

**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE 15-016**

**IN RE: JOHN SUMNER
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 John Sumner (the “Respondent” or “Sumner”), pursuant to KRS 11A.080(1), on July 24, 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 Cabinet for Health and Family Services 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 advantages and privileges for himself or others in derogation of the state at large; failing to 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; and failing to abstain from action on an official decision in which he has or may have a personal or private interest.

The Commission notified the Respondent of the preliminary investigation by letter dated July 24, 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 July 24, 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, if necessary, 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 Kathryn H. Gabhart, Interim Executive Director and General Counsel of the Executive Branch Ethics Commission. She 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 counsel.

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 24th day of July 2015.

EXECUTIVE BRANCH ETHICS COMMISSION:



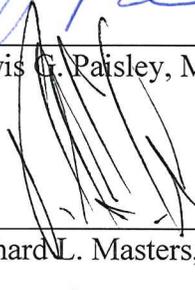
W. David Denton, Chair



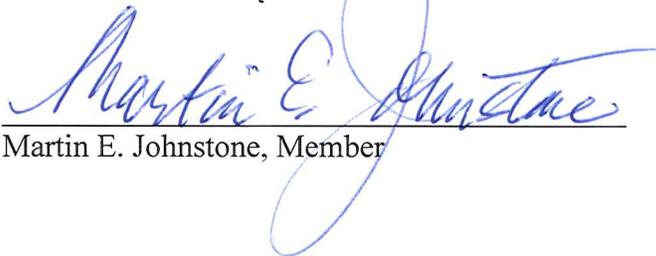
William G. Francis, Vice-Chair



Lewis G. Paisley, Member



Richard L. Masters, Member



Martin E. Johnstone, Member

**APPENDIX A
CASE NO. 15-016
INITIATING ORDER**

ALLEGATION OF VIOLATIONS

The Respondent, John Sumner, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Cabinet for Health and Family Services (also referred to herein as “the 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 John Sumner committed the following violations:

COUNT I

That John Sumner, during his course of employment as a Administrator, Western State Nursing Facility, Cabinet for Health and Family Services, used or attempted 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; used or attempted to use any means to influence his agency in derogation of the state at large; gave another advantages and privileges in derogation of the state at large; 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; and failed to abstain from action on an official decision in which he had or may have had a personal or private interest.

Specifically, between 2011 and 2014, Sumner used his position as Administrator to influence his agency to hire an individual as a contract employee to fulfill the position of a social worker or social services clinician, a position for which she did not maintain the qualifications to hold, circumventing the established processes of government for filling the position provided in

the merit system. The individual was the paramour of Sumner's friend and golfing partner. Sumner further used his position to influence his agency to continue to employ the individual for two (2) more years after she demonstrated that she did not maintain the skills necessary to perform the duties assigned to her nor to fulfill the task for which she was originally hired.

These facts constitute a violation of KRS 11A.020(1)(a), (b), and (d), KRS 11A.020(2) and (3), which provide as follows:

- (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.
- (3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

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