

OFFICE OF THE
SULLIVAN COUNTY DISTRICT ATTORNEY

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Acting District Attorney



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26 Hamilton Avenue
Monticello, New York 12701

July 29, 2020

Ms. Elena Ruth Sassower
P.O. Box 8101
White Plains, N.Y. 10602

RE: FOIL REQUEST

Dear Ms. Sassower:

The District Attorney's Office acknowledges receipt of your letter dated July 28, 2020 received via e-mail on that same date. With regard to the records you have requested pursuant to the New York State Freedom of Information Law, our response is as follows:

1. Records reflecting the number of public corruption complaints the district attorney received.

No such records exist.

2. Records reflecting the number of public corruption complaints the district attorney dismissed without presentment to grand juries.

No such records exist.

3. Records reflecting the number of public corruption complaints the district attorney presented to grand juries that did not result in indictments.

No such records exist.

4. Records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in indictments, the names of those indicted, the court index/docket numbers, and the disposition of the indictments pursuant to County Law § 700.6.

No such records exist.

5. Records reflecting the number of public corruption complaints the district attorney presented

to grand juries that resulted in grand jury reports – and the court index/docket numbers thereof pursuant to Criminal Procedure Law § 190.85, § 190.90 and County Law § 700.7.

No such records exist.

6. Records reflecting the number of public corruption complaints from which the district attorney's office recused itself – and how such complaints were handled.

No such records exist.

7. Manuals, guides, and other records setting forth the policies and procedures of the district attorney's office in instances of conflicts of interests of the district attorney or assistant district attorneys, *to wit*, financial interest and professional, political and social relationships.

Attached as *Exhibit 1*, please find the section of the National District Attorneys Association, National Prosecution Standards, Third Edition, which deals with conflicts of interest of a prosecutor. These standards are complied with by this office.

8. Manuals, guides, and other records of the district attorney's office setting forth its procedures for handling public corruption complaints. [Examples in FOIL request omitted]

No such records exist.

9. Records as to the number of grand jury indictments that the Sullivan County district attorney obtained against "a public servant" and persons "acting in concert with a public servant" pursuant to Penal Law § 496 ("The Public Trust Act") – and the names of those indicted thereunder, the court index/docket numbers, and the dispositions of the indictments pursuant to County Law § 700.6.

No such records exist.

You have also requested a mailing or e-mail address by which to contact the Sullivan County Grand Jury directly as well as the contact information for the Sullivan County Commissioner of Jurors. These requests are denied. Any requests for Grand Jury action must be directed to the District Attorney's Office and the contact information for the Commissioner of Jurors is public information and readily available by conventional means.

If you wish to appeal that portion of the District Attorney's response that constitutes a denial of your FOIL request, you must submit written notice within 30 days to Monica Farquhar-Brennan, Director of Risk Management, Sullivan County Government Center, 100 North Street, Monticello, N.Y. 12701.

Very truly yours,



Steven E. Goldberg
Assistant District Attorney

Exhibit 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Conflicts of Interest

1-3.1 Conflict Avoidance

A prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office.

1-3.2 Conflicts with Private Practice

In jurisdictions that do not prohibit private practice by a prosecutor:

- a. The prosecutor in his private practice should not represent clients in any criminal or quasi-criminal related matters, regardless of the jurisdiction where the case is pending;
- b. The prosecutor should avoid representing to private clients or prospective clients that the status of a prosecutor could be an advantage in the private representation;
- c. The prosecutor should not indicate his or her status as a prosecutor on any letterhead, announcement, advertising, or other communication involved in the private practice, and should not in any manner use the resources of the prosecutor's office for the purpose of such non-prosecutorial activities;
- d. The prosecutor should excuse himself or herself from the investigation and prosecution of any current client of the prosecutor and should withdraw from any further representation of that client.

1-3.3 Specific Conflicts

In all jurisdictions, including those prohibiting private practice by prosecutors:

- a. The prosecutor should excuse himself or herself from the investigation and prosecution of any former client involving or substantially related to the subject matter of the former representation, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.
- b. The prosecutor should excuse himself or herself from the investigation and prosecution of any matter where information known to the prosecutor by virtue of a prior representation and subject to the attorney-client privilege would be pertinent to the criminal matter, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.
- c. The prosecutor should excuse himself or herself from the investigation and prosecution of any person who is represented by a lawyer related to the prosecutor as a parent, child, sibling, spouse, or domestic partner, or who has a significant financial relationship with the prosecutor.
- d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.
- e. If an assistant or deputy prosecutor learns of the potential of a specific conflict, he or she should immediately report the matter to the chief prosecutor or a designee thereof.

1-3.4 Conflict Handling

Each prosecutor's office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

- a. The creation of firewalls and taint or filter teams to ensure that prosecutors with a conflict are not improperly exposed to information or improperly disclose information; and
- b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor's office.

1-3.5 Special Prosecutors

Where an actual or potential conflict of interest exists that would prevent the prosecutor's office from investigating or prosecuting a criminal matter, the prosecutor's office should appoint, or seek the appointment of a "special prosecutor," or refer the matter to the appropriate governmental authority as required by law. Under those circumstances where a special prosecutor is appointed:

- a. The special prosecutor should be a member of the state bar in good standing, with appropriate experience in the subject matter of the appointment, and should be perceived as having sufficient detachment from the prosecutor's office so as not to be influenced by any actual or potential conflict;

- b. The special prosecutor should have the authority only over the case or cases for which he or she is appointed; and
- c. Subject to the need to avoid the appearance of a conflict, a chief prosecutor and his or her assistants and staff should give all appropriate assistance, cooperation, and support to a special prosecutor.

Commentary

There are few topics of ethical orientation more pervasive than conflicts of interest. Conflicts may arise not only from relationships with current or former clients, but also with a prosecutor's other activities—financial or otherwise.

Conflicts of interest problems are founded on the premise of the inability to serve two masters with foreseeable different interests that compete or contend.

Conflicts present themselves differently to the prosecutor, compared to the private practitioner, because the prosecutor does not initially select those subject to prosecution. Nor is there usually a choice of which prosecution office should proceed.

The standards recognize potential conflicts in all jurisdictions involving former clients or information obtained by virtue of former representation, and allow the prosecutor to proceed on the case only if the individual makes a counseled waiver permitting the prosecutor's involvement.

The extent to which firewalls and filters may be used depend upon the size of the office and jurisdiction, the media coverage of the matter, the type of matter concerned, and the position of the conflicted prosecutor in the office. If such methods are or are likely to be ineffective, the chief prosecutor should seek a qualified special prosecutor and offer appropriate assistance.

[REDACTED]

[REDACTED]

[REDACTED]