

**STATE OF RHODE ISLAND  
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

IN RE: William C. Perry  
Respondent

Complaint No. 2018-4

**NOTICE TO RESPONDENT OF HEARING REGARDING  
PROBABLE CAUSE AND RIGHT TO APPEAR**

TO: Elizabeth Wiens, Esq.  
Gursky Wiens Attorneys at Law, Ltd.  
1130 Ten Rod Road, Suite C-207  
North Kingstown, RI 02852

1. Pursuant to R. I. Gen. Laws § 36-14-12(c)(4) and Commission Regulation 1006(a), the Rhode Ethics Commission has scheduled a hearing regarding probable cause in the above-captioned Complaint on **Tuesday, September 25, 2018, at 9:00 a.m.** The hearing will be held at the Rhode Island Ethics Commission, Hearing Room - 8th Floor, 40 Fountain Street, Providence, RI 02903. You are hereby notified of the right to submit a written statement and/or appear before the Ethics Commission at this hearing in person and/or by counsel for the purpose of presenting arguments and/or written evidence in response to the allegations against you.

2. A copy of the Prosecution's Report summarizing the results of the investigation in this matter is herewith enclosed, pursuant to Commission Regulation 1006(a), which also provides that this Report, and any written response filed thereto, shall be made public and a part of the official Commission Complaint file upon the issuance of either a Finding of Probable Cause or a Dismissal of the Complaint.

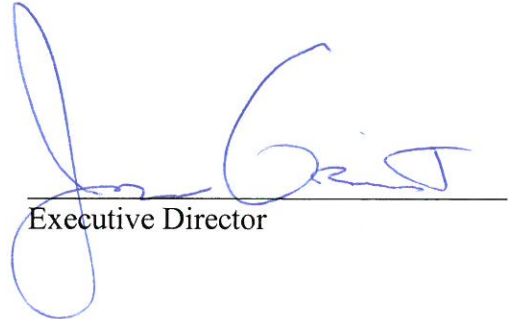
3. The Commission shall conduct its hearing regarding probable cause in Executive Session as an investigative proceeding, pursuant to R.I. Gen. Laws § 42-46-5(a)(4).

4. You are advised that the Commission will make reasonable accommodations to furnish appropriate auxiliary aids and services, when necessary to afford an individual with a disability with an equal opportunity to participate in Commission proceedings and have access to Commission documents. To request a reasonable accommodation, contact the Commission at (401) 222-3790 and ask for the ADA Coordinator, or write to the Commission at 40 Fountain Street, Providence, RI 02903. The Commission also may be contacted through Rhode Island Relay, a telecommunications relay service, at 1-800-RI5-5555. Your request must be received by the 18<sup>th</sup> day of September 2018 at 4:30 p.m.

5. You are advised that, pursuant to Commission Regulation 1012.1, you may, at your own expense, arrange for the creation of a stenographic recording of those portions of the proceedings that you have a right to participate in or attend. If you choose to make such a recording, you must provide the Commission with written notice of your intent to create such a

record no less than two (2) business days prior to the proceeding. Additionally, you must provide the Ethics Commission with a transcript of any such recording. Be advised that the Commission may proceed in the absence of a stenographer if any of the above stated conditions are not met.

Date: September 11, 2018



Executive Director

**CERTIFICATION**

I, Christine Andreozzi, hereby certify that on the 11th day of September 2018, I forwarded a copy of this document by US mail, postage prepaid, to: Elizabeth Wiens, Esq., Gursky Wiens Attorneys at Law, Ltd., 1130 Ten Rod Road, Suite C-207, North Kingstown, RI 02852.



**STATE OF RHODE ISLAND  
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

**In re: William C. Perry  
Respondent**

**Complaint No. 2018-4**

**INVESTIGATIVE REPORT**

**I. INTRODUCTION AND TRAVEL OF THE CASE**

The instant Complaint was filed by Peter F. Henrikson on March 16, 2018, and names William C. Perry as the Respondent (“Respondent” or “Lieutenant Perry”). The Complaint alleges that the Respondent, a Lieutenant in the East Greenwich Fire Department, a municipal employee position, violated the Code of Ethics by serving in a supervisory role over his brother, James M. Perry, within the same platoon. Specifically, the Complaint alleges that, as a Lieutenant on Platoon B, the Respondent had a supervisory role which included directing the work assignments of those reporting to him, which would include making decisions impacting his brother who also served on Platoon B.

Pursuant to Regulation 1003,<sup>1</sup> the Ethics Commission (“Commission”) made an initial determination on March 27, 2018, that the Complaint alleged sufficient facts that, if true, would constitute a violation of the Code of Ethics and approved a full investigation. On April 4, 2018, Attorney Elizabeth Wiens entered her appearance on behalf of the Respondent. On April 17, 2018, the Respondent filed a Verified Answer and Request for a Civil Penalty against Complainant Peter Henrikson (“Answer”) along with eight attached exhibits. Upon the Prosecution’s Motion, on August 21, 2018, the Commission extended the time to complete the investigation by 60 days,

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<sup>1</sup> In May 2018, the Ethics Commission codified the Code of Ethics into the Rhode Island Code of Regulations (“RICR”), a uniform state code containing the rules and regulations of the various Rhode Island agencies. In order to do so, the Ethics Commission reformatted and renumbered the Code of Ethics. As a result, Regulation 1003 now corresponds to Regulation 520-RICR-00-00-3.8 Initial Determination of Complaint (1003).

until November 11, 2018, pursuant to R.I. Gen. Laws § 36-14-12. The investigation concluded on September 11, 2018.

This Investigative Report has been prepared in advance of a hearing on probable cause, and relevant evidence from the investigation for purposes of the Commission's probable cause determination is detailed below.

## **II. SUMMARY**

The investigation revealed that, on August 16, 2016, the Respondent received an advisory opinion from the Commission concerning the proposed hiring of his brother, James M. Perry, to the East Greenwich Fire Department and matters related to the chain of command to be implemented if his brother were hired.<sup>2</sup> The Commission was satisfied that the proposed chain of command was sufficient to insulate the Respondent from any potential conflicts of interest. The advisory opinion required the Respondent to recuse from any decisions that might financially impact his brother but noted that during discreet emergency situations, where incident-specific supervision of his brother is required, no violation of the Code of Ethics would exist. On August 22, 2016, the Respondent's brother was hired as a firefighter and assigned to a different platoon than the Respondent.

Six (6) months after James Perry's hiring, the Chief of the East Greenwich Fire Department approved his request to be transferred to Platoon B effective February 6, 2017. The investigation revealed no evidence that the Respondent participated in any decision-making matters that financially impacted his brother nor was he involved in the supervision of his brother in violation of the Nepotism provisions set forth in Commission Regulation 36-14-5004.<sup>3</sup> Detailed results of

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<sup>2</sup> See Advisory Opinion 2016-26.

<sup>3</sup> Regulation 5004, which became effective in February 2007, now corresponds to Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004).

the investigation are set forth fully below.

### **III. PROBABLE CAUSE STANDARD**

At this stage of the Complaint process, the Commission determines whether probable cause exists to support the allegations of the Complaint. See R.I. Gen. Laws § 36-14-12(c). In making that determination, the Commission must objectively assess whether, under the totality of the circumstances, the facts supported by reasonably trustworthy information are sufficient to cause a reasonable person to believe that the Respondent has violated the Code of Ethics.

The test for probable cause involves an objective assessment in which the examining court determines, under the totality of the circumstances, whether “‘the facts and circumstances within . . . [their] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.”

State v. Flores, 996 A.2d 156, 161 (R.I. 2010) (quoting Maryland v. Pringle, 540 U.S. 366, 372 n.2 (2003) (quoting Brinegar v. United States, 338 U.S. 160, 175-76 (1949))).

“Probable cause ‘does not demand any showing that such a belief be correct or more likely true than false.’” Flores, 996 A.2d at 161 (quoting Texas v. Brown, 460 U.S. 730, 742 (1983)). However, probable cause lies somewhere beyond “bare suspicion.” Id. (citing United States v. Prandy-Binett, 995 F.2d 1069, 1070 (D.C. Cir. 1993)).

### **IV. RESULTS OF THE INVESTIGATION**

#### **A. The Organizational Structure of the East Greenwich Fire Department.**

The East Greenwich Fire Department (“Fire Department”) is comprised of two fire stations and four platoons, or groups, of firefighters, A, B, C, and D.<sup>4</sup> Each platoon is assigned a particular shift and mans both stations. At all times relevant to the allegations in the Complaint, there was

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<sup>4</sup> Station 1 is located on Main Street in East Greenwich and Station 2 is located on Frenchtown Road in East Greenwich.

one Captain assigned to Station 1 and another Captain assigned to Station 2.<sup>5</sup> Each platoon has two fire engines and two rescues, with a Lieutenant Officer assigned to each vehicle. There are two firefighters assigned to Engine 1 and one firefighter is assigned to Engine 2. A firefighter is assigned to Rescue 1 and another is assigned to Rescue 2.

From January 2014 through November 2017, Russell McGillivray was the Chief of the Fire Department (“Chief McGillivray”). Following his termination, the East Greenwich Town Council appointed Christopher Olsen as interim Fire Chief on November 6, 2017. Upon interim Chief Olsen’s departure, the Town Council appointed Kevin Robinson as Acting Chief on January 22, 2018, and he continues to serve in that capacity. From July 2014 through June 2017, Michael Sullivan was the Deputy Chief of the Fire Department, after which the position remained vacant until May 2018 when the Town Council voted to appoint the Complainant, Peter Henrikson, as Acting Deputy Chief. The Respondent began his employment with the Fire Department in October 2002. On October 2, 2009, he was promoted to Lieutenant and was assigned to Platoon B, Engine 1 at Station 1.<sup>6</sup>

#### **B. The Hiring of James Perry and the Respondent’s Advisory Opinion.**

By July of 2016, the Town of East Greenwich (“Town”) was faced with a shortage of firefighters. There were four vacancies in the Fire Department and a few firefighters were out of work for job-sustained injuries. Due to the size of the Fire Department, the overtime costs to maintain the minimum staff required under the collective bargaining agreement became unsustainable. The Town needed to fill the vacancies as quickly as possible and posted the openings. The Respondent’s brother was one of the top candidates for the position of probationary

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<sup>5</sup> Effective July 1, 2018, each platoon now has a Captain for a total of four. All other assignments remain the same.

<sup>6</sup> In July 2018, the Respondent was promoted to the position of a Captain. The allegations in the Complaint relate to his conduct in his former capacity as a Lieutenant.

firefighter.

Upon the recommendation of the former Town Manager, Thomas Coyle, and Chief McGillivray, the Respondent requested an advisory opinion from the Commission regarding the propriety of the Town hiring his brother, given the Respondent's position as a Lieutenant in the same Fire Department. Attached to the advisory opinion request were two letters, one signed by Mr. Coyle and the other signed by Chief McGillivray, both dated July 18, 2016. In each letter, Mr. Coyle and the Chief respectively represented that "an alternate 'Chain of Command' will be used to ensure that Lieutenant [ ] Perry would have no authority or responsibility to evaluate, promote or discipline . . . his brother James." The letters explained that the duties to evaluate, promote, or discipline are assigned to either the Fire Chief or the Deputy Fire Chief.

The advisory opinion approved by the Commission on August 16, 2016, stated that, under the Code of Ethics, the Respondent could continue to serve as a Lieutenant in the Fire Department upon the hiring of his brother as a probationary firefighter in the same Fire Department "provided that certain procedures are followed so that the [Respondent] is removed from personnel decisions or other matters that particularly affect his family member." The Respondent is required to "recuse from any decisions that may financially impact his brother." The Commission opined that "the alternate chain of command proposed by the [Respondent] and the Fire Chief effectively insulate the [Respondent] from decisions directly affecting his brother." The Commission noted that "during discreet emergency situations, such as fighting fires where incident-specific supervision of his brother may be unavoidable . . . a violation of the Code of Ethics will not exist." Chief McGillivray and Deputy Chief Sullivan attended the Commission's August 16, 2016 meeting on behalf of the Respondent, who was out of Town.

On August 22, 2016, James Perry was hired by the Fire Department as a probationary



firefighter. The Respondent was not involved in the interviews or selection process. For the first several weeks after James Perry was hired, he served in the position of dispatcher. In early October 2016, he was assigned to Platoon A, Rescue 2 driver, and Station 2, while the Respondent was serving at Station 1.

Following the August 16, 2016 Commission meeting, Chief McGillivray spoke with the Captains and Lieutenants and informed them of the advisory opinion. He advised them that if any issues arose regarding James Perry, the Respondent could not be involved, and they would have to handle those issues. In his interview with Commission Investigator Gary V. Petrarca, Chief McGillivray stated that he did not establish a formal alternate chain of command in writing, admitting that, “in hindsight, I probably should have.”<sup>7</sup>

In February 2017, James Perry was eligible to bid for a transfer to a different assignment that became available. James Perry’s bid transfer was approved by Chief McGillivray and became effective February 6, 2017. As a result of his transfer, James Perry was assigned to Platoon B, the same platoon as the Respondent, as Rescue 2 driver, but remained at Station 2 while the Respondent was at Station 1. The officer assigned to Rescue 2 with James Perry was Lieutenant Ryan Grady. This was the only assignment available to James Perry at the time. The Respondent was not involved in approving his brother’s transfer.

### **C. The Collective Bargaining Agreement and the Standard Operating Guide.**

The Collective Bargaining Agreement (“CBA”) between the East Greenwich Firefighters’ Union, Local 3328 (“Union”), and the Town sets forth the terms and conditions of employment

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<sup>7</sup> Acting Chief Robinson informed Investigator Petrarca that since the Respondent became a Captain effective July 1, 2018, he is now establishing a written set of directives to address situations that might arise in which the Respondent, now a Captain, would have to supervise his brother.



that apply to all Union members including the Respondent and his brother.<sup>8</sup> The CBA governs all employment matters such as wages, transfers, promotions, discipline, and overtime.<sup>9</sup> Pursuant to the CBA, all platoon assignments are based on seniority. With respect to overtime, the highest-ranking officer on duty for a given shift follows a list of firefighters to be called on a rotating basis. Chief McGillivray and Acting Chief Robinson explained to Commission Investigator Gary V. Petrarca that the officer must strictly adhere to the order of names on the overtime call-back list, otherwise grievances would be filed.

The CBA outlines the duties and responsibilities of all personnel of the Fire Department. Section 6-3 of the contract specifically relates to Lieutenants and provides, in relevant part:

- a. The lieutenants shall perform such other and further legitimate duties as the Chief of the Department may determine.
- b. When the Chief, Deputy Chief(s) and Captain(s) are not present at the scene of an emergency, the permanent lieutenant shall be in command of the emergency until such time as the Chief, Deputy Chief(s) or Captain(s) shall arrive at the scene.

Captains' duties include having control over the "firefighters . . . under their supervision and the apparatus and equipment therein contained," and assigning work at the stations to the firefighters on each shift. Section 6-2.

In addition to the CBA, the Fire Department employs a Standard Operating Guide ("SOG"). Chief McGillivray explained that because the CBA is a contract between the Union and the Town, it supersedes the SOG where there is a conflict. The SOG predates the hiring of the Union President in 2002. According to Chief McGillivray, the CBA applies to working terms and conditions whereas the SOG provides instructions for addressing and handling incident-specific

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<sup>8</sup> The Respondent is also the President of the Union. The allegations in the Complaint do not relate to the Respondent in that role.

<sup>9</sup> The Union also negotiated a written policy with the Town entitled "Fill-In Procedures," dated September 1, 2013, to address the procedures for filling vacancies and calling back employees for overtime.

matters. Attorney Wiens represented to the Prosecution that the SOG was not negotiated with the Union and was not approved by the East Greenwich Fire District, the firefighters' previous employer, nor was it ratified by the Town. She explained that the Fire Chiefs have authority to implement guidelines but do not have authority to impose duties and responsibilities that exceed those negotiated with the Union and reflected in the CBA.

Chapter 01-12 of the SOG is entitled "Lieutenant's Duties." Its preamble states, in part:

Lieutenants oversee the members and work hand in hand with them.

...

Lieutenants will be responsible for their *company* and assigned apparatus . . . The safety of the personnel . . . will be the highest priority. Keeping adequately staffed apparatus in-service will be the second priority.

...

Lieutenants are an equal class . . . [and] will take the lead for all calls not directly EMS related. The duties will be divided equally for each *company* in the station.

(Emphases added). The term "company" as it appears under Chapter 01-12 of the SOG refers to the fire engine or rescue to which a Lieutenant is assigned and the firefighter(s) working on said apparatus.

In their respective interviews, Chief McGillivray and Acting Chief Robinson explained how these provisions of the CBA and SOG apply in practice to the day-to-day operations of the Fire Department. Chief McGillivray explained that, during his tenure, if a Captain was not on duty for a shift, each Lieutenant would be in charge of his own vehicle, or company, and the driver of said vehicle. He stated that, in the absence of a Captain, all Lieutenants working a given shift would have equal supervisory authority, with "all the Lieutenants . . . in charge." Former Deputy Chief Sullivan and Captains Thomas Mears and Kenneth Montville concurred that when there was no Captain on a shift, each Lieutenant would be responsible for his respective vehicle. However, Acting Chief Robinson maintained that in the absence of a Captain, he looks to the Lieutenant on Engine 1 as the person in charge of the whole station. Former Deputy Chief Sullivan disagreed,

stating that the CBA does not support Acting Chief Robinson's interpretation. He explained that the Engine 1 Lieutenant is in charge of Engine 1 personnel only and all Lieutenants share equal authority.

Section 2 of the SOG, entitled "The Physical Condition of the Building and Grounds," further states that "in the absence of a Captain, the Lieutenant assigned to Engine [1] will directly supervise the personnel performing the dispatch function." Chapter 01-12, Sec. 2. This provision does not appear in the CBA. Any firefighter, including a Captain, may serve as a dispatcher.

#### **D. Accountability Sheets for the Respondent and James Perry.**

As part of the investigation, the Prosecution reviewed the Accountability Sheets from August 22, 2016, the date of James Perry's hire, through May 28, 2018.<sup>10</sup> An Accountability Sheet is a daily schedule of which officers and firefighters worked each platoon and in what capacity, and it reflects who worked overtime, who swapped shifts with whom, and who was out sick or on vacation. The Accountability Sheets show that the Respondent worked with his brother in the same vehicle, engine or rescue, on 10 occasions during that 21-month period.

In his Answer, the Respondent asserts because he and his brother were assigned to different stations, he would have no occasion to supervise his brother unless they both responded to the same emergency call. The Respondent maintains that even when he and his brother were assigned to the same vehicle or rescue and he could give orders to his brother, the orders would relate to the provision of emergency services and not to the terms and conditions of James Perry's employment. The Respondent informed that even though he does not supervise his brother when they work

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<sup>10</sup> On May 3, 2018, the Prosecution requested documents from the Town Clerk for purposes of the investigation. May 28, 2018, is the date of the last Accountability Sheet that the Town Clerk provided in response to the Prosecution's request.

together on the same engine or rescue, he has tried to swap his shifts with other Lieutenants, or his brother would swap shifts with other firefighters whenever possible to avoid any appearance of impropriety.

The interviews revealed that a Lieutenant's supervisory authority over his driver relates to emergency-type matters. Acting Chief Robinson explained that the Lieutenant in a rescue directs his driver in proper medical protocol. Where transport to a hospital is required, the Lieutenant stays in the back with the patient. Former Deputy Chief Sullivan further explained that when an engine and/or rescue responds to a call, it is an emergency and any supervising by the Lieutenant officer would be emergency-related. He informed that most of the firefighters are licensed by the state as EMTs or paramedics and there is a standard protocol that must be followed. Lieutenant TJ Matola noted that both the Lieutenants and drivers must follow proper medical protocol. Rescue Lieutenant Thomas Bailey stated that his supervisory authority consists of ensuring that medical care is administered at motor vehicle accidents and other emergency situations. And Lieutenant Robert Gardner explained, "I am the Rescue 1 Officer; I provide medical aid. I really don't supervise the driver of my rescue, because we are partners. We are both trained for these types of emergency calls." When asked what other non-emergency directives a Lieutenant could order to his driver, Acting Chief Robinson stated that "he could order the driver to slow it down or speed it up."

The SOG further provides that the Lieutenant assigned to Engine 1 will supervise the personnel performing the dispatch function. This provision is not part of the CBA. The Accountability Sheets show that on 15 separate occasions between August 22, 2016, and May 28, 2018, the Respondent served as Engine 1 Lieutenant, his brother as the dispatcher, and no Captain was on duty. One of the responsibilities of the dispatcher is to electronically enter personnel into

the Accountability Sheets. Acting Chief Robinson, Chief McGillivray and Captain Mears explained that the platoon dispatcher enters the Accountability Sheets into the computer database which are then electronically transmitted to payroll at the end of a shift for the Chief to approve. Chief McGillivray stated that the Accountability Sheets are first reviewed for accuracy by either a Captain or Lieutenant on duty. Captain Mears stated that he does not regularly review the Accountability Sheets and there is no written policy requiring that Captains or Lieutenants review the Accountability Sheets before submitting them to payroll.

Regarding supervision of the dispatcher, the interviews revealed that the dispatcher function is largely autonomous. Captains Mears and Montville stated that the dispatcher supervises himself. Eight Lieutenants<sup>11</sup> stated that no one supervises the dispatcher because it is a collateral position and the dispatcher supervises himself.<sup>12</sup> Chief McGillivray expounded by stating that a dispatcher turns to a Lieutenant for emergency-related matters such as mutual aid issues, who to send to a call, or how to handle an emergency call. Regarding disciplinary matters, there was no written evidence to support that the Respondent had any supervisory authority. Nor did the interviews reveal that the Respondent had the authority to discipline any firefighter, including his brother. Lieutenant Grady informed that “only the Chief can discipline anyone.” Lieutenant Purcell stated that “the only supervisors on this department are the Chief and Deputy Chief.” And Lieutenant Beaudreau explained that if there is an issue or problem involving the dispatcher, the Chief or Deputy Chief will handle the matter because the Lieutenants do not have authority to discipline anyone.

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<sup>11</sup> The eight Lieutenants were Scott Beaudreau, Ryan Grady, Mert Greene, Michael Monaghan, Robert Gardner, Thomas Bailey, TJ Matola, and William Purcell.

<sup>12</sup> The CBA defines collateral duties as those performed by any employee “other than normally assigned duties, other than during his/her normally scheduled work period.” Section 3, Definitions.

In his interview with Investigator Petrarca, James Perry described his interactions with the Respondent when the latter serves as Engine 1 Lieutenant and he serves as dispatcher. He explained that the Respondent has no supervision over him and added:

The only time I would ever see my brother when I was dispatching is if he had to come into the dispatch room to call back for overtime. The dispatcher is on his own. I don't have any interaction with my brother or anyone when I'm dispatching. My duties are spelled out. I answer 911 calls, police calls, calls from the public and I'm responsible for the cleaning duties of the dispatch area when I'm there. That's it. If there is a problem, I would contact the Chief or Deputy Chief who I consider the supervisors of the Department. I'll give you an example. The other day when I was dispatching, there was a circuit problem with one of the street alarm boxes. I called the Chief on his cell phone to advise him. If I have any problems I would call the Chief or Deputy Chief, who I consider the supervisors, not the Captain or the Lieutenant.

Regarding the occasions when James Perry worked in the same vehicle with the Respondent, James Perry explained:

Whether I'm working with my brother, Lt. Grady, Lt. Matola or any Lieutenant, there are procedures and protocol that we all must follow. The Lieutenants will sometimes tell me to start an IV, how much meds to be given to a cardiac patient, when to administer nitro. These procedures are spelled out by the Department of Health. All EMT's are required to follow this protocol. I am aware of the Advisory Opinion that my brother got, and I try to switch with someone to avoid working with my brother. Just last week I switched with Steve McKeon so I wouldn't have to work with my brother on Engine 1.

In connection with non-emergency matters warranting reprimand or discipline, Chief McGillivray informed that a Lieutenant must contact the Deputy Chief or Chief directly. He explained that a Lieutenant may verbally warn a firefighter or dispatcher of an infraction, but if a problem persists, the Lieutenant must notify the Deputy Chief or Chief of the issue. Chief McGillivray stated, "Only the Chief can discipline anyone. It's spelled out in the [CBA]." Captain Mears confirmed that he has no authority to discipline anyone. He added that a Lieutenant can advise a firefighter but, ultimately, only the Deputy Chief or Chief can take disciplinary action. Additionally, if a firefighter is repeatedly disciplined, Chief McGillivray explained that, pursuant

to the CBA's grievance procedures, said firefighter could be suspended without pay or dismissed, but only the Chief has the authority to take such action. The Chief further noted that he would not take any action against a firefighter without first conferring with the Town Manager.

In his interview with the Prosecutor and Investigator Petrarca,<sup>13</sup> the Respondent represented that while he does not supervise his brother, he still tries to avoid any appearance of impropriety issues by swapping his shift or assignment whenever possible to avoid working with his brother. The information obtained through interviews with other members of the Fire Department was consistent with the Respondent's representation. Captain Mears informed Investigator Petrarca that the Respondent "tries to avoid working with his brother." Captain Montville affirmed that the Respondent often asks other firefighters to switch so that he can avoid working with his brother, adding "Bill went to the Chief and asked him to carve something out in the SOG to address it." Captain Montville concluded by stating that "I think Bill is doing this out of an abundance of caution. Even if he worked on the same engine with his brother, the only supervising he would do is when they go to an emergency call."

The Lieutenants confirmed that they often made efforts to swap shifts or vehicles with the Respondent. Lieutenant Ryan Grady stated that he has cooperated with the Respondent's requests to swap so that he could avoid working with his brother. Lieutenants Gardner, Beaudreau, and Bailey remarked that the firefighters often swapped with the Respondent because it is easier for them to do so than it is for the Lieutenants. Lieutenant Monaghan attested to the fact that he and others have swapped with the Respondent, stating, "we knew this from Chief McGillivray, we try to work with [the Respondent]." Chief McGillivray explained that the Respondent would try to

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<sup>13</sup> The Respondent's attorney, Elizabeth Wiens, was also present for this interview.



switch with other Lieutenants, but not all could do so, nor could they be required to swap under the CBA.

The Respondent explained that his understanding of the advisory opinion has been that he is prohibited from taking any part in any personnel matters or decision-making regarding his brother including supervising, assigning work, promoting, evaluating, or disciplining. He represented that he believes that he has complied with the direction in the advisory opinion and has never made any decision that would financially impact his brother. The Respondent stated that he was not involved in his brother's transfer,<sup>14</sup> which Chief McGillivray approved, nor did he evaluate his brother at the end of his probationary period, a task handled by Lieutenant Grady.

## **V. LEGAL ANALYSIS**

As a municipal employee, the Respondent is a person subject to the Code of Ethics. R.I. Gen. Laws § 36-14-4(3). No person subject to the Code shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest. Section 36-14-5(a). A person subject to the Code has an interest which is in substantial conflict with the proper discharge of his duties if he has reason to believe that he or any family member will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Additionally, a person subject to the Code shall not use his public office to obtain financial gain, other than that provided by law, for himself or any person within his family, which includes one's brother. Sections 36-14-2(1) & 5(d).

Furthermore, no person subject to the Code of Ethics shall participate in any matter as part

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<sup>14</sup> Pursuant to the CBA, all bid transfers are based on seniority over which there is no discretion.

of his public duties if he has reason to believe or expect that any person within his family is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage. Regulation 36-14-5004(b)(1). A public official may not participate in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his family, nor may he delegate such tasks to a subordinate. Regulation 5004(b)(2)(A) & (B).

The instant Complaint alleges that the Respondent violated the Code of Ethics by serving in a supervisory role over his brother within the same platoon of the Fire Department, and sometimes in the same official vehicle, without procedures in place to sufficiently insulate him from conflicts of interest. Specifically, the Complaint alleges that, as a Lieutenant on Platoon B, the Respondent directs the work assignments of those reporting to him, which would include making decisions impacting his brother.

The investigation of this matter, including interviews of 16 witnesses, some more than once, and a review of all contracts, time sheets, and other pertinent documents revealed that the only oversight that the Respondent exercised in his role of Lieutenant over any firefighter, including his brother, was related to emergency situations. As a Lieutenant, the Respondent had no authority to make any decisions that would impact his brother. Scheduling, overtime, and transfers, for example, are seniority-based, and the terms and conditions of employment are governed by the CBA and Fill-In Procedures which must be strictly followed. The interviews corroborated that Lieutenants do not have any authority over anyone regarding employment terms and conditions. The Deputy Chief and Chief are responsible for disciplinary matters. Captains Montville and Mears and Lieutenant Beaudreau confirmed that disciplinary issues are handled by the Deputy Chief or Chief. While Lieutenants can perform evaluations at the end of a firefighter's

probationary period, the investigation revealed that the Respondent did not perform his brother's evaluation or review any of his work. Instead, Lieutenant Grady, who was assigned to Rescue 2 with the Respondent's brother, performed the evaluation of James Perry.

Chief McGillivray stated in his interview that he did not formally establish an alternate chain of command following the Commission's issuance of the advisory opinion. Captain Montville confirmed that, after the advisory opinion issued, the Respondent asked Chief McGillivray to address the proper procedures in writing in the SOG, but the Chief did not do so. The evidence revealed, however, that Chief McGillivray spoke with the Captains and Lieutenants and advised them of the substance of the advisory opinion and that the Respondent could not be involved in any issues regarding his brother. The Captains and Lieutenants corroborated the fact that the Respondent did not supervise his brother other than in emergency situations, but he nevertheless tried to swap with others to avoid working on the same shift or the in the same vehicle to avoid any appearance of impropriety. Many would cooperate and swap, but no one could be forced to do so.

A review of the Accountability Sheets established that the Respondent worked with his brother in the same vehicle, engine or rescue, on 10 occasions between August 22, 2016, and May 28, 2018. However, the evidence further demonstrated that the nature of the occasions when the Respondent worked with or oversaw his brother were emergency-related. The interviews substantiated that the only supervision that the Respondent would exercise when he worked in the same vehicle as his brother was in the context of responding to an emergency. Any supervision provided by the Respondent as a Lieutenant officer related to administering medical aid, putting out fires, responding to accident scenes, and handling any other emergency-type situations.

During the same period of August 22, 2016, through May 28, 2018, the Respondent served

as Engine 1 Lieutenant and his brother as the dispatcher, with no Captain on duty, 15 times. James Perry confirmed that when he worked as dispatcher on a given shift and his brother was Engine 1 Lieutenant, he never contacted the Respondent nor did the Respondent supervise him. James Perry explained that if he had problem or concern, he would call the Deputy Chief or Chief directly, who he considered to be the supervisors, not the Captain or Lieutenant. Furthermore, Chief McGillivray and Acting Chief Robinson agreed that when a dispatcher seeks assistance from a supervisor, it concerns mutual aid issues or to whom to send to an emergency call.

Concerning the terms and conditions of employment, the Respondent had no authority to assign overtime, extra duties, or other benefits to his brother, nor could he discipline him, approve his transfer request, or promote him, all tasks handled by the Chief. Chief McGillivray and Captain Mears agreed that Lieutenants have no authority to reprimand or discipline anyone. The only supervisory authority that the Respondent exercised or could exercise over his brother related to non-financial, emergency matters which is consistent with the advisory opinion issued to the Respondent. The advisory opinion states, in relevant part:

It is the opinion of the Rhode Island Ethics Commission that the Code of Ethics does not prohibit the Petitioner, a Lieutenant in the East Greenwich Fire Department, a municipal employee position, from serving in that position upon the hiring of his brother as a Probationary Firefighter in the same Fire Department, provided that certain procedures are followed so that the Petitioner is removed from personnel decisions or other matters that particularly affect his family member.

...

[I]n the instant matter it is our opinion that the chain of command outlined by the Petitioner and the Fire Chief, which requires the Petitioner to recuse from any decisions that may financially impact his brother (including, but not limited to, supervision, evaluation, work assignment, promotion, transfer and discipline) are reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest. As we have noted in prior advisory opinions, during discrete emergency situations, such as fighting fires where incident-specific supervision of his brother may be unavoidable, the Commission finds that a violation of the Code of Ethics will not exist.

A.O. 2016-26 (emphases added). See A.O. 2011-32 (Commissioner of the Rhode Island

Department of Public Safety and Superintendent of the State Police was required to recuse from any decision-making that will impact his son's personal finances or terms of employment at the State Police, such as evaluation of performance, classification, promotion, transfer or discipline, but may be involved in emergency police situations in which the incident specific supervision of his son is unavoidable and a violation of the Code of Ethics will not exist); A.O. 2010-40 (opining that the Chief of the Manville Fire Department, whose son was employed as a firefighter in the department, would not violate the Code of Ethics as an alternate chain of command was established whereby the Chairman of the Board of Fire Wardens had agreed to become his son's designated supervisor regarding all administrative matters such as the scheduling of work shifts and disciplinary actions, but during emergency situations, such as fighting fires, in which incident specific supervision of his son is unavoidable, the Commission finds that a violation of the Code of Ethics will not exist).

Given the language of the advisory opinion which prohibits the Respondent from participating in any personnel matters or decisions that may financially impact his brother but permits his participating in "incident-specific" supervision of his brother in emergency situations, the Respondent's understanding that he may not participate in any decision that would financially impact his brother is reasonable. The investigation revealed no evidence that the Respondent had any involvement in matters that would impact his brother as to the terms and conditions of his employment. Former Deputy Chief Sullivan summarized the nature of the Fire Department's work, "When the engine or rescue goes out on a call, it's usually an emergency situation." Any supervision by the Respondent of his brother was limited to such emergency matters.<sup>15</sup>

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<sup>15</sup> The legal analysis herein largely relies on the analysis and recommendation set forth in Advisory Opinion 2016-26. The Respondent, through Attorney Wiens, has been advised that because of his promotion to the position of Captain in July 2018, the Respondent now has supervisory responsibilities that were not contemplated nor addressed in the Advisory Opinion. The investigation revealed issues involving overtime that may present conflicts for the Respondent

The totality of the evidence, as set forth herein, does not substantiate that the Respondent was involved in any supervision of his brother beyond what was permitted of him in the advisory opinion. Furthermore, even if a violation could be perceived, the Respondent's efforts to comply with the direction included in the advisory opinion by swapping shifts, abstaining from participating in his brother's interviews, hiring, evaluation, and transfer, and avoiding any appearance of impropriety whenever possible do not support a knowing and willful violation.

Accordingly, given the absence of any evidence that the Respondent supervised his brother in non-emergency situations, the Prosecution submits that there is a lack of probable cause to believe that the Respondent violated the Code of Ethics.

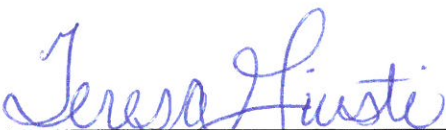
## **VI. CONCLUSION**

Based upon the above cited facts and legal discussion, the Prosecution submits that:

Probable cause does not exist to believe that the Respondent, a Lieutenant in the East Greenwich Fire Department, violated the Code of Ethics by serving in a supervisory role over his brother, James M. Perry, within the same platoon.

Dated: September 11, 2018

Respectfully submitted,

  
Teresa Giusti, Esq. (Bar No. 8006)  
Commission Prosecutor

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in his new position as a Captain. The Respondent has been strongly advised to seek another advisory opinion given the change in his circumstances and responsibilities.