in a memorandum, pursuant to his request, that there was no Ethics Act definition of the term “contract.” The Ethics Officer further cautioned that Respondent should assume that interagency agreements with a cumulative value of \$25,000 or more would fall within the scope of the Ethics Act’s use of the term “contract.” The Ethics Officer likewise advised Respondent that the memorandum was not and should not be used as a substitute for an opinion from the Attorney General, the only person with the authority to issue binding opinions interpreting the post-departure restrictions, if any, faced by a departing agency director under the Ethics Act.

10. Attached to the Ethics Officer’s memorandum was a list of contracts, grants, and interagency agreements that included the FY10 Shefsky Contract, which was identified as having a FY2010 obligation of \$75,000.00.

11. Respondent left public service on April 15, 2010, and began work as a shareholder at Shefsky one week later, on April 21, 2010.

12. After Respondent began working at Shefsky, OEIG commenced an investigation into whether Respondent may have violated the revolving door prohibitions of the Ethics Act. On May 30, 2012, OEIG issued a final report in connection with its investigation, in which it found that Respondent had violated Section 5-45(h) of the Ethics Act's revolving door provisions by accepting an employment opportunity with Shefsky within a year of his departure from public service, because Shefsky had been a party to a State contract "involving" DHFS and Respondent, with a cumulative value of \$25,000 or more. 5 ILCS 430/5-45(h). OEIG then referred the matter to the Office of the Illinois Attorney General ("OAG").

13. On October 12, 2012, OAG filed its Complaint with the Commission on Petitioner's behalf, alleging that Respondent had violated Section 5-45(h) of the Ethics Act by accepting an employment opportunity with an employer that had been a party to a contract "involving" Respondent and Respondent's agency, within the year immediately preceding Respondent's departure from public employment.

14. Based on the allegations in the Complaint, Petitioner requested that the Commission enter judgment against Respondent and levy a fine "of up to 3 times the total annual compensation that would have been obtained in violation of Section 5-45." 5 ILCS 430/50-5(a-1).

15. On December 21, 2012, Respondent answered the Complaint, denying that he had violated the Ethics Act, and asserted various affirmative defenses and mitigating factors. As part of his Answer, however, Respondent admitted that: (a) as the Director of DHFS, he was subject to the Commission's jurisdiction under the Ethics Act and had a duty to comply with the Ethics Act, (b) Shefsky had been retained to represent him and other State defendants in the *Caro* litigation, (c) DHFS had agreed to pay—and had paid—a portion of the fees for services

rendered by Shefsky under the Shefsky Contracts and the IGAs, (d) he had requested guidance from the DHFS Ethics Officer regarding post-departure employment restrictions, if any, and (e) had begun to work for and receive compensation from Shefsky within weeks after his departure from State employment.

16. In an Order dated March 4, 2013, the Commission concluded that Petitioner had sufficiently pleaded facts that, if proven, may constitute a violation of Section 5-45(h) of the Ethics Act. 2 Ill. Admin. Code § 1620.480(a)-(b). Consistent with a ruling on the sufficiency of the allegations, the Commission declined to address the effect, if any, of Respondent's affirmative defenses and mitigating factors. A copy of the Commission's Order of March 4, 2013, is attached to the Parties' proposed Settlement Agreement as Exhibit E.

### **III. THE PARTIES HAVE ELECTED TO SETTLE THIS MATTER**

17. Petitioner and Respondent have agreed to settle this matter pursuant to the terms of the attached proposed Settlement Agreement. Settlement is authorized by the Illinois Administrative Code, which provides in relevant part that "[o]nce a complaint has been filed with the Commission, any proposed settlement reached by the parties must be submitted to the Commission for review and approval." 2 Ill. Admin. Code § 1620.530(f).

18. The Parties' proposed Settlement Agreement, a signed copy of which is attached hereto as Exhibit 1, is neither an admission of any alleged fact, liability or wrongdoing by Respondent, nor is it a concession by Petitioner that its allegations are not well-founded. The Parties have entered into this Settlement Agreement solely to avoid the uncertainty, delay, disruption, and expense of litigating this matter.

19. OEIG and OAG are public entities, and therefore subject to and bound by policies of transparency and public accountability. It is therefore a material condition of Petitioner's decision to enter into the Settlement Agreement that the Parties and counsel shall consent and

agree to the public disclosure of the attached Settlement Agreement and its exhibits, as well as information about the Settlement Agreement, whether by Petitioner, Respondent, the Parties' respective counsel, or any third party, including but not limited to the Commission.

20. It is likewise a material condition of the Parties' decision to enter into the Settlement Agreement that the Commission not enter a finding, either that Respondent violated the Ethics Act's revolving door prohibitions, as Petitioner has alleged; or that Respondent did not violate the Ethics Act's revolving door prohibitions, as Respondent has argued. It should be noted specifically in this regard that a settlement is not a decision on the merits. To the contrary: in a settlement, the tribunal

should refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights. The essence of settlement is compromise. Each side gains the benefit of immediate resolution of the litigation and some measure of vindication for its position while foregoing the opportunity to achieve an unmitigated victory. . . . That each side gains something is, of course, true of all settlements between rational parties . . . .

*E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889-90 (7th Cir. 1985) (emphasis added).

"A settlement reflects the parties' mutual decision that a compromise is preferable to the risk and uncertainty of trial." *Pesek v. Donahue*, 04 C 4525, 2006 WL 1049969, at \*4 (N.D. Ill. Feb. 9, 2006).

21. Tribunals have long recognized both the desirability of encouraging out-of-court settlements, as well as a presumption in favor of approving the settlement that the parties have reached. *Rakowski v. Lucente*, 104 Ill. 2d 317, 325 472 N.E.2d 791, 795 (Ill. 1984) ("As a matter of public policy the settlement of claims should be encouraged."); *see also, e.g., Donovan v. Robbins*, 752 F.2d 1170, 1177 (7th Cir. 1985); *Sheffield Poly-Glaz, Inc. v. Humboldt Glass Co.*, 42 Ill. App. 3d 865, 868, 356 N.E.2d 837, 558 (1st Distr. 1976). As one court has explained, "[t]he general rule of law regarding settlement agreements is that the settling parties retain the

autonomy to fashion their own settlement terms . . . .” *Collins v. Coastline Constr.*, 820 F. Supp. 270, 273 (D. La. 1993.)

22. Accordingly, Petitioner hereby submits this Motion for Approval of Proposed Settlement Agreement, along with a signed copy of the Parties’ proposed Settlement Agreement, attached hereto as Exhibit 1.

### CONCLUSION

WHEREFORE, and for the reasons set forth above, Petitioner hereby requests that the Commission enter an order:

- a. granting Petitioner's Motion for Approval of Proposed Settlement Agreement;
- b. approving the Parties' proposed Settlement Agreement, a signed copy of which is attached as Exhibit 1 to this Joint Motion;
- c. authorizing Petitioner, Respondent, their respective counsel, and any other third party, including but not limited to the Commission, to publicly disclose the Parties' proposed Settlement Agreement, with attached exhibits, and any final order of dismissal by the Commission in connection with the approval of the Parties' proposed Settlement Agreement; and
- d. granting all other relief that is necessary, appropriate, and which the Commission deems just in securing the requests set out in Petitioner's Motion and the Parties' proposed Settlement Agreement.

Lisa Madigan, Attorney General for the  
State of Illinois, on behalf of Ricardo Meza,  
in his capacity as Executive Inspector  
General, Petitioner,

By: \_\_\_\_\_

Francis Neil MacDonald  
Assistant Attorney General  
Office of the Illinois Attorney General  
100 W. Randolph St., 11th Floor  
Chicago, IL 60601

francis.macdonald@state.il.us

Dated: April 15, 2014



# **EXHIBIT 1**

**IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS**

**Ricardo MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,**

**Petitioner,**

**v.**

**Barry MARAM,**

**Respondent.**

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**No. 13-EEC-006**

**RECEIVED**  
**APR 15 2014**  
**EXECUTIVE  
ETHICS COMMISSION**

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by Petitioner Ricardo Meza, the Executive Inspector General for the Agencies of the Illinois Governor ("OEIG") and Respondent Barry Maram, who are jointly referred to herein as the "Parties."

**I. BACKGROUND AND RECITALS**

1. Respondent was appointed Director of the Illinois Department of Healthcare and Family Services ("DHFS") in February 2003, and he remained in that position until his resignation from DHFS on April 15, 2010. As the Director of DHFS, Respondent was subject to the jurisdiction of the Executive Ethics Commission ("EEC" or "Commission") and the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/1-1 *et seq.* (the "Ethics Act"). *Id.* §§ 5-45(h), 20-5(d).

2. In relevant part, Section 5-45 of the Ethics Act was amended, effective August 18, 2009, adding current subsection 5-45(h). *Id.* § 5-45. Section 5-45(h) expanded the Ethics Act's revolving door prohibition by creating an absolute ban that, under certain circumstances, prohibits high ranking State officials and similar State employees from accepting employment or compensation from a prospective employer.

3. In October 2008, the State of Illinois' Office of the Governor retained Shefsky & Froelich Ltd. ("Shefsky") to represent the Governor and other State defendants, including Respondent, all in their official capacities, in a case captioned *Caro ex rel. State of Illinois v. Blagojevich*, No. 2007-CH-34353 (Cir. Ct. Cook Cty. Nov. 26, 2007). The contract with Shefsky, which became effective on October 24, 2008, was renewed through June 30, 2010 (together, the "Shefsky Contracts"). The Shefsky Contracts, which authorized payments to Shefsky of up to \$150,000.00 per fiscal year, identified the Office of the Governor as the "coordinating agency" responsible for receiving all invoices and allocating costs among the State governmental agencies.

4. After the execution of the Shefsky Contracts, the Office of the Governor and DHFS entered into Interagency Agreements ("IGAs") for FY2009 and FY2010, under the terms of which DHFS agreed to pay 50% of the total cost, for fiscal years 2009 and 2010, of the legal services provided under the Shefsky Contracts.

5. On or about March 12, 2010, Respondent discussed with the Office of the Governor his departure from DHFS.

6. Respondent left State employment on April 15, 2010. He accepted an offer to become a shareholder at Shefsky and began working there one week later, on April 21, 2010.

7. After Respondent began working at Shefsky, OEIG commenced an investigation into whether Respondent may have violated the revolving door prohibitions of the Ethics Act and issued a final report on May 30, 2012, in which it found that Respondent had violated Section 5-45(h) of the Ethics Act's revolving door provisions by accepting an employment opportunity with Shefsky within a year of his departure from public service. A true and correct copy of the

final OEIG report is attached hereto as Exhibit “A.” OEIG then referred the matter to the Office of the Illinois Attorney General (“OAG”).

8. On October 12, 2012, OAG filed a complaint with the Commission, on behalf of Petitioner, alleging that Respondent had violated the Ethics Act’s revolving door prohibitions by accepting an employment opportunity with Shefsky within a year of his departure from public service. A true and correct copy of Petitioner’s Complaint is attached hereto as Exhibit “B.”

9. On December 21, 2012, Respondent answered the Complaint. Respondent denied that he had violated the Ethics Act and asserted defenses and mitigating factors. A true and correct copy of Respondent’s Answer, Defenses and Mitigating Factors is attached hereto as Exhibit “C.”

10. On February 24, 2013, OAG filed a Response to Respondent’s Answer, Defenses, and Mitigating Defenses, a true and correct copy of which is attached hereto as Exhibit “D.”

11. In an Order dated March 4, 2013, the Commission concluded that Petitioner had sufficiently pleaded facts that, if proven, may constitute a violation of Section 5-45(h) of the Act. *Id.* § 20-50(f); 2 Ill. Admin. Code § 1620.480(a)-(b). A true and correct copy of the Commission’s Order of March 4, 2013, is attached hereto as Exhibit “E.”

12. This Settlement Agreement, entered pursuant to 2 Ill. Admin. Code § 1620.530(f), is neither an admission of any alleged fact, liability or wrongdoing by Respondent, nor is it a concession by Petitioner that its allegations are not well-founded. The Parties have entered into this Settlement Agreement solely to avoid the uncertainty, delay, and expense of litigating this matter. In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties therefore agree and covenant as follows:

## **II. SETTLEMENT TERMS AND CONDITIONS**

13. Respondent Barry Maram will pay the State of Illinois the sum of \$100,000.00 (the "Settlement Sum"), pursuant to the following terms:

a. Respondent shall pay the Settlement Sum in no more than six installments (the "Settlement Payments"), the first of which shall be at least \$30,000.00, and is due by the close of business on the first day of the first month immediately following the EEC's approval of this Settlement Agreement; with successive Settlement Payments of at least \$14,000.00, due no later than the first business day of each successive month thereafter; and

b. in the event that a Settlement Payment is not timely received by OAG pursuant to Paragraph 13(a) above, and in the absence of any written agreement to the contrary that has been executed by both Parties prior to a delay in payment by Respondent, if any, the delay shall be considered an act of default by Respondent with respect to payment of the Settlement Sum, the outstanding balance of which shall become due immediately and in full.

14. The Parties further agree that this Settlement Agreement, the attachments hereto, and any final order of dismissal by the Commission in this matter shall be subject to public disclosure, whether by Petitioner, Respondent, the Parties' respective counsel, or any third party, including but not limited to the Commission. The Parties acknowledge, however, that any other investigative materials, reports, and related documents in this matter are considered confidential under the Ethics Act, are protected from disclosure, and are subject to the Ethics Act's confidentiality and FOIA-exempt provisions. 5 ILCS 430/20-90(b), 20-95(a)-(b), (d).

15. This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended except by written agreement of the Parties.

16. This Settlement Agreement shall be binding upon and inure to the benefit of the successors, assigns, agents, and guarantors of each of the Parties hereto.

17. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

[End of Page]

18. This Agreement may be executed in counterparts, which together shall constitute the entire Settlement Agreement.

Lisa Madigan, Attorney General for the  
State of Illinois, on behalf of Ricardo Meza,  
in his capacity as Executive Inspector  
General, Petitioner,

Daley & Georges, Ltd. on behalf of  
Barry Maram, Respondent,

By: \_\_\_\_\_

By: \_\_\_\_\_

Francis Neil MacDonald  
Assistant Attorney General  
Office of the Illinois Attorney General  
100 W. Randolph St., 13th Floor  
Chicago, IL 60601

Mara S. Georges  
Daley & Georges Ltd.  
20 South Clark Street, Suite 400  
Chicago, IL 60603

Dated: April 15, 2014

Dated: April 15, 2014

Ricardo Meza, in his capacity as  
Executive Inspector General,  
Petitioner,

By: \_\_\_\_\_

Daniel J. Hurtado  
General Counsel  
Office of Executive Inspector General for the  
Offices of the Governor  
69 W. Washington St., Suite 3400  
Chicago, IL 60602

Dated: April 15, 2014

# **EXHIBIT A**



# Office of Executive Inspector General for the Agencies of the Illinois Governor

Investigation Case No. 11-00573



*As required under the State Officials and Employees Ethics Act (Ethics Act), this Final Report is submitted to the appropriate ultimate jurisdictional authority and the head of each State agency affected by or involved in the investigation, if appropriate. Pursuant to the Ethics Act, this Final Report and any attachments are CONFIDENTIAL and are not subject to the Freedom of Information Act. The Final Report and attachments may be disclosed only on a need-to-know basis to those persons the ultimate jurisdictional authority or head of each affected or involved State agency has deemed necessary, as well as to the subject(s) of the investigation. Neither this Final Report nor any information contained herein may be shared with anyone outside the affected or involved agency, the appropriate ultimate jurisdictional authority, or the subject(s) without the express prior authorization of the Executive Inspector General.*

## FINAL REPORT

### I. ALLEGATIONS

The Office of Executive Inspector General received an anonymous complaint alleging that former Illinois Department of Healthcare and Family Services (HFS) Director Barry Maram violated the Illinois State Officials and Employees Ethics Act (Ethics Act) Revolving Door Prohibition.<sup>1</sup> Specifically, the complaint alleged that immediately after terminating his State employment, Mr. Maram began working for a law firm that had a State contract involving HFS.<sup>2</sup>

### II. BACKGROUND

#### A. *Caro v. Blagojevich Litigation*

In 2008, State taxpayers filed a lawsuit against former Governor Blagojevich, HFS, the Illinois Department of Public Health, Mr. Maram in his capacity as HFS Director, and others. *See Caro v. Blagojevich*, 385 Ill. App. 3d 704 (2008). During the course of the lawsuit, the State of Illinois Office of the Governor (Governor's Office) retained the law firm of Shefsky & Froelich to represent the *Caro* defendants including Mr. Maram and HFS.<sup>3</sup>

#### B. *Ethics Act Revolving Door Prohibition*

In 2009, the Illinois General Assembly amended the Revolving Door Prohibition of the Ethics Act by, among other things, adding Subsection (h) (hereafter Subsection (h)), which was effective August 18, 2009. 5 ILCS 430/5-45(h). Pursuant to the 2009 amendment, certain members, officers, and State employees are barred, within one year immediately after termination of State employment, from:

[K]nowingly accept[ing] employment or receiv[ing] compensation or fees for services from a person or entity if the person or entity ... during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the ... State employee's State agency ... regardless of whether he or she participated personally and substantially in the award of the State contract or contracts....

<sup>1</sup> See 5 ILCS 430/5-45.

<sup>2</sup> The complaint also alleged that an HFS Division of Medical Programs Administrator had a conflict of interest when she gave a presentation on healthcare issues at Shefsky & Froelich. The OEIG interviewed numerous individuals regarding this allegation and determined that there was insufficient evidence to show the employee's participation constituted a conflict of interest; thus, the allegation is UNFOUNDED.

<sup>3</sup> The lawsuit, filed in Cook County Circuit Court, sought to prohibit Illinois from expanding, funding, and operating a State health insurance program. The Circuit Court of Cook County ruled in favor of plaintiffs and the Illinois Appellate Court affirmed the ruling, concluding that HFS and others lacked the authority to fund and operate a State health insurance program under a State medical assistance program, absent compliance with requirements of the "Temporary Assistance for Needy Families" article of the Illinois Public Aid Code. *Caro*, 385 Ill.App.3d at 704.

Among those members, officers, and State employees who are precluded from accepting certain employment and compensation or fees, simply by virtue of their position, are persons whose appointment to office is subject to the advice and consent of the Illinois Senate, like agency directors. Thus, the position of HFS Director is subject to Subsection (h) of the Ethics Act Revolving Door Prohibition.

### III. INVESTIGATION

#### A. *Barry Maram's Employment as HFS Director and Resignation*

Effective in February 2003, Barry Maram was appointed HFS Director. Mr. Maram was HFS Director from February 2003 through early April 2010.

On April 9, 2010, Mr. Maram provided a letter of resignation to Governor Pat Quinn in which Mr. Maram advised that his resignation would be effective at the close of business on April 15, 2010. In the same letter, Mr. Maram also advised that he was resigning from all related boards, commissions, authorities, and task forces to which he had been appointed.

#### B. *Documents Reviewed Relating to the Caro Lawsuit*

During the investigation, OEIG investigators obtained and reviewed numerous documents relating to Shefsky & Froelich's representation of the Governor's Office, HFS, and HFS Director Maram in regards to the *Caro* lawsuit.

##### i) *Shefsky & Froelich's \$150,000 State Contract in Fiscal Year 2009*

On October 24, 2008, the Governor's Office entered into a contract to retain Shefsky & Froelich (FY09 Shefsky Contract). Specifically, under the FY09 Shefsky Contract, Shefsky & Froelich agreed to provide legal services to the Governor's Office, State agencies directly responsible to the Governor, including HFS, and associated directors and employees of the State in defense of the *Caro* lawsuit.<sup>4</sup> This contract was effective from October 24, 2008 to June 30, 2009. The amount payable under the FY09 Shefsky Contract was capped at \$150,000. Shefsky & Froelich agreed to bill the State a rate of \$200 per hour for attorneys, \$150 per hour for paralegals, plus reasonable expenses. The FY09 Shefsky Contract identified the Governor's Office as the "coordinating agency," which received all invoices and allocated costs among the agencies.

On January 5, 2009, HFS entered into an Interagency Agreement (FY09 Interagency Agreement) with the Governor's Office relating to the FY09 Shefsky Contract. Mr. Maram's former Chief of Staff signed the FY09 Interagency Agreement in Mr. Maram's name. In addition, the Contract-Obligation Document related to the FY09 Interagency Agreement contains Mr. Maram's typewritten name identifying him as the individual who "authorized" HFS's obligated amount. Under the FY09 Interagency Agreement, HFS agreed to pay 50% of the total

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<sup>4</sup> The Governor's Office entered into a separate contract with Shefsky & Froelich, around the same time, for general legal services. HFS also entered into an interagency agreement with the Governor's Office to pay half of the cost of legal services rendered by Shefsky & Froelich under that contract. However, no services were performed.

cost of legal services rendered by Shefsky & Froelich in the *Caro* matter, or up to \$75,000 of the \$150,000 stated contract amount.

During the term of the FY09 Shefsky Contract, Shefsky & Froelich submitted invoices to the Governor's Office. The Governor's Office then forwarded the invoices to HFS. These invoices reflect that Shefsky & Froelich billed the Governor's Office \$67,183.63 for services rendered between October 24, 2008 and June 30, 2009.

A review of HFS Invoice Vouchers and Warrant Summaries reflects that HFS paid Shefsky & Froelich a total of \$33,846.82 (or slightly more than 50% of the \$67,183.63 billed) for legal services pursuant to the FY09 Interagency Agreement.

ii) *Shefsky & Froelich's \$150,000 Contract in Fiscal Year 2010*

On July 7, 2009, the Governor's Office entered into a "Contract Renewal - FY10," effective July 1, 2009 to June 30, 2010. The renewal contract contained the same terms and conditions as the \$150,000 FY09 Shefsky Contract, except that the contract was effective during Fiscal Year 2010 (FY10 Shefsky Contract).

Prior to execution of the FY10 Shefsky Contract, on June 30, 2009, HFS again entered into an Interagency Agreement (FY10 Interagency Agreement) with the Governor's Office in which HFS agreed to pay 50% of the total cost of services rendered by Shefsky & Froelich, or up to \$75,000 of the \$150,000 stated contract amount, in defense of HFS in the *Caro* lawsuit during Fiscal Year 2010. Mr. Maram's former administrative assistant signed the FY10 Interagency Agreement in Mr. Maram's name. In addition, the Contract-Obligation Document related to the FY10 Interagency Agreement contains Mr. Maram's typewritten name identifying him as the individual who "authorized" HFS's obligated amount.

Under the FY10 Shefsky Contract, Shefsky & Froelich billed the Governor's Office \$9,911.89 for services rendered between July 1, 2009 and June 30, 2010.

HFS Invoice Vouchers and Warrant Summaries reflect that HFS paid Shefsky & Froelich \$5,334.79 (or slightly more than 50%), including an interest penalty, directly for legal services, pursuant to the FY10 Interagency Agreement.

C. *Shefsky & Froelich's \$250,000 Per Year Employment Offer to Barry Maram*

On March 25, 2010, Shefsky & Froelich sent Mr. Maram a letter summarizing the terms pursuant to which Mr. Maram would be joining the firm. The March 25, 2010 letter was signed by Cezar M. Froelich and stated, among other things, "These are the salient points of our arrangement: (1) Salary: \$250,000 per year paid bi-monthly" and also included the following, "I want to again emphasize how excited we all are to have you as a member of our firm."

On April 21, 2010, Mr. Maram began employment at Shefsky & Froelich. Mr. Maram received his first paycheck on April 30, 2010 and as of May 2012, continued to draw a salary.<sup>5</sup>

***D. Interviews of HFS General Counsel and Ethics Officer Jeanette Badrov***

On July 28, 2011 and April 25, 2012, the OEIG interviewed HFS General Counsel and Ethics Officer Jeanette Badrov. As Ethics Officer, Ms. Badrov responds to all ethical issues involving HFS employees. As General Counsel, Ms. Badrov said she had overall responsibility for HFS legal issues, but delegated some legal matters to her staff attorneys, and in fact indicated that she did not have any involvement with the Shefsky Contracts or the corresponding Interagency Agreements.

According to Ms. Badrov, sometime prior to Mr. Maram's April 15, 2010 termination of State employment, he requested guidance from her regarding the Revolving Door Prohibition, as well as other conflict of interest policies. At the time of his request, Mr. Maram mentioned to Ms. Badrov that he was interviewing with several law firms, including Shefsky & Froelich. Ms. Badrov said she consulted with representatives of the Governor's Office and the Executive Ethics Commission in response to Mr. Maram's request.

Ms. Badrov subsequently drafted an April 6, 2010 memorandum responding to Mr. Maram's questions and included an excel spreadsheet containing separate tabs identifying contracts and interagency agreements, among others, involving HFS as of April 6, 2010. The interagency agreement tab included five columns, the first of which identified the name of the vendor. The next column identified the Contract Numbers, and subsequent columns identified Contract Start Dates, Contract End Dates, and Amounts Obligated to all vendors through interagency agreements involving HFS. Included on this interagency agreement tab was the FY10 Shefsky Contract, set forth as follows:

	<u>Contract Number</u>	<u>Contract Start Date</u>	<u>Contract End Date</u>	<u>Amount Obligated</u>
<b>SHEFSKY &amp; FROELICH LTD</b>	9GOMB00006	7/1/2009	6/30/2010	75,000.00

Ms. Badrov recalled that she gave Mr. Maram the memorandum around April 6, 2010 with a draft of the excel spreadsheet. In addition, Ms. Badrov clearly recalled that on April 15, 2010, Mr. Maram's last day of work, she gave Mr. Maram an updated version of the excel spreadsheet identifying State contracts and interagency agreements involving HFS and various parties, including Shefsky & Froelich. Ms. Badrov said that she drafted the memorandum for HFS Director Maram because he had requested that she do so, but noted that she did not provide ethics opinions as a matter of course.

According to Ms. Badrov, Mr. Maram would have been aware of the *Caro* lawsuit and would have been aware that Shefsky & Froelich was one of the firms retained to represent him and HFS, because she believed there were meetings about the *Caro* lawsuit that Mr. Maram attended, along with representatives of Shefsky & Froelich and the Governor's Office. Ms.

<sup>5</sup> On May 16, 2012, OEIG investigators visited the Shefsky & Froelich website. The website included a list of firm attorneys, including Mr. Maram.

Badrov, however, did recall that Mr. Maram seemed surprised when he saw Shefsky & Froelich's name on the lists of contracts and interagency agreements involving HFS and others.

Ms. Badrov said she thought agency directors are required to sign off on all interagency agreements, but she was unsure if there were any written policies regarding this practice. Ms. Badrov was also unsure if agency directors could delegate their authority to execute interagency agreements. After reviewing the FY10 Interagency Agreement, which Mr. Maram's administrative assistant signed on his behalf, Ms. Badrov said that she was not surprised that Mr. Maram gave his administrative assistant his signatory authority.

Ms. Badrov said she did not have any detailed discussions with Mr. Maram about the Revolving Door Prohibition, but stated that at some point, she informed him that her fiduciary responsibility was to the State and that her opinion was just general guidance. Ms. Badrov said she was aware that Mr. Maram subsequently sought an opinion from Illinois State Senator John Cullerton's office. Ms. Badrov also said that she arranged for Senator Cullerton's office to receive copies of the Shefsky & Froelich Contracts and Interagency Agreements. Ms. Badrov said that "everyone" was aware that Mr. Maram ultimately accepted employment with Shefsky & Froelich, but she could not recall when she learned of this employment.<sup>6</sup>

***E. HFS General Counsel Jeanette Badrov's April 6, 2010 Ethics Opinion***

In the April 6, 2010 memorandum Ms. Badrov provided Mr. Maram, she summarized various revolving door and conflict of interest provisions. Prior to giving her opinion, Ms. Badrov reiterated Mr. Maram's request that she prepare the memorandum and particularly noted the following:

You stated that you are resigning from your position as Director and from all your appointee positions. You stated you intend to work as an attorney with a law firm. You do not know which law firm you will be joining. You stated that you would like guidance from the HFS Ethics Office regarding the impact of various revolving door and conflicts of interest provisions on accepting employment, compensation, or fees for services as an attorney with a law firm.

Ms. Badrov stated that Mr. Maram was subject to Subsection (h) of the Revolving Door Prohibition. She also opined that under the Revolving Door Prohibition, one should assume the term "contract" would include "grants and interagency agreements with a cumulative value of \$25,000 or more with persons or entities that are not affiliated with the State of Illinois (e.g. counties, cities, and other local government units)." As noted above, Ms. Badrov attached to the April 6, 2010 memorandum an excel spreadsheet containing separate tabs identifying active HFS contracts, grants, and interagency agreements, and advised Mr. Maram that if he wanted to enter into an employment relationship with a particular entity, he had a "continuing obligation to confirm whether that person or entity has a contract, grant, or interagency agreement with HFS."

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<sup>6</sup> Ms. Badrov said she did not report to the OEIG Mr. Maram's employment with Shefsky & Froelich because she did not think there were any issues with his employment there. Ms. Badrov explained that the interagency agreements were between HFS and the Governor's Office, not HFS and Shefsky & Froelich.

The list Ms. Badrov attached to the memorandum identified the FY10 Shefsky Contract on the interagency agreement tab. See Exhibit 1 (with attachments).

***F. HFS General Counsel and Ethics Officer Badrov's April 8, 2010 Email***

On April 8, 2010 at 11:36 am, Ms. Badrov sent to several staff members in the Governor's Office an email, which stated as follows:

Director Maram has stated that he has received an inquiry from Senator Cullerton to provide documents showing that HFS did not control the Shefsky & Froelich procurement. ... The attached is what HFS would submit to any legislator who made an inquiry. ... Please review and advise.

The following documents were identified as attachments to Ms. Badrov's April 8, 2010 email:

- Shefsky FY09 Contract and IGA – JCAR and FC.pdf<sup>7</sup>
- Shefsky FY10 Renewal Contract and IGA – Caro.pdf<sup>8</sup>
- Gov Emails Shefsky 09 and 10.pdf<sup>9</sup>
- Shefsky FY09 Contract and IGA – Caro.pdf<sup>10</sup>

On the same day, April 8, 2010, at 2:56 pm, Mr. Maram sent Senator Cullerton's Chief Legal Counsel an email marked "high" importance that included each of the aforementioned attachments, except the emails between the Governor's Office and other individuals regarding the authorization and execution of the FY09 and FY10 Interagency Agreements.

***G. Interview of Former HFS Director Barry Maram***

On April 10, 2012, the OEIG interviewed former HFS Director Barry Maram. Mr. Maram stated that he served as HFS Director for approximately seven years. Mr. Maram said that he was aware of the Revolving Door provision of the Ethics Act and agreed that his position was subject to Subsection (h) of the Revolving Door Prohibition of the Ethics Act.

***i) Barry Maram's Meeting with Governor's Office and Job Search***

According to Mr. Maram, on or about March 12, 2010, after meeting with a high-ranking official from Governor Quinn's Office, he began looking for new employment. Mr. Maram stated that after the March 12 meeting, he began contacting law firms and other organizations regarding possible future employment. Mr. Maram said that he contacted Cezar M. Froelich, whom he said he knew since childhood, sometime in March 2010 for a recommendation of a

<sup>7</sup> This attachment consisted of the contract for general services noted in footnote 4, *supra*.

<sup>8</sup> This attachment consisted of the FY10 Shefsky Contract, FY10 Interagency Agreement, and other supporting documents related to the *Caro* litigation.

<sup>9</sup> This attachment consisted of three emails sent by the Governor's Office to individuals and HFS staff requesting HFS's authorization of the interagency agreements for Shefsky & Froelich's services related to the *Caro* litigation.

<sup>10</sup> This attachment consisted of the FY09 Shefsky Contract, FY09 Interagency Agreement, and other supporting documents related to the initial contract between the Governor's Office and Shefsky & Froelich related to the *Caro* litigation.

headhunter. Thereafter, according to Mr. Maram, Shefsky & Froelich became interested in hiring him. Mr. Froelich eventually sent Mr. Maram a March 25, 2010 letter detailing what Mr. Maram's position would be and the parameters of his possible employment with Shefsky & Froelich. Mr. Maram stated, however, that he did not accept employment with Shefsky & Froelich until after he left his employment with HFS.

ii) *The FY09 & FY10 Interagency Agreements*

Mr. Maram said that he did not recall asking Ms. Badrov to research the Revolving Door Prohibition of the Ethics Act, and suggested that Ms. Badrov may have simply written the April 6, 2010 memorandum as a matter of course. According to Mr. Maram, on April 6, 2010, he received from Ms. Badrov a list of all the entities that had contracts or interagency agreements involving HFS attached to a memorandum regarding the Revolving Door Prohibition. During his interview, Mr. Maram acknowledged having seen the April 6, 2010 memorandum and attachment.

Mr. Maram said that when he first began discussions with Shefsky & Froelich, he had no knowledge that Shefsky & Froelich represented either HFS or himself in any matters. Mr. Maram said that it was only when Ms. Badrov provided him with a list of entities [attached to the April 6, 2010 memorandum] that he realized HFS had contracts or interagency agreements relating to Shefsky & Froelich.

Mr. Maram said that prior to receiving information from Ms. Badrov on April 6, 2010, he was not aware of the two interagency agreements between HFS and the Governor's Office regarding the FY09 and FY10 Shefsky Contracts, even though both agreements were signed by HFS employees on his behalf. The first interagency agreement that required HFS to pay legal fees up to \$75,000 was signed on January 5, 2009 by Mr. Maram's former Chief of Staff. The second interagency agreement was signed on June 30, 2009 by Mr. Maram's administrative assistant. Mr. Maram stated that he was not aware of what his administrative assistant's actual signatory authority level was, but assumed it was at least \$75,000, because that was the amount of the interagency agreement.

Mr. Maram said that he was shocked to see Shefsky & Froelich on the list of entities that had contracts or interagency agreements involving HFS even though he acknowledged that his employees had signed the interagency agreements on his behalf and that Shefsky & Froelich had performed legal services on his and HFS's behalf. He said that when he saw that Shefsky & Froelich was identified in the list of interagency agreements, he called the Governor's Office and spoke to someone in the legal department, who told him that HFS had not been involved in the procurement of the Shefsky & Froelich contract.

Mr. Maram explained that on April 7, 2010, he told Shefsky & Froelich about the situation, and placed the employment offer on hold while he looked into the matter. Mr. Maram stated that he did so because he was concerned about the fact that Shefsky & Froelich had a contract related to HFS. Mr. Maram said he did not discuss the April 6, 2010 memorandum or the Revolving Door Prohibition with Ms. Badrov.



iii) *Barry Maram Contacts State Senator John Cullerton's Office*

According to Mr. Maram, either the same day he received the memorandum or the next day, April 7, 2010, he decided to find the legislative history of the Ethics Act, because he noticed that the Shefsky & Froelich Contracts involving HFS were in place prior to the effective date (August 18, 2009) of Subsection (h) of the Ethics Act's Revolving Door Prohibition. Mr. Maram said that he then contacted Senate President John Cullerton, because Senator Cullerton served as the Senate President when the Ethics Act was amended. Mr. Maram stated that he told Senator Cullerton that he needed clarification of the Ethics Act because, in Mr. Maram's opinion, it did not make sense that the Act would apply to him when he had no involvement with the procurement of the Shefsky & Froelich Contracts, which again predated the enactment of Subsection (h). According to Mr. Maram, Senator Cullerton referred him to his Chief Legal Counsel.

Mr. Maram said he spoke to Senator Cullerton's Chief Legal Counsel and provided Counsel with the facts relating to his circumstances. Mr. Maram said he asked Senator Cullerton's Chief Legal Counsel to look into the history and legislative intent of Subsection (h) of the Revolving Door Prohibition. Mr. Maram recalled being asked for background documents such as the contracts and interagency agreements. Mr. Maram stated that he "probably" asked Ms. Badrov to provide those documents to Senator Cullerton's Chief Legal Counsel.<sup>11</sup>

According to Mr. Maram, he believed Senator Cullerton's Chief Legal Counsel called him on or about April 7, 2010, and told him that he (Chief Legal Counsel) had looked into the situation and did not believe that the Ethics Act would apply retroactively because the contracts predated enactment of Subsection (h). Mr. Maram believed that he received a written opinion on or about April 8, 2010.

Mr. Maram was shown a copy of a memorandum dated April 8, 2010 written by Senator Cullerton's Chief Legal Counsel regarding the "Scope of the State Ethics Act's Revolving Door Prohibition."<sup>12</sup> Mr. Maram confirmed this was the memorandum he received. He said that he had wanted to get the best opinion for himself and that once he had Senator Cullerton's Chief Legal Counsel's opinion, he felt comfortable that Subsection (h)'s restrictions would not apply to his situation. Mr. Maram confirmed, however, that Senator Cullerton's Chief Legal Counsel was not acting as his personal attorney. Mr. Maram stated that he did not share the April 8, 2010 memorandum with Ms. Badrov or anyone in the Governor's Office.

On April 9, 2010, Mr. Maram stated that he submitted his letter of resignation, noting that April 15, 2010 would be his last day as HFS Director. According to Mr. Maram, as of April 9, 2010, he had not yet decided whether to accept a position with Shefsky & Froelich and said that after he left HFS employment on April 15, 2010, he accepted employment with Shefsky & Froelich and began on April 21, 2010. Mr. Maram confirmed that was still employed by Shefsky & Froelich on April 10, 2012.

<sup>11</sup> As noted above, Ms. Badrov did seek and obtain Governor's Office permission to forward the Shefsky Contracts and Interagency Agreements to Senator Cullerton's office.

<sup>12</sup> On August 5, 2011, Mr. Maram's attorney hand-delivered to the OEIG a copy of the April 8, 2010 memorandum.

## **H. Senator Cullerton's Chief Legal Counsel's Memorandum**

On April 9, 2010, Senator Cullerton's Chief Legal Counsel sent Mr. Maram an email attaching an interoffice memorandum he had prepared for Senator Cullerton dated April 8, 2010 regarding the "Scope of the State Ethics Act's Revolving Door Prohibition." See Exhibit 2.

### **I. Interview of Senator Cullerton's Chief Legal Counsel**

On May 7, 2012, the OEIG interviewed Senator Cullerton's Chief Legal Counsel, who stated as follows:

- that it is part of his job to research possible issues with recently enacted legislation in case any legislative changes need to be made;
- that on April 8, 2010, Senator Cullerton asked him to research an issue that had been brought to his attention by Mr. Maram regarding Subsection (h) of the Revolving Door Prohibition;
- that he contacted Mr. Maram in order to obtain background information and asked to see the underlying contracts involving Shefsky & Froelich; and,
- that he later received copies of the underlying contracts and interagency agreements involving the Governor's Office, HFS, and Shefsky & Froelich.

According to Senator Cullerton's Chief Legal Counsel, he researched the issue on his own, wrote the April 8, 2010 memorandum within 24 hours, and sent the memorandum as an attachment to Mr. Cullerton and Mr. Maram in an April 9, 2010 email. Senator Cullerton's Chief Legal Counsel also stated that he arrived at the opinion set forth in the memorandum after researching the statute, case law, and relevant legislative debate, and that prior to writing the memorandum, he did not contact any legislators.

Finally, Senator Cullerton's Chief Legal Counsel stated that he also sent a copy of the memorandum to high-ranking officials at both the Office of the Illinois Attorney General and the Executive Ethics Commission, because those two entities dealt with the Revolving Door Prohibition of the Ethics Act. After writing the memorandum, Senator Cullerton's Chief Legal Counsel stated that there were some discussions with his staff regarding the Revolving Door Prohibition but that no action was taken to make any legislative changes to the existing law.

## **IV. ANALYSIS**

### ***The Revolving Door Prohibition***

#### **A. Background of the Revolving Door Prohibition**

The purpose of Revolving Door prohibitions is to ensure government employees will act in the best interest of the public and not in their own self-interest regarding future employment. See, e.g., *Forti v. New York State Ethics Com'n*, 75 N.Y.2d 596, 605 (N.Y. 1990) (stating that in general, the purpose of revolving door provisions is to "prevent former government employees from unfairly profiting from or otherwise trading upon the contracts, associations and special

knowledge that they acquired during their tenure as public servants.”). As such, the Ethics Act is drawn to capture the purpose and spirit of such prohibitions.<sup>13</sup>

## **B. 2009 Amendments to the Revolving Door Prohibition**

In 2009, the Illinois General Assembly expanded the Revolving Door Prohibition. Prior to 2009, the Revolving Door Prohibition applied only to those State employees who participated personally and substantially in a contracting, licensing, or regulatory decision. The 2009 amendments expanded the prohibition by creating an absolute ban prohibiting certain high-ranking employees, such as agency directors, from accepting employment or compensation from entities if the entity, its parent, or its subsidiary was a party to a contract involving the agency or was subject to a licensing or regulatory decision by the agency, regardless of whether the employee was personally and substantially involved in the decision.

The legislative history indicates that the legislature expanded the Revolving Door Prohibition to address “problems concerning the revolving-door prohibition.” See 96<sup>th</sup> ILL. GEN. ASSEM., HOUSE PROCEEDINGS, May 21, 2009, at 29. As such, according to Illinois State Representative Michael Madigan:

The Bill provides that for high ranking officials and employees, they are *absolutely* prohibited from accepting employment compensation from one year from an entity if that entity was party to a state contract or contracts worth \$25 thousand or more . . . . For other employees in the agency, it depends on whether they are substantially and personally involved in the decision-making process. *Id.* (Emphasis added.)

As a result, the legislature amended the Ethics Act to implement an absolute bar against certain post-State employment actions by high-ranking officials and employees. The 2009 amendments to the Revolving Door Prohibition became effective on August 18, 2009.

## **C. Subsections 5-45(c) and (f) of the Revolving Door Prohibition**

Pursuant to the 2009 amendments to the Ethics Act, Subsections 5-45(c) and (f) provide that certain current and former State employees must notify the OEIG prior to accepting an offer of non-State employment, so that the OEIG may determine whether the former employee is restricted from accepting the offer. These employees are generally referred to as “c-list” employees, because Subsection (c) requires constitutional officers to identify employees who hold or held State positions in which they may have participated “personally and substantially” in a contracting, licensing, or regulatory decision.

Pursuant to Subsection 5-45(f), so-called “c-list” employees must submit information to the OEIG, so that the OEIG can make an informed determination as to whether the current or former State employee was “personally and substantially” involved in a contracting, licensing, or regulatory decision involving the entity that made the offer of employment or involving the

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<sup>13</sup> Since 2009, the Executive Ethics Commission has issued five decisions relating to “c-list” Revolving Door appeals by the Office of the Illinois Attorney General. None of the appeals in each of these instances involves so-called “h list” employees, such as former HFS Director Maram.

potential employer's parent or subsidiary. The OEIG must make its determination within 10 calendar days of receiving the employee's notification of prospective post-State employment. *Id.*

No later than the 10th calendar day after the date of the OEIG's determination, the Attorney General or the person subject to the OEIG's determination may appeal the OEIG's decision to the Executive Ethics Commission. *See* 5 ILCS 430/5-45(g). The Executive Ethics Commission then has 10 calendar days in which to decide whether to uphold or vacate the OEIG's determination. *Id.*

Thus, Subsections 5-45(c) and (f) of the Ethics Act provide that certain current and former State employees (1) must notify the OEIG prior to accepting employment and (2) the current or former employees may be prohibited from accepting the employment if they personally and substantially participated in decisions involving the potential employer, its parent, or subsidiary. In this regard, the General Assembly retained the requirement that a State employee must have "personally and substantially" participated in a contracting, licensing, or regulatory decision before the ban will apply.

#### **D. Subsection (h) of the Revolving Door Prohibition**

On the other hand, Subsection (h) strictly prohibits certain current and former State employees from accepting certain post-State employment, "regardless of whether [they] participated personally and substantially" in a contracting, licensing, or regulatory decision involving the potential employer, its parent, or subsidiary. These so called "h-list" employees include "persons whose appointment to office is subject to the advice and consent of the Senate" and "the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State."

Thus, as it applies to this matter, Subsection (h) provides that "h-list" employees shall not, within one year immediately after termination from State employment knowingly:

- accept employment or receive compensation or fees from a person or entity if;
- the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts;
- with a cumulative value of \$25,000 or more;
- involving the employee's State agency.

*See* 5 ILCS 430/5-45(h). As noted above, this prohibition applies "regardless of whether [they] participated personally and substantially in the award of the State contract or contracts...." *Id.* In other words, the prohibition applies to agency directors, for example, even if they had no involvement in the procurement of a contract.

As set out below, the OEIG investigation leaves no doubt that by accepting employment and receiving compensation from Shesky & Froelich, Mr. Maram's conduct satisfied all of the conditions supporting a violation of Subsection (h) of the Revolving Door Prohibition of the Ethics Act.

i) *Former HFS Director Barry Maram was an "h-list" Employee*

The OEIG investigation established that as the former HFS Director, Mr. Maram was subject to Subsection (h) of the Revolving Door Prohibition. Indeed, Mr. Maram agreed that prior to termination of his State employment on April 15, 2010, he was aware that he occupied a position subject to Subsection (h).

ii) *Mr. Maram Accepted Employment and Received Compensation from Shefsky & Froelich Within One Year After Terminating State Employment*

The OEIG investigation also established that Mr. Maram accepted employment and began receiving compensation within a period of one year after terminating his office or State employment.

Mr. Maram said he began looking for employment and spoke with Mr. Froelich in mid-March 2010 and by March 25, 2010, he in fact received a letter from Shefsky & Froelich outlining the terms of his employment with the firm, including a \$250,000 per year salary and benefits package.

Mr. Maram resigned from HFS on April 15, 2010, began working at Shefsky & Froelich on April 21, 2010, or about one week later, first received compensation on April 30, 2010, and continued to receive compensation through April 10, 2012. As such, Mr. Maram engaged in a continuing violation of Subsection (h) each time he received compensation from Shefsky & Froelich from the day he left HFS (April 15, 2010) until one year after termination of his State employment (April 15, 2011).

iii) *Shefsky & Froelich Was a Party to State Contracts During the Year Immediately Preceding Mr. Maram's Termination of State Employment*

The OEIG investigation established that Shefsky & Froelich was a party to two State contracts, one of which was a renewal, during the year immediately preceding Mr. Maram's termination of State employment. Mr. Maram terminated his State employment on April 15, 2010. Thus, the relevant Revolving Door one-year review period was from April 15, 2009 through April 15, 2010.

On October 24, 2008, the Governor's Office entered into the FY09 Shefsky Contract retaining Shefsky & Froelich to represent the defendants in the *Caro* lawsuit through June 30, 2009, or during the year prior to Mr. Maram's termination of State employment. Shefsky & Froelich agreed to perform legal services in exchange for an amount not to exceed \$150,000. The FY09 Shefsky Contract required Shefsky & Froelich to perform legal services on behalf of Mr. Maram and HFS, among others.

In addition, on July 7, 2009, the Governor's Office renewed the FY09 Shefsky Contract, pursuant to which Shefsky & Froelich agreed to provide legal services in FY10 in exchange for an amount not to exceed \$150,000 (the FY10 Shefsky Contract). The FY10 Shefsky Contract

required Shefsky & Froelich to perform legal services on behalf of Mr. Maram and HFS, among others.

Thus, Shefsky & Froelich was a party to at least two State contracts during the year immediately preceding Mr. Maram's departure from State employment.

iv) *The Value of the FY09 and FY10 Shefsky Contracts and Related Interagency Agreements Exceeded \$25,000*

The OEIG investigation also revealed that the FY09 Shefsky Contract had a cumulative value of \$25,000 or more. As set forth above, pursuant to the FY09 Shefsky Contract, the State agreed to pay Shefsky & Froelich up to \$150,000 for legal services performed during FY09. In addition, on July 7, 2009, the Governor's Office renewed the FY09 Shefsky Contract, pursuant to which Shefsky & Froelich agreed to provide legal services in FY10 in exchange for an agreement by the Governor's Office to pay an amount not to exceed \$150,000. The cumulative value of the two contracts was \$300,000. Because HFS agreed to pay for up to one-half the values of the Shefsky Contracts, via the FY09 and FY10 Interagency Agreements, the two contracts had, at a minimum, a cumulative value of at least \$150,000 as it pertained to HFS (the agency).

In any event, even when considering the amount actually billed, as opposed to the amount allotted in the interagency agreements, the OEIG investigation revealed that the Shefsky Contracts had an actual cumulative value of \$25,000 or more. Shefsky & Froelich billed the State approximately \$67,183 for services rendered pursuant to the FY09 Shefsky Contract and \$9,911 for services rendered pursuant to the FY10 Shefsky Contract. HFS paid Shefsky & Froelich a total of \$39,181.61 for services rendered pursuant to the FY09 and FY10 Shefsky Contracts.

Therefore, Shefsky & Froelich was a party to at least two State contracts during the year immediately preceding Mr. Maram's termination of State employment that had a cumulative value of \$25,000 or more.

v) *The Shefsky Contracts Involved HFS, Mr. Maram's State Agency*

The OEIG investigation revealed that the Shefsky Contracts "involved" HFS, and specifically Mr. Maram in his capacity as HFS Director. Pursuant to the Shefsky Contracts, Shefsky & Froelich agreed to defend all State agencies and employees who were defendants in the *Caro* lawsuit, including HFS and Mr. Maram. As such, there is no doubt that the FY09 and FY10 Shefsky Contracts "involved" HFS.

HFS confirmed its involvement with Shefsky & Froelich when it agreed to pay Shefsky & Froelich by entering into the FY09 and FY10 Interagency Agreements. On January 5, 2009, Mr. Maram's former Chief of Staff, to whom he had given signatory authority, executed the FY09 Interagency Agreement on Mr. Maram's behalf, effective until June 30, 2009, obligating HFS to pay Shefsky & Froelich up to \$75,000. In fact, HFS did pay Shefsky & Froelich \$33,846.82 for services performed under the FY09 Shefsky Contract, pursuant to the terms of the

FY09 Interagency Agreement. Mr. Maram and HFS, via the FY10 Interagency Agreement, again agreed to pay Shefsky & Froelich for legal services rendered up to 50% of the FY10 Shefsky Contract, or an amount not to exceed \$75,000. Mr. Maram's former administrative assistant, to whom he had given signatory authority, executed the FY10 Interagency Agreement on Mr. Maram's behalf, effective until June 30, 2010, obligating HFS to pay Shefsky & Froelich up to \$75,000. Because HFS agreed to be represented by Shefsky & Froelich and then paid its legal services, it necessarily follows that the FY09 and FY10 Shefsky Contracts involved HFS and Mr. Maram.

In addition, Mr. Maram recognized that the contracts involved HFS and Shefsky & Froelich, because he sought legal advice from Senator Cullerton's Office.

vi) *Mr. Maram Accepted Employment with Shefsky & Froelich While Aware of the Firm's Contract With HFS in the Previous Year*

Mr. Maram accepted employment with and received compensation from Shefsky & Froelich, within one year after terminating his State employment, while knowing that Shefsky & Froelich had State contracts with a cumulative value in excess of \$25,000 that involved HFS. At the latest, on or about April 6, 2010, Mr. Maram learned about Shefsky & Froelich's relationship with the State and HFS. In his interview, Mr. Maram confirmed that he received a list of entities which indicated that HFS had an interagency agreement relating to a contract Shefsky & Froelich had with the Governor's Office when Ms. Badrov provided him with the list and her April 6, 2010 memorandum. Mr. Maram also confirmed that he then investigated the relationship between Shefsky & Froelich, HFS, and the Governor's Office further, by seeking additional information from Ms. Badrov and legal advice from Senator Cullerton's Office. Thus, before Mr. Maram departed State employment, accepted employment with Shefsky & Froelich, or began receiving compensation from Shefsky & Froelich, Mr. Maram knew that Shefsky & Froelich had a State contract, worth more than \$25,000, that involved HFS. Nevertheless, these facts did not deter Mr. Maram from engaging in the aforementioned prohibited post-State employment conduct.

vii) *Subsection (h) Barred Mr. Maram From Employment, Regardless of Whether He Participated Personally or Substantially in the Procurement of the Shefsky Contracts*

Mr. Maram was prohibited from accepting employment with Shefsky & Froelich for one year after termination of his State employment, "regardless of whether he [] participated personally and substantially" in the award of the contract. See 5 ILCS 430/5-45(h). The fact that Mr. Maram did not select Shefsky & Froelich to represent the Governor's Office, HFS, or even himself, is not relevant. Subsection (h) contains a strict prohibition, and does not require evidence that the current or former State employee participate in the contracting decision. In enacting Subsection (h), the General Assembly removed any incentive for "h-list" employees to delegate authority to subordinates to avoid being "personally and substantially" involved in important State business, while simultaneously relieving "h-list" employees from even the suggestion that they would place their own interests over those of the State by delegating to subordinates authority for important decisions.

In other words, even though, as set forth above, the OEIG did not discover evidence that Mr. Maram, or HFS in general, had any role in the procurement of Shefsky & Froelich's legal services, Subsection (h) prohibited Mr. Maram from accepting any employment with Shefsky & Froelich for one year after he departed State employment.

Thus, the OEIG investigation revealed that Mr. Maram violated Subsection (h) of the Revolving Door Prohibition of the Ethics Act.

#### **E. The OEIG is Not Applying Subsection (h) Retroactively**

Even though the OEIG investigation reveals that Mr. Maram violated the Revolving Door Prohibition as set out in Section 5-45(h) of the Ethics Act, the circumstances of this matter give rise to the question of whether it is an impermissible retroactive application of the statute to apply the August 2009 Revolving Door amendments to Mr. Maram's termination of State employment and acceptance of employment with Shefsky & Froelich, because the two Shefsky Contracts were executed prior to the effective date of Subsection (h). The OEIG has concluded that requiring Mr. Maram to comply with Subsection (h) of the Revolving Door Prohibition would not constitute an impermissible retroactive application of the statute. That the Shefsky Contracts were executed prior to the effective date of the 2009 amendments are merely antecedent facts that do not prevent Subsection (h) from applying to Mr. Maram.

In *Commonwealth Edison v. Will County Collector*, 749 N.E.2d 964 (Ill. 2001), the Illinois Supreme Court reasoned that when a statute does not explicitly state whether it is to be applied retroactively, which Subsection (h) does not, then a court "must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that [the statute] does not govern." *Id.* at 970-971 (citing *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994)). In *Landgraf*, the United States Supreme Court concluded that a statute is not made retroactive in effect merely because it draws upon antecedent facts for its operation.

The August 2009 amendments to the Revolving Door Prohibition did not impair the rights of Mr. Maram, increase his liability for past conduct, or impose new duties with respect to transactions already completed, because he did not terminate his State employment and accept employment with Shefsky & Froelich until *after* the effective date of the 2009 amendments. As such, the 2009 amendments did not impair Mr. Maram's rights, or increase liability for Mr. Maram's "past conduct," because he terminated his employment on April 15, 2010 and began employment with Shefsky & Froelich on April 21, 2010, all of which occurred *after* the August 18, 2009 effective date of Subsection (h). Similarly, Mr. Maram did not "act" or "complete the transaction," *i.e.* terminate his State employment and begin employment with Shefsky & Froelich, until April 2010, which again was *after* the effective date of Subsection (h) of the Revolving Door Prohibition.



The Illinois Supreme Court reasoned in the *Commonwealth Edison* case that “merely because [the statute] is applied to a case arising from conduct antedating the statute’s enactment ... or upsets expectations based on prior law” does not give rise to an impermissible retroactive effect. *Id.* at 971-972 (citing *Landgraf*, 511 U.S. at 269-270). Therefore, merely because the OEIG investigation involves the Shefsky Contracts, whose execution antedated the effective date of Subsection (h), does not mean that the OEIG’s conclusion that Mr. Maram violated Subsection (h) of the Revolving Door Prohibition is an impermissible application of the statute. Mr. Maram did not terminate his State employment and begin his employment with, or begin receiving compensation from, Shefsky & Froelich until eight months after Subsection (h) became effective.

In addition, Mr. Maram had sufficient notice of the Ethics Act amendments and their applicability to his post-State employment opportunities. Indeed, Mr. Maram was well aware of his duties and the potential consequences of selecting certain employment opportunities, which is evinced by the fact that he asked both Ms. Badrov and Senator Cullerton’s Chief Counsel to examine Revolving Door provisions and opine how they applied to him. Thus, there are no inequitable consequences in applying the Ethics Act Revolving Door Prohibition to Mr. Maram.

Unlike the circumstances presented in this investigation, the 2009 amendments could have an impermissible retroactive effect if Subsection (h) applied to a person who left State employment within one year *before* the effective date of the amendments. Because Subsection (h) expressly states the prohibition applies to a person who accepts employment or fees for services within one year after termination of State employment, a literal interpretation of the statute could lead to the conclusion that Subsection (h) applies to employees who terminated State employment and accepted certain employment for up to one year *prior* to August 18, 2009. In other words, Subsection (h) would have an impermissible retroactive effect if it were applied to an agency director who left State employment and accepted employment with a vendor of the director’s former agency within one year *before* August 18, 2009. In that case, there can be little doubt that Subsection (h) would not apply, because the former employee would have already completed the “act” or “transaction” – terminating State employment and accepting employment with the vendor – prior to the effective date of the statute. Those circumstances are far different from the facts presented in this investigation.

#### **F. Conclusion Regarding the Revolving Door Prohibition**

Mr. Maram violated Subsection (h) of the Revolving Door Prohibition because within a period of one year immediately after his termination of State employment, he knowingly accepted employment and received compensation from an entity that during the year immediately preceding his termination of State employment was a party to State contracts with a cumulative value of \$25,000 or more involving HFS. Therefore, the corresponding allegation is **FOUNDED**.

## V. CONCLUSION

As a result of its investigation, the OEIG issues this finding:

- **FOUNDED** – Barry Maram violated Subsection (h) of the Ethics Act Revolving Door Prohibition.

The OEIG is referring this matter to the Office of the Illinois Attorney General for the purpose of determining whether or not it agrees with the conclusions set forth in this report, namely that Mr. Maram violated the Ethics Act and that the Ethics Act is not being applied retroactively to Mr. Maram. If the Office of the Illinois Attorney General agrees with these factual and legal conclusions, we ask that it consider taking whatever appropriate action it deems fit, including filing a complaint with the Executive Ethics Commission.

No further action is required and this matter is closed.

Date: May 30, 2012

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
32 W. Randolph Street, Ste. 1900  
Chicago, IL 60601

**Fallon Opperman**  
Assistant Inspector General

**Donald Rehmer**  
Investigator #139

## Illinois Department of Healthcare and Family Services Inter-Office Memorandum

To: Barry Maram, Director, Department of Healthcare and Family Services

From: Jeanette Badrov, Ethics Officer

Date: April 6, 2010

Subject: Revolving Door and Conflicts of Interest

### **Background and Inquiry**

The Ethics Office of the Department of Healthcare and Family Services has received your inquiry regarding your potential post-state employment with a law firm. You are the Director of the State of Illinois, Department of Healthcare and Family Services (HFS). You are also appointed to various boards, commissions, authorities, or task forces authorized or created by state law, executive order of the Governor, or the Constitution. You stated that you are resigning from your position as Director and from all your appointee positions. You stated you intend to work as an attorney with a law firm. You do not know which law firm you will be joining. You stated that you would like guidance from the HFS Ethics Office regarding the impact of various revolving door and conflicts of interest provisions on accepting employment, compensation, or fees for services as an attorney with a law firm. You stated that you have not been notified and are not aware of being placed on any "C" list, pursuant to 5 ILCS 430/5-45(c), with respect to the revolving door in connection with any of your appointments or as Director. You are requesting the view of the HFS Ethics Office with respect to this matter in accordance with the terms of 610.1(H) of the Employee Handbook and 5 ILCS 430/20-23 of the State Officials and Employees Ethics Act (Ethics Act).

This written guidance given is based solely on the facts set forth and is restricted to the question raised. Accordingly, it should be noted that any different facts or conditions might require a different conclusion.

This guidance is also given pursuant to 610.1(H) of the Employee Handbook and 5 ILCS 430/20-23 of the Ethics Act. 610.1(H) of the Employee Handbook states "If you have a question as to whether a personal relationship, business transaction, outside employment, business interest, gift or association is or has the potential to be a conflict of interest, consult the Ethics Officer." The Ethics Act states that ethics officers shall "provide guidance to officers and employees in the interpretation and implementation of this Act, which the officer or employee may in good faith rely upon. Such guidance shall be based, wherever possible, upon legal precedent in court decisions, opinions of the Attorney General, and the findings and opinions of the Executive Ethics Commission." 5 ILCS 430/20-23. Because this guidance is given under the authority of the Employee Handbook and the Ethics Act, it is not intended to be used as a substitute for an opinion from the Attorney General; only the Attorney General has the constitutional authority to issue binding opinions with

precedential value. In the event you need a formal opinion, you should seek it from the Attorney General. This guidance is also not intended to be used as a substitute for any procedures set by law regarding obtaining approval for post-state employment pursuant to the revolving door. Accordingly, this guidance does not address any responsibilities you may have pursuant to 5 ILCS 430/5-45 (c). If you have been placed or notified that you are on any lists pursuant to 5 ILCS 430/5-45(c), you will need to follow the procedures authorized by this statute and established by the Office of the Illinois Executive Inspector General; see <http://inspectorgeneral.il.gov/revolving.htm>. Further, this guidance is not intended to provide legal counsel to you. In the event you feel you need clarification or a legal opinion, you should seek it independently. This guidance is not binding before any administrative body or court of law and is based on a current understanding of the ethics law, which could change as a result of court opinions, statutory changes, or other matters (e.g. Attorney General or Executive Ethics Commission opinions).

## **Review**

### **I. State Officials and Employees Ethics Act, Revolving Door**

As Director of HFS, you are the head of HFS and a person whose appointment to office is subject to the advice and consent of the Senate. The revolving door section of the Ethics Act, 5 ILCS 430/5-45(h), states that you

shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency, or was the subject of a regulatory or licensing decision involving the officer, member, or State employee's State agency, regardless of whether he or she participated personally and substantially in the award of the State contract or contracts or the making of the regulatory or licensing decision in question.

#### **A. Contracts Under Revolving Door**

You have inquired as to the meaning of the term "contract" under the revolving door provision of the Ethics Act. The Ethics Act does not define contracts, no rules or regulations exist, there is no case law, and no written opinions by the Attorney General or the Executive Ethics Commission exist to offer guidance. However, one should assume that grants and interagency agreements with a cumulative value of \$25,000 or more with persons or entities that are not affiliated with the State of Illinois (e.g. counties, cities, and other local government units) are included in the definition of contracts. With respect to whether medical assistance provider agreements are included in the definition of contracts, please note the following.

The Attorney General has consistently argued in defense of HFS in the Court of Claims that medical assistance provider agreements are not contracts. See *Franciscan Sisters v. State*, 31 Ill Ct. Cl. 58 (1975). In this case, the Court of Claims held that the authority for payment of medical assistance claims is statutory, because the provisions of the Public Aid Code authorize payments directly to a person or entity who supplies goods or services to a recipient of the Public Aid Code. 305 ILCS 5/2-5 and 5/11-13. Since HFS payments to providers in the medical assistance program are authorized by statute and not by contract, the AG has successfully utilized *Franciscan Sisters v. State* before the Court of Claims to argue that medical assistance provider agreements are not contracts.

In addition to the *Franciscan* case, the Court of Claims Act makes a distinction between contracts and HFS medical assistance provider agreements.

Every claim cognizable by the Court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within the time set forth as follows:

(a) All claims arising out of a contract must be filed within 5 years after it first accrues, saving to minors, and persons under legal disability at the time the claim accrues, in which cases the claim must be filed within 5 years from the time the disability ceases.

(b) All claims cognizable against the State by vendors of goods or services under "The Illinois Public Aid Code", approved April 11, 1967, as amended, must file within one year after the accrual of the cause of action, as provided in Section 11-13 of that Code.

705 ILCS 505/22

Note that medical assistance provider agreements are also excluded from the definition of contracts under the Conflicts of Interest section of the Illinois Procurement Code, 30 ILCS 500/50-13(f)(1), and are exempt from the Illinois Procurement Code as a "purchase of care." 30 ILCS 500/1-10(b)(3); 44 Ill. Admin. Code 1.10(d)(3).

Indeed, an HFS provider agreement lacks a basic element of a contract, consideration. By statute, as long as certain statutory conditions exist, HFS exercises no discretion and must allow any willing provider to enroll and register in its medical assistance programs. 305 ILCS 5/5-5. A provider agreement simply allows a provider to register and enroll in HFS medical assistance programs. There is no finite termination date to this agreement. The purpose of the agreement is to ensure that the provider will be paid medical assistance rates if goods or services are tendered to a medical assistance recipient. Providers are not mandated to render services or goods to recipients and may decline to treat recipients. Payment is made by HFS after the services or goods are provided, not at the time of enrollment and registration, and payment will continue to be made as long as the provider renders services or goods to recipients. Hence, unlike a contract, no consideration is

tendered at the time of registration and enrollment of a provider in the medical assistance program.

## **B. Regulatory Decisions Under Revolving Door**

You have also asked whether HFS, in administering its medical assistance programs, renders any regulatory decisions within the meaning of the revolving door section of the Ethics Act. The Ethics Act does not define regulatory decisions, no rules or regulations exist, there is no case law, and no written opinions by the Attorney General or the Executive Ethics Commission exist to offer guidance. However, if the provisions of the Regulatory Sunset Act, 5 ILCS 80/1 *et al.*, could be relied upon to interpret the meaning of "regulatory decision," it would appear that only regulatory agencies could issue regulatory decisions and that HFS would not be considered to be a regulatory agency.

The "Findings and Intent" section of the Regulatory Sunset Act states:

(a) The General Assembly finds that State government actions have produced a substantial increase in numbers of agencies, growth of programs and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination or continuation of such agencies and programs, it will be in a better position to evaluate the need for the continued existence of present and future regulatory bodies.

(b) It is the intent of the General Assembly:

(1) That no profession, occupation, business, industry or trade shall be subject to the State's regulatory power unless the exercise of such power is necessary to protect the public health, safety or welfare from significant and discernible harm or damage. The exercise of the State's police power shall be done only to the extent necessary for that purpose.

(2) That the State shall not regulate a profession, occupation, industry, business or trade in a manner which will unreasonably and adversely affect the competitive market.

(3) To provide systematic legislative review of the need for, and public benefits derived from, a program or function that licenses or otherwise regulates the initial entry into a profession, occupation, business, industry or trade by a periodic review and termination, modification, or continuation of those programs and functions.

5 ILCS 80/2

Regulatory agency under the Regulatory Sunset Act means "any arm, branch, department, board, committee or commission of State government that licenses, supervises, exercises control over, or issues rules regarding, or otherwise regulates any trade, occupation, business, industry or profession." 5 ILCS 80/3.

Program under the Regulatory Sunset Act means "a system to license or otherwise regulate the initial entry into a profession, occupation, business, industry, or trade by a periodic review and termination, modification, or continuation of the profession, occupation, business, industry, or trade." 5 ILCS 80/3.

If the Regulatory Sunset Act could be relied upon to define regulatory decisions under the Ethics Act, HFS decisions with respect to the medical assistance programs would not be considered regulatory. The medical assistance programs pay a provider after that provider renders services or goods to a recipient. In operating the medical assistance programs, HFS does not license, supervise, exercise control over, or issue rules regarding any aspect of a profession, occupation, business, industry, or trade. Determinations made by HFS can be construed to be enforcement decisions, because they are limited to whether a specific provider (a person or entity) should receive compensation from the medical assistance programs. Thus, in operating the medical assistance programs, based upon the Regulatory Sunset Act, HFS neither acts as a regulatory agency nor issues regulatory decisions.

### **C. Licensing Decisions Under Revolving Door**

HFS makes determinations of child support arrearages with respect to non-custodial parents (NCP) and certifies these arrearages to the appropriate state licensing agencies. These licensing agencies are then statutorily required to revoke the NCP's license. As there is no other administrative hearing to determine whether the NCP should retain his/her license (an appeal to the circuit court is only allowed), HFS could be construed to be an agency that renders licensing decisions under the revolving door provision of the Ethics Act with respect to outstanding child support payments of NCPs.

### **D. Compensation Under Revolving Door**

Compensation means "any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another." 5 ILCS 420/1-104.

## **II. Illinois Procurement Code, Revolving Door Prohibition**

The "Revolving Door Prohibition" of the Illinois Procurement Code applies to you after your resignation. 50 ILCS 500/50-30(a) states:

Chief procurement officers, associate procurement officers, State purchasing officers, their designees whose principal duties are directly related to State procurement, and executive officers confirmed by the Senate are expressly prohibited for a period of 2

years after terminating an affected position from engaging in any procurement activity relating to the State agency most recently employing them in an affected position for a period of at least 6 months. The prohibition includes but is not limited to: lobbying the procurement process; specifying; bidding; proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation. This subsection applies only to persons who terminate an affected position on or after January 15, 1999.

This prohibition applies to contracts subject to the Illinois Procurement Code. Medical assistance provider agreements are exempt from the Illinois Procurement Code as a "purchase of care." 30 ILCS 500/1-10(b)(3); 44 Ill. Admin. Code 1.10(d)(3). Interagency agreements are exempt from the procurement code. 30 ILCS 500/1-10(b)(1); 44 Ill. Admin. Code 1.10(d)(1). Grants are exempt from the Illinois procurement code. 30 ILCS 500/1-10(b)(2); 44 Ill. Admin. Code 1.10 (d)(2).

### **III. Executive Order 1 (2007)**

This order became effective 2/28/07. It applies to state employees who had procurement authority at any time during the one-year period immediately preceding the termination of state employment. Procurement authority is defined as the authority to participate personally and substantially in decisions to award state contracts. This order prohibits former state employees with procurement authority and their family members from engaging in procurement lobbying activities within one year after termination of state employment.

### **IV. HFS Employee Handbook**

Section 135 (B), Leaving State Employment, of the HFS employee handbook also restricts your procurement activity for two years after termination of employment with HFS. Section 135(B) states:

1. Effective January 15, 1999, the department's State Purchasing Officer (SPO) shall identify in writing all designees whose principal duties are directly related to state procurement. "Principal duties" shall mean "job or position descriptions at least 51% directly related to state procurement." The SPO shall maintain that information for a period of at least two years following the end or revocation of the designation.
2. Any department employee who is the SPO or a designee identified pursuant to paragraph one above, who is employed by the department in an affected position for at least six months, or any executive officer confirmed by the Senate is expressly prohibited by law from engaging in any procurement activity relating to the department for two years after termination of employment with the department. This prohibition includes, but is not limited to, lobbying the procurement process; specifying; bidding; and proposing bid, proposal, or contract documents



on their own or on behalf of any firm, partnership, association, or corporation.

**V. Illinois Procurement Code, Conflicts of Interest**  
**A. Conflicts of Interest**

The "Conflicts of Interest" section of the Illinois Procurement Code, 30 ILCS 500/50-13, applies to you as long as you serve as Director and possibly as an appointee ("office" and "agency" are not defined) of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. It states:

a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.

(b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2 % of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(c) Combined interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(c-5) Appointees and firms. In addition to any provisions of this Code, the interests of certain appointees and their firms are subject to Section 3A-35 of the Illinois Governmental Ethics Act.

(d) Securities. Nothing in this Section invalidates the provisions of any bond or other security previously offered or to be offered for sale or sold by or for the State of Illinois.

(e) Prior interests. This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General

Assembly, his or her spouse, minor child, or other immediate family member living in his or her residence or any combination of those persons if that contract was in existence before his or her election or employment as an officer, member, or employee. The contract is voidable, however, if it cannot be completed within 365 days after the officer, member, or employee takes office or is employed.

(f) Exceptions.

(1) Public aid payments. This Section does not apply to payments made for a public aid recipient.

(2) Teaching. This Section does not apply to a contract for personal services as a teacher or school administrator between a member of the General Assembly or his or her spouse, or a State officer or employee or his or her spouse, and any school district, public community college district, the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, or Northeastern Illinois University.

(3) Ministerial duties. This Section does not apply to a contract for personal services of a wholly ministerial character, including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist, or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly.

(4) Child and family services. This Section does not apply to payments made to a member of the General Assembly, a State officer or employee, his or her spouse or minor child acting as a foster parent, homemaker, advocate, or volunteer for or in behalf of a child or family served by the Department of Children and Family Services.

(5) Licensed professionals. Contracts with licensed professionals, provided they are competitively bid or part of a reimbursement program for specific, customary goods and services through the Department of Children and Family Services, the Department of Human Services, the Department of Healthcare and Family Services, the Department of Public Health, or the Department on Aging.

(g) Penalty. A person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000.

Note that under this statute, public aid payments are listed as an exception. 30 ILCS 500/50-13(f)(1). Additionally, as argued above, grants and interagency agreements could be construed to be exempted from this provision.

## **B. Negotiations**

The "Negotiations" section of the Illinois Procurement Code, 30 ILCS 500/50-15, applies to you as long as you continue to serve as Director and possibly in your service as an appointee (offices and agencies are not defined). 30 ILCS 500/50-15 states:

(a) It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association, or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment.

(b) Any person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000.

### **C. Exemptions**

30 ILCS 500/50-20 states how you may request an exemption from the prohibitions set forth in 30 ILCS 500/50-13. It states:

With the approval of the appropriate chief procurement officer involved, the Governor, or an executive ethics board or commission he or she designates, may exempt named individuals from the prohibitions of Section 50-13 when, in his, her, or its judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section. An exemption is effective only when it is filed with the Secretary of State and the Comptroller and includes a statement setting forth the name of the individual and all the pertinent facts that would make that Section applicable, setting forth the reason for the exemption, and declaring the individual exempted from that Section. Notice of each exemption shall be published in the Illinois Procurement Bulletin.

## **VI. Illinois Governmental Ethics Act, Conflicts of Interest**

The conflicts of interest sections of the Illinois Governmental Ethics Act, 5 ILCS 420/3A-35, apply to you as an appointee of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. As long as you are an appointee, please note the following restrictions:

(a) In addition to the provisions of subsection (a) of Section 50-13 of the Illinois Procurement Code, it is unlawful for an appointed member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor, the spouse of the appointee, or an immediate family member of the appointee living in the appointee's residence to have or acquire a contract or have or acquire a direct pecuniary interest in a contract with the State that relates to the board, commission, authority, or task force of which he or she is an appointee during and for one year after the conclusion of the person's term of office.

(b) If (i) a person subject to subsection (a) is entitled to receive more than 7 1/2 % of the total distributable income of a partnership, association, corporation, or other business entity or (ii) a person subject to subsection (a) together with his or her spouse and immediate family members living in that person's residence are entitled to receive more than 15%, in the aggregate, of the total distributable income of a partnership, association, corporation, or other business entity then it is unlawful for that partnership, association, corporation, or other business entity to have or acquire a contract or a direct pecuniary interest in a contract prohibited by subsection (a) during and for one year after the conclusion of the person's term of office.

## **VII. Public Officer Prohibited Activities Act**

The "Prohibited Interest In Contracts" sections of the Public Officer Prohibited Activities Act, 50 ILCS 105/3 and 50 ILCS 105/4, apply to you in your capacity as Director and possibly as an appointee (office is not defined) of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. As long as you are Director or serve an appointee, please note the following restrictions:

### **A. Prohibited Interest in Contracts**

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission or to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law.

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under either paragraph (1) or (2):

(1) If:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 1/2 % share in the ownership; and

B. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D. such contract is approved by a majority vote of those members presently holding office; and

E. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and

F. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$25,000.

(2) If:

A. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

B. the amount of the contract does not exceed \$2,000; and

C. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$4,000; and

D. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the interested member of the governing body of the municipality, advisory panel, or commission has less than a 1% share in the ownership; and

B. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

C. such interested member publicly discloses the nature and extent of his interest before or during deliberations concerning the proposed award of the contract; and

D. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(c) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an ownership interest of no more than 7 1/2 % in the public utility company, or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section.

(d) Notwithstanding any other provision of this Section or any other law to the contrary, until January 1, 1994, a member of the city council of a municipality with a population under 20,000 may purchase real estate from the municipality, at a price of not less than 100% of the value of the real estate as determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser, if the purchase is approved by a unanimous vote of the city council members then holding office (except for the member desiring to purchase the real estate, who shall not vote on the question).

(e) For the purposes of this Section only, a municipal officer shall not be deemed interested if the officer is an employee of a company or owns or holds an interest of 1% or less in the municipal officer's individual name in a company, or both, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market, provided the interested member: (i) publicly discloses the fact that he or she is an employee or holds an interest of 1% or less in a company before deliberation of the proposed award of the contract; (ii) refrains from evaluating, recommending, approving, deliberating, or otherwise participating in negotiation, approval, or both, of the contract, work, or business; (iii) abstains from voting on the award of the contract though he or she shall be considered present for purposes of establishing a quorum; and (iv) the contract is approved by a majority vote of those members currently holding office.

A municipal officer shall not be deemed interested if the officer owns or holds an interest of 1% or less, not in the officer's individual name but through a mutual fund,

in a company, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market.

(f) Under either of the following circumstances, a municipal officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or business of the municipality:

(1) If the municipal officer is appointed by the governing body of the municipality to represent the interests of the municipality on a not-for-profit corporation's board, then the municipal officer may actively vote on matters involving either that board or the municipality, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal officer may be reimbursed by the non-for-profit board for expenses incurred as the result of membership on the non-for-profit board.

(2) If the municipal officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, then the municipal officer may continue to serve; however, the municipal officer shall abstain from voting on any proposition before the municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal governing body.

50 ILCS 105/3

## **B. Violations**

Any alderman, member of a board of trustees, supervisor or county commissioner, or other person holding any office, either by election or appointment under the laws or constitution of this state, who violates any provision of the preceding sections, is guilty of a Class 4 felony and in addition thereto, any office or official position held by any person so convicted shall become vacant, and shall be so declared as part of the judgment of court. 50 ILCS 105/4 .

## **VIII. State Officials and Employees Ethics Act, Prohibition on Serving on Boards and Commissions**

The "Prohibition on Serving on Boards and Commissions" section of the Ethics Act, 5 ILCS 430/5-55, applies to you in your capacity as an appointee of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. As long as you are an appointee, please note the following restrictions:

Notwithstanding any other law of this State, on and after February 1, 2004, a person, his or her spouse, and any immediate family member living with that person is

ineligible to serve on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor if (i) that person is entitled to receive more than 7 1/2 % of the total distributable income under a State contract other than an employment contract or (ii) that person together with his or her spouse and immediate family members living with that person are entitled to receive more than 15% in the aggregate of the total distributable income under a State contract other than an employment contract; except that this restriction does not apply to any of the following:

(1) a person, his or her spouse, or his or her immediate family member living with that person, who is serving in an elective public office, whether elected or appointed to fill a vacancy; and

(2) a person, his or her spouse, or his or her immediate family member living with that person, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action.

#### **IX. State Officials and Employees Ethics Act, Penalties**

The penalties and injunctive relief for violating the various sections cited above of the Ethics Act are as follows.

A person is guilty of a Class A misdemeanor if that person intentionally violates any provision of Section 5-15, 5-30, 5-40, or 5-45 or Article 15. 5 ILCS 430/50-5 (a).

An ethics commission may levy an administrative fine of up to 3 times the total annual compensation that would have been obtained in violation of the revolving door. 5 ILCS 430/50-5(a-1).

A person who intentionally violates any provision of Section 5-20, 5-35, 5-50, or 5-55 is guilty of a business offense subject to a fine of at least \$1,001 and up to \$5,000. 5 ILCS 430/50-5(c).

For a violation of any Section of the Ethics Act, an ethics commission may issue appropriate injunctive relief up to and including discharge of a state employee. 5 ILCS 430/50-10.

#### **X. List of HFS Contracts, Grants, and Interagency Agreements**

Attached is a list of HFS contracts, grants, and interagency agreements as of April 2, 2010. This list is not intended to be an exhaustive list. For example, interagency agreements that are not obligated by HFS are not included. These interagency agreements are with other state agencies and HFS has delegated signature authority to these agencies to fund the services subject to the agreement. As the list is not exhaustive, should you wish



to enter into an employment relationship, receive compensation or fees for services, or otherwise engage in a business relationship with a person or entity or its parent or subsidiary, you have a continuing obligation to confirm whether that person or entity has a contract, grant, or interagency agreement with HFS.

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	<u>Contract Number</u>	<u>Contract Start Date</u>	<u>Contract End Date</u>	<u>Amount Obligated</u>
BARNES & THORNBURG LLP	8GOMB00010	7/1/2009	6/30/2010	125,000.00
BOND COUNTY	8KCC000003	7/1/2009	6/30/2010	7,249.00
BOND COUNTY	9FF0000044	7/1/2009	6/30/2010	20,000.00
BOND COUNTY	9M00000050	7/1/2009	6/30/2010	30,000.00
BROWN COUNTY	8KCC000005	7/1/2009	6/30/2010	6,259.00
BROWN COUNTY	9FF0000061	7/1/2009	6/30/2010	20,000.00
CALHOUN COUNTY	8KCC000007	7/1/2009	6/30/2010	6,212.00
CALHOUN COUNTY	9FF0000002	7/1/2009	6/30/2010	20,000.00
CASS COUNTY	8KCC000009	7/1/2009	6/30/2010	9,006.00
CASS COUNTY	9FF0000080	7/1/2009	6/30/2010	20,000.00
CHAMPAIGN CO STATES ATTY	8KSAO00001	7/1/2009	6/30/2010	370,742.00
CHAMPAIGN COUNTY CIRCUIT CLERK	8KCC000010	7/1/2009	6/30/2010	61,515.00
CHAMPAIGN CTY SHERIFF	8KSHF00001	7/1/2009	6/30/2010	35,000.00
CHICAGO STATE UNIVERSITY	9FF0000070	7/1/2009	6/30/2010	20,000.00
CLAY COUNTY HEALTH DEPARTMENT	9FF0000088	7/1/2009	6/30/2010	20,000.00
CLINTON COUNTY	8KCC000014	7/1/2009	6/30/2010	8,441.00
CLINTON COUNTY HEALTH DEPT	9FF0000003	7/1/2009	6/30/2010	20,000.00
COLES COUNTY	9FF0000004	7/1/2009	6/30/2010	25,000.00
COLES COUNTY CIRCUIT CLERK	8KCC000015	7/1/2009	6/30/2010	14,079.00
COOK COUNTY	8KCOK00001	7/1/2009	6/30/2010	1,697,862.00
COOK COUNTY	8KCOK00002	7/1/2009	6/30/2010	7,864,905.00
COOK COUNTY	8KCOK00003	7/1/2009	6/30/2010	3,032,994.00
COOK COUNTY	8KCOK00004	7/1/2009	6/30/2010	12,784,584.00
COOK COUNTY CIRCUIT COURT	9KAVG00001	7/1/2009	6/30/2010	96,638.00
COUNTY OF ADAMS	8KCC000001	7/1/2009	6/30/2010	22,499.00
COUNTY OF ADAMS	9FF0000001	7/1/2009	6/30/2010	20,000.00
COUNTY OF ALEXANDER CIR CLK	8KCC000002	7/1/2009	6/30/2010	10,768.00
COUNTY OF BOONE	9FF0000005	7/1/2009	6/30/2010	20,000.00
COUNTY OF BOONE CIRCUIT CLERK	8KCC000004	7/1/2009	6/30/2010	11,852.00
COUNTY OF BUREAU	8KCC000006	7/1/2009	6/30/2010	11,048.00
COUNTY OF BUREAU	9FF0000068	7/1/2009	6/30/2010	20,000.00
COUNTY OF CARROLL	9FF0000040	7/1/2009	6/30/2010	20,000.00
COUNTY OF CARROLL CIRCUIT CLERK	9KCC000008	7/1/2009	6/30/2010	8,438.00
COUNTY OF CHRISTIAN	8KCC000011	7/1/2009	6/30/2010	14,158.00
COUNTY OF CHRISTIAN	9FF0000090	7/1/2009	6/30/2010	20,000.00
COUNTY OF CLARK	9FF0000006	7/1/2009	6/30/2010	20,000.00
COUNTY OF CLARK CIRCUIT CLERK	8KCC000012	7/1/2009	6/30/2010	8,560.00
COUNTY OF CLAY	8KCC000013	7/1/2009	6/30/2010	6,384.00
COUNTY OF EDGAR	8KCC000022	7/1/2009	6/30/2010	5,408.00
COUNTY OF EDGAR	9FF0000007	7/1/2009	6/30/2010	20,000.00
COUNTY OF FRANKLIN	8KCC000027	7/1/2009	6/30/2010	17,791.00
COUNTY OF FULTON	9FF0000084	7/1/2009	6/30/2010	20,000.00
COUNTY OF FULTON	9M00000048	7/1/2009	6/30/2010	30,000.00
COUNTY OF FULTON CIRCUIT CLERK	8KCC000028	7/1/2009	6/30/2010	11,695.00
COUNTY OF GALLATIN	8KCC000029	7/1/2009	6/30/2010	4,947.00
COUNTY OF GREENE	9FF0000027	7/1/2009	6/30/2010	20,000.00
COUNTY OF GREENE CIRCUIT CLERK	8KCC000030	7/1/2009	6/30/2010	9,005.00
COUNTY OF GRUNDY CIRCUIT CLERK	8KCC000031	7/1/2009	6/30/2010	9,186.00
COUNTY OF HARDIN CIRCUIT CLERK	8KCC000034	7/1/2009	6/30/2010	6,835.00
COUNTY OF HENRY	8KCC000036	7/1/2009	6/30/2010	19,799.00
COUNTY OF HENRY	9FF0000037	7/1/2009	6/30/2010	20,000.00
COUNTY OF JO DAVIESS	8KCC000042	7/1/2009	6/30/2010	7,788.00
COUNTY OF JO DAVIESS	9FF0000015	7/1/2009	6/30/2010	20,000.00
COUNTY OF JOHNSON CIRCT CLERK	8KCC000043	7/1/2009	6/30/2010	5,459.00
COUNTY OF KANKAKEE	8KCC000045	7/1/2009	6/30/2010	42,758.00
COUNTY OF KANKAKEE	8KSAO00005	7/1/2009	6/30/2010	138,834.00
COUNTY OF KENDALL	8KCC000046	7/1/2009	6/30/2010	7,840.00
COUNTY OF KENDALL	9FF0000043	7/1/2009	6/30/2010	20,000.00
COUNTY OF MACOUPIN GEN ACCT	8KCC000055	7/1/2009	6/30/2010	16,409.00
COUNTY OF MCHENRY ILLINOIS	8KCC000062	7/1/2009	6/30/2010	15,408.00
COUNTY OF MCHENRY ILLINOIS	9FF0000047	7/1/2009	6/30/2010	20,000.00
COUNTY OF MERCER	8KCC000065	7/1/2009	6/30/2010	9,053.00
COUNTY OF MERCER	9FF0000021	7/1/2009	6/30/2010	20,000.00
COUNTY OF PIATT CIRCUIT CLERK	8KCC000073	7/1/2009	6/30/2010	7,719.00
COUNTY OF PIKE	9FF0000054	7/1/2009	6/30/2010	20,000.00
COUNTY OF PIKE CLERK/RECORDER	8KCC000074	7/1/2009	6/30/2010	8,838.00
COUNTY OF POPE CIRCUIT CLERK	8KCC000075	7/1/2009	6/30/2010	6,207.00

COUNTY OF ROCK ISLAND	8KCC000080	7/1/2009	6/30/2010	55,800.00
COUNTY OF ROCK ISLAND	9FF0000035	7/1/2009	6/30/2010	20,000.00
COUNTY OF SALINE	8KCC000081	7/1/2009	6/30/2010	11,694.00
COUNTY OF SCOTT	8KCC000084	7/1/2009	6/30/2010	3,400.00
COUNTY OF SCOTT	9FF0000026	7/1/2009	6/30/2010	20,000.00
COUNTY OF SHELBY	8KCC000085	7/1/2009	6/30/2010	6,183.00
COUNTY OF SHELBY HEALTH DEPT	9FF0000073	7/1/2009	6/30/2010	20,000.00
COUNTY OF STARK	8KCC000087	7/1/2009	6/30/2010	7,085.00
COUNTY OF STARK HLTH DEPT	9FF0000036	7/1/2009	6/30/2010	20,000.00
COUNTY OF STEPHENSON	8KCC000088	7/1/2009	6/30/2010	15,453.00
COUNTY OF STEPHENSON	9FF0000052	7/1/2009	6/30/2010	20,000.00
COUNTY OF TAZEWELL ILLINOIS	8KCC000089	7/1/2009	6/30/2010	41,326.00
COUNTY OF VERMILION CIR CLK	8KCC000091	7/1/2009	6/30/2010	38,650.00
COUNTY OF VERMILION HLTH DEPT	9FF0000053	7/1/2009	6/30/2010	20,000.00
COUNTY OF WABASH CIRCUIT CLERK	8KCC000092	7/1/2009	6/30/2010	8,353.00
COUNTY OF WARREN	9FF0000079	7/1/2009	6/30/2010	20,000.00
COUNTY OF WARREN CIRCUIT CLERK	8KCC000093	7/1/2009	6/30/2010	5,896.00
COUNTY OF WAYNE	9FF0000023	7/1/2009	6/30/2010	20,000.00
COUNTY OF WAYNE CIRCUIT CLERK	8KCC000095	7/1/2009	6/30/2010	8,540.00
COUNTY OF WHITE CIRCUIT CLERK	8KCC000096	7/1/2009	6/30/2010	4,507.00
COUNTY OF WILL	8KCC000098	7/1/2009	6/30/2010	81,421.00
COUNTY OF WILL HEALTH DEPT	9FF0000066	7/1/2009	6/30/2010	20,000.00
COUNTY OF WILLIAMSON	8KCC000099	7/1/2009	6/30/2010	17,238.00
COUNTY OF WINNEBAGO ILLINOIS	8KCC000100	7/1/2009	6/30/2010	42,918.00
CRAWFORD CO HEALTH DEPT	9FF0000030	7/1/2009	6/30/2010	20,000.00
CRAWFORD COUNTY CIRCUIT CLERK	8KCC000016	7/1/2009	6/30/2010	4,637.00
CUMBERLAND COUNTY	8KCC000017	7/1/2009	6/30/2010	6,818.00
CUMBERLAND COUNTY	9FF0000033	7/1/2009	6/30/2010	20,000.00
DEKALB CO HEALTH DEPT	9FF0000048	7/1/2009	6/30/2010	42,000.00
DEKALB COUNTY CIRCUIT CLERK	8KCC000018	7/1/2009	6/30/2010	14,866.00
DEKALB COUNTY SAO	8KSAO00002	7/1/2009	6/30/2010	93,645.00
DELOITTE CONSULTING LLP	9GOMB00008	7/1/2009	6/30/2010	14,795.73
DEWITT COUNTY CIRCUIT CLERK	8KCC000019	7/1/2009	6/30/2010	8,325.00
DEWITT PIATT BI CO	9FF0000051	7/1/2009	6/30/2010	20,000.00
DEWITT PIATT BI CO	9M00000051	7/1/2009	6/30/2010	30,000.00
DOUGLAS COUNTY CIRCUIT CLERK	8KCC000020	7/1/2009	6/30/2010	4,296.00
DOUGLAS COUNTY HEALTH DEPT	9FF0000008	7/1/2009	6/30/2010	20,000.00
DOUGLAS COUNTY HEALTH DEPT	9M00000049	7/1/2009	6/30/2010	30,000.00
DUPAGE COUNTY	8KMIS00007	7/1/2009	6/30/2010	300,000.00
DUPAGE COUNTY	8KSAO00003	7/1/2009	6/30/2010	583,013.00
DUPAGE COUNTY	9KAVG00002	7/1/2009	6/30/2010	150,323.00
DUPAGE COUNTY CHIEF JUDGE	8KEXP00001	7/1/2009	6/30/2010	43,000.00
EDWARDS COUNTY CIRCUIT CLERK	8KCC000023	7/1/2009	6/30/2010	7,326.00
EDWARDS COUNTY HEALTH DEPT	9FF0000009	7/1/2009	6/30/2010	20,000.00
EFFINGHAM COUNTY	9FF0000083	7/1/2009	6/30/2010	20,000.00
EFFINGHAM COUNTY CIRCUIT CLERK	8KCC000024	7/1/2009	6/30/2010	11,185.00
EGYPTIAN PUBLIC MENTAL HLTH	9FF0000010	7/1/2009	6/30/2010	20,000.00
FAYETTE COUNTY	9FF0000011	7/1/2009	6/30/2010	25,000.00
FAYETTE COUNTY CIRCUIT CLERK	0KCC000025	7/1/2009	6/30/2010	9,835.00
FORD COUNTY	8KCC000026	7/1/2009	6/30/2010	7,721.00
FORD-IROQUOIS PUBLIC HEALTH DE	9FF0000012	7/1/2009	6/30/2010	20,000.00
FRANKLIN-WILLIAMSON BI-COUNTY	9FF0000034	7/1/2009	6/30/2010	20,000.00
GABRIEL ROEDER SMITH & COMPANY	0HP0000011	10/23/2009	6/30/2010	95,000.00
GELLER JEFFREY MD	9GOMB00003	7/1/2009	6/30/2010	50,000.00
HAMILTON COUNTY CIRCUIT CLERK	8KCC000032	7/1/2009	6/30/2010	7,196.00
HAMILTON COUNTY HEALTH DEPT	9FF0000029	7/1/2009	6/30/2010	20,000.00
HANCOCK COUNTY	9FF0000063	7/1/2009	6/30/2010	20,000.00
HANCOCK COUNTY CIRCUIT CLERK	8KCC000033	7/1/2009	6/30/2010	3,061.00
HENDERSON COUNTY	9FF0000013	7/1/2009	6/30/2010	20,000.00
HENDERSON COUNTY CIRCUIT CLERK	8KCC000035	7/1/2009	6/30/2010	1,632.00
HUMAN SERVICES DEPT OF	0M00000009	7/1/2009	12/31/2009	95,000.00
HUMAN SERVICES DEPT OF	SHAREDCCOST	7/1/2009	6/30/2010	1,046,598.00
ILLINOIS DEPT EMPLOYMNT SEC	8KMIS00001	7/1/2009	6/30/2010	5,000.00
ILLINOIS DEPT OF COMMERCE	0M00000027	8/31/2009	12/31/2009	85,000.00
ILLINOIS DEPT OF HUMAN SVCS	08Z1789001	7/1/2009	6/30/2010	1,500,000.00
ILLINOIS DEPT OF HUMAN SVCS	7M00000033	7/1/2009	6/30/2010	619,322.00
ILLINOIS HOUSING DEV AUTHORITY	9M00000030	7/1/2009	6/30/2010	27,500.00
ILLINOIS STATE UNIVERSITY	9FF0000075	7/1/2009	6/30/2010	30,000.00
IROQUOIS COUNTY	8KCC000037	7/1/2009	6/30/2010	11,454.00

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JACKSON COUNTY CIRCUIT CLERK	8KCC000038	7/1/2009	6/30/2010	16,776.00
JACKSON COUNTY HEALTH DEPT	9FF0000038	7/1/2009	6/30/2010	62,730.00
JASPER COUNTY HEALTH DEPT	9FF0000060	7/1/2009	6/30/2010	20,000.00
JASPER CTY CIRCUIT CLERK	8KCC000039	7/1/2009	6/30/2010	6,639.00
JEFFERSON COUNTY	9FF0000086	7/1/2009	6/30/2010	20,000.00
JEFFERSON COUNTY CIR CLK	8KCC000040	7/1/2009	6/30/2010	15,240.00
JERSEY COUNTY CIRCUIT CLERK	8KCC000041	7/1/2009	6/30/2010	8,521.00
JERSEY COUNTY HEALTH DEPT	9FF0000014	7/1/2009	6/30/2010	20,000.00
KANE CO SA/CO S CHIDESTER	8KSAO000004	7/1/2009	6/30/2010	769,378.00
KANE COUNTY CIRCUIT CLERK	8KCC000044	7/1/2009	6/30/2010	36,421.00
KANE COUNTY HEALTH DEPARTMENT	0M00000035	12/1/2009	6/30/2010	70,000.00
KANE COUNTY HEALTH DEPT	9FF0000045	7/1/2009	6/30/2010	20,000.00
KANKAKEE COUNTY	9FF0000062	7/1/2009	6/30/2010	20,000.00
KNOX COUNTY	8KSAO000006	7/1/2009	6/30/2010	121,600.00
KNOX COUNTY	9FF0000057	7/1/2009	6/30/2010	20,000.00
KNOX COUNTY CIRCUIT CLERK	8KCC000047	7/1/2009	6/30/2010	21,514.00
LA SALLE COUNTY HEALTH DEPT	9FF0000085	7/1/2009	6/30/2010	20,000.00
LA SALLE COUNTY CIRCUIT CLERK	8KCC000049	7/1/2009	6/30/2010	28,287.00
LAKE COUNTY	8KMIS00008	7/1/2009	6/30/2010	150,000.00
LAKE COUNTY	8KSAO000007	7/1/2009	6/30/2010	796,110.00
LAKE COUNTY	9KAVG000004	7/1/2009	6/30/2010	42,686.00
LAWRENCE COUNTY CLERK	8KCC000050	7/1/2009	6/30/2010	8,565.00
LAWRENCE COUNTY HEALTH DEPT	9FF0000016	7/1/2009	6/30/2010	20,000.00
LEE COUNTY	9FF0000042	7/1/2009	6/30/2010	20,000.00
LEE COUNTY CIRCUIT CLERK	8KCC000051	7/1/2009	6/30/2010	12,285.00
LIVINGSTON CO CIRCUIT CLERK	8KCC000052	7/1/2009	6/30/2010	12,438.00
LIVINGSTON COUNTY OF	9FF0000017	7/1/2009	6/30/2010	20,000.00
LOGAN COUNTY CIRCUIT CLERK	8KCC000053	7/1/2009	6/30/2010	12,866.00
MACON COUNTY	8KSAO000008	7/1/2009	6/30/2010	340,900.00
MACON COUNTY CIRCUIT CLERK	8KCC000054	7/1/2009	6/30/2010	63,607.00
MACON COUNTY HEALTH DEPARTMENT	9FF0000050	7/1/2009	6/30/2010	20,000.00
MACOUPIN COUNTY PUB HLTH DEPT	9FF0000032	7/1/2009	6/30/2010	20,000.00
MADISON COUNTY CIRCUIT CLERK	8KCC000056	7/1/2009	6/30/2010	118,012.00
MADISON COUNTY HLTH DEPT	9FF0000055	7/1/2009	6/30/2010	20,000.00
MADISON CTY	8KSAO000009	7/1/2009	6/30/2010	636,887.00
MARION COUNTY CIRCUIT CLERK	8KCC000057	7/1/2009	6/30/2010	19,012.00
MARION COUNTY HEALTH DEPT	9FF0000028	7/1/2009	6/30/2010	20,000.00
MARSHALL COUNTY CIRCUIT CLERK	8KCC000058	7/1/2009	6/30/2010	9,294.00
MASON COUNTY CIRCUIT CLERK	8KCC000059	7/1/2009	6/30/2010	9,662.00
MASON COUNTY HEALTH DEPT	9FF0000077	7/1/2009	6/30/2010	20,000.00
MASSAC COUNTY CIRCUIT CLERK	8KCC000060	7/1/2009	6/30/2010	9,671.00
MCDONOUGH COUNTY	9FF0000018	7/1/2009	6/30/2010	30,000.00
MCDONOUGH COUNTY CIRCUIT CLERK	8KCC000061	7/1/2009	6/30/2010	6,814.00
MCLEAN COUNTY	8KCC000063	7/1/2009	6/30/2010	39,874.00
MCLEAN COUNTY	8KEXP000002	7/1/2009	6/30/2010	33,400.00
MCLEAN COUNTY	8KSAO000010	7/1/2009	6/30/2010	308,561.00
MCLEAN COUNTY	9FF0000019	7/1/2009	6/30/2010	20,000.00
MENARD COUNTY CIRCUIT CLERK	8KCC000064	7/1/2009	6/30/2010	7,741.00
MENARD COUNTY HEALTH DEPT	9FF0000020	7/1/2009	6/30/2010	20,000.00
MONROE COUNTY CIRCUIT CLERK	8KCC000066	7/1/2009	6/30/2010	7,557.00
MONROE COUNTY IL	0FF0000092	9/16/2009	6/30/2010	20,000.00
MONTGOMERY COUNTY	9FF0000059	7/1/2009	6/30/2010	20,000.00
MONTGOMERY COUNTY CIRCUIT CLERK	8KCC000067	7/1/2009	6/30/2010	12,552.00
MORGAN COUNTY	9FF0000022	7/1/2009	6/30/2010	20,000.00
MORGAN COUNTY CIRCUIT CLERK	8KCC000068	7/1/2009	6/30/2010	13,938.00
MOULTRIE CTY CIRCUIT CLK	8KCC000069	7/1/2009	6/30/2010	2,145.00
NAVIGANT CONSULTING INC	8GOMB000005	7/1/2009	6/30/2010	50,000.00
NAVIGANT CONSULTING INC	8RD0000001	7/1/2009	6/30/2010	540,000.00
NORTHERN ILLINOIS UNIVERSITY	8I00000025	4/1/2010	6/30/2010	966,525.66
OGLE COUNTY HEALTH DEPT	9FF0000024	7/1/2009	6/30/2010	20,000.00
PEORIA COUNTY CIRCUIT CLERK	8KCC000071	7/1/2009	6/30/2010	87,279.00
PEORIA COUNTY TENTH JUD CIR IL	9KAVG000003	7/1/2009	6/30/2010	54,710.00
PERRY COUNTY	8KCC000072	7/1/2009	6/30/2010	8,868.00
PERRY COUNTY HEALTH DEPT	9FF0000058	7/1/2009	6/30/2010	20,000.00
PUBLIC HEALTH DEPT OF	9M00000052	7/1/2009	6/30/2010	3,653,951.00
PULASKI COUNTY CIRCUIT CLERK	8KCC000076	7/1/2009	6/30/2010	8,620.00
PUTNAM COUNTY	9FF0000071	7/1/2009	6/30/2010	20,000.00
PUTNAM COUNTY CIRCUIT CLERK	8KCC000077	7/1/2009	6/30/2010	6,234.00
RANDOLPH CNTY CIRCUIT CLERK	8KCC000078	7/1/2009	6/30/2010	11,643.00

## IAIGA

RANDOLPH COUNTY ILLINOIS	0FF0000091	9/16/2009	6/30/2010	20,000.00
RICHLAND COUNTY	9FF0000031	7/1/2009	6/30/2010	20,000.00
RICHLAND COUNTY CLERK	8KCC000079	7/1/2009	6/30/2010	8,278.00
SANG CO DEPT OF PUBLIC HLTH	9FF0000049	7/1/2009	6/30/2010	244,000.00
SANGAMON COUNTY	8KSAO00011	7/1/2009	6/30/2010	269,981.00
SANGAMON COUNTY CIRCUIT CLERK	8KCC000082	7/1/2009	6/30/2010	56,289.00
SCHIFF HARDIN LLP	6GOMB00004	7/1/2009	6/30/2010	10,500.00
SCHUYLER COUNTY	8KCC000083	7/1/2009	6/30/2010	6,396.00
SCHUYLER COUNTY HEALTH DEPT	9FF0000025	7/1/2009	6/30/2010	20,000.00
SHEFSKY & FROELICH LTD	9GOMB00006	7/1/2009	6/30/2010	75,000.00
SOUTHERN ILLINOIS UNIVERSITY	9FF0000072	7/1/2009	6/30/2010	25,000.00
SOUTHERN ILLINOIS UNIVERSITY	9FF0000078	7/1/2009	6/30/2010	25,000.00
SOUTHERN ILLINOIS UNIVERSITY	9M00000047	7/1/2009	12/31/2009	22,500.00
ST CLAIR COUNTY	8KCC000086	7/1/2009	6/30/2010	123,921.00
ST CLAIR COUNTY	8KSAO00012	7/1/2009	6/30/2010	636,485.00
STATE OF RHODE ISLAND	9KMIS00001	7/1/2009	6/30/2010	207,150.00
TABET DIVITO & ROTHSTEIN LLC	9GOMB00002	7/1/2009	6/30/2010	100,000.00
TABET DIVITO & ROTHSTEIN LLC	9GOMB00005	7/1/2009	6/30/2010	75,000.00
UNION COUNTY CIRCUIT CLERK	8KCC000090	7/1/2009	6/30/2010	9,125.00
UNIVERSITY OF IL SPRINGFIELD	09Z2099001	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	09Z2469001	8/17/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	09Z2469002	8/17/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	09Z2899001	10/16/2009	6/30/2010	16,129.80
UNIVERSITY OF IL SPRINGFIELD	0F00000001	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0F00000002	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0F00000003	8/17/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	0GC0000001	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0GC0000003	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0I00000004	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0001	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0002	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0003	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0004	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0005	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000001	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0M00000002	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0M00000003	8/17/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0M00000011	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000012	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000013	7/1/2009	12/15/2009	10,585.49
UNIVERSITY OF IL SPRINGFIELD	0M00000014	7/1/2009	6/30/2010	22,389.63
UNIVERSITY OF IL SPRINGFIELD	0M00000015	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000016	7/1/2009	2/25/2010	18,159.76
UNIVERSITY OF IL SPRINGFIELD	0M00000017	7/1/2009	8/21/2009	4,056.42
UNIVERSITY OF IL SPRINGFIELD	0M00000018	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000023	8/17/2009	10/30/2009	4,552.26
UNIVERSITY OF IL SPRINGFIELD	0M00000024	8/17/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	0M00000037	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0M00000038	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0M00000039	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0M00000040	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0PGPSI0001	8/17/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	0SGPSI0001	8/17/2009	6/30/2010	19,224.76
UNIVERSITY OF ILLINOIS	9FF0000081	7/1/2009	6/30/2010	20,000.00
UNIVERSITY OF ILLINOIS	9FF0000087	7/1/2009	6/30/2010	20,000.00
UNIVERSITY OF ILLINOIS	9FF0000089	7/1/2009	6/30/2010	35,000.00
UNIVERSITY OF ILLINOIS AT CHGO	0M00000033	8/1/2009	6/30/2010	115,000.00
UNIVERSITY OF ILLINOIS AT CHGO	7M00000034	7/1/2009	6/30/2010	3,474,380.00
UNIVERSITY OF ILLINOIS AT CHGO	7M00000063	7/1/2009	6/30/2010	150,000.00
UNIVERSITY OF ILLINOIS AT CHGO	8I00000028	4/1/2010	6/30/2010	118,481.00
UNIVERSITY OF ILLINOIS AT CHGO	8M00000054	7/1/2009	6/30/2010	80,000.00
UNIVERSITY OF ILLINOIS AT CHGO	8M00000058	7/1/2009	6/30/2010	160,000.00
UNIVERSITY OF ILLINOIS AT CHGO	8M00000063	7/1/2009	6/25/2010	700,300.00
UNIVERSITY OF ILLINOIS AT CHGO	9FF0000082	7/1/2009	6/30/2010	111,700.00
UNIVERSITY OF ILLINOIS AT CHGO	9M00000025	7/1/2009	6/30/2010	725,000.00
VILLAGE OF OAK PARK	9FF0000076	7/1/2009	6/30/2010	20,000.00
WABASH COUNTY HEALTH DEPT	9FF0000074	7/1/2009	6/30/2010	20,000.00
WASHINGTON COUNTY	8KCC000094	7/1/2009	6/30/2010	6,889.00
WASHINGTON COUNTY	9FF0000046	7/1/2009	6/30/2010	20,000.00

## IAIGA

WHITESIDE COUNTY CIRCUIT CLERK	8KCC000097	7/1/2009	6/30/2010	19,959.00
WHITESIDE COUNTY HEALTH DEPT	9FF0000041	7/1/2009	6/30/2010	20,000.00
WINNEBAGO COUNTY HEALTH DEPT	9FF0000065	7/1/2009	6/30/2010	25,000.00
WOODFORD COUNTY	9FF0000039	7/1/2009	6/30/2010	20,000.00
WOODFORD COUNTY CIRCUIT CLERK	8KCC000101	7/1/2009	6/30/2010	11,405.00
				50,933,838.27

## INTEROFFICE MEMORANDUM

TO: John J. Cullerton, Senate President  
FROM: Eric M. Madiar, Chief Counsel  
DATE: April 8, 2010  
RE: Scope of the State Ethics Act's Revolving Door Prohibition

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### Overview

This memorandum addresses the scope of the one-year, "revolving door" employment prohibition that applies to certain State officials and employees who leave state service as contained in Section 5-45(h) of the State Officials and Employees Ethics Act ("Ethics Act"). 5 ILCS 430/5-45(h). In particular, the memorandum discusses whether the prohibition bars a State agency director from obtaining employment with a law firm where (1) that firm was actually hired by the Governor's office—not the state agency—to perform legal services concerning the director's state agency, and (2) that firm's fees were split and paid equally pursuant to a later intergovernmental agreement between the Governor's office and the state agency director. As explained below, while the revolving door prohibition appears to apply as a general matter based on its plain language, a court would likely conclude that the prohibition only applies *prospectively*. As a result, the prohibition would apply to the above circumstance if the contractual arrangement commenced on or after August 19, 2009, Section 5-45(h)'s effective. In addition, a court could reasonably conclude that the prohibition would only apply to an agency director seeking employment with a firm that the agency actually awarded a contract to, not simply one having an indirect contractual relationship with the agency.

### Discussion

On its face, the one-year revolving door prohibition applies to an agency director under the above scenario because Section 5-45(h) expressly bars employment with a prospective employer who "was a party to a State contract" valued at \$25,000 or more that "*involv[es]*" the director's state agency, irrespective of whether the director "participated personally and substantially in the award of the State contract." *Id.* This result derives from the use of the word "involve," which Illinois courts define as to "implicate" or be "connected by participation or association." *People v. Brady*, 369 Ill. App. 3d 836, 845 (2<sup>nd</sup> Dist. 2007). The intergovernmental agreement described above appears, as a literal matter, to effectuate a sufficient connection between the agency director and State contractor to trigger the revolving door prohibition. Accordingly, Section 5-45(h) would seemingly require an agency director to wait a year before seeking employment with a State contractor—even if that director did not award the contract—so long as the State contractor provided services that implicated the director's state agency and participation.

With that said, the prohibition would most likely not apply, however, to an agency director who seeks employment with a law firm under the above scenario where the contractual arrangement took place before Section 5-45(h)'s effective date. Section 5-45(h) was part of Senate Bill 54 and a new legal provision that took effect on August 18, 2009. Illinois courts presume that a new statute will apply *prospectively* if a retroactive application would have "inequitable consequences," unless the statute contains clear language to the contrary. *Doe A v. Diocese of Dallas*, 234 Ill.2d 393, 405-07 (2009). Because the Ethics Act did not previously bar such employment in this context,<sup>1</sup> and because Section 5-45(h) lacks clear language regarding its retroactive application, it is reasonable to conclude that the prohibition only applies prospectively to agency directors who seek employment with a State contractor under a contractual arrangement entered into on or after August 18, 2009.

Indeed, Speaker Michael Madigan, the sponsor of Senate Bill 54, stated in floor debate that the revolving door provision was intended to apply prospectively. See 96<sup>TH</sup> ILL. GEN. ASSEM., HOUSE PROCEEDINGS, May 21, 2009, at 45 (colloquy of Reps. Dunkin and Madigan) (*Rep. Dunkin*: "Okay. One last question. Would this have a retroactive application or is this strictly prospective? You don't have to answer the question. That's fine. Thank you." *Rep. Madigan*: "Prospective.").

Moreover, even if we assume that Section 5-45(h) applies retroactively, application of Section 5-45(h)'s plain language to an agency director whose agency had no role in selecting or procuring the contractor's services simply confounds the provision's intended purpose. Section 5-45(h) was passed in response to the actions of Brian McPartlin, former Executive Director of the Illinois Toll Highway Authority. Mr. McPartlin obtained employment with a Tollway contractor providing engineering services shortly after the Tollway awarded the firm a \$1.4 million contract. Since the Ethics Act at that time only barred employment for a year following state service with a contractor who the state official or employee personally and substantially participated in awarding a contract to, Mr. McPartlin delegated his procurement duties to his assistant. Mr. McPartlin also sought a formal waiver of the "revolving door" prohibition from the Executive Ethics Commission due to his prior award of a contract to the same engineering firm. Attorney General Madigan opposed his request before the Executive Ethics Commission. Mr. McPartlin later withdrew his waiver request and turned down the job offer with the engineering firm.

Simply put, Section 5-45(h) was intended stop agency directors or other certain senior officials or employees, for one year, from taking a job with an entity that was, a year before the director left, an agency contractor or license or regulated by the agency. See 96<sup>TH</sup> ILL. GEN. ASSEM., HOUSE PROCEEDINGS, May 21, 2009, at 29 (remarks of Speaker Madigan on SB 54) ("The Bill significantly strengthens the prohibition against revolving door, against the idea that people that are working with an agency granting significant

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<sup>1</sup> Prior to Section 5-45(h) becoming law, the Ethics Act imposed a one-year revolving door prohibition on an agency director seeking employment with (1) a State contractor (or its parent or subsidiary) if that director "participated personally and substantially in the award" of contract value at \$25,000 or more, and (2) a person or entity if that director "participated personally and substantially in the making of a regulatory or licensing decision that directly applied to that person or entity, or its parent or subsidiary." 5 ILCS 430/5-45(a) & (b). The Ethics Act, however, allowed a state official or employee subject to the prohibition to obtain a waiver from the Executive Ethics Commission. 5 ILCS 430/5-45(c).



contracts and the next day leaving the agency and taking a job with a company that got the contract.”). The provision was not intended to prohibit employment with an entity that the agency never directly contracted with and provided services to another state agency. As a result, applying Section 5-45(h) to agency director in such a circumstance leads to an absurd result that is contrary to the real-world activity it seeks to regulate. See *People v. Hanna*, 207 Ill.2d 486, 498 (2003) (“It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.”).

# **EXHIBIT B**

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

RICARDO MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,

Petitioner,

v.

BARRY MARAM,

Respondent.

RECEIVED  
OCT 12 2012

No. EXECUTIVE  
ETHICS COMMISSION

13EEC006

NOTICE OF FILING

PLEASE TAKE NOTICE that on October 12, 2012, we caused **Petitioner's Complaint** to be filed with the Executive Ethics Commission of the State of Illinois, a copy of which is attached and served upon you.

Chad Fornoff (via electronic mail and U.S. Mail)  
Administrative Law Judge  
Illinois Executive Ethics Commission  
401 South Spring Street  
513 William Stratton Building  
Springfield, IL 62706  
[chad.fornoff@illinois.gov](mailto:chad.fornoff@illinois.gov)

Respectfully submitted,

The People of the State of Illinois, by and  
through LISA MADIGAN, Attorney  
General of Illinois,

Barbara Delano  
Assistant Attorney General  
100 W. Randolph St., 11<sup>th</sup> Floor  
Chicago, Illinois 60601

\_\_\_\_\_  
Assistant Attorney General

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

RECEIVED  
OCT 12 2012

EXECUTIVE  
ETHICS COMMISSION

RICARDO MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,  
Petitioner,

v.

BARRY MARAM,  
Respondent.

No. 13EEC006

COMPLAINT

Petitioner, Ricardo Meza, in his capacity as Executive Inspector General, by and through his attorney, Lisa Madigan, Attorney General for the State of Illinois, brings this administrative action complaining of Respondent, Barry Maram, pursuant to the Illinois State Officials and Employees Ethics Act, 5 ILCS §430/1-1 *et seq.* ("Ethics Act"), and states as follows:

1. Petitioner, Ricardo Meza, is the Executive Inspector General, duly appointed by the Illinois Governor, pursuant to 5 ILCS §430/20-10.
2. In February 2003, Barry Maram ("Director Maram"), was appointed Director of the Illinois Department of Healthcare and Family Services ("HFS"), and he remained in that position until his resignation on April 15, 2010. Agency Directors, including Director Maram, are gubernatorial cabinet officials appointed by the Governor and confirmed by the Senate.
3. Director Maram was a State employee subject to the jurisdiction of the Executive Ethics Commission.

APPLICABLE STATUTE

4. In May 2003, the Illinois General Assembly passed the Ethics Act. Public Act 93-0615. The Ethics Act went into effect on November 19, 2003 and included a Revolving Door Prohibition that prohibited State employees from receiving compensation or fees from an entity

if that employee participated personally and substantially in a contracting decision with a cumulative value of over \$25,000 or a regulatory or licensing decision that directly applied to the prospective employer in the year immediately preceding termination of State employment.

5. In 2009, the Illinois General Assembly amended the Revolving Door Prohibition of the Ethics Act by, among other things, adding Subsection (h), which was effective August 18, 2009. 5 ILCS 430/5-45(h).

6. Director Maram, who was appointed by the Governor and confirmed by the Senate to be the Director of HFS, began his employment as the Director of HFS in February 2003 and continued as the Director of HFS after the 2009 amendments went into effect and until his termination of State employment in April 2010.

7. When Director Maram terminated his State employment, he had a duty to comply with the Revolving Door Prohibition in the Ethics Act, 5 ILCS §430/5-45(h), and with all policies adopted and implemented pursuant to the Revolving Door Prohibition of the Ethics Act. 5 ILCS §430/5-45.

8. Section 5-45(h) of the Ethics Act states:

The following officers, members, or State employees shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency, or was the subject of a regulatory or licensing decision involving the officer, member, or State employee's State agency, regardless of whether he or she participated personally and substantially in the award of the State contract or contracts or the making of the regulatory or licensing decision in question:

- 1) members or officers;
- 2) members of a commission or board created by the Illinois Constitution;
- 3) persons whose appointment to office is subject to the advice and consent of the Senate;

- 4) the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State;
- 5) chief procurement officers, State purchasing officers, and their designees whose duties are directly related to State procurement; and
- 6) chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors.

5 ILCS §430/5-45(h).

### **SUMMARY OF FACTS**

9. In response to an anonymous complaint, the Office of the Executive Inspector General ("OEIG") conducted an investigation and on May 30, 2012, issued a Final Report ("OEIG Final Report") that found Director Maram violated the Ethics Act's Revolving Door Prohibition when he knowingly accepted employment and received compensation from Shefsky & Froelich ("Shefsky"), an entity that was a party to state contracts valued at more than \$25,000 that involved HFS, in violation of Subsection 5-45(h). See Exhibit 1 (OEIG Final Report).

10. In 2008, state taxpayers filed a lawsuit against Director Maram (in his capacity as HFS Director), then-Governor Rod Blagojevich, and other State defendants, seeking to prohibit the defendants from expanding, funding and operating the state's children's health insurance program. *Caro ex rel. State of Illinois v. Blagojevich*, 385 Ill. App. 3d 704 (1st Dist. 2008).

11. In October 2008, Shefsky was retained by the Office of the Governor to represent Director Maram, then-Governor Rod Blagojevich, and other State defendants in *Caro ex rel. State of Illinois v. Blagojevich*.

12. The contract between the Office of the Governor and Shefsky was effective October 24, 2008 through June 30, 2009 ("FY09 Shefsky Contract") and was renewed by the Office of the Governor for an additional year through June 30, 2010 ("FY10 Shefsky Contract"). See Exhibit 2 (FY09 Shefsky Contract and FY10 Shefsky Contract).

13. The FY09 Shefsky Contract and the FY10 Shefsky Contract both provided for payments up to \$150,000. *Id.*

14. The FY09 Shefsky Contract and the FY10 Shefsky Contract identified the Office of the Governor as the "coordinating agency" responsible for receiving all invoices and allocating costs among the agencies and expressly provided that payments will be made by "IGA" ("Interagency Agreement"). The FY09 Shefsky Contract and the FY10 Shefsky Contract stated that the need for services was for "legal advice and analysis in anticipation of litigation relating to issues involving the AGENCY [Office of the Governor], State of Illinois agencies directly responsible to the Governor and associated officers, directors and employees." The contracts further explained that:

[f]or the purposes of this CONTRACT, the Office of the Governor shall be the coordinating AGENCY, will receive all invoices and billing and payment questions, and may direct an allocation of payment obligations to other State of Illinois agencies that receive benefits of the services rendered under this CONTRACT. Such allocation shall be pursuant to the coordinating AGENCY's assessment of the other State of Illinois agencies uses of and benefits from the services rendered.

*Id.*

15. Pursuant to the express terms of the FY09 Shefsky Contract and FY10 Shefsky Contract, HFS entered into two Interagency Agreements with the Office of the Governor through which HFS agreed to pay 50% of Shefsky's legal fees. *See* Exhibit 3 (Interagency Agreement and Interagency Agreement – FY10).

16. Both agreements were signed on Director Maram's behalf by HFS employees. The first interagency agreement was signed on January 5, 2009 ("FY09 IGA") by Director Maram's then Chief of Staff, and the second interagency agreement was signed on June 30, 2009 ("FY10 IGA") by Director Maram's administrative assistant. *Id.*

17. Under the FY09 IGA and the FY10 IGA, HFS agreed to pay 50% of the total cost of legal services rendered by Shefsky in representing Director Maram and other State defendants in the *Caro* matter, or up to \$75,000 of the \$150,000 stated contract amount for each contract. The FY10 IGA states:

This Interagency Agreement is entered into between the Office of the Governor and the Illinois Department of Healthcare and Family Services (the "Agency"), pursuant to the "Intergovernmental Cooperation Act" (5 ILCS 220) and in connection with certain professional services provided to the State of Illinois by Shefsky & Froelich ("Vendor").

1. To assist the Office of the Governor, the Agency, and the officers and employees in connection with issues relating to the Agency. Vendor was retained to provide advice, counsel, and, where appropriate, legal representation of the Office of the Governor, the Agency, and officers and employees of the State of Illinois; and perform such other legal services as are requested and as may be contemplated under the terms of the contract between Vendor and the State of Illinois on the matters of: Caro et. al., v. Blagojevich, et. al. The Office of the Governor has been the Coordinating Agency responsible for the preparation of the underlying contract and other administrative functions in connection with these services (copy of contract attached for reference).
2. The Office of the Governor and the Agency agree that the Agency shall pay an allocable share of the cost of obtaining services under the contract with Vendor, and in furtherance of Section 1 of the "Pricing/Compensation" provisions of the underlying contract effective October 24, 2008 through June 30, 2009, and renewed for the period of July 1, 2009 through June 30, 2010 (see Appendix A for Agency allocable share). Total compensation under this contract shall not exceed \$150,000.
3. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on both parties hereto, notwithstanding that both parties are not signatories to the same counterpart.
4. The term of this Agreement is effective as of the start date of the underlying contract between the Office of the Governor and Vendor and, unless otherwise terminated by one of the parties, shall continue through June 30, 2010. Notice of termination must be in writing and may be delivered by any means.

*Id.*

18. Based on a review of HFS' invoice vouchers and warrant summaries, the OEIG found that HFS paid Shefsky \$33,846.82 for legal services pursuant to the FY09 Shefsky Contract and



the FY09 IGA, and \$5,334.79 for legal services pursuant to the FY10 Shefsky Contract and the FY10 IGA. *See* Exhibit 1 (OEIG Final Report).

19. HFS reviewed and approved payment for services rendered by Shefsky under the FY09 and FY10 Shefsky Contracts and FY09 and FY10 IGAs after the effective date of the 2009 Revolving Door Prohibition amendments throughout the year prior to Director Maram's termination of State employment.

20. Prior to terminating State employment, and aware of his obligations pursuant to the 2009 Revolving Door Prohibition amendments, Director Maram sought guidance about his post-State employment possibilities and restrictions from HFS' Ethics Officer, the Governor's Office General Counsel and the Senate President's Chief Legal Counsel. *See* Exhibit 1 (OEIG Final Report), Exhibit 4 (April 6, 2010 Inter-Office Memorandum from Jeanette Badrov, Ethics Officer to Barry Maram, Director, Department of Healthcare and Family Services), and Exhibit 5 (April 8, 2010 Interoffice Memorandum from Eric M. Madiar, Chief Counsel to John J. Cullerton, Senate President).

21. On April 6, 2010, HFS Ethics Officer Jeanette Badrov sent Director Maram a memo in response to Director Maram's inquiry for "guidance from the HFS Ethics Officer regarding the impact of various revolving door and conflicts of interest provisions on accepting employment, compensation, or fees for services as an attorney with a law firm." *See* Exhibit 4 (April 6, 2010 Inter-Office Memorandum from Jeanette Badrov, Ethics Officer to Barry Maram, Director, Department of Healthcare and Family Services).

22. In the section of the Ethics Officer's April 6, 2010 memo titled "Contracts Under the Revolving Door," the Ethics Officer explained to Director Maram that there is no law or guidance regarding the definition of the term "contract," but "one should assume that grants and

interagency agreements with a cumulative value of \$25,000 or more with persons or entities that are not affiliated with the State of Illinois (e.g. counties, cities, and other local government units) are included in the definition of contracts.” *Id.*

23. The Ethics Officer attached a list of “HFS contracts, grants and interagency agreements,” that was not supposed to be an exhaustive list but which did include the FY10 Shefsky Contract. *Id.*

24. At the time the Ethics Officer wrote the memo, Director Maram told the Ethics Officer that he did not know which law firm he planned to join and therefore the memo did not address specifically Director Maram’s potential employment with Shefsky. *Id.*

25. The Ethics Officer informed Director Maram in her memo that her guidance was based solely on the facts she was aware of at the time (which did not include Director Maram’s prospective employment with Shefsky), and informed him that her memo was merely guidance and could not be used as a substitute for an opinion from the Attorney General. *Id.*

26. The Ethics Officer’s April 6, 2010 memo stated:

Because this guidance is given under the authority of the Employee Handbook and the Ethics Act, it is not intended to be used as a substitute for an opinion from the Attorney General; only the Attorney General has the constitutional authority to issue binding opinions with precedential value. In the event you need a formal opinion, you should seek it from the Attorney General.

*Id.*

27. The May 30, 2012 OEIG Final Report found that Director Maram violated the Revolving Door Prohibition of the Ethics Act. *See* Exhibit 1 (OEIG Final Report).

28. HFS Director is a position defined as one subject to the advice and consent of the Illinois Senate and classifies Director Maram as a category (h) employee. *See* 5 ILCS 430/5-45(h)(3).

29. Category (h) employees are prohibited from accepting employment or receiving compensation from an entity if that entity was a “a party to a State contract or contracts with a cumulative value of \$25,000 or more **involving** the officer, member, or State employee’s State agency...regardless of whether he or she participated personally and substantially in the award of the State contract or contracts.” 5 ILCS 430/5-45(h)(emphasis added).

30. Director Maram terminated State employment on April 15, 2010 and began receiving compensation from Shefsky on April 30, 2010. *See* Exhibit 1 (OEIG Final Report).

31. Director Maram continued to receive compensation from Shefsky the entire year after termination of State employment. *Id.*

32. Shefsky was a party to State contracts with a cumulative value of more than \$25,000 that involved HFS and Director Maram.

33. The OEIG found that Director Maram violated subsection (h) of the Revolving Door Prohibition because within a year immediately after his termination of State employment, Director Maram knowingly accepted employment and received compensation from an entity that during the year immediately preceding his termination of State employment was a party to State contracts with a cumulative value of \$25,000 or more involving HFS. *Id.*

34. The Ultimate Jurisdictional Authority (“UJA”) for HFS is the Office of the Governor. On July 3, 2012, after receiving the OEIG Final Report, the Office of the Governor submitted the UJA response pursuant to 5 ILCS 430/20-50(a). *See* Exhibit 6 (UJA Response to Final Report in OEIG Case No. 11-00573).

**COUNT I – VIOLATION OF THE ETHICS ACT**  
**REVOLVING DOOR PROHIBITION**

1. Petitioner hereby repeats and re-alleges Paragraphs 1 through 43.

2. By accepting employment and receiving compensation from Shefsky, an entity that had a State contract with a cumulative value of more than \$25,000 within a year immediately preceding Director Maram's termination of State employment that involved Director Maram and HFS, Director Maram violated the Revolving Door Prohibition of the Ethics Act. 5 ILCS §430/5-45(h).

3. A violation of the Revolving Door Prohibition of the Ethics Act is subject to an administrative fine pursuant to section 50-5(a-1) of the Ethics Act 5 ILCS 430/50-5(a-1).

WHEREFORE, Petitioner requests that the Commission:

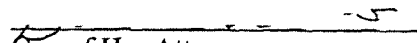
- A. Enter a decision finding that Director Maram violated the Revolving Door Prohibition by accepting employment and receiving compensation from Shefsky & Froelich within one year preceding termination of State employment; and
- B. Levy an administrative fine against Director Maram in accordance with 5 ILCS 430/50-5(a-1).

Date: October 12, 2012

Respectfully Submitted,

RICARDO MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,  
Petitioner,

By and through LISA MADIGAN,  
Attorney General of Illinois,

  
One of Her Attorneys

Barbara Delano  
Assistant Attorney General  
Office of the Illinois Attorney General  
100 W. Randolph St., 11<sup>th</sup> Floor  
Chicago, Illinois 60601

# EXHIBIT 1

Office of Executive Inspector General for the  
Agencies of the Illinois Governor

Investigation Case No. 11-00573



*As required under the State Officials and Employees Ethics Act (Ethics Act), this Final Report is submitted to the appropriate ultimate jurisdictional authority and the head of each State agency affected by or involved in the investigation, if appropriate. Pursuant to the Ethics Act, this Final Report and any attachments are CONFIDENTIAL and are not subject to the Freedom of Information Act. The Final Report and attachments may be disclosed only on a need-to-know basis to those persons the ultimate jurisdictional authority or head of each affected or involved State agency has deemed necessary, as well as to the subject(s) of the investigation. Neither this Final Report nor any information contained herein may be shared with anyone outside the affected or involved agency, the appropriate ultimate jurisdictional authority, or the subject(s) without the express prior authorization of the Executive Inspector General.*

## **FINAL REPORT**

### **I. ALLEGATIONS**

The Office of Executive Inspector General received an anonymous complaint alleging that former Illinois Department of Healthcare and Family Services (HFS) Director Barry Maram violated the Illinois State Officials and Employees Ethics Act (Ethics Act) Revolving Door Prohibition.<sup>1</sup> Specifically, the complaint alleged that immediately after terminating his State employment, Mr. Maram began working for a law firm that had a State contract involving HFS.<sup>2</sup>

### **II. BACKGROUND**

#### **A. *Caro v. Blagojevich* Litigation**

In 2008, State taxpayers filed a lawsuit against former Governor Blagojevich, HFS, the Illinois Department of Public Health, Mr. Maram in his capacity as HFS Director, and others. *See Caro v. Blagojevich*, 385 Ill. App. 3d 704 (2008). During the course of the lawsuit, the State of Illinois Office of the Governor (Governor's Office) retained the law firm of Shefsky & Froelich to represent the *Caro* defendants including Mr. Maram and HFS.<sup>3</sup>

#### **B. *Ethics Act Revolving Door Prohibition***

In 2009, the Illinois General Assembly amended the Revolving Door Prohibition of the Ethics Act by, among other things, adding Subsection (h) (hereafter Subsection (h)), which was effective August 18, 2009. 5 ILCS 430/5-45(h). Pursuant to the 2009 amendment, certain members, officers, and State employees are barred, within one year immediately after termination of State employment, from:

[K]nowingly accept[ing] employment or receiv[ing] compensation or fees for services from a person or entity if the person or entity ... during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the ... State employee's State agency ... regardless of whether he or she participated personally and substantially in the award of the State contract or contracts....

<sup>1</sup> See 5 ILCS 430/5-45.

<sup>2</sup> The complaint also alleged that an HFS Division of Medical Programs Administrator had a conflict of interest when she gave a presentation on healthcare issues at Shefsky & Froelich. The OEIG interviewed numerous individuals regarding this allegation and determined that there was insufficient evidence to show the employee's participation constituted a conflict of interest; thus, the allegation is **UNFOUNDED**.

<sup>3</sup> The lawsuit, filed in Cook County Circuit Court, sought to prohibit Illinois from expanding, funding, and operating a State health insurance program. The Circuit Court of Cook County ruled in favor of plaintiffs and the Illinois Appellate Court affirmed the ruling, concluding that HFS and others lacked the authority to fund and operate a State health insurance program under a State medical assistance program, absent compliance with requirements of the "Temporary Assistance for Needy Families" article of the Illinois Public Aid Code. *Caro*, 385 Ill.App.3d at 704.

Among those members, officers, and State employees who are precluded from accepting certain employment and compensation or fees, simply by virtue of their position, are persons whose appointment to office is subject to the advice and consent of the Illinois Senate, like agency directors. Thus, the position of HFS Director is subject to Subsection (h) of the Ethics Act Revolving Door Prohibition.

### III. INVESTIGATION

#### A. *Barry Maram's Employment as HFS Director and Resignation*

Effective in February 2003, Barry Maram was appointed HFS Director. Mr. Maram was HFS Director from February 2003 through early April 2010.

On April 9, 2010, Mr. Maram provided a letter of resignation to Governor Pat Quinn in which Mr. Maram advised that his resignation would be effective at the close of business on April 15, 2010. In the same letter, Mr. Maram also advised that he was resigning from all related boards, commissions, authorities, and task forces to which he had been appointed.

#### B. *Documents Reviewed Relating to the Caro Lawsuit*

During the investigation, OEIG investigators obtained and reviewed numerous documents relating to Shefsky & Froelich's representation of the Governor's Office, HFS, and HFS Director Maram in regards to the *Caro* lawsuit.

##### i) *Shefsky & Froelich's \$150,000 State Contract in Fiscal Year 2009*

On October 24, 2008, the Governor's Office entered into a contract to retain Shefsky & Froelich (FY09 Shefsky Contract). Specifically, under the FY09 Shefsky Contract, Shefsky & Froelich agreed to provide legal services to the Governor's Office, State agencies directly responsible to the Governor, including HFS, and associated directors and employees of the State in defense of the *Caro* lawsuit.<sup>4</sup> This contract was effective from October 24, 2008 to June 30, 2009. The amount payable under the FY09 Shefsky Contract was capped at \$150,000. Shefsky & Froelich agreed to bill the State a rate of \$200 per hour for attorneys, \$150 per hour for paralegals, plus reasonable expenses. The FY09 Shefsky Contract identified the Governor's Office as the "coordinating agency," which received all invoices and allocated costs among the agencies.

On January 5, 2009, HFS entered into an Interagency Agreement (FY09 Interagency Agreement) with the Governor's Office relating to the FY09 Shefsky Contract. Mr. Maram's former Chief of Staff signed the FY09 Interagency Agreement in Mr. Maram's name. In addition, the Contract-Obligation Document related to the FY09 Interagency Agreement contains Mr. Maram's typewritten name identifying him as the individual who "authorized" HFS's obligated amount. Under the FY09 Interagency Agreement, HFS agreed to pay 50% of the total

<sup>4</sup> The Governor's Office entered into a separate contract with Shefsky & Froelich, around the same time, for general legal services. HFS also entered into an interagency agreement with the Governor's Office to pay half of the cost of legal services rendered by Shefsky & Froelich under that contract. However, no services were performed.



cost of legal services rendered by Shefsky & Froelich in the *Caro* matter, or up to \$75,000 of the \$150,000 stated contract amount.

During the term of the FY09 Shefsky Contract, Shefsky & Froelich submitted invoices to the Governor's Office. The Governor's Office then forwarded the invoices to HFS. These invoices reflect that Shefsky & Froelich billed the Governor's Office \$67,183.63 for services rendered between October 24, 2008 and June 30, 2009.

A review of HFS Invoice Vouchers and Warrant Summaries reflects that HFS paid Shefsky & Froelich a total of \$33,846.82 (or slightly more than 50% of the \$67,183.63 billed) for legal services pursuant to the FY09 Interagency Agreement.

ii) *Shefsky & Froelich's \$150,000 Contract in Fiscal Year 2010*

On July 7, 2009, the Governor's Office entered into a "Contract Renewal - FY10," effective July 1, 2009 to June 30, 2010. The renewal contract contained the same terms and conditions as the \$150,000 FY09 Shefsky Contract, except that the contract was effective during Fiscal Year 2010 (FY10 Shefsky Contract).

Prior to execution of the FY10 Shefsky Contract, on June 30, 2009, HFS again entered into an Interagency Agreement (FY10 Interagency Agreement) with the Governor's Office in which HFS agreed to pay 50% of the total cost of services rendered by Shefsky & Froelich, or up to \$75,000 of the \$150,000 stated contract amount, in defense of HFS in the *Caro* lawsuit during Fiscal Year 2010. Mr. Maram's former administrative assistant signed the FY10 Interagency Agreement in Mr. Maram's name. In addition, the Contract-Obligation Document related to the FY10 Interagency Agreement contains Mr. Maram's typewritten name identifying him as the individual who "authorized" HFS's obligated amount.

Under the FY10 Shefsky Contract, Shefsky & Froelich billed the Governor's Office \$9,911.89 for services rendered between July 1, 2009 and June 30, 2010.

HFS Invoice Vouchers and Warrant Summaries reflect that HFS paid Shefsky & Froelich \$5,334.79 (or slightly more than 50%), including an interest penalty, directly for legal services, pursuant to the FY10 Interagency Agreement.

C. *Shefsky & Froelich's \$250,000 Per Year Employment Offer to Barry Maram*

On March 25, 2010, Shefsky & Froelich sent Mr. Maram a letter summarizing the terms pursuant to which Mr. Maram would be joining the firm. The March 25, 2010 letter was signed by Cezar M. Froelich and stated, among other things, "These are the salient points of our arrangement: (1) Salary: \$250,000 per year paid bi-monthly" and also included the following, "I want to again emphasize how excited we all are to have you as a member of our firm."

On April 21, 2010, Mr. Maram began employment at Shefsky & Froelich. Mr. Maram received his first paycheck on April 30, 2010 and as of May 2012, continued to draw a salary.<sup>5</sup>

**D. Interviews of HFS General Counsel and Ethics Officer Jeanette Badrov**

On July 28, 2011 and April 25, 2012, the OEIG interviewed HFS General Counsel and Ethics Officer Jeanette Badrov. As Ethics Officer, Ms. Badrov responds to all ethical issues involving HFS employees. As General Counsel, Ms. Badrov said she had overall responsibility for HFS legal issues, but delegated some legal matters to her staff attorneys, and in fact indicated that she did not have any involvement with the Shefsky Contracts or the corresponding Interagency Agreements.

According to Ms. Badrov, sometime prior to Mr. Maram's April 15, 2010 termination of State employment, he requested guidance from her regarding the Revolving Door Prohibition, as well as other conflict of interest policies. At the time of his request, Mr. Maram mentioned to Ms. Badrov that he was interviewing with several law firms, including Shefsky & Froelich. Ms. Badrov said she consulted with representatives of the Governor's Office and the Executive Ethics Commission in response to Mr. Maram's request.

Ms. Badrov subsequently drafted an April 6, 2010 memorandum responding to Mr. Maram's questions and included an excel spreadsheet containing separate tabs identifying contracts and interagency agreements, among others, involving HFS as of April 6, 2010. The interagency agreement tab included five columns, the first of which identified the name of the vendor. The next column identified the Contract Numbers, and subsequent columns identified Contract Start Dates, Contract End Dates, and Amounts Obligated to all vendors through interagency agreements involving HFS. Included on this interagency agreement tab was the FY10 Shefsky Contract, set forth as follows:

	<u>Contract Number</u>	<u>Contract Start Date</u>	<u>Contract End Date</u>	<u>Amount Obligated</u>
<b>SHEFSKY &amp; FROELICH LTD</b>	9GOMB00006	7/1/2009	6/30/2010	75,000.00

Ms. Badrov recalled that she gave Mr. Maram the memorandum around April 6, 2010 with a draft of the excel spreadsheet. In addition, Ms. Badrov clearly recalled that on April 15, 2010, Mr. Maram's last day of work, she gave Mr. Maram an updated version of the excel spreadsheet identifying State contracts and interagency agreements involving HFS and various parties, including Shefsky & Froelich. Ms. Badrov said that she drafted the memorandum for HFS Director Maram because he had requested that she do so, but noted that she did not provide ethics opinions as a matter of course.

According to Ms. Badrov, Mr. Maram would have been aware of the *Caro* lawsuit and would have been aware that Shefsky & Froelich was one of the firms retained to represent him and HFS, because she believed there were meetings about the *Caro* lawsuit that Mr. Maram attended, along with representatives of Shefsky & Froelich and the Governor's Office. Ms.

<sup>5</sup> On May 16, 2012, OEIG investigators visited the Shefsky & Froelich website. The website included a list of firm attorneys, including Mr. Maram.

Badrov, however, did recall that Mr. Maram seemed surprised when he saw Shefsky & Froelich's name on the lists of contracts and interagency agreements involving HFS and others.

Ms. Badrov said she thought agency directors are required to sign off on all interagency agreements, but she was unsure if there were any written policies regarding this practice. Ms. Badrov was also unsure if agency directors could delegate their authority to execute interagency agreements. After reviewing the FY10 Interagency Agreement, which Mr. Maram's administrative assistant signed on his behalf, Ms. Badrov said that she was not surprised that Mr. Maram gave his administrative assistant his signatory authority.

Ms. Badrov said she did not have any detailed discussions with Mr. Maram about the Revolving Door Prohibition, but stated that at some point, she informed him that her fiduciary responsibility was to the State and that her opinion was just general guidance. Ms. Badrov said she was aware that Mr. Maram subsequently sought an opinion from Illinois State Senator John Cullerton's office. Ms. Badrov also said that she arranged for Senator Cullerton's office to receive copies of the Shefsky & Froelich Contracts and Interagency Agreements. Ms. Badrov said that "everyone" was aware that Mr. Maram ultimately accepted employment with Shefsky & Froelich, but she could not recall when she learned of this employment.<sup>6</sup>

***E. HFS General Counsel Jeanette Badrov's April 6, 2010 Ethics Opinion***

In the April 6, 2010 memorandum Ms. Badrov provided Mr. Maram, she summarized various revolving door and conflict of interest provisions. Prior to giving her opinion, Ms. Badrov reiterated Mr. Maram's request that she prepare the memorandum and particularly noted the following:

You stated that you are resigning from your position as Director and from all your appointee positions. You stated you intend to work as an attorney with a law firm. You do not know which law firm you will be joining. You stated that you would like guidance from the HFS Ethics Office regarding the impact of various revolving door and conflicts of interest provisions on accepting employment, compensation, or fees for services as an attorney with a law firm.

Ms. Badrov stated that Mr. Maram was subject to Subsection (h) of the Revolving Door Prohibition. She also opined that under the Revolving Door Prohibition, one should assume the term "contract" would include "grants and interagency agreements with a cumulative value of \$25,000 or more with persons or entities that are not affiliated with the State of Illinois (e.g. counties, cities, and other local government units)." As noted above, Ms. Badrov attached to the April 6, 2010 memorandum an excel spreadsheet containing separate tabs identifying active HFS contracts, grants, and interagency agreements, and advised Mr. Maram that if he wanted to enter into an employment relationship with a particular entity, he had a "continuing obligation to confirm whether that person or entity has a contract, grant, or interagency agreement with HFS."

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<sup>6</sup> Ms. Badrov said she did not report to the OEIG Mr. Maram's employment with Shefsky & Froelich because she did not think there were any issues with his employment there. Ms. Badrov explained that the interagency agreements were between HFS and the Governor's Office, not HFS and Shefsky & Froelich.

The list Ms. Badrov attached to the memorandum identified the FY10 Shefsky Contract on the interagency agreement tab. See Exhibit 1 (with attachments).

**F. HFS General Counsel and Ethics Officer Badrov's April 8, 2010 Email**

On April 8, 2010 at 11:36 am, Ms. Badrov sent to several staff members in the Governor's Office an email, which stated as follows:

Director Maram has stated that he has received an inquiry from Senator Cullerton to provide documents showing that HFS did not control the Shefsky & Froelich procurement. ... The attached is what HFS would submit to any legislator who made an inquiry. ... Please review and advise.

The following documents were identified as attachments to Ms. Badrov's April 8, 2010 email:

- Shefsky FY09 Contract and IGA – JCAR and FC.pdf<sup>7</sup>
- Shefsky FY10 Renewal Contract and IGA – Caro.pdf<sup>8</sup>
- Gov Emails Shefsky 09 and 10.pdf<sup>9</sup>
- Shefsky FY09 Contract and IGA – Caro.pdf<sup>10</sup>

On the same day, April 8, 2010, at 2:56 pm, Mr. Maram sent Senator Cullerton's Chief Legal Counsel an email marked "high" importance that included each of the aforementioned attachments, except the emails between the Governor's Office and other individuals regarding the authorization and execution of the FY09 and FY10 Interagency Agreements.

**G. Interview of Former HFS Director Barry Maram**

On April 10, 2012, the OEIG interviewed former HFS Director Barry Maram. Mr. Maram stated that he served as HFS Director for approximately seven years. Mr. Maram said that he was aware of the Revolving Door provision of the Ethics Act and agreed that his position was subject to Subsection (h) of the Revolving Door Prohibition of the Ethics Act.

**i) Barry Maram's Meeting with Governor's Office and Job Search**

According to Mr. Maram, on or about March 12, 2010, after meeting with a high-ranking official from Governor Quinn's Office, he began looking for new employment. Mr. Maram stated that after the March 12 meeting, he began contacting law firms and other organizations regarding possible future employment. Mr. Maram said that he contacted Cezar M. Froelich, whom he said he knew since childhood, sometime in March 2010 for a recommendation of a

<sup>7</sup> This attachment consisted of the contract for general services noted in footnote 4, *supra*.

<sup>8</sup> This attachment consisted of the FY10 Shefsky Contract, FY10 Interagency Agreement, and other supporting documents related to the *Caro* litigation.

<sup>9</sup> This attachment consisted of three emails sent by the Governor's Office to individuals and HFS staff requesting HFS's authorization of the interagency agreements for Shefsky & Froelich's services related to the *Caro* litigation.

<sup>10</sup> This attachment consisted of the FY09 Shefsky Contract, FY09 Interagency Agreement, and other supporting documents related to the initial contract between the Governor's Office and Shefsky & Froelich related to the *Caro* litigation.

headhunter. Thereafter, according to Mr. Maram, Shefsky & Froelich became interested in hiring him. Mr. Froelich eventually sent Mr. Maram a March 25, 2010 letter detailing what Mr. Maram's position would be and the parameters of his possible employment with Shefsky & Froelich. Mr. Maram stated, however, that he did not accept employment with Shefsky & Froelich until after he left his employment with HFS.

*ii) The FY09 & FY10 Interagency Agreements*

Mr. Maram said that he did not recall asking Ms. Badrov to research the Revolving Door Prohibition of the Ethics Act, and suggested that Ms. Badrov may have simply written the April 6, 2010 memorandum as a matter of course. According to Mr. Maram, on April 6, 2010, he received from Ms. Badrov a list of all the entities that had contracts or interagency agreements involving HFS attached to a memorandum regarding the Revolving Door Prohibition. During his interview, Mr. Maram acknowledged having seen the April 6, 2010 memorandum and attachment.

Mr. Maram said that when he first began discussions with Shefsky & Froelich, he had no knowledge that Shefsky & Froelich represented either HFS or himself in any matters. Mr. Maram said that it was only when Ms. Badrov provided him with a list of entities [attached to the April 6, 2010 memorandum] that he realized HFS had contracts or interagency agreements relating to Shefsky & Froelich.

Mr. Maram said that prior to receiving information from Ms. Badrov on April 6, 2010, he was not aware of the two interagency agreements between HFS and the Governor's Office regarding the FY09 and FY10 Shefsky Contracts, even though both agreements were signed by HFS employees on his behalf. The first interagency agreement that required HFS to pay legal fees up to \$75,000 was signed on January 5, 2009 by Mr. Maram's former Chief of Staff. The second interagency agreement was signed on June 30, 2009 by Mr. Maram's administrative assistant. Mr. Maram stated that he was not aware of what his administrative assistant's actual signatory authority level was, but assumed it was at least \$75,000, because that was the amount of the interagency agreement.

Mr. Maram said that he was shocked to see Shefsky & Froelich on the list of entities that had contracts or interagency agreements involving HFS even though he acknowledged that his employees had signed the interagency agreements on his behalf and that Shefsky & Froelich had performed legal services on his and HFS's behalf. He said that when he saw that Shefsky & Froelich was identified in the list of interagency agreements, he called the Governor's Office and spoke to someone in the legal department, who told him that HFS had not been involved in the procurement of the Shefsky & Froelich contract.

Mr. Maram explained that on April 7, 2010, he told Shefsky & Froelich about the situation, and placed the employment offer on hold while he looked into the matter. Mr. Maram stated that he did so because he was concerned about the fact that Shefsky & Froelich had a contract related to HFS. Mr. Maram said he did not discuss the April 6, 2010 memorandum or the Revolving Door Prohibition with Ms. Badrov.

iii) *Barry Maram Contacts State Senator John Cullerton's Office*

According to Mr. Maram, either the same day he received the memorandum or the next day, April 7, 2010, he decided to find the legislative history of the Ethics Act, because he noticed that the Shefsky & Froelich Contracts involving HFS were in place prior to the effective date (August 18, 2009) of Subsection (h) of the Ethics Act's Revolving Door Prohibition. Mr. Maram said that he then contacted Senate President John Cullerton, because Senator Cullerton served as the Senate President when the Ethics Act was amended. Mr. Maram stated that he told Senator Cullerton that he needed clarification of the Ethics Act because, in Mr. Maram's opinion, it did not make sense that the Act would apply to him when he had no involvement with the procurement of the Shefsky & Froelich Contracts, which again predated the enactment of Subsection (h). According to Mr. Maram, Senator Cullerton referred him to his Chief Legal Counsel.

Mr. Maram said he spoke to Senator Cullerton's Chief Legal Counsel and provided Counsel with the facts relating to his circumstances. Mr. Maram said he asked Senator Cullerton's Chief Legal Counsel to look into the history and legislative intent of Subsection (h) of the Revolving Door Prohibition. Mr. Maram recalled being asked for background documents such as the contracts and interagency agreements. Mr. Maram stated that he "probably" asked Ms. Badrov to provide those documents to Senator Cullerton's Chief Legal Counsel.<sup>11</sup>

According to Mr. Maram, he believed Senator Cullerton's Chief Legal Counsel called him on or about April 7, 2010, and told him that he (Chief Legal Counsel) had looked into the situation and did not believe that the Ethics Act would apply retroactively because the contracts predated enactment of Subsection (h). Mr. Maram believed that he received a written opinion on or about April 8, 2010.

Mr. Maram was shown a copy of a memorandum dated April 8, 2010 written by Senator Cullerton's Chief Legal Counsel regarding the "Scope of the State Ethics Act's Revolving Door Prohibition."<sup>12</sup> Mr. Maram confirmed this was the memorandum he received. He said that he had wanted to get the best opinion for himself and that once he had Senator Cullerton's Chief Legal Counsel's opinion, he felt comfortable that Subsection (h)'s restrictions would not apply to his situation. Mr. Maram confirmed, however, that Senator Cullerton's Chief Legal Counsel was not acting as his personal attorney. Mr. Maram stated that he did not share the April 8, 2010 memorandum with Ms. Badrov or anyone in the Governor's Office.

On April 9, 2010, Mr. Maram stated that he submitted his letter of resignation, noting that April 15, 2010 would be his last day as HFS Director. According to Mr. Maram, as of April 9, 2010, he had not yet decided whether to accept a position with Shefsky & Froelich and said that after he left HFS employment on April 15, 2010, he accepted employment with Shefsky & Froelich and began on April 21, 2010. Mr. Maram confirmed that was still employed by Shefsky & Froelich on April 10, 2012.

<sup>11</sup> As noted above, Ms. Badrov did seek and obtain Governor's Office permission to forward the Shefsky Contracts and Interagency Agreements to Senator Cullerton's office.

<sup>12</sup> On August 5, 2011, Mr. Maram's attorney hand-delivered to the OEIG a copy of the April 8, 2010 memorandum.

#### ***H. Senator Cullerton's Chief Legal Counsel's Memorandum***

On April 9, 2010, Senator Cullerton's Chief Legal Counsel sent Mr. Maram an email attaching an interoffice memorandum he had prepared for Senator Cullerton dated April 8, 2010 regarding the "Scope of the State Ethics Act's Revolving Door Prohibition." See Exhibit 2.

#### ***I. Interview of Senator Cullerton's Chief Legal Counsel***

On May 7, 2012, the OEIG interviewed Senator Cullerton's Chief Legal Counsel, who stated as follows:

- that it is part of his job to research possible issues with recently enacted legislation in case any legislative changes need to be made;
- that on April 8, 2010, Senator Cullerton asked him to research an issue that had been brought to his attention by Mr. Maram regarding Subsection (h) of the Revolving Door Prohibition;
- that he contacted Mr. Maram in order to obtain background information and asked to see the underlying contracts involving Shefsky & Froelich; and,
- that he later received copies of the underlying contracts and interagency agreements involving the Governor's Office, HFS, and Shefsky & Froelich.

According to Senator Cullerton's Chief Legal Counsel, he researched the issue on his own, wrote the April 8, 2010 memorandum within 24 hours, and sent the memorandum as an attachment to Mr. Cullerton and Mr. Maram in an April 9, 2010 email. Senator Cullerton's Chief Legal Counsel also stated that he arrived at the opinion set forth in the memorandum after researching the statute, case law, and relevant legislative debate, and that prior to writing the memorandum, he did not contact any legislators.

Finally, Senator Cullerton's Chief Legal Counsel stated that he also sent a copy of the memorandum to high-ranking officials at both the Office of the Illinois Attorney General and the Executive Ethics Commission, because those two entities dealt with the Revolving Door Prohibition of the Ethics Act. After writing the memorandum, Senator Cullerton's Chief Legal Counsel stated that there were some discussions with his staff regarding the Revolving Door Prohibition but that no action was taken to make any legislative changes to the existing law.

#### **IV. ANALYSIS**

##### ***The Revolving Door Prohibition***

##### **A. Background of the Revolving Door Prohibition**

The purpose of Revolving Door prohibitions is to ensure government employees will act in the best interest of the public and not in their own self-interest regarding future employment. See, e.g., *Forti v. New York State Ethics Com'n*, 75 N.Y.2d 596, 605 (N.Y. 1990) (stating that in general, the purpose of revolving door provisions is to "prevent former government employees from unfairly profiting from or otherwise trading upon the contracts, associations and special

knowledge that they acquired during their tenure as public servants."'). As such, the Ethics Act is drawn to capture the purpose and spirit of such prohibitions.<sup>13</sup>

#### **B. 2009 Amendments to the Revolving Door Prohibition**

In 2009, the Illinois General Assembly expanded the Revolving Door Prohibition. Prior to 2009, the Revolving Door Prohibition applied only to those State employees who participated personally and substantially in a contracting, licensing, or regulatory decision. The 2009 amendments expanded the prohibition by creating an absolute ban prohibiting certain high-ranking employees, such as agency directors, from accepting employment or compensation from entities if the entity, its parent, or its subsidiary was a party to a contract involving the agency or was subject to a licensing or regulatory decision by the agency, regardless of whether the employee was personally and substantially involved in the decision.

The legislative history indicates that the legislature expanded the Revolving Door Prohibition to address "problems concerning the revolving-door prohibition." See 96<sup>th</sup> ILL. GEN. ASSEM., HOUSE PROCEEDINGS, May 21, 2009, at 29. As such, according to Illinois State Representative Michael Madigan:

The Bill provides that for high ranking officials and employees, they are *absolutely* prohibited from accepting employment compensation from one year from an entity if that entity was party to a state contract or contracts worth \$25 thousand or more . . . . For other employees in the agency, it depends on whether they are substantially and personally involved in the decision-making process. *Id.* (Emphasis added.)

As a result, the legislature amended the Ethics Act to implement an absolute bar against certain post-State employment actions by high-ranking officials and employees. The 2009 amendments to the Revolving Door Prohibition became effective on August 18, 2009.

#### **C. Subsections 5-45(c) and (f) of the Revolving Door Prohibition**

Pursuant to the 2009 amendments to the Ethics Act, Subsections 5-45(c) and (f) provide that certain current and former State employees must notify the OEIG prior to accepting an offer of non-State employment, so that the OEIG may determine whether the former employee is restricted from accepting the offer. These employees are generally referred to as "c-list" employees, because Subsection (c) requires constitutional officers to identify employees who hold or held State positions in which they may have participated "personally and substantially" in a contracting, licensing, or regulatory decision.

Pursuant to Subsection 5-45(f), so-called "c-list" employees must submit information to the OEIG, so that the OEIG can make an informed determination as to whether the current or former State employee was "personally and substantially" involved in a contracting, licensing, or regulatory decision involving the entity that made the offer of employment or involving the

<sup>13</sup> Since 2009, the Executive Ethics Commission has issued five decisions relating to "c-list" Revolving Door appeals by the Office of the Illinois Attorney General. None of the appeals in each of these instances involves so-called "h list" employees, such as former HFS Director Maram.



potential employer's parent or subsidiary. The OEIG must make its determination within 10 calendar days of receiving the employee's notification of prospective post-State employment. *Id.*

No later than the 10th calendar day after the date of the OEIG's determination, the Attorney General or the person subject to the OEIG's determination may appeal the OEIG's decision to the Executive Ethics Commission. See 5 ILCS 430/5-45(g). The Executive Ethics Commission then has 10 calendar days in which to decide whether to uphold or vacate the OEIG's determination. *Id.*

Thus, Subsections 5-45(c) and (f) of the Ethics Act provide that certain current and former State employees (1) must notify the OEIG prior to accepting employment and (2) the current or former employees may be prohibited from accepting the employment if they personally and substantially participated in decisions involving the potential employer, its parent, or subsidiary. In this regard, the General Assembly retained the requirement that a State employee must have "personally and substantially" participated in a contracting, licensing, or regulatory decision before the ban will apply.

#### **D. Subsection (h) of the Revolving Door Prohibition**

On the other hand, Subsection (h) strictly prohibits certain current and former State employees from accepting certain post-State employment, "regardless of whether [they] participated personally and substantially" in a contracting, licensing, or regulatory decision involving the potential employer, its parent, or subsidiary. These so called "h-list" employees include "persons whose appointment to office is subject to the advice and consent of the Senate" and "the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State."

Thus, as it applies to this matter, Subsection (h) provides that "h-list" employees shall not, within one year immediately after termination from State employment knowingly:

- accept employment or receive compensation or fees from a person or entity if;
- the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts;
- with a cumulative value of \$25,000 or more;
- involving the employee's State agency.

See 5 ILCS 430/5-45(h). As noted above, this prohibition applies "regardless of whether [they] participated personally and substantially in the award of the State contract or contracts...." *Id.* In other words, the prohibition applies to agency directors, for example, even if they had no involvement in the procurement of a contract.

As set out below, the OEIG investigation leaves no doubt that by accepting employment and receiving compensation from Shefsky & Froelich, Mr. Maram's conduct satisfied all of the conditions supporting a violation of Subsection (h) of the Revolving Door Prohibition of the Ethics Act.

i) *Former HFS Director Barry Maram was an "h-list" Employee*

The OEIG investigation established that as the former HFS Director, Mr. Maram was subject to Subsection (h) of the Revolving Door Prohibition. Indeed, Mr. Maram agreed that prior to termination of his State employment on April 15, 2010, he was aware that he occupied a position subject to Subsection (h).

ii) *Mr. Maram Accepted Employment and Received Compensation from Shefsky & Froelich Within One Year After Terminating State Employment*

The OEIG investigation also established that Mr. Maram accepted employment and began receiving compensation within a period of one year after terminating his office or State employment.

Mr. Maram said he began looking for employment and spoke with Mr. Froelich in mid-March 2010 and by March 25, 2010, he in fact received a letter from Shefsky & Froelich outlining the terms of his employment with the firm, including a \$250,000 per year salary and benefits package.

Mr. Maram resigned from HFS on April 15, 2010, began working at Shefsky & Froelich on April 21, 2010, or about one week later, first received compensation on April 30, 2010, and continued to receive compensation through April 10, 2012. As such, Mr. Maram engaged in a continuing violation of Subsection (h) each time he received compensation from Shefsky & Froelich from the day he left HFS (April 15, 2010) until one year after termination of his State employment (April 15, 2011).

iii) *Shefsky & Froelich Was a Party to State Contracts During the Year Immediately Preceding Mr. Maram's Termination of State Employment*

The OEIG investigation established that Shefsky & Froelich was a party to two State contracts, one of which was a renewal, during the year immediately preceding Mr. Maram's termination of State employment. Mr. Maram terminated his State employment on April 15, 2010. Thus, the relevant Revolving Door one-year review period was from April 15, 2009 through April 15, 2010.

On October 24, 2008, the Governor's Office entered into the FY09 Shefsky Contract retaining Shefsky & Froelich to represent the defendants in the *Caro* lawsuit through June 30, 2009, or during the year prior to Mr. Maram's termination of State employment. Shefsky & Froelich agreed to perform legal services in exchange for an amount not to exceed \$150,000. The FY09 Shefsky Contract required Shefsky & Froelich to perform legal services on behalf of Mr. Maram and HFS, among others.

In addition, on July 7, 2009, the Governor's Office renewed the FY09 Shefsky Contract, pursuant to which Shefsky & Froelich agreed to provide legal services in FY10 in exchange for an amount not to exceed \$150,000 (the FY10 Shefsky Contract). The FY10 Shefsky Contract

required Shefsky & Froelich to perform legal services on behalf of Mr. Maram and HFS, among others.

Thus, Shefsky & Froelich was a party to at least two State contracts during the year immediately preceding Mr. Maram's departure from State employment.

iv) *The Value of the FY09 and FY10 Shefsky Contracts and Related Interagency Agreements Exceeded \$25,000*

The OEIG investigation also revealed that the FY09 Shefsky Contract had a cumulative value of \$25,000 or more. As set forth above, pursuant to the FY09 Shefsky Contract, the State agreed to pay Shefsky & Froelich up to \$150,000 for legal services performed during FY09. In addition, on July 7, 2009, the Governor's Office renewed the FY09 Shefsky Contract, pursuant to which Shefsky & Froelich agreed to provide legal services in FY10 in exchange for an agreement by the Governor's Office to pay an amount not to exceed \$150,000. The cumulative value of the two contracts was \$300,000. Because HFS agreed to pay for up to one-half the values of the Shefsky Contracts, via the FY09 and FY10 Interagency Agreements, the two contracts had, at a minimum, a cumulative value of at least \$150,000 as it pertained to HFS (the agency).

In any event, even when considering the amount actually billed, as opposed to the amount allotted in the interagency agreements, the OEIG investigation revealed that the Shefsky Contracts had an actual cumulative value of \$25,000 or more. Shefsky & Froelich billed the State approximately \$67,183 for services rendered pursuant to the FY09 Shefsky Contract and \$9,911 for services rendered pursuant to the FY10 Shefsky Contract. HFS paid Shefsky & Froelich a total of \$39,181.61 for services rendered pursuant to the FY09 and FY10 Shefsky Contracts.

Therefore, Shefsky & Froelich was a party to at least two State contracts during the year immediately preceding Mr. Maram's termination of State employment that had a cumulative value of \$25,000 or more.

v) *The Shefsky Contracts Involved HFS, Mr. Maram's State Agency*

The OEIG investigation revealed that the Shefsky Contracts "involved" HFS, and specifically Mr. Maram in his capacity as HFS Director. Pursuant to the Shefsky Contracts, Shefsky & Froelich agreed to defend all State agencies and employees who were defendants in the *Caro* lawsuit, including HFS and Mr. Maram. As such, there is no doubt that the FY09 and FY10 Shefsky Contracts "involved" HFS.

HFS confirmed its involvement with Shefsky & Froelich when it agreed to pay Shefsky & Froelich by entering into the FY09 and FY10 Interagency Agreements. On January 5, 2009, Mr. Maram's former Chief of Staff, to whom he had given signatory authority, executed the FY09 Interagency Agreement on Mr. Maram's behalf, effective until June 30, 2009, obligating HFS to pay Shefsky & Froelich up to \$75,000. In fact, HFS did pay Shefsky & Froelich \$33,846.82 for services performed under the FY09 Shefsky Contract, pursuant to the terms of the

FY09 Interagency Agreement. Mr. Maram and HFS, via the FY10 Interagency Agreement, again agreed to pay Shefsky & Froelich for legal services rendered up to 50% of the FY10 Shefsky Contract, or an amount not to exceed \$75,000. Mr. Maram's former administrative assistant, to whom he had given signatory authority, executed the FY10 Interagency Agreement on Mr. Maram's behalf, effective until June 30, 2010, obligating HFS to pay Shefsky & Froelich up to \$75,000. Because HFS agreed to be represented by Shefsky & Froelich and then paid its legal services, it necessarily follows that the FY09 and FY10 Shefsky Contracts involved HFS and Mr. Maram.

In addition, Mr. Maram recognized that the contracts involved HFS and Shefsky & Froelich, because he sought legal advice from Senator Cullerton's Office.

vi) *Mr. Maram Accepted Employment with Shefsky & Froelich While Aware of the Firm's Contract With HFS in the Previous Year*

Mr. Maram accepted employment with and received compensation from Shefsky & Froelich, within one year after terminating his State employment, while knowing that Shefsky & Froelich had State contracts with a cumulative value in excess of \$25,000 that involved HFS. At the latest, on or about April 6, 2010, Mr. Maram learned about Shefsky & Froelich's relationship with the State and HFS. In his interview, Mr. Maram confirmed that he received a list of entities which indicated that HFS had an interagency agreement relating to a contract Shefsky & Froelich had with the Governor's Office when Ms. Badrov provided him with the list and her April 6, 2010 memorandum. Mr. Maram also confirmed that he then investigated the relationship between Shefsky & Froelich, HFS, and the Governor's Office further, by seeking additional information from Ms. Badrov and legal advice from Senator Cullerton's Office. Thus, before Mr. Maram departed State employment, accepted employment with Shefsky & Froelich, or began receiving compensation from Shefsky & Froelich, Mr. Maram knew that Shefsky & Froelich had a State contract, worth more than \$25,000, that involved HFS. Nevertheless, these facts did not deter Mr. Maram from engaging in the aforementioned prohibited post-State employment conduct.

vii) *Subsection (h) Barred Mr. Maram From Employment, Regardless of Whether He Participated Personally or Substantially in the Procurement of the Shefsky Contracts*

Mr. Maram was prohibited from accepting employment with Shefsky & Froelich for one year after termination of his State employment, "regardless of whether he ☐ participated personally and substantially" in the award of the contract. See 5 ILCS 430/5-45(h). The fact that Mr. Maram did not select Shefsky & Froelich to represent the Governor's Office, HFS, or even himself, is not relevant. Subsection (h) contains a strict prohibition, and does not require evidence that the current or former State employee participate in the contracting decision. In enacting Subsection (h), the General Assembly removed any incentive for "h-list" employees to delegate authority to subordinates to avoid being "personally and substantially" involved in important State business, while simultaneously relieving "h-list" employees from even the suggestion that they would place their own interests over those of the State by delegating to subordinates authority for important decisions.

In other words, even though, as set forth above, the OEIG did not discover evidence that Mr. Maram, or HFS in general, had any role in the procurement of Shefsky & Froelich's legal services, Subsection (h) prohibited Mr. Maram from accepting any employment with Shefsky & Froelich for one year after he departed State employment.

Thus, the OEIG investigation revealed that Mr. Maram violated Subsection (h) of the Revolving Door Prohibition of the Ethics Act.

**E. The OEIG is Not Applying Subsection (h) Retroactively**

Even though the OEIG investigation reveals that Mr. Maram violated the Revolving Door Prohibition as set out in Section 5-45(h) of the Ethics Act, the circumstances of this matter give rise to the question of whether it is an impermissible retroactive application of the statute to apply the August 2009 Revolving Door amendments to Mr. Maram's termination of State employment and acceptance of employment with Shefsky & Froelich, because the two Shefsky Contracts were executed prior to the effective date of Subsection (h). The OEIG has concluded that requiring Mr. Maram to comply with Subsection (h) of the Revolving Door Prohibition would not constitute an impermissible retroactive application of the statute. That the Shefsky Contracts were executed prior to the effective date of the 2009 amendments are merely antecedent facts that do not prevent Subsection (h) from applying to Mr. Maram.

In *Commonwealth Edison v. Will County Collector*, 749 N.E.2d 964 (Ill. 2001), the Illinois Supreme Court reasoned that when a statute does not explicitly state whether it is to be applied retroactively, which Subsection (h) does not, then a court "must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that [the statute] does not govern." *Id.* at 970-971 (citing *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994)). In *Landgraf*, the United States Supreme Court concluded that a statute is not made retroactive in effect merely because it draws upon antecedent facts for its operation.

The August 2009 amendments to the Revolving Door Prohibition did not impair the rights of Mr. Maram, increase his liability for past conduct, or impose new duties with respect to transactions already completed, because he did not terminate his State employment and accept employment with Shefsky & Froelich until *after* the effective date of the 2009 amendments. As such, the 2009 amendments did not impair Mr. Maram's rights, or increase liability for Mr. Maram's "past conduct," because he terminated his employment on April 15, 2010 and began employment with Shefsky & Froelich on April 21, 2010, all of which occurred *after* the August 18, 2009 effective date of Subsection (h). Similarly, Mr. Maram did not "act" or "complete the transaction," i.e. terminate his State employment and begin employment with Shefsky & Froelich, until April 2010, which again was *after* the effective date of Subsection (h) of the Revolving Door Prohibition.

The Illinois Supreme Court reasoned in the *Commonwealth Edison* case that "merely because [the statute] is applied to a case arising from conduct antedating the statute's enactment ... or upsets expectations based on prior law" does not give rise to an impermissible retroactive effect. *Id.* at 971-972 (citing *Landgraf*, 511 U.S. at 269-270). Therefore, merely because the OEIG investigation involves the Shefsky Contracts, whose execution antedated the effective date of Subsection (h), does not mean that the OEIG's conclusion that Mr. Maram violated Subsection (h) of the Revolving Door Prohibition is an impermissible application of the statute. Mr. Maram did not terminate his State employment and begin his employment with, or begin receiving compensation from, Shefsky & Froelich until eight months after Subsection (h) became effective.

In addition, Mr. Maram had sufficient notice of the Ethics Act amendments and their applicability to his post-State employment opportunities. Indeed, Mr. Maram was well aware of his duties and the potential consequences of selecting certain employment opportunities, which is evinced by the fact that he asked both Ms. Badrov and Senator Cullerton's Chief Counsel to examine Revolving Door provisions and opine how they applied to him. Thus, there are no inequitable consequences in applying the Ethics Act Revolving Door Prohibition to Mr. Maram.

Unlike the circumstances presented in this investigation, the 2009 amendments could have an impermissible retroactive effect if Subsection (h) applied to a person who left State employment within one year *before* the effective date of the amendments. Because Subsection (h) expressly states the prohibition applies to a person who accepts employment or fees for services within one year after termination of State employment, a literal interpretation of the statute could lead to the conclusion that Subsection (h) applies to employees who terminated State employment and accepted certain employment for up to one year *prior* to August 18, 2009. In other words, Subsection (h) would have an impermissible retroactive effect if it were applied to an agency director who left State employment and accepted employment with a vendor of the director's former agency within one year *before* August 18, 2009. In that case, there can be little doubt that Subsection (h) would not apply, because the former employee would have already completed the "act" or "transaction" – terminating State employment and accepting employment with the vendor – prior to the effective date of the statute. Those circumstances are far different from the facts presented in this investigation.

#### **F. Conclusion Regarding the Revolving Door Prohibition**

Mr. Maram violated Subsection (h) of the Revolving Door Prohibition because within a period of one year immediately after his termination of State employment, he knowingly accepted employment and received compensation from an entity that during the year immediately preceding his termination of State employment was a party to State contracts with a cumulative value of \$25,000 or more involving HFS. Therefore, the corresponding allegation is **FOUNDED**.

**V. CONCLUSION**

As a result of its investigation, the OEIG issues this finding:

- **FOUNDED** – Barry Maram violated Subsection (h) of the Ethics Act Revolving-Door Prohibition.

The OEIG is referring this matter to the Office of the Illinois Attorney General for the purpose of determining whether or not it agrees with the conclusions set forth in this report, namely that Mr. Maram violated the Ethics Act and that the Ethics Act is not being applied retroactively to Mr. Maram. If the Office of the Illinois Attorney General agrees with these factual and legal conclusions, we ask that it consider taking whatever appropriate action it deems fit, including filing a complaint with the Executive Ethics Commission.

No further action is required and this matter is closed.

Date: May 30, 2012

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
32 W. Randolph Street, Ste. 1900  
Chicago, IL 60601

**Fallon Opperman**  
Assistant Inspector General

**Donald Rehmer**  
Investigator #139

# EXHIBIT 2



# State of Illinois Contract - Obligation Document

\*\*FY 2009\*

- Please Type -

AGENCY NO. 310

FISCAL YR.	TRANSACTION CD	CONTRACT / OBLIGATION NO.	TRANSACTION DATE	NINE DIGIT-TAXPAYER IDENTIFICATION	LEGAL STATUS
2009	2113	IGOV200099	10/28/2008	[REDACTED]	04
CONTRACT ACTION		CLASS CODE	GOVERNOR'S RELEASE NO.	VENDOR'S NAME AND ADDRESS	
1. <input checked="" type="checkbox"/> NEW 2. <input type="checkbox"/> CHANGE		0 2		SHEFSKY AND FROELICH 111 E WACKER DR SUITE 2800  CHICAGO IL 60601-3713	
APPROPRIATION ACCOUNT CODE			OBLIGATION AMOUNT		
001-31001-1200-0000			0.00		
			MULTIPLE YEAR CONTRACT		MAXIMUM CONTRACT AMOUNT
			FROM _____ TO _____ Month/Day/Year Month/Day/Year		
			CURRENT FISCAL YEAR CONTRACT		ANNUAL CONTRACT AMOUNT
			FROM 10/24/2008 TO 06/30/2009 Month/Day/Year Month/Day/Year		
					Reimbursement Expenses Included
			MULTIPLE YEAR CONTRACT AMOUNT		YEAR 2 - 7 (AND OVER)
			2	3	4
			5	6	7

**DESCRIPTION**

PROVIDE LEGAL SERVICES

NOT SUBJECT TO STATE INDEMNIFICATION ACT

MAXIMUM EXPENDITURE UNDER TERMS OF THIS AGREEMENT IS 150,000

PAYMENT PROVIDED BY IGA

METHOD OF COMPENSATION	Procurement Information	TRAVEL EXPENSES
(If Multiple Rates, Specify)	Award Code <u>T</u>	YES _____ NO <u>X</u>
PER _____ MR _____ (RATE) (TIME)	Publication Date _____	AMOUNT _____
	Reference # _____	ADVANCE PAYMENT
	Subcontractor Utilization (Y/N) <u>N</u>	YES _____ NO <u>X</u>
	Subcontractor Disclosure (Y/N) <u>N</u>	

PREPARED BY <u>MARY FANNING</u> AUTHORIZED BY <u>[Signature]</u>	DATE <u>10/28/08</u>	OFFICE OF THE GOVERNOR CONTRACTING AGENCY/DIVISION OFFICE OF THE GOVERNOR FILING AGENCY/DIVISION
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C-23. 6/15/07

MA: -

COMPTROLLER COPY

PE0065

### CONTRACT FOR SUPPLIES AND/OR SERVICES

The undersigned entity, State of Illinois Office of the Governor, (referred to as "AGENCY" or "State of Illinois"), and VENDOR, as the PARTIES to this CONTRACT, agree to perform in accordance with the provisions of this CONTRACT consisting of this page and the attachments described below.

1. TERM OF CONTRACT: The term of this CONTRACT and provisions for renewal and termination are as specified in this attachment.
2. DESCRIPTION OF SUPPLIES AND SERVICES: VENDOR shall provide the supplies and/or perform the services specified in this attachment.
3. PRICING/COMPENSATION: AGENCY shall pay VENDOR for the supplies and/or services contracted in accordance with the rates or prices established in this attachment.
4. STANDARD TERMS, CONDITIONS AND CERTIFICATIONS: Standard terms, conditions and certifications applicable to this CONTRACT are specified in this attachment.
5. OTHER ATTACHMENTS: Additional terms and conditions are shown in the following attachments:  
NONE

IN WITNESS WHEREOF, AGENCY and VENDOR have caused this CONTRACT to be executed by duly authorized representatives of the respective PARTIES on the dates shown below.

SHEFSKY & FROELICH

STATE OF ILLINOIS  
OFFICE OF THE GOVERNOR

Signature \_\_\_\_\_  
Printed Name J. Timothy Eaton  
Title Shareholder Date 10/24/08  
Address 111 E. Wacker Dr., Ste. 2800  
Chicago, IL 60601  
Phone                      Fax                     

Signature                       
Title Fiscal Director Date 10/23/08

#### FOR STATE USE ONLY

Contract # \_\_\_\_\_  
Agency CLC \_\_\_\_\_ CMS CLC \_\_\_\_\_  
Agency CFO \_\_\_\_\_ CMS CFO \_\_\_\_\_  
Source Selection: IFB (including Multi-step) \_\_\_\_\_ RFP \_\_\_\_\_ RFP P&A \_\_\_\_\_ Small \_\_\_\_\_ Sole Source \_\_\_\_\_ Emergency \_\_\_\_\_  
Exempt from Code X Other (describe) \_\_\_\_\_

### TERM OF CONTRACT

- a. Beginning and end date of initial term.  
October 24, 2008, through June 30, 2009.
- b. Renewal. Except as otherwise shown, AGENCY reserves the right to renew this CONTRACT for the same, lesser or longer length of term as the initial term and on the same terms and conditions.
- c. Early Termination. The AGENCY reserves the right to terminate CONTRACT without cause and without penalty or further payment being required upon 30 days prior written notice. Upon exercise of this right, the AGENCY shall pay VENDOR for supplies and services satisfactorily provided and for authorized expenses incurred up to the time of termination.

### DESCRIPTION OF SUPPLIES AND SERVICES

1. Need for Supplies and Services.

AGENCY is in need of legal advice and representation in anticipation of litigation relating to issues involving the AGENCY, State of Illinois agencies directly responsible to the Governor and associated officers, directors and employees.

2. Agency's Goal.

AGENCY wishes to utilize the legal expertise of VENDOR on issues relating to the AGENCY, State of Illinois agencies directly responsible to the Governor and associated officers, directors and employees. This expertise will be reflected in legal advice and analysis.

3. Supplies and/or Services Required.

VENDOR will provide assistance and legal advice to AGENCY, the State of Illinois agencies directly responsible to the Governor, and officers, directors and employees of the State of Illinois on the matter of: Caro, et.al. v. Blagojevich, et.al. VENDOR will provide advice, counsel, and legal representation to AGENCY, State of Illinois agencies directly responsible to the Governor and officers, directors and employees, and perform such other legal services as are requested and as may be contemplated under the terms of this CONTRACT.

4. Milestones and Deliverables.

Milestones and Deliverables will depend on the nature and status of the particular matter for which VENDOR is providing assistance.

5. Qualifications of VENDOR and/or VENDOR'S staff (or others who would perform).

VENDOR must have and show the qualifications (including as appropriate, education, experience and technical ability) necessary to perform this contract.

6. Subcontracting/Joint Ventures. ☐ Allowed ☒ Not Allowed

AGENCY intends to contract with one entity per contract and that entity shall be contractually responsible for performance. However, if the entity is a joint venture, one of the parties to the joint venture must take full contractual responsibility for performance under the contract.

If VENDOR is providing Professional and Artistic Services, the names of subcontractors and amounts to be paid to each must be shown. AGENCY may require the same or similar information in relation to contracts for other supplies or services. Subcontractors are subject to approval of AGENCY.

### PRICING/COMPENSATION

1. Method and Rate of Compensation.

\$200.00 per hour for any and all attorneys regardless of seniority level. \$150 per hour maximum for paralegals.

Total compensation under this CONTRACT is not to exceed \$150,000.00

Is the rate (check one) firm X or estimated \_\_\_\_?

For purposes of this CONTRACT, the Office of the Governor shall be the coordinating AGENCY, will receive all invoices and billing and payment questions, and may direct an allocation of payment obligations to other State of Illinois agencies that receive benefits of the services rendered under this CONTRACT. Such allocation shall be pursuant to the coordinating AGENCY's assessment of the other State of Illinois agencies uses of and benefits from the services rendered.

2. Expenses. Are expenses included in the pricing given in 1 above? Yes \_\_\_\_ No X

If "no", describe expenses that will be separately billed.

VENDOR shall be reimbursed for reasonable, actual, ordinary and necessary expenses for (a) communications, including telephone, telegraph, postage, parcel post and freight, and package express; (b) reproduction (including, but not limited to, photographs, prints and offset work); and (c) rental charges of equipment owned by VENDOR at established rates but exclusive of profit and less any portion charged elsewhere. VENDOR shall retain all receipts therefore and shall, upon request of AGENCY, provide any necessary documentation.

VENDOR shall be reimbursed for reasonable, actual, ordinary and necessary expenses for other special materials required for and used solely in the fulfillment of this CONTRACT. VENDOR shall retain all receipts therefore and shall, upon request of the AGENCY, provide any necessary documentation.

Travel, meals, lodging and other direct non-labor costs which VENDOR expects to incur under this CONTRACT other than as set forth in the above paragraphs shall require the prior approval of AGENCY, which approval shall not be unreasonably withheld. Prior approval by AGENCY of travel to be undertaken by VENDOR as an incident of VENDOR'S performance of services under this CONTRACT shall constitute approval for VENDOR to incur reasonable, actual, ordinary and necessary expenses for travel, meals, lodging and other ordinary and necessary direct non-labor costs.

VENDOR shall require AGENCY approval before incurring any extraordinary or unusual expenses.

## STANDARD TERMS, CONDITIONS AND CERTIFICATIONS

1. **TERM AND RENEWALS:** The length of the CONTRACT, including any renewals, may not exceed that allowed by law, including 30 ILCS 500/20-60. When the term begins on execution, that means the date of final execution by the AGENCY. If the commencement of performance is delayed because the CONTRACT is not executed by the AGENCY on the start date, the AGENCY may change the start date, end date and milestones to reflect the delayed execution. No renewal may be effective automatically. No renewal may be effective solely at VENDOR'S option.
2. **BILLING:**
  - a) VENDOR shall submit invoices to the address, on the schedule and with the detail required by the COORDINATING AGENCY. Invoices for supplies ordered or services performed and expenses incurred prior to July 1st must be presented to the AGENCY no later than July 31; otherwise VENDOR may have to seek payment of such invoices through the Illinois Court of Claims (30 ILCS 105/25). Billings shall be made to conform to State of Illinois fiscal year requirements, including prorating if necessary, notwithstanding any contrary provision in this CONTRACT or order.
  - b) VENDOR shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State of Illinois. The State of Illinois does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.
  - c) By submitting an invoice VENDOR certifies that the requirements of the CONTRACT will be satisfied in all material respects, and the amount billed and expenses incurred are as allowed in the CONTRACT.
3. **PAYMENT:**
  - a) Late payment charges, if any, shall not exceed the formula established in the State of Illinois "Prompt Payment" Act (30 ILCS 540/1) and rules (74 Ill. Adm. Code 900). Payments delayed at the beginning of the State of Illinois' fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.
  - b) The AGENCY shall not be liable to pay for any supplies or services, including related expenses subject of this CONTRACT incurred prior to the beginning of the term of this CONTRACT. Any CONTRACT or order labeled "subject to financing" or words to similar effect is subject to the AGENCY obtaining suitable financing.
  - c) The approved invoice amount will be paid less any retainage and previous partial payments. Final payment shall be made by AGENCY in anticipation that all requirements under this CONTRACT will be satisfactorily completed in all material respects. Such final payment will be made subject to adjustment after completion of an audit of VENDOR'S records as provided for in this CONTRACT.
  - d) Any contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index (30 ILCS 305/1).
  - e) As a condition of payment, VENDOR must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, security guard and food service), and must pay its suppliers and subcontractors providing lien waivers on request.
4. **AVAILABILITY OF APPROPRIATIONS (30 ILCS 500/20-60):** The AGENCY shall use their best efforts to secure sufficient appropriations to fund this CONTRACT. However, the AGENCY's obligations hereunder shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. The AGENCY shall determine whether amounts appropriated are sufficient. The AGENCY shall give VENDOR notice of insufficient funding as soon as practicable. VENDOR'S obligation to perform shall cease upon receipt of the notice.
5. **CONSULTATION:** VENDOR shall keep the AGENCY fully informed as to the progress of matters covered by this CONTRACT. Where time permits and VENDOR is not otherwise prohibited from so doing, VENDOR shall offer the AGENCY the opportunity to review relevant documents prior to filing with any public body or adversarial party.

6. **PERFORMANCE REVIEWS:** The AGENCY may conduct a post performance review of the VENDOR'S performance under the CONTRACT. Any professional and artistic services performed under this CONTRACT shall be subject to a post performance review. The VENDOR shall cooperate with the AGENCY in this review, which may require that VENDOR provide records of its performance and billing in its possession. VENDOR shall provide any required information within 90 days of the AGENCY's request.
7. **AUDIT / RETENTION OF RECORDS (30 ILCS 500/20-65):** VENDOR and its subcontractors shall maintain books and records relating to performance of the CONTRACT or subcontract and necessary to support amounts charged to the AGENCY under the CONTRACT or subcontract. Books and records shall be maintained by the VENDOR for a period of 3 years from the later of the date of final payment under the CONTRACT or completion of the CONTRACT, and by the subcontractor for a period of 3 years from the later of the date of final payment under the subcontract or completion of the subcontract. The 3-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the AGENCY, and other governmental entities with monitoring authority upon reasonable prior written notice and during normal business hours. VENDOR and its subcontractors shall cooperate fully with any such audit. Failure to maintain books and records required by this Section shall establish a presumption in favor of the AGENCY for the recovery of any funds paid by the AGENCY under the CONTRACT for which adequate books and records are not available to support the purported disbursement.
8. **SCHEDULE OF WORK:** Any work performed on the AGENCY's premises shall be done during the hours designated by the AGENCY and shall in any event be performed so as to minimize inconvenience to the AGENCY and their personnel and minimize interference with the AGENCY's operations.
9. **INDEPENDENT CONTRACTOR:** The VENDOR shall be an independent contractor. Supplies provided and/or services performed pursuant to this CONTRACT are not rendered as an employee of the AGENCY or of the State of Illinois. Amounts paid pursuant to this CONTRACT do not constitute compensation paid to an employee.
10. **RESPONSIBILITY FOR AGENTS AND EMPLOYEES:** VENDOR shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of VENDOR'S duties under this CONTRACT. VENDOR represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the AGENCY determine that any individual performing services for VENDOR hereunder is not providing such skilled services, they shall promptly so notify VENDOR and VENDOR shall replace that individual.
11. **ASSIGNMENT AND SUBCONTRACTING:**
  - a) VENDOR may not assign, subcontract, or transfer any interest in the work subject of this CONTRACT without the AGENCY's prior written consents. In the event the AGENCY consents, the terms and conditions of this CONTRACT shall apply to and bind the party to whom such work is subcontracted, assigned, or transferred as fully and completely as VENDOR is hereby bound and obligated. This includes requiring such parties to submit certifications and disclosures to the AGENCY for review and approval upon request.
  - b) Where VENDOR is providing professional and artistic services, names and addresses of all subcontractors utilized by VENDOR shall be listed in an addendum to this CONTRACT together with the anticipated amount of money that the subcontractor is expected to receive pursuant to this CONTRACT (30 ILCS 500/35-40).
  - c) If VENDOR is unable to secure or maintain individuals named in the CONTRACT to render the services, VENDOR shall not be relieved of its obligations to complete performance. The AGENCY shall have the option to accept a substitute or to terminate the CONTRACT.
  - d) After VENDOR'S consent, the AGENCY may transfer the CONTRACT or payment responsibility to another State of Illinois agency, or assign the CONTRACT to a third-party for financing purposes, provided, however, that no such transfer shall relieve AGENCY from their obligations hereunder.

12. **LICENSE:** VENDOR, directly or through its employees, shall have and maintain any required license. With consent of the AGENCY, VENDOR may meet the license requirement through a subcontractor.
13. **MAINTENANCE ASSURANCE:** Intentionally Omitted.
14. **CONFIDENTIALITY AND USE AND OWNERSHIP OF WORK PRODUCT:**
- a) Any documents or information obtained by the respective PARTIES from each other in connection with this CONTRACT shall be kept confidential and shall not be provided to any third party unless the party whose information is being disclosed approves such disclosure in writing.
  - b) Work product produced under this CONTRACT, including, but not limited to, documents, reports, information, documentation of any sort and ideas, whether preliminary or final, shall become and remain the property of the AGENCY, including any patent, copyright or other intellectual property rights. With the exception of ideas, all such work products shall be considered works made for hire within the meaning of 17 U.S.C. §101. To the extent that any portion of such work product is not a work made for hire, VENDOR completely and without reservation assigns to the AGENCY all right, title and interest in and to such portion of the work products, as well as all related intellectual property rights, including patent and copyright. AGENCY shall exercise all rights of ownership in all such work product without restriction or limitation including as to use, and without further compensation to VENDOR. VENDOR shall not acquire or have any right to use, disclose or reproduce the work product or any equipment, documents, information, media, software, or know-how obtained from the AGENCY except to perform this CONTRACT. Nothing herein shall be construed as precluding the use of any information independently acquired by VENDOR without such limitation.
  - c) The ideas, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that VENDOR previously developed and brings to the AGENCY in furtherance of performance of the CONTRACT shall remain the property of the VENDOR. VENDOR grants to the AGENCY a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions and tools solely within its enterprise.
  - d) Except as is reasonably necessary to provide the services requested by AGENCY, VENDOR shall not use the name(s), trademarks or trade names of AGENCY, whether registered or not, in publicity releases or advertising without securing the prior written approval of AGENCY. AGENCY does grant VENDOR the right to use its name as part of a general client list.
15. **WARRANTY:** VENDOR warrants that all services will be performed in a good and professional manner consistent with industry standards and professional obligations and responsibilities for similar services. VENDOR warrants it has title to, or the right to allow the AGENCY to use, the supplies and services being provided and that the AGENCY may use same without suit, trouble or hindrance from VENDOR or third parties, provided, that no AGENCY is in breach or default hereunder.
16. **LIABILITY AND INSURANCE:**
- a) The VENDOR agrees to indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of (a) any breach or violation by VENDOR of any of its representations, warranties, covenants or agreements set forth herein, (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss by whomsoever suffered, claimed to result in whole or in part from VENDOR'S negligent performance hereunder, (c) any act, activity or omission of VENDOR or any of its employees, representatives, subcontractors or agents. Neither party shall be liable for incidental, special, consequential or punitive damages.
  - b) VENDOR shall, at all times during the term and any renewals, maintain and provide a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. VENDOR shall provide: (a) General Commercial Liability-occurrence form in amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amount required by law. Insurance shall not limit VENDOR'S obligation to indemnify, defend, or settle any claims.



17. **TAX COMPLIANCE:** VENDOR shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.
18. **SOLICITATION AND EMPLOYMENT:** VENDOR shall not employ any person employed by the AGENCY during the term of this CONTRACT to perform any work required by the terms of this CONTRACT. As a condition of this CONTRACT, the VENDOR shall give notice immediately to the AGENCY's director if VENDOR solicits or intends to solicit for employment any of the AGENCY's employees during the term of this CONTRACT. The AGENCY has no authority to contractually refuse to hire VENDOR'S employees who apply to the AGENCY for employment.
19. **BACKGROUND CHECK:** The AGENCY may conduct criminal and driver history background checks of VENDOR'S officers, employees or agents who would directly supervise or physically perform the CONTRACT requirements at AGENCY's facilities. Any officer, employee or agent deemed unsuitable by the AGENCY must be replaced immediately.
20. **LEGAL ABILITY TO CONTRACT:** Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:
- a) Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
  - b) Vendor is not in default on an educational loan (5 ILCS 385/3).
  - c) Vendor has informed the director of the Agency/Buyer in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive in or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
  - d) Intentionally omitted.
  - e) Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe (30 ILCS 500/50-5).
  - f) If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
  - g) If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the contracting State Agency/Buyer shall declare the contract void if this certification is false (30 ILCS 500/50-10.5).
  - h) Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the contracting State Agency/Buyer may declare the contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
  - i) Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledge that failure to comply can result in the contract being declared void.
  - j) Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five (5) years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the contracting State Agency/Buyer may declare the contract void. (30 ILCS 500/50-14)
  - k) Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
  - l) Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
  - m) Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).

- n) Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the Contract. This certification applies to contracts of \$5000 or more with: individuals; and to entities with twenty-five (25) or more employees (30 ILCS 580).
- o) Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
- p) Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or of the United States (720 ILCS 5/33E-3, 5/33E-4).
- q) Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- r) Vendor does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- s) Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (PA 93-0307).
- t) Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12 (PA 94-0264).
- u) Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State of Illinois or any State agency until the violation is mitigated".
- v) In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
- w) Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity (EO No. 1 (2007)).

21. **CONFLICTS OF INTEREST:** Vendor has disclosed, and agrees it is under a continuing obligation to disclose to the Agency/Buyer, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any conflict under Section 50-13 exists no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:
- a. the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$102,550.20). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);
  - b. the contract is with a firm, partnership, association or corporation in which a person referenced in 1) above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (currently \$170,917.00).
  - c. the contract is with a firm, partnership, association or corporation in which a person referenced in 1) above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$341,834.00) from the firm, partnership, association or corporation.

22. **BREACH AND OTHER FOR CAUSE TERMINATION:** The AGENCY may terminate this CONTRACT without penalty to the AGENCY or further payment required in the event of: (i) any breach of this CONTRACT which, if it is susceptible of being cured, is not cured within 15 days of the AGENCY giving notice of breach to VENDOR, including but not limited to failure of VENDOR to maintain covenants, representations, warranties, certifications, bonds and insurance; (ii) commencement of a proceeding by or

against VENDOR under the U.S. Bankruptcy Code or similar law; or any action by VENDOR to dissolve, merge, or liquidate; or (iii) material misrepresentation or falsification of information provided by VENDOR in the course of any dealing between the PARTIES or between VENDOR and any State of Illinois agency.

23. **FORCE MAJEURE:** Failure by any of the PARTIES to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.
24. **ANTITRUST ASSIGNMENT:** VENDOR hereby assigns, sells and transfers to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States relating to the subject matter of the CONTRACT.
25. **NON-DISCRIMINATION:** In compliance with the State of Illinois and Federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the AGENCY does not unlawfully discriminate in employment, contracts, or any other activity.
26. **APPLICABLE LAW:** The terms and conditions of this CONTRACT, including those set forth in any attachment, shall be construed in accordance with and are subject to the laws and rules of the State of Illinois, including, without limitation the Illinois Freedom of Information Act (5 ILCS 140) and the Attorney General Act (15 ILCS 205). The Department of Human Rights' Equal Opportunity requirements (44 Ill. Admin Code 750) are incorporated by reference. Any claim against the AGENCY or the State of Illinois arising out of this CONTRACT must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The AGENCY shall not enter into binding arbitration to resolve any CONTRACT dispute. The State of Illinois does not waive sovereign immunity by entering into this CONTRACT. Any provision containing a citation to an Illinois statute (cited ILCS) may not contain complete statutory language. The official text, which is incorporated by reference, can be found in the appropriate chapter and section of the Illinois Compiled Statutes. An unofficial version can be viewed at [www.legis.state.il.us](http://www.legis.state.il.us).
27. **NOTICES:** Notices shall be in writing and may be delivered by any means. Notices by fax must show the date/time of successful receipt. Notices to VENDOR shall be sent to the person shown on the signature page. Notices to the AGENCY shall be sent to the executive head of the AGENCY at the AGENCY's headquarters. Notice of any name, address, or fax number change shall be given to the other in writing.
28. **ENTIRE CONTRACT:** This CONTRACT, with attachments, constitutes the entire agreement between the PARTIES concerning the subject matter of the CONTRACT. Modifications and waivers must be in writing and signed by authorized representatives of the PARTIES. Any provision of this CONTRACT officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this CONTRACT shall be interpreted, as far as possible, to give effect to the PARTIES' intent. All provisions that by their nature would be expected to survive, shall survive termination of this CONTRACT, including without limitation provisions relating to confidentiality, warranty, ownership and liability.
29. **CONTRACTING AUTHORITY:** Certain contracts must be signed or approved by the Director of the Department of Central Management Services (CMS) before they are binding on the AGENCY. In those instances CMS shall not be responsible for costs or funding even though payments may be made through CMS' facilities.

**Request for Taxpayer  
Identification Number and Certification**

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Shefsky & Froelich Ltd.

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership

☒ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ...C...

☐ Other (see instructions) ▶

☐ Exempt  
payee

Address (number, street, and apt. or suite no.)

111 E. Wacker Drive, Suite 2800

Requester's name and address (optional)

City, state, and ZIP code

Chicago, IL 60601

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign  
Here

Signature of  
U.S. person ▶

Date ▶

10/28/08

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

# State of Illinois Contract - Obligation Document

\*\*FY 2010

- Please Type -

AGENCY NO. 310

FISCAL YR.	TRANSACTION CD	CONTRACT / OBLIGATION NO.	TRANSACTION DATE	NINE DIGIT TAXPAYER IDENTIFICATION	LEGAL STATUS
2010	2113	IGOV200099	08/24/2009	[REDACTED]	03
CONTRACT ACTION		CLASS CODE	GOVERNOR'S RELEASE NO.	VENDOR'S NAME AND ADDRESS	
1. <input checked="" type="checkbox"/> NEW 2. <input type="checkbox"/> CHANGE		0 2		SHEFSKY AND FROELICH 111 E WACKER DR SUITE 2800  CHICAGO IL 60601-3713	
APPROPRIATION ACCOUNT CODE			OBLIGATION AMOUNT		
001-31001-1910-9900			0.00		
				MULTIPLE YEAR CONTRACT	MAXIMUM CONTRACT AMOUNT
				FROM 10/24/2008 TO 06/30/2010 Month/Day/Year Month/Day/Year	
				CURRENT FISCAL YEAR CONTRACT	ANNUAL CONTRACT AMOUNT
				FROM 07/01/2009 TO 06/30/2010 Month/Day/Year Month/Day/Year	
				Reimbursement Expenses Included	
				MULTIPLE YEAR CONTRACT AMOUNT	YEAR 2 - 7 (AND OVER)
				2	3
				5	7

## DESCRIPTION

PROVIDE LEGAL SERVICES  
NOT SUBJECT TO STATE INDEMNIFICATION ACT

MAXIMUM EXPENDITURE UNDER TERMS OF THIS AGREEMENT IS 150,000

PAYMENT PROVIDED BY IGA  
CONTRACT AND OB ON FILE IN FY09 / RENEWAL

METHOD OF COMPENSATION	Procurement Information	TRAVEL EXPENSES
(If Multiple Rates, Specify)	Award Code T	YES _____ NO <input checked="" type="checkbox"/> X
PER MR _____ (RATE) (TIME)	Publication Date _____	AMOUNT _____
	Reference # _____	ADVANCE PAYMENT
	Subcontractor Utilization (Y/N) N	YES _____ NO <input checked="" type="checkbox"/> X
	Subcontractor Disclosure (Y/N) N	

MARY FANNING	08/24/2009	OFFICE OF THE GOVERNOR
PREPARED BY	DATE	CONTRACTING AGENCY/DIVISION
	8/24/09	OFFICE OF THE GOVERNOR
AUTHORIZED BY	DATE	FILING AGENCY/DIVISION

**CONTRACT RENEWAL - FY 10**

The undersigned Office of the Governor (AGENCY) and SHEFSKY & FROELICH (VENDOR), agree to RENEW the described CONTRACT as follows:

1. DESCRIPTION OF CONTRACT BEING RENEWED: Original Contract #: IGOV 200099

VENDOR will provide assistance and legal advice to AGENCY, the State of Illinois agencies directly responsible to the Governor, and officers, directors and employees of the State of Illinois on the matter of: Caro, et.al. v. Blagojevich, et.al.. VENDOR will provide advice, counsel, and legal representation to AGENCY, State of Illinois agencies directly responsible to the Governor and officers, directors and employees, and perform such other legal services as are requested and as may be contemplated under the terms of this CONTRACT.

2. TERMS AND CONDITIONS: This RENEWAL is on the same terms and conditions as the underlying CONTRACT except as changed and described herein. All required certifications and disclosures have been made and are current.
3. RENEWAL TERM: This RENEWAL shall begin July 1, 2009 and shall run through June 30, 2010.
4. COST (DESCRIBE CALCULATION AND/OR COST BASIS, IF APPLICABLE):  
\$200 per hour for any and all attorneys regardless of seniority. \$150 per hour maximum for paralegals. Total compensation under this RENEWAL shall not exceed \$150,000. Expenses will be separately billed in the same manner as under the original CONTRACT.
5. ATTACHMENTS: Certifications
6. CHANGES FROM CONTRACT BEING RENEWED (INCLUDING COMPENSATION): None.

IN WITNESS WHEREOF, the undersigned parties have caused this RENEWAL to be executed on the dates shown below by representatives authorized to bind the respective PARTIES.

**SHEFSKY & FROELICH**

**STATE OF ILLINOIS  
OFFICE OF THE GOVERNOR**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name J. Timothy Eaton

Title Director of Operations Date 07-07-09

Title Shareholder Date 7/1/09

Address 111 E. Wacker Dr., Ste. 2800

APPROVED PURSUANT TO CPO NOTICE #33

Chicago, IL 60601

Signature \_\_\_\_\_

Phone [REDACTED]

Printed Name \_\_\_\_\_

Fax [REDACTED]

Title \_\_\_\_\_

Date \_\_\_\_\_

**FOR STATE USE ONLY**

Contract # \_\_\_\_\_

Agency CLC \_\_\_\_\_ CMS CLC \_\_\_\_\_

Agency CFO \_\_\_\_\_ CMS CFO \_\_\_\_\_

Source Selection: IFB (including Multi-step) \_\_\_\_\_ RFP \_\_\_\_\_ RFP P&A \_\_\_\_\_ Small \_\_\_\_\_ Sole Source \_\_\_\_\_ Emergency \_\_\_\_\_

Exempt from Code X \_\_\_\_\_ Other (describe) \_\_\_\_\_

#### CONTRACT CERTIFICATIONS – FY10

**LEGAL ABILITY TO CONTRACT:** Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

1. Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
2. Vendor is not in default on an educational loan (5 ILCS 385/3).
3. Vendor (if an individual, sole proprietor, or partner) has informed the director of the Agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
4. Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer, and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80).
5. Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).
6. If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
7. If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the Contract void if this certification is false (30 ILCS 500/50-10.5).
8. Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the Contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
9. Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledges that failure to comply can result in the Contract being declared void.
10. Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the State may declare the Contract void (30 ILCS 500/50-14).
11. Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
12. Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
13. Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).
14. In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).

15. Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and Vendor and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580).

16. Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).

17. Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).

18. Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).

19. Vendor does not pay dues to, or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).

20. Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).

21. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).

22. Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated".

23. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.

24. In accordance with Public Act 095-0307, all information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at [www.dhs.state.il.us/itaa](http://www.dhs.state.il.us/itaa).

25. Vendor has disclosed if required, on forms provided by the State, and agrees it is under a continuing obligation to disclose to the State, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any elected or appointed State officer or employee, or the spouse or minor child of same has any ownership or financial interest in the Vendor or the Contract, Vendor certifies it has disclosed that information to the State if required, on forms provided by the State, and any waiver of the conflict has been issued in accordance with applicable law and rule. A waiver is required if:

- a) the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$106,447.20). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);
- b) the contract is with a firm, partnership, association or corporation in which a person referenced in a) above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (currently \$177,412.00).



- c) the contract is with a firm, partnership, association or corporation in which a person referenced in b) above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$354,824.00) from the firm, partnership, association or corporation.

26. Vendor, as defined in Public Act 95-971, certifies that it has read, understands, and is in compliance with the Act and will not make a contribution that will violate the Act. In general, Public Act 95-0971 contains new registration and reporting requirements for certain Vendors, as well as limitations on political contributions by certain Vendors and their affiliates. These requirements shall be effective for the duration of the term of office of the incumbent Governor or for a period of 2 years after the end of the contract term, whichever is longer.

Vendor certifies, in accordance with Public Act 95-971, as applicable:

☐ Vendor is not required to register as a business entity with the State Board of Elections.

or

☒ Vendor has registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration as required by the Act. A copy of the certificate of registration is attached.

Vendor acknowledges that the State may declare this Contract void without any additional compensation due to the Vendor if this foregoing certification is false or if the Vendor (or any of its Affiliated Persons or Entities) engages in conduct that violates Public Act 95-0971.

SHEFSKY & FROELICH

Signature [Handwritten Signature]

Printed Name J. Timothy Eaton

Title Shareholder Date 7/1/09

Address Shefsky & Froelich Ltd.

111 E. Wacker Drive, Suite 2800

Chicago, IL 60601

ILLINOIS STATE BOARD OF EDUCATION  
Fiscal & Procurement Services  
100 North First Street, W-380  
Springfield, Illinois 62777-0001

VENDOR'S FEDERAL TAXPAYER IDENTIFICATION NUMBER  
LEGAL STATUS DISCLOSURE CERTIFICATION AND CONTRACT ADDENDUM

NAME (As shown on your income tax return)

SHEFSKY & FROELICH LTD.

BUSINESS NAME (If different from above)

Check appropriate box ☐ Individual/Sole Proprietor ☐ Governmental ☐ Estate or Trust ☐ Tax Exempt  
☐ Partnership/Legal Corporation ☒ Corporation ☐ Nonresident Alien ☐ Other  
☐ Limited Liability (D=disregarded entity, C=corporation, P=partnership)

ADDRESS (Number, Street, and Apt. or Suite Number) CITY STATE ZIP CODE  
111 E. Wacker Drive, Suite 2800, Chicago, Illinois 60601

Part I - Taxpayer Identification Number (TIN). Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN).

Social Security Number/Employer ID No.

Part II - Certification. Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person.

VENDOR certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- VENDOR, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the American with Disabilities Act (42 U.S.C. 12101 et seq.).
- VENDOR is not in default on an education loan (5 ILCS 385) or in violation of the "revolving door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
- VENDOR has informed the director of the agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under section 14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts made with out the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive in or after 2002 under section 14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts in violation of Section 15e of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
- VENDOR has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempting to bribe (30 ILCS 500/5) nor has VENDOR been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or the United States (720 ILCS 5/33E-3, 5/33E-4).
- If VENDOR has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
- If VENDOR, or any officer, director, partner, or other managerial agent of VENDOR, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 years have passed since the date of the conviction, VENDOR further certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10.5, and acknowledges that the contracting State agency shall declare the contract void if this certification is false. (30 ILCS 500/50-10.5).
- VENDOR and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and VENDOR and its affiliates acknowledge the contracting State agency may declare the contract void if this certification is false (30 ILCS 500/50-11) or if VENDOR or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
- VENDOR and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500-12) and acknowledges that failure to comply can result in the contract being declared void.
- VENDOR certifies, in accordance with 30 ILCS 500/50-12 that it is not barred from being awarded a contract under this Section. The contractor acknowledges that the contracting agency may declare the contract void if this certification is false.
- VENDOR has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has VENDOR accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
- VENDOR will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers, or employees of the State (30 ILCS 500/50-40, 50-45/50-50).
- VENDOR will, pursuant to the Drug Free Workplace Act, provide a drug free work place, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the CONTRACT. This certification applies to CONTRACTS of \$5000 or more with: individuals; and to entities with twenty-five (25) or more employees (30 ILCS 580).
- Neither VENDOR nor any substantially owned affiliate is participating or shall anticipate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to CONTRACTS that exceed \$10,000 (30 ILCS 582).
- VENDOR complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- VENDOR does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- VENDOR complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (30 ILCS 583).
- VENDOR complies with the State Prohibition of Goods from Child Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12 (30 ILCS 584).
- All information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Information Technology Accessibility Act (30 ILCS 587) and the standards required under Section 15 of the Act.
- VENDOR certifies that it is not in violation of (30 ILCS 500/50-14.5) which states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State of Illinois or any State agency until the violation is mitigated."
- Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity (EO No. 1 (2007)).
- VENDOR certifies that:  
☐ They are not required to register as a business entity with the State Board of Elections pursuant to the Procurement Code (30 ILCS 500/20-160), and acknowledges that all contracts between State agencies and a business entity that do not comply with this Section shall be voidable under Section 50-60 of the Procurement Code (30 ILCS 500/50-60).  
OR  
☒ They have registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration pursuant to the Procurement Code (30 ILCS 500/20-160). Further, the contractor acknowledges that all contracts between State agencies and a business entity that do not comply with this Section shall be voidable under Section 50-60 of the Procurement Code (30 ILCS 500/50-60).

TELEPHONE NUMBER (Include Area Code)

NAME (Please Print: First, Middle, Last)

TITLE


Kathy Deane

Controller

6/19/09

Use

Signature

	<h2>Business Entity Registration</h2> <p>PLEASE TYPE OR PRINT IN BLACK INK</p>	<p>FOR OFFICE USE ONLY STATE BOARD OF ELECTIONS</p> <p>09 JAN 23 AM 9:05</p>
<p>Full name and complete mailing address of Business Entity:</p> <p>Shelsky &amp; Froelich Ltd. 1311 E. Wacker Drive, Suite 2800 Chicago, IL 60601</p>		<p>FEDERAL TAX IDENTIFICATION NUMBER</p>
<p>E-MAIL ADDRESS: [REDACTED]</p>		<p>[REDACTED]</p>
<p><input type="checkbox"/> CHECK HERE IF NAME OR ADDRESS CHANGE</p> <p>SEE 10 ILCS 5/9-35 FOR GUIDANCE</p>		
<p><input checked="" type="checkbox"/> NEW REGISTRATION      <input type="checkbox"/> AMENDED REGISTRATION</p>		
<p>1. <b>AFFILIATED ENTITY</b> (Usual affiliated entities as defined in 10 ILCS 50-37(a) of the Illinois Procurement Code)</p> <p>NAME: Shelsky &amp; Froelich Charitable Foundation STREET ADDRESS: 1311 E. Wacker Drive, Suite 2800 CITY: Chicago STATE: Illinois ZIP CODE: 60601 NATURE OF AFFILIATION: Charitable Foundation</p> <p>NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: NATURE OF AFFILIATION:</p> <p>NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: NATURE OF AFFILIATION:</p>		

\*IF MORE SPACE FOR INFORMATION IS REQUIRED, PLEASE ATTACH ADDITIONAL SHEETS.

<b>NAME OF BUSINESS ENTITY</b> Shofsky & Froelich Ltd.	<b>FEDERAL TAX IDENTIFICATION NUMBER</b> [REDACTED]
---	--

**2. AFFILIATED PERSON:** (List all affiliated persons as defined in 30 ILCS 50-37(b) of the Illinois Procurement Code)

**NAME:** Cezar Froelich

**IS THE AFFILIATED PERSON UNDER 18 YEARS OF AGE?** YES ☐ NO ☒

**RESIDENTIAL STREET ADDRESS:** [REDACTED]

**RESIDENTIAL CITY:** [REDACTED]

**RESIDENTIAL STATE:** [REDACTED]

**RESIDENTIAL ZIP CODE:** [REDACTED]

**NATURE OF AFFILIATION:** Executive employee

**NAME:** Mary Froelich

**IS THE AFFILIATED PERSON UNDER 18 YEARS OF AGE?** YES ☐ NO ☒

**RESIDENTIAL STREET ADDRESS:** [REDACTED]

**RESIDENTIAL CITY:** [REDACTED]

**RESIDENTIAL STATE:** [REDACTED]

**RESIDENTIAL ZIP CODE:** [REDACTED]

**NATURE OF AFFILIATION:** Spouse of Executive employee

**NAME:** Brian Crowe

**IS THE AFFILIATED PERSON UNDER 18 YEARS OF AGE?** YES ☐ NO ☒

**RESIDENTIAL STREET ADDRESS:** [REDACTED]

**RESIDENTIAL CITY:** [REDACTED]

**RESIDENTIAL STATE:** [REDACTED]

**RESIDENTIAL ZIP CODE:** [REDACTED]

**NATURE OF AFFILIATION:** Executive employee

\* IF MORE SPACE FOR INFORMATION IS REQUIRED, PLEASE ATTACH ADDITIONAL SHEETS.

**VERIFICATION OF ACCURACY**

I DECLARE THAT THIS CERTIFICATE OF REGISTRATION (INCLUDING ALL AFFILIATED BUSINESSES AND AFFILIATED PERSONS) HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE CERTIFICATE OF REGISTRATION AS REQUIRED BY ARTICLE 9-3.5 OF THE ELECTION CODE. I UNDERSTAND THAT A COPY OF THIS CERTIFICATE WILL BE PROVIDED TO EACH AFFILIATED ENTITY AND EACH AFFILIATED PERSON WITHIN 10 BUSINESS DAYS OF REGISTRATION. VIOLATION OF THIS REQUIREMENT IS SUBJECT TO A FINE NOT TO EXCEED \$1000. I UNDERSTAND ANY CHANGE IN THE INFORMATION PROVIDED IN THIS REGISTRATION SHALL BE REPORTED TO THE ILLINOIS STATE BOARD OF ELECTIONS WITHIN 2 BUSINESS DAYS (10 BUSINESS DAYS FOR BUSINESSES WITH EXISTING STATE CONTRACTS). FAILURE TO DO SO IS SUBJECT TO A CONTINUING PENALTY OF \$1000 PER DAY.

**PRINTED NAME AND SIGNATURE OF BUSINESS ENTITY AGENT**

**DATE**

THE ILLINOIS STATE BOARD OF ELECTIONS REQUIRES A CERTIFICATE OF REGISTRATION IF YOU QUALIFY AS A BUSINESS ENTITY, AFFILIATE OF A BUSINESS ENTITY, OR AN AFFILIATED PERSON OF A BUSINESS ENTITY AS OUTLINED UNDER PUBLIC ACT 05-0971. WILLFUL FAILURE TO FILE OR WILLFUL FILING OF FALSE OR INCOMPLETE INFORMATION REQUIRED BY THIS ARTICLE SHALL CONSTITUTE A BUSINESS OFFENSE SUBJECT TO A FINE NOT TO EXCEED \$5000 PER VIOLATION. THIS FORM IS IN COMPLIANCE WITH THE FORMS MANAGEMENT PROGRAM ACT. THIS FORM IS AUTHORIZED BY PUBLIC ACT 05-0971 AND IS REQUIRED FOR BUSINESS ENTITIES COVERED BY THE ACT. FAILURE TO COMPLY WITH THE REGISTRATION REQUIREMENTS OF THE ACT MAY RESULT IN ANY CONTRACT BETWEEN THE STATE AND SUCH BUSINESS ENTITY BEING VOIDED, OR ANY BID OR PROPOSAL BEING REJECTED.

BUSINESS ENTITIES FILE THIS FORM AT:  
 STATE BOARD OF ELECTIONS  
 1020 S SPRING ST  
 SPRINGFIELD, IL 62704-2974

TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: \_\_\_\_\_

Business Name: Shelsky & Froelich Ltd.

Taxpayer Identification Number: \_\_\_\_\_  
Social Security Number \_\_\_\_\_  
or  
Employer Identification Number  \_\_\_\_\_

Legal Status (check one):

- |   |  |
|---|--|
| <input type="checkbox"/> Individual   | <input type="checkbox"/> Governmental  |
| <input type="checkbox"/> Sole Proprietor  | <input type="checkbox"/> Nonresident alien   |
| <input type="checkbox"/> Partnership  | <input type="checkbox"/> Estate or trust   |
| <input type="checkbox"/> Legal Services Corporation   | <input type="checkbox"/> Pharmacy (Non-Corp.)  |
| <input type="checkbox"/> Tax-exempt   | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.)                                      |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services     | <input checked="" type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> D = disregarded entity  |
|   | <input checked="" type="checkbox"/> C = corporation  |
|   | <input type="checkbox"/> P = partnership   |

Signature: \_\_\_\_\_

Date: 7/1/09

LFA #8 24 09b

Affidavit

Submitting Agency: Office of the Governor  
Address: 414 Stratton Building

Vendor: Shefsky & Froelich  
Address: 111 East Wacker Suite 2800  
Chicago, IL 60601

Contract # IGOV 200099

State of Illinois }  
County of Sangamon } SS

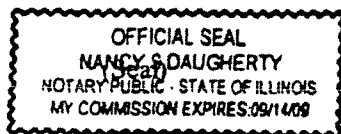
I, Mary Fanning, being duly sworn, solemnly affirm that: I am the Fiscal Director for the Office of the Governor.

Due to the following reasons, the attached contract renewal was not filed timely. Although the scope of services to be provided and fees were agreed upon, there was a delay in obtaining the necessary documents. The vendor continued to follow the terms of the contract.

I am duly authorized to make this affidavit. This affidavit is made pursuant to and in fulfillment of the requirements of the State Comptroller Act (15 ILCS 405). I know and understand the contents of this affidavit and all statements herein are true and correct.

\_\_\_\_\_  
Signature of Affiant

Subscribed and sworn before me this 24th day of August 20 09.



\_\_\_\_\_  
Notary Public  
My Commission Expires: 9-14-09

# EXHIBIT 3

### INTERAGENCY AGREEMENT

This Interagency Agreement is entered into between the Office of the Governor and the Illinois Department of Healthcare and Family Services (the "Agency"), pursuant to the "Intergovernmental Cooperation Act" (5 ILCS 220) and in connection with certain professional services provided to the State of Illinois by Shelsky & Froelich ("Vendor").

1. To assist the Office of the Governor, the Agency, and the officers and employees of the State of Illinois in connection with issues relating to the Agency, Vendor was retained to provide advice, counsel, and, where appropriate, legal representation to the Office of the Governor, the Agency, and officers and employees of the State of Illinois; and perform such other legal services as are requested and as may be contemplated under the terms of the contract between Vendor and the State of Illinois on the matters of: Caro et. al., v. Blagojevich, et.al. The Office of the Governor has been the Coordinating Agency, responsible for the preparation of the underlying contract and other administrative functions in connection with these services (copy of contract attached for reference).
2. The Office of the Governor and the Agency agree that the Agency shall pay an allocable share of the cost of obtaining the services under the contract with Vendor, in furtherance of Section 1 of the "Pricing/Compensation" provisions of the underlying contract effective October 24, 2008 through June 30, 2009 (see Appendix A for Agency allocable share). Total compensation under this contract shall not exceed \$150,000.
3. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on both parties hereto, notwithstanding that both parties are not signatories to the same counterpart.
4. The term of this Agreement is effective as of the start date of the underlying contract between the Office of the Governor and Vendor and, unless otherwise terminated by one of the parties, shall continue through June 30, 2009. Notice of termination must be in writing and may be delivered by any means.

Office of the Governor,

Department of Healthcare and Family Services

Mary Panning, Fiscal Director

Barry Maram, Director

Date 1/5/09

Date 1/05/09



## APPENDIX A

### Legal Services Agreement:

Contract for Services with Shefsky & Froelich effective October 24, 2008.

### Agency Allocable Share of Cost:

Illinois Department of Healthcare and Family Services – 50%, but not to exceed \$75,000.

INTERAGENCY AGREEMENT - FY 10

This Interagency Agreement is entered into between the Office of the Governor and the Illinois Department of Healthcare and Family Services (the "Agency"), pursuant to the "Intergovernmental Cooperation Act" (5 ILCS 220) and in connection with certain professional services provided to the State of Illinois by Shefsky & Froelich ("Vendor").

1. To assist the Office of the Governor, the Agency, and the officers and employees of the State of Illinois in connection with issues relating to the Agency, Vendor was retained to provide advice, counsel, and, where appropriate, legal representation to the Office of the Governor, the Agency, and officers and employees of the State of Illinois; and perform such other legal services as are requested and as may be contemplated under the terms of the contract between Vendor and the State of Illinois on the matters of: Caro et. al., v. Blagojevich, et.al. The Office of the Governor has been the Coordinating Agency responsible for the preparation of the underlying contract and other administrative functions in connection with these services (copy of contract attached for reference).
2. The Office of the Governor and the Agency agree that the Agency shall pay an allocable share of the cost of obtaining the services under the contract with Vendor, in furtherance of Section 1 of the "Pricing/Compensation" provisions of the underlying contract effective October 24, 2008 through June 30, 2009, and renewed for the period of July 1, 2009 through June 30, 2010 (see Appendix A for Agency allocable share). Total compensation under this contract shall not exceed \$150,000.
3. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on both parties hereto, notwithstanding that both parties are not signatories to the same counterpart.
4. The term of this Agreement is effective as of the start date of the underlying contract between the Office of the Governor and Vendor and, unless otherwise terminated by one of the parties, shall continue through June 30, 2010. Notice of termination must be in writing and may be delivered by any means.

Office of the Governor

Department of Healthcare and Family Services

Simone McNeil, Director of Operations

Barry Marah, Director

Michelle Schober  
PSA TO THE DIRECTOR

Date 07-09-09

Date 6/30/09

## APPENDIX A

### Legal Services Agreement:

Contract for Services with Shefsky & Froelich effective October 24, 2008.

### Agency Allocable Share of Cost:

Illinois Department of Healthcare and Family Services – 50%, but not to exceed \$75,000.

# EXHIBIT 4

**Illinois Department of Healthcare and Family Services Inter-Office Memorandum**

To: Barry Maram, Director, Department of Healthcare and Family Services

From: Jeanette Badrov, Ethics Officer

Date: April 6, 2010

Subject: Revolving Door and Conflicts of Interest

**Background and Inquiry**

The Ethics Office of the Department of Healthcare and Family Services has received your inquiry regarding your potential post-state employment with a law firm. You are the Director of the State of Illinois, Department of Healthcare and Family Services (HFS). You are also appointed to various boards, commissions, authorities, or task forces authorized or created by state law, executive order of the Governor, or the Constitution. You stated that you are resigning from your position as Director and from all your appointee positions. You stated you intend to work as an attorney with a law firm. You do not know which law firm you will be joining. You stated that you would like guidance from the HFS Ethics Office regarding the impact of various revolving door and conflicts of interest provisions on accepting employment, compensation, or fees for services as an attorney with a law firm. You stated that you have not been notified and are not aware of being placed on any "C" list pursuant to 5 ILCS 430/5-45(c), with respect to the revolving door in connection with any of your appointments or as Director. You are requesting the view of the HFS Ethics Office with respect to this matter in accordance with the terms of 610.1(H) of the Employee Handbook and 5 ILCS 430/20-23 of the State Officials and Employees Ethics Act (Ethics Act).

This written guidance given is based solely on the facts set forth and is restricted to the question raised. Accordingly, it should be noted that any different facts or conditions might require a different conclusion.

This guidance is also given pursuant to 610.1(H) of the Employee Handbook and 5 ILCS 430/20-23 of the Ethics Act. 610.1(H) of the Employee Handbook states "If you have a question as to whether a personal relationship, business transaction, outside employment, business interest, gift or association is or has the potential to be a conflict of interest, consult the Ethics Officer." The Ethics Act states that ethics officers shall "provide guidance to officers and employees in the interpretation and implementation of this Act, which the officer or employee may in good faith rely upon. Such guidance shall be based, wherever possible, upon legal precedent in court decisions, opinions of the Attorney General, and the findings and opinions of the Executive Ethics Commission." 5 ILCS 430/20-23. Because this guidance is given under the authority of the Employee Handbook and the Ethics Act, it is not intended to be used as a substitute for an opinion from the Attorney General; only the Attorney General has the constitutional authority to issue binding opinions with

precedential value. In the event you need a formal opinion, you should seek it from the Attorney General. This guidance is also not intended to be used as a substitute for any procedures set by law regarding obtaining approval for post-state employment pursuant to the revolving door. Accordingly, this guidance does not address any responsibilities you may have pursuant to 5 ILCS 430/5-45 (c). If you have been placed or notified that you are on any lists pursuant to 5 ILCS 430/5-45(c), you will need to follow the procedures authorized by this statute and established by the Office of the Illinois Executive Inspector General; see <http://inspectorgeneral.il.gov/revolving.htm>. Further, this guidance is not intended to provide legal counsel to you. In the event you feel you need clarification or a legal opinion, you should seek it independently. This guidance is not binding before any administrative body or court of law and is based on a current understanding of the ethics law, which could change as a result of court opinions, statutory changes, or other matters (e.g. Attorney General or Executive Ethics Commission opinions).

## **Review**

### **I. State Officials and Employees Ethics Act, Revolving Door**

As Director of HFS, you are the head of HFS and a person whose appointment to office is subject to the advice and consent of the Senate. The revolving door section of the Ethics Act, 5 ILCS 430/5-45(h), states that you

shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency, or was the subject of a regulatory or licensing decision involving the officer, member, or State employee's State agency, regardless of whether he or she participated personally and substantially in the award of the State contract or contracts or the making of the regulatory or licensing decision in question.

#### **A. Contracts Under Revolving Door**

You have inquired as to the meaning of the term "contract" under the revolving door provision of the Ethics Act. The Ethics Act does not define contracts, no rules or regulations exist, there is no case law, and no written opinions by the Attorney General or the Executive Ethics Commission exist to offer guidance. However, one should assume that grants and interagency agreements with a cumulative value of \$25,000 or more with persons or entities that are not affiliated with the State of Illinois (e.g. counties, cities, and other local government units) are included in the definition of contracts. With respect to whether medical assistance provider agreements are included in the definition of contracts, please note the following.

The Attorney General has consistently argued in defense of HFS in the Court of Claims that medical assistance provider agreements are not contracts. See *Franciscan Sisters v. State*, 31 Ill Ct. Cl. 58 (1975). In this case, the Court of Claims held that the authority for payment of medical assistance claims is statutory, because the provisions of the Public Aid Code authorize payments directly to a person or entity who supplies goods or services to a recipient of the Public Aid Code. 305 ILCS 5/2-5 and 5/11-13. Since HFS payments to providers in the medical assistance program are authorized by statute and not by contract, the AG has successfully utilized *Franciscan Sisters v. State* before the Court of Claims to argue that medical assistance provider agreements are not contracts.

In addition to the *Franciscan* case, the Court of Claims Act makes a distinction between contracts and HFS medical assistance provider agreements.

Every claim cognizable by the Court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within the time set forth as follows:

(a) All claims arising out of a contract must be filed within 5 years after it first accrues, saving to minors, and persons under legal disability at the time the claim accrues, in which cases the claim must be filed within 5 years from the time the disability ceases.

(b) All claims cognizable against the State by vendors of goods or services under "The Illinois Public Aid Code", approved April 11, 1967, as amended, must file within one year after the accrual of the cause of action, as provided in Section 11-13 of that Code.

#### 705 ILCS 505/22

Note that medical assistance provider agreements are also excluded from the definition of contracts under the Conflicts of Interest section of the Illinois Procurement Code, 30 ILCS 500/50-13(f)(1), and are exempt from the Illinois Procurement Code as a "purchase of care." 30 ILCS 500/1-10(b)(3); 44 Ill. Admin. Code 1.10(d)(3).

Indeed, an HFS provider agreement lacks a basic element of a contract, consideration. By statute, as long as certain statutory conditions exist, HFS exercises no discretion and must allow any willing provider to enroll and register in its medical assistance programs. 305 ILCS 5/5-5. A provider agreement simply allows a provider to register and enroll in HFS medical assistance programs. There is no finite termination date to this agreement. The purpose of the agreement is to ensure that the provider will be paid medical assistance rates if goods or services are tendered to a medical assistance recipient. Providers are not mandated to render services or goods to recipients and may decline to treat recipients. Payment is made by HFS after the services or goods are provided, not at the time of enrollment and registration, and payment will continue to be made as long as the provider renders services or goods to recipients. Hence, unlike a contract, no consideration is

tendered at the time of registration and enrollment of a provider in the medical assistance program.

## **B. Regulatory Decisions Under Revolving Door**

You have also asked whether HFS, in administering its medical assistance programs, renders any regulatory decisions within the meaning of the revolving door section of the Ethics Act. The Ethics Act does not define regulatory decisions, no rules or regulations exist, there is no case law, and no written opinions by the Attorney General or the Executive Ethics Commission exist to offer guidance. However, if the provisions of the Regulatory Sunset Act, 5 ILCS 80/1 *et al.*, could be relied upon to interpret the meaning of "regulatory decision," it would appear that only regulatory agencies could issue regulatory decisions and that HFS would not be considered to be a regulatory agency.

The "Findings and Intent" section of the Regulatory Sunset Act states:

(a) The General Assembly finds that State government actions have produced a substantial increase in numbers of agencies, growth of programs and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination or continuation of such agencies and programs, it will be in a better position to evaluate the need for the continued existence of present and future regulatory bodies.

(b) It is the intent of the General Assembly:

(1) That no profession, occupation, business, industry or trade shall be subject to the State's regulatory power unless the exercise of such power is necessary to protect the public health, safety or welfare from significant and discernible harm or damage. The exercise of the State's police power shall be done only to the extent necessary for that purpose.

(2) That the State shall not regulate a profession, occupation, industry, business or trade in a manner which will unreasonably and adversely affect the competitive market.

(3) To provide systematic legislative review of the need for, and public benefits derived from, a program or function that licenses or otherwise regulates the initial entry into a profession, occupation, business, industry or trade by a periodic review and termination, modification, or continuation of those programs and functions.

5 ILCS 80/2



Regulatory agency under the Regulatory Sunset Act means "any arm, branch, department, board, committee or commission of State government that licenses, supervises, exercises control over, or issues rules regarding, or otherwise regulates any trade, occupation, business, industry or profession." 5 ILCS 80/3.

Program under the Regulatory Sunset Act means "a system to license or otherwise regulate the initial entry into a profession, occupation, business, industry, or trade by a periodic review and termination, modification, or continuation of the profession, occupation, business, industry, or trade." 5 ILCS 80/3.

If the Regulatory Sunset Act could be relied upon to define regulatory decisions under the Ethics Act, HFS decisions with respect to the medical assistance programs would not be considered regulatory. The medical assistance programs pay a provider after that provider renders services or goods to a recipient. In operating the medical assistance programs, HFS does not license, supervise, exercise control over, or issue rules regarding any aspect of a profession, occupation, business, industry, or trade. Determinations made by HFS can be construed to be enforcement decisions, because they are limited to whether a specific provider (a person or entity) should receive compensation from the medical assistance programs. Thus, in operating the medical assistance programs, based upon the Regulatory Sunset Act, HFS neither acts as a regulatory agency nor issues regulatory decisions.

#### **C. Licensing Decisions Under Revolving Door**

HFS makes determinations of child support arrearages with respect to non-custodial parents (NCP) and certifies these arrearages to the appropriate state licensing agencies. These licensing agencies are then statutorily required to revoke the NCP's license. As there is no other administrative hearing to determine whether the NCP should retain his/her license (an appeal to the circuit court is only allowed), HFS could be construed to be an agency that renders licensing decisions under the revolving door provision of the Ethics Act with respect to outstanding child support payments of NCPs.

#### **D. Compensation Under Revolving Door**

Compensation means "any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another." 5 ILCS 420/1-104.

### **II. Illinois Procurement Code, Revolving Door Prohibition**

The "Revolving Door Prohibition" of the Illinois Procurement Code applies to you after your resignation. 50 ILCS 500/50-30(a) states:

Chief procurement officers, associate procurement officers, State purchasing officers, their designees whose principal duties are directly related to State procurement, and executive officers confirmed by the Senate are expressly prohibited for a period of 2

years after terminating an affected position from engaging in any procurement activity relating to the State agency most recently employing them in an affected position for a period of at least 6 months. The prohibition includes but is not limited to: lobbying the procurement process; specifying; bidding; proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation. This subsection applies only to persons who terminate an affected position on or after January 15, 1999.

This prohibition applies to contracts subject to the Illinois Procurement Code. Medical assistance provider agreements are exempt from the Illinois Procurement Code as a "purchase of care." 30 ILCS 500/1-10(b)(3); 44 Ill. Admin. Code 1.10(d)(3). Interagency agreements are exempt from the procurement code. 30 ILCS 500/1-10(b)(1); 44 Ill. Admin. Code 1.10(d)(1). Grants are exempt from the Illinois procurement code. 30 ILCS 500/1-10(b)(2); 44 Ill. Admin. Code 1.10(d)(2).

### **III. Executive Order 1 (2007)**

This order became effective 2/28/07. It applies to state employees who had procurement authority at any time during the one-year period immediately preceding the termination of state employment. Procurement authority is defined as the authority to participate personally and substantially in decisions to award state contracts. This order prohibits former state employees with procurement authority and their family members from engaging in procurement lobbying activities within one year after termination of state employment.

### **IV. HFS Employee Handbook**

Section 135 (B), Leaving State Employment, of the HFS employee handbook also restricts your procurement activity for two years after termination of employment with HFS. Section 135(B) states:

1. Effective January 15, 1999, the department's State Purchasing Officer (SPO) shall identify in writing all designees whose principal duties are directly related to state procurement. "Principal duties" shall mean "job or position descriptions at least 51% directly related to state procurement." The SPO shall maintain that information for a period of at least two years following the end or revocation of the designation.
2. Any department employee who is the SPO or a designee identified pursuant to paragraph one above, who is employed by the department in an affected position for at least six months, or any executive officer confirmed by the Senate is expressly prohibited by law from engaging in any procurement activity relating to the department for two years after termination of employment with the department. This prohibition includes, but is not limited to, lobbying the procurement process; specifying; bidding; and proposing bid, proposal, or contract documents

on their own or on behalf of any firm, partnership, association, or corporation.

**V. Illinois Procurement Code, Conflicts of Interest**

**A. Conflicts of Interest**

The "Conflicts of Interest" section of the Illinois Procurement Code, 30 ILCS 500/50-13, applies to you as long as you serve as Director and possibly as an appointee ("office" and "agency" are not defined) of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. It states:

a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.

(b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2 % of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(c) Combined interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(c-5) Appointees and firms. In addition to any provisions of this Code, the interests of certain appointees and their firms are subject to Section 3A-35 of the Illinois Governmental Ethics Act.

(d) Securities. Nothing in this Section invalidates the provisions of any bond or other security previously offered or to be offered for sale or sold by or for the State of Illinois.

(e) Prior interests. This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General

Assembly, his or her spouse, minor child, or other immediate family member living in his or her residence or any combination of those persons if that contract was in existence before his or her election or employment as an officer, member, or employee. The contract is voidable, however, if it cannot be completed within 365 days after the officer, member, or employee takes office or is employed.

(f) Exceptions.

(1) Public aid payments. This Section does not apply to payments made for a public aid recipient.

(2) Teaching. This Section does not apply to a contract for personal services as a teacher or school administrator between a member of the General Assembly or his or her spouse, or a State officer or employee or his or her spouse, and any school district, public community college district, the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, or Northeastern Illinois University.

(3) Ministerial duties. This Section does not apply to a contract for personal services of a wholly ministerial character, including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist, or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly.

(4) Child and family services. This Section does not apply to payments made to a member of the General Assembly, a State officer or employee, his or her spouse or minor child acting as a foster parent, homemaker, advocate, or volunteer for or in behalf of a child or family served by the Department of Children and Family Services.

(5) Licensed professionals. Contracts with licensed professionals, provided they are competitively bid or part of a reimbursement program for specific, customary goods and services through the Department of Children and Family Services, the Department of Human Services, the Department of Healthcare and Family Services, the Department of Public Health, or the Department on Aging.

(g) Penalty. A person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000.

Note that under this statute, public aid payments are listed as an exception. 30 ILCS 500/50-13(f)(1). Additionally, as argued above, grants and interagency agreements could be construed to be exempted from this provision.

**B. Negotiations**

The "Negotiations" section of the Illinois Procurement Code, 30 ILCS 500/50-15, applies to you as long as you continue to serve as Director and possibly in your service as an appointee (offices and agencies are not defined). 30 ILCS 500/50-15 states:

(a) It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association, or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment.

(b) Any person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000.

### **C. Exemptions**

30 ILCS 500/50-20 states how you may request an exemption from the prohibitions set forth in 30 ILCS 500/50-13. It states:

With the approval of the appropriate chief procurement officer involved, the Governor, or an executive ethics board or commission he or she designates, may exempt named individuals from the prohibitions of Section 50-13 when, in his, her, or its judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section. An exemption is effective only when it is filed with the Secretary of State and the Comptroller and includes a statement setting forth the name of the individual and all the pertinent facts that would make that Section applicable, setting forth the reason for the exemption, and declaring the individual exempted from that Section. Notice of each exemption shall be published in the Illinois Procurement Bulletin.

## **VI. Illinois Governmental Ethics Act, Conflicts of Interest**

The conflicts of interest sections of the Illinois Governmental Ethics Act, 5 ILCS 420/3A-35, apply to you as an appointee of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. As long as you are an appointee, please note the following restrictions:

(a) In addition to the provisions of subsection (a) of Section 50-13 of the Illinois Procurement Code, it is unlawful for an appointed member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor, the spouse of the appointee, or an immediate family member of the appointee living in the appointee's residence to have or acquire a contract or have or acquire a direct pecuniary interest in a contract with the State that relates to the board, commission, authority, or task force of which he or she is an appointee during and for one year after the conclusion of the person's term of office.

(b) If (i) a person subject to subsection (a) is entitled to receive more than 7 1/2 % of the total distributable income of a partnership, association, corporation, or other business entity or (ii) a person subject to subsection (a) together with his or her spouse and immediate family members living in that person's residence are entitled to receive more than 15%, in the aggregate, of the total distributable income of a partnership, association, corporation, or other business entity then it is unlawful for that partnership, association, corporation, or other business entity to have or acquire a contract or a direct pecuniary interest in a contract prohibited by subsection (a) during and for one year after the conclusion of the person's term of office.

## **VII. Public Officer Prohibited Activities Act**

The "Prohibited Interest In Contracts" sections of the Public Officer Prohibited Activities Act, 50 ILCS 105/3 and 50 ILCS 105/4, apply to you in your capacity as Director and possibly as an appointee (office is not defined) of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. As long as you are Director or serve an appointee, please note the following restrictions:

### **A. Prohibited Interest in Contracts**

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission or to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law.

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under either paragraph (1) or (2):

(1) If:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 1/2 % share in the ownership; and

B. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D. such contract is approved by a majority vote of those members presently holding office; and

E. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and

F. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$25,000.

(2) If:

A. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

B. the amount of the contract does not exceed \$2,000; and

C. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$4,000; and

D. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the interested member of the governing body of the municipality, advisory panel, or commission has less than a 1% share in the ownership; and

B. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

C. such interested member publicly discloses the nature and extent of his interest before or during deliberations concerning the proposed award of the contract; and

D. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(c) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an ownership interest of no more than 7 1/2 % in the public utility company, or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section.

(d) Notwithstanding any other provision of this Section or any other law to the contrary, until January 1, 1994, a member of the city council of a municipality with a population under 20,000 may purchase real estate from the municipality, at a price of not less than 100% of the value of the real estate as determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser, if the purchase is approved by a unanimous vote of the city council members then holding office (except for the member desiring to purchase the real estate, who shall not vote on the question).

(e) For the purposes of this Section only, a municipal officer shall not be deemed interested if the officer is an employee of a company or owns or holds an interest of 1% or less in the municipal officer's individual name in a company, or both, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market, provided the interested member: (i) publicly discloses the fact that he or she is an employee or holds an interest of 1% or less in a company before deliberation of the proposed award of the contract; (ii) refrains from evaluating, recommending, approving, deliberating, or otherwise participating in negotiation, approval, or both, of the contract, work, or business; (iii) abstains from voting on the award of the contract though he or she shall be considered present for purposes of establishing a quorum; and (iv) the contract is approved by a majority vote of those members currently holding office.

A municipal officer shall not be deemed interested if the officer owns or holds an interest of 1% or less, not in the officer's individual name but through a mutual fund,



in a company, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market.

(f) Under either of the following circumstances, a municipal officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or business of the municipality:

(1) If the municipal officer is appointed by the governing body of the municipality to represent the interests of the municipality on a not-for-profit corporation's board, then the municipal officer may actively vote on matters involving either that board or the municipality, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal officer may be reimbursed by the non-for-profit board for expenses incurred as the result of membership on the non-for-profit board.

(2) If the municipal officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, then the municipal officer may continue to serve; however, the municipal officer shall abstain from voting on any proposition before the municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal governing body.

50 ILCS 105/3

#### **B. Violations**

Any alderman, member of a board of trustees, supervisor or county commissioner, or other person holding any office, either by election or appointment under the laws or constitution of this state, who violates any provision of the preceding sections, is guilty of a Class 4 felony and in addition thereto, any office or official position held by any person so convicted shall become vacant, and shall be so declared as part of the judgment of court. 50 ILCS 105/4.

#### **VIII. State Officials and Employees Ethics Act, Prohibition on Serving on Boards and Commissions**

The "Prohibition on Serving on Boards and Commissions" section of the Ethics Act, 5 ILCS 430/5-55, applies to you in your capacity as an appointee of any board, commission, authority, or task force created by state law, executive order of the Governor, or by the Constitution. As long as you are an appointee, please note the following restrictions:

Notwithstanding any other law of this State, on and after February 1, 2004, a person, his or her spouse, and any immediate family member living with that person is

ineligible to serve on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor if (i) that person is entitled to receive more than 7 1/2 % of the total distributable income under a State contract other than an employment contract or (ii) that person together with his or her spouse and immediate family members living with that person are entitled to receive more than 15% in the aggregate of the total distributable income under a State contract other than an employment contract; except that this restriction does not apply to any of the following:

(1) a person, his or her spouse, or his or her immediate family member living with that person, who is serving in an elective public office, whether elected or appointed to fill a vacancy; and

(2) a person, his or her spouse, or his or her immediate family member living with that person, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action.

#### **IX. State Officials and Employees Ethics Act, Penalties**

The penalties and injunctive relief for violating the various sections cited above of the Ethics Act are as follows.

A person is guilty of a Class A misdemeanor if that person intentionally violates any provision of Section 5-15, 5-30, 5-40, or 5-45 or Article 15. 5 ILCS 430/50-5 (a).

An ethics commission may levy an administrative fine of up to 3 times the total annual compensation that would have been obtained in violation of the revolving door. 5 ILCS 430/50-5(a-1).

A person who intentionally violates any provision of Section 5-20, 5-35, 5-50, or 5-55 is guilty of a business offense subject to a fine of at least \$1,001 and up to \$5,000. 5 ILCS 430/50-5(c).

For a violation of any Section of the Ethics Act, an ethics commission may issue appropriate injunctive relief up to and including discharge of a state employee. 5 ILCS 430/50-10.

#### **X. List of HFS Contracts, Grants, and Interagency Agreements**

Attached is a list of HFS contracts, grants, and interagency agreements as of April 2, 2010. This list is not intended to be an exhaustive list. For example, interagency agreements that are not obligated by HFS are not included. These interagency agreements are with other state agencies and HFS has delegated signature authority to these agencies to fund the services subject to the agreement. As the list is not exhaustive, should you wish

to enter into an employment relationship, receive compensation or fees for services, or otherwise engage in a business relationship with a person or entity or its parent or subsidiary, you have a continuing obligation to confirm whether that person or entity has a contract, grant, or interagency agreement with HFS.

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	<u>Contract Number</u>	<u>Contract Start Date</u>	<u>Contract End Date</u>	<u>Amount Obligated</u>
BARNES & THORNBURG LLP	8GOMB00010	7/1/2009	6/30/2010	125,000.00
BOND COUNTY	8KCC000003	7/1/2009	6/30/2010	7,249.00
BOND COUNTY	9FF0000044	7/1/2009	6/30/2010	20,000.00
BOND COUNTY	9M00000050	7/1/2009	6/30/2010	30,000.00
BROWN COUNTY	8KCC000005	7/1/2009	6/30/2010	6,259.00
BROWN COUNTY	9FF0000061	7/1/2009	6/30/2010	20,000.00
CALHOUN COUNTY	8KCC000007	7/1/2009	6/30/2010	6,212.00
CALHOUN COUNTY	9FF0000002	7/1/2009	6/30/2010	20,000.00
CASS COUNTY	8KCC000009	7/1/2009	6/30/2010	9,006.00
CASS COUNTY	9FF0000080	7/1/2009	6/30/2010	20,000.00
CHAMPAIGN CO STATES ATTY	8KSAO00001	7/1/2009	6/30/2010	370,742.00
CHAMPAIGN COUNTY CIRCUIT CLERK	8KCC000010	7/1/2009	6/30/2010	61,515.00
CHAMPAIGN CTY SHERIFF	8KSHF00001	7/1/2009	6/30/2010	35,000.00
CHICAGO STATE UNIVERSITY	9FF0000070	7/1/2009	6/30/2010	20,000.00
CLAY COUNTY HEALTH DEPARTMENT	9FF0000088	7/1/2009	6/30/2010	20,000.00
CLINTON COUNTY	8KCC000014	7/1/2009	6/30/2010	8,441.00
CLINTON COUNTY HEALTH DEPT	9FF0000003	7/1/2009	6/30/2010	20,000.00
COLES COUNTY	9FF0000004	7/1/2009	6/30/2010	25,000.00
COLES COUNTY CIRCUIT CLERK	8KCC000015	7/1/2009	6/30/2010	14,079.00
COOK COUNTY	8KCOK00001	7/1/2009	6/30/2010	1,697,862.00
COOK COUNTY	8KCOK00002	7/1/2009	6/30/2010	7,864,905.00
COOK COUNTY	8KCOK00003	7/1/2009	6/30/2010	3,032,994.00
COOK COUNTY	8KCOK00004	7/1/2009	6/30/2010	12,784,584.00
COOK COUNTY CIRCUIT COURT	9KAVG00001	7/1/2009	6/30/2010	96,638.00
COUNTY OF ADAMS	8KCC000001	7/1/2009	6/30/2010	22,499.00
COUNTY OF ADAMS	9FF0000001	7/1/2009	6/30/2010	20,000.00
COUNTY OF ALEXANDER CIR CLK	8KCC000002	7/1/2009	6/30/2010	10,768.00
COUNTY OF BOONE	9FF0000005	7/1/2009	6/30/2010	20,000.00
COUNTY OF BOONE CIRCUIT CLERK	8KCC000004	7/1/2009	6/30/2010	11,852.00
COUNTY OF BUREAU	8KCC000006	7/1/2009	6/30/2010	11,048.00
COUNTY OF BUREAU	9FF0000068	7/1/2009	6/30/2010	20,000.00
COUNTY OF CARROLL	9FF0000040	7/1/2009	6/30/2010	20,000.00
COUNTY OF CARROLL CIRCUIT CLERK	9KCC000008	7/1/2009	6/30/2010	8,438.00
COUNTY OF CHRISTIAN	8KCC000011	7/1/2009	6/30/2010	14,158.00
COUNTY OF CHRISTIAN	9FF0000090	7/1/2009	6/30/2010	20,000.00
COUNTY OF CLARK	9FF0000006	7/1/2009	6/30/2010	20,000.00
COUNTY OF CLARK CIRCUIT CLERK	8KCC000012	7/1/2009	6/30/2010	8,560.00
COUNTY OF CLAY	8KCC000013	7/1/2009	6/30/2010	6,384.00
COUNTY OF EDGAR	8KCC000022	7/1/2009	6/30/2010	5,408.00
COUNTY OF EDGAR	9FF0000007	7/1/2009	6/30/2010	20,000.00
COUNTY OF FRANKLIN	8KCC000027	7/1/2009	6/30/2010	17,791.00
COUNTY OF FULTON	9FF0000084	7/1/2009	6/30/2010	20,000.00
COUNTY OF FULTON	9M00000048	7/1/2009	6/30/2010	30,000.00
COUNTY OF FULTON CIRCUIT CLERK	8KCC000028	7/1/2009	6/30/2010	11,695.00
COUNTY OF GALLATIN	8KCC000029	7/1/2009	6/30/2010	4,947.00
COUNTY OF GREENE	9FF0000027	7/1/2009	6/30/2010	20,000.00
COUNTY OF GREENE CIRCUIT CLERK	8KCC000030	7/1/2009	6/30/2010	9,005.00
COUNTY OF GRUNDY CIRCUIT CLERK	8KCC000031	7/1/2009	6/30/2010	9,186.00
COUNTY OF HARDIN CIRCUIT CLERK	8KCC000034	7/1/2009	6/30/2010	6,835.00
COUNTY OF HENRY	8KCC000036	7/1/2009	6/30/2010	19,799.00
COUNTY OF HENRY	9FF0000037	7/1/2009	6/30/2010	20,000.00
COUNTY OF JO DAVIESS	8KCC000042	7/1/2009	6/30/2010	7,788.00
COUNTY OF JO DAVIESS	9FF0000015	7/1/2009	6/30/2010	20,000.00
COUNTY OF JOHNSON CIRCT CLERK	8KCC000043	7/1/2009	6/30/2010	5,459.00
COUNTY OF KANKAKEE	8KCC000045	7/1/2009	6/30/2010	42,758.00
COUNTY OF KANKAKEE	8KSAO00005	7/1/2009	6/30/2010	138,834.00
COUNTY OF KENDALL	8KCC000046	7/1/2009	6/30/2010	7,840.00
COUNTY OF KENDALL	9FF0000043	7/1/2009	6/30/2010	20,000.00
COUNTY OF MACOUPIN GEN ACCT	8KCC000055	7/1/2009	6/30/2010	16,409.00
COUNTY OF MCHENRY ILLINOIS	8KCC000062	7/1/2009	6/30/2010	15,408.00
COUNTY OF MCHENRY ILLINOIS	9FF0000047	7/1/2009	6/30/2010	20,000.00
COUNTY OF MERCER	8KCC000065	7/1/2009	6/30/2010	9,053.00
COUNTY OF MERCER	9FF0000021	7/1/2009	6/30/2010	20,000.00
COUNTY OF PLATT CIRCUIT CLERK	8KCC000073	7/1/2009	6/30/2010	7,719.00
COUNTY OF PIKE	9FF0000054	7/1/2009	6/30/2010	20,000.00
COUNTY OF PIKE CLERK/RECORDER	8KCC000074	7/1/2009	6/30/2010	8,838.00
COUNTY OF POPE CIRCUIT CLERK	8KCC000075	7/1/2009	6/30/2010	6,207.00

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COUNTY OF ROCK ISLAND	8KCC000080	7/1/2009	6/30/2010	55,800.00
COUNTY OF ROCK ISLAND	9FF0000035	7/1/2009	6/30/2010	20,000.00
COUNTY OF SALINE	8KCC000081	7/1/2009	6/30/2010	11,694.00
COUNTY OF SCOTT	8KCC000084	7/1/2009	6/30/2010	3,400.00
COUNTY OF SCOTT	9FF0000026	7/1/2009	6/30/2010	20,000.00
COUNTY OF SHELBY	8KCC000085	7/1/2009	6/30/2010	6,183.00
COUNTY OF SHELBY HEALTH DEPT	9FF0000073	7/1/2009	6/30/2010	20,000.00
COUNTY OF STARK	8KCC000087	7/1/2009	6/30/2010	7,085.00
COUNTY OF STARK HLTH DEPT	9FF0000036	7/1/2009	6/30/2010	20,000.00
COUNTY OF STEPHENSON	8KCC000088	7/1/2009	6/30/2010	15,453.00
COUNTY OF STEPHENSON	9FF0000052	7/1/2009	6/30/2010	20,000.00
COUNTY OF TAZEWELL ILLINOIS	8KCC000089	7/1/2009	6/30/2010	41,326.00
COUNTY OF VERMILION CIR CLK	8KCC000091	7/1/2009	6/30/2010	38,650.00
COUNTY OF VERMILION HLTH DEPT	9FF0000053	7/1/2009	6/30/2010	20,000.00
COUNTY OF WABASH CIRCUIT CLERK	8KCC000092	7/1/2009	6/30/2010	8,353.00
COUNTY OF WARREN	9FF0000079	7/1/2009	6/30/2010	20,000.00
COUNTY OF WARREN CIRCUIT CLERK	8KCC000093	7/1/2009	6/30/2010	5,896.00
COUNTY OF WAYNE	9FF0000023	7/1/2009	6/30/2010	20,000.00
COUNTY OF WAYNE CIRCUIT CLERK	8KCC000095	7/1/2009	6/30/2010	8,540.00
COUNTY OF WHITE CIRCUIT CLERK	8KCC000096	7/1/2009	6/30/2010	4,507.00
COUNTY OF WILL	8KCC000098	7/1/2009	6/30/2010	81,421.00
COUNTY OF WILL HEALTH DEPT	9FF0000066	7/1/2009	6/30/2010	20,000.00
COUNTY OF WILLIAMSON	8KCC000099	7/1/2009	6/30/2010	17,238.00
COUNTY OF WINNEBAGO ILLINOIS	8KCC000100	7/1/2009	6/30/2010	42,918.00
CRAWFORD CO HEALTH DEPT	9FF0000030	7/1/2009	6/30/2010	20,000.00
CRAWFORD COUNTY CIRCUIT CLERK	8KCC000016	7/1/2009	6/30/2010	4,637.00
CUMBERLAND COUNTY	8KCC000017	7/1/2009	6/30/2010	6,818.00
CUMBERLAND COUNTY	9FF0000033	7/1/2009	6/30/2010	20,000.00
DEKALB CO HEALTH DEPT	9FF0000048	7/1/2009	6/30/2010	42,000.00
DEKALB COUNTY CIRCUIT CLERK	8KCC000018	7/1/2009	6/30/2010	14,866.00
DEKALB COUNTY SAO	8KSAO00002	7/1/2009	6/30/2010	93,645.00
DELOITTE CONSULTING LLP	9GOMB00008	7/1/2009	6/30/2010	14,795.73
DEWITT COUNTY CIRCUIT CLERK	8KCC000019	7/1/2009	6/30/2010	8,325.00
DEWITT PLATT BI CO	9FF0000051	7/1/2009	6/30/2010	20,000.00
DEWITT PLATT BI CO	9M00000051	7/1/2009	6/30/2010	30,000.00
DOUGLAS COUNTY CIRCUIT CLERK	8KCC000020	7/1/2009	6/30/2010	4,296.00
DOUGLAS COUNTY HEALTH DEPT	9FF0000008	7/1/2009	6/30/2010	20,000.00
DOUGLAS COUNTY HEALTH DEPT	9M00000049	7/1/2009	6/30/2010	30,000.00
DUPAGE COUNTY	8KMIS00007	7/1/2009	6/30/2010	300,000.00
DUPAGE COUNTY	8KSAO00003	7/1/2009	6/30/2010	583,013.00
DUPAGE COUNTY	9KAVG00002	7/1/2009	6/30/2010	150,323.00
DUPAGE COUNTY CHIEF JUDGE	8KEXP00001	7/1/2009	6/30/2010	43,000.00
EDWARDS COUNTY CIRCUIT CLERK	8KCC000023	7/1/2009	6/30/2010	7,326.00
EDWARDS COUNTY HEALTH DEPT	9FF0000009	7/1/2009	6/30/2010	20,000.00
EFFINGHAM COUNTY	9FF0000083	7/1/2009	6/30/2010	20,000.00
EFFINGHAM COUNTY CIRCUIT CLERK	8KCC000024	7/1/2009	6/30/2010	11,185.00
EGYPTIAN PUBLIC MENTAL HLTH	9FF0000010	7/1/2009	6/30/2010	20,000.00
FAYETTE COUNTY	9FF0000011	7/1/2009	6/30/2010	25,000.00
FAYETTE COUNTY CIRCUIT CLERK	0KCC000025	7/1/2009	6/30/2010	9,835.00
FORD COUNTY	8KCC000026	7/1/2009	6/30/2010	7,721.00
FORD-IROQUOIS PUBLIC HEALTH DE	9FF0000012	7/1/2009	6/30/2010	20,000.00
FRANKLIN-WILLIAMSON BI-COUNTY	9FF0000034	7/1/2009	6/30/2010	20,000.00
GABRIEL ROEDER SMITH & COMPANY	0HP0000011	10/23/2009	6/30/2010	95,000.00
GELLER JEFFREY MD	9GOMB00003	7/1/2009	6/30/2010	50,000.00
HAMILTON COUNTY CIRCUIT CLERK	8KCC000032	7/1/2009	6/30/2010	7,196.00
HAMILTON COUNTY HEALTH DEPT	9FF0000029	7/1/2009	6/30/2010	20,000.00
HANCOCK COUNTY	9FF0000063	7/1/2009	6/30/2010	20,000.00
HANCOCK COUNTY CIRCUIT CLERK	8KCC000033	7/1/2009	6/30/2010	3,061.00
HENDERSON COUNTY	9FF0000013	7/1/2009	6/30/2010	20,000.00
HENDERSON COUNTY CIRCUIT CLERK	8KCC000035	7/1/2009	6/30/2010	1,632.00
HUMAN SERVICES DEPT OF	0M00000009	7/1/2009	12/31/2009	95,000.00
HUMAN SERVICES DEPT OF	SHARED COST	7/1/2009	6/30/2010	1,046,598.00
ILLINOIS DEPT EMPLOYMNT SEC	8KMIS00001	7/1/2009	6/30/2010	5,000.00
ILLINOIS DEPT OF COMMERCE	0M00000027	8/31/2009	12/31/2009	85,000.00
ILLINOIS DEPT OF HUMAN SVCS	0821789001	7/1/2009	6/30/2010	1,500,000.00
ILLINOIS DEPT OF HUMAN SVCS	7M00000033	7/1/2009	6/30/2010	619,322.00
ILLINOIS HOUSING DEV AUTHORITY	9M00000030	7/1/2009	6/30/2010	27,500.00
ILLINOIS STATE UNIVERSITY	9FF0000075	7/1/2009	6/30/2010	30,000.00
IROQUOIS COUNTY	8KCC000037	7/1/2009	6/30/2010	11,454.00

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JACKSON COUNTY CIRCUIT CLERK	8KCC000038	7/1/2009	6/30/2010	16,776.00
JACKSON COUNTY HEALTH DEPT	9FF0000038	7/1/2009	6/30/2010	62,730.00
JASPER COUNTY HEALTH DEPT	9FF0000060	7/1/2009	6/30/2010	20,000.00
JASPER CTY CIRCUIT CLERK	8KCC000039	7/1/2009	6/30/2010	6,639.00
JEFFERSON COUNTY	9FF0000086	7/1/2009	6/30/2010	20,000.00
JEFFERSON COUNTY CIR CLK	8KCC000040	7/1/2009	6/30/2010	15,240.00
JERSEY COUNTY CIRCUIT CLERK	8KCC000041	7/1/2009	6/30/2010	8,521.00
JERSEY COUNTY HEALTH DEPT	9FF0000014	7/1/2009	6/30/2010	20,000.00
KANE CO SA/CO S CHIDESTER	8KSAO00004	7/1/2009	6/30/2010	769,378.00
KANE COUNTY CIRCUIT CLERK	8KCC000044	7/1/2009	6/30/2010	36,421.00
KANE COUNTY HEALTH DEPARTMENT	0M00000035	12/1/2009	6/30/2010	70,000.00
KANE COUNTY HEALTH DEPT	9FF0000045	7/1/2009	6/30/2010	20,000.00
KANKAKEE COUNTY	9FF0000062	7/1/2009	6/30/2010	20,000.00
KNOX COUNTY	8KSAO00006	7/1/2009	6/30/2010	121,600.00
KNOX COUNTY	9FF0000057	7/1/2009	6/30/2010	20,000.00
KNOX COUNTY CIRCUIT CLERK	8KCC000047	7/1/2009	6/30/2010	21,514.00
LA SALLE COUNTY HEALTH DEPT	9FF0000085	7/1/2009	6/30/2010	20,000.00
LA SALLE COUNTY CIRCUIT CLERK	8KCC000049	7/1/2009	6/30/2010	28,287.00
LAKE COUNTY	8KMS000008	7/1/2009	6/30/2010	150,000.00
LAKE COUNTY	8KSAO00007	7/1/2009	6/30/2010	796,110.00
LAKE COUNTY	9KAVG00004	7/1/2009	6/30/2010	42,686.00
LAWRENCE COUNTY CLERK	8KCC000050	7/1/2009	6/30/2010	8,565.00
LAWRENCE COUNTY HEALTH DEPT	9FF0000016	7/1/2009	6/30/2010	20,000.00
LEE COUNTY	9FF0000042	7/1/2009	6/30/2010	20,000.00
LEE COUNTY CIRCUIT CLERK	8KCC000051	7/1/2009	6/30/2010	12,285.00
LIVINGSTON CO CIRCUIT CLERK	8KCC000052	7/1/2009	6/30/2010	12,438.00
LIVINGSTON COUNTY OF	9FF0000017	7/1/2009	6/30/2010	20,000.00
LOGAN COUNTY CIRCUIT CLERK	8KCC000053	7/1/2009	6/30/2010	12,866.00
MACON COUNTY	8KSAO00008	7/1/2009	6/30/2010	340,900.00
MACON COUNTY CIRCUIT CLERK	8KCC000054	7/1/2009	6/30/2010	63,607.00
MACON COUNTY HEALTH DEPARTMENT	9FF0000050	7/1/2009	6/30/2010	20,000.00
MACOUPIN COUNTY PUB HLTH DEPT	9FF0000032	7/1/2009	6/30/2010	20,000.00
MADISON COUNTY CIRCUIT CLERK	8KCC000056	7/1/2009	6/30/2010	118,012.00
MADISON COUNTY HLTH DEPT	9FF0000055	7/1/2009	6/30/2010	20,000.00
MADISON CTY	8KSAO00009	7/1/2009	6/30/2010	636,887.00
MARION COUNTY CIRCUIT CLERK	8KCC000057	7/1/2009	6/30/2010	19,012.00
MARION COUNTY HEALTH DEPT	9FF0000028	7/1/2009	6/30/2010	20,000.00
MARSHALL COUNTY CIRCUIT CLERK	8KCC000058	7/1/2009	6/30/2010	9,294.00
MASON COUNTY CIRCUIT CLERK	8KCC000059	7/1/2009	6/30/2010	9,662.00
MASON COUNTY HEALTH DEPT	9FF0000077	7/1/2009	6/30/2010	20,000.00
MASSAC COUNTY CIRCUIT CLERK	8KCC000060	7/1/2009	6/30/2010	9,671.00
MCDONOUGH COUNTY	9FF0000018	7/1/2009	6/30/2010	30,000.00
MCDONOUGH COUNTY CIRCUIT CLERK	8KCC000061	7/1/2009	6/30/2010	6,814.00
MCLEAN COUNTY	8KCC000063	7/1/2009	6/30/2010	39,874.00
MCLEAN COUNTY	8KEXP00002	7/1/2009	6/30/2010	33,400.00
MCLEAN COUNTY	8KSAO00010	7/1/2009	6/30/2010	308,561.00
MCLEAN COUNTY	9FF0000019	7/1/2009	6/30/2010	20,000.00
MENARD COUNTY CIRCUIT CLERK	8KCC000064	7/1/2009	6/30/2010	7,741.00
MENARD COUNTY HEALTH DEPT	9FF0000020	7/1/2009	6/30/2010	20,000.00
MONROE COUNTY CIRCUIT CLERK	8KCC000066	7/1/2009	6/30/2010	7,557.00
MONROE COUNTY IL	0FF0000092	9/16/2009	6/30/2010	20,000.00
MONTGOMERY COUNTY	9FF0000059	7/1/2009	6/30/2010	20,000.00
MONTGOMERY COUNTY CIRCUIT CLERK	8KCC000067	7/1/2009	6/30/2010	12,552.00
MORGAN COUNTY	9FF0000022	7/1/2009	6/30/2010	20,000.00
MORGAN COUNTY CIRCUIT CLERK	8KCC000068	7/1/2009	6/30/2010	13,938.00
MOULTRIE CTY CIRCUIT CLK	8KCC000069	7/1/2009	6/30/2010	2,145.00
NAVIGANT CONSULTING INC	8GOMB00005	7/1/2009	6/30/2010	50,000.00
NAVIGANT CONSULTING INC	8RD0000001	7/1/2009	6/30/2010	540,000.00
NORTHERN ILLINOIS UNIVERSITY	8I00000025	4/1/2010	6/30/2010	966,525.66
OGLE COUNTY HEALTH DEPT	9FF0000024	7/1/2009	6/30/2010	20,000.00
PEORIA COUNTY CIRCUIT CLERK	8KCC000071	7/1/2009	6/30/2010	87,279.00
PEORIA COUNTY TENTH JUD CIR IL	9KAVG000003	7/1/2009	6/30/2010	54,710.00
PERRY COUNTY	8KCC000072	7/1/2009	6/30/2010	8,868.00
PERRY COUNTY HEALTH DEPT	9FF0000058	7/1/2009	6/30/2010	20,000.00
PUBLIC HEALTH DEPT OF	9M00000052	7/1/2009	6/30/2010	3,653,951.00
PULASKI COUNTY CIRCUIT CLERK	8KCC000076	7/1/2009	6/30/2010	8,620.00
PUTNAM COUNTY	9FF0000071	7/1/2009	6/30/2010	20,000.00
PUTNAM COUNTY CIRCUIT CLERK	8KCC000077	7/1/2009	6/30/2010	6,234.00
RANDOLPH CNTY CIRCUIT CLERK	8KCC000078	7/1/2009	6/30/2010	11,643.00

## IAIGA

RANDOLPH COUNTY ILLINOIS	0FF0000091	9/16/2009	6/30/2010	20,000.00
RICHLAND COUNTY	9FF0000031	7/1/2009	6/30/2010	20,000.00
RICHLAND COUNTY CLERK	8KCC000079	7/1/2009	6/30/2010	8,278.00
SANG CO DEPT OF PUBLIC HLTH	9FF0000049	7/1/2009	6/30/2010	244,000.00
SANGAMON COUNTY	8KSAC00011	7/1/2009	6/30/2010	269,981.00
SANGAMON COUNTY CIRCUIT CLERK	8KCC000082	7/1/2009	6/30/2010	56,289.00
SCHIFF HARDIN LLP	6GOMB00004	7/1/2009	6/30/2010	10,500.00
SCHUYLER COUNTY	8KCC000083	7/1/2009	6/30/2010	6,396.00
SCHUYLER COUNTY HEALTH DEPT	9FF0000025	7/1/2009	6/30/2010	20,000.00
SHEFSKY & FROELICH LTD	9GOMB00006	7/1/2009	6/30/2010	75,000.00
SOUTHERN ILLINOIS UNIVERSITY	9FF0000072	7/1/2009	6/30/2010	25,000.00
SOUTHERN ILLINOIS UNIVERSITY	9FF0000078	7/1/2009	6/30/2010	25,000.00
SOUTHERN ILLINOIS UNIVERSITY	9M00000047	7/1/2009	12/31/2009	22,500.00
ST CLAIR COUNTY	8KCC000086	7/1/2009	6/30/2010	123,921.00
ST CLAIR COUNTY	8KSAC00012	7/1/2009	6/30/2010	636,485.00
STATE OF RHODE ISLAND	9KMIS00001	7/1/2009	6/30/2010	207,150.00
TABET DIVITO & ROTHSTEIN LLC	9GOMB00002	7/1/2009	6/30/2010	100,000.00
TABET DIVITO & ROTHSTEIN LLC	9GOMB00005	7/1/2009	6/30/2010	75,000.00
UNION COUNTY CIRCUIT CLERK	8KCC000090	7/1/2009	6/30/2010	9,125.00
UNIVERSITY OF IL SPRINGFIELD	09Z2099001	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	09Z2469001	8/1/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	09Z2469002	8/1/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	09Z2899001	10/16/2009	6/30/2010	16,129.80
UNIVERSITY OF IL SPRINGFIELD	0F00000001	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0F00000002	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0F00000003	8/1/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	0GC0000001	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0GC0000003	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0I00000004	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0001	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0002	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0003	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0004	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0KGPSI0005	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000001	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0M00000002	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0M00000003	8/1/2009	6/30/2010	19,532.50
UNIVERSITY OF IL SPRINGFIELD	0M00000011	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000012	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000013	7/1/2009	12/15/2009	10,585.49
UNIVERSITY OF IL SPRINGFIELD	0M00000014	7/1/2009	6/30/2010	22,389.63
UNIVERSITY OF IL SPRINGFIELD	0M00000015	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000016	7/1/2009	2/25/2010	18,159.76
UNIVERSITY OF IL SPRINGFIELD	0M00000017	7/1/2009	8/21/2009	4,056.42
UNIVERSITY OF IL SPRINGFIELD	0M00000018	7/1/2009	5/15/2010	18,404.50
UNIVERSITY OF IL SPRINGFIELD	0M00000023	8/1/2009	10/30/2009	4,552.26
UNIVERSITY OF IL SPRINGFIELD	0M00000024	8/1/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	0M00000037	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0M00000038	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0M00000039	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0M00000040	1/16/2010	6/30/2010	11,000.49
UNIVERSITY OF IL SPRINGFIELD	0PGPSI0001	8/1/2009	6/30/2010	19,224.76
UNIVERSITY OF IL SPRINGFIELD	0SGPSI0001	8/1/2009	6/30/2010	19,224.76
UNIVERSITY OF ILLINOIS	9FF0000081	7/1/2009	6/30/2010	20,000.00
UNIVERSITY OF ILLINOIS	9FF0000087	7/1/2009	6/30/2010	20,000.00
UNIVERSITY OF ILLINOIS	9FF0000089	7/1/2009	6/30/2010	35,000.00
UNIVERSITY OF ILLINOIS AT CHGO	0M00000033	8/1/2009	6/30/2010	115,000.00
UNIVERSITY OF ILLINOIS AT CHGO	7M00000034	7/1/2009	6/30/2010	3,474,380.00
UNIVERSITY OF ILLINOIS AT CHGO	7M00000063	7/1/2009	6/30/2010	150,000.00
UNIVERSITY OF ILLINOIS AT CHGO	8I00000028	4/1/2010	6/30/2010	118,481.00
UNIVERSITY OF ILLINOIS AT CHGO	8M00000054	7/1/2009	6/30/2010	80,000.00
UNIVERSITY OF ILLINOIS AT CHGO	8M00000058	7/1/2009	6/30/2010	160,000.00
UNIVERSITY OF ILLINOIS AT CHGO	8M00000063	7/1/2009	6/25/2010	700,300.00
UNIVERSITY OF ILLINOIS AT CHGO	9FF0000082	7/1/2009	6/30/2010	111,700.00
UNIVERSITY OF ILLINOIS AT CHGO	9M00000025	7/1/2009	6/30/2010	725,000.00
VILLAGE OF OAK PARK	9FF0000076	7/1/2009	6/30/2010	20,000.00
WABASH COUNTY HEALTH DEPT	9FF0000074	7/1/2009	6/30/2010	20,000.00
WASHINGTON COUNTY	8KCC000094	7/1/2009	6/30/2010	6,889.00
WASHINGTON COUNTY	9FF0000046	7/1/2009	6/30/2010	20,000.00

## IAIGA

WHITESIDE COUNTY CIRCUIT CLERK	8KCC000097	7/1/2009	6/30/2010	19,959.00
WHITESIDE COUNTY HEALTH DEPT	9FF0000041	7/1/2009	6/30/2010	20,000.00
WINNEBAGO COUNTY HEALTH DEPT	9FF0000065	7/1/2009	6/30/2010	25,000.00
WOODFORD COUNTY	9FF0000039	7/1/2009	6/30/2010	20,000.00
WOODFORD COUNTY CIRCUIT CLERK	8KCC000101	7/1/2009	6/30/2010	11,405.00
				50,933,838.27



# EXHIBIT 5

## INTEROFFICE MEMORANDUM

TO: John J. Cullerton, Senate President  
FROM: Eric M. Madiar, Chief Counsel  
DATE: April 8, 2010  
RE: Scope of the State Ethics Act's Revolving Door Prohibition

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### Overview

This memorandum addresses the scope of the one-year, "revolving door" employment prohibition that applies to certain State officials and employees who leave state service as contained in Section 5-45(h) of the State Officials and Employees Ethics Act ("Ethics Act"). 5 ILCS 430/5-45(h). In particular, the memorandum discusses whether the prohibition bars a State agency director from obtaining employment with a law firm where (1) that firm was actually hired by the Governor's office—not the state agency—to perform legal services concerning the director's state agency, and (2) that firm's fees were split and paid equally pursuant to a later intergovernmental agreement between the Governor's office and the state agency director. As explained below, while the revolving door prohibition appears to apply as a general matter based on its plain language, a court would likely conclude that the prohibition only applies *prospectively*. As a result, the prohibition would apply to the above circumstance if the contractual arrangement commenced on or after August 19, 2009, Section 5-45(h)'s effective. In addition, a court could reasonably conclude that the prohibition would only apply to an agency director seeking employment with a firm that the agency actually awarded a contract to, not simply one having an indirect contractual relationship with the agency.

### Discussion

On its face, the one-year revolving door prohibition applies to an agency director under the above scenario because Section 5-45(h) expressly bars employment with a prospective employer who "was a party to a State contract" valued at \$25,000 or more that "*involves*" the director's state agency, irrespective of whether the director "participated personally and substantially in the award of the State contract." *Id.* This result derives from the use of the word "involve," which Illinois courts define as to "implicate" or be "connected by participation or association." *People v. Brady*, 369 Ill. App. 3d 836, 845 (2<sup>nd</sup> Dist. 2007). The intergovernmental agreement described above appears, as a literal matter, to effectuate a sufficient connection between the agency director and State contractor to trigger the revolving door prohibition. Accordingly, Section 5-45(h) would seemingly require an agency director to wait a year before seeking employment with a State contractor—even if that director did not award the contract—so long as the State contractor provided services that implicated the director's state agency and participation.

With that said, the prohibition would most likely not apply, however, to an agency director who seeks employment with a law firm under the above scenario where the contractual arrangement took place before Section 5-45(h)'s effective date. Section 5-45(h) was part of Senate Bill 54 and a new legal provision that took effect on August 18, 2009. Illinois courts presume that a new statute will apply *prospectively* if a retroactive application would have "inequitable consequences," unless the statute contains clear language to the contrary. *Doe A v. Diocese of Dallas*, 234 Ill.2d 393, 405-07 (2009). Because the Ethics Act did not previously bar such employment in this context,<sup>1</sup> and because Section 5-45(h) lacks clear language regarding its retroactive application, it is reasonable to conclude that the prohibition only applies prospectively to agency directors who seek employment with a State contractor under a contractual arrangement entered into on or after August 18, 2009.

Indeed, Speaker Michael Madigan, the sponsor of Senate Bill 54, stated in floor debate that the revolving door provision was intended to apply prospectively. See 96<sup>TH</sup> ILL. GEN. ASSEM., HOUSE PROCEEDINGS, May 21, 2009, at 45 (colloquy of Reps. Dunkin and Madigan) (*Rep. Dunkin*: "Okay. One last question. Would this have a retroactive application or is this strictly prospective? You don't have to answer the question. That's fine. Thank you." *Rep. Madigan*: "Prospective.").

Moreover, even if we assume that Section 5-45(h) applies retroactively, application of Section 5-45(h)'s plain language to an agency director whose agency had no role in selecting or procuring the contractor's services simply confounds the provision's intended purpose. Section 5-45(h) was passed in response to the actions of Brian McPartlin, former Executive Director of the Illinois Toll Highway Authority. Mr. McPartlin obtained employment with a Tollway contractor providing engineering services shortly after the Tollway awarded the firm a \$1.4 million contract. Since the Ethics Act at that time only barred employment for a year following state service with a contractor who the state official or employee personally and substantially participated in awarding a contract to, Mr. McPartlin delegated his procurement duties to his assistant. Mr. McPartlin also sought a formal waiver of the "revolving door" prohibition from the Executive Ethics Commission due to his prior award of a contract to the same engineering firm. Attorney General Madigan opposed his request before the Executive Ethics Commission. Mr. McPartlin later withdrew his waiver request and turned down the job offer with the engineering firm.

Simply put, Section 5-45(h) was intended stop agency directors or other certain senior officials or employees, for one year, from taking a job with an entity that was, a year before the director left, an agency contractor or license or regulated by the agency. See 96<sup>TH</sup> ILL. GEN. ASSEM., HOUSE PROCEEDINGS, May 21, 2009, at 29 (remarks of Speaker Madigan on SB 54) ("The Bill significantly strengthens the prohibition against revolving door, against the idea that people that are working with an agency granting significant

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<sup>1</sup> Prior to Section 5-45(h) becoming law, the Ethics Act imposed a one-year revolving door prohibition on an agency director seeking employment with (1) a State contractor (or its parent or subsidiary) if that director "participated personally and substantially in the award" of contract value at \$25,000 or more, and (2) a person or entity if that director "participated personally and substantially in the making of a regulatory or licensing decision that directly applied to that person or entity, or its parent or subsidiary." 5 ILCS 430/5-45(a) & (b). The Ethics Act, however, allowed a state official or employee subject to the prohibition to obtain a waiver from the Executive Ethics Commission. 5 ILCS 430/5-45(c).

contracts and the next day leaving the agency and taking a job with a company that got the contract."). The provision was not intended to prohibit employment with an entity that the agency never directly contracted with and provided services to another state agency. As a result, applying Section 5-45(h) to agency director in such a circumstance leads to an absurd result that is contrary to the real-world activity it seeks to regulate. See *People v. Hanna*, 207 Ill.2d 486, 498 (2003) ("It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.").

# EXHIBIT 6



## OFFICE OF THE GOVERNOR

IRTC, 100 W. RANDOLPH, SUITE 16-100  
CHICAGO, ILLINOIS 60601

PAT QUINN  
GOVERNOR

VIA E-MAIL and U.S. MAIL

July 3, 2012

Erin K. Bonales  
Deputy Inspector General and  
Chief of Chicago Division  
Office of the Inspector General  
32 West Randolph Street  
Suite 1900  
Chicago, IL 60601

**Re: Response to Final Report in OEIG Case No. 11-00573**

Dear Ms. Bonales:

Enclosed is the response of the Office of the Governor ("OOG") to the Office of the Executive Inspector General's ("OEIG") Final Report in Case No. 11-00573.

Please let us know if you have any questions or if we can provide any additional information.

Sincerely,

~~John F. Schomberg~~  
General Counsel  
312-814-1687

Enclosure

cc: Brent Stratton, Chief Deputy, Office of the Attorney General



**Office of Executive Inspector General**  
**for the Agencies of the Illinois Governor**  
[www.inspectorgeneral.illinois.gov](http://www.inspectorgeneral.illinois.gov)

**OEIG RESPONSE FORM**

**Case Number:** 11-00573

**Due Within 20 Days of Receipt of  
Report**

Please check the box that applies.

- ☐ We have implemented all of the OEIG recommendations.  
(Provide details regarding action taken.)

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- ☐ We will implement all of the OEIG recommendations but will require additional time.  
We will report to OEIG within 30 days from the original return date.  
(Provide details regarding action planned / taken.)

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(over)

☐ We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.

(Provide details regarding action planned / taken and any alternate plan(s).)

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☒ We do not wish to implement any of the OEIG recommendations.  
(Explain in detail why and provide details of any alternate plan(s).)

PLEASE SEE ATTACHMENT

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Signature

John Schomberg

Print Name

Office of the Governor - General Counsel  
Print Agency and Job Title

2/3/12

Date



**ADDENDUM TO OFFICE OF THE GOVERNOR'S RESPONSE IN  
OEIG CASE NO. 11-00573**

The Office of the Governor (OOG) submits the following in response to the Office of Executive Inspector General's (OEIG) Final Report in Case No. 11-00573:

1. **OEIG Finding:** [Former HFS Director Barry] Maram violated Subsection (h) of the Revolving Door Prohibition because within a period of one year immediately after his termination of State employment, he knowingly accepted employment and received compensation from an entity that during the year immediately preceding his termination of State employment was a party to State contracts with a cumulative value of \$25,000 or more involving HFS.

**OOG Response:** The OEIG's report does not contain a recommendation for action by the Office of the Governor, as the ultimate jurisdictional authority. Nevertheless, in order to meet its statutory response obligations pursuant to 5 ILCS 430/20-50(a), the Office of the Governor responds as follows:

The Office of the Governor disagrees with the OEIG Final Report's finding that Maram violated subsection (h) of the revolving door prohibition. Maram was not prohibited from accepting employment with the law firm of Shefsky & Froelich ("Shefsky") because that firm was not a party to a State contract with Maram's State agency, the Illinois Department of Healthcare and Family Services ("HFS"). Rather, the FY09 Shefsky contract and the FY10 extension of the same (collectively, the "Shefsky Contracts") were contracts between the Office of the Governor and Shefsky, not HFS. Additionally, Maram's State agency, HFS was not "involv[ed]" in the Shefsky Contracts, as HFS played no role in identifying, selecting, or retaining Shefsky and HFS had no "involve[ment]" in awarding the Shefsky Contracts. See OEIG Final Report, Case No. 11-00573, at 7 (citing Governor's Office of the General Counsel as stating that "HFS had not been involved in the procurement of the Shefsky & Froelich contract."). With Maram's State agency, HFS, never having been a party to or "involv[ed]" in the Shefsky Contracts, those contracts cannot provide a basis for any subsection (h) revolving door prohibition against Mr. Maram. It is the Office of the Governor that awarded the Shefsky Contracts and it is the "H-Listers" in the Office of the Governor that would potentially be subject to any revolving door prohibition, not the "H-Listers" who are or were at HFS, like Mr. Maram.

As for the FY09 and FY10 Intergovernmental Agreements ("IGAs") between the Governor's Office and HFS whereby, at the direction of the Governor's Office, HFS was required to pay a portion of the cost for the legal services awarded by

the Governor's Office, Shefsky was not a party to those IGAs. Therefore, the IGAs cannot provide a basis for any subsection (h) revolving door prohibition. See 5 ILCS 430/4-45(h) (amongst other requirements, requiring outside employer to be a "party to a State contract or contracts" in order for subsection h to apply).

The legislative intent and public policy behind the revolving door prohibition was to prevent state employees from making procurement awards and regulatory decisions based on self-interest rather than the best interest of the State. Self-interest is, effectively, presumed (the equivalent of no-fault, strict liability) for high-level employees and appointees, when it is their agency that is making the award or decision. As noted during legislative debate, "The Bill significantly strengthens the prohibition against revolving door, against the idea that people that are **working with an agency granting significant contracts** and the next day leaving the agency and taking a job with a company that got the contract." (96<sup>th</sup> Ill. Gen. Assem., House Proceedings, May 21, 2009, at 29; remarks of Speaker Michael Madigan on SB 54, which created subsection (h) of the revolving door prohibition) (emphasis added). As stated above, Maram's agency, HFS, was not involved in the grant or award of the Shefsky Contracts. It is the award/grant that is the seminal event of a contract, for revolving door purposes—"award" is referenced four times in the statute. For "C Listers" (those employees who "may have the authority to participate personally and substantially in the award of State contracts"), the question—in addition to looking at the totality of the participation and the effect of the prospective employment on the decisions—is whether the employee participated "**personally and substantially in the award.**" For "H Listers," like Mr. Maram, the question, by implication, is whether their agency was "involve[ed]" in the award at all.

As a matter of both plain statutory language and legislative intent, a contract that had just one agency "involve[ed]" in its award, but that ultimately benefits and/or is required to be paid for by other agencies cannot be held against the non-awarding agencies and their H-Listers, for revolving door purposes. If that were the case, Department of Central Management Services contracts and master contracts that benefit and are paid for by the State's many agencies, boards, and commissions, would be held against all agencies, boards, and commissions and their H-Listers, statewide. That is not only inconsistent with the plain language of the statute and the legislative intent, but it makes no logical or public policy sense.

Mr. Maram went to great lengths to make sure that he was not violating the revolving door prohibition. (As a consequence, if there were, somehow, a finding of a violation, such a violation was clearly not intentional.) He consulted with

HFS's Ethics Officer and General Counsel Jeanette Badrov, he received the advice of Senate President Cullerton's Chief Counsel Eric Madiar, and he confirmed with the Governor's Office of the General Counsel that HFS "had not been involved in the procurement of the Shefsky & Froelich contract." In the case of the guidance of Ms. Badrov, as HFS's Ethics Officer, which included not listing the contracts between the Governor's Office and Shefsky as amongst HFS's contracts, Mr. Maram could statutorily "in good faith rely upon" such guidance. 5 ILCS 430/20-23(3). As the OEIG Final Report states, "Ms. Badrov said she did not report to the OEIG Mr. Maram's employment with Shefsky & Froelich because she did not think there were any issues with his employment there." OEIG Final Report, Case No. 11-00573, at 5, n.6. Similarly, Mr. Madiar stated that, "The [revolving door] provision was not intended to prohibit employment with an entity that the agency never directly contracted with and provided services to another state agency." April 8, 2010 Memo from Chief Counsel Madiar to Senate President Cullerton at p. 3. In the end, as HFS was not involved in the award of the Shefsky Contracts, HFS's Ethics Officer and General Counsel, the Senate President's Chief Counsel, and the Governor's Office of the General Counsel all concluded that the revolving door prohibition did not apply to Maram.

In sum, the Office of the Governor disagrees with the OEIG Final Report's finding that Mr. Maram violated subsection (h) of the revolving door prohibition. Mr. Maram's State agency, HFS, was not involved in the award of the Shefsky Contracts and Shefsky was not a party to the IGAs. Therefore, neither the Shefsky Contracts nor the IGAs barred Mr. Maram's Shefsky employment. With no statutory or administrative mechanism for Mr. Maram to vet his employment with the Office of the Executive Inspector General, Mr. Maram went to great lengths and to the highest levels to confirm (and, in good faith, rely upon) that his acceptance of employment was appropriate. Therefore, the Office of the Governor believes that no violation occurred, that no complaint should be filed, and that no penalty or fine should be imposed.

If you have any questions, please feel free to call the Governor's General Counsel, John Schomberg, at

# **EXHIBIT C**

**IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS**

RICARDO MEZA, in his capacity as )  
EXECUTIVE INSPECTOR GENERAL, )  
Petitioner, )

v. )

BARRY MARAM, )  
Respondent. )

**13-EEC-006**

Respondent, Barry Maram, by his attorney Mara S. Georges, answers Petitioner's complaint as follows:

1. Petitioner, Ricardo Meza, is the Executive Inspector General, duly appointed by the Illinois Governor, pursuant to 5 ILCS §430/20-10.

**ANSWER: Admitted.**

2. In February 2003, Barry Maram ("Director Maram"), was appointed Director of the Illinois Department of Healthcare and Family Services ("HFS"), and he remained in that position until his resignation on April 15, 2010. Agency Directors, including Director Maram, are gubernatorial cabinet officials appointed by the Governor and confirmed by the Senate.

**ANSWER: Admitted.**

3. Director Maram was a State employee subject to the jurisdiction of the Executive Ethics Commission.

**ANSWER: Admitted.**

4. In May 2003, the Illinois General Assembly passed the Ethics Act. Public Act 93-0615. The Ethics Act went into effect on November 19, 2003 and included a Revolving Door Prohibition that prohibited State employees from receiving compensation or fees from an entity if

that employee participated personally and substantially in a contracting decision with a cumulative value of over \$25,000 or a regulatory or licensing decision that directly applied to the prospective employer in the year immediately preceding termination of State employment.

**ANSWER: Admitted.**

5. In 2009, the Illinois General Assembly amended the Revolving Door Prohibition of the Ethics Act by, among other things, adding Subsection (h), which was effective August 18, 2009. 5 ILCS 430/5-45(h).

**ANSWER: Admitted.**

6. Director Maram, who was appointed by the Governor and confirmed by the Senate to be the Director of HFS, began his employment as the Director of HFS in February 2003 and continued as the Director of HFS after the 2009 amendments went into effect and until his termination of State employment in April 2010.

**ANSWER: Admitted. Answering further, all of the agreements referenced in the OEIG's complaint were executed prior to the 2009 amendments to the Ethics Act, and the 2009 amendments do not apply retroactively to those agreements.**

7. When Director Maram terminated his State employment, he had a duty to comply with the Revolving Door Prohibition in the Ethics Act, 5 ILCS §430/5-45(h), and with all policies adopted and implemented pursuant to the Revolving Door Prohibition of the Ethics Act. 5 ILCS §430/5-45.

**ANSWER: Barry Maram admits that he had a duty to comply with applicable laws and regulations, but denies any violation of the Ethics Act. Answering further, all of the agreements referenced in the OEIG's complaint were executed prior to the 2009**

**amendments to the Ethics Act, and the 2009 amendments do not apply retroactively to those agreements.**

**8. Section 5-4(h) of the Ethics Act States:**

The following officers, members, or State employees shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency, regardless of whether he or she participated personally and substantially in the award of the State contract or the making of the regulatory or licensing decision in question:

- 1) members or officers
- 2) members of a commission or board created by the Illinois Constitution;
- 3) persons whose appointment to office is subject to the advice and consent of the Senate;
- 4) the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State;
- 5) chief procurement officers, State purchasing officers, and their designees whose duties are directly related to State procurement; and
- 6) chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors.

ILCS §430/5-45(h).

**ANSWER: The actual statutory text is admitted. Any remaining allegations are denied.**

9. In response to an anonymous complaint, the Office of the Executive Inspector General ("OEIG") conducted an investigation and on May 30, 2012, issued a Final Report ("OEIG Final Report") that found Director Maram violated the Ethics Act's Revolving Door Prohibition when he knowingly accepted employment and received compensation from Shefsky & Froelich

("Shefsky"), an entity that was a party to state contracts valued at more than \$25,000 that involved HFS, in violation of Subsection 5-45(h). See Exhibit 1 (OEIG Final Report).

**ANSWER:** Barry Maram lacks sufficient knowledge to form a belief as to the existence of, or responses to, any anonymous complaint, and therefore denies such allegations. The existence of the investigation and Final Report are admitted, but all adverse findings in the Final Report are denied. Barry Maram admits that he ultimately accepted employment and received compensation from Shefsky & Froelich, but denies any violation of the Ethics Act. Barry Maram denies that the identified state contracts had a cumulative value of \$25,000 or more for the period relevant to this complaint. Any remaining allegations are denied.

10. In 2008, state taxpayers filed a lawsuit against Director Maram (in his capacity as HFS Director), then-Governor Rod Blagojevich, and other State defendants, seeking to prohibit the defendants from expanding, funding and operating the state's children's health insurance program. *Caro ex rel State of Illinois v. Blagojevich*, 385 Ill App. 3d 704 (1st Dist. 2008).

**ANSWER:** Admitted.

11. In October 2008, Shefsky was retained by the Office of the Governor to represent Director Maram, then-Governor Rod Blagojevich, and other State defendants in *Caro ex rel. State of Illinois v. Blagojevich*.

**ANSWER:** Barry Maram denies that he had any involvement with or contemporaneous knowledge of the retention of Shefsky & Froelich. Any remaining allegations are admitted.

12. The contract between the Office of the Governor and Shefsky was effective October 24, 2008 through June 30, 2009 ("FY09 Shefsky Contract") and was renewed by the Office of the



Governor for an additional year through June 30, 2010 ("FY10 Shefsky Contract"). See Exhibit 2 (FY09 Shefsky Contract and FY10 Shefsky Contract).

**ANSWER: Barry Maram denies that he had any involvement with or contemporaneous knowledge of the contract(s). Any remaining allegations are admitted.**

13. The FY09 Shefsky Contract and the FY10 Shefsky Contract both provided for payments up to \$150,000. *Id.*

**ANSWER: Barry Maram denies that either the FY09 Shefsky Contract or the FY10 Shefsky Contract had an actual or cumulative value of \$25,000 or more for the period relevant to this complaint; answering further, he states that their cumulative value in the year immediately prior to his resignation was less than \$25,000 – the amount actually paid to Shefsky & Froelich under the contract(s) during that period. To the extent the allegations of paragraph 13 are inconsistent with the terms of the subject contracts, the allegations of paragraph 13 are denied.**

14. The FY09 Shefsky Contract and FY10 Shefsky Contract identified the Office of the Governor as the "coordinating agency" responsible for receiving all invoices and allocating costs among the agencies and expressly provided that payments will be made by "IGA" ("Interagency Agreement"). The FY09 Shefsky Contract and FY10 Shefsky Contract stated that the need for services was for "legal advice and analysis in anticipation of litigation relating to issues involving the AGENCY [Office of the Governor], State of Illinois agencies directly responsible to the Governor and associated officers, directors and employees." The contracts further explained that:

[f]or the purposes of this CONTRACT, the Office of the Governor shall be the coordinating AGENCY, will receive all invoices and billing and payment questions, and may direct an allocation of payment obligations to other State of Illinois agencies that receive benefits of the services rendered under this CONTRACT. Such

allocation shall be pursuant to the coordinating AGENCY'S assessment of the other State of Illinois agencies uses of any benefits from the services rendered.

*Id.*

**ANSWER: To the extent the allegations of paragraph 14 are inconsistent with the terms of the subject contracts, the allegations of paragraph 14 are denied.**

15. Pursuant to the express terms of the FY09 Shefsky Contract and FY10 Shefsky Contract, HFS entered into two Interagency Agreements with the Office of the Governor through which HFS agreed to pay 50% of Shefsky's legal fees. See Exhibit 3 (Interagency Agreement and Interagency Agreement – FY10).

**ANSWER: To the extent the allegations of paragraph 15 are inconsistent with the terms of the subject contracts, the allegations of paragraph 15 are denied. Answering further, Barry Maram denies that he had any actual involvement with or contemporaneous knowledge of the two Interagency Agreements. Barry Maram admits that the terms of the Shefsky contracts provided that the "Office of the Governor...may direct an allocation of payment obligations to other State of Illinois agencies," and that the Office of the Governor did direct and require HFS to enter into the two Interagency Agreements, the actual terms of which are also admitted. Any remaining allegations are denied.**

**Answering further, Shefsky & Froelich was not a party to the two Interagency Agreements, and therefore those agreements could not trigger the provisions of the Ethics Act. As noted in the Office of the Governor's response to the OEIG's Final Report, "HFS...was not involved in the grant or award of the Shefsky contracts," and "a contract that had just one agency 'involve[d] in its award, but that ultimately benefits and/or is required to be paid for by other agencies cannot be held against the**

non-awarding agencies and their [category (h) employees], for revolving door purposes.”

Answering further, as noted in the OEIG’s Report at page 5 footnote 6, HFS’ General Counsel and Ethics Officer Ms. Badrov did not report Barry Maram to the OEIG because she did not see any issues with Barry Maram’s employment by Shefsky & Froelich, as the law firm was not a party to the agreement between HFS and the Governor’s Office.

16. Both agreements were signed on Director Maram’s behalf by HFS employees. The first interagency agreement was signed on January 5, 2009 (FY09 IGA”) by Director Maram’s then Chief of Staff, the second interagency agreement was signed on June 30, 2009 (”FY10 IGA”) by Director Maram’s administrative assistant. *Id.*

**ANSWER:** Barry Maram denies that he had any actual involvement with or contemporaneous knowledge of the two Interagency Agreements. Barry Maram lacks sufficient knowledge to form a belief as to whether or the extent to which the agreements were signed on his behalf, and therefore denies such allegations. Any remaining allegations are denied.

17. Under the FY09 IGA, HFS agreed to pay 50% of the total cost of legal services rendered by Shefsky in representing Director Maram and other State defendants in the Caro matter, or up to \$75,000 of the \$150,000 stated contract amount for each contract. The FY10 IGA states:

This Interagency Agreement is entered into between the Office of the Governor and the Illinois Department of Healthcare and Family Services (”the “Agency”), pursuant to the Intergovernmental Cooperation Act” (5 ILCS 220) and in connection with certain professional services provided to the State of Illinois by Shefsky & Froelich (”Vendor”).

1. To assist the Office of the Governor, the Agency, and the officers and employees in connection with issues relating to the Agency. Vender was retained to provide advice, counsel, and, where appropriate, legal representation of the Office of the Governor,

the Agency, and officers and employees of the State of Illinois; and perform such other legal services as are requested and as may be contemplated under the terms of the contract between Vendor and the State of Illinois on the matters of: Caro et. al., v. Blagojevich, et. al. The Office of the Governor has been the Coordinating Agency responsible for the preparation of the underlying contract and other administrative functions in connection with these services (copy of contract attached for reference).

2. The Office of the Governor and the Agency agree that the Agency shall pay an allocable share of the cost of obtaining services under the contract with Vendor, and in furtherance of Section 1 of the "Pricing/Compensation" provisions of the underlying contract effective October 24, 2008 through June 30, 2009, and renewed for the period of July 1, 2009 through June 30, 2010 (see Appendix A for Agency allocable share). Total compensation under this contract shall not exceed \$150,000.
3. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on both parties hereto, notwithstanding that both parties are not signatories to the same counterpart.
4. The term of this Agreement is effective as of the start date of the underlying contract between the Office of the Governor and Vendor and, unless otherwise terminated by one of the parties, shall continue through June 30, 2010. Notice of termination must be in writing and may be delivered by any means.

*Id.*

**ANSWER: To the extent the allegations of paragraph 17 are inconsistent with the terms of the subject contracts, the allegations of paragraph 17 are denied. Answering further, Barry Maram denies that he had any actual involvement with or contemporaneous knowledge of the two Interagency Agreements.**

18. Based on a review of HRS' invoice vouchers and warrant summaries, the OEIG found that HFS paid Shefsky \$33,846.82 for legal services pursuant to the FY09 Shefsky Contract and the FY09 IGA and \$5,334.79 for legal services pursuant to the FY10 Shefsky Contract and the FY10 IGA. *See Exhibit 1 (OEIG Final Report).*

**ANSWER: Barry Maram denies that either the FY09 Shefsky Contract or the FY10 Shefsky Contract had an actual or cumulative value of \$25,000 or more for the period relevant to this complaint; instead he affirmatively states that the cumulative value in the year immediately prior to his resignation was less than \$25,000 – the amount actually paid to Shefsky & Froelich under the contract(s) during that period.**

**Barry Maram lacks sufficient knowledge to form a belief as to any remaining allegations, and therefore denies such allegations.**

19. HFS reviewed and approved payment for services rendered by Shefsky under the FY09 and FY10 Shefsky Contracts and FY09 and FY10 IGAs after the effective date of the 2009 Revolving Door Prohibition amendments throughout the year prior to Director Maram's termination of State employment.

**ANSWER: Barry Maram denies having had any contemporaneous knowledge of payments to Shefsky. Based on subsequently obtained information, Barry Maram admits that some payments were made to Shefsky and Froelich after the amendment's effective date for services rendered, but lacks sufficient knowledge to form a belief as to the remaining allegations, and therefore denies such allegations.**

**Answering further, any such payments were made under agreements that were executed prior to the 2009 amendments to the Ethics Act, and the 2009 amendments do not apply retroactively to those agreements.**

20. Prior to terminating State employment, and aware of his obligations pursuant to the 2009 Revolving Door Prohibition amendments, Director Maram sought guidance about his post-State employment possibilities and restrictions from HFS' Ethics Officer, the Governor's Office General Counsel and the Senate President's Chief Legal Counsel. See Exhibit 1 (OEIG Final Report), Exhibit 4 (April 6, 2010 Inter-Office Memorandum from Jeanette Badrov, Ethics Officer to Barry Maram Director, Department of Healthcare and Family Services), and Exhibit 5 (April 8, 2010 Interoffice Memorandum from Eric M. Madiar, Chief Counsel to John J. Cullerton, Senate President.

**ANSWER: Barry Maram answers that his inquiry to Ethics Officer Jeanette Badrov was primarily related to Medicaid providers and what restrictions he may have**

**in providing legal services to such providers; any contrary allegations are denied. Barry Maram admits that he confirmed with the Office of the Governor that neither he nor HFS was involved in any way with the selection and hiring of Shefsky & Froelich by the Office of the Governor. Barry Maram further admits that he asked the General Counsel to the President of Illinois Senate whether or not the 2009 amendments to the Ethics Act may apply to him, and was advised that the 2009 amendments did not apply to him based on the facts and the law Any remaining allegations are denied.**

21. On April 6, 2010, HFS Ethics Officer Jeanette Badrov sent Director Maram a memo in response to Director Maram's inquiry for "guidance from the HFS Ethics Officer regarding the impact of various revolving door and conflicts of interest provisions on accepting employment, compensation, or fees for services as an attorney with a law firm." See Exhibit 4 (April 6, 2010 Inter-Office Memorandum from Jeanette Badrov, Ethics Officer to Barry Maram, Director, Department of Healthcare and Family Services).

**ANSWER: Barry Maram answers that his inquiry to Ethics Officer Jeanette Badrov was primarily related to Medicaid providers and what restrictions he may have in providing legal services to such providers; any contrary allegations are denied. Any remaining allegations are admitted.**

22. In the section of the Ethics Officer's April 6, 2010 memo titled "Contracts Under the Revolving Door," the Ethics Officer explained to Director Maram that there is no law or guidance regarding the definition of the term "contract," but one should assume that grants and interagency agreements with a cumulative value of \$25,000 or more with persons or entities that are not affiliated with the State of Illinois (e.g. counties, cities, and other local government units) are included in the definition of contracts." *Id.*

**ANSWER:** The actual text of the April 6, 2010 memo is admitted as the comments of the Ethics Officer. Any remaining allegations are denied.

Answering further, Shefsky & Froelich was not a party to the two Interagency Agreements between the Office of the Governor and HFS, and therefore those agreements could not trigger the provisions of the Ethics Act. As noted in the Office of the Governor's response to the OEIG's Final Report, "HFS...was not involved in the grant or award of the Shefsky contracts," and "a contract that had just one agency 'involve[d] in its award, but that ultimately benefits and/or is required to be paid for by other agencies cannot be held against the non-awarding agencies and their [category (h) employees], for revolving door purposes."

Answering further, as noted in the OEIG's Report at page 5 footnote 6, HFS' General Counsel and Ethics Officer Ms. Badrov did not report Barry Maram to the OEIG because she did not see any issues with Barry Maram's employment by Shefsky & Froelich, as the law firm was not a party to the agreement between HFS and the Governor's Office.

23. The Ethics Officer attached a list of "HFS contracts, grants and interagency agreement," that was not supposed to be an exhaustive list but which did include the FY10 Shefsky Contract. *Id.*

**ANSWER:** With regards to the list, Barry Maram answers that the entry for "SHEFSKY & FROELICH LTD" shows a contract number that includes the term "GOMB", indicating that the contract was with the Governor's Office of Management and Budget, rather than with HFS. Any contrary allegations are denied.

24. At the time the Ethics Officer wrote the memo, Director Maram told the Ethics Officer that he did not know which law firm he planned to join and therefore the memo did not address specifically Director Maram's potential employment with Shefsky. *Id.*

**ANSWER:** Barry Maram admits that at the time the Ethics Officer wrote the memo, he did not know which law firm he planned to join. Barry Maram lacks sufficient knowledge to form a belief as to the remaining allegations, and therefore denies such allegations.

Answering further, with regards to the list, the entry for "SHEFSKY & FROELICH LTD" shows a contract number that includes the term "GOMB", indicating that the contract was with the Governor's Office of Management and Budget, rather than with HFS.

25. The Ethics Officer informed Director Maram in her memo that her guidance was based solely on the facts she was aware of at the time (which did not include Director Maram's prospective employment with Shefsky), and informed him that her memo was merely guidance and could not be used as a substitute for an opinion from the Attorney General. *Id.*

**ANSWER:** The actual text of the memo is admitted as the comments of the Ethics Officer. Any remaining allegations are denied.

26. The Ethics Officer's April 6, 2010 memo stated:

Because this guidance is given under the authority of the Employee Handbook and the Ethics Act, it is not intended to be used as a substitute for an opinion from the Attorney General; only the Attorney General has the constitutional authority to issue binding opinions with precedential value. In the event you need a formal opinion, you should seek it from the Attorney General.

*Id.*



**ANSWER:** To the extent the allegations of paragraph 26 are inconsistent with the content of the memo, the allegations of paragraph 26 are denied.

27. The May 30, 2012 OEIG Final Report found that Director Maram violated the Revolving Door Prohibition of the Ethics Act. See Exhibit 1 (OEIG Final Report).

**ANSWER:** Barry Maram denies any adverse findings in the OEIG Final Report and denies any violation of the Ethics Act.

28. HFS Director is a position defined as one subject to the advice and consent of the Illinois Senate and classifies Director Maram as a category (h) employee. See 5 ILCS 430/5-45(h)(3).

**ANSWER:** Barry Maram admits that he was a category (h) employee. The actual statutory text is admitted. Any remaining allegations are denied.

29. Category (h) employees are prohibited from accepting employment or receiving compensation from an entity if that entity was a "party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member or State employee's State agency...regardless of whether he or she participated personally and substantially in the award of the State contract or contracts." 5 ILCS 430/5-45(h) (emphasis added).

**ANSWER:** To the extent the allegations of paragraph 29 are inconsistent with the content of the statute, the allegations of paragraph 29 are denied.

30. Director Maram terminated State employment on April 15, 2010 and began receiving compensation from Shefsky on April 30, 2010. See Exhibit 1 (OEIG Final Report).

**ANSWER:** Admitted.

31. Director Maram continued to receive compensation from Shefsky the entire year after termination of State employment. *Id.*

**ANSWER: Admitted.**

32. Shefsky was a party to State contracts with a cumulative value of more than \$25,000 that involved HFS and Director Maram.

**ANSWER: Denied.**

33. The OEIG found that Director Maram violated subsection (h) of the Revolving Door Prohibition because within a year immediately after his termination of State employment, Director knowingly accepted employment and received compensation from an entity that during the year immediately preceding his termination of State employment was a party to State contracts with a cumulative value of \$25,000 or more involving HFS. *Id.*

**ANSWER: Barry Maram admits that the OEIG made certain findings as specifically set forth in the OEIG's Final Report. Barry Maram denies any adverse findings and denies any violation of the Ethics Act. Any remaining allegations are denied.**

Answering further, as noted in the Office of the Governor's response to the OEIG's Final Report, Barry Maram "went to great lengths to make sure that he was not violating the revolving door prohibition...He consulted with HFS's Ethics Officer and General Counsel Jeanette Badrov, he received the advice of Senate President Cullerton's Chief Counsel Eric Madiar, and he confirmed with the Governor's Office of the General Counsel that HSF 'had not been involved in the procurement of the Shefsky & Froelich contract.'"

Answering further, as noted in the OEIG's Report at page 5 footnote 6, HFS' General Counsel and Ethics Officer Ms. Badrov did not report Barry Maram to the

**OEIG because she did not see any issues with Barry Maram's employment by Shefsky & Froelich, as the law firm was not a party to the agreement between HFS and the Governor's Office.**

34. The Ultimate Jurisdictional Authority ("UJA") is the Office of the Governor. On July 3, 2012 after receiving the OEIG Final Report, the Office of the Governor submitted the UJA response pursuant to 5 ILCS 430/20-50(a). See Exhibit 6 (UJA Response to Final Report in OEIG Case No. 11-00573).

**ANSWER: Admitted. Answering further, as noted in the Office of the Governor's response to the OEIG's Final Report, "the Office of the Governor disagrees with the OEIG Final Report's finding that Mr. Maram violated subsection (h) of the revolving door prohibition. Mr. Maram's State Agency, HSFS, was not involved in the award of the Shefsky Contracts and Shefsky was not a party to the IGAs. Therefore, neither the Shefsky Contract nor the IGAs barred Mr. Maram's Shefsky employment."**

#### **COUNT I**

1. Petitioner hereby repeats and re-alleges Paragraphs 1 through 43 [sic].

**ANSWER: Barry Maram repeats and re-alleges his answers to Paragraphs 1 through 34. Any subsequent paragraphs are denied.**

2. By accepting employment and receiving compensation from Shefsky, an entity that had a State contract with a cumulative value of more than \$25,000 within a year immediately preceding Director Maram's termination of State employment that involved Director Maram and HFS, Director Maram violated the Revolving Door Prohibition of the Ethics Act. 5 ILCS §430/5-45(h).

**ANSWER: Denied.**

3. A violation of the Revolving Door Prohibition of the Ethics Act is subject to an administrative fine pursuant to section 50-5(a-1) of the Ethics Act 5 ILCS §430/550-5(a-1).

**ANSWER: Barry Maram denies any violation of the Ethics Act.**

For the above reasons, Respondent Barry Maram respectfully requests that the complaint be dismissed, or for a finding that there has been no violation of the Ethics Act.

### **ADDITIONAL DEFENSES**

Barry Maram, by his attorney Mara S. Georges, raises various additional defenses by stating as follows:

#### **First Additional Defense – FY09 Shefsky Contract**

The FY09 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract. As such, the FY09 Shefsky Contract did not trigger the provisions of the Ethics Act.

#### **Second Additional Defense – FY09 Shefsky Contract**

1. Notwithstanding the FY09 Shefsky Contract's provision for a "maximum" (unachieved) expenditure, the actual value (and the total payment made) was less than \$25,000 with respect to HFS during the year immediately preceding Barry Maram's termination of his State employment, and therefore did not trigger the provisions of the Ethics Act.

2. Similarly, neither the FY09 Shefsky Contract nor the FY10 Shefsky Contract had an actual or cumulative value of \$25,000 or more for the period relevant to this complaint; instead the cumulative value in the year immediately prior to his resignation was

less than \$25,000 – the amount actually paid to Shefsky & Froelich under the contract(s) during that period. Therefore the provisions of the Ethics Act were not triggered.

#### Third Additional Defense – FY10 Shefsky Contract

The FY10 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract. As such, the FY10 Shefsky Contract did not trigger the provisions of the Ethics Act.

#### Fourth Additional Defense – FY10 Shefsky Contract

1. Notwithstanding the FY10 Shefsky Contract's provision for a "maximum" (unachieved) expenditure, the actual value (and the total payment made) was less than \$25,000 with respect to HFS during the year immediately preceding Barry Maram's termination of his State employment, and therefore did not trigger the provisions of the Ethics Act.

2. Similarly, neither the FY09 Shefsky Contract nor the FY10 Shefsky Contract had an actual or cumulative value of \$25,000 or more for the period relevant to this complaint; instead the cumulative value in the year immediately prior to his resignation was less than \$25,000 – the amount actually paid to Shefsky & Froelich under the contract(s) during that period. Therefore the provisions of the Ethics Act were not triggered.

#### Fifth Additional Defense – FY09 IGA

The FY09 IGA was, by its own terms, made between HFS and the Office of the Governor, not between HFS and Shefsky & Froelich. As such, the FY09 IGA did not trigger the provisions of the Ethics Act.

#### Sixth Additional Defense – FY10 IGA

The FY10 IGA was, by its own terms, made between HFS and the Office of the Governor, not between HFS and Shefsky & Froelich. As such, the FY10 IGA did not trigger the provisions of the Ethics Act.

#### Seventh Additional Defense – Improper Retroactive Application of Statute

1. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY09 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h).

2. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY10 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h).

3. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY09 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h).

4. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY10 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h).

#### Eighth Additional Defense – Good Faith Reliance

1. Title 5 ILCS 430/20-23(c) provides that state employees may rely in good faith on guidance by Ethics Officers.

2. With regards to the list of contracts provided by Ethics Officer, the entry for “SHEFSKY & FROELICH LTD” shows a contract number that includes the term “GOMB”,

indicating that the contract is with the Governor's Office of Management and Budget, rather than with HFS.

3. After reviewing the list of contracts provided by the Ethics Officer, Barry Maram confirmed with the Office of the Governor that neither he nor HFS was involved in any way with the selection and hiring of Shefsky & Froelich by the Officer of the Governor.

4. As stated in the OEIG's Final Report, Ethics Officer "Badrov said she did not report to the OEIG Mr. Maram's employment with Shefsky & Froelich because she did not think there were any issues with his employment there." OEIG Final Report, Case No. 11-00573, p. 5, n.6.

5. Barry Maram also relied in good faith on guidance provided by Senate President Cullerton's Chief Counsel Eric Madiar who represented to him prior to accepting employment with Shefsky & Froehlich that accepting such employment would not be a violation of the Ethics Act. Barry Maram relied in good faith on this guidance.

For the above reasons, Respondent Barry Maram respectfully requests that the complaint be dismissed, or for a finding that there has been no violation of the Ethics Act.

### **MITIGATING FACTORS**

Barry Maram, by his attorney Mara S. Georges, raises the following facts as mitigating factors in the event a violation is found:

1. Barry Maram had no role in the procurement of Shefsky & Froelich's legal services. (See OEIG Final Report, Investigation Case No. 11-00573, p. 15.)

2. The FY09 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract, and Barry Maram had no role in its negotiation, approval or execution.

3. The FY10 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract, and Barry Maram had no role in its negotiation, approval or execution.

4. The FY09 IGA was mandated by the Office of the Governor, and HFS had no discretion in entering into the agreement. Barry Maram had no role in its negotiation, approval or execution.

5. The FY09 IGA did not create any new State obligation or liability to Shefsky & Froelich, because the State was already obligated under the FY09 Shefsky Contract entered into by the Office of the Governor.

6. The FY10 IGA was mandated by the Office of the Governor, and HFS had no discretion in entering into the agreement. Barry Maram had no role in its negotiation, approval or execution.

7. The FY10 IGA did not create any new State obligation or liability to Shefsky & Froelich, because the State was already obligated under the FY10 Shefsky Contract entered into by the Office of the Governor.

8. Barry Maram did not seek employment with Shefsky & Froelich; rather, his prospective employer approached him about the position.

9. Barry Maram sought legal guidance regarding his prospective employment. As noted in the Office of the Governor's response to the OEIG's Final Report, Barry Maram "went to great lengths to make sure that he was not violating the revolving door



prohibition...He consulted with HFS's Ethics Officer and General Counsel Jeanette Badrov, he received the advice of Senate President Cullerton's Chief Counsel Eric Madiar, and he confirmed with the Governor's Office of the General Counsel that HSF 'had not been involved in the procurement of the Shefsky & Froelich contract.'...In the end, as HFS was not involved in the award of the Shefsky Contracts, HFS's Ethics Officer and General Counsel, the Senate President's Chief Counsel, and the Governor's Office of the General Counsel all concluded that the revolving door prohibition did not apply to [Barry] Maram."

10. Barry Maram relied in good faith on information he received from HFS's Ethics Officer and General Counsel Jeanette Badrov, Senate President Cullerton's Chief Counsel Eric Madiar, and the Governor's Office of the General Counsel.

11. The law relating to the Ethics Act amendment was undeveloped and, with respect to the facts in this case, unclear. For example, in her memorandum dated April 6, 2010, HFS's Ethics Officer and General Counsel Jeanette Badrov observed that "The Ethics Act does not define contracts, no rules or regulations exist, there is no case law, and no written opinions by the Attorney General or the Executive Ethics Commission exist to offer guidance." As another example, the OEIG's Final Report is at odds with the written opinion of Senate President Cullerton's Chief Counsel Eric Madiar (which Chief Counsel Madiar had forwarded to the Executive Ethics Commission and the Illinois Attorney General prior to Barry Maram accepting employment at Shefsky & Froelich). As another example, the OEIG's Final Report is at odds with the Office of the Governor's response to the OEIG's Final Report, which states that "the Office of the Governor disagrees with the OEIG Final report's finding that Mr. Maram violated subsection (h) of the revolving door prohibition...[and that] the Office of the Governor believes that no violation occurred."

Similarly, as outlined in Chief Counsel Madiar's memorandum, the legislative history indicates that the 2009 Revolving Door amendments were not intended to be retroactive; it is therefore an unforeseeable retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, for the following reasons:

- a) the FY09 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h);
- b) the FY10 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h);
- c) the FY09 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h); and
- d) the FY10 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h).

12. The 2009 Revolving Door amendments is in effect a strict liability statute that can impose severe, unintended consequences; as noted in the Office of the Governor's response to the OEIG's Final Report, the OEIG's interpretation of the amendments can lead to potentially absurd results: Because, for example, contracts with the Department of Central Management Services benefit (and/or are paid for by) many agencies, boards and commission, the OEIG's interpretation could extend the reach of the amendments through such contracts to every "category (h) employee" in the state.

13. Barry Maram has cooperated fully in the investigation of this matter.

14. There has never been any prior disciplinary action against Barry Maram for alleged violations of the Ethics Act.

For the above reasons, in the event the Commission does find that a violation of the Ethics Act did occur, Respondent Barry Maram respectfully requests a determination that there was only a *de minimis* violation, and for the imposition of a nominal fine.

Barry Maram

**Mara S. Georges**  
**Daley and Georges, Ltd.**  
**20 S. Clark St., Suite 400**  
**Chicago, IL 60603**

**IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS**

RICARDO MEZA, in his capacity as     )  
EXECUTIVE INSPECTOR GENERAL,     )  
    Petitioner,     )  
  )  
    v.     )  
  )  
BARRY MARAM,     )  
    Respondent.     )

**13-EEC-006**

**NOTICE OF FILING AND CERTIFICATE OF SERVICE**

PLEASE TAKE NOTICE that on December 21, 2012, I caused Respondent's Motion for Extension of Time to be filed with the Executive Ethics Commission of the State of Illinois, a copy of which is attached and served upon you via electronic and U.S. mail.

Chad Fornoff  
Administrative Law Judge  
Illinois Executive Ethics Commission  
401 South Spring Street  
513 William Stratton Building  
Springfield, IL 62706

Barbara Delano  
Assistant Attorney General  
100 West Randolph Street  
11<sup>th</sup> Floor  
Chicago, IL 60601

Respectfully submitted,

Barry Maram

\_\_\_\_\_  
By Mara S. Georges, his attorney

Mara S. Georges  
Daley and Georges, Ltd.  
20 S. Clark St., Suite 400  
Chicago, IL 60603

# **EXHIBIT D**

**IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS**

<b>RICARDO MEZA, in his capacity as</b>	)	
<b>EXECUTIVE INSPECTOR GENERAL,</b>	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>No. 13-EEC-006</b>
	)	
	)	
<b>BARRY MARAM,</b>	)	
<b>Respondent.</b>	)	

**PETITIONER'S RESPONSE TO RESPONDENT'S ANSWER,  
DEFENSES AND MITIGATING FACTORS**

NOW COMES Petitioner, Ricardo Meza, in his capacity as Executive Inspector General, by and through his attorney, Lisa Madigan, Attorney General for the State of Illinois, pursuant to the order of the Executive Ethics Commission ("EEC") dated January 9, 2013 and January 24, 2013, to respond to Respondent's additional defenses and mitigating factors filed by Respondent in the above-captioned matter.

**Introduction**

Respondent's answer, defenses and mitigating factors filed on December 21, 2013 ("Respondent's Answer") do not alter any of the undisputed facts that establish Respondent's receipt of compensation from Shefsky & Froelich Ltd ("Shefsky") was prohibited by the Ethics Act.

When Respondent terminated his State employment, he had a duty to comply with the Revolving Door Prohibition in the Ethics Act, 5 ILCS § 430/5-45(h), and with all policies adopted and implemented pursuant to the Revolving Door Prohibition of the Ethics Act. 5 ILCS §430/5-45.

Section 5-45(h) of the Ethics Act states:

The following officers, members, or State employees shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency, or was the subject of a regulatory or licensing decision involving the officer, member, or State employee's State agency, regardless of whether he or she participated personally and substantially in the award of the State contract or contracts or the making of the regulatory or licensing decision in question:

- 1) members or officers;
- 2) members of a commission or board created by the Illinois Constitution;
- 3) persons whose appointment to office is subject to the advice and consent of the Senate;
- 4) the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State;
- 5) chief procurement officers, State purchasing officers, and their designees whose duties are directly related to State procurement; and
- 6) chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors.

5 ILCS §430/5-45(h).

Respondent, Director of HFS, falls under the category (h) prohibition detailed above. As such, he is strictly prohibited from accepting compensation or fees from an entity that was a party to a State contract with a cumulative value of \$25,000 or more that **involved** the State employee or his agency, "regardless of whether he or she participated personally and substantially in the award of the State contract or contracts." 5 ILCS §430/5-45(h)(emphasis added).

The only relevant factors for determining whether Respondent was prohibited from accepting compensation or fees from Shefsky are whether (1) Shefsky was a party to State contracts during the year prior to Respondent's termination of State employment; (2) the State

contracts involved Respondent or the agency where he served as the Director; and (3) the State contracts that involved Respondent or his agency had a cumulative value of more than \$25,000.

### **Summary of Undisputed Facts**

The undisputed facts establish that (1) Shefsky was a party to two State contracts during the year prior to Respondent's termination of State employment; (2) the State contracts with Shefsky specified that the contract was for legal representation of Respondent himself as well as for representation of the State agency where he served as the Director; and (3) the cumulative value of each contract was \$150,000, with Respondent's agency responsible for half of each contract, \$75,000.

The following relevant facts are not in dispute:

- Respondent was the Director of HFS from February 2003 through April 15, 2010. (Respondent's Answer ¶ 2);
- Respondent was subject to the jurisdiction of the EEC and Revolving Door Prohibitions. (Respondent's Answer ¶¶ 3, 4);
- Respondent terminated State employment on April 15, 2010 and began receiving compensation from Shefsky on April 30, 2010. (Respondent's Answer ¶ 30);
- In October 2008, Shefsky was retained by the Office of the Governor to represent Respondent, then-Governor Rod Blagojevich, and other State defendants in *Caro ex rel. State of Illinois v. Blagojevich*. (Respondent's Answer ¶ 11);
- The contract between the Office of the Governor and Shefsky was effective October 24, 2008 through June 30, 2009 ("FY09 Shefsky Contract") and was renewed by the Office of the Governor for an additional year through June 30, 2010 ("FY10 Shefsky Contract"). See Exhibit 2 to the Complaint (FY09 Shefsky Contract and FY10 Shefsky Contract) and (Respondent's Answer ¶ 12);
- The FY09 Shefsky Contract provided for payments up to \$150,000 with Respondent's agency responsible for half of each contract, \$75,000. See Exhibit 2 and Exhibit 3 to the Complaint (FY09 Shefsky Contract and FY10 Shefsky Contract and Interagency Agreement and Interagency Agreement - FY10);
- The FY10 Shefsky Contract provided for payments up to \$150,000 with Respondent's agency responsible for half of each contract, \$75,000. See Exhibit 2 and Exhibit 3 to the Complaint (FY09 Shefsky Contract and FY10 Shefsky Contract and Interagency Agreement and Interagency Agreement - FY10);



- The FY09 Shefsky Contract and the FY10 Shefsky Contract identified the Office of the Governor as the “coordinating agency” responsible for receiving all invoices and allocating costs among the agencies and expressly provided that payments will be made by “IGA” (“Interagency Agreement”). The FY09 Shefsky Contract and the FY10 Shefsky Contract stated that the need for services was for “legal advice and analysis in anticipation of litigation relating to issues involving the AGENCY [Office of the Governor], State of Illinois agencies directly responsible to the Governor and associated officers, directors and employees.” The contracts further explained that:  
 [f]or the purposes of this CONTRACT, the Office of the Governor shall be the coordinating AGENCY, will receive all invoices and billing and payment questions, and may direct an allocation of payment obligations to other State of Illinois agencies that receive benefits of the services rendered under this CONTRACT. Such allocation shall be pursuant to the coordinating AGENCY’s assessment of the other State of Illinois agencies uses of and benefits from the services rendered.

See Exhibit 2 to the Complaint (FY09 Shefsky Contract and FY10 Shefsky Contract) and (Respondent’s Answer ¶14);

- The FY09 and FY10 Skefsky Contracts specifically state “Payment Provided by IGA.” See Exhibit 2 to the Complaint (FY09 Shefsky Contract and FY10 Shefsky Contract);
- Pursuant to the express terms of the FY09 Shefsky Contract and FY10 Shefsky Contract, HFS entered into two Interagency Agreements with the Office of the Governor through which HFS agreed to pay 50% of Shefsky’s legal fees. See Exhibit 3 to the Complaint (Interagency Agreement and Interagency Agreement – FY10); and
- The FY10 IGA states:

This Interagency Agreement is entered into between the Office of the Governor and the Illinois Department of Healthcare and Family Services (the “Agency”), pursuant to the “Intergovernmental Cooperation Act” (5 ILCS 220) and in connection with certain professional services provided to the State of Illinois by Shefsky & Froelich (“Vendor”).

1. To assist the Office of the Governor, the Agency, and the officers and employees in connection with issues relating to the Agency. Vendor was retained to provide advice, counsel, and, where appropriate, legal representation of the Office of the Governor, the Agency, and officers and employees of the State of Illinois; and perform such other legal services as are requested and as may be contemplated under the terms of the contract between Vendor and the State of Illinois on the matters of: Caro et. al., v. Blagojevich, et. al. The Office of the Governor has been the Coordinating Agency responsible for the preparation of the underlying contract and other administrative

functions in connection with these services (copy of contract attached for reference).

2. The Office of the Governor and the Agency agree that the Agency shall pay an allocable share of the cost of obtaining services under the contract with Vendor, and in furtherance of Section 1 of the "Pricing/Compensation" provisions of the underlying contract effective October 24, 2008 through June 30, 2009, and renewed for the period of July 1, 2009 through June 30, 2010 (see Appendix A for Agency allocable share). Total compensation under this contract shall not exceed \$150,000.
3. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on both parties hereto, notwithstanding that both parties are not signatories to the same counterpart.
4. The term of this Agreement is effective as of the start date of the underlying contract between the Office of the Governor and Vendor and, unless otherwise terminated by one of the parties, shall continue through June 30, 2010. Notice of termination must be in writing and may be delivered by any means.

See Exhibit 3 to the Complaint (Interagency Agreement and Interagency Agreement – FY10) and (Respondent's Answer ¶17).

**Respondent's Asserted Defenses and Mitigating Factors Do Not Negate His Liability  
Under the Revolving Door Prohibition of the Ethics Act**

Respondent's Answer asserts several defenses and mitigating factors that essentially amount to four main arguments: (1) HFS was not a party to contract with Shefsky; (2) Respondent's lack of involvement in retaining Shefsky and alleged lack of knowledge of the contract is a factor that demonstrates Respondent did not violate the Revolving Door Prohibition; (3) applying the category (h) restriction to Respondent would constitute retroactive application; and (4) the cumulative value of the contract was not more than \$25,000. As detailed below, none of these arguments support Respondent's assertion that he did not violate the revolving door by accepting compensation or fees from Shefsky.

### **The Shefsky Contracts Involve Respondent and HFS**

In October 2008, Shefsky was retained by the Office of the Governor to represent Respondent, then-Governor Rod Blagojevich, and other State defendants in *Caro ex rel. State of Illinois v. Blagojevich*. (Respondent's Answer ¶ 11). Respondent argues that because HFS did not sign the contract with Shefsky, Respondent and HFS were not parties to the contract for purposes of the Revolving Door Prohibition. However, as the contract between the Office of the Governor and Shefsky, as well as the IGA's between HFS and the Office of the Governor, make clear, Shefsky was retained, in part, to represent Respondent himself and the State agency where Respondent served as the Director. There can be no doubt that HFS and Respondent were involved in the Shefsky contracts. Respondent's argument that he and HFS are not parties to the contract is a red herring. The very language of the Shefsky contract involves both Respondent and HFS. The Shefsky Contracts state that Shefsky will "provide assistance and legal advice to AGENCY, the State of Illinois agencies directly responsible to the Governor, and officers, directors and employees of the State of Illinois on the matter of: Caro, et.al. v. Blagojevich, et.al." See Exhibit 2 to the Complaint (FY09 Shefsky Contract and FY10 Shefsky Contract). Furthermore, the FY09 and FY10 Shefsky Contracts specifically state "Payment Provided by IGA." Shefsky's legal services provided pursuant to the FY09 and FY10 Shefsky Contracts involved Respondent and his State agency.

### **Respondent's Involvement in the Award of the Shefsky Contracts is Irrelevant**

Respondent's denial that he had any involvement or contemporaneous knowledge of the retention of Shefsky & Froelich is irrelevant for determining whether or not Respondent, a category (h) employee, violated the Ethics Act by receiving compensation or fees from a prohibited entity. Category (h) employees are strictly prohibited from accepting compensation

or fees from an entity where the entity was a party to a State contract involving the officer, member, or State employee's State agency "regardless of, whether he or she participated personally and substantially in the award of the State contract or contracts." 5 ILCS §430/5-45(h). It is particularly appropriate to not require proof that a category (h) employee was personally and substantially involved when the category (h) employee was the agency director, as is the case in this matter. As the director, Respondent was responsible for knowing how the agency was spending its funds. The fact that he may have chosen not to know that the agency was agreeing to pay very significant legal fees – to defend him as well as the agency – should not allow him to get around the Revolving Door Prohibition. Respondent's assertion that he had no involvement or contemporaneous knowledge of the contracts is irrelevant. Respondent's involvement, or lack thereof, is not required in order to prohibit him from accepting compensation or fees from Shefsky who had a State contract that involved Respondent himself and the agency he was employed by.

#### **There is No Retroactive Application of Law in this Matter**

Respondent argues that to apply contracts signed before the implementation of the Ethics Act amendments would constitute an impermissible retroactive application of the statute. Respondent's argument is without merit. An impermissible retroactive application would have occurred if Respondent left State employment any time in the year prior to August 18, 2009 (the effective date of the amended Revolving Door Prohibitions) and the State were to try and bar his employment with Shefsky based on amendments passed and effective after Respondent terminated State employment.

Respondent terminated State employment after the effective date of the 2009 Revolving Door amendments and Respondent was aware of his strict obligations pursuant to these

amendments. The fact that the contracts were signed prior to the Amendment does not alter the restrictions placed on Respondent's post-State employment. One of the main purposes of the 2009 Revolving Door amendments was to create a strict prohibition on a category of employees with the highest decision making authority, referred to as category (h) employees. The amendments specifically removed the necessity that a category (h) employee (which Respondent admits he was) be personally or substantially involved in the contract decision and instead mandates that if an agency was "involved" in a contract, any category (h) employee at that agency is prohibited from receiving compensation or fees from such entity. The employee's involvement in the contract and the start date of the contract are not controlling. Under the applicable provision of the Ethics Act, the only relevant facts are that during the last year of employment, the category (h) employee's agency was involved in contracts with a cumulative value of \$25,000 or more.

#### **Cumulative Value is Determined by Contract Terms, Not by What Was Spent**

Respondent's argument that the cumulative value of the contract is the amount actually spent pursuant to the contract rather than the contract award is illogical. Respondent's analysis would create a number of logistical and legal issues. When evaluating whether an employee is eligible for prospective employment, sometimes the only document available is the contract. Many employees do not have the benefit of time passing to determine what the actual payment made is versus what the contract award was.

For purposes of determining the cumulative value for the Revolving Door Prohibitions, the amount stated in the contract award must be the determining factor. The amendments to the Revolving Door Prohibitions created different categories of employees; category (h) employees who are strictly prohibited from accepting employment with any entity that had a contract with

the State with a cumulative value of \$25,000 or more that involved the employee or his agency; and category (c) employees who are required to have their prospective employment evaluated by the Inspector General to determine whether they participated personally and substantially in the award of State contracts with a cumulative value of \$25,000 or more. When an Inspector General or the Attorney General reviews category (c) employees the amount actually paid pursuant to the contract is rarely known. Often payment has not begun or the State continues to make payment pursuant to the contract after the employee's prospective employment has been reviewed. An agency could award a contract for \$150,000 and the next day a category (c) employee could be offered employment at the entity that was awarded the contract. The agency may only end up paying \$20,000 pursuant to that contract, but that information would not be known until after the fact. Meanwhile, the review of the prospective employment has to be done when the employment offer is made.

Additionally, the State's payment process takes time and bills for payment may have been submitted, but not yet paid by the agency when the employee submits their revolving door paperwork. If the assessment of cumulative value turns on payments made, those bills that have been submitted but not yet paid would not be considered as part of the cumulative value. In the situation of a category (h) employee like the agency director, relying on how much has been paid out at the time the revolving door paperwork is reviewed, could be an invitation for that employee to manipulate the timing of the agency's payments.

It would be illogical to create a standard in which the cumulative value is assessed after payments were made when the review of prospective employment is almost always conducted before the contract term has ended and the final payments made unknown. Therefore, cumulative value is the total amount available to be paid as stated in the contract.

### **Conclusion**

The relevant facts supporting a finding of an Ethics Act violation have been admitted by Respondent. The defenses and mitigating factors argued do not vitiate the violation. As such, the Executive Ethics Commission should find Respondent in violation of the Revolving Door Prohibition of the Ethics Act. 5 ILCS § 430/5-45(h).

## **PETITIONER'S ANSWER TO RESPONDENT'S EIGHT ADDITIONAL DEFENSES**

### **First Additional Defense – FY09 Shefsky Contract**

The FY09 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract. As such, the FY09 Shefsky Contract did not trigger the provisions of the Ethics Act.

**Answer: Petitioner admits only that the FY09 Shefsky Contract was made between Shefsky & Froelich and the Office of the Governor. Petitioner denies the remaining allegations of Respondent's First Additional Defense. Answering further, because the Shefsky Contract was specifically for legal representation of HFS and Respondent himself in his official capacity, the State contract involved Respondent and therefore does trigger the Revolving Door Prohibition of the Ethics Act.**

### **Second Additional Defense – FY09 Shefsky Contract**

1. Notwithstanding the FY09 Shefsky Contract's provision for a "maximum" (unachieved) expenditure, the actual value (and the total payment made) was less than \$25,000 with respect to HFS during the year immediately preceding Barry Maram's termination of his State employment, and therefore did not trigger the provisions of the Ethics Act.

**Answer: Petitioner admits only that the FY09 Shefsky Contract had a value of \$150,000. Petitioner denies the remaining allegations of Paragraph 1 of Respondent's Second Additional Defense.**

2. Similarly, neither the FY09 Shefsky Contract nor the FY10 Shefsky Contract had an actual or cumulative value of \$25,000 or more for the period relevant to his complaint; instead the cumulative value in the year immediately prior to his resignation was less than \$25,000 – the amount actually paid to Shefsky & Froelich under the contract(s) during that period. Therefore the provisions of the Ethics Act were not triggered.

**Answer: Denied. The assertion that the actual value paid was less than \$25,000 with respect to HFS during the year preceding Respondent's termination of State employment and therefore did not trigger the provisions of the Ethics Act is incorrect. The cumulative value to be assessed is based on what is contracted for rather than what is**



actually paid out. In most revolving door circumstances, we do not have the benefit of the actual payments made. Often, the contract was recently awarded and the payments made pursuant to the contract are not known, have not even begun or are ongoing when the employee seeking employment is determining (or the Inspector General and Attorney General are reviewing) whether the prospective employment would be prohibited by the Revolving Door Prohibitions. For purposes of fairly and consistently evaluating and assessing employees' prospective non-State employment, the cumulative value is the value stated in the contracts. In this case, HFS agreed to 50% of the legal fees, up to \$75,000 in both the FY09 and again in the FY10 contracts. Therefore, the cumulative value to be assessed is over the \$25,000 threshold set forth in the Revolving Door Prohibition of the Ethics Act.

#### Third Additional Defense – FY10 Shefsky Contract

The FY10 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract. As such, the FY10 Shefsky Contract did not trigger the provisions of the Ethics Act.

**Answer:** Petitioner admits only that the FY10 Shefsky Contract was made between Shefsky & Froelich and the Office of the Governor. Petitioner denies the remaining allegations of Respondent's Third Additional Defense. Answering further, because the Shefsky Contract was specifically for legal representation of HFS and Respondent himself in his official capacity, the State contract involved Respondent and therefore does trigger the Revolving Door Prohibition of the Ethics Act.

#### Fourth Additional Defense – FY10 Shefsky Contract

1. Notwithstanding the FY10 Shefsky Contract's provision for a "maximum" (unachieved) expenditure, the actual value (and the total payment made) was less than \$25,000

with respect to HFS during the year immediately preceding Barry Maram's termination of his State employment, and therefore did not trigger the provisions of the Ethics Act.

**Answer: Petitioner admits only that the FY10 Shefsky Contract had a value of \$150,000. Petitioner denies the remaining allegations of Paragraph 1 of Respondent's Fourth Additional Defense.**

2. Similarly, neither the FY09 Shefsky Contract nor the FY10 Shefsky Contract had an actual or cumulative value of \$25,000 or more for the period relevant to his complaint; instead the cumulative value in the year immediately prior to his resignation was less than \$25,000 – the amount actually paid to Shefsky & Froelich under the contract(s) during that period. Therefore the provisions of the Ethics Act were not triggered.

**Answer: Denied. The assertion that the actual value paid was less than \$25,000 with respect to HFS during the year preceding Respondent's termination of State employment and therefore did not trigger the provisions of the Ethics Act is incorrect. The cumulative value to be assessed is based on what is contracted for rather than what is actually paid out. In most revolving door circumstances, we do not have the benefit of the actual payments made. Often, the contract was recently awarded and the payments made pursuant to the contract are not known, have not even begun or are ongoing when the employee seeking employment is determining (or the Inspector General and Attorney General are reviewing) whether the prospective employment would be prohibited by the Revolving Door Prohibitions. For purposes of fairly and consistently evaluating and assessing employees' prospective non-State employment, the cumulative value is the value stated in the contracts. In this case, HFS agreed to 50% of the legal fees, up to \$75,000 in both the FY09 and again in the FY10 contracts. Therefore, the cumulative value to be assessed is over the \$25,000 threshold set forth in the Revolving Door Prohibition of the Ethics Act.**

Fifth Additional Defense – FY09 IGA

The FY09 IGA was, by its own terms, made between HFS and the Office of the Governor, not between HFS and Shefsky & Froelich. As such, the FY09 IGA did not trigger the provisions of the Ethics Act.

**Answer:** Petitioner admits only that the FY09 IGA was made between HFS and the Office of the Governor. Petitioner denies the remaining allegations of Respondent's Fifth Additional Defense. Answering further, the IGA further demonstrates that the Shefsky Contracts involved Respondent directly and Respondent's State agency and thus is evidence that Respondent was prohibited from accepting compensation or fees for services from Shefsky for one year after termination of State employment. Additionally, the Ethics Officer informed Respondent that IGAs should be assumed to be included in the definition of contracts under the prohibitions for the revolving door. *See Exhibit 4 of Complaint (April 6, 2010 Inter-Office Memorandum from Jeanette Badrov, Ethics Officer to Barry Maram, Director, Department of Healthcare and Family Services).*

Sixth Additional Defense – FY10 IGA

The FY10 IGA was, by its own terms, made between HFS and the Office of the Governor, not between HFS and Shefsky & Froelich. As such, the FY10 IGA did not trigger the provisions of the Ethics Act.

**Answer:** Petitioner admits only that the FY10 IGA was made between HFS and the Office of the Governor. Petitioner denies the remaining allegations of Respondent's Sixth Additional Defense. Answering further, the IGA further demonstrates that the Shefsky Contracts involved Respondent directly and Respondent's State agency and thus is evidence that Respondent was prohibited from accepting compensation or fees for services from Shefsky for one year after termination of State employment. Additionally, the Ethics Officer informed Respondent that IGAs should be assumed to be included in the definition

of contracts under the prohibitions for the revolving door. *See Exhibit 4 of Complaint (April 6, 2010 Inter-Office Memorandum from Jeanette Badrov, Ethics Officer to Barry Maram, Director, Department of Healthcare and Family Services).*

Seventh Additional Defense – Improper Retroactive Application of Statute

1. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY09 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h).

**Answer: Denied.** Respondent terminated State employment after the effective date of the Revolving Door amendments, therefore applying the prohibition to Respondent is not a retroactive application. The date the contracts and IGA were entered into do not affect whether the ban should apply to Respondent. An impermissible retroactive application would have occurred if Respondent left State employment prior to August 18, 2009 (the effective date of the amended Revolving Door Prohibitions).

2. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY10 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h).

**Answer: Denied.** Respondent terminated State employment after the effective date of the Revolving Door amendments, therefore applying the prohibition to Respondent is not a retroactive application. The date the contracts and IGA were entered into do not affect whether the ban should apply to Respondent. An impermissible retroactive application would have occurred if Respondent left State employment prior to August 18, 2009 (the effective date of the amended Revolving Door Prohibitions).

3. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY09 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h).

**Answer: Denied. Respondent terminated State employment after the effective date of the Revolving Door amendments, therefore applying the prohibition to Respondent is not a retroactive application. The date the contracts and IGA were entered into do not affect whether the ban should apply to Respondent. An impermissible retroactive application would have occurred if Respondent left State employment prior to August 18, 2009 (the effective date of the amended Revolving Door Prohibitions).**

4. It is an impermissible retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, because the FY10 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h).

**Answer: Denied. Respondent terminated State employment after the effective date of the Revolving Door amendments, therefore applying the prohibition to Respondent is not a retroactive application. The date the contracts and IGA were entered into do not affect whether the ban should apply to Respondent. An impermissible retroactive application would have occurred if Respondent left State employment prior to August 18, 2009 (the effective date of the amended Revolving Door Prohibitions).**

**Eighth Additional Defense – Good Faith Reliance**

1. Title 5 ILCS 430/20-23(c)[sic] provides that state employees may rely in good faith on guidance by Ethics Officers.

**Answer: Petitioner admits that 5 ILCS 430/20-23(3) states that Ethics Officers shall “provide guidance to officers and employees in the interpretation and implementation of this Act, which the officer or employee may in good faith rely upon.” Petitioner denies the remaining allegations of Paragraph 1 of Respondent’s Eighth Additional Defense.**

2. With regards to the list of contracts provided by Ethics Officer, the entry for “SHEFSKY & FROELICH LTD” shows a contract number that includes the term “GOMB” indicating that the contract is with the Governor’s Office of Management and Budget, rather than HFS.

**Answer: Petitioner admits that that the list of contracts provided by the Ethics Officer included the Shefsky Contract. Answering further, the “SHEFSKY & FROELICH LTD” entry provided by the Ethics Officer included the “Contract Number” as “9GOMB00006” and listed the Contract Start Date as 7/1/2009, the Contract End Date as 6/30/2010 and the “Amount Obligated” as \$75,000. Petitioner denies the remaining allegations of Paragraph 2 of Respondent’s Eighth Additional Defense.**

3. After reviewing the list of contracts provided by the Ethics Officer, Barry Maram confirmed with the Office of the Governor that neither he nor HFS was involved in any way with the selection and hiring of Shefsky & Froelich by the Officer of the Governor.

**Answer: Petitioner admits that the Office of Governor’s Response in OEIG Case No. 11-00573 states that Respondent “confirmed with the Governor’s Office and General Counsel that HFS ‘had not been involved in the procurement of the Shefsky & Froelich contract.’” Answering further, Respondent’s involvement in the procurement of Shefsky is not relevant for determining whether Respondent violated section 5-45(h) of the Ethics Act. Petitioner has insufficient information to either admit or deny the remaining allegations so any remaining allegations of Paragraph 3 of Respondent’s Eighth Additional Defense are denied.**

4. As stated in the OEIG’s Final Report, Ethics Officer “Badrov said she did not report to the OEIG Mr. Maram’s employment with Shefsky & Froelich because she did not think there were any issues with his employment there.” OEIG Final Report, Case No. 11-00573, p. 5, n.6.

**Answer: Petitioner admits that Paragraph 4 of Respondent’s Eighth Additional Defense accurately quotes the OEIG Final Report, but denies any remaining allegations.**

5. Barry Maram also relied in good faith on guidance provided by Senate President Cullerton’s Chief Counsel Eric Madiar who represented to him prior to accepting employment

with Shefsky & Froelich that accepting such employment would not be a violation of the Ethics Act. Barry Maram relied in good faith on this guidance.

**Answer: Petitioner admits that Senate President Cullerton's Chief Counsel Eric Madiar wrote a memo to Senate President John J. Cullerton regarding the "Scope of the State Ethics Act's Revolving Door Prohibition" which is attached to the Complaint as Exhibit 5. Answering further, this memo does not specifically identify Respondent or Shefsky; it is a general memo that does not state that Respondent's prospective employment with Shefsky would not be a violation of the Ethics Act. Petitioner has insufficient information to either admit or deny the remaining allegations so any remaining allegations of Paragraph 4 of Respondent's Eighth Additional Defense are denied.**

WHEREFORE, Petitioner requests that the Commission:

- A. Enter a decision finding that Respondent violated the Revolving Door Prohibition by accepting employment and receiving compensation from Shefsky & Froelich within one year preceding termination of State employment; and
- B. Levy an administrative fine against Respondent in accordance with 5 ILCS 430/50-5(a-1).

## **PETITIONER'S ANSWER TO RESPONDENT'S MITIGATING FACTORS**

1. Barry Maram had no role in the procurement of Shefsky & Froelich's legal services. (See OEIG Final Report, Investigation Case No. 11-00573, p. 15.)

**Answer: Petitioner admits the OEIG Final Report states that the OEIG did not discover evidence that Respondent had any role in the procurement of Shefsky & Froelich's legal services. Petitioner denies any remaining allegations.**

2. The FY09 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract, and Barry Maram had no role in its negotiation, approval or execution.

**Answer: Petitioner admits only that the FY09 Shefsky Contract was made between Shefsky & Froelich and the Office of the Governor. Petitioner denies any remaining allegations. Answering further, because the Shefsky Contract was specifically for legal representation of HFS and Respondent himself in his official capacity, the State contract involved Respondent and therefore Respondent's role in its negotiation, approval or execution is irrelevant for purposes of 5-45(h) of the Ethics Act.**

3. The FY10 Shefsky Contract was, by its own terms, made between Shefsky & Froelich and the Office of the Governor. HFS was not a party to the contract, and Barry Maram had no role in its negotiation, approval or execution.

**Answer: Petitioner admits only that the FY10 Shefsky Contract was made between Shefsky & Froelich and the Office of the Governor. Petitioner denies any remaining allegations. Answering further, because the Shefsky Contract was specifically for legal representation of HFS and Respondent himself in his official capacity, the State contract involved Respondent and therefore Respondent's role in its negotiation, approval or execution is irrelevant for purposes of 5-45(h) of the Ethics Act.**



4. The FY09 IGA was mandated by the Office of the Governor, and HFS had no discretion in entering into the agreement. Barry Maram had no role in its negotiation, approval or execution.

**Answer: Petitioner admits only that the FY09 IGA was between the Office of the Governor and HFS. Petitioner has insufficient information to either admit or deny the remaining allegations so any remaining allegations are denied. Answering further, because the Shefsky Contract and the FY09 IGA between the Office of the Governor and HFS was specifically for legal representation of HFS and Respondent himself in his official capacity, the State contract involved Respondent and therefore Respondent's role in its negotiation, approval or execution is irrelevant for purposes of 5-45(h) of the Ethics Act.**

5. The FY09 IGA did not create any new State obligation or liability to Shefsky & Forelich, because the State was already obligated under the FY09 Shefsky Contract entered into the Office of the Governor.

**Answer: Petitioner admits only that the State was obligated under the FY09 Shefsky Contract entered into the Office of the Governor. Petitioner denies any remaining allegations. Answering further, because the Shefsky Contract and the FY09 IGA between the Office of the Governor and HFS was specifically for legal representation of HFS and Respondent himself in his official capacity, it is irrelevant whether the FY09 IGA created any new State obligation or liability for purposes of assessing a violation of 5-45(h) of the Ethics Act.**

6. The FY10 IGA was mandated by the Office of the Governor, and HFS had no discretion in entering into the agreement. Barry Maram had no role in its negotiation, approval or execution.

**Answer: Petitioner admits only that the FY10 IGA was between the Office of the Governor and HFS. Petitioner has insufficient information to either admit or deny the**

remaining allegations so any remaining allegations are denied. Answering further, because the Shefsky Contract and the FY10 IGA between the Office of the Governor and HFS was specifically for legal representation of HFS and Respondent himself in his official capacity, the State contract involved Respondent and therefore Respondent's role in its negotiation, approval or execution is irrelevant for purposes of 5-45(h) of the Ethics Act.

7. FY10 IGA did not create any new State obligation or liability to Shefsky & Forelich, because the State was already obligated under the FY09 Shefsky Contract entered into the Office of the Governor.

**Answer: Petitioner admits only that the State was obligated under the FY10 Shefsky Contract entered into the Office of the Governor. Petitioner denies any remaining allegations. Answering further, because the Shefsky Contract and the FY10 IGA between the Office of the Governor and HFS was specifically for legal representation of HFS and Respondent himself in his official capacity, it is irrelevant whether the FY10 IGA created any new State obligation or liability for purposes of assessing a violation of 5-45(h) of the Ethics Act.**

8. Barry Maram did not seek employment with Shefsky & Froelich; rather, his prospective employer approached him about the position.

**Answer: Petitioner has insufficient information to either admit or deny the allegations contained in Mitigating Factor 8 and therefore the allegations are denied.**

9. Barry Maram sought legal guidance regarding his prospective employment. As noted in the Office of the Governor's response to the OEIG's Final Report, Barry Maram "went to great lengths to make sure that he was not violating the revolving door prohibition...He consulted with HFS's Ethics Officer and General Counsel Jeanette Badrov, he received the advice of Senate President Cullerton's Chief Counsel Eric Madiar, and he confirmed with the Governor's Office of the General Counsel that HFS 'had not been involved in the procurement of the Shefsky & Froelich contract.'...In the end, HFS was not involved in the award of the Shefsky Contracts, HFS's Ethics Officer and General Counsel, the Senate President's Chief Counsel, and the Governor's Office of the General Counsel all concluded that the revolving door prohibition did not apply to [Barry] Maram."

**Answer: Petitioner admits only that Mitigating Factor 9 accurately quotes the Office of the Governor's response to the OEIG's Final Report. Petitioner denies any remaining allegations.**

10. Barry Maram relied in good faith on information he received from HFS's Ethics Officer and General Counsel Jeanette Badrov, Senate President Cullerton's Chief Counsel Eric Madiar, and the Governor's Office of the General Counsel.

**Answer: Petitioner admits only that HFS's Ethics Officer and General Counsel Jeanette Badrov, sent a memorandum to Respondent on April 6, 2010 Regarding Revolving Door and Conflicts of Interest (attached to the Complaint as Exhibit 4) and Senate President Cullerton's Chief Counsel Eric Madiar wrote a general memorandum to Senate President John J. Cullerton regarding the "Scope of the State Ethics Act's Revolving Door Prohibition" (attached to the Complaint as Exhibit 5). Petitioner has insufficient information as to Respondent's state of mind or reliance and therefore denies the allegations contained in Mitigation Factor 10.**

**Answering further, neither memorandum specifically identifies Shesky as Respondent's prospective employer and therefore cannot form the basis of good faith reliance. Both memoranda provide general guidance. The memo from Respondent's Ethics Officer to Respondent was based solely on the information she received from Respondent and did not specifically address Respondent's prospective employment with Shesky, "[y]ou stated that you are resigning from your position as Director and from all your appointee positions. You stated you intend to work as an attorney with a law firm. You do not know which law firm you will be joining." See Exhibit 4 to the Complaint. The Ethics Officer memorandum informed Respondent that interagency agreements with a cumulative value of \$25,000 or more should be included in the definition of contract for**

**purposes of the Revolving Door Prohibition and attached a list of “HFS contracts, grants and interagency agreements,” which included the FY10 Shefsky Contract with an obligation of \$75,000. *Id.***

11. The law relating to the Ethics Act amendment was undeveloped and, with respect to the facts in this case, unclear. For example, in her memorandum dated April 6, 2010, HFS’s Ethics Officer and General Counsel Jeanette Badrov observed that “The Ethics Act does not define contracts, no rules or regulations exist, there is no case law, and no written opinions by the Attorney General or the Executive Ethics Commission exist to offer guidance.” As another example, the OEIG’s Final Report is at odds with the written opinion of Senate President Cullerton’s Chief Counsel Eric Madiar (which Chief Counsel Madiar had forwarded to the Executive Ethics Commission and the Illinois Attorney General prior to Barry Maram accepting employment at Shefsky & Froelich). As another example, the OEIG’s Final Report is at odds with the Office of the Governor’s response to the OEIG’s Final Report, which states that “the Office of the Governor disagrees with the OEIG Final report’s finding that Mr. Maram violated subsection (h) of the revolving door prohibition...[and that] the Office of the Governor believes that no violation occurred.”

Similarly, as outlined in Chief Counsel Madiar’s memorandum, the legislative history indicates that the 2009 Revolving Door amendments were not intended to be retroactive; it is therefore an unforeseeable retroactive application of the statute to apply the 2009 Revolving Door amendments to this matter, for the following reasons:

- a) the FY09 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h);
- b) the FY10 Shefsky Contract was executed prior to the effective date of 5 ILCS § 430/5-45(h);
- c) the FY09 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h); and
- d) the FY10 IGA was executed prior to the effective date of 5 ILCS § 430/5-45(h).

**Answer: Petitioner admits that Mitigating Factor 11 accurately quotes the HFS’s Ethics Officer and General Counsel Jeanette Badrov’s memorandum dated April 6, 2010 and the Office of the Governor’s response to the OEIG’s Final Report. Petitioner admits Chief Counsel Madiar told the OEIG he forwarded a copy of his memoranda regarding the “Scope of the State Ethics Act’s Revolving Door Prohibition” to the Executive Ethics Commission and the Illinois Attorney General. Petitioner denies any remaining allegations.**

12. The 2009 Revolving Door amendments is in effect a strict liability statute that can impose severe, unintended consequences; as noted in the Office of the Governor's response to the OEIG's Final Report, the OEIG's interpretation of the amendments can lead to potentially absurd results: Because, for example, contracts with the Department of Central Management Services benefit (and/or are paid for by) many agencies, boards and commission, the OEIG's interpretation could extend the reach of the amendments through such contracts to every "category (h) employee" in the state.

**Answer: Petitioner admits only that the 2009 Revolving Door amendments at issue in this case are strict liability. Petitioner denies the remaining allegations contained Mitigating Factor 12. Answering further, these amendments eliminated the requirement that a category (h) employee be involved and assumes that if you are at the level of a category (h) employee, you are involved enough to be prohibited from accepting employment.**

13. Barry Maram has cooperated fully in the investigation of this matter.

**Answer: Petitioner admits Respondent cooperated in the investigation of this matter.**

14. There has never been any prior disciplinary action against Barry Maram for alleged violations of the Ethics Act.

**Answer: Petitioner admits that Petitioner is not aware of any prior disciplinary action against Respondent for alleged violations of the Ethics Act.**

WHEREFORE, Petitioner requests that the Commission:

- A. Enter a decision finding that Respondent violated the Revolving Door Prohibition by accepting employment and receiving compensation from Shefsky & Froelich within one year preceding termination of State employment; and
- B. Levy an administrative fine against Respondent in accordance with 5 ILCS 430/50-5(a-1).

Date: February 21, 2013

Respectfully Submitted,

RICARDO MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL,  
Petitioner,

By and through LISA MADIGAN,  
Attorney General of Illinois,

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One of Her Attorneys

Barbara Delano  
Assistant Attorney General  
Office of the Illinois Attorney General  
100 W. Randolph St., 13<sup>th</sup> Floor  
Chicago, Illinois 60601

# **EXHIBIT E**

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

RECEIVED  
MAR -6 2013

RICARDO MEZA, in his capacity as  
EXECUTIVE INSPECTOR GENERAL for  
AGENCIES OF THE GOVERNOR, State  
Of Illinois,

Petitioner,

v.

BARRY MARAM,

Respondent.

EXECUTIVE  
ETHICS COMMISSION

No. 13-EEC-006

ORDER

This cause is before the Executive Ethics Commission pursuant to 5 ILCS 430/20-50(f) for purposes of determining the sufficiency of the complaint.

Petitioner filed the complaint with the Commission on October 12, 2012. An affidavit of service indicates that respondent was personally served a copy of the complaint on October 24, 2012. Respondent filed an unopposed motion for extension of time to respond or plead to the complaint until December 21, 2012, which the administrative law judge granted. On December 21, 2012, respondent filed an answer to the complaint, along with additional defenses and mitigating factors.

On January 9, 2013, the administrative law judge ordered respondent to respond to the additional defenses, mitigating factors and other matters respondent deemed appropriate. On January 23, 2013, respondent filed an unopposed motion requesting additional time, which the administrative law judge granted. Respondent filed its response on February 21, 2013.

FACTS

The allegations of fact contained in the complaint, which the Commission accepts as true only for purposes of determining the sufficiency of the complaint, state that respondent was at all times relevant to the complaint the Director of the Illinois Department of Healthcare and Family Services ("HFS") until his resignation on April 15, 2010. At the time of his resignation, respondent was subject to subsection (h) of the Revolving Door provisions of the State Officials and Employees Ethics Act ("Act") 5 ILCS 430/5-45(h).

Subsection (h) provides that certain officers and employees, including respondent, "shall not, within a period of one year immediately after termination of office or State employment knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract



or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency." 5 ILCS 430/5-45(h)

During the year prior to respondent's termination of office (April 15, 2009 through April 15, 2010), respondent's present employer, Shefsky & Froehlich ("Shefsky"), was a party to two contracts with the Office of the Governor. The first contract ("FY 09 Shefsky contract") was effective October 24, 2008 through June 30, 2009. This contract was renewed for an additional year through June 30, 2010 ("FY 10 Shefsky contract").

The purpose of these contracts was to provide legal advice and analysis in anticipation of litigation to a number of State officials, including respondent. Each contract provided for a maximum expenditure of \$150,000. The Office of the Governor and HFS entered into interagency agreements that provided that HFS would pay half of the fees allocated under the contracts, up to a maximum of \$75,000 for each contract.

Under the FY 09 Shefsky contract and in accordance with the interagency agreement, HFS paid Shefsky \$33,846.82 and under the FY 10 Shefsky contract and in accordance with the interagency agreement, HFS paid Shefsky \$5,334.79.

Respondent began receiving compensation from Shefsky on April 30, 2010.

Respondent raises a number of defenses and mitigating factors that will be addressed later in this order. Respondent argues that the revolving door prohibition was not triggered because the contracts were between Shefsky and the Office of the Governor.

Petitioner requests that the Commission levy an administrative fine pursuant to 5 ILCS 430/50-5(a-1). Respondent asks that the complaint be dismissed.

### ANALYSIS

Petitioner's complaint alleges that respondent violated Section 5-45(h) of the Act.

Subsection (h) provides that certain officers and employees, including respondent, "shall not, within a period of one year immediately after termination of office or State employment knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency." 5 ILCS 430/5-45(h)

"Charges in an administrative proceeding need not be as exact and detailed as judicial pleadings, but they must contain a clear statement of the theory on which the agency intends to rely, so that the employee can prepare a defense." *Burns v. Police Bd.*, 104 Ill.App.3d 612, 615 (1<sup>st</sup> Dist. 1982). "The charge in an administrative proceeding need only reasonably advise the respondent as to the charges so that the respondent will be

able to intelligently prepare a defense.” *Magnus v. Dept. of Prof’l Regulation*, 359 Ill.App.3d 773, 793 (1<sup>st</sup> Dist. 2005).

The Commission’s rules require a complaint to contain “facts that fully describe the alleged violation of the Act, including, but not limited to, dates, times, locations and relationships between the respondent and other relevant parties.” 2 Ill. Admin. Code 1620.450(b).

Respondent’s response contains a number of defenses. Respondent argues that the revolving door prohibition was not triggered because the contracts in question were between Shefsky and the Office of the Governor, and not HFS. Respondent also argues that the interagency agreements were between the Office of the Governor and HFS, and not Shefsky. These facts are not relevant to the issue of whether these were contracts or agreements “involving the officer, member, or State employee’s State agency,” as referenced in subsection (h). Whether or not HFS was a party to the contract, the contracts appear to involve HFS and its former director, respondent.

Respondent also raises the issue of whether the contracts in question “have a cumulative value of \$25,000 or more.” Respondent attempts to introduce the word “actual” into the analysis (“actual or cumulative value of \$25,000 or more”) where “actual” does not appear. The maximum payable under each contract (\$150,000) is the value of the contracts and not the actual amounts paid. Even the actual amount paid under the two contracts is in excess of \$25,000.

Respondent also raises the issue of good faith reliance. An agency’s ethics officer may provide guidance upon which an officer or employee may in good faith rely upon. 5 ILCS 430/20-23. The written guidance provided by respondent’s ethics officer did not advise that respondent could accept employment with Shefsky. The 15-page document clearly states that respondent did not know which law firm he intended to join. Respondent also sought legal advice from another individual. The question of respondent’s reasonable reliance on this advice is a factual matter about which the Commission lacks sufficient information and would be best resolved following an evidentiary hearing.

Respondent also raises the issue of retroactive application of the amendments to the revolving door prohibition. On August 18, 2009, the revolving door prohibition was amended to create new categories of employees and officers. As a result of these amendments, respondent’s position as the head of a department was included in new subsection (h). P.A. 96-555 (effective 8-18-09); 5 ILCS 430/5-45(h). Again, respondent terminated State service on April 15, 2010.

Illinois courts have developed a three-tiered test to determine retroactivity. The first inquiry is whether the legislature clearly indicated the temporal, or retroactive, reach of the amended statute. See *Schweickert v. AG Services of America, Inc.*, 355 Ill. App. 3d 439, (Ill. App. Ct. 2005) (citing *Commonwealth Edison v. Will County Collector*, 196 Ill.2d 27 (Ill. 2001) (citing *Landgraf v. USI Film Products*, 511 U.S. 244 (1994))). If there is no such indication, the next inquiry is whether the amendment is procedural or

substantive in nature. Courts have held that only those amendments that are procedural in nature may be applied retroactively, and if the statute is procedural, a final inquiry is made to determine if application of the amended statute would have a "retroactive impact." Absent retroactive impact, the amended statute will apply. An amended statute is considered to have a retroactive impact if it (1) impairs rights that a party possessed when it acted, (2) increases a party's liability for past conduct, or (3) imposes new duties with respect to transactions already completed. See *id* at 444. Courts have held a statute does not operate retrospectively merely because it upsets expectations based on prior law. Instead, courts consider whether the amendment attaches new legal consequences to events completed before the statute was changed. See *id*.

In this case, it does not appear there is any retroactive application of the revolving door statute. While the statutory change may well have upset expectations respondent formed prior to the change in the revolving door law, it did not impose upon respondent liability for past conduct nor did it impose a new duty on any previously completed transaction. Indeed, at the time the amendment went into effect, respondent was a State employee – for purposes of the statute – with no vested right in any employment contract. It is respondent's acceptance of new employment some months later, months after the amendment became effective, that gives rise to the allegations in the complaint. While the pre-existing Shesky contracts are facts at issue in this matter, it is neither the execution of those contracts nor respondent's involvement with those contracts that triggers the alleged violation. The conduct that triggered the alleged violation is respondent's acceptance of employment, which occurred some months after the amendments to the revolving door law became effective. As such, respondent's retroactive application argument does not apply.

In the case presently before the Commission, petitioner has pleaded facts which, if proven, may be sufficient to constitute a violation of Section 5-45 of the Act. The complaint contains sufficient specificity to allow respondent to prepare an intelligent defense.

WHEREFORE, for the foregoing reasons, the Commission declares, pursuant to Section 20-50(f) of the Ethics Act (5 ILCS 430/20-50(f)), this complaint sufficient to proceed with respect to allegations concerning Section 10-10 (5 ILCS 430/10-10).

IT IS FURTHER ORDERED that an evidentiary hearing shall be held at **10:30 a.m.** on **March 28, 2013** in the Commission's offices, Room 513, William Stratton Building, Springfield, Illinois 62706. Mr. Chad D. Fornoff shall preside at the hearing as Administrative Law Judge.

IT IS FURTHER ORDERED that the parties shall appear for a telephonic pre-hearing conference at **1:30 p.m.** on **March 21, 2013**. Commission staff shall provide the necessary contact information.

Respondents' failure to attend either the telephonic pre-hearing conference or the evidentiary hearing may result in an adverse finding including, but not limited to, a

determination *in absentia* of a violation of the State Officials and Employees Ethics Act, a recommendation of discipline or the levying of an administrative fine up to \$5,000 per violator.

IT IS FURTHER ORDERED that petitioner's motion for leave to reply to respondent's objections is granted.

IT IS FURTHER ORDERED that the parties shall review and comply with the attached Commission rules concerning discovery.

SO ORDERED.

Date: March 4, 2013