

STATE OF NEW YORK  
JOINT COMMISSION ON PUBLIC ETHICS

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IN THE MATTER OF AN INVESTIGATION OF

TRACY R. KINN,

Respondent.

JCOPE No. 14-089

Alleged Violations of §§73(5)(a) and 74(3)(d), (f) and  
(h) of the Public Officers Law

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**FINDINGS AND RECOMMENDATIONS  
BY  
HON. GEORGE C. PRATT  
DESIGNATED HEARING OFFICER**

**INTRODUCTION**

This matter was initiated by the New York State Joint Commission on Public Ethics. After preliminary communications, document exchanges, and investigative interviews of Respondent Tracy R. Kinn and other witnesses, the matter came on for a full hearing before the undersigned, Hon. George C. Pratt, as Designated Hearing Officer, on November 9 and 10, 2016, at the Walter Mahoney Office Building in Buffalo, New York. After completion of the transcript, the parties submitted post-hearing memoranda on February 28, 2017. JCOPE seeks to recover from Kinn \$452,053, the value of the challenged gifts, plus \$40,000 as a penalty, or a total of \$492,053.<sup>1</sup>

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<sup>1</sup> For purposes of this report, I have referred to the Commission, in its functions as the charging body as well as the ultimate decision maker, as “the Commission”, and to the Commission in its function as prosecuting attorney at the hearing, as “JCOPE”.

Section 941.15(a) of 19 NYCRR provides that “[w]ithin 60 days of the conclusion of the hearing, the hearing officer shall make findings of fact and a recommendation as to the appropriate penalty to be assessed or any other action to be taken.” (Emphasis added). As the Designated Hearing Officer I have studied all the evidence submitted by the parties, their pre-hearing and post-hearing memoranda, and the statutes and regulations involved, and I have deliberated carefully over the sensitive issues presented by this matter, keeping in mind that the burden of proof of the charges in the Commission’s Substantial Basis Investigation Report rests on JCOPE. This report sets forth my findings of fact, analysis, evaluation, and recommendations.

JCOPE alleges that Kinn violated Sections 73(5)(a) and 74(3)(d), (f), and (h) of the Public Officers’ Law (“POL”) through the receipt of certain gifts and the entirety of the estate of a former client and veteran, Charles W. “Slim” Matie, during the period 2002 – 2010, while serving in her capacity as a Veterans Benefits Counselor I with the New York State Department of Veterans’ Affairs (“DVA”).

At the hearing, JCOPE was represented by Emily Logue, Esq., the Commission’s Deputy Director of Investigations and Enforcement, and Kinn was represented by Mark Farrell, Esq. Over the two days, the parties presented thirteen witnesses and eighteen exhibits. The transcript of the hearing consists of 390 pages.

## ANALYSIS OF CHARGES

JCOPE has charged Kinn with violating four separate sections of the POL. Before setting forth my findings of fact it will be helpful to focus those charges in light of the evidence developed at the hearing.

Section §73(5)(a), is the primary section to be considered. It provides in significant part::

No state officer or employee shall, directly or indirectly: solicit, accept or receive any gift having more than a nominal value . . . under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. (Emphasis added).

This section bans two types of gifts – those that could reasonably be inferred were “intended to influence” Kinn in the performance of her official duties (influence gifts), and gifts that were “intended as a reward for any official action” on Kinn’s part (reward gifts). Kinn’s official duties and official actions with respect to Matie were completed in February of 2005. The only gift she received from him before that date, and could therefore be considered to possibly be intended to have influenced her in her official duty of seeking benefits for Matie, was a WW II vintage German Luger Pistol he gave to Kinn on August 6, 2004. No evidence was submitted as to its monetary value, which must therefore be presumed to be nominal, so that the pistol does not fall within either the influence gifts or the reward gifts that are prohibited by Section 73(5)(a).

All the other gifts charged by JCOPE came later – too late to have any influence over Kinn’s official actions. Thus, it is the second part of Section 73(5)(a) – reward gifts

– that presents the central question for this matter, and it will be the major focus of this report.

The other three charged subsections of Section 74(3) provide as follows:

§74(3)(d). No state officer or employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

§74(3)(f). An officer or employee of a state agency should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

§74(3)(h). An officer or employee of a state agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

As will be developed later in this report, JCOPE's charges under Subsections (d) and (f) of Section 74(3) were not supported by evidence at the hearing. Subsection (h) is a vague, catchall provision that apparently would have no application unless §75(3)(a) or subsection (d) or (f) of §74(3) were also violated. So, the central question is whether the gifts to Kinn were reward gifts in violation of §75(3)(a).

At bottom, the problem here is not that Kinn used her official position to secure unwarranted benefits – she did not. The problem is the perception of impropriety one might get if they knew only the facts that she represented Matie officially and accepted gifts from him. But anyone aware of the full picture, including their pre-existing acquaintance and the close personal relationship between Matie and Kinn that

developed over the years, would have no doubt that Kinn acted properly and in full compliance with the law and all ethical standards.

## **FACTS**

**Tracy R. Kinn** was born on May 18, 1967. In 1987 she joined the U.S. Marine Corps and injured her back and leg in a training exercise in June 1990. She was given a medical discharge in March 1991. After a period of work she attended Fredonia State College beginning in 1997 and graduating in 2000. Then she trained for, and in 2001 she became, a state veterans' counsellor in the DVA. Her duties were to advise and assist veterans with respect to the benefits available to them from the federal government and to help prepare and submit to the federal Veterans' Administration ("VA") the complicated applications for those benefits. Significantly here, her work involved only preparing and submitting applications for her veteran clients. She played no role in making the decisions on whether the applications would be granted.

While she had a personality clash with her supervisor early in her career, the evidence shows that she was a top performing veterans counselor both in the number of applications processed and in the results she obtained. By the time of the hearing, she had, over the years, handled thousands of applications for veterans, with a case load that ran around 1,200 a year. There is evidence that she handled as many as three times the number of cases processed by some of the other counselors. As to the quality of her work, former supervisors and several of her former clients testified and submitted laudatory statements.

- “at the high end of the spectrum”, made “very few mistakes”, “other counselors call her and ask her for advice”, “always went above and beyond what was required”, has “ a lot of heart” (Cesar, Tr. 202-204)
- “relentless passion for truth and justice . . .not only . . . to me, but to other veterans”, “extremely knowledgeable”, “pure professionalism”, “very compassionate, caring person”. (Mahoney, Tr. 227-229)
- “relentless”, “tremendous work” (Gorman, Tr. 240, 242)
- DVA “should be really proud that we have a state employee like her”, “she cut through all the baloney”, “she’s a lets get it done person”. (Potozniak, Tr. 251, 254)
- “Quality was as good as you could ask for out of a counselor”, “her record was . . . better than most” (Basher, Tr. 276, 278).
- “she was the only one that cared”, “a veteran herself”, “had nothing but the interest of our veterans” (Kreiger, Tr. 347-348)
- ”sincere concern to help every veteran with pride and enthusiasm seldom seen in today’s bureaucratic environment”, “a true professional in every sense”. (Loughran, RX E).

**Charles W. Matie** was born on September 5, 1924. A decorated veteran of World War II, he suffered frostbite to his hand and feet while in combat. After the war he received a benefit for his disability of \$100 per month. He was an astute

businessman and ultimately became the proprietor of a business in the Buffalo area called Modern Auto Parts, which did business all over the United States. He was active in Masonic and veterans organizations. He had a particular interest in the Shriners Hospitals for Children, and during much of the period relevant here he volunteered to drive children for treatments at the Shriners hospital in Erie, Pennsylvania,.

Matie was intelligent, independent, strong-willed, even a little domineering. Although he had been twice married and divorced, he lived alone, and until the later years, he managed his life by himself. He had no children.

He had a sister who lived in California and who came to stay with him for a month after he was badly injured in an auto accident in 2006. Although he had several nieces and nephews, they rarely called or visited him. His social life mainly focused on his connections with the Masons and with veterans' organizations. Essentially, he lived alone in the world except for his relationship with Kinn and her husband, John.

### **Relationship Between Kinn and Matie.**

In about 1997 a mutual friend introduced Kinn, unmarried, barely in her thirties, and attending college, to Matie at a restaurant. Matie was then divorced and in his seventies,. Despite their 44-year age difference, they struck up a friendship that grew out of their common interests in veterans organizations and activities, walking, gardening, and visiting the cemetery where Matie's mother was buried. His mother and Kinn's grandmother had died at about the same time. They enjoyed talking and frequently visited restaurants together, alternating on who would pay the check. She

would see him three or four times a week. Over the years the friendship deepened and continued even after Kinn married John in 2000.

When speaking to others, Matie sometimes referred to Kinn as “my girlfriend”, although he did not do that in her presence. He came to love Kinn as the daughter he never had. He called her “Princess”. She also loved him, as a father. There was nothing inappropriate in their relationship. Kinn and John had Matie to their home on holidays. After his disabling accident in 2006, Kinn visited him several times a week, did shopping for him, and arranged for someone to help him at home, cook, clean, provide companionship, and run errands for him.

Through their friendship and conversations, Kinn learned about Matie’s war injury and the \$100 per month benefit he received. After she became a state veteran’s counselor in August of 2001, Kinn suggested that he apply to have the benefit increased. He agreed, and on April 15, 2002, he executed the documents she had prepared, and Kinn submitted them to the VA. It took nearly two years, but on February 17, 2004, the VA increased Matie’s disability rating from 10% to 60%, raising his benefit level to \$633.00 per month.

Six months later, in August 2004, Matie gave Kinn the German Luger pistol. About a month after that, Matie took it upon himself to sign documents prepared by his lawyer, Paul E. Rudnicki, giving Kinn a general power of attorney and naming her as his health-care proxy. However, he didn’t tell Kinn about the documents and when she learned about them she consulted with George Basher, Director of the DVA, who advised her she should not assume those positions. Kinn followed his advice and then

persuaded Matie, in December 2004, to revoke the appointments and designate someone else.

Under the VA system a veteran who, like Matie, was in the 60% classification gets moved to 100% if he is reclassified as having "individual unemployability". In February 2005 Kinn prepared and submitted to the VA for Matie a claim for "individual unemployability". This time the VA acted more promptly, and five months later, in July 2005, Matie's application was approved, he was reclassified as "individual unemployability", and his monthly benefit increased to \$2,393. At that point Kinn's official actions as a veteran's counsellor on Matie's behalf were completed, although his special power of attorney to the DVA to represent him in his veterans matters remained in effect.

On July 28, 2005, Matie executed a new will that, had it become effective, would have left to Kinn his house and car. Under his previous will these assets would have passed to the Shriners Hospitals for Children, his residuary beneficiary. In November 2005 Matie bought a 2006 BMW.

Over the next couple of years, the close relationship continued and strengthened. In 2006, Matie was badly injured in a serious car crash that dramatically changed his life. He could no longer drive or get around. He needed help at home. In a word, he had lost his independence and had to rely on others for many of the tasks of his life. This development drew Kinn closer to Matie and solidified the bonds between them, because she was the only person in his life that was close to him and cared for him.

Unable to drive due to the injuries from his accident, Matie gave his BMW to Kinn in March 2008, and at about the same time he created a joint bank account with her that he funded and used to have her pay his own bills. He also directed Kinn to pay some of her bills out of the joint account.

Three months later, on June 23, 2008, Matie executed a new will naming Kinn as executrix and leaving his entire estate to her.

In November 2009 Matie set up an annuity, working through Julie Murphy, who was Kinn's financial advisor.

After a couple of month's hospitalization Matie died on May 18, 2010, at the age of 86, thereby ending their relationship of approximately 13 years.

## **DISCUSSION**

The evidence does not support JCOPE's charges under §74(3)d) or §73(3)f). Nothing shows that Kinn used or attempted to use her official position to secure any privileges or exemptions (subsection(d)),and nothing shows a reasonable basis for inferring that she could be influenced in the performance of her official duties (subsection (f)).

JCOPE has charged that Kinn received \$452,052.71 in gifts in violation of the POL – gifts that are argued to be both influence gifts and reward gifts. As indicated earlier, the key issue in this dispute is whether Matie's gifts to Kinn could reasonably be

viewed as intended by Matie as rewards for the official actions that Kinn had taken on his behalf. Counsel broke the charged gifts down as follows:

• German Luger pistol	No value established
• BMW	\$ 20,000.00
• NFCU credit card payments (from joint account)	\$ 13,123.51
• John's root canal	\$2,438.00
• Annuity (as beneficiary)	\$179,283.66
• Remainder of bank accounts (from estate)	\$ 90,800.80
• Proceeds of real estate (from estate)	\$138,569.24
• Household furniture, etc. (from estate)	\$ 7837.50
	Total
	\$452,052.71

### **THE GIFTS**

In this part of the report I will discuss the gifts separately. As previously noted, since all but the German Luger (of nominal value) were given at a time when no further official action by the DVA or Kinn on Matie's behalf was contemplated, the entire dollar amount of the charged gifts cannot be considered as influence gifts, and therefore, they would violate POL §73(5)(a) only if they were reward gifts. I conclude that they were not reward gifts and could not reasonably be viewed as such by anyone who was aware of the circumstances surrounding the gifts.

The overwhelming evidence establishes that their primary motivating factor was the personal affection of a lonely man for a woman, 44 years his junior, who for years had shown care, concern, and affection toward him, and whom he had grown to love and view as the daughter he never had. Additional findings of fact will be included in this section.

### **German Luger pistol.**

Matie gave the Luger to Kinn in 2004, shortly after he had received from the VA the benefit increase from 10% to 60%. At that time he and Kinn had been friends for about seven years. The pistol had a priceless sentimental value for Matie, but there is no evidence that it had any economic value. Kinn had a pistol permit; Matie did not. She never fired the gun, and there is no evidence that it could be fired. For present purposes, therefore, the pistol had no more than nominal value.

As indicated earlier, this is the only gift that occurred before Kinn's work on Matie's behalf was concluded. Under the circumstances here, including the long friendship between Matie and Kinn, only an over-zealous prosecutor could infer that the gift was intended by Matie to "influence [Kinn] in the performance of [her] official duties" as a veterans' counselor (See POL §73(5a)). The gift was an expression of gratitude and appreciation to the only human being he was close to, and not a reward for the recently approved application that she had, two years earlier, prepared and submitted to the VA for him. Receipt of the increase in benefits may have been the trigger for his making the gift at that time, but it was neither the reason nor a motive for it.

### **2006 BMW.**

In November 2005 Matie had bought a new BMW. Soon after, he was seriously injured in the car accident and thereafter could no longer drive. Obviously, he no longer had any direct use for the car and in 2008 he gave it to Kinn, who was spending considerable time and energy caring for him and assisting him with his increased disability in his advancing age. Kinn seldom drove the car; her husband, John, drove it mostly. In June 2010 she traded the BMW in and applied the \$20,000 credit to John's purchase of a truck.

### **NFCU Credit Card Payments.**

On March 15, 2008, Matie and Kinn opened a joint bank account with funds supplied by Matie. This was well after his accident. Some of the payments from the account were gifts because they were for Kinn's personal expenses. The total of the charged NFCU credit-card gift payments to or for Kinn was \$13,123.51.

By far the majority of payments out of the Joint account were made through the on-line bill paying service available to the account. Matie did not use a computer, but on Sundays they would have a bill-paying session in which he would direct Kinn to make payments from the account on the computer. Kinn testified that Matie gave directions for every payment, and she did not argue with him, but did as she was told rather than upset him. The payments on Kinn's personal NFCU credit card thus were made at Matie's direction. In part the payments represented reimbursement to Kinn for expenses on Matie's behalf that she had charged to the credit card. In part they

represented Kinn's personal items and were, indeed, gifts. They were not intended by Matie as rewards for Kinn's earlier official actions on his behalf.

### **John's Root Canal.**

This item of \$2,438 was for dental work on Kinn's husband John, for which Matie gave Kinn a check drawn on the joint account. There does not seem to be any evidence of when that was done, nor does it matter here.

### **Annuity**

On November 11, 2009, Matie used part of the \$250,000 settlement from his accident to purchase an annuity contract in which he named Kinn as the beneficiary. Upon his death she received \$179,283.66.

In March of that year Kinn had engaged a financial advisor, Julie Murphy, who advised Kinn and her husband about some of their assets. Murphy testified at the hearing. Kinn mentioned to Murphy in their first meeting that she was the caretaker for an 86 year old man, that he expected to receive a substantial sum in settlement of a lawsuit, and that she would also be his sole beneficiary when he passes away.

In November, Kinn arranged for Murphy to meet with Matie at his home. Murphy and Matie sat at a table near or in the kitchen where they discussed the terms of the annuity contract that Murphy had proposed. They filled out the application together. Kinn was not seated at the table and did not participate in their conversation, but she was in the room. Matie told Murphy to make Kinn the beneficiary of the annuity. JCOPE argues that she was aware of that; Kinn says she was not. Whether she was or

not is not necessary for me to decide, because the gift that resulted five months later was made to a person that Matie had known for over a decade, who loved and cared for him, whom he had grown to love, and whom he viewed as a daughter – his only “family”.

The annuity money was not intended by Matie as a reward for Kinn’s official acts.

### **Remainder of Bank Accounts**

As the residual beneficiary of Matie’s estate, Kinn received the proceeds of several bank accounts that Matie had in his own name. She also received the relatively small balance that was in the joint account Matie had established with her. The total amount was \$90,800.00.

Matie’s prior will had left his residuary estate to the Shriner’s Childrens Hospitals. Using his personal attorney, Rudnicki, who testified at the hearing, Matie executed a new will on July 28, 2005, that carved out of the residuary estate his car and house, which he designated for Kinn. According to Rudnicki, at the time, Matie was an excellent businessman, sharp as a tack, in full command of his faculties, and not under any outside influences.

Three years later, on June 23, 2008, Matie executed another will, also drawn up and supervised by Rudnicki. That will, which was ultimately admitted to probate, made Kinn the executrix and left her his entire estate. According to Rudnicki, when he executed the new will, Matie was still in full command of his faculties. The reason Matie

gave for the change was that he thought that the former residuary beneficiary, the Shriners Hospitals for Children, was well funded and did not need a bequest from him.

Kinn was not present during either of the will executions. Not until Matie died did Rudnicki meet her. She testified that she did not know the contents of his wills, but there is evidence from Julie Murphy, Kinn's financial advisor, that in 2009 Kinn had reported that she was the beneficiary of Matie's estate. Kinn's knowledge of the wills prior to Matie's death is, however, irrelevant to whether she violated the POL, because merely being named as executor or beneficiary in a will is not soliciting, accepting, or receiving a gift. There would be no gift until the testator died and the will was probated, which here was in 2010, more than five years after she had submitted the last claim on Matie's behalf to the VA.

Neither the gifts of the remainder of the bank accounts, nor the proceeds of Matie's real estate or household furniture (both discussed below) were intended by Matie as rewards for Kinn's having worked with him and having submitted, over five years previously, his applications for additional benefits from the VA. With no close family connections, Matie regarded Kinn, his caretaker, whom he loved like a daughter, as being the only person to whom he wanted to leave his assets.

### **Proceeds of Real Estate**

Matie owned his own house, which passed to Kinn as part of his estate. It's sale provided to Kinn \$138,569.24. Kinn's position as executrix and sole beneficiary of his will is set forth above in connection with the bank accounts. Like the bank accounts and

the household furniture, the real estate proceeds were not intended by Matie as a “reward” for Kinn’s official actions as a veterans’ counselor.

**Household Furniture, etc.**

This refers to Matie’s miscellaneous personal property, which his estate sold for \$7,837.50. It is subject to the same analysis and conclusions as the previous two items – Remainder of Bank Accounts, and Proceeds of Real Estate.

**MISCELLANEOUS**

**Personal Power of Attorney and Health Care Proxy.**

On September 2, 2004, Matie designated Kinn as the recipient of his personal power of attorney and health care proxy. He neither asked nor told Kinn about his actions. Nor did she know about it until a few months later when his actions were discovered. Kinn discussed the matter with DVA Director George Basher, who advised her that it was improper for her to represent a DVA client in that capacity. She prevailed on Matie to change the designee, and on December 29, 2014, within four months of the appointment, Matie replaced her with someone else. She took no actions in either capacity. In April 2005 Kinn’s direct supervisor, Harry Rudy, counseled her about what she already knew – that as a state veterans counselor she could not act as agent for a DVA client under either a power of attorney or a health care proxy.

### **DVA Power of Attorney.**

In order to authorize the DVA to represent a veteran before the federal VA, the veteran must at the outset execute a power of attorney appointing the DVA as his agent. Matie did so here in April 2002 when he and Kinn started to work on his first application for increased benefits. In March 2008, Matie felt that the DVA was bullying Kinn about decisions he himself had made, so he appointed the Military Order of the Purple Heart as his agent before the VA, thereby revoking all authority of DVA or any of its employees, including Kinn, to represent him.

### **Handling Matie's Estate.**

JCOPE implies something nefarious in the speed with which Kinn handled Matie's funeral and estate and how she wound up his affairs. With respect to the funeral, there was no one else follow through on the arrangements that Matie had already made. His relatives were not available. With respect to the estate, under the guidance of Attorney Rudnicki she efficiently carried out her duties as executrix and cannot be criticized for doing so.

## **EVALUATION**

As pointed out by JCOPE's counsel, "The Commission has found that 'when the circumstances make it clear' that a personal relationship is the 'primary motivating

factor' for the gift, acceptance of the gift should not be considered a violation of POL §73(5)." (JCOPE PH Br. at 10). Determining the primary motivating factor necessarily requires determining Matie's intent in making the gifts, and this requires an evaluation of all the circumstances leading up to the gifts, including such things as the amount of the gifts, the type of official action performed by Kinn, the significance of the official action to Matie, the timing of the gifts in relation to Kinn's official actions, whether there had been similar gifts prior to the official actions, and perhaps most importantly, the nature of the relationship between the Matie and Kinn over the period of the gifts.

There is no dispute that Matie made the gifts and that Kinn received them. The parties differ over whether Matie intended the gifts to influence Kinn in her official actions and whether Matie intended them as a reward for past official actions by her. A subsidiary question is whether the gifts would be regarded by a reasonable person as a breach of the public trust in the form of influence gifts or reward gifts.

I focus first on Matie's intent as shown by the evidence presented. Thirteen witnesses testified at the hearing. In addition to Kinn, there were five who had known Matie personally. One of them, James Mahoney, was also a veteran-client of Kinn. Three supervisors of Kinn testified, one called by JCOPE and two called by Kinn. The three supervisors agreed that Kinn was an excellent veterans counselor, knowledgeable and hard-working. In addition to Mahoney, three other veteran-clients testified. All four praised Kinn for the fine work she had done on their behalf and for other veterans. For present purposes, the testimony of those witnesses who actually knew Matie is particularly useful.

- **Tracy Kinn** testified about Matie and her relationship with him. Many of the findings of fact set forth above are based on her testimony, which I found to be, by and large, credible, and need not be repeated here.
- **Julie Murphy** was Kinn's financial advisor, retained in March 2009. She signed Matie up for the annuity. She met him on only two occasions in November 2009. Understandably, she did not, in 2016, directly recall much of the meeting, but she had made extensive notes of her initial retention by and representation of Kinn and her husband as well as her two meetings with Matie. She used those notes to refresh her recollection. She had no "doubt about Matie's mental acuity or his sharpness"; "he had lucid conversation the whole time", and he asked "cogent questions". She had no feeling "that this was a put up job or a scheme or something that had been set up". (Tr. 134-35). Matie "adored Tracy and said she was family . . . his state of mind was very clear". (Ex. 5B Bates # 104).
- **Michael J. Nagourney**, a nephew of Matie, would see him "around holidays and things" when he was growing up. In later years he would call Matie, perhaps once a month, and from time to time had lunch with him – "probably a handful of times, it wasn't much". He never visited at Matie's house and never had him for holidays at his own house. During the lunch sessions Matie had told him about Kinn and referred to her as his "girlfriend". "[H]e loved her" and "he trusted her". Matie said that Kinn

“picked up the groceries and did different things for him”, and that “they were really close”. Matie had cut off contact with other family members because “they think she is gold digging”. (Tr. 142 - 158).

- **Paul E. Rudnicki** was Matie’s attorney from 2004 until his death. He prepared for Matie the two wills discussed earlier, one in July 2005 and the other in 2008. In September 2004 he had prepared for Matie a health-care proxy and power of attorney naming Kinn as his agent, but Matie revoked them in December of that year. Matie told Rudnicki “that he had a tremendous amount of respect for Tracy Kinn due to the fact that she would help any veteran who needed help regardless of their own personal situation” and that “he respected her because, in his words, she was a fighter.” Matie “knew exactly what he wanted. He didn’t ask my opinion as to what he should do.” “He was a strong-willed individual.” With the second will, the one that removed the Shriners as residuary beneficiary, Matie “felt that the Shriners were very well funded and they frankly didn’t need a monetary bequest from Slim.” “[E]very time I met with Mr. Matie, the only ones present were me and Mr. Matie. . . . We meet [sic] in absolute privacy, usually at his residence.” Until Matie died, Rudnicki had no personal contact with Kinn. (Tr. 164 - 176).
- **James Mahoney**, was a retired army colonel, last serving as an Inspector General. After first receiving a 30% disability on an application prepared by John Rudy, who was a veteran’s counselor similar to Kinn, Mahoney switched to Kinn after talking with other combat veterans. Kinn processed

a new application that won for him an upgrade to 70% disability with “individual unemployability”, entitling him to 100%. He testified that “my particular case was pursued with relentless passion for the truth and justice. And her relentless passion not only came forth to me, but to other veterans I had talked to who had the same result by following the advice of the regulations that she’s well versed in.” To him, Kinn appeared “[e]xtremely knowledgeable, extremely.” “[T]ime was not an issue with Ms. Kinn”. “I would visit her office and just to shoot the breeze because she was . . . a very compassionate, caring person . . . especially when it comes to veterans benefits.”

Mahoney first met Matie in a restaurant where “Tracy, her husband John and Slim were in this restaurant and they invited me to join them at their table.” Matie talked a lot. He told Mahoney “how much he would appreciate the compassion Tracy Kinn showed to him and he also mentioned that she’s the only one that cared about him by helping him because he hadn’t seen his family members in a long, long time – he just said nobody comes to visit him or help him do anything except Tracy and her husband John.”

Mahoney saw Kinn a second time “within a year of the first meeting. And it happened at the Kinns’ house and he was there.” “There was no indication of impropriety whatsoever of any kind ...” What she did for Matie “she did for the other veterans [Mahoney] referred to her. . . .She did the same for us as she did for him.”

Around Christmas 2007 while in her office he saw “each of these two veterans tried to give her a gift card for something . . . she flatly refused it and said nope, can’t take it, take that back. I don’t accept gifts.” (Tr. 224 – 232).

- **Tammy Schueler** had been a bar tender for 18 years at the Eagle House restaurant where she met both Kinn and Matie. On more than one occasion she saw them together. She and Kinn became friends. Sometime after she stopped working at Eagle House, Kinn asked her if she “would be interested in helping out a friend of hers who was needing additional assistance.” She met with Matie and he hired her to work three hours a day, three days a week. She worked for about one year in 2007-2008, cooking for him, driving him, house cleaning, sometimes just sitting and talking.

Matie appeared “to be in control of his faculties and aware of what was going on.” He was “[o]utspoken, quick-witted” and “absolutely” able to “make decisions”. Schueler described the Matie/Kinn relationship as “good friends”. He called Kinn “the princess”, “he adored her . . . he wished she was his daughter”. He felt that John was his “son-in-law”. While she was working for Matie there was no “family coming in and visiting”. She never felt that “there was anything nefarious or anything going on that was inappropriate between the two of them”.

I have excerpted in fairly extensive detail the testimony of the witnesses who knew Matie, because in the absence of any opposing evidence, their testimony conclusively demonstrates Matie's independent, self-reliant nature and that a close personal relationship had developed between him and Kinn, particularly after his 2006 car accident, a relationship that completely overshadows any significance that might be attributed to the routine official actions that Kinn had performed for him.

The official actions that Kinn took for Matie in 2002 and 2005 were preparing and filing with the VA applications for increases in Matie's benefits, exactly the same actions she has taken on behalf of thousands of veteran-clients during her 15-year career at the DVA. There is no evidence to show that her actions on Matie's behalf were any greater than or different from the many other applications she has handled.

The results of her actions were surely significant to Matie, because combined, they increased his monthly benefit from \$100 to \$2,400 per month, although there is no evidence to suggest that Matie needed the additional VA benefit to live comfortably.

The timing of the gifts is partially addressed elsewhere in this report. The greatest dollar amount came, however, with Matie's death, which provided Kinn with his residuary estate and the annuity payment. But neither of those "gifts" was received by Kinn until Matie died in 2010, because at any time until then Matie could have changed either his will, or his annuity beneficiary, or both, since he was fully competent right up to the end. We thus have a picture of official acts ending in 2005, and the great bulk of the gifts being received five years later, in 2010.

Finally, it is absurd to suggest that Matie intended his gifts of nearly \$500,000 to be a “reward” for Kinn’s official actions which netted for him only half that amount.

In her post-hearing brief JCOPE’s counsel rests heavily on the fact that there is no evidence of any gifts or even of a close personal relationship in the period before April 2002 when Matie became a client of the DVA, assigned to Kinn, Her logic seems to be that anything that happened between Matie and Kinn after that date must be deemed a product of her official actions on his behalf. Such a narrow view of human relationships does violence to common sense and life experience. Over the twelve or more years that Matie and Kinn knew each other, their relationship would inevitably evolve and develop in response to their separate and joint experiences. As becomes clear throughout this report, their relationship grew into one of mutual respect, devotion, and affection.

JCOPE’s case as set forth in their post hearing brief presents a picture of Kinn that is inaccurate, unsupported by the great weight of the evidence at the hearing, and contrary to my own evaluation of Kinn as a person and as a state veterans counsellor. The brief says that “Kinn wove her way into Matie’s personal life”, “orchestrated her windfall”, “insert[ed] herself in his personal financial affairs”, “contrived her receipt of nearly half a million dollars” (JCOPE PH Br. at 1-2), and “further enmeshed herself in his finances” (*Id.* at 15).

Instead, the evidence presents a clear picture of Kinn at first offering to help a friend of at least three years by officially preparing and submitting two applications to the VA, which over three years produced in 2005 an increase of \$2,400 in his monthly

benefit. Thereafter, Kinn performed no official actions for Matie, and Matie in 2006 had his accident and began to need help from others to handle daily tasks. Only then did Kinn begin to assist him with his finances, and by then the bonds between them had already matured into a close, affectionate relationship.

The evidence shows that Matie was the impetus for her increased involvement with his finances. He executed the power of attorney and health-care proxy in 2004 without her advance knowledge. The changes to his will were done by him alone, when he was fully competent and, according to his attorney, "sharp as a tack". The payments of her credit card and utility bills were made at his direction, a pattern consistent with his independent and commanding personality. Contrary to JCOPE's assertions, Kinn did not enmesh herself into Matie's financial affairs; Matie drew her into them.

## **SUMMARY AND CONCLUSIONS**

- Kinn and Matie had become friends at least three years before she became a state veterans' counsellor.
- Kinn's official acts on Matie's behalf were completed in 2005.
- The only gift to Kinn while she was acting for Matie was the German Luger, which on the evidence at the hearing had only nominal value.
- None of the gifts, nor all of them combined, can reasonably be viewed as intended to influence Kinn in her official actions or likely to do so.
- Matie intended the gifts as expressions of affection and personal regard arising out of their long-term relationship. He did not intend them as rewards for her having prepared and filed two applications for him with the VA years earlier.
- Matie's primary motivating factor in making the gifts was love and affection growing out of a long-term personal relationship.
- The gifts were neither influence gifts nor reward gifts.
- Kinn's conduct toward Matie was not an attempt by her to use her official position to secure privileges or benefits from Matie.

- Kinn's conduct toward Matie was consistent with all regulations and established policies of the DVA with respect to its employees acting for clients with whom they have personal relationships.
- Kinn did not pursue a course of conduct that was in violation of the public trust.
- Kinn did not violate POL §73(5)(a), 73(3)(d), (f), or (h).

### **RECOMMENDATIONS**

I respectfully recommend to the Commission that no penalty be assessed against Tracy Kinn and that all charges against her be withdrawn.

March 21, 2017

Hon. George C. Pratt

Designated Hearing Officer