

**COOK COUNTY BOARD OF ETHICS**  
69 West Washington, Suite 3040  
Chicago, Illinois 60602

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IN THE MATTER OF	)	
	)	
Dan Patlak, Commissioner	)	Case No. 2012 I 0001
Cook County Board of Review	)	

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**NOTICE OF DETERMINATION ON RECONSIDERATION**

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On November 20, 2013, the Board of Ethics (“Board”) issued a Notice of Determination in this matter finding that Cook County Board of Review Commissioner Dan Patlak (“Commissioner Patlak”) violated Sections 2-576 and 2-583 of the Cook County Ethics Ordinance (“Ethics Ordinance”) in connection with the posting of a November 30, 2011 political event on the Board of Review’s website. Board of Ethics Notice of Determination (“Bd.E. Not.”), 12 I 0001, \*4 (Nov. 20, 2013). The Board declined to issue fines in connection with these violations but did request a written report of any actions taken on the Board’s recommendations to reduce the risk of future violations. *Id.* at 3-4.

On January 22, 2014, in lieu of submitting such a report, Commissioner Patlak, through counsel, moved for reconsideration of the Board’s decision.<sup>1</sup> On reconsideration, Commissioner Patlak seeks the dismissal of this matter in its entirety and, in the alternative, certain revisions to the Board’s Investigation Report and its November 20, 2013 Notice of Determination in this matter. Commissioner Patlak bases this request on three arguments. The first two arguments—that the Board should set aside its findings because the investigation took too long or because Commissioner Patlak cannot be discharged from office for violating the Ethics Ordinance—are without merit.

The third is equally unpersuasive. There is sufficient evidence of intent to support a finding of a violation of Section 2-583 of the Ethics Ordinance. The affidavits submitted on reconsideration, to the extent that they are credible at all, do not provide new facts that demonstrate that the Board’s original determination was erroneous. The Board declines to reconsider its findings and recommendations with respect to Commissioner Patlak’s violations of Sections 2-576 and 2-583 of the Ethics Ordinance.

**INVESTIGATION SUMMARY ON RECONSIDERATION**

An investigation directed by the Board found evidence supporting the following:

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<sup>1</sup> Commissioner Patlak received an extension of his time to file for reconsideration.

In November 2011, Sean M. Morrison and Commissioner Patlak were running against each other in the March 2012 Republican primary election for a seat on the Cook County Board of Review. Commissioner Patlak already held the position and had a staff of County employees that included Elly Drake. Ms. Drake's job responsibilities for the Board of Review included gathering Board of Review and community outreach meeting information for posting to the Board of Review website.

Separate and apart from Ms. Drake's employment with the County, she also volunteered as part of Commissioner Patlak's re-election campaign staff. As part of the Board's original investigation, it appeared that Ms. Drake's work for the Patlak campaign mirrored her duties at the Board of Review. On reconsideration, however, Ms. Drake attests that her responsibilities as a campaign volunteer did not generally extend to updating the Patlak campaign website or managing his political calendar.

During the primary election, the TOP Tea Party invited Commissioner Patlak to speak at its monthly meeting, which was scheduled for November 30, 2011. Although the meeting was open to the public, both Commissioner Patlak and the Director of the TOP Tea Party characterized the meeting as political in nature.

As part of the Board's original investigation, the Board concluded that on or about Friday, November 18, 2011, during regular business hours at the Board of Review's County-owned office (*i.e.* The County Building, 118 N. Clark Street, Chicago, Illinois 60602), Commissioner Patlak directed Ms. Drake to post notice of the November 30, 2011 TOP Tea Party event to the website. On reconsideration, Commissioner Patlak now attests that he did not direct Ms. Drake to post notice of the November 30, 2011 event at all but was instead only discussing his schedule with her. As discussed below, the Board does not find this testimony to be credible. *See* Part C, *infra*. Regardless, it is uncontested that Ms. Drake (whether at Commissioner Patlak's direction or on her own initiative) posted notice of this event to the Board of Review's website.

Additionally, the uncontested facts indicate that on November 30, 2011, Commissioner Patlak attended and spoke at the TOP Tea Party meeting. In addition to speaking on Board of Review-related topics, Commissioner Patlak solicited campaign contributions and political support from meeting attendees.

Subsequently, in January 2012, a media outlet notified Commissioner Patlak that notice of the November 30, 2011 TOP Tea Party meeting was posted on the Board of Review website as a community outreach event. Commissioner Patlak immediately directed his staff to remove notice of the event from the website. Commissioner Patlak also represents that he has put into place safeguards by which senior Board of Review staff review items uploaded to the Board of Review website periodically and before these items become available for public display to ensure that only County events are posted.

## DISCUSSION

### **A. Length of the Board Investigation**

An investigation by the Board begins with a written request for investigation. Cook County Board of Ethics Amended Rules and Regulations (“Bd. E.”), Rule (“R.”) 5.1. The Board’s Rules instruct the Executive Director to determine within thirty days of receipt whether there is reasonable cause for an investigation. Bd.E.R. 5.10(A). If the Executive Director believes there is cause to proceed, the Board’s Rules state that “[a]n Investigation of an alleged violation of the Ethics Ordinance shall be completed no later than one (1) year from the date the Investigation was initiated.” Bd.E.R. 5.3.

Here, then-Executive Director MaryNic Foster received a request for an investigation of Commissioner Patlak on January 13, 2012. After Director Foster had evaluated the request (and less than thirty days later), on February 10, 2012, the Board initiated an investigation on the basis of this complaint. Yet, this investigation took far longer than one year to complete. The Board staff issued an investigation report to the Board on November 15, 2013, more than 11 months after the deadline for doing so, according to Rule 5.3.

In his motion for reconsideration, Commissioner Patlak suggests that the unexplained length of the investigation is itself grounds for a dismissal. *See* Request for Reconsideration, pp. 5-6. He is incorrect. Rule 5.3 sets out the Board’s expectations for its staff with respect to the scope and timeline of any pending investigation; it does not create a statute of repose or substantive right for litigants to a resolution of matters pending before the Board by a date certain. The Board oversees a number of investigations and aims to complete each matter as quickly as possible. Investigations are delayed for a number of reasons, including the Board requesting additional interviews and investigation by the staff. All things considered, the Board agrees that this investigation should have been completed more quickly. But the fact that it was not, does not prevent the Board from finding a violation of the Ethics Ordinance where there is otherwise sufficient factual and legal support. The Board has many tools for providing its staff with feedback about case management. Dismissing meritorious cases is not one of them.

Commissioner Patlak further complains that he was not given a copy of the January 13, 2012 request for investigation or a copy of the written evidence submitted to or gathered by the Board in this matter. *See id.* at 6. Again, this is not grounds for dismissal. The Board’s investigations are confidential. Cook County Code of Ordinances (“County Code”), § 2-592. Commissioner Patlak’s motion for reconsideration does not explain the legal basis for his claimed entitlement to documents from the Board’s investigation file, but his counsel cited Rule 5.11 in the April 3, 2012 correspondence that included his original request for these materials. Request for Reconsideration, Exh. B. This rule states that “the Executive Director shall give respondent notice of the substance of the Investigation and an opportunity to present such written information as the respondent may desire, including the name of any witnesses to be interviewed.” Bd.E.R. 5.11. Commissioner Patlak has had ample opportunity to provide information to the Board. Rule 5.11 does not require the Board to provide the respondent with a

copy of the request for investigation or any evidence that any other party has submitted to the Board, written or otherwise. Commissioner Patlak does not claim that he was prejudiced by the Board staff's failure to provide him with the request for investigation or written evidence in this matter. Commissioner Patlak was aware of the allegations that had been made against him and that were under investigation by the Board. *See* Request for Reconsideration, p. 3.

## **B. Scope of the Ethics Ordinance**

In enacting the Ethics Ordinance, the Cook County Board of Commissioners made the law applicable, by its own terms, “to *all* officials, board or commission appointees and employees of Cook County.” County Code, § 2-562 (emphasis supplied); *see also id.* at § 2-561 (defining “official” as “any elected County official or appointed official, regardless of whether the official is compensated”). The Board has no reason to read this expansive scope provision to specifically exclude members of the Cook County Board of Review.<sup>2</sup> Instead, the Board must presume that members of the Cook County Board of Review, like any other County official, must only use County property for a public purpose and must refrain from prohibited political activities on County time.

Nonetheless, Commissioner Patlak at various times and again on reconsideration has asserted that he is outside of the jurisdiction of the Ethics Ordinance. *See* Request for Reconsideration, p. 7. The argument that the Cook County Board of Review is an arm of the state (rather than a part of county government) has been repeatedly rejected. *See, e.g., Santana v. Cook County Bd. of Review*, 700 F. Supp. 2d 1023, 1030 (N.D. Ill. 2010). Commissioner Patlak is correct that the tax appeal functions of the Cook County Board of Review are set by state law. Request for Reconsideration, Exh. B (citing 35 ILCS 200/5-5, *et seq.*). But that is not an argument as to why complying with the same ethics requirements as any other County official impinges on the ability of the Cook County Board of Review to perform those state-mandated functions.

The Illinois Appellate Court held in *Chicago Bar Assoc. v. County of Cook*, 124 Ill. App. 3d 355 (1st Dist. 1984), that the Cook County Board of Commissioners could not alter the composition of the Cook County Board of Review by ordinance. True enough, but *Chicago Bar Assoc.* is inapposite to the matter at hand. The Cook County Board of Commissioners did not enact the Ethics Ordinance to alter the outcome of tax appeals, nor has this Board attempted to alter the governing structure of the Cook County Board of Review, to change the method by which its members are selected, or to abrogate or expand any member's term of office by ordering (or even requesting) that anyone be discharged.

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<sup>2</sup> The article compiling ethics-related ordinances in the County Code also specifically mentions the Board of Review on a number of occasions. *See, e.g.,* County Code, §§ 2-585 (limiting campaign contributions to candidates for elected County office by persons doing business with the County); 2-589 (requiring the Board of Review and the Assessor to disclosure of information about property tax appeals); 2-622 (defining “county official” for the purpose of the Cook County Lobbyist Registration Ordinance).

Further, that some aspect of a County official's job is governed by state law does not forever place everything that County official does outside of the jurisdiction of County government. To the contrary, state law expressly provides that while "[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law," a county board, "may . . . impose additional duties, powers and functions upon county officers." 55 ILCS 5/5-1087 (emphasis supplied). Whatever the 1970 Illinois Constitution says about the collection of revenue by taxation, home-rule units, such as Cook County, have "the power to regulate for the protection of the public health, safety, morals and welfare." Ill. Const., Art. VII, § 6(a) (1970). Enacting ethics rules in an attempt to increase ethical behavior by its public officials, and to ensure that the public funds of a county are spent in an ethical manner, falls squarely within the very broad general power of a home-rule county. Cf. *Blanchard v. Berrios*, 2013 CH 14300, \*10 (Circuit Court of Cook County, Jan. 15, 2014) (rejecting the argument that complying with the Independent Inspector General's Ordinance would unconstitutionally diminish the power of a separately elected county official because the Circuit Court "cannot say that investigating fraud or waste in Cook County government is beyond the scope of the home rule power granted to the County").

### **C. Factual Support for Commissioner Patlak's Intent**

On reconsideration, Commissioner Patlak acknowledges "that he engaged in a technical violation of Section 2-576, but not Section 2-583."<sup>3</sup> Request for Reconsideration, p. 11. Because much of the new evidence presented by Commissioner Patlak on reconsideration is not credible, the Board disagrees with respect to the latter charge.

Section 2-583 prohibits County officials from intentionally misappropriating County resources for "prohibited political activities." See County Code, § 2-583(c) ("County employees and officials shall not intentionally misappropriate any County property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization."). "Prohibited political activities" include "[p]reparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event" and "[m]anaging or working on a campaign for elective office." *Id.* at § 2-561.

The Board had concluded that Commissioner Patlak intended to prepare for a political meeting and manage his campaign for elective office when he met with Ms. Drake during her

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<sup>3</sup> Despite acknowledging the violation of Section 2-576 because he allowed the Board of Review website to be used for something that was not official County business, Commissioner Patlak objects to the statement that the materials posted promoted or supported his re-election efforts. See Request for Reconsideration, p. 9. Commissioner Patlak does not contest on reconsideration that he solicited campaign contributions and political support from the attendees at the November 30, 2011 event. Wider publication of a political event at which an individual solicits campaign contributions and votes promotes and supports those re-election efforts, whether that was the intent of publication or not. Cf. John Zaller, "The Nature and Origins of Mass Opinion" (1992). The Board declines Commissioner Patlak's invitation to rewrite its Notice of Determination with respect to the Section 2-576 violation.

compensated County time in a County-owned facility. Bd.E. Not., 12 I 0001 at 3. The basis for this conclusion was twofold: first, that Commissioner Patlak directed Ms. Drake to post notice of a political event to the web and second, that Ms. Drake's responsibilities on the Patlak campaign mirrored those of her role at the Board of Review. *See id.*

The Board believed that Commissioner Patlak directed Ms. Drake to post notice of the November 30, 2011 event to the web because Ms. Drake said as much during her August 9, 2012 interview with Board investigators. On reconsideration, Commissioner Patlak, through counsel, asserts that Ms. Drake recanted that statement later in her interview. *See Request for Reconsideration*, p. 8. Troublingly, this version of events is reflected in neither the notes of the Board's investigators nor Ms. Drake's affidavit on reconsideration. Moreover, when Board investigators asked Commissioner Patlak during a December 26, 2012 interview whether he was speaking as a Commissioner of the Board of Review or as a candidate for reelection *when he asked Ms. Drake to post the meeting*, Commissioner Patlak did not protest that he never asked Ms. Drake to post the notice of the November 30, 2011 meeting to the web. Instead he answered with "as candidate Patlak" and said his mistake was failing to communicate that the event was political, rather than a Board of Review-sponsored event.

During that interview, Commissioner Patlak cut off his counsel, when she suggested what Commissioner Patlak now attests on reconsideration. Although he never said so himself during either of his two interviews with Board investigators, Commissioner Patlak now states that he only told Ms. Drake about the November 30, 2011 event as part of a conversation about his schedule as a whole to ensure that Ms. Drake would not schedule a competing Board of Review event for the evening of this political event. *Request for Reconsideration*, Exh. E. Why it would matter, in a general scheduling conversation about what times Commissioner Patlak was or was not available, whether his scheduling conflicts were political, personal or County-related is unclear. And how Ms. Drake could have gotten the particulars (*e.g.*, the address of the event and its sponsors) of any of those scheduling conflicts so as to be able to post them to the Board of Review website, whether by mistake or not, in a general scheduling conversation is also a mystery. Simply put, much of the new evidence that has been presented to the Board raises more questions than it answers, and does not demonstrate that the Board's finding that Commissioner Patlak intended to plan for a campaign event on County time using County resources was erroneous.

The Board notes Ms. Drake's testimony on reconsideration that her campaign volunteer duties did not mirror her Board of Review responsibilities, but again this obfuscates more than it illuminates. Ms. Drake attests that as a County employee her duties included posting notices of meetings to the Board of Review website. *Request for Reconsideration*, Exh. D. The Board staff believed that Ms. Drake generally had the same duties as a Patlak campaign volunteer. This belief may have been incorrect because Ms. Drake's affidavit unequivocally states that her "responsibilities did not include posting matters to Dan Patlak's political website." *See id.* But it is notable that Ms. Drake's general denial that she knew how to log on to Commissioner Patlak's campaign website or that she was "in charge" of his political schedule is not a denial that Commissioner Patlak involved her in the planning of a political event on or about Friday,

November 18, 2011, during regular business hours at the Board of Review's County-owned office.

Whatever Ms. Drake's duties as a campaign volunteer generally, it is the view of the Board that the only credible evidence is that on the specific date in question, Commissioner Patlak directed Ms. Drake to post an event to the web and that event was, by Commissioner Patlak's own admissions, political in nature. That is sufficient evidence to support the original determination that Commissioner Patlak violated Section 2-583 of the Ethics Ordinance.

#### CONCLUSION

For the forgoing reasons, with respect to the above-captioned matter, the Board of Ethics DENIES the motion to reconsider. The Board concludes on reconsideration that Commissioner Patlak VIOLATED Sections 2-576 and 2-583 of the Ethics Ordinance. The Board's recommendations remain the same. Pursuant to Section 2-591(9) of the Ethics Ordinance, a written report of actions taken on any recommendations are due within thirty (30) days of receipt of this notice.

April 16, 2014

So ordered  
COOK COUNTY BOARD OF ETHICS

A handwritten signature in cursive script, appearing to read "Roseann Oliver", is written over a horizontal line.

Roseann Oliver,  
Chair