

# Suffolk

COUNTY COMMUNITY COLLEGE  
Office of Human Resources

July 11, 2011

Christine Malafi, Esq.  
County Attorney  
Suffolk County Attorney's Office  
PO Box 6100  
Hauppauge, New York 11788

Re: Part-time Employees

Dear Ms. Malafi:

This letter shall serve to confirm our conversation with regard to two questions you requested clarification on.

The first question involved part-time workers and how holidays and paid time off through use of accruals would impact their part-time work schedule. Under the AME contract, paid holidays and use of paid accruals (i.e. vacation, sick, personal, compensatory) is considered time worked. Therefore, an AME part-time employee who utilizes paid accruals or who receives pay for holidays, such time would be considered in determining his/her scheduled work year.

The second question relates to determining the period of time that a part time employee must work greater than 50% in order to be eligible for benefits. While it is well established that the employee must work greater than 50% of the work week, it has not been established over what period of time this should be measured. For a management employee who has the ability to vary his/her work schedule, it has not been determined at this time if the period of measuring the 50% is weekly, bi-weekly, monthly, quarterly or annually.

From a stand point of determining eligibility for health insurance alone, it is not possible to alter someone's health insurance on a weekly, bi-weekly or even monthly basis. This is due to the rules requiring a waiting period to commence health insurance of approximately two months. Therefore, it would be impossible to put someone on or take them off health insurance on a weekly or even monthly basis.

*Suffolk County Community College promotes intellectual discovery, physical development, social and ethical awareness, and economic opportunities for all through an education that transforms lives, builds communities, and improves society.*

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Selden, NY 11744-2899  
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533 College Road  
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Michael J. Grant Campus  
Crooked Hill Road  
Brookwood, NY 11717-1012  
(631) 661-0700

Eastern Campus  
121 Spunk-Riverhead Road  
Riverhead, NY 11901-3459  
(631) 648-2300

I hope the above answers the questions that you have raised. If you have any further questions, do not hesitate to contact me at 631-451-4239.

Sincerely,

  
Jeffrey L. Tampera  
Assistant Vice President  
Human Resources

JL.Tier

# COUNTY OF SUFFOLK



STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

CHRISTINE MALAFI  
COUNTY ATTORNEY

July 12, 2011

DEPARTMENT OF LAW  
ADDRESS ALL COMMUNICATIONS  
IN THIS MATTER TO:

Hon. Joseph Sawicki, Jr.  
Suffolk County Comptroller  
H. Lee Dennison Bldg., 9th Floor  
100 Veterans Memorial Highway  
Hauppauge, NY 11788-0099

**Re: Draft Audit Report of Timesheets of the Executive Director of the  
Ethics Commission**

Dear Honorable Comptroller Sawicki:

Please accept this as my formal response to your draft audit report of the timesheets of the Director of the Suffolk County Ethics Commission ("Ethics Commission"). You extended my time to submit a response to same from July 6, 2011 to July 12, 2011.

At the outset, it must be noted that there are no Standard Operating Procedures ("SOPs"), or manuals, or memos, delineating procedures or protocol to be followed by any Department of the County in connection with payroll. There is not a "payroll question" person to be contacted with inquiries. There are no written rules in place to be followed. Therefore, all acts and handling of the timesheets, time accounting, etc., relative to the timesheets in question were handled by the Law Department after verbal questions and inquiries were made to the persons we thought best to answer them. At each and every point, the Law Department provided all other Departments (Audit and Control, Labor Relations, Employee Benefits, Civil Service) with all information necessary in guiding us as to the handling of the timesheets in question.

The Law Department and its employees were consistently and constantly told, over a period of at least ten years, that the County Payroll System contains inherent checks and balances between the employing Department, Audit and Control, Labor Relations, Civil Service, and Employee Benefits. It was always our belief that all information inputted into the payroll system was checked and that any problems or errors would be reported to us. There have been numerous instances where Audit and Control would call the Administration of the Law Department and tell us of an honest mistake made, and we would correct all errors. For example, we were recently contacted by Audit and Control (Deidre) relative to an entry made into the payroll system for retroactive pay to an employee. We did not contact Audit and Control – they contacted us. We are contacted on a regular basis, verbally, with questions or comments or entries made by the Law Department into the Payroll System.

LOCATION  
H. LEE DENNISON BLDG.  
100 VETERANS MEMORIAL HIGHWAY

MAILING ADDRESS  
P.O. BOX 6100  
HAUPPAUGE, NY 11788-0099

(631) 853-4049  
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The draft report cites no applicable written rules or procedures in connection with payroll, timesheets, accruals, etc., because there are none. The Law Department should not be faulted for doing exactly what we were told to do every step of the way.

The Ethics Commission consists of three members, one appointed by the County Executive, one appointed by the Suffolk County Legislature, and one appointed by the Presiding Officer of the Legislature, under Suffolk County Charter § C30-2(A), entitled "Organization," which states:

- A. There shall be three members appointed to the Suffolk County Ethics Commission: one member shall be appointed by the County Executive, one member shall be appointed by the County Legislature, and one member shall be appointed by the Presiding Officer of the County Legislature. Of the three members, no more than two members shall belong to the same political party and no members shall hold office in any political party or be employed as a lobbyist. By the express terms of the law, the County Executive has one appointment to the Ethics Commission and the Suffolk County Legislature has the majority of appointments to the Ethics Commission.

The Law Department has never exercised any supervision, control, or direction over the work of the Ethics Director. The Executive Director of the Ethics Commission ("Executive Director") is appointed and supervised solely by the Ethics Commission. Suffolk County Charter § C30-3(A), entitled "General Administrative Powers," provides, in pertinent part, that:

- A. The [Ethics] Commission shall:
- (1) **Appoint an executive director and independent counsel who shall carry out and implement the policies of the Commission.** The Commission may delegate authority to the executive director and independent counsel to act in the name of the Commission between meetings of the Commission, provided that such delegation is in writing and the specific powers to be delegated are enumerated. The power to appoint and or retain such executive director and independent counsel shall be subject only to available appropriations provided therefor in the County operating budget, and the actual appointment and filling of such positions shall not be subject to approval by the County Executive or the budget office. The Commission shall be deemed the appointing authority for all such personnel.
  - (2) **Appoint such other staff as may be necessary to carry out its duties under this article, within appropriations provided therefor by the County of Suffolk.** The power to appoint and or retain such other support staff shall be subject only to available appropriations provided therefor in the County operating budget, and the actual appointment and filling of such positions shall not be subject to approval by the County Executive or the budget office. The Commission shall be deemed the appointing

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authority for all such staff and personnel. The executive director, independent counsel, and support staff shall not be part of the Suffolk

County Department of Law or supervised by the Suffolk County Department of Law. The Commission, its staff, and its funding shall be treated as a separate agency for purposes of presentation and adoption in the annual County operating budget.

By Resolution No. 433-2004, the position of Executive Director was added to the Suffolk County Classification and Salary Plan. Former New York State Supreme Court Justice Alfred M. Lama was appointed by the Ethics Commission, whose members at the time were Chairman Richard Johannesen, Commissioner Steven J. Wilutis, and Commissioner Steven H. Gittelman on November 22, 2004, as the first Executive Director. The position was and is budgeted as a full-time position. Any discussion regarding the Executive Director's employment, duties, work hours, etc., were handled directly between the members of the Ethics Commission and the Executive Director. The Law Department took absolutely no part in those discussions. The Law Department was not notified or informed of the specific discussions between the Ethics Commission and the Ethics Director. Any questions regarding the work arrangements between the Executive Director and the members of the Ethics Commission must be directed to the Ethics Director and the then-members of the Ethics Commission.

The Law Department was not aware that the Ethics Director would work less than full-time when he first began work. When I became aware that the Executive Director had been given permission to work less than full-time hours by the Ethics Commission, I was told that the Ethics Director would work whatever amount of hours were needed to get the job done, which included working full-time hours at any point, if needed. Therefore, since his salary was in the budget of the Law Department, I took the position that the budget line-item for Executive Director must be a full-time position. If it were budgeted and classified as a part-time position, there would be no option for his working more than part-time hours, or else the Department of Law budget would fall short.

As can be seen by a reading of the Suffolk County Charter § C30-3(A)(1), the power to hire and supervise the Ethics Director rests solely with the members of the Ethics Commission. The budget line item wherein his salary is contained cannot override the provisions of the Suffolk County Charter. Because he serves at the pleasure of the Ethics Commission and can be let go at any time by the Commission, the Law Department took the position that he should be considered a management employee, not an Association of Municipal Employees employee. The Law Department treated him as a management employee because the number of hours worked by management employees is higher than non-management employees, and we wanted to err on the side of caution by having him considered a management employee and having his hourly salary based on a longer work week, which lowers his hourly pay rate.

Neither the Law Department nor I were aware of the existence of several documents referred to in the draft audit report, and it is unfair for the report to fault us for not following alleged procedures, not included in any type of manual or referred to anywhere, and not posted anywhere, from years before I started as County Attorney. Additionally, the All Department

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Heads Memo dated August 19, 1997 is not on file with the Law Department, and I have never been advised of its existence. Even if it is applicable, the position of Executive Director could not be converted to a part-time position, because the Executive Director is required to work full-time if deemed necessary by the Ethics Commission.

Further, the All Payroll Representatives memorandum dated September 27, 1999, also cited in the draft audit, was not known to be in existence before this draft audit report. It is not posted anywhere, and a copy was not in the Law Department's files. Further, it is not applicable to the Executive Director. That memorandum, by its express terms, applies to a specific contract between the Association of Municipal Employees Union ("AME") and the County. The Executive Director began employment with the County in late 2004, and the contract referred to in the All Payroll Representatives memorandum of 1999 was no longer in effect. The new contract between the County and AME was effective for the time period of January 1, 2004 to December 31, 2008. The memorandum was not effective as to the new AME contract. In any event, that memorandum applies to part-time budgeted employees, and the Executive Director is not budgeted as a part-time employee. The Department of Law was never notified to apply the 1999 directives to any employee from 2004 to date.

Before signing the Executive Director's time and accrual sheets in 2005, I, as County Attorney, questioned whether I had ability to sign his time sheets, since the Executive Director reported to and was directed solely by the Ethics Commission, not to the Law Department. At the time, I was told that, since I was the Department Head of the department in which the Ethics Commission was budgeted, I was required to be the one to confirm his time and accrual sheets in order for his paycheck to be issued. My office was verbally told this by someone in either Audit and Control, Civil Service, or Labor Relations. Unfortunately, my staff did not write down the name of the person they spoke with and no notes can be found.

The Law Department was informed, in 2004 or early 2005, that as long as the Ethics Director worked more than 50% of his full-time hours every year, he was eligible for health insurance benefits, and that the accruals of his vacation, personal, and sick time would be made based upon the number of hours he actually worked. Additionally, the 50% benchmark must be calculated using all accrued vacation, sick, personal, and holiday time. This is confirmed by former Director of Labor Relations Jeff Tempera in his attached letter, dated July 11, 2011. In calculating this 50% benchmark, it is impossible to make such a determination on a weekly or monthly basis – the County cannot have an employee coming on and off the eligibility list for health insurance weekly or monthly. It would be an impossible task. Therefore, the Department of Law logged in all of the Executive Director's docked time into the County Payroll System, and was told that the Employee Benefits Unit would make the necessary calculations on a yearly basis.

As indicated above, the Law Department treated the Executive Director as a Management employee, and you have been provided with copies of our numerous writings with Civil Service, detailing why his position cannot be subjected to a Civil Service test. Management employees 50% benchmark for eligibility for benefits is calculated on a yearly basis. This is confirmed by former Director of Labor Relations Jeff Tempera in the attached letter dated July 11, 2011, as "it is not possible to alter someone's health insurance on a weekly, bi-weekly, or even monthly

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basis. This is due to the rules requiring a waiting period to commence health insurance of approximately two months. Therefore, it would be impossible to put someone on or take them off health insurance on a weekly or even monthly basis.”

Unfortunately, because the questions were asked and answered in 2004 or 2005, the Law Department does not remember the names of the persons outside the Department of Law with whom we conferred and from whom we obtained this information. The person who called the appropriate persons at the Office of Labor Relations, Civil Service Department, etc., was my then-Office Administrator, Robert Scroope. Mr. Scroope has since retired, and I have not contacted him in connection with this matter to test his memory. He left no notes on the subject that can be located.

I asked the Executive Director to utilize the sign in/attendance sheets used by the Department of Law. From 2005 to 2006, the Executive Director signed the attendance sheets. For reasons unknown to me, he stopped utilizing those sign in sheets thereafter. Since I do not supervise or direct him, I could not demand he do so, but my office continued to closely monitor his time in the office and report his comings and goings to me daily.

The Executive Director’s office is located on the same floor as my office, and my office personnel and I are aware of his presence and/or absence from the office at any given time, based upon sight and our use of the Touch ‘N Go system, which allows me to see who is in the office at any time. Additionally, his job duties may be performed out of the physical constraints of the office, if approved by the Ethics Commissioners.

Finally, in 2011, after I absolutely refused to sign his time sheets, it was finally approved for the Ethics Commission Chairman to sign the time and accrual sheets for the Executive Director.

I will now address the drafted results of the report:

- 1) The Ethics Director’s time and accrual sheets provided by the Department of Law were correctly prepared, pursuant to our conversations with all relevant departments at or about the time of his hiring by the Ethics Commission.

Not a minute over the time actually worked by the Ethics Director is contained on his timesheets. He never was paid while not working.

The Law Department has consistently maintained that the Charter of Suffolk County requires the Ethics Director to be considered a management employee. The Law Department, in 2004 and 2005, spoke with the appropriate departments regarding this issue, and his timesheets have been treated according to directives.

It is abundantly clear that, because the County has not had a formal written Payroll Procedures Manual since the 1970s, the Department of Law had no “rules” it was obligated to follow. When questions arose, the Department of Law called the department it felt had the authority to answer the question. The Department of Law has always been ready, willing, and able to follow all County

procedures – and we have always followed directives as to these procedures. To say now that certain unwritten, unpublished procedures should have been followed is patently unfair and harsh.

- 2) The Ethics Director was not overpaid in wages.

The Law Department meticulously tracked the hours worked by the Executive Director, and docked his pay for every hour not worked, on the basis of 37.5 hour work week (Management) to ensure that any error would favor the County, not the Executive Director. Attached is a chart of all wages, hours docked, and accruals used by the Executive Director, with columns based on a 75-hour pay period (Management), and columns based on a 70-hour (AME) pay period. Our calculations clearly show that if the Executive Director's wages are calculated as an AME employee, he is owed wages, because the hourly wage paid to him by the Law Department was based on a 75-hour pay period, not a 70-hour pay period, so his hourly compensation is greater as a "AME" employee.

- 3) The Ethics Director did not unilaterally reduce his work hours or improperly convert his position to a part-time position without approval.

Based upon several conversations I have had with the Executive Director and members of the Ethics Commission over the years, the Executive Director did not "unilaterally convert" a full-time position into a part-time position. The Ethics Commission knew and approved his working less than every day and approved his shortened hours, but with the caveat that he work whatever hours were needed to complete his job duties in full. This would include working full-time at any given point if requested. His position is not a budget part-time position to which any of the unwritten unpublished "rules" regarding budgeted part-time positions apply.

The Department of Law did not have a copy of the 1997 All Departments Head Memo referred to in the draft audit report, and, in any event, because it was possible that the Ethics Director would be asked by the Ethics Commission to work full-time if necessary, the position could not have been "converted" to a part-time position.

In fact, since January 1, 2011, the Law Department has been prohibited from providing legal assistance to the Ethics Commission (pursuant to Resolution 634-2010, Local Law 43-2010), and the Ethics Director has put in more than usual hours to be able to do the work that the Law Department previously provided the Ethics Commission and Ethics Director (i.e., drafting letters, performing research, etc.).



If his position had been "converted" to a part-time position with limited hours, this would not have been possible.

- 4) The Department of Law did not fail to notify the Employee Benefits Unit ("EBU") of any pertinent information.

The Department of Law correctly placed the number of hours docked by the Executive Director into the County Payroll System (PPS screen P21), which is reviewed by the Suffolk County Department of Audit and Control. We have been advised the EBU has access to this information through the payroll system, and automatically generates the appropriate notifications directly to employees. For example, the Department of Law has had employees who are on unpaid leave, and, without any action by the Law Department, EBU notifies the employees of the effect of their leave on their medical benefits.

Further, the calculations made in the draft audit report fail to include the use of accruals by the Executive Director as work time, as is required. With the use of accruals, it is our belief that the Executive Director has met the benchmark required, and that if there was an issue, EBU would have so advised the Ethics Director, as has been the procedure since January 2004.

- 5) The Ethics Director's time and accrual sheets do not incorrectly lag 60 hours instead of the required 70 hours under the Memorandum of Agreement between the County and AME dated May 1, 2009.

The Ethics Director was "lagged" 37.5 hours of pay in July 2009, and he was lagged 22.5 hours of pay in December of 2009, because he did not work full-time hours in that pay period and lagging him additional hours would have resulted in him actually owing money to the County for the lag, which is not provided for in the Memorandum of Agreement.

- 6) There is direct oversight of the hours worked by the Ethics Director, as well as the vacation, sick, and personal hours used by the Ethics Director.

The Law Department, while never overseeing the work product of the Ethics Director, has always overseen the number of hours he spends in his office on the sixth floor of the Dennison Building – by either sign-in sheets, direct observations, daily attendance reports emailed to me every morning, the Touch 'N Go System, or his time accounting sheets. The Law Department has meticulously kept track of the Executive Director's hours worked, and use of personal, vacation, sick, and holiday time, docking his paycheck regularly and routinely.

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Ethics Commission

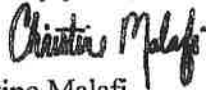
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If you have any questions, or wish to discuss anything in this response, please do not hesitate to contact me.

Thank you.

Very truly yours,



Christine Malafi  
County Attorney

CM/vk  
Attachment