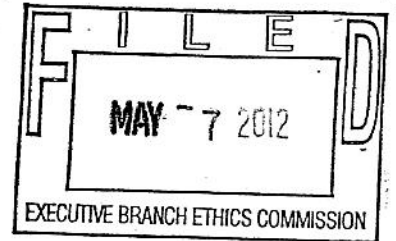


COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
AGENCY NO. 08-021
ADMINISTRATIVE ACTION NO. 08-EBEC-0342



EXECUTIVE BRANCH ETHICS COMMISSION

COMPLAINANT

vs.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
RECOMMENDED ORDER AND NOTICE OF APPEAL RIGHTS**

RON G. WINTERS

RESPONDENT

* * * * *

An Administrative Hearing was held in this matter on February 7, 2012. The Complainant, Kentucky Executive Branch Ethics Commission, was represented by Kathryn H. Gabhart, General Counsel, with John Steffen, Executive Director, as Co-Counsel. The Respondent, Ron G. Winters, was represented by Luke Morgan, McBrayer McGinnis Leslie & Kirkland. The Hearing was presided over by Susan S. Durant, Hearing Officer, Administrative Hearings, Office of the Attorney General. The following witnesses testified: JoJuana Leavell-Greene, Human Resources Branch Manager for PVA Administrative Support, Department of Revenue, Finance Cabinet; Barbara Winters, Chief Deputy, Oldham County PVA Office; Jill LeMaster, currently an employee of the Kentucky Auditor of Public Accounts, formerly the Executive Director of the Kentucky Executive Branch Ethics Commission; Bill Alward, Muhlenberg Property Valuation Administrator, and formerly President of the PVA Association, and Ron Winters, Property Valuation Administrator of Oldham County. The testimony of LeMaster and Alward was given telephonically in a previous hearing and was stipulated into the record as if given during this hearing.

The issue in this matter is whether Ron Winters as PVA of Oldham County violated KRS 11A.020(1)(c) by using his official position or office to obtain financial gain for his wife,

Barbara Winters, when he promoted his wife to Chief Deputy in the Oldham County PVA Office on September 1, 2006. It is concluded that Ron Winters did violate the cited statute.

BRIEF PROCEDURAL BACKGROUND

1. The procedural background for Administrative Actions 08-EBEC-0334 through 08-EBEC-0344 are all the same. The Findings of Fact, Conclusions of Law, and Recommended Order vary according to the evidence presented at the Hearing in each case and the legal arguments made in each case.

2. On October 7, 2008, an Initiating Order was filed in this matter by the Executive Branch Ethics Commission. The Initiating Order in regard to Ron G. Winters was one of eleven initiating orders charging various Property Valuation Administrators (PVAs) throughout the Commonwealth with violating KRS 11A.020(1)(c). The charged statute states:

(1) No public servant, by himself or through others, shall knowingly:

....

(c) Use his official position or office to obtain financial gain for himself or any member of the public servant's family.. . . .

All of the PVAs were charged with violating the Executive Branch Code of Ethics because they employed and/or promoted members of their families.

3. On October 30, 2008, Winters, along with the other PVAs, filed an Answer to the Initiating Order. On December 2, 2008, the PVAs, who were all represented by the same two attorneys, filed an Agreed Order Holding Administrative Actions in Abeyance.

4. The administrative actions were stayed while the PVAs prosecuted a declaratory judgment action in Franklin Circuit Court. In that action the PVAs asserted that they were not "public servants" or "officers" as defined in KRS 11A and thus were not subject to the jurisdiction of the Executive Branch Ethics Commission. The Franklin Circuit Court judge

agreed that the Executive Branch Code of Ethics did not apply to PVAs. The Executive Branch Ethics Commission appealed the Franklin Circuit Court judgment to the Kentucky Court of Appeals. On June 18, 2010, the Court of Appeals in an unanimous decision reversed the Franklin Circuit Court judgment. *See, Kentucky Executive Branch Ethics Commission v. Atkinson*, 339 S.W.3d 472 (Ky. App. 2011). On June 9, 2011, the Kentucky Supreme Court denied discretionary review.

5. On June 13, 2011, Franklin Circuit Court issued an Order of Dismissal that lifted the abeyance of this administrative action. On July 26, 2011, the parties agreed to hearing dates for the first five PVAs' actions. Eventually eight of the original PVA cases were heard.

FINDINGS OF FACT

6. Ron G. Winters took office as Oldham County Property Valuation Administrator on December 2, 2002. As of August, 2004, the Oldham County PVA Office had 5½ Budgeted Deputies whose salaries and benefits were paid through state funds. The office also had 1½ Deputies paid with funds that were designated as OX funds. And, there was one seasonal hourly employee who was also paid with OX funds. Exhibit 10A to the hearing. (Hereinafter cited as Ex. __.)

7. On September 7, 2004, Winters wrote the Kentucky Revenue Cabinet's PVA Administrative Support branch and stated that he desired to hire a "local residential appraiser, Barbara Winters" to work 20 hours a week for 60 to 90 days because his chief deputy had been out for 10 weeks in April and May, and his office manager and another deputy had also been off for 2 weeks during that same period time. In early September another deputy had suffered a heart attack and would be out for approximately 4 weeks. Barbara Winters had the necessary skills to help with the office's unusual work load. Ex. 5.

8. Thus on September 7, 2004, Winters submitted a Request for Personnel Action (RPA). The RPA recommended that Barbara Winters be appointed for part-time employment of approximately 20 hours a week for 2 to 3 months. The effective date of her employment was October 18, 2004. Her grade was 09/06 based on her high school education with ten years of work experience. Her pay was \$10.38/hour and she was to be paid from OX funds. Ex. 4A. Barbara's experience included being a bank teller, high school office manager, mortgage processor, and real estate appraiser. At the time Barbara was hired by Ron as PVA Deputy, she was working for Winters Real Estate Appraisal Company. Ex. 16. Her supervisor was Ron Winters. She continued to work for Winters Real Estate Appraisal Company after she was hired and was still doing review appraisals at the time of the hearing in February, 2012. Tr. at 106. Ron and Barbara Winters continue to own the company. Tr. at 144.

9. On November 23, 2004, in less than 90 days after Barbara began as a part-time employee, Ron Winters signed a RPA recommending that Barbara become a full-time employee with all benefits. The move to full-time was effective on January 1, 2005. Barbara's grade and pay remained the same and she was still paid out of OX funds. Ex. 4B. Winters remarked on the RPA that the office needed the additional hours because a deputy had resigned.

10. Effective August 1, 2005, Ron shifted Barbara's source of funding so that almost half of her salary was paid by state funds. OX funds still paid 55% of her salary. Ex. 4E.

11. Just over one year later on August 8, 2006, Ron Winters took advantage of the departure of his chief deputy to promote Barbara to Chief Deputy effective September 1, 2006. Barbara's grade went from 09/06 to 14/06. Ex. 4H. Her pay went from \$29,016 annually in 2005, Ex. 10B, to \$51,667 annually in 2007, Ex. 10D. She was now completely paid from state funds as a Budgeted Deputy. The last RPA for Barbara Winters was a non-discretionary education

award for earning a Certified Kentucky Assessor designation on June 24, 2011. Ex. 4N.

12. After Winters was elected PVA in 2002, he attended New PVA Orientation on November 19-20, 2002. Ex. 11. He could not recall any Executive Branch Ethics training during the Orientation. Tr. at 93.

13. Jill LeMaster, currently an employee of the Kentucky Auditor of Public Accounts, formerly the Executive Director of the Kentucky Executive Branch Ethics Commission, testified that she gave training on the Executive Branch Code of Ethics during the orientation for new PVAs. In the electronic files of the Executive Branch Ethics Commission were notes that LeMaster drafted as a guides to her presentations for new PVAs. Tr. at 187, 189, 201. Although the Ethics Commission's files did not include LeMaster's notes for each presentation, they did include years that bracketed the year that Winters attended PVA orientation—2002. The notes and LeMaster's testimony indicated that LeMaster routinely handed out and discussed Executive Branch Ethics Commission Advisory Opinion 93-24 which dealt generally with PVAs' responsibilities under the Executive Branch Code of Ethics and specifically with whether the Code disallowed PVAs' employing relatives. Ex. 1 and 2. The Advisory Opinion urged: "The Commission encourages your agency to follow policies to avoid any real or perceived conflict of interest in this area."

14. Despite the fact that he completed and signed a multi-page Statement of Financial Disclosure in 2004, 2005, 2006, and 2007 which clearly indicated on the heading of the first page and on the return address on the last page that it was from the Executive Branch Ethics Commission, Exs. 12-15, Winters did not know if the Executive Branch Ethics Code applied to him or not. Tr. at 99. Advisory Opinion 93-24 also re-emphasized that Advisory Opinion 92-10 had stressed that PVAs are covered by the Executive Branch Code of Ethics.

15. Winters testified that he was a member of the Kentucky PVA Association. Thus he would have received copies of the vigorous exchange of letters and opinions between Bill Alward, PVA Muhlenberg County, who was President of the Kentucky PVA Association, and Wesley Salyer, Executive Director of the Division of Local Government Services in the Finance and Administration Cabinet in March and April, 2007. Ex. 17. The issue was the attempt of the Finance Cabinet to have PVAs come into compliance with Executive Branch Ethics Advisory Opinion 04-34 which said that PVAs should not employ, appoint, promote, transfer, or advance members of their families. By the time of the exchange of letters, Barbara Winters had already been promoted to the highest position with the largest salary under the Oldham County PVA on September 1, 2006.

16. When asked if he did anything to mitigate the problem of his hiring and promoting Barbara once he learned that it was considered to be an ethical violation, he responded that he did nothing because "I have to live with her." Tr. 108. He did not consider that the situation presented a conflict of interest.

CONCLUSIONS OF LAW

17. KRS 11A.020 provides:

(1) No public servant, by himself or through others, shall knowingly:

....

(c) Use his official position or office to obtain financial gain for himself or any member of the public servant's family.. . .

The provision, as part of the Executive Branch Code of Ethics, became effective on July 14, 1992, and has not been amended subsequently.

18. In his closing argument, Winters argued initially that he did not violate the statute because he did not "use his official position or office" for the benefit of Barbara Winters. Ron

Winters placed the blame for Barbara's appointment squarely on the Department of Revenue stating that "Revenue is the sole actor and arbiter of this hiring decision." Respondent's Proposed Recommendations of Law at 3. (Hereinafter cited as Resp. at __.)

19. KRS 132.590(8), which is cited by the Respondent, indicates that the PVA "appoints" employees, who "may be removed at the pleasure of the property valuation administrator." The Fiscal and Personnel Administration Office of Property Valuation Administrator handbook, Ex. 9, which originated through a conference of PVAs, states: "**All employees serve at the pleasure of their respective PVA, and are at will, unclassified, non-merit, non-P1 state employees.**" Ex.9 p.6. [Emphasis in original.]

20. As JoJuana Leavell-Greene, Human Resources Branch Manager for PVA Administrative Support, Department of Revenue explained, in regard to Revenue's role concerning PVA employees:

The PVA recommends that the employee be hired, reclassified, promoted, whatever the nature of personnel action is. Recommends a grade and a salary and a position name. And, our [PVA Administrative Support's] job is to certify that and I sign it to approve to be put in the payroll system.

Tr. at 29-30. Leavell-Greene did not know that Barbara was Ron Winters' wife when he sent in the initial Request for Personnel Action. Tr. at 68. Revenue is not the enforcer of the Executive Branch Code of Ethics. It is the Executive Branch Ethics Commission who enforces the Code. KRS 11A.080; KRS 11A.100.

21. The second flaw in the statutory charge according to Winters is that "financial gain" must be "unwarranted or in conflict with the interests of the public at large." Resp. at 5. Initially, it must be observed that the policy behind the Code of Ethics begins:

It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior

contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

....

(c) A public servant not use public office to obtain private benefits; and

(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.005(1). Justice Stephens' concurrence in *Caudill v. Judicial Ethics Committee*, 986 S.W. 2d 435 (Ky. 1999), which is favorably referenced by Winters, appears to be especially useful in the context of this matter. The problem with financial gain connected with nepotism, which is a particular form of favoritism, is, as Justice Stephens, concluded:

The evil that I believe anti-nepotism provisions are designed to combat is the appearance of impropriety which has the inevitable effect of undermining the public's trust in a given institution.

Id., at 439. As the Complainant Commission has emphasized, what is at issue is not Barbara Winters's qualifications or her compensation, it is the favoritism in which an employee was hired or promoted because of a family relationship. As Winters' testimony indicated, PVA offices can almost become hereditary fiefdoms. Winters' immediate predecessor as PVA had been the Chief Deputy of his father who was PVA. His step-son and wife were both employees of the PVA Office. Tr. at 124-125. Bill Alward testified, Tr. at 221-222, when he became PVA in 1989 he was advised to hire family members:

And, that I think the general gist was that we were a small office and we were like a small business in America, and that's built on family business and that's kind of the way we operated.

22. Winters also raised as an affirmative defense "Violation of the doctrine of *stare decisis*." According to *Black's Law Dictionary*, Seventh Edition, *stare decisis* is: "The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation." Winters argues that the Ethics Commission violated *stare*

decisis because Advisory Opinion 93-94 stated that KRS 11A.020 (1)(c) contained no prohibition to the employment of family members and Advisory Opinion 04-34 stated that KRS 11A.020 (1)(c) prohibited such employment.

23. In the first year of its existence, the Executive Branch Ethics Commission, under the authority of KRS 11A.110(1) issued Advisory Opinion 92-10 which concluded that PVAs were covered by the Executive Branch Code of Ethics. Advisory Opinion 93-24 then followed in response to a query as to whether the Executive Branch Code of Ethics “disallowed” PVAs’ employing relatives. Advisory Opinion 93-24 stated “the Executive Branch Code of Ethics does not specifically prohibit the employment of relatives in PVA offices. However. . .” [Emphasis added.] The Commission then cited KRS 11A.020(1)(a) and (c) and concluded: “The Commission envisions certain circumstances where conflicts of interest could arise under such employment. The Commission encourages your agency to follow policies to avoid any real or perceived conflict of interest in this area.” In short, the Commission did not state that the Code prohibited nepotism, but it did warn that employing family members could create conflicts of interest. Advisory Opinion 93-24 seemed to issue a “word to the wise,” the Commission knowing, as did Winters and Leavell-Greene, that many PVAs traditionally had family members in their offices.

24. In its post-hearing closing the Ethics Commission agreed that Advisory Opinion 93-24 did state that family members could work in the same office—but family favoritism would not be permitted. A PVA could create a conflict of interest by hiring members of his own family. The Opinion indicated that family members already employed in an office could remain.

25. On September 30, 2004, the Commission on its own motion again took up the issue of family members being employed in the same state agency as a public servant. The

occasion was recent investigations within the Department of Parks which revealed that Parks and other state agencies needed further guidance. Advisory Opinion 04-34 again recited KRS 11A.020(1) and then proceeded to more explicitly set out problem areas:

[T]he Commission believes that KRS 11A.020(1)(a), (c) and (d) serve to prohibit a public servant from advocating or influencing in any way the employment, appointment, promotion, transfer, advancement of a member of the public servant's family to an executive branch position of employment that the public servant directly supervises or manages.

Specifically, employees should not be involved in interviewing, recommending, or approving family members for positions within their employing agencies

26. Jill LeMaster, who was the Executive Director of the Executive Branch Ethics Commission from 1993 until May 31, 2008, testified in response to a question about the difference between Advisory Opinion 93-24 and Advisory Opinion 04-34: "I don't believe it's a change. I believe the original opinion just said that the statute doesn't specifically spell out the prohibition." Tr. at 161. LeMaster stated that the Commission always thought that public servants should not give an advantage to family members.

27. On July 29, 2007, the Ethics Commission issued Advisory Opinion 07-19 which reviewed nepotism under the Code of Ethics and amended Advisory Opinion 04-34. The Opinion stated that Advisory Opinion 04-34 pointed out that KRS 11A.020(1)(a), (c), and (d) prohibited advocating or influencing employment actions in regard to family members. The Opinion then took up the persistent problem of how to deal fairly with family members who were already under the supervision of a family member and had been for many years. The Opinion reiterated that since Advisory Opinion 04-34, public servants should not have been involved in the employment, supervision, or promotion of family members.

28. Advisory Opinion 07-19 urged a layer of supervision between a family member

and a public servant to remove as much potential for conflict as possible. Winters testified that Barbara and the office manager shared the right to supervise other employees. Tr. at 107. He indicated that it would be difficult for him to alter her position in the office. Tr. at 109. Barbara Winters testified that “We have a very small office. And, Mr. Winters supervises [the office manager] and she supervises me.” Tr. at 138. The Hearing Officer finds, however, that because the PVA wields all of the authority in regard to personnel decisions and because the Office Manager has five years less experience than Barbara, and because Ron Winters’ testimony appears more credible, there was no effective barrier to a conflict of interest.

29. Although the advisory opinions have not been uniformly hard-nosed about conflicts of interest in the form of nepotism in regard to public servants, they have consistently said that public servants’ employing, promoting, and supervising their family members created conflicts of interest. The Advisory Opinions started out gently in their warnings in 93-24; became quite firm in 04-34; and then relented a bit in 07-19 in regard to previously employed family members. LeMaster stated that the Commission’s Opinions and enforcement were always reactive rather than proactive, because the Commission had only 5-6 employees. Tr. at 182-183.

30. Although it is useful to point out that the advisory opinions wavered a bit in the firmness with which they dealt with family members in the same office with a public servant, *stare decisis* is not relevant to this matter. Advisory opinions are just “opinions.” They offer guidance; they are not judicial precedents established through litigation.

31. Winters also offered as an affirmative defense “Violation of the Doctrine of Contemporaneous Construction.” This doctrine used in this context is quite similar to *stare decisis*. The doctrine as defined in *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky., 1991) means that “In most cases, an agency’s interpretation of its own regulations is entitled to substantial

deference. ... A construction of a law or regulation by officers of an agency continued without interruption for a long period of time is entitled to controlling weight.” In this instance, advisory opinions are used as interpretations or regulations according to Winters. Therefore, because of contemporaneous construction, as stated in *In re Hughes & Coleman*, 60 S.W.3d 540, 543 (Ky., 2001): “An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored”

32. The Hearing Officer, as previously stated, concludes that the focus of the nepotism opinions shifted slightly but there was no significant contradiction. Advisory Opinions 93-24, 04-34, and 07-19 were rational elaborations that provided a chain of coherent advice.

33. The final legal argument made by Winters is that the Commission had violated KRS 13A.120 by issuing unauthorized guidance concerning conflicts of interest and nepotism in the advisory opinions and by not promulgating specific anti-nepotism regulations. KRS 11A.110 (1) clearly gives the Commission the authority to “issue and publish advisory opinions on the requirements of this chapter for those who wish to use the opinions to guide their own conduct.” Winters also suggested that OAG Opinion 88-15 which found “no specific authorizing regulation for the Personnel Commissioner and the Personnel Board to promulgate regulations concerning nepotism,” somehow prohibited the Executive Branch Ethics Commission from concerning itself with nepotism. Resp. at 8. The Hearing Officer does not find it persuasive to argue that because the Personnel Board or the Personnel Commissioner cannot promulgate regulations against nepotism, the Legislature could not give the statutory authority to another administrative body to deter conflicts of interest or favoritism in the form of nepotism in the executive branch of the state government.

34. The statutes that are cited by Winters as being permissible anti-nepotism statutes

are concerned with members of electric and water plants of third-class municipalities (KRS 96.172), members of boards of trustees of state universities (KRS 164.225), local school boards (KRS 160.180), school councils for school-based decision making (KRS 164.345), and school superintendents and principals (KRS 160.380). These statutes support the view that the Commonwealth has wide reaching concerns about the nefarious impact of nepotism on the local as well as the state level.

35. Further, the above-cited statutes indicate that nepotism can be dealt with through statutes and does not require regulations. *Hagan v. Farris*, 807 S.W.2d 488 (Ky., 1991), and *Department of Education v. Gobert*, 979 S.W. 2d 922, 926 (Ky., 1998), are relied upon by Winters for the proposition that regulations are essential to interpret KRS 11A.020 (1)(c). However, those cases most firmly stand for the proposition that regulations cannot contradict statutes. Regulations may be used to “flesh out” statutes but KRS 11A.020(1)(c) does not suffer from any vagueness problems.

36. Finally, Winters offered Governor Steven Beshear’s Executive Order of June 2, 2008, as a standard against which to judge the arbitrariness of the Commission’s actions in charging Winters with violating KRS 11A.020(1)(c). That Executive Order stated that it is the Commonwealth’s policy to provide equal employment opportunities to all people without discrimination because of race, color...ancestry....” The Hearing Officer concludes that this broad affirmative policy set out in an Executive Order opens the doors of opportunity to all within the state. The practice of nepotism means that the door keeper only lets those related by birth or marriage enter the door of opportunity. The Commission’s view of KRS 11A.020(1)(c) supports public trust, impartiality, and the integrity of public servants. It compliments the Executive Order of June 2, 2008.

37. Winters's contrast of KRS 11A.020 (1)(c)'s ethical injunction against a public servant using his office to obtain financial gain for himself or any members of his family with KRS 132.590 (8) concerning the personnel classification system for PVA deputies and KRS 18A.110(5) concerning the Personnel Secretary's authority to promulgate regulations is not convincing as a constitutional argument. Nor is Advisory Opinion 07-19 an *ex post facto* law.

38. It is to be stressed that this case was brought under KRS 11A.020 (1)(c)—no Advisory Opinion was cited in the Initiating Order. The Advisory Opinions are useful in providing guidance, but the foundation of the complaint against Winters is the statute. The evidence presented at the Hearing is that Winters hired his wife in October, 2004, and within two years he had provided full benefits, placed her in a budgeted position, promoted her 6 grades, and increased her pay from \$1687/month to \$3233/month. Winters apparently consulted only his personal knowledge in hiring and promoting Barbara. Despite his initial PVA training in 2002 and the Alward-Salyer debate in 2007, he still saw no conflict of interest in his wife and real estate appraisal business partner being the highest paid and most senior employee in his PVA Office.¹ Winters did join with other PVAs in defense of his view of PVA ethical autonomy.

39. The statute states: "No public servant, by himself or through others, shall knowingly . . . use his official position or office to obtain financial gain for himself or any member of the public servant's family. . . ." The evidence presented at the Hearing was clear and convincing that Winters knowingly used his position as PVA to obtain financial gain for

¹ Executive Branch Ethics Commission Financial Disclosure forms completed by Ron Winters for 2004-2007, Ex.s 12-15, indicate that Christine N. Fryman was a dependent child of Winters or his wife during those years. The snap shots for 2005-2007, Ex.s 10B, 10C, 10D, indicate that Christine Fryman was a seasonal employee of the Oldham County PVA Office during those years. Fryman's grade was 6 which indicates a deputy with little higher education and experience. Fryman may indicate another conflict of interest.

Barbara Winters. Ron Winters should henceforth not hire or promote family members as employees in the Oldham County PVA Office. He should post a copy of KRS 11A.020 prominently in a public place in the office as a reminder of the law. Winters was informed of the law even before he was sworn into office but he chose to ignore it. He should pay the full penalty of \$5,000.

RECOMMENDED ORDER

On the basis of the above Findings of Fact and Conclusions of Law, it is recommended that Ron Winters be ordered to henceforth obey KRS 11A.020(1)(c); to post a copy of KRS 11A.020 prominently in a public place in his office as a reminder of the law; and to pay a civil penalty of \$5,000 to the Executive Branch Ethics Commission.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110 (4) you have the right to file exceptions to this recommended decision:

- (4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

In order to preserve a right to review by the circuit court, case law requires that a litigant must file exceptions with the board or agency if there is anything in the recommended order with which a party does not agree and desires to appeal.

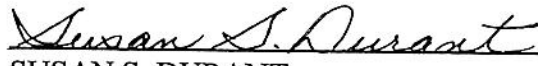
You have a right to appeal the Final Order of the agency pursuant to KRS 13B.140 which reads in part:

- (1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency

and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." The Court of Appeals has suggested that an appeal to circuit court is commenced upon the filing of the appeal petition and the issuance of a summons within the 30-day time period for filing an appeal.

SO RECOMMENDED this 4th day of May, 2012.


SUSAN S. DURANT
HEARING OFFICER
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CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDED ORDER was mailed this 4th day of May, 2012, by messenger mail, to:

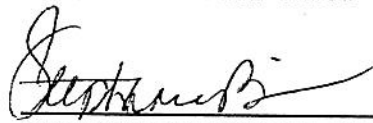
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for filing; and a true copy was sent by first-class mail, postage prepaid, to:

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