COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE 15-018

IN RE: PHILLIP HANEY
ALLEGED VIOLATION OF KRS CHAPTER 11A

INITIATING ORDER
Initiation of Administrative Proceeding And Formal Complaint

The Executive Branch Ethics Commission (the "Commission"), upon its own motion, initiated a preliminary investigation of Phillip Haney (the "Respondent" or "Haney"), pursuant to KRS 11A.080(1), on September 30, 2015.

At all relevant times, the Respondent was a "public servant" as defined in KRS 11A.010(9), and thus subject to the jurisdiction of the Commission.

The Commission initiated the preliminary investigation to determine whether there was probable cause to believe the Respondent violated provisions of KRS Chapter 11A (also referred to herein as the "Ethics Code").

The Commission focused upon the Respondent's possible violation of the Ethics Code by using his official position with the Justice and Public Safety Cabinet to use or attempt to use his influence in any matter which involved a substantial conflict between his personal or private interest and his duties in the public interest; to use or attempt to use any means to influence his agency in derogation of the state at large; to use his official position or office to obtain financial gain for himself or any members of the public servant's family; to give himself or others advantages and privileges for himself or others in derogation of the state at large; and failed to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

The Commission notified the Respondent of the preliminary investigation by letter dated October 12, 2015. During the course of the investigation, the Commission found probable cause to believe that violations of KRS Chapter 11A had occurred and voted on November 16, 2015, to initiate an administrative proceeding, pursuant to KRS 11A.080(4)(b) and KRS Chapter 13B, to determine whether the Respondent violated the Ethics Code as set forth in the Allegations of Violations, attached hereto and incorporated fully herein as Appendix A to this Initiating Order.

IT IS THEREFORE ORDERED that:

1. This Initiating Order and Appendix shall be served on the Respondent pursuant to KRS 13B.050(2) by certified mail, return receipt requested, to the last known address of the Respondent.

2. The Respondent shall file his answer to this Initiating Order within twenty (20) days from the date of service, verifying the truth and accuracy of any answer submitted.

3. The Respondent shall appear at a hearing to be scheduled by subsequent order and be prepared to defend against the Commission's allegations that he committed the Ethics Code violations set forth in the Allegation of Violations, attached hereto and incorporated fully herein as Appendix A to this Initiating Order.

4. Pursuant to KRS 13B.030(2)(b), the Commission will request the designation of a Hearing Officer by the Administrative Hearings Branch of the Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

5. If the Attorney General's Office cannot provide the requested hearing officer, the Commission will, pursuant to KRS 13B.030(2)(a), employ a hearing officer, contract with another agency for a hearing officer in conjunction with KRS 11A.070, or contract with a private attorney through a personal services contract. The Commission will notify the Respondent or his retained counsel of the designation of a Hearing Officer as soon as possible after the

appointment.

6. The Commission is represented by Misty Dugger Judy, General Counsel, and Kathryn H. Gabhart, Executive Director and co-Counsel. They may be contacted through the Commission's office at (502) 564-7954.

7. All original material shall be submitted to the Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601, Attention: Debbie Briscoe. A copy of all materials shall be served on the designated Hearing Officer and the Commission's counsels.

8. The Respondent has the right to legal counsel during this proceeding. If the Respondent retains legal counsel, that person shall file an appearance with the Commission, and thereafter all correspondence from the Commission to the Respondent shall be mailed or delivered to the Respondent's attorney.

9. The Respondent has the right to examine upon request, at least five (5) days prior to the hearing, a list of witnesses the Commission expects to call at the hearing, any evidence that will be used at the hearing and any exculpatory information in the Commission's possession.

10. The Respondent has the right to subpoena witnesses on his own behalf. If the Respondent subpoenas witnesses, he shall pay for all costs associated with the subpoenas' issuance, including any applicable witness fees.

11. If the Respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default pursuant to KRS 13B.050(3)(h).

12. The Respondent has a right to appeal any final Commission order to the Franklin Circuit Court within thirty (30) days of service.

13. This proceeding is subject to KRS Chapter 11A, the Commission's regulations, the provisions of KRS Chapter 13B, and any Order issued by the Commission or its hearing

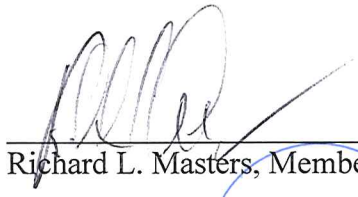
officer issued during this administrative proceeding.

So ordered this 16th day of November 2015.

EXECUTIVE BRANCH ETHICS COMMISSION:

W. David Denton, Chair

William G. Francis, Vice-Chair



Richard L. Masters, Member

Martin E. Johnstone, Member

Sheila R. Isaac, Member

APPENDIX A
CASE NO. 15-018
INITIATING ORDER

ALLEGATION OF VIOLATIONS

The Respondent, Phillip Haney, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Department of Corrections, (also referred to herein as "the Department"), Justice and Public Safety Cabinet. As such, the Respondent was subject to the jurisdiction of the Commission. KRS 11A.010(9)(h).

During the course of its preliminary investigation, the Commission found probable cause to believe that Phillip Haney committed the following violation:

COUNT I

That Phillip Haney, during his course of employment as a Social Services Clinician, District 2, Department of Corrections, Justice and Public Safety Cabinet, attempted to or used his influence in a matter which involved a substantial conflict between his personal or private interest and his duties in the public interest; attempted to or used any means to influence his agency in derogation of the state at large; gave advantages and privileges for himself or others in derogation of the state at large. to give himself or others advantages and privileges for himself or others in derogation of the state at large; and failed to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

Specifically, during 2015, Haney used his position to become "friends" on social media with approximately one hundred and forty (140) offenders, some of whom he provided services to as a Social Services Clinician for alcohol and drug counseling. Haney used his social media account and his access with the offenders served by his Department to attempt to instigate a for-

profit business selling supplements. Haney solicited the offenders who were his "friends" on the social media site to enter into a for-profit business relationship with him to work as his representatives selling supplements for his website "Success with Phill." Haney approached at least one offender in person to participate in the personal for-profit business.

Haney attempted to use his position and access to individuals served by his Department for use in his personal, for-profit business which could have resulted in Haney receiving benefits or advantages in derogation of the public interest. By Haney engaging in such conduct, he failed to avoid conduct that would lead the general public to conclude that he was using his official position to further his private interest.

These facts constitute a violation of KRS 11A.020(1)(a), (b), and (d).

KRS 11A.020(1)(a), (b), and (d) provides:

> (1) No public servant, by himself or through others, shall knowingly:
> (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
> (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
> ***
>
> (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.
>
> (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

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