COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE NO. 19-005

IN RE: MATTHEW MOHALLEY
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 Matthew Mohalley (the "Respondent" or "Mohalley"), pursuant to KRS 11A.080(1), on July 10, 2018.

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 it has sufficient probable cause to believe the Respondent violated provisions of KRS Chapter 11A, Executive Branch Code of Ethics (also referred to herein as the "Ethics Code").

The Commission focused its investigation upon the Respondent's possible violation of the Ethics Code by using or attempting to use his influence in a matter which involves a substantial conflict between his personal or private interest and his duties in the public interest, using or attempting to use any means to influence a public agency in derogation of the state at large, using his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest, 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 20, 2018. During the course of the investigation, the Commission found probable cause to believe that violations of KRS Chapter 11A had occurred. The Commission voted on February 5, 2019, 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, or by personal service.

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. If the Respondent does not submit an answer to the Initiating Order within twenty (20) days from the date of service, the Commission may accept the failure to answer as an admission of the allegations in the Initiating Order; find by clear and convincing evidence pursuant to KRS 11A.100(3) that the Respondent has engaged in the alleged conduct; and enter a final order against the Respondent for the full possible penalty allowed under KRS 11A.100(3).

4. The Respondent shall appear at a hearing to be scheduled by subsequent order and be prepared to defend against the Commission's allegations that she 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.

5. The Commission will designate a hearing officer, pursuant to KRS 13B.030(2)(a), by contract with a private attorney through a personal services contract. The Commission will notify the Respondent or her retained counsel of the designation of a Hearing Officer as soon as

possible after the appointment.

6. The Commission is represented by Michael W. Board, General Counsel, and Kathryn H. Gabhart, Executive Director, as supporting counsel and agency representative. They may be contacted through the Commission's office at (502) 564-7954.

7. All original material and documents shall be submitted to the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Attention: Debbie Briscoe, Commission Secretary. Copies of all materials shall be served on the designated Hearing Officer and the Commission's counsel listed in paragraph 6.

8. The Respondent has the right to obtain his own legal counsel during this proceeding. If the Respondent retains legal counsel, that legal counsel 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 5th day of February 2019.

EXECUTIVE BRANCH ETHICS COMMISSION:

Christopher Thacker, Chair

Christopher Brooker, Vice-Chair

April Wimberg, Member

Holly Jaccarino, Member

Kyle Winslow, Member

APPENDIX A
CASE NO. 19-005
INITIATING ORDER

ALLEGATION OF VIOLATIONS

The Respondent, Matthew Mohalley, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Department of Corrections, 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 Matthew Mohalley committed the following violations:

COUNT I

Matthew Mohalley, during his course of employment as a Corrections Officer, Roederer Correctional Complex, Department of Corrections, Justice and Public Safety Cabinet, used his influence in a matter which involves a substantial conflict between his personal or private interest and his duties in the public interest, used any means to influence a public agency in derogation of the state at large, used his position to obtain a financial gain for himself, used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest, 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, during December 2017, Mohalley tampered with evidence by claiming to find a Bic cigarette lighter in an inmate's belongings upon transporting the inmate to the prison from the hospital. In fact, the lighter belonged to Mohalley and he feared disciplinary action for

forgetting to leave it in his vehicle and smoking while driving the prison van. The inmate received a disciplinary report and was placed in segregation as a result of Mohalley's actions.

These facts constitute violations of KRS 11A.020(1)(a), (b), and (d), KRS 11A.020(2), and KRS 11A.020(3).

KRS 11A.020(1)(a), (b), and (d), KRS 11A.020(2), and KRS 11A.020(3) provide:

> (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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