

STATE OF NEW YORK  
JOINT COMMISSION ON PUBLIC ETHICS

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IN THE MATTER OF AN INVESTIGATION OF  
TRACY R. KINN,

Respondent.

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

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**SUBSTANTIAL BASIS  
INVESTIGATION REPORT**

JCOPE No. 14-089

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## I. SUMMARY OF INVESTIGATION

This investigation concerns a state employee who accepted gifts in the performance of her official responsibilities in violation of the public trust. In this matter, Tracy Kinn, a counselor at the New York State Department of Veterans Affairs (“DVA”), received substantial gifts and a bequest totaling more than a half million dollars in value from a veteran she served in her official capacity. State workers who provide services to members of the public, such as the subject of this report, must not be allowed to financially benefit as a result of the reliance placed upon them by the population he or she serves, or profit from the gratitude that may develop in the course of their official responsibilities. Adherence to this principle is most important when, as is the case here, the services provided can be life-changing.

Charles Matie was a World War II veteran and Purple Heart recipient who served in the United States Army from 1943 to 1946. After the war, Matie became a successful businessman and active member of his Buffalo community, devoting much of his time to charitable endeavors with the Masons organization and Shriners Hospital for Children (“Shriners”). Before 2002, Matie had been receiving federal veterans benefits totaling no more than \$104 per month.

Tracy Kinn began employment as a counselor in the Buffalo regional office of the DVA in 2001. She is responsible for assisting veterans in filing claims for federal, state, local, and private veterans benefits. Her job is to submit claims and advocate on behalf of veterans. Her actions can significantly impact the quality of life for those veterans who rely on her experience and expertise in navigating a complex benefits system. Her efforts could impact a veteran’s monthly benefits to the tune of hundreds or thousands of dollars.

Tracy Kinn began assisting Matie with his federal veterans benefits in 2002. She successfully petitioned the DVA to increase Matie’s benefits from \$104 per month in 2002 to \$2,299 per month in 2005. Her efforts in her official capacity from May 2002 until Matie’s death in May 2010 resulted in benefits for Matie totaling \$215,576. Though Matie was entitled to the increase in benefits, without Kinn’s efforts, Matie’s benefits during that time period would have amounted to \$10,879. Despite warnings from her supervisors at DVA about the propriety of her personal relationship with Matie, Kinn increasingly benefited financially from his generosity. Ultimately, upon Matie’s death in 2010, he left her his entire estate.

This matter was referred to the Commission in August 2014 after the New York State Inspector General (“IG”) issued a report concerning Kinn’s actions relating to Matie and a second veteran, whose affairs Kinn mishandled. The IG’s report noted that Kinn served as Matie’s DVA representative despite having a personal relationship with him and receiving numerous gifts of substantial value from him.

On October 8, 2014, in accordance with Executive Law §94(13), the Commission sent Kinn a letter notifying her of allegations that may constitute violations of Public Officers Law §§73(5)(a) and 74(3)(d), (f), and (h).<sup>1</sup> On March 29, 2015, the Commission commenced an investigation into the matter. During the course of the investigation, Commission staff examined numerous banking and credit card records and interviewed multiple witnesses, including friends

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<sup>1</sup> See Exhibit A: 15-day letter, dated October 8, 2014.

and relatives of Kinn and Matie, employees of the DVA, a financial services provider, Matie's house cleaner, and Kinn herself.

The investigation confirmed that Kinn's actions as Matie's DVA representative resulted in increases to Matie's monthly veterans benefits starting in 2002. Her efforts also resulted in a substantial increase in 2005. In addition, during the time Kinn represented Matie, he was involved in a serious car accident. He ultimately received more than \$250,000 through a legal settlement related to the accident. Following the accident, Kinn took on increasing responsibilities in Matie's personal life and financial affairs.

The investigation also confirmed that Matie gifted property to Kinn both during the time she represented him and shortly after Matie ended DVA's representation of him in veterans matters. In 2004, Matie gave Kinn a German Luger pistol which he brought back from his service in World War II. In July 2005, Matie executed a will leaving his car and home to Kinn, with the remainder of his estate going to the Shriners organization. In March 2008, two weeks after he filed paperwork to end DVA's responsibilities for his veterans benefits, Matie gave Kinn a 2006 BMW 3-series 330Ci. Also in March 2008, Matie and Kinn set up a joint checking account funded entirely by Matie. In June 2008, Matie executed a new will leaving his entire estate to Kinn. In November 2009, through a financial advisor recommended by Kinn and in Kinn's presence, Matie placed \$175,000 into an annuity product naming Kinn as the beneficiary. Finally, in the year prior to Matie's death in 2010, Kinn used more than \$11,000 of his money from the joint account to pay her personal credit card bills. She also used funds from the joint account to pay her home utility bills and her husband's dental expenses.

Matie died on May 18, 2010. Two days later, Kinn initiated the claims process for Matie's annuity. On June 15, 2010, Kinn received the balance of the annuity, nearly \$180,000. Also in June 2010, Kinn received \$20,000 towards the purchase of a new truck in exchange for the BMW Matie had given her before his death. At the time of his death, Matie had more than \$160,000 in accounts held at First Niagara Bank and more than \$15,000 in the joint checking account he shared with Kinn. Kinn sold Matie's home for just under \$160,000. She sold his personal belongings on eBay and at a yard sale without notice to Matie's friends and family. Kinn received the balance of the bank accounts and the proceeds of the home sale.

Based upon the evidence developed through the investigation, the Commission finds that Kinn's conduct constituted a breach of the public trust and violations of Public Officers Law §§73(5)(a) and 74(3)(d), (f), and (h).

Pursuant to Executive Law §§94(14) and (14-b), the Commission's Findings and Conclusions of Law are set forth below.

## **II. PROCEDURAL HISTORY**

### **A. JCOPE Authority and Process**

The Commission has authority to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law by state officers

and employees has occurred as set forth in Executive Law §§94(13) and 94(14). The statute provides that prior to commencing a full investigation the subject of the allegations must be provided notice and 15 days to respond to the allegations (known as a “15-Day Letter”). The matter must then be presented to the Commission. The Commission must vote to commence an investigation to determine whether a substantial basis exists to conclude that a violation of law has occurred. After an investigation is completed, the Commission must determine whether there is a substantial basis to conclude that a violation of law has occurred. If at least eight members of the Commission agree, the Commission shall issue a substantial basis investigation report, pursuant to Executive Law §§94(14) and 94(14-b).

As stated above, this matter was referred to the Commission by the IG on August 11, 2014. In accordance with Executive Law §94(13), on October 8, 2014, the Commission sent Kinn a 15-Day Letter notifying her of allegations that she violated various provisions of the Public Officers Law.<sup>2</sup> Specifically, the 15-Day Letter alleged that Kinn violated Public Officers Law §§73(5)(a) and 74(3)(d), (f), and (h), alleging:

In August 2014, the New York State Office of the Inspector General issued a report which indicated that you may have violated §§73 and 74 of the Public Officers Law. It is alleged in the report that, you, as a New York State Division of Veterans’ Affairs Counselor, had a personal relationship with a Division of Veterans’ Affairs client whom you began assisting in 2002 as part of your employment. You failed to disclose your relationship with the client to your employer and to recuse yourself. It is further alleged that from around March 2008 to August 2011, you accepted from the client, gifts of significant value, including a car and the majority of his estate upon his death, in violation of Public Officers Law §§73 and 74.

On November 7, 2014, Kinn, through her attorney, submitted a response to the 15-Day Letter denying any wrongdoing and stating in sum and substance that (i) she and Matie were close family friends for years before she represented him on his veterans claims; (ii) she was no longer assisting Matie as a DVA counselor at the time she received the gifts; (iii) her supervisors at DVA were fully aware of her relationship with Matie from the beginning; (iv) her personal expenses were being paid out of their joint account in exchange for her doing household chores for Matie; and (v) she did not know that she was named the beneficiary of Matie’s estate until after his death.<sup>3</sup> Her attorney also argued that, at the time of the actions alleged to be in violation of the Public Officers Law, DVA lacked policies regarding the acceptance of gifts.

#### B. Substantial Basis Investigation

On March 29, 2015, the Commission voted to commence a Substantial Basis Investigation, pursuant to Executive Law §94(13), to determine whether a substantial basis exists to conclude that Kinn violated §§73(5) and 74(3)(d), (f), and (h) of the New York State Public Officers Law, the relevant portions of which are excerpted below:

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<sup>2</sup> See Exhibit A.

<sup>3</sup> See Exhibit B: Response of Mark G. Farrell, Esq., dated November 6, 2014.

§73(5)(a): No statewide elected official, state officer or employee shall, directly or indirectly: solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, 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. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

§74(3)(d): No officer or employee of a state agency 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.

On April 8, 2015, the Commission sent Kinn a Notice of Substantial Basis Investigation that detailed the alleged violations of the provisions of the Public Officers Law discussed above.<sup>4</sup>

### **III. FINDINGS**

#### **A. Charles Matie's History**

Through interviews conducted of Kinn and of Matie's friends and family members, an image emerges of Matie as a strong-willed, sociable man for whom loyalty and civic duty were essential virtues. He was twice married, but single in his later years. Until the time of his death, he remained close to a woman he had dated from the mid-1970s through the 1980s. He had no children of his own but remained in contact with the children of this former girlfriend and also with several nieces and nephews. He remained friendly with colleagues from his business days when he ran an auto parts store in Lackawanna, New York.

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<sup>4</sup> See Exhibit C: Notice of Substantial Basis Investigation, dated April 8, 2015.

Matie was a dedicated member of the Masons organization, for which community service is a principle tenet. He achieved high ranking status in his local lodge and at the time of his death was Chairman of the Board for the Erie County Masonic Foundation.<sup>5</sup> Matie was also active in the charitable endeavors of the Shriners organization. According to his former attorney and fellow Mason, up until a few years before his death, Matie regularly volunteered to drive children and their families from the Buffalo area to the Shriners Hospital in Erie, Pennsylvania. According to the obituary published at the time of his death, Matie “dedicated his leisure time to his community” and “stood tall among his peers and in his community for his caring nature and involvement in [the Buffalo community].”<sup>6</sup>

He had a sister who lived in California who came to live with him for approximately three months while he recovered from an automobile accident in 2006.<sup>7</sup> While he was hospitalized following the car accident, and later in the weeks prior to his death, multiple friends and family members visited him at his bedside.<sup>8</sup>

#### B. Kinn’s Employment at DVA

Kinn, who was a veteran herself, began working for the DVA in August of 2001 following her graduation from SUNY Fredonia College in May 2001. She was hired as a State Veteran Counselor and was initially assigned to an office located inside the United States Department of Veterans Affairs (“VA”) Hospital in Buffalo. In 2004, Kinn was relocated to an office in Williamsville, New York. She presently has the title of Veterans Benefits Advisor 1, though her responsibilities remain the same as at the time she was hired.

As a State Veteran Counselor and later as a Veterans Benefits Advisor, Kinn is responsible for assisting claimants, i.e., veterans and/or the spouse, child, or parent of a veteran, in completing applications, obtaining necessary documentation, and filing claims for federal, state, local, and private veterans benefits. Her responsibilities also include responding to correspondence with benefit agencies and appealing unfavorable rulings by benefits agencies on behalf of claimants.

#### C. Charles Matie’s Relationship with Kinn

Kinn asserts that her long-standing friendship with Matie, which she claims predates her employment with the DVA, provides the basis for his gifts and bequeaths of assets to her. While her claim of a personal friendship with Matie developed over the decade prior to his death cannot be discredited, the origin and extent of their relationship prior to Kinn providing state services is

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<sup>5</sup> See Exhibit D: Obituary of Charles Matie.

<sup>6</sup> *Id.*

<sup>7</sup> Interviews of Linda Monin, Denise Rodler, and Michael Nagurney, November 4, 2015, and Terry Matie, November 5, 2015.

<sup>8</sup> *Id.*

unclear. Kinn reported to the IG that her personal relationship with Matie began in 1998,<sup>9</sup> and she stated the same in her response to the Commission's 15-day letter.<sup>10</sup> When interviewed by Commission staff on November 5, 2015, Kinn was asked to describe the origin of her relationship with Matie. Kinn stated that she met Matie sometime in the years 1995 or 1996 when they were introduced by a mutual friend at a local restaurant.<sup>11</sup>

Kinn asserted that she started spending holidays with Matie "pretty early on in the relationship," though she could not confirm whether this began before or after 2001.<sup>12</sup> Kinn also noted that she began dating her husband in 1997, who she married on August 12, 2000. She described her husband's first introduction to Matie as occurring at a home which she moved into after her wedding.<sup>13</sup>

Commission staff also interviewed Kinn's husband, John Kinn, on November 5, 2015. John Kinn stated that he met Matie sometime in late 1998 or 1999. Though he claimed that he and Tracy spent multiple holidays with Matie, he could not provide any details or anecdotes of a specific holiday spent with Matie, either in recent years or prior to 2001. When asked what holidays they spent with Matie he stated "all holidays," though he also noted that he and Tracy spend some holidays with his own family. He did not recall any holiday at which his own family, who live in the Buffalo area, met Matie and did not know if Tracy's father, who has visited the Kinns in the Buffalo area, had ever met Matie.

Kinn was asked to provide Commission staff with any documentation, in the form of photographs or other confirmation, of holidays spent with Matie. She has not done so. Kinn provided the Commission with letters from individuals with knowledge of her relationship with Matie. Though many of these individuals generally described a close, supportive relationship between Kinn and Matie, none indicated a specific awareness of this type of a relationship in the years prior to Kinn's employment at the DVA. One friend of Kinn's noted that he became aware of the friendship between Kinn and Matie in 1998. When interviewed by Commission staff, this person acknowledged that his first and only time meeting Matie was at the Kinns' home where they presently reside, and that this meeting occurred after Kinn had begun working for the DVA.

The absence of specific details concerning the holidays spent together and the relatives that met Matie does not negate the existence of a friendship between Kinn and Matie. However, given the paucity of details provided by Kinn and other witnesses, the nature and extent of Kinn's personal relationship with Matie over the years is ambiguous.

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<sup>9</sup> State of New York Office of the Inspector General, Investigation of Conflicts of Interest at the Division of Veterans' Affairs (August 2014), available at <http://ig.ny.gov/pdfs/KinnPublicReport8-11-14.pdf> (hereinafter "IG Report").

<sup>10</sup> Exhibit B.

<sup>11</sup> Exhibit E: Interview of Kinn, November 5, 2015, at p. 24, l. 15.

<sup>12</sup> *Id.* at p. 23, l. 15.

<sup>13</sup> *Id.* at p. 19, l. 16-17, 25.

Friends and family members of Matie were also interviewed by Commission staff and asked about their knowledge of the origin of Kinn and Matie's relationship. None had direct knowledge of their meeting and only a few had met Kinn during Matie's lifetime. No friend or family member of Matie recalled learning about the relationship between Matie and Kinn anytime in the years 1996-98.

D. Charles Matie's Interactions with DVA and Benefit Determinations

In 2002, Kinn began serving as Matie's representative for veterans-related claims. From early 2002 through August 2005, Kinn assisted Matie with his veterans benefits claims in her role as a DVA Counselor.

When interviewed by Commission staff, Kinn stated that after she started working for the DVA and learned the process by which veterans can apply for increases to their benefits, she began to talk to Matie about applying for an increase in his benefits.<sup>14</sup> Matie's particular benefits were a type of disability benefit provided by the United States Department of Veterans Affairs ("VA").<sup>15</sup> Matie received a small benefit as result of frostbite he sustained to one hand and both feet while serving under General Patton in World War II. In Kinn's estimation, Matie's service-connected injury had grown more debilitating over the years, thereby entitling him to higher benefits.<sup>16</sup>

When interviewed by Commission staff and asked whether two veterans who are similarly situated could have a different benefit result depending who they are serviced by at the DVA, Kinn responded "yes" and explained that the representative's level of "of passion, of advocacy, of wanting to do the right thing, of enjoying the job versus it just being a paycheck" can influence the benefit result.<sup>17</sup>

On April 15, 2002, Matie visited the DVA office at the Buffalo VA Hospital and completed a Power of Attorney appointing the DVA as his representative for veterans claims.<sup>18</sup>

On April 16, 2002, Kinn prepared and submitted a claim on Matie's behalf for an increase to his service-connected disability rate, which determines the amount of the monthly benefit.<sup>19</sup> At the time of this application, Matie was deemed to have a ten percent service-connected disability rate.<sup>20</sup> According to the VA benefit table effective December 1, 2001

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<sup>14</sup> Exhibit E at p. 45, l. 1-14.

<sup>15</sup> This type of "disability benefit" is a tax-free monetary benefit paid to veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service. The benefit amount is graduated according to the degree of the disability on a scale from ten percent to one hundred percent (in increments of 10 percent).

<sup>16</sup> Exhibit E at p. 45, l. 6-14.

<sup>17</sup> *Id.* at p. 32, l. 23 – p. 33, l. 21.

<sup>18</sup> See Exhibit F: VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative (DVA).

<sup>19</sup> See Exhibit G: DVA Vetcop screen shot; Exhibit E at p. 47, l. 6 – p. 48, l. 4.

<sup>20</sup> *Id.*

through November 30, 2002, a single veteran with no dependents deemed to have a ten percent service-connected disability rate received \$103 per month.<sup>21</sup>

On February 17, 2004, as a result of claims submitted by Kinn on Matie's behalf, Matie's VA service-connection disability rate increased from ten percent to sixty percent.<sup>22</sup> The effective date of the change in to the service connection disability rate is the date VA receives a claim or the date entitlement arose, whichever is later. Thus, the effective date for Matie's claim was retroactive to the date the VA received the claim filed by Kinn, which was April 18, 2002. According to the VA benefit table effective December 1, 2001, a single veteran with no dependents deemed to have a sixty percent service-connected disability received \$790 per month.<sup>23</sup> The rate for a veteran with no dependents found to have a sixty percent service-connected disability rate increased to \$801 on December 1, 2002, \$817 on December 1, 2003, and \$839 on December 1, 2004.<sup>24</sup>

Following the increase to Matie's benefit rating, Kinn submitted applications on Matie's behalf for additional benefits. Specifically, Kinn sought a determination of "individual unemployability" for Matie.<sup>25</sup> Upon a determination of "individual unemployability," the VA will pay disability compensation at the one hundred percent rate, even though the VA has not rated the service-connected disability at that level.<sup>26</sup>

In order to receive the benefit associated with individual unemployability, the veteran must have at least one service-connected disability rated at least at sixty percent, or a combination of two or more service-connected disabilities totaling at least seventy percent, one of which must be ratable at least forty percent. Also, the service-connected disability must be sufficient, without regard to other factors, to prevent performing the mental and/or physical tasks required to get or keep substantially gainful employment.<sup>27</sup>

On July 9, 2005, Matie's claim for individual unemployability was approved, bringing his benefit amount to \$2,299 per month, an increase of \$1,460 per month.<sup>28</sup> Over the next five

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<sup>21</sup> The VA Benefit Rates are adjusted annually for increased cost of living. The rate for a veteran with no dependents found to have a ten percent service connected disability increased to \$104 on December 1, 2002 and to \$106 on December 1, 2003.

<sup>22</sup> Exhibit G.

<sup>23</sup> Veterans Compensation Benefits Rate Tables - Effective 12\_1\_01 – Compensation, *available at* [http://www.benefits.va.gov/COMPENSATION/resources\\_comp0101.asp](http://www.benefits.va.gov/COMPENSATION/resources_comp0101.asp).

<sup>24</sup> *Id.*

<sup>25</sup> Exhibit E at p. 50, l. 18.

<sup>26</sup> Individual Unemployability – Compensation, [http://www.benefits.va.gov/COMPENSATION/claims-special-individual\\_unemployability.asp](http://www.benefits.va.gov/COMPENSATION/claims-special-individual_unemployability.asp).

<sup>27</sup> *Id.*

<sup>28</sup> *See* Exhibit G; Exhibit E at p. 52, l. 22-25.

years, this benefit was also increased pursuant to a cost-of-living adjustment.<sup>29</sup> Matie was also entitled to a one time retroactive award of \$5,840.<sup>30</sup>

Had Kinn not successfully petitioned the VA on Mattie's behalf, Matie would have remained at the ten percent disability rate, meaning he would have received \$10,879 from the period Kinn began to represent him until his death. However, as a result of her efforts, Kinn was able to secure him a total of \$215,576 in benefits in that time period. This by no means suggests Matie was not entitled to the increase in benefits or that Kinn did anything untoward in her dealings with the VA. It simply illustrates that her efforts substantially increased Matie's income for which he was most likely grateful.

#### E. Gifts and Bequests During Charles Matie's Lifetime

After the increase in Matie's disability rating from ten percent to sixty percent, Matie began to provide Kinn with gifts and bequests. On August 6, 2004, Matie gave Kinn a German Lugar pistol, a souvenir from his service in World War II. As his benefits later increased even further, so did his gifts and bequests to Kinn.

On July 26, 2005, within two weeks of the VA's award of individual unemployability, Matie executed a will leaving his car and home to Kinn.<sup>31</sup> As noted above, the award of individual unemployability increased Matie's benefits by \$1,460 per month to a total of \$2,299 per month. While prior to 2006 Matie received less than \$10,000 a year in benefits, due to the VA's approval of individual unemployability, after 2006 he received approximately \$30,000 a year in benefits. Thus, after his VA benefits had increased some \$20,000 annually, Matie willed substantial assets to Kinn.

In keeping with his devotion to civic duty and, specifically, the Masons and Shriners organizations, Matie directed that the remainder of his estate be donated to the Shriners Hospital for Children.<sup>32</sup>

Over the ensuing years several additional events demonstrate the increasing financial relationship between Kinn and Matie.

In November 2005, he purchased a 2006 BMW 3-series 330Ci.<sup>33</sup> In the Fall of 2006, Matie was involved in a serious car accident which resulted in his hospitalization for several weeks. His sister travelled from California to care for him upon his release from the hospital.

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<sup>29</sup> On December 1, 2004, the rate for a veteran with no dependents found to have a 100% service connected disability was \$2,299. On December 1, 2005, this amount increased to \$2,393. On December 1, 2006, this amount increased to \$2,471. On December 1, 2007, this amount increased to \$2,527. On December 1, 2008, this amount increased to \$2,673 and remained the same through the date of Matie's death in 2010.

<sup>30</sup> See Exhibit G.

<sup>31</sup> See Exhibit H: Will dated July 26, 2005.

<sup>32</sup> *Id.*

<sup>33</sup> See Exhibit I: Title to BMW dated November 15, 2005.

Following his car accident, Matie was unable to drive. Matie gave Kinn the use of the BMW, which Kinn claimed “sat in her driveway.”<sup>34</sup>

On March 1, 2008, Matie revoked DVA’s representation in his veterans affairs claims by submitting a new form designating the Military Order of the Purple Heart as his representative.<sup>35</sup> This change appears to have no purpose other than to remove his association with DVA.

Less than two weeks later, on March 13, 2008, Matie transferred ownership of the BMW to Kinn, turning the title over to her.<sup>36</sup> Two days later, on March 15, 2008, Kinn and Matie opened a joint checking account funded entirely by Matie through a \$30,000 deposit. Bank records demonstrate that Matie later replenished the account with \$56,595 from separate accounts he held.

On June 23, 2008, Matie executed a new will naming Kinn as the executrix and primary beneficiary of his estate.<sup>37</sup> The new will made no mention of the Shriners Hospital for Children and left all of Matie’s estate to Kinn.

In February 2009, Matie received \$244,236 pursuant to a settlement in a legal action relating to the car accident.<sup>38</sup>

Meanwhile, over the next two years, Kinn used over \$11,000 of Matie’s money from the joint checking account to pay her personal credit card bills and hundreds of dollars to pay for her utility bills. She also used nearly \$2,500 from the account to pay for a dental bill incurred by her husband.<sup>39</sup>

In November 2009, through a financial advisor recommended by Kinn and with Kinn’s knowledge, Matie placed \$175,000 into an annuity product naming Kinn as the beneficiary.<sup>40</sup>

#### F. Charles Matie’s Death and Subsequent Events

Following several weeks of hospitalization, Matie died on May 18, 2010.

Upon Matie’s death, Kinn made the funeral arrangements and promptly began settling his financial affairs. Two days after Matie’s death, Kinn initiated the claims process for Matie’s annuity.<sup>41</sup> On May 25, 2010, Kinn completed the paperwork necessary to petition the probate of

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<sup>34</sup> Exhibit E at p. 95, l. 7 – 23.

<sup>35</sup> See Exhibit J: VA Form 21-22, Appointment of Veterans Service Organization as Claimant’s Representative (MOPH).

<sup>36</sup> See Exhibit K: NYS DMV Registration.

<sup>37</sup> See Exhibit L: Will dated June 23, 2008.

<sup>38</sup> See Exhibit M: Page from First Niagara Bank record regarding settlement check.

<sup>39</sup> See Exhibit E at p. 80, l. 6-11; Exhibit N: Page from First Niagara Bank record ending 204 (dental).

<sup>40</sup> Interview of Julie Murphy, November 5, 2015.

<sup>41</sup> See Exhibit E at p. 86, l. 12-19; Exhibit O: Letter from VALIC, May 21, 2010.

Matie's will.<sup>42</sup> She used \$649 from the joint checking account to pay the surrogate court filing fees necessary to process the will.<sup>43</sup>

Kinn paid for Matie's funeral expenses using his funds from the joint checking account.<sup>44</sup> On June 6, 2010, Kinn submitted a request for burial expenses to the VA.<sup>45</sup> Kinn thereafter recorded this action in the DVA computer system used for documenting actions taken relating to veterans claims.<sup>46</sup>

On June 15, 2010, nearly \$180,000, the balance of the annuity account, was deposited into Kinn's bank account.<sup>47</sup> Also in June 2010, Kinn traded in the BMW for approximately \$20,000 towards the purchase of a new truck.<sup>48</sup>

Members of Matie's family, including his sister, a niece, and three nephews, contested the probate of the will. The family members believe that, absent the influence of Kinn, Matie would have left his estate to the Shriners Hospital for Children. This belief motivated their challenge.<sup>49</sup> On May 10, 2011, the parties settled the matter whereby the family withdrew their petition on the condition Kinn reimburse them for the \$25,000 they had expended in legal fees.<sup>50</sup>

Kinn sold Matie's personal belongings at a yard sale and online. His friends and family members discovered this by chance, and paid Kinn for some small items of personal value.<sup>51</sup>

In total, Kinn received over half a million dollars from Matie. Specifically, Kinn received \$138,569 from the sale of Matie's house, \$179,284 from the annuity, \$161,329 in bank accounts Matie held at First Niagara Bank, and \$15,761 in the joint checking account. Separately, Kinn received \$20,000 in trade-in value in exchange for the BMW; at least \$15,000 from previously spent funds from the Matie-funded joint checking account to pay her credit card bills, dental expenses, and household utility bills; and the proceeds of the sale of Matie's household and other personal belongings. Thus, at a minimum, Kinn received \$529,943 from Matie.

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<sup>42</sup> See Exhibit P: Petition for Probate.

<sup>43</sup> See Exhibit Q: Page from First Niagara bank record ending 433.

<sup>44</sup> See Exhibit E at p. 105, l. 20-25.

<sup>45</sup> The executor of a veteran's estate is eligible to file a claim for and receive this benefit. See Exhibit E at p. 106, l. 8 – p. 110, l. 10; Exhibit R: Application for Burial Benefits.

<sup>46</sup> See Exhibit E at p. 109, l. 2 – 25.

<sup>47</sup> See Exhibit S: Page from Kinn bank record.

<sup>48</sup> See Exhibit E at p. 93, l. 20-21; Exhibit T: bill of sale.

<sup>49</sup> Interviews of Linda Monin, Mike Nagurney, and Terry Matie.

<sup>50</sup> *Id.*; Exhibit U: Settlement.

<sup>51</sup> *Id.*

G. Kinn's Notice of Ethical Standards

In addition to notices provided to her upon her employment with the DVA in 2000, Kinn completed trainings and had discussions with DVA supervisors which alerted her to the impropriety of accepting gifts from a DVA client and conflicts of interest to be avoided.

Upon her appointment, Kinn was required to complete a form attesting to the following:

From the date of my appointment as an employee of the Divisions of Veteran's Affairs, I (HAVE/HAVE NOT) been designated, assigned, or acted as a legal guardian, committee or fiduciary of any incompetent veteran, former member of the Armed Forces or other person whom I have come in contact in the exercise of functions or responsibilities as an employee of the NYS Division of Veterans Affairs.

I (HAVE/HAVE NOT) been designated, assigned or acted as executor, administrator, executrix or administratrix of any will, estate or trust fund of a veteran, his widow, a former member of the Armed Forces or his widow, the children of the same or other person with whom I have come in contact in the exercise of the functions and responsibilities as an employee of the NYS Division of Veterans' Affairs during the period of my employment with the NYS Division of Veterans'

As to both attestations, Kinn circled "HAVE NOT."<sup>52</sup> While an accurate attestation, at the outset of her employment at DVA, Kinn was on notice of the potential impropriety of taking on any of the above-stated roles on behalf of those whom DVA employees served.

On November 5, 2015, in the presence of her attorney, Kinn was interviewed by Commission staff. During this interview, Kinn acknowledged having completed ethics training mandated by the State, though she did not recall when.<sup>53</sup> In addition, upon commencing her employment on August 16, 2001, Kinn attested to the following statement: "I hereby acknowledge receipt of a copy of Public Officers Law sections 73 through 78, have read the same and agree to conform to the provisions thereof."<sup>54</sup>

In May 2005, while Matie's application for individual unemployability was pending, Kinn's supervisors at the DVA were alerted by a VA hospital employee that Kinn was listed in VA hospital records as Matie's next of kin. On May 16, 2005, Kinn's DVA supervisors met with Kinn to determine the extent of her relationship with Matie. Kinn was defensive and argumentative and told her supervisors that "it is none of the Division's business."<sup>55</sup> At this meeting, Kinn informed her supervisors that she became Matie's health care proxy and was appointed his power of attorney in 2003, but that these designations were removed in April 2005.

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<sup>52</sup> Exhibit V: DVA form dated August 16, 2001.

<sup>53</sup> Exhibit E at p. 43, l. 23 – p. 44, l. 4.

<sup>54</sup> Exhibit W: Oath of Office form dated August 16, 2001.

<sup>55</sup> See Exhibit X: Email regarding meeting on May 16, 2005; Interview of Gerald Grace, December 7, 2015.

Notably, a letter provided to Kinn by Matie's attorney indicated that Kinn served as Matie's health care proxy and power of attorney from on or about September 2, 2004 through December 29, 2004.<sup>56</sup> Kinn's supervisors explained to her that the designations created the appearance of a conflict of interest.<sup>57</sup>

#### H. Kinn's Credibility

Over the course of the investigation of this matter, Kinn misrepresented the nature, timing, and extent of the gifts provided to her by Matie, all of which the Commission finds troubling. For instance, Kinn denied knowing that she was the beneficiary of the annuity product Matie purchased;<sup>58</sup> however, the financial advisor who sold Matie the annuity attested that Kinn was both aware and present at the time that Matie named Kinn as the beneficiary.<sup>59</sup> In fact, Kinn was an existing client of the financial advisor and requested that the financial advisor also assist with Matie's finances.<sup>60</sup> Kinn acknowledged calling the financial advisor two days after Matie had died, and claimed it was during this call that she first learned she was the beneficiary of the annuity.<sup>61</sup>

Kinn also minimized her use of Matie's money from the joint bank account during Matie's lifetime. When initially questioned by the IG investigators Kinn claimed that she only used the account to pay Matie's bills.<sup>62</sup> When questioned by Commission staff if she used the joint account to make payments on her personal credit card bill, Kinn initially stated "there was probably a payment on it."<sup>63</sup> In fact, bank and credit card account records demonstrate that she made twenty payments, totaling \$11,445.71, between April 2009 and April 2010, to pay her personal credit card bill. When confronted, Kinn stated that she "did not see it as a gift" and claimed that she used the money at Matie's direction.<sup>64</sup>

In her response to the 15-day letter, Kinn claimed that Matie allowed her to use his funds in the joint account to pay for her personal expenses, because "in his later years" she assisted him with household chores and Matie "would insist on squaring off." Though Kinn may have provided Matie some assistance managing his household, during the same period that Kinn used over \$11,000 of Matie's money to pay her own expenses Matie was also employing a housekeeper who assisted him with errands and drove him to appointments approximately three or more times per week. The housekeeper, employed by Matie at the recommendation of Kinn, noted that she would drive Matie to appointments, shop for him, and clean his home and that

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<sup>56</sup> See Exhibit W.

<sup>57</sup> See *id.*

<sup>58</sup> Exhibit E at p.85, l. 1-25.

<sup>59</sup> Interview of Julie Murphy, November 4, 2015.

<sup>60</sup> *Id.*

<sup>61</sup> Exhibit E at p. 86, l. 20 – p. 87, l. 1.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at p.73, l. 16-20.

<sup>64</sup> *Id.* at p.79, l. 5-29.

Kinn was not available for these tasks as she regularly worked during the days.<sup>65</sup> Thus, Kinn was not Matie’s primary source of daily assistance.

Similarly, when questioned by the IG investigators, Kinn initially claimed that she had not accepted any gifts from Matie prior to his death.<sup>66</sup> She acknowledged receiving a little over \$200,000 from Matie’s estate, but when asked specifically to note any other gifts she received from Matie, she did not inform the investigators about the \$180,000 she received from the annuity until she knew they were aware of it. When interviewed by Commission staff about the annuity and keeping it from the IG investigators, Kinn stated, “I don’t see the annuity as a gift, so no, I did not [tell them].”<sup>67</sup>

#### IV. VIOLATIONS OF THE PUBLIC OFFICERS LAW

##### A. Substantial Basis to Conclude Violation of Public Officers Law

The Commission finds that Kinn knowingly and intentionally financially benefited from her professional relationship with Charles Matie. Though Kinn may have had some personal connection to Matie prior to her employment with the DVA, her actions as his DVA representative cultivated Matie’s trust in her ability to handle his personal finances. By virtue of her state responsibilities, she gained access to his private financial affairs and ultimately was awarded an estate – the value of which increased as a result of her work as a DVA representative.

The core purpose of the Public Officers Law is to ensure that public officers act and use public resources in furtherance of the public interest. It is well recognized that a “public office is a public trust,”<sup>68</sup> and that “[p]ublic trust and confidence in elected and appointed public officials are fundamental and necessary conditions for a strong and stable democratic government.”<sup>69</sup> Further, “[f]avoritism and the potential for conflicts of interest, as well as the mere appearance of such, serve to weaken and erode the public’s trust and confidence in government.”<sup>70</sup> The public “[is] entitled to expect from their public servants a set of standards set above the morals of the market place.”<sup>71</sup>

Section 73 of the Public Officers Law sets forth the general rules regulating conduct by state officers and employees. Section 74 of the Public Officers Law provides minimum standards against which state officers and employees are expected to gauge their behavior and

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<sup>65</sup> Interview of Denise Rodler, November 4, 2015.

<sup>66</sup> See IG Report.

<sup>67</sup> Exhibit E at p. 114, l. 24 – p. 115, l. 2.

<sup>68</sup> *People v. Caban*, 258 A.D.2d 87, 88 (1st Dep’t 1999).

<sup>69</sup> Governor’s Program Bill Memorandum to the Ethics in Government Act (Bill Jacket, L 1987, ch. 813), at 5 (quoted in *Kelly v. New York State Ethics Comm’n*, 161 Misc. 2d 706, 713 (N.Y. Sup. Ct. 1994)).

<sup>70</sup> *Id.*

<sup>71</sup> Laws 1954, ch 696, §1.

provides standards of conduct which address actual as well as apparent conflicts of interest.<sup>72</sup> The Commission's investigation was for the purpose of determining whether there was a substantial basis to conclude that Kinn violated §§73(5)(a), 74(3)(d), 74(3)(f), or 74(3)(h). The applicable provisions are stated in relevant part below:

§73(5)(a). No state officer or employee shall, directly or indirectly: solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, 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. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

§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.

The Commission finds a substantial basis to conclude that Kinn violated Public Officers Law Sections §§73(5)(a) and 74(3)(d), (f), and (h). These findings are explained below.

**B. Public Officers Law §73(5)(a)**

Public Officers Law §73(5)(a) prohibits the acceptance of gifts by a state employee under circumstances in which it could reasonably be inferred that the gift was intended to influence her, or could reasonably be expected to influence her, in the performance of her official duties or was intended as a reward for any official action on her part.

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<sup>72</sup> New York State Commission on Public Integrity, Advisory Opinion No. 10-03.

Under the circumstances present here, Kinn's acceptance of the gifts was improper. Public Officers Law §73(5)(a) is designed to prevent the appearance of any improper influence in a state employee's official actions. In some instances, the appearance of improper influence or intent to reward may be abrogated by a showing that the gift was primarily motivated by a personal relationship. Given the timing of the gifts accepted by Kinn from Matie, the gifts appear to be a response to Kinn's official actions, rather than primarily motivated by a personal relationship.

Indeed, Matie's confidence in and reliance on Kinn was largely influenced by the aptitude she exhibited in assisting him in her DVA role. The attorney who drafted both Matie's 2005 and 2008 wills noted that Matie was "impressed by the way [Kinn] went to bat for veterans." Employees from the DVA and Kinn herself acknowledge that many veterans, who have no personal relationship with their DVA counselor, express gratitude for the work of their DVA counselor by offering the counselor gifts ranging from coffee shop gift cards to large sums of money.<sup>73</sup> However, these employees also note that acceptance of valuable gifts would be impermissible under these circumstances and violate the Public Officers Law. Matie's motivations are not sufficiently distinguished from these scenarios. Like these scenarios, gratitude and a desire to reward Kinn for her actions appear to be substantial motivating factors in Matie's bequests to Kinn.

Neither the passage of time between Kinn's official actions on Matie's behalf and her ultimate receipt of his estate, nor Matie's withdrawal of the DVA's power of attorney, alter the Commission's determination that accepting the gifts was improper. Based on the evidence gathered, it is reasonable to infer that all the gifts were primarily motivated by the official actions Kinn took on Matie's behalf, regardless of when the gifts were accepted. Thus, in the Commission's determination, Kinn's acceptance of gifts from Matie, during his lifetime and upon his death, violated Public Officers Law §73(5)(a).

C. Public Officers Law §74(3)(d), (f), and (h)

The provisions of Public Officers Law §74 are similarly implicated by Kinn's receipt of gifts from Matie. Public Officers Law §74 is concerned with both actual and apparent conflicts of interest. The provisions of §74(3) provide minimum standards against which state officers and employees are expected to gauge their behavior, addressing the conflict between an employee's obligations for the State and his or her private, often personal, financial interests.

Kinn used her official position to secure unwarranted privileges for herself, specifically the financial benefits she accepted from Matie. Kinn's acceptance of gifts from Matie provides a reasonable basis for the impression that she could be improperly influenced or would bestow undue favor in the performance of her official duties. Lastly, her acceptance of gifts from Matie gives rise to a suspicion that she is likely to engage in acts that are in violation of the trust placed in her as a public servant.

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<sup>73</sup> Interviews of George Basher, September 11, 2015, and Gerald Grace, December 7, 2015.

## **V. CONCLUSION**

Based upon evidence established by the Commission's investigation, there is a substantial basis to conclude that Kinn accepted impermissible gifts and that she pursued a course of conduct that was in violation of the public trust, that she utilized her state position to secure unwarranted benefits, and that there exists a reasonable basis for the impression that one could unduly enjoy her favor in the performance of her official duties. There is therefore a substantial basis to conclude that Kinn violated Public Officers Law §§73(5)(a) and 74(3)(d), (f), and (h) through knowing and intentional conduct.

Dated: February 24, 2016

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS

Approved: Daniel J. Horwitz  
Chair

David Arroyo  
Hon. Joseph Covello  
Marvin E. Jacob  
Seymour Knox, IV  
Hon. Eileen Koretz  
Gary J. Lavine  
David A. Renzi  
Michael A. Romeo, Sr.  
Hon. Renee R. Roth  
Michael K. Rozen  
Dawn L. Smalls  
George H. Weissman

Absent: Hon. Mary Lou Rath  
Members