SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CHRISTOPHER SILVA,	**SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-590-24T2**
Petitioner,	**CIVIL ACTION**
v.	
LOCAL FINANCE BOARD,	**ON APPEAL FROM: FINAL AGENCY DECISION OF THE LFB, OAL DOCKET NO. CFB 09222-22 AND AGENCY REF. NO. C19-013**
Respondent.	

BRIEF OF PETITIONER CHRISTOPHER SILVA

Date Submitted: 3/17/25

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PRELIMINARY STATEMENT

Petitioner Christopher Silva appeals a final agency decision of the Local Finance Board (LFB) finding that he violated the Local Government Ethics Law (LGEL), but excusing the violation based on advice of counsel. In an opaque executive session, the LFB modified the decision of the administrative law judge (ALJ) in that the ALJ found no violation of the law in the first place. Petitioner asks this court to conclude the ALJ was right, and the LFB was wrong. The conduct in this case does not meet the plain statutory language, nor is a finding of violation consistent with interpretive caselaw.

Petitioner was on the governing body of Mullica Township. His son-in-law was a police captain in the same municipality. According to the LFB, Petitioner's vote on matters relating to the police department constituted a violation of the ethics law. The allegedly offending articles of legislation included, for example, resolutions appointing special class II and III officers, and settling a disciplinary matter against another police officer on the recommendation of a hearing officer. None of this had any logical or factual connection to Petitioner's son-in-law. Petitioner scrupulously recused himself any time legislation arose that would have conferred any benefit, financial or otherwise, on his son-in-law. This was an undisputed fact found by the ALJ, which the LFB rejected for no reason at all. The LFB's position amounts to a *per se* disqualification on voting any time legislation

concerns the department in which the elected municipal official's relative is employed. That is not what the statutory language forbids, and the position is contrary to binding caselaw. The existence of a familial relationship, standing alone, is insufficient to find a disqualifying conflict. For these reasons, and as expressed in greater detail within, Petitioner respectfully asks this court to reinstate the ALJ's opinion, and reject that of the LFB.

PROCEDURAL HISTORY[2]

In April 2019, the LFB received an anonymous complaint about Petitioner. (Pa186-187).

In March 2022, the LFB notified Petitioner of the investigation. (Pa121-123). In April 2022, Petitioner filed a response. (Pa125-130).

In August 2022, the LFB in a secret executive session issued a notice of violation to Petitioner. (Pa154-156).

In September 2022, Petitioner requested an administrative hearing. (Pa185).

In July 2024, the ALJ issued an initial decision granting Petitioner's motion for summary decision, and denying the LFB's cross-motion for summary disposition. (Pa51-64).

In August 2024, the LFB filed exceptions to the ALJ's initial decision, and Petitioner responded. (Pa33-50, Pa22-32).

In October 2024, the LFB, in another secret executive session, issued its final agency decision. (Pa1-19).

Petitioner filed a timely appeal. (Pa188-190).

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Pa# refers to Petitioner's appellate appendix and page number.
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STATEMENT OF FACTS

A. Background information

Petitioner was a committee member in the Township of Mullica, and, at the time of the within allegations, the Mayor of that municipality. (Pa85¶2). Petitioner's son-in-law, Brian Zeck ("Zeck"), was at that time employed as a Captain in the Township of Mullica Police Department. (Pa86¶4). Zeck does not live in Petitioner's household. (Pa86¶5).

Cognizant of the potential conflict, one of the first things Petitioner did upon assuming office was to request a legal opinion from the municipal solicitor about his ethical obligations. (Pa86¶4). The solicitor initially advised Petitioner that he could vote on matters relating to the municipal police department, so long as they did not inure to the financial or personal benefit of Zeck. (Pa86¶5). After reviewing a case from the LFB, the solicitor advised Petitioner to refrain from voting on anything relating to the municipal police department. (Pa86¶5). A short while later, after reviewing another LFB case that dealt with this same circumstance, the solicitor changed her opinion again. (Pa86¶5). In the solicitor's opinion, Petitioner was permitted to vote on matters relating to the municipal police department, so long as they did not inure to the financial or personal benefit of Zeck. (Pa86¶5). The solicitor put her opinion on the record at a Township Committee meeting in October 2018. (Pa86¶5, Pa130). Petitioner adhered to the

solicitor's advice, and never voted on any legislation that would have conferred any benefit on Zeck, financial or otherwise. (Pa86¶5).

B. The notice of investigation

In March 2022, Petitioner received a notice of investigation (NOI) from the LFB. (Pa121-123, Pa86¶6). The NOI advised Petitioner that an anonymous complaint had been filed against him, alleging that he violated two provisions of the Local Government Ethics Law. (Pa121-123). The complaint alleged that Petitioner had voted on ten articles of legislation "involving the Mullica Township Police Department" when Zeck was employed there. (Pa121-123). Petitioner responded to the NOI, and addressed each article of legislation that allegedly constituted a conflict:

- Ordinance #10-2018. This ordinance formally adopted police rules and regulations. (Pa91-100). It was discovered during unrelated litigation that the Township had never formally adopted such rules, even though they had been drafted "many years earlier" by the then-Police Chief and signed off on by the then-Mayor (not Petitioner). Petitioner's vote was the ministerial ratification of these rules, which in no way benefitted Zeck. (Pa87¶6a, Pa127).

- Resolution #29-2019. This resolution appointed special class II Officer Ross Restuccio, III, at the recommendation of the Police Chief. (Pa102, Pa127). This had nothing to do with Zeck. (Pa127, Pa87¶6b).

- Resolution #30-2019. This resolution appointed special class II Officer Travis Hoffman, at the recommendation of the Police Chief. (Pa104, Pa127). This had nothing to do Zeck. (Pa127, Pa87¶6c).

- Resolution #31-2019. This resolution amended the personnel policy manual for special class II officers. (Pa106). Zeck was not affected by this, since he

was a superior officer (Captain), not a special class II officer. (Pa127, Pa87¶6d). Furthermore, this resolution was eventually withdrawn. (Pa127, Pa87¶6d).

- Ordinance #2-2019. This ordinance fixed the salaries and wages of certain Township employees. Petitioner did, in fact, abstain when it came to Zeck. (Pa127). He did vote on the remaining officers and employees. (Pa127).

- Resolution #49-2019. This resolution approved the appointment of a class III school resource officer, Richard Fetske, at the recommendation of the Police Chief. (Pa108, Pa127). This had nothing to do with Zeck. (Pa127, Pa87¶6e).

- Resolution #50-2019. This resolution approved the appointment of a class III school resources officer, Anthony Trivelli, at the recommendation of the Police Chief. (Pa110, Pa127). This had nothing to do with Zeck. (Pa127, Pa87¶6f).

- Resolution #51-2019. This resolution approved the reappointment of special class II Officer Travis Hoffman, at the recommendation of the Police Chief. (Pa112). This had nothing to do with Zeck. (Pa127, Pa87¶6g).

- Resolution #52-2019. This resolution approved the reappointment of special class II Officer Ross Restuccio, III, at the recommendation of the Police Chief. (Pa114, Pa127). This had nothing to do with Zeck. (Pa127, Pa87¶6h).

- Resolution #143-2018. This resolution approved the settlement of a disciplinary matter against Officer Paul Sarraf on the recommendation of a hearing officer and the Chief of Police. (Pa116, Pa127). It had nothing to do with Zeck. (Pa127, Pa87¶6i).

As part of Petitioner's response to the NOI, he included a letter from the then-municipal solicitor who had advised Petitioner that he could, consistent his ethical obligations, vote on matters relating to the police department so long as they did not inure to the benefit of Zeck. (Pa132-133). Petitioner also advised the LFB that

the complainant was trying to use the LGEL to punish Petitioner for having considered shared services which may have cost the complainant's employment. (Pa125).

C. The LFB hearing and notice of violation

In August 2022, the LFB held a meeting at which it voted to find Petitioner had violated the LGEL. (Pa143@9:23-10:2). There is no record of factual findings or legal conclusions that explain why the LFB came to this conclusion. All decisions were made in executive session and Petitioner and his attorney were excluded from same. (Pa118¶6). The LFB imposed a $900 fine but waived it based on an advice-of-counsel defense. (Pa144@10:2-3). Several weeks later, Petitioner received the notice of violation (NOV) based on the LFB's vote. (Pa154-156). Of the above ten articles of legislation Petitioner voted on, the LFB concluded that nine[3] constituted a violation of the LGEL, N.J.S.A. 40A:9-22.5(d). (Pa156-157). The NOV states that Petitioner

> voted on nine pieces of legislation involving the Mullica Township Police Department while his son-in-law, Brian Zeck, was employed as Captain in the Police Department, which constitute actions in his official capacity in matters where Christopher Silva had a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment[.]

[3] The LFB apparently concluded that there was no conflict relating to Ordinance #2-2019, which fixed the salaries and wages of certain Township employees (excluding Zeck). (Pa127).

[(Pa156).]

The LFB assessed a fine of $100 for each such alleged violation, for a total of $900, but waived the fine because Petitioner "reasonably relied on the advice of the municipal attorney[.]" (Pa156).

In September 2022, Petitioner requested an administrative hearing to appeal the NOV. (Pa185). Thereafter, the matter was transferred to the Office of Administrative Law (OAL) as a contested matter. (Pa182-183).

D. The OAL matter

In June 2023, Petitioner filed a motion for summary disposition. (Pa82-181). In July 2023, the LFB filed a cross-motion for summary disposition. (Pa65-81). A review of the statement of material facts and response reveals the parties' agreement that there was no dispute of fact. (Pa83-84, Pa66-67).

In July 2024, Administrative Law Judge Carl Buck, III, issued an initial decision and order. (Pa 51-64). ALJ Buck found thirteen undisputed material facts, one of which was: "During his time on committee, Petitioner did not vote on anything that conferred any benefit on Zeck, financial or otherwise." (Pa54¶12). That found fact was supported by a citation to the record and there was no evidence to the contrary. (Pa86¶5, Pa88¶7). ALJ Buck concluded the LFB had failed to establish that Petitioner's conduct in voting for the subject articles of legislation implicated any direct or indirect personal or financial involvement that

might reasonably have impaired Petitioner's objectivity or independence of judgment. (Pa62). ALJ Buck thus granted Petitioner's motion for summary disposition, denied the LFB's cross-motion, and ordered that the NOV be dismissed. (Pa62).

~~D.~~E. LFB's appeal to the full Board and the final agency decision

In August 2024, the LFB filed exceptions to the initial decision with the full Board. (Pa33-50). Petitioner filed a response. (Pa22-32). On October 9, 2024, the LFB conducted another secret executive session wherein Petitioner and his attorney were denied the opportunity to present their position. (T6:1-7:3). As before, there was no record of any sort, just a vote, and Petitioner's counsel was denied the opportunity to participate despite having requested to do so. (T6:1-7:3, Pa20-21). The LFB stated:

> At this time, the Board is being asked to modify the OAL initial decision as outlined in the final agency decision. This includes modifying the facts and legal conclusions but upholding the finding that the excused did not violate the Local Government Ethics Law because he recently relied on the advice of counsel.
>
> [(T6:2-10).]

It was not clear who was "asking" the LFB to make such modifications. The motion was approved. (T6:13-7:3).

On October 16, 2024, the LFB issued its final decision. It made three modifications to the ALJ's factual findings, most notably, eliminating the finding

that "During his time on committee, petitioner did not vote on anything that conferred any benefit on Zeck, financial or otherwise." (Pa7). The LFB also modified the legal conclusion by determining that Petitioner's vote on nine articles did constitute a violation of the LGEL. (Pa9-19). The LFB excused the violations based on an advice-of-counsel defense. (Pa19). Petitioner appealed. (Pa188-190).

LEGAL ARGUMENT

I: STANDARD OF REVIEW. (Not Raised Below).

A reviewing court will reverse an agency's determination if it is arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole. Kadonsky v. Lee, 452 N.J. Super. 198, 202 (App. Div. 2017). Deference is given to factual findings, but courts "owe no deference to [an agency's] legal conclusions, particularly when that interpretation is inaccurate or contrary to legislative objectives." Moran v. Bd. of Trustees, Police and Firemen's Retirement Sys., 438 N.J. Super. 346, 354 (App. Div. 2014).

The LFB's decision to eliminate the ALJ's factual finding that Petitioner did not vote on anything that conferred a benefit on Zeck is the definition of an arbitrary and capricious action. It lacks *any* support in the record. That Zeck never benefitted in any way from any of the subject votes was an undisputed material fact. (Pa54¶12, Pa86¶5, Pa88¶7). The LFB never put forth any evidence to dispute this. The LFB simply didn't like the finding or the implication of such a

finding, so it decided to eliminate it. In addition, for reasons that follow, the LFB's resolution of the legal issue is plain error and enjoys no deference.

II: NEITHER THE PLAIN STATUTORY LANGUAGE NOR THE INTERPRETIVE CASELAW SUPPORTS THE CONCLUSION THAT PETITIONER VIOLATED THE LGEL. (Pa51-64, Pa1-19).

The statute at issue states: "No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." N.J.S.A. 40A:9-22.5(d). An "immediate family member" is defined as "the spouse or dependent child of a local government officer or employee residing in the same household." N.J.S.A. 40A:9-22.3(i).

It was undisputed that Zeck did not meet the definition of "immediate family member" because he is not the spouse or dependent child of Petitioner, and he does not reside in Petitioner's household. (Pa53¶¶3-4). Because the plain language of N.J.S.A. 40A:9-22.5(d) is not met, that should have been the end of the inquiry, just as it was in Horvath v. Local Fin. Bd., 2006 N.J. Super. Unpub. LEXIS 1079 (App. Div. May 11, 2006) (Pa157-162). Horvath – which the ALJ relied on – is largely indistinguishable from this case. In Horvath, the LFB found that a mayor had violated the identical statutory provision, N.J.S.A. 40A:9-22.5(d), by

nominating his brother-in-law as borough attorney, and appointing his emancipated adult daughter (who lived in a separate household) to various municipal boards. Id. at *1. The ALJ found no violation, since neither the brother-in-law nor the adult daughter fit within the statutory definition of "immediate family member," but the LFB reversed. Id. at *2-8. The Appellate Division ultimately reversed the LFB and reinstated the ALJ's decision, holding:

> N.J.S.A. 40A:9-22.5(d) relates to "members" of the official's "immediate family," and N.J.S.A. 40A:9-22.3(i) defines "member of immediate family" as "the spouse or dependent child of a local government officer or employee residing in the same household." Neither the brother-in-law nor an emancipated adult child living outside the official's home is a "member of his immediate family." The undisputed testimony is that she was married, living outside petitioner's home for eleven years, and was not a "dependent for tax purposes."
>
> [Id. at *10.]

The Horvath panel also observed that, even if the statute could be read to encompass circumstances involving people not strictly meeting the definition of immediate family member, "the Board's conclusory findings do not explain how such violation occurred in this case, and we find nothing in the record with respect to the nominations and appointments which can reasonably be understood to permit such a finding." Id. at *11.

Horvath is not the only case to so hold. In O'Hern v. Local Fin. Bd., 2018 N.J. Agen. LEXIS 250 (OAL April 23, 2018) – which the ALJ here also relied on

– the court ruled that the petitioner had not violated the identical provision of the LGEL by voting for salary ordinances that would affect his brother, who was employed by the same municipality. The judge there held:

> The Local Government Ethical Law (LGEL) at N.J.S.A. 40A:9-22.3(i) defines the term "member of immediate family" to include only "the spouse or dependent child of a local government official or employee residing in the same household." If the local government official's immediate family member has no direct or indirect financial or personal involvement, there is no conflict of interest under the statute as a matter of law . . . .
>
> I FIND that as a statute that can form the basis of monetary penalties, N.J.S.A. 40A:9-22.5(d) must be strictly construed, and the fact that [the petitioner's brother] does not meet the statutory definition of "member of immediate family," cannot be ignored in determining the "direct" or "indirect" pecuniary interest benefitting the elected official.
>
> [Id. at *17-18.]

As in Horvath and O'Hern, Zeck is not a member of Petitioner's "immediate family," hence there is no violation of the statute. And even if the statute could be read in a way that encompasses this sort of circumstance, there is – as in Horvath – nothing more than the LFB's "conclusory" assertion that a violation occurred here.

Every time the LFB attempts to explain how a violation occurred, it resorts to abject speculation and conjecture, which emphatically is *not* a basis upon which to find a disqualifying conflict. See Piscitelli v. City of Garfield Zoning Bd. of Adjustment, 237 N.J. 333, 353 (2019) ("Our conflict-of-interest rules . . . do not

apply to 'remote' or 'speculative' conflicts because local governments cannot operate efficiently if recusals occur based on ascribing to an official a conjured or imagined disqualifying interest."). For example, the final agency decision makes the following conclusions (in the bullet points below):

- "A reasonable person could see how working on a matter involving the individual's son-in-law could impair their objectivity, whether or not he lives in the home." (Pa15).

None of the cited articles of legislation "involved" Petitioner's son-in-law, and to conclude otherwise would require the LFB to manufacture evidence that does not exist. The appointment of special class II and III officers did not "involve" Zeck. Amendments to a personnel policy manual for special class II officers does not "involve" Zeck. Settling an unrelated disciplinary matter against another officer does not "involve" Zeck.

- "As Captain, [Petitioner's] son-in-law stood to benefit in a non-financial way. For example, [Petitioner] voted on Ordinance No. 10-2018 which amended the rules and regulations of the police department, including those impacting the Police Captain." (Pa16).

This does not grapple with the undisputed fact that the rules and regulations were drafted by the police chief many years earlier, and signed off on by the then-Mayor (not Petitioner). (Pa87‖6a, Pa127). In 2018, during unrelated litigation, it was discovered that those rules and regulations had never been formally adopted by the governing body. (Pa87‖6a). Petitioner's vote was ministerial, as he had no hand

whatsoever in drafting them.[4]

- "Additionally, [Petitioner] voted on Resolution No. 31-2019, which amended the personnel policy manual with regard to Class II Officers, but which was ultimately found to be invalid. Zeck could benefit by getting more lenient rules/policies or ones that he was in favor of. These ordinances could also benefit him in his supervision of officers. It is reasonable that the public could perceive that [Petitioner] voted on these matters not for the betterment of the Township, but because his son-in-law wanted those rules or other rules would benefit Zeck in some capacity." (Pa16).

This is the exact sort of "speculative" conflict described by Piscitelli that does not generate a conflict. Zeck is not a special class II officer. And the notion that Zeck had any input or influence whatsoever into the substance of the resolution, or that he could "benefit" from this in any way, is abject speculation untethered to anything in the record.

- "Similar reasoning can be applied concerning [Petitioner's] involvement in six resolutions which approval the appointment of Special Class II or Class III officers . . . as well as his involvement in the approved settlement of a disciplinary matter brought against another officer . . . . All of these individuals would be serving under Zeck, since he was Captain. Zeck stood to benefit from this as these individuals would have a daily impact on Zeck in the exercise of his duties as a municipal employee. . . . A reasonable person may wonder if [Petitioner] was acting for the interests of the Township or to better his son-in-law's standing with his subordinates." (Pa16).

This is the identical rampant speculation as before. No "reasonable person" would wonder whether Petitioner's vote to appoint special class officers recommended by

[4] The irony in the LFB's position is that, in the absence of adopted rules, it would have severely impeded any efforts to impose discipline on any police officer (Zeck included). (Pa87‖6a).

the Chief of Police, or to approve the settlement of a disciplinary matter against another officer upon the recommendation of a hearing officer, was secretly an effort to "better his son-in-law's standing with his subordinates." It is always possible to invent tenuous hypotheticals, but thankfully the law does not make that the governing standard. As Piscitelli correctly recognizes, municipalities – many of which are small, as here – cannot operate effectively if recusals occur based on ascribing an "imagined" disqualifying interest to an official. Piscitelli at 353. Every single one of the allegedly disqualifying interests posed by the LFB is imagined and speculative.

The LFB argues that Petitioner, rather than Zeck, has the "direct personal involvement," N.J.S.A. 40A:9-22.5(d) that constitutes the conflict. But this argument suffers from two flaws. First, Petitioner had and has no "direct personal involvement" in the municipal police force. He was the Mayor and he runs his own private business. His son-in-law works there. But that is *Zeck's* personal involvement, not Petitioner's, and Zeck is not an immediate family member. The LFB's contortions are nothing short of an effort to avoid the outcome in Horvath. It is clearly Zeck's familial connection to Petitioner that the LFB believes constitutes the conflict. But neither the statute, nor interpretive caselaw, makes the existence of a family relationship a *per se* disqualifier, which is the position the LFB advocates. N.J.S.A. 40A:9-22.5(d) nowhere states that the mere existence of

a familial relationship is a basis for disqualification, and caselaw supports that interpretation. In addressing the identical statutory provision, Shapiro v. Mertz, 368 N.J. Super. 46, 53 (App. Div. 2004) holds: "A familial relationship does not always create a per se conflict." It takes more.

> In the context of a familial relationship that may trigger a disqualifying interest, the pivotal issue is not the degree of relationship to the [elected official], but, rather, **the type of association the relative had with the interested organization and the amount of interest the relative had in the official's actions.**
>
> [Meyer v. MW Red Bank, LLC, 401 N.J. Super. 482, 492 (App. Div. 2008) (internal quotation marks omitted) (emphasis added).]

Petrick v. Planning Bd. of Jersey City, 287 N.J. Super. 325 (App. Div. 1996) shows the weakness of the LFB's position. In Petrick, a planning board member voted to approve the construction of a parking garage at the hospital where his wife sometimes worked. Id. at 328. Was this a disqualifying conflict? If the LFB hews to its present position, it would say yes; because the immediate family member stood to benefit from the building of the garage, the planning board member had a disqualifying conflict. But the Appellate Division said no. "[T]here is no evidence in this record to even suggest that [the wife's] employment status with [the hospital] was or would be enhanced by the passage of the parking garage resolution. . . . The relationship of [the wife] with [the hospital] is too remote and attenuated to disqualify [the planning board member] from voting[.]" Id. at 332.

In Petrick, the actual and tangible benefit of easier parking was too remote of a disqualifying interest. Here, the LFB can't even identify any actual and tangible benefit to Zeck in the first place. How does Zeck benefit from a disciplinary matter being resolved against another police officer upon the recommendation of a hearing officer? How does Zeck benefit from the appointment of special class II and III officers recommended by the chief? How does Zeck benefit from the adoption of a personnel policy manual for class II officers? These are all rhetorical questions. The LFB offers no evidence, only rampant speculation. And that is insufficient to establish a disqualifying conflict.

Local government cannot function if a disqualifying conflict can arise upon the flimsiest of bases. As our Supreme Court recognized long ago:

> Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion of some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion[.]
>
> [Van Itallie v. Franklin Lakes, 28 N.J. 258, 269 (1958).]

The LGEL does not prohibit an elected official from voting on an issue simply because a relative is employed by a department that may be affected. The implications of a ruling to the contrary, as Van Itallie cautions, would seriously impede municipal operations statewide.

III: EVEN IF THE STATUTE COULD BE READ TO ENCOMPASS CIRCUMSTANCES LIKE THIS, THE LFB STILL LACKS EVIDENCE NECESSARY FOR A DISQUALIFYING CONFLICT. (Pa58-62, Pa15).

Even if N.J.S.A. 40A:9-22.5(d) can be read the way the LFB prefers, there still would be no violation. Grabowsky v. Twp. of Montclair describes the four permutations of conflicts under this statute, including: direct pecuniary interests, indirect pecuniary interests, direct personal interests, and indirect personal interests. 221 N.J. 536, 553 (2015). Of these four, the LFB alleges that Petitioner falls into the "direct personal interest" category. (Pa15). According to Grabowsky, the "direct personal interest" permutation of N.J.S.A. 40A:9-22.5(d) is triggered "when an official votes on a matter that **benefits** a blood relative or close friend in a non-financial way, but in a matter of great public importance[.]" Id. at 553 (Emphasis added). There is no evidence to substantiate that Zeck benefitted in any way from any of the votes cast by Petitioner. ALJ Buck found that this was an undisputed material fact. (Pa54¶12). The LFB rejected this found fact (Pa7), not because there was a material dispute over it, but because it did not like the legal implication: there can be no "direct personal involvement" disqualification in the

absence of a non-financial benefit conferred on the relative. Grabowsky at 553.

The LFB cites and appears to acknowledge that Grabowsky is controlling law. (Pa15-16). But then the LFB pretends its laundry list of tenuous speculation is a "non-financial benefit" to Zeck, apparently forgetting that it is just tenuous speculation.

How does approving the appointment of various special class officers, or approving the settlement of a disciplinary matter against another officer, benefit Zeck? According to the LFB, because these individuals "would be serving under Zeck," he "stood to benefit" because they "would have a daily impact on Zeck in the exercise of his duties as a municipal employee." (Pa16). This is vacuous and meaningless. It does not establish any sort of benefit. It describes a chain-of-command as would exist in any governmental structure, whether police or otherwise.

How does amending a personnel policy manual for special class officers, which does not apply to superior officer Zeck, benefit Zeck? According to the LFB, because Zeck "could . . . get[] more lenient rules/policies or ones that he was in favor of. These ordinances could also benefit him in his supervision of officers." (Pa16). This is vacuous speculation.

There is no violation of the "direct personal involvement" permutation of N.J.S.A. 40A:9-22.5(d) without the conferral of a benefit. That is what the plain

language of Grabowsky says. The LFB's efforts to gin up a benefit are speculation.

IV: THE ADMINISTRATIVE PROCEEDINGS BELOW CONSTITUTE A DUE PROCESS VIOLATION. (Pa22, Pa20-21, Pa192).

Due process, even in the administrative context, requires notice and an opportunity to be heard. See, e.g., Matter of Young, 471 N.J. Super. 169, 182 (App. Div. 2022). The proceedings before the LFB lacked the second of these two rudiments.

An anonymous complaint was sent to the LFB in April 2019. (Pa186-187). While Petitioner was permitted to submit a response, that was the extent of permitted involvement. There was no hearing. No testimony was taken. No argument was made. Petitioner was not allowed to participate. There was a public vote at which the LFB voted to issue the NOV. (Pa143@9:23-10:22). But there was no transparency or explanation why the LFB voted the way it did. Nor did the NOV provide any insight when it was issued two weeks after the hearing. (Pa154-156). The NOV merely recites the allegations, and conclusorily states that they constitute a violation of the LGEL. No subject of an ethics investigation – or any investigation, for that matter – should be required to pursue an appeal to the OAL simply to learn how and why they received an adverse decision.

Petitioner was also denied the right to be heard before the full Board on appeal from the OAL. Petitioner asked for permission to participate, but was

denied. (Pa22, Pa20-21). Again, there was no transparency – just a vote that the LFB characterized as "being asked to modify" the ALJ's decision. (T6:1-7:3).

Petitioner, and anyone else similarly situated, has a right to be heard and participate *before* the LFB makes its determination. This distinguishes the present matter from Abraham v. Twp. of Teaneck Ethics Bd., 349 N.J. Super. 374 (App. Div. 2002). Abraham claimed he was denied due process based on the local ethics board's acceptance and review of a citizen complaint against him. Id. at 378. But he "was afforded a full opportunity to be heard with counsel in hearings that spanned fourteen days and involved seven witnesses and twenty exhibits" before the ethics issued its finding of a violation. Id. at 377-78, 380. No such procedure took place, nor was it even available, here. The LFB issued the notice of violation at the conclusion of a secret investigation, without sharing any information or explaining itself, and without giving Petitioner an opportunity to participate. Petitioner respectfully suggests that this is a due process violation.

CONCLUSION

For these reasons, Petitioner respectfully asks the court to affirm the dismissal of the NOV, but conclude that no violation of the LGEL occurred in the first instance.

Respectfully submitted,
GOLDENBERG, MACKLER, SAYEGH, MINTZ, PFEFFER, BONCHI & GILL,
Attorneys for Petitioner

BY: _____
ELLIOTT J. ALMANZA, ESQ.

DATED: March 17, 2025

CHRISTOPHER SILVA, Petitioner-Appellant, v. LOCAL FINANCE BOARD, Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-590-24T2 CIVIL ACTION ON APPEAL FROM: A Final Agency Decision of the Local Finance Board State of New Jersey Office of Administrative Law OAL Docket No. CFB 09222-22 Sat Below: Hon. Carl V. Buck III, A.L.J.

BRIEF ON BEHALF OF RESPONDENT LOCAL FINANCE BOARD

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Between October 2018 and February 2019, Appellant Christopher Silva was a Mullica Township Committeeman and served as the town's Mayor. (Pa2). Silva's son-in-law, Brian Zeck, was a police captain in Mullica. (Pa86). When Silva was first elected to the Mullica Township Committee ("Committee") in 2014, he requested advice from the municipal solicitor concerning his ethical obligations regarding Committee business involving the town's police department. (Pa86). The solicitor advised Silva that he could not vote on anything that could confer a benefit, either financially or personally, to Zeck. (Pa86; Pa130-133).

Between October 30, 2018 and February 26, 2019, the Committee adopted one ordinance and eight resolutions concerning the Mullica Township Police Department. (Pa90-116). Silva voted on each of these ordinances. (Pa86).

This legislation included measures which, among other things, adopted modifications to the suspension and removal process for police officers in the township (Pa99-100), modified the rules and regulations governing the police department (Pa100), and appointed Special Class II and Special Class III officers. (Pa101-104, Pa107-114).

[1] Because the Procedural History and Statement of Facts are closely intertwined, they are combined for the convenience of the court.

On April 17, 2019, the LFB received an anonymous complaint detailing allegations against Silva that he had violated subsections (c) and (d) of the Local Government Ethics Law ("LGEL"), or N.J.S.A. 40A:9-22.5(c), (d). (Pa186-187). The complainant alleged that Silva's actions resulted in benefits to Zeck when, among other things, he voted on legislation concerning the Mullica Township Police Department. (Pa187).

The Board initiated an investigation of the complaint on March 16, 2022. (Pa121-123). Silva submitted an April 5, 2022 letter to the LFB asserting that his actions did not constitute violations of the LGEL and further that if they did, no charges should be brought because he properly relied on the advice of counsel, citing In re Zisa, 385 N.J. Super. 188, 198 (App. Div. 2006). (Pa125-130).

Following the conclusion of its investigation, which included reviewing letters from municipal counsel who rendered advice to Silva prior to the underlying incidents (Pa128-129; 132-133), on August 10, 2022 the Board voted to issue a Notice of Violation finding that Silva violated N.J.S.A. 40A:9-22.5(d) but waiving the fine as it found that he had met the elements of In re Zisa necessary for him to rely on advice from counsel as a defense to his actions. (Pa143-144). Thereafter on August 24, 2022, the Board served Silva with the Notice of Violation charging him with nine violations of the Local Government

Ethics Law, N.J.S.A. 40A:9-22.5(d), with a waiver of the $900 fine. (Pa154-156).[2] The subsection (c) violations were dismissed in this notice. (Pa154). On September 12, 2022, Silva requested a hearing, and the matter was transferred to the Office of Administrative Law (OAL) on October 12, 2022. (Pa182-185).

On June 27, 2023, Silva filed a motion for summary decision, arguing that the LFB had not met its burden in establishing a violation of the LGEL. (Pa82-181). The Board responded on July 25, 2023 with its opposition to Silva's motion and a cross-motion for summary decision. (Pa65-81). Argument was heard on the motion and cross-motion and the record closed on April 18, 2024. (Pa52). Carl V. Buck, III, ALJ, issued an Initial Decision on the motion and cross-motion on July 18, 2024, recommending that ethics charges against Silva be dismissed. (Pa62-63).

Exceptions were filed by the Board on August 1, 2024. (Pa33-50). Silva filed a reply to the exceptions on August 5, 2024. (Pa22-32). On October 16, 2024, the Board entered its final agency decision affirming revocation of the Notice of Violation but modifying the Initial Decision's rationale that Silva's

[2] Though Silva was found to have met the elements of the Zisa defense, he was still found to have violated the LGEL as the defense is not absolute and only provides protection against the implementation of a fine. See In re Zisa, 385 N.J. Super. 188, 197 ("[T]he advice of counsel is not an absolute defense to a charge of having violated the Local Government Ethics Law.").

actions could not constitute violations of N.J.S.A. 40A:22.5(d) and instead determining that Silva had demonstrated he relied on the advice of counsel. (Pa1-19).[3] On October 29, 2024, Silva filed the present appeal. (Pa188-190).

ARGUMENT

POINT I

SILVA LACKS STANDING TO BRING THIS APPEAL BECAUSE HE PREVAILED BELOW AND ALL ETHICS CHARGES HAVE BEEN REVOKED

This appeal should be dismissed because Silva lacks standing as he prevailed before the Local Finance Board and so was not aggrieved by its final agency decision. Standing is a threshold issue which involves a determination of the court's power to hear a case. N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 410 (App. Div. 1997) (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 417 (1991)). "[A]ppeals may be taken to the Appellate Division as of right . . . to review final decisions or actions of any state administrative agency[.]" Rule 2:2-3(a)(2). Generally, final decisions of

[3] Silva contends, without basis, that the Board "conducted another secret executive session wherein Petitioner and his attorney were denied the opportunity to present their position." (Appellant Brief ("App. Br.") at 9). There is no contention that the Board's actions were in any way inconsistent with the Open Public Meeting Act, N.J.S.A. 10:4-6 through -21, or any other relevant statute or regulation, and Silva's reference to the transcript of the Board's October 9, 2024 public meeting is outside the records listed in the Statement of Items Comprising the Record. (Transaction ID E1673346-01072025).

the Board may be appealed in the same manner as any other final agency decision. Mondsini v. Local Fin. Bd., 458 N.J. Super. 290 (App. Div. 2019).

It is the policy of New Jersey courts that litigation shall be confined "to those situations where the litigant's concerns with the subject matter evidence a sufficient stake and real adverseness." Crescent Park Tenants Assoc. v. Realty Equities Corp., 58 N.J. 98, 107 (1971). Courts will generally refrain from rendering advisory opinions or functioning in the abstract and will decide only concrete contested issues conclusively affecting adversary parties in interest. N.J. Tpk. Auth. v. Parson, 3 N.J. 235, 240 (1949).

However, on appeal, only an aggrieved party has standing to challenge an agency or lower court's decision. Howard Sav. Inst. Of Newark v. Peep, 34 N.J. 494, 499, (1961). "[S]tanding to seek judicial review of an administrative agency's final action or decision is available to the direct parties to that administrative action as well as any[]one who is affected or aggrieved in fact by that decision." N.J. Election Law Enf't Comm'n v. DiVincenzo, 451 N.J. Super. 554, 563-64 (App. Div. 2017) (quoting In re Camden Cty., 170 N.J. 439, 446 (2002)). To qualify as an aggrieved party, the appellant "must have a personal or pecuniary interest or property right adversely affected by the judgment in question." Id.; State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015); Popow v. Wink Assocs., 269 N.J. Super. 518, 528 (App. Div. 1993) ("[A] litigant may

not appeal from a judgment or so much of a judgment which is in that party's favor."). The ability of the courts to review the decisions of administrative agencies is conditioned "by the requirement that there be some interest to be protected beyond a mere abstraction." Elizabeth Federal Sav. & Loan Assoc. v. Howell, 24 N.J. 488, 499 (1957).

This longstanding principle is fundamental to the very nature and purpose of the appeals process:

> The very object of the appeal is to redress an injury. If there be no injury to redress, there can be no appeal; the object of the appeal cannot be attained; it cannot be what it is intended – a redress for an injury.
>
> [Green v. Blackwell, 32 N.J. Eq. 768, 770 (1880) (internal citation omitted).]

Appeals are taken from judgments and may not be taken from opinions. Price v. Hudson Heights Dev., LLC, 417 N.J. Super. 462, 467 (App. Div. 2011). "It is only what a court adjudicates, not what it says in an opinion, that has any direct legal effect." Suburban Dep't Stores v. East Orange, 47 N.J. Super. 472, 479 (App. Div. 1957). "Correspondingly, because an appeal questions the propriety of *action* below, the rationale underlying the action is not independently appealable." Price, 417 N.J. Super. at 467. A party "who obtains the judgment sought, may not be heard to complain on appeal about the reasons or rationales cited for the action." Ibid.

Silva achieved a completely favorable outcome; the Notice of Violation issued by the Board was revoked. (Pa19). While Silva may not like the Board's reasoning, the rationale of a decision cannot be independently appealed. Rather, the only appealable element would be the wholly favorable judgment entered in Silva's favor, and he cannot appeal that as he is not aggrieved by it.

Nor can Silva complain that he was aggrieved by the Board's reliance on the Zisa (reliance on advice of counsel) defense when he made this argument himself before the Board. See In re Zisa, 385 N.J. Super. 188 (App. Div. 2006); (Pa86; Pa126). In defending a notice of violation of the LGEL, a local government official may rely on advice from counsel regarding ethics as long as four prerequisites are met: 1) the approval or advice was received prior to the action being taken; 2) the individual who offered the advice or approval relied upon possessed authority or responsibility with regards to ethical issues; 3) the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances; and 4) the individual complied with the advice received, including any restrictions it might contain. See In re Zisa, 385 N.J. Super. at 198.

Silva contended that the violations should be dismissed when he, through his counsel by letter dated April 5, 2022, and by his own certification, raised the Zisa reliance-on-counsel defense as a means of challenging the Notice of

Violation. (Pa86; Pa128). He cannot now claim to be aggrieved by getting exactly what he wanted.

Nor can he claim entitlement to proceed with this litigation to address potential future Board investigations involving similar future conduct should Silva continue to partake in actions criticized in the Board's decision. This sort of hypothetical harm is, at most, speculative and would require a new complaint against Silva based on as-yet-unknown facts and a new notice of violation from the Board based on those facts. Besides being speculative and hypothetical, this would create a separate case and controversy entirely different from the matter currently before the court. When a party loses the basis for its alleged entitlement to a right by the nature of the lawsuit's developments, "the perceived need to test the validity of the underlying claim of right in anticipation of future situations is, by itself, no reason to continue the process." State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016). Silva's suit has concluded in his favor, no challenged right remains, and it would be both a waste of judicial resources and antithetical to our courts' understanding of the concept of standing to consider the substance of this appeal.

As such, this appeal is inappropriate and should be dismissed pursuant to New Jersey Court Rule 2:8-2.

POINT II

THE BOARD'S DETERMINATION THAT VIOLATIONS OF N.J.S.A. 40A:9-22.5(d) OCCURRED IS SUPPORTED BY EXISTING CASE LAW AND ADMINISTRATIVE PRECEDENTS

If the court determines that Silva has standing to appeal the Board's Final Administrative Decision, the Board's decision should nonetheless be affirmed as its factual and legal conclusions were sound and reasonable. The Board did not arrive at its conclusions in an arbitrary and capricious manner.

The scope of judicial review of agency decision is limited. In re Herrmann, 192 N.J. 19, 27 (2007) (citing In re Carter, 191 N.J. 474, 482 (2007)). The agency's decision must be sustained unless there is a clear showing that its decision was arbitrary, capricious, unreasonable, or that it lacks fair support in the record. Herrmann, 192 N.J. at 28-29. Where this is not the case, the court owes substantial deference to the agency's expertise and superior knowledge of a particular field. In re License Issued to Zahl, 186 N.J. 341, 353 (2006). This deference applies even if the court would have reached a different result in the first instance. In re Taylor, 158 N.J. 644, 657 (1999).

The LGEL is intended to "make ethical standards in state and local government clear, consistent, uniform in their application, and enforceable on a statewide basis. [It] 'demands that an officeholder discharge duties with

undivided loyalty.'" Mondsini, 458 N.J. Super. at 298 (quoting Macdougall v. Weichert, 144 N.J. 380, 401 (1996)). To that end, N.J.S.A. 40A:9-22.5(d) provides that a local government officer shall not "act in his official capacity in any manner where he, a member of his immediate family or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment."

The purpose of subsection (d) is to "further the Legislature's expressed intent that '[w]henever the public perceives a conflict between the private interests and the public duties of a government officer,' 'the public's confidence in the integrity' of that officer is 'imperiled.'" Piscitelli v. City of Garfield Zoning Bd. of Adj., 237 N.J. 333, 351 (2019) (citation omitted). Subsection (d) is therefore "not confined to instances of possible material gain[,] but . . . extends to any situation in which the personal interest of [the public official] in the 'matter' before it, direct or indirect, may have the capacity to exert an influence on his action in the matter." Randolph v. City of Brigantine Planning Bd., 405 N.J. Super. 215, 225 (App. Div. 2009) (internal quotation marks and citation omitted). Furthermore, even perceived unethical conduct, without proof of actual conflict of interest, can seriously damage the public trust and confidence. See N.J.S.A. 40A:9-22.2; Shapiro v. Mertz, 368 N.J. Super. 46, 51 (App. Div. 2004). Put another way, subsection (d) is a "prophylactic," McNamara

v. Borough of Saddle River, 64 N.J. Super. 426, 429 (App. Div. 1960), concerned with "whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty," Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958). See also Mondsini, 458 N.J. Super. at 300 (noting subsection (d) is "[u]undoubtedly" concerned with the "importance of public perception" of a potential conflict by a local government official).

A conflict of interest arises for a public official where "the public official has an interest not shared in common with the other members of the public." Haggerty v. Red Bank Borough Zoning Bd. of Adjustment, 385 N.J. Super. 501, 512 (App. Div. 2006). Though not every interaction with a non-immediate family member arises to the level of a violation of subsection (d), the LGEL nonetheless contemplates instances where an official's act "under circumstances in which personal involvement with a nominee or appointee, . . . 'might reasonably be expected to impair his objectivity or independence of judgment' by conduct totally unrelated to an 'immediate family member' or 'a business organization in which he has an interest.'" Horvarth v. Local Fin. Bd., 2006 N.J. Super. Unpub. LEXIS 1079 at *10 (quoting Zisa, 385 N.J. Super. at 196).[4]

[4] Although cited by the ALJ in the Initial Decision, (Pa60), Horvath is unpublished and, therefore, nonbinding pursuant to Rule 1:36-3 and is included

Indeed it is well understood that a local government official violates N.J.S.A. 40A:9-22.5(d) when voting on a matter that "benefits a blood relative or a close friend in a non-financial way, but in a matter of great importance." Grabowsky v. Twp. of Montclair, 221 N.J. 536, 553 (2015) (quoting Wyzykowski v. Rizas, 132 N.J. 509, 525 (1993)).

While a son-in-law is not a member of a government official's immediate family for the sake of subsection (d), this relationship can create an inference of impropriety which may lead to a direct conflict for the local government official himself. This may occur even in relationships which are not as close as those between members of an immediate family. See Kremer v. Plainfield, 101 N.J. Super. 346, 351 (Law Div. 1968) (discussing circumstances in which disqualifying interest arose due to relationship with a nephew); Piscitelli, 237 N.J. at 349-50 (recognizing that a patient-physician relationship may be intimate enough to impair the impartiality of a board member); Barrett v. Union Twp. Committee, 230 N.J. Super. 195, 204 (App. Div. 1989) (affirming invalidation of land use ordinance voted on by committeeman whose mother lived in an assisted living facility run by affected landowners.). Where the conflict arises out of the benefited party's employment, there must be evidence which suggests

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here only to demonstrate that it supports the LFB's interpretation of N.J.S.A. 40A-9.22.5(d).

that the benefited party's "employment status with [their employer] was or would be enhanced" by the actions taken by the local government officer. Petrick v. Planning Bd. of Jersey City, 287 N.J. Super. 325, 332 (App. Div. 1996). Subsection (d) limits imputed conflicts to those involving immediate family members and business organizations in which the government officer has an interest; however, a direct conflict may arise concerning the government officer's relationship with a non-immediate family member if that relationship creates a conflict for the government officer himself. See N.J.S.A. 40A:9-22.5(d); see also In re Engelbert, A-4674-96T3, slip op. (App. Div. Oct. 30, 1997) (upholding subsection (d) violation where government officer voted on increase in salary for non-immediate family member son who no longer resided in the same household) (Ra03).[5]

The Board's discussion that Silva could have been found in violation of subsection (d) was not arbitrarily or capriciously included. Despite contentions otherwise by Silva, the LGEL contemplates that a subsection (d) violation may arise when a local government officer uses their position to benefit a person other than an immediate family member, if that results in a conflict to the officer himself. As the Board discussed in its Final Agency Decision, a subsection (d)

[5] In accordance with R. 1:36-3, counsel has enclosed herewith copies of each unpublished decision referenced herein. Counsel is aware of no other case law to the contrary.

violation can occur where the local government officer is personally involved in a matter by virtue of their relationship with an individual with whom they are close, even if that individual is not an immediate family member. (Pa10-12). The fact that Silva was not related by blood to Zeck and that they did not live in the same household "does not sever [the] family ties and thereby eliminate the conflict." Haggerty v. Red Bank Zoning Bd. of Adjustment, 385 N.J. Super. 501, 516 (App. Div. 2006).

In Wyzykowski, the Supreme Court identified four instances where our case law mandates disqualification:

> (1)"Direct pecuniary interests," when an official votes on a matter benefitting the official's own property or affording a direct financial gain;
>
> (2) "Indirect pecuniary interests," where an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
>
> (3) "Direct personal interest," when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but in a matter of great importance, as in the case of a councilman's mother being in the nursing home subject to the zoning issue; and
>
> (4) "Indirect [p]ersonal [i]nterest," when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.
>
> [Wyzykowski, 132 N.J. at 525-26).]

If the circumstances of a particular case fall into one of the four categories listed above, the interest must be deemed disqualifying to avoid even the appearance of bias. Id. Once a disqualifying interest is found, "an inquiry into an official's motive is unnecessary." Grabowsky, 221 N.J. at 554 (2015) (citing McNamara v. Borough of Saddle River, 64 N.J. Super. 426, 429 (App. Div. 1960) ("[i]f there is 'interest,' there is disqualification automatically, entirely without regard to actual motive, as the purpose of the rule is prophylactic[.]")).

Here, Silva had a direct personal interest (Wyzykowski scenario three) at stake when voting on the legislation, as his vote at least potentially benefited Zeck, a close acquaintance and non-immediate family member, in a non-financial way and in a matter of great importance, his employment. Further, by voting on this legislation, Silva benefited his blood relative daughter and her family by way of the potential benefits conferred on her husband.

Unlike in Petrick, these benefits include at least the possibility of enhancing the conditions of Zeck's employment and improving his standing in the police department. In particular, Zeck potentially benefited from the appointment of additional officers and reappointment of additional officers, which enhanced his available manpower. Zeck also potentially benefited from the adoption of changes to portions of the Township Code concerning suspension, removal, and appointment of persons to the Police department,

which helped secure Zeck's position in the department and enhanced his status in the department through his relationship to Silva. Delivery of these potential benefits represented an interest Silva did not share in common with the other members of the public due to his relationship with Zeck as his father-in-law, which gave him an interest in Zeck's working conditions certainly not shared with the general public. See Pinto v. Local Fin. Bd., 2005 N.J. Super. Unpub. LEXIS 491 (App. Div. Sept. 22, 2005) (Ra05-06).[6] This interest in the well-being of close acquaintance, even if not a family member, can create actionable ethics violations under New Jersey Stat. Ann. 40A:9-22.5(d). (Ra05).

As in Pinto, where a local government officer was held to have violated subsection (d) for failing to abstain from participating in matters which concerned the well-being of her romantic partner's sons, Silva has an interest in Zeck's well-being, despite the lack of a blood relationship, by virtue of their closeness. See id. at *1-*2. This is an interest not shared in common with the other members of the public. While Zeck may not be an immediate family member, the LGEL has never been interpreted as being limited to those relationships, and improprieties between a local government officer and friends, business associates, and even close acquaintances have been sufficient to support a finding of a subsection (d)

[6] In accordance with R. 1:36-3, counsel has enclosed herewith copies of each unpublished decision referenced herein. Counsel is aware of no other case law to the contrary.

violation where there is sufficient evidence that there is a potential for conflict. See Wyzykowski, 132 N.J. at 524.

Silva's position that the benefits Zeck actually received are too speculative is irrelevant. (App. Br. at 20). A subsection (d) violation arises not only due to the specific benefits resulting from actions of a local government officer, but can also arise due to the perception of a disqualifying conflict of interest. Mondsini, 458 N.J. Super. at 299-300. Proof of benefits received is not necessary to demonstrate that a disqualifying interest exists, as that finding can be sustained where the public could reasonably perceive a conflict of interest. Id. at 300 ("[T]he critical issue was whether the public officer or employee was in an actual conflict of interest *or there was an appearance of impropriety*.") (emphasis added). The Board's discussion of potential benefits merely represents a reasonable explanation of what the public could have perceived and demonstrates at the very least a qualifying appearance of impropriety. (Pa16).

As Silva notes in his brief, the existence of a familial relationship does not always create a conflict. (App. Br. at 17). It requires more, in the form of an "interest not shared in common with the other members of the public," which creates the "potential for conflict." Wyzykowski, 132 N.J. at 524. That interest existed in this case due to Silva's close personal relationship with Zeck, regardless of whether the two were related by blood, and benefits conferred on

close acquaintances even without a close familial relationship still trigger the statutory bar of the LGEL. See Piscitelli, 237 N.J. at 349-50. It is the perception of a potential conflict or an appearance of impropriety that creates the disqualifying situation, and proof of actual dishonesty is not necessary. Mondsini, 458 N.J. Super. at 301; Shapiro, 368 N.J. Super. at 53.

At the very least, the Board's determination that at least a perception of a potential conflict exists is fully supported by the record and is not arbitrary, capricious, or unreasonable. As such, the Board's legal conclusion finding that Silva met the Zisa defense, and its discussion that his conduct could otherwise constitute a violation of the LGEL, are both legally sound, and the court should affirm the Board's final administrative decision.

POINT III

THE BOARD'S MODIFICATION OF THE FACTUAL FINDINGS IN THE INITIAL DECISION WERE APPROPRIATE, SUPPORTED BY THE RECORD, AND DEMONSTRATE THAT A DISQUALIFYING CONFLICT EXISTED

The Board's fact modifications were supported by sufficient credible evidence in the record to more accurately reflect the number of violations at issue and the nature of those alleged violations of the LGEL. Agency heads are permitted to "reject or modify findings of fact, conclusions of law or

interpretations of agency policy in the [final] decision," so long as they clearly state the reasons for doing so. N.J.S.A. 52:14B-10(c).

The Board provided a thorough discussion for its modification of the ALJ's findings of fact when modifying paragraphs 6, 12 and 13 of the Facts in the Initial Decision. In modifying Paragraph 6, the Board correctly identified that voting on Ordinance No. 10-2018 was not a ministerial act because voting on and adopting an ordinance is not a discretionary matter unless doing so is required by statute, which was not the case in this matter. (Pa17-18); See Finn v. Wayne, 45 N.J. Super. 375, 379 (App. Div. 1957). The Board also acted appropriately when striking the finding in Paragraph 12 because the ALJ had incorrectly made a factual and legal determination that nothing Silva voted on conferred "*any* benefit on Zeck, financial or otherwise." (Pa54) (emphasis added). However, as discussed by the Board, Silva had a direct personal interest in Zeck's betterment, and voting on the ordinances at issue conferred Zeck the benefits of improved standing in his office by association with Silva, and an improved work environment. See (Pa15-16). Finally, the modification of Paragraph 13(b) was appropriate as the ALJ incorrectly identified that the March 15, 2022 notice identified ten – rather than nine – violations, and because the ALJ inserted an improper legal conclusion when stating that voting on the ordinances was allegedly a violation of the LGEL. (Pa3, 7). For the reasons

discussed in Point II, these facts support the Board's findings that Silva's actions represented violations of the LGEL. Silva had a direct personal interest at stake because he conferred at least potential benefits upon Zeck, and their relationship can reasonably be viewed as creating a disqualifying interest. As such, the modifications of the factual findings by the Board were appropriate and support the Board's legal findings that Silva's actions could constitute violations of the LGEL, but that he met the elements of the Zisa defense.[7]

POINT IV

THE BOARD'S REVIEW OF THIS MATTER DID NOT CONSTITUTE A VIOLATION OF DUE PROCESS

Contrary to Silva's claim, the Board did not violate his right to due process, as it provided him with an opportunity to address the Notice of Violation, a hearing before the OAL, and the opportunity to be heard by written exceptions prior to issuing its final administrative determination. Due process requires "an opportunity to be heard at a meaningful time and in a meaningful manner." Doe v. Poritz, 142 N.J. 1, 106 (1995) (citing Kahn v. U.S., 753 F.2d 1208, 1218 (3d. Cir. 1985)). "Due process is satisfied if there has been a 'full

[7] Furthermore, the Board held that the facts of this matter demonstrate that Silva met the Zisa defense. (Pa19). Silva did not refer to the Zisa defense in his brief and does not assert that the Board erred in this regard, so any argument to the contrary should be deemed waived.

and fair hearing' before an administrative law judge." Moiseyev v. New Jersey Racing Com'n, 239 N.J. Super. 1, 10 (App. Div. 1989) (quoting De Vitis v. New Jersey Racing Com'n, 202 N.J. Super. 484, 501 (App. Div. 1985)); see Abraham v. Township of Teaneck Ethics Bd., 349 N.J. 374, 379-80 (App. Div. 2002) (finding receipt of complaint of violations and hearing before local municipal ethics board afforded local government officer due process).

Silva was given an opportunity to present his position to the Board before it issued the Notice of Violation by responding to the Notice of Investigation. (Pa121-134). Following issuance of the Notice of Violation, Silva requested a hearing and the matter was transferred to the OAL, where the ALJ granted his motion for summary decision. (Pa62). The Board affirmed the dismissal on October 16, 2024. (Pa19). At each stage of the prior proceedings, Silva actively defended himself and ultimately succeeded in achieving his desired outcome.

Silva claims he was denied due process when the Board voted on October 9, 2024 to modify the Initial Decision, without providing him with a hearing before the Board, but he is wrong. Agency heads are permitted to "reject or modify findings of fact, conclusions of law or interpretations of agency policy in the [final] decision," so long as they clearly state the reasons for doing so. N.J.S.A. 52:14B-10(c); New Jersey Dep't of Public Advocate v. New Jersey Bd. of Public Utilities, 189 N.J. Super. 491, 507 (App. Div. 1983). The Board

explained in great detail its rationale for modifying the Initial Decision. Silva cannot complain that modification of the legal rationale without a hearing violated due process since he had the opportunity for an administrative hearing, and to reply to the Board's exceptions, (Pa22-32. And to the extent Silva argues the Board's action in approving the final agency decision was somehow violative of due process, the Board complied with N.J.S.A. 10:4-12 by voting on the matter during a public meeting where members of the public were welcome to attend, including Silva.

This case was adjudicated by the Board in a fair, impartial, and proper manner, and the decision of the Board should be affirmed as Silva was afforded the full extent of his constitutional rights. As such, no violation of due process can be found, and the decision of the Board should be affirmed.

CONCLUSION

For the foregoing reasons, the decision of the Local Finance Board should be affirmed.

Respectfully submitted,
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Dated: July 16, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CHRISTOPHER SILVA,	**SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-590-24T2**
Petitioner,	**CIVIL ACTION**
v.	
LOCAL FINANCE BOARD,	**ON APPEAL FROM: FINAL AGENCY DECISION OF THE LFB, OAL DOCKET NO. CFB 09222-22 AND AGENCY REF. NO. C19-013**
Respondent.	

REPLY BRIEF OF PETITIONER CHRISTOPHER SILVA

Date Submitted: 7/30/25

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LEGAL ARGUMENT

I: PETITIONER HAS STANDING. (Not Raised Below).

The LFB contends that Petitioner "lacks standing" to prosecute this appeal because "he prevailed before the Local Finance Board and so was not aggrieved by its final agency decision." (Db4).[1] Petitioner was, in fact, aggrieved by the LFB final agency decision. Whereas the ALJ concluded that Petitioner did not violate N.J.S.A. 40A:9-22.5(d) in the first place, the LFB determined that Petitioner's conduct did constitute a statutory violation. (Pa9). "The Board finds that had Silva not met the reliance on counsel defense, then the facts could have substantiated nine violations of N.J.S.A. 40A:9-22.5(d)." (Pa9). In other words, Petitioner was found to have violated the ethics laws. It is cold comfort that the violation was excused based on an advice-of-counsel defense, since this *public document* finds that he acted unethically. It is in the public record that Petitioner acted unethically, and reputational harm clearly confers standing. See, e.g., Too Much Media, LLC v. Hale, 413 N.J. Super. 135, 169 (App. Div. 2010).

II: THERE IS NO EVIDENCE OF A BENEFIT ON ZECK, AND NO REASONABLE PERSON WOULD CONCLUDE THERE IS ANY APPEARANCE OF IMPROPRIETY. (Pa51-64, Pa1-19).

The LFB cites certain cases and standards governing the LGEL, yet fails to apply them to this matter, or in some cases outright ignores the holdings. For

[1] Db# refers to the LFB's appellate brief and page number.

example, the LFB cites Petrick v. Planning Bd. of Jersey City, 287 N.J. Super. 325, 332 (App. Div. 1996) for the proposition that "[w]here conflict arises out of the benefited party's employment, there must be evidence which suggests that the benefited party's 'employment status with [their employer] was or would be enhanced' by the actions taken by the local government officer." (Db12-13). But here there is no "evidence" that the Zeck's employment status was enhanced. The LFB's so-called "evidence" is conclusory argument and untethered speculation that cannot form the basis of a disqualifying interest. The LFB says that the articles Petitioner voted on confer benefits on Zeck that "include at least the possibility of enhancing the conditions of Zeck's employment and improving his standing in the police department," including "the appointment of additional officers and reappointment of additional officers, which enhanced his available manpower." (Db15). These "benefits," even if they can be characterized as such, do not inure to Zeck. Having additional officers and manpower on the municipal police force inures to the benefit of the municipality, not any individual officer (which conclusion makes no sense). That is the definition of an "arbitrary and capricious" decision. Cf. Bayshore Sewerage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973) (describing "arbitrary and capricious" as "having no rational basis"), aff'd o.b., 131 N.J. Super. 37 (App. Div. 1974); Worthington v. Fauver, 88 N.J. 183, 204 (1982) (describing the arbitrary and capricious standard as "one of

rational basis," meaning "willful and unreasoning action, without consideration and in disregard of circumstances.").

The LFB also asserts that "adoption of changes to portions of the Township Code concerning suspension, removal, and appointment of persons to the Police department . . . helped secure Zeck's position in the department and enhanced his status in the department through his relationship with [Petitioner]." (Db15-16). To start, there were no "changes" to the municipal code relating to suspension, removal, and appointment, since the municipal code lacked any such provision prior to its adoption here. (Pa87¶6a). In other words, there had been no formal mechanism by which to suspended, remove, or discipline police officers. How does adopting such disciplinary rules and procedures benefit Zeck? Apart from the non-sequitur and evidentially-unsupported statement that such rules "helped secure Zeck's position in the department and enhanced his status in the department," the LFB's appellate brief leaves that question unanswered. The adoption of rules and regulations does not inure to the benefit of Zeck or any other officer. The adoption of rules and regulations benefits the public at large by having clear and consistent standards for the "maintenance, regulation and control" of officer discipline. N.J.S.A. 40A:14-118; Jansco v. Waldron, 70 N.J. 320, 326 (1976).

Petitioner argued before, as it does now, that the claimed "benefits" to Zeck are speculative and attenuated. The LFB responds that this argument is

"irrelevant." (Db17). Since our Supreme Court has explicitly held that "remote or speculative conflicts" cannot form the basis of an ethical violation under -22.5(d), Piscitelli v. City of Garfield Zoning Bd. of Adjustment, 237 N.J. 333, 353 (2019), it is hard to see how Petitioner's argument is "irrelevant." To the contrary, it is extremely salient that the best the LFB can muster are musings about how Zeck's "position" or "standing" in the municipal police force was "enhanced," even though the articles of legislation don't have the faintest capacity to confer any benefit on Zeck. The LFB also says that it doesn't matter if there was any actual benefit conferred on Zeck, since merely the "appearance of impropriety" is sufficient to trigger an ethical violation. (Db17). But even the "appearance of impropriety" is subject to a reasonable-person standard: "The question will always be whether the circumstances *could reasonably be interpreted* to show that [conflicting interests] had the likely capacity to tempt the official from his sworn public duty." Piscitelli at 353 (internal quotation marks omitted) (second alteration in original). From Petitioner's perspective, no "reasonable person" would interpret the settlement of an unrelated disciplinary matter against another officer to benefit Zeck. No "reasonable person" would interpret the appointment of special class II and III officers recommended by the Chief of Police to benefit Zeck. No "reasonable person" would interpret the amendment of a personnel policy manual for special class II officers to benefit Zeck.

The LFB does not like the text of N.J.S.A. 40A:9-22.5(d) or this court's interpretation of this statute in Horvath, which is not meaningfully distinguishable in any way. The unbiased ALJ got it right the first time. His decision should be reinstated in full.

III: IT WAS ARBITRARY AND CAPRICIOUS OF THE LFB TO ELIMINATE ¶12 OF THE ALJ'S FOUND FACTS, WHICH ESTABLISHED THAT PETITIONER DID NOT VOTE ON ANYTHING THAT CONFERRED A BENEFIT ON ZECK. (Pa54¶12, Pa7¶2).

While N.J.S.A. 52:14B-10(c) unquestionably gives an agency head the authority to "reject or modify findings of fact," that selfsame statute also requires any such rejection or modification to be "supported by sufficient, competent, and credible evidence in the record." That is where the LFB's argument fails.

The ALJ found as fact: "During his time on committee, petitioner . . . did not vote on anything that conferred any benefit on Zeck, financial or otherwise." (Pa54¶12). The full LFB struck this factual finding, presumably because it decided that Zeck "benefitted" in the ways earlier described. (Pa7¶2, Pa15-16). But the LFB's speculation about nonsensical "benefits"[2] is not supported by "sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). It is

[2] For example, "better[ing] his son-in-law's standing with his subordinates," or Zeck's nonexistent "involvement in the approved settlement of a disciplinary matter brough against another officer," or that Zeck would somehow benefit from the appointment of special class officers because they "would have a daily impact on Zeck in the exercise of his duties as a municipal employee." (Pa16).

instead supported by attenuated conjecture that no reasonable person would agree with. This determination is worse than arbitrary and capricious. It was an effort to save face for a complaint that never should have been prosecuted in the first place.

IV: THE PROCEDURE AT ISSUE IS CONSTITUTIONALLY INFIRM BECAUSE IT PERMITS AN ADJUDICATION OF LIABILITY IN THE ABSENCE OF ANY HEARING OR EXPLANATION, FORCES THE ACCUSED TO APPEAL SIMPLY TO FIND OUT WHY HE WAS FOUND LIABLE, AND FORBIDS ANY PARTICIPATION BY COUNSEL. (Pa20-22, Pa192).

Despite the weighty consequences of a violation of the LGEL, N.J.S.A. 40A:9-22.10(b) (fine), N.J.S.A. 40A:9-22.11 (removal, suspension, demotion or other disciplinary action), this appears to be the only area of law in which an adjudication of liability comes: (a) in the total absence of any written findings or explanation; and (b) without the opportunity to be heard *before* such adjudication is made. It bears repeating: the Board conducted a meeting – which Petitioner was not allowed to attend – where they apparently decided to find him liable. They then held a public vote and found him liable, without any explanation why the conduct fit the statute, and without permitting counsel to participate. The subsequently-issued notice of violation (NOV) similarly lacks any explanation. (Pa154-156). And later, before the full Board, something similar occurred: a proceeding out of public view, followed by a public vote without any opportunity to participate. It bears repeating that no one should be required to pursue an appeal without knowing why they were found liable for violating a statute that facially

does not apply to the charged conduct.[3]

It is one thing if the individual has a full and fair opportunity to be heard *before* the finding of liability is made, as in Abraham v. Twp. of Teaneck Ethics Bd., 349 N.J. Super. 374 (App. Div. 2002). It is another thing entirely to invert the process: guilt first, and flawed process next. A public servant is entitled to a public hearing if they face disciplinary proceedings that could result in termination. N.J.S.A. 10:4-12(b)(8); Rice v. Union Cnty. Reg'l High School Bd. of Educ., 155 N.J. Super. 64, 72 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978). Petitioner's request, however, was ignored. (Pa22).

CONCLUSION

For these reasons, Petitioner respectfully asks the court to affirm the dismissal of the NOV, but conclude that no violation of the LGEL occurred in the first instance, and reinstate the ALJ's decision.

Respectfully submitted,
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BY: _____
ELLIOTT J. ALMANZA, ESQ.

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[3] It is also puzzling that Petitioner could prevail over a deputy attorney general before the OAL (Pa51-64), only to have another deputy attorney general essentially override the ALJ (Pa1-19).