

JAN 17 2019

STATE OF NEW YORK  
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway  
Albany, New York 12207

IN THE MATTER OF MARC PANEPINTO,

Former Senator.

JOINT SETTLEMENT AGREEMENT

JCOPE No. 16-038

WHEREAS, the Joint Commission on Public Ethics ("JCOPE") is authorized by Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to refer JCOPE's findings with respect to Legislative members to the New York State Legislative Ethics Commission (LEC) for enforcement;

WHEREAS, the LEC is authorized by Legislative Law §80 to assess penalties on the members of the Legislature for any violation of the Public Officers Law;

WHEREAS, Marc Panepinto ("Respondent") was a member of the New York State Senate for the 60<sup>th</sup> District from January 1, 2015 through January 1, 2017;

WHEREAS, on March 4, 2016, the LEC referred to JCOPE the report of the New York State Senate outside counsel concerning Respondent's conduct towards a member of his staff employed by the Senate;

WHEREAS, on March 15, 2016, Respondent announced that he would not seek re-election to his New York State Senate seat;

WHEREAS, on March 31, 2016, a letter was sent to Respondent alleging violations of Public Officers Law §§ 74(3)(d), (f), and (h) which afforded Respondent fifteen (15) days to respond, and Respondent responded on April 20, 2016 denying the allegations;

WHEREAS, on May 24, 2016, the Commission voted to commence an investigation into this matter. The Commission conducted an investigation and interviewed the relevant parties;

WHEREAS, in cooperation with the U.S. Attorney's Office for the Western District of New York, further action on this matter was deferred pending the criminal investigation and prosecution;

WHEREAS, on June 28, 2018, Respondent plead guilty in federal court in the Western District of New York to a violation of Title 18 of the United States Code, Section 600, "Promise of Employment, Compensation, or other Benefit for Political Activity," a misdemeanor offense carrying a possible sentence of imprisonment of up to one year;

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between

JCOPE, the LEC, and Respondent;

WHEREAS, the Respondent has waived notification in writing of possible additional violations pursuant to Executive Law § 94(13)(a) and in lieu of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve their dispute in a manner that avoids further administrative and/or adjudicatory proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree to the following:

1. The facts set forth in section 4 (a)-(k) of the plea agreement between the Respondent and the United States Attorney for the Western District of New York in United States v. Marc Panepinto (WDNY June 28, 2018) (No. 18-MJ-5133).
2. Respondent admits that by his conduct incorporated by reference in paragraph 1, he violated Public Officers Law § 74(3)(d) and (h).
3. Respondent agrees to pay to the LEC the amount of ten thousand dollars (\$10,000.00) in settlement of said violation within thirty (30) days of the signing of this Agreement.
4. JCOPE and the LEC have agreed to the terms of this Agreement based on, among other things, the representations made to JCOPE by Respondent. To the extent that representations made by Respondent are later found by JCOPE or the LEC to be materially incomplete or inaccurate, Respondent shall be in breach of this Agreement.
5. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
6. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which JCOPE and the LEC are not parties. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.
7. Upon a breach of this Agreement, JCOPE and/or LEC may, in their discretion, deem the Agreement null and void in its entirety, issue a Notice of Substantial Basis Investigation and Hearing, which may include additional charges against Respondent, proceed with an enforcement action, and issue a new Substantial Basis Investigation Report; or deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which JCOPE and/or LEC are entitled at law or in equity, including, but not limited to, specific performance or

injunction. As to any Substantial Basis Investigation Report or enforcement action by JCOPE and/or LEC pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that JCOPE and/or LEC may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any proceeding against Respondent relating to the allegations herein.

8. Respondent shall, upon request by JCOPE and/or LEC, provide all documentation and information reasonably necessary for JCOPE and/or LEC to verify compliance with this Agreement.
9. Respondent understands and acknowledges that JCOPE may investigate any other conduct not covered by this Agreement, by Respondent and take any appropriate action.
10. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of JCOPE and/or the LEC relating to this matter in any forum.
11. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
12. Respondent consents to the jurisdiction of JCOPE and LEC in any proceeding to enforce this Agreement.
13. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§ 94(14) & (19) and Legislative Law §§ (9) & (12).
14. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
15. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
16. This Agreement shall become effective upon execution by JCOPE and the LEC or their designees.
17. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

18. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement. Respondent was represented by counsel, Mark F. Glaser of Greenberg Traurig, LLP.

Dated: 1/20/19

  
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Seth H. Agata, Executive Director  
New York State Joint Commission on Public Ethics

  
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Lisa Reid, Executive Director  
New York State Legislative Ethics Commission

ACCEPTED AND AGREED TO  
THIS 15 DAY OF January, 2019

Respondent

  
\_\_\_\_\_  
Marc Pahepinto

Approved:

Michael K. Rozen  
Chair

Robert Cohen  
James E. Dering  
Colleen C. DiPirro  
William P. Fisher  
Julie A. Garcia  
Daniel J. Horwitz  
Marvin E. Jacob  
Gary J. Lavine  
George H. Weissman  
James Yates  
Members

David J. McNamara  
Absent