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EXECUTIVE DIRECTOR

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

540 BROADWAY
ALBANY, NEW YORK 12207
www.jcope.ny.gov

PHONE: (518) 408-3976
FAX: (518) 408-3975

October 8, 2014

Tracy R. Kinn



Re: JCOPE 14-089

Dear Ms. Kinn:

The New York State Joint Commission on Public Ethics (“Commission”) has received allegations against you of potential violations of Public Officers Law §§73 and 74.

Executive Law §94(13)(a) requires that the Commission notify you of these allegations and provide you with a fifteen-day period in which to submit a written response setting forth information relating to the activities cited as possible violations of law. This letter does not serve to commence a full investigation. The statute provides that the Commission must vote before a full investigation can be commenced to determine whether a substantial basis exists to conclude that a violation of law has occurred. Accordingly, you, or an attorney on your behalf, have until October 23, 2014 to submit a written response to these allegations. Although any response submitted will be reviewed by the Commission, please be advised that the Commission is not precluded from voting to commence an investigation in advance of receiving your written response.

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.

Public Officers Law §73(5)(a) states in pertinent part:

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.

Please be advised that any individual who knowingly and intentionally violates Public Officers Law §73(5)(a) may be subject to a civil penalty in an amount not to exceed \$40,000 for each violation and the value of any gift, compensation or benefit received in connection with such violation.

Public Officers Law §§74(3)(d), (f), and (h) set forth specific standards to avoid conflicts of interest and provide in pertinent part:

(d) No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

(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.

(h) An officer or employee of a state agency, member of the legislature or legislative employee 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.

Please be advised that any individual determined to have knowingly and intentionally violated the provisions of Public Officers Law §74(3)(d) may be subject to a civil penalty in an amount not to exceed \$10,000.00 and the value of any gift, compensation or benefit received as a result.

Please be further advised that any individual determined to have knowingly and intentionally violated the provisions of Public Officers Law §§74(3)(f) and (h) may not be

subject to a civil penalty, but may be subject to a fine, suspension or removal from office or employment in the manner provided by law, in addition to any penalty contained in any other provision of law.

The statute and pertinent regulations and rules of the Commission regarding the conduct of adjudicatory proceedings, appeals and due process procedural mechanisms available are set forth and are available on the Commission's website at www.jcope.ny.gov.

If you have any questions about this matter, please contact the Commission at (518) 408-3976.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Pei Pei Cheng-de Castro', written in a cursive style.

Pei Pei Cheng-de Castro
Director of Investigations and Enforcement