

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF GLENN LaFAVE,

Former Executive Director of the Hudson River Black River
Regulating District.

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. CPI 11-23

WHEREAS, the Public Integrity Reform Act of 2011 ("PIRA") created the Joint Commission on Public Ethics ("Commission") to replace the Commission on Public Integrity ("CPI") and expressly provided that the Commission shall continue the authority of CPI;

WHEREAS, Part A, Section 16, of PIRA provides in relevant part "any business or other matter undertaken or commenced by the state commission on public integrity or the legislative ethics commission pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the joint commission on public ethics, and pending on the effective date of this act may be conducted and completed by the joint commission on public ethics in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the former state commission on public integrity or the legislative ethics commission";

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and Glenn LaFave, the Respondent; and Respondent has agreed to proceed under Executive Law §94 as amended by PIRA;

WHEREAS, the Commission has authority pursuant to Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law has occurred, to issue a report of its finding of a substantial basis to conclude that a violation has occurred, and to impose penalties for such violation as provided for in Executive Law §94(14);

WHEREAS, the Respondent was employed as the Executive Director of the Hudson River Black River Regulating District ("District") from August 29, 2005 until his retirement on August 19, 2010;

WHEREAS, the Office of the Inspector General issued a report, in July 2011, relating to the Respondent's conduct, in which it found that the Respondent violated agency policy for his personal benefit and referred Respondent's conduct to CPI for its consideration;

WHEREAS, on July 26, 2011, CPI issued a letter to Respondent maintaining that Respondent may have engaged in violations of the Public Officers Law, and which afforded Respondent 15 days in which to respond to the CPI letter, which 15 day time period was extended by agreement. The CPI letter alleges, that, *inter alia*, the Respondent violated the District's time and attendance policy and misused the District's flex time policy to avoid charging vacation leave, and as a result of which, the Respondent may have gained a benefit from the District's vacation buy back policy;

WHEREAS, on September 13, 2011, Respondent responded to CPI's letter denying the allegations and denying any violations, *inter alia*;

WHEREAS, in lieu of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve their dispute in a manner that avoids further administrative proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this proceeding, the parties stipulate and agree that:

- I. Respondent agrees to return to the State five thousand dollars (\$5,000) for funds that were paid to Respondent for unused vacation time within 30 days of Respondent's attorney's receipt of a fully executed agreement.
- II. Respondent acknowledges that Public Officers Law §74(3)(d) prohibits an officer or employee of a state agency to use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
- III. If Respondent fails to timely perform the conditions set forth in Paragraph I of this Agreement, Respondent will be in breach of this Agreement, and it shall be in the Commission's sole discretion to deem the Agreement null and void in its entirety, issue a new Substantial Basis Investigation Report, which may include additional charges against Respondent, and proceed with an enforcement action. As to any new Substantial Basis Investigation Report or enforcement action by the Commission pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses, provided that such action would not have been time-barred if brought on or before the date of this Agreement; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or other materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or other materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any enforcement proceeding against Respondent relating to the allegations herein.
- IV. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate future alleged violations of the

Public Officers Law, if any, by Respondent and take any appropriate action. Respondent reserves any and all defenses to any such action.

- V. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.
- VI. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
- VII. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- VIII. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19).
- IX. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to, any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.
- X. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
- XI. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XII. This Agreement shall become effective upon execution by the Commission or its designee.
- XIII. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- XIV. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement. Respondent was represented by counsel, William P. Fanciullo, 61 Columbia Street, Albany, New York 12210.

Dated: 6/30/14

Letizia Tagliaferro
Letizia Tagliaferro
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 26TH DAY OF JUNE, 2014

Respondent
By: Glenn LaFave
Name: Glenn LaFave

Approved: Daniel J. Horwitz
Chair

Paul Casteleiro
Hon. Joseph Covello
Mitra Hormozi
Marvin Jacob
Seymour Knox, IV
Gary J. Lavine
Hon. Mary Lou Rath
Michael A. Romeo, Sr.
Renee R. Roth
George Weissman

Absent: David Arroyo
David A. Renzi

Members