

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

Memorandum on Financial Disclosure Requirements

FROM: Ed Dumas, Chief Deputy County Executive *Ed Dumas*
DATE: June 28, 2010
RE: Suffolk County Ethics Commission v. Neppell (2003)

Numerous ethics commissions throughout the state have ruled that New York State General Municipal Law Article 18, Section 811 clearly affords persons required to file financial disclosure statements with both the state and local governments the ability to satisfy local filing requirements by filing the state form.

Some have disputed this contention by citing a 2003 case from the Appellate Division, Second Department, entitled Suffolk County Ethics Commission v. Neppell, wherein a local political party leader in Suffolk County, Thomas Neppell Jr., was required to file a Suffolk County disclosure form even though he was not obligated to file a state form. It is respectfully submitted that the facts in the Neppell case are inapplicable to the issue at hand, and, in fact, the wording of the decision actually bolsters the claim of the administration and ethics scholars that where an individual is subject to both the state and the local filings, the state filing will suffice.

Notably absent from the Neppell decision is the law applicable here – Subdivision 1(b) of Section 811, wherein it states that “a person who is subject to the filing of both Subdivision 2 of Section 73-a of the Public Officers Law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of a statement filed pursuant to Section 73-a of the Public Officers Law with the appropriate body.”

The court in the Neppell case never addressed this section, nor is it inferred that Mr. Neppell’s attorneys ever referred to this section, quite obviously because this section of law did not apply to Mr. Neppell’s fact pattern. Mr. Neppell was not subject to filing a state form under Section 73-a, because his income did not exceed the \$30,000 state law threshold that would have required Mr. Neppell, a party leader, to submit a state form. Consequently, Mr. Neppell NEVER filed ANY financial disclosure form. This is to be distinguished from County Executive Levy, who was indeed required to file under Section 73-a of the Public Officers Law, and did so.

Mr. Neppell sought to excuse himself from filing ANY financial disclosure document on the grounds that the state had preempted the local governments from intervening in all financial disclosure matters. The court correctly rejected this argument. It is acknowledged that the state law clearly notes that a local government may, at its option, tailor a financial disclosure form for its employees to meet its local needs. A local government cannot, however, supersede a specific mandate from the state.

Though Mr. Neppell was not required to file a state form because he made less than \$30,000, he was required to file some type of form – that being the county form – because the county law had a much lower threshold. Mr. Neppell would have had to submit a filing under Section 73-a of the Public Officers Law, however, if he made over \$30,000. Once mandated to file pursuant to that statute, General Municipal Law Section 811 kicks in and clearly notes that he would not, at that point, be required to file a second form with the local county.

One of the key clauses within the decision was: “where the extension of state law, by means of a local law, results in a situation where what would be permissible under the state law becomes a violation of the local law, the latter law is unauthorized.”

If a county were to place within its ethics code a requirement that a local official, subject to filing both the state form and the local form, file the local form as well, it would be contradicting the specific language of the state statute. In such a case, the local law would be declaring that the filer was in violation if he/she only filed the state form, even though such non-duplicative filing is specifically permissible under the state law.

Some have also tried to make the argument that the pertinent language of Section 811, which notes that a single filing may satisfy the requirements of this subdivision, means that the local government has the option as to whether or not it will accept the state form in lieu of the county form. This is an inaccurate interpretation of the law. The statute does not say that the county has such an option. Instead, it specifically makes the filer the subject of the clause; more particularly, it notes “that a person who is subject to the filing of both the Public Officers Law and this subdivision may satisfy the requirements of this subdivision by filing a copy...”

In conclusion, the Neppell case actually bolsters the argument of the administration, and the New York City and Nassau County Ethics Commissions, which held that state law specifically mandates that only the state form need be filed and that there is no need for a duplicative local form to be filed, and that any attempt by the local government to supersede that specific language would be invalid. If there was a desire to change that law, it would have to be done on the state level.