

BOARD OF FIREARMS PERMIT EXAMINERS

STATEMENT OF

CHRISTOPHER R. ADAMS

AND

JOSEPH T. CORRADINO

11 October 2007

It is a fundamental principal of free government that those charged with adjudicating the claims of citizens against the state do so without bias, prejudice, or favoritism. It is equally important to a society which is one of laws and not men, and which exists not by force of arms, but by the consent of the people, that confidence in the just adjudication of claims be maintained by avoiding any appearance of impropriety.

Following the adjournment of the September meeting of this Board, we, Christopher R. Adams and Joseph T. Corradino, both members of the Bar of this State, learned from Mr. M. Peter Kuck, one of the members of this Board, that he had filed an internal affairs complaint against an officer of the Connecticut State Police who frequently appears before this Board and that the same member of this Board also intended to file a federal civil rights action against the Commissioner of the Department of Public Safety and the commander of the State Police Firearms Unit. ✓

At that time we explained to him that we believed that commencement of either of those actions, and certainly the combination of both of them, created a potential conflict of interest on his part which might be used to call into question his impartiality in adjudicating claims wherein the Commissioner of Public Safety, and specifically the Firearms Unit, is a party. We also explained that even if it were not a conflict of interest, it certainly presented an appearance of impropriety and a genuine appellate issue on the question of bias in any determinations of the Board. We also explained that it presented potential additional litigation for appellants in whose favor this Board might rule because the Department of Public Safety would have a colorable claim for an administrative appeal in any case in which he were to sit. We explained the potential impact his course of action might have on the backlog of cases, an issue which he has raised frequently and forcefully, and offered to address this issue with the leadership of Ye Connecticut Gun Guild, which is the organization which sponsors his membership on this Board. no

We also explained to him that it was his decision as to whether he should continue to hear appeals in which the Commissioner of Public Safety is a party, or to remain a member of the Board, but we made clear to him that it was our opinion that his status as a party to an adversary proceeding against a party appearing before him as a member of this Board constituted at minimum a moral impediment, and potentially a legal one, to his continued service.

We expressed our concerns to Mr. Kuck in confidence as his colleagues. We chose to speak privately with him out of respect for him and his long service, seeking to avoid both public embarrassment to him and any situation which might exacerbate the present backlog of hearings before the board. Thus we also spoke as citizens concerned with prompt and fair adjudication of claims brought to this Board by our individual fellow citizens and the Commissioner of Public Safety. Sadly, Mr. Kuck elected to make the entire issue public by posting his complaints as well as a letter from his attorney concerning our conversation on the website of Ye Connecticut Gun Guild. Today, we address the issue in public before the full Board. ✓

Like all governmental proceedings, administrative agency proceedings must be impartial and unbiased. All parties appearing before an administrative board are entitled to a fair hearing.¹

The applicable due process standards for disqualification of administrative adjudicators due to bias do not rise to the heights of those prescribed for judicial disqualification. The mere appearance of bias that might disqualify a judge will not disqualify an administration board member.² One statement of the applicable test for disqualification of an administrative hearing officer is whether a disinterested observer may conclude that the officer has in some measure adjudged the facts as well as law of a particular case in advance of hearing it.³ ✓

While Mr. Kuck has been an outspoken critic of the State Police, as is evident in the Gun Guild Website of which he is the Webmaster, and has from time to time expressed to individual members of the Board and in deliberations general opinions concerning the credibility of the State Police which might be considered indiscreet for a neutral and detached decision maker, it is significant that he has not heretofore given any indication that he has prejudged the facts as well as the law of any particular case. Accordingly, his prior participation in the proceedings of the Board presented no cause for us to suspect the propriety of the outcomes.⁴ ✓

The test for administrative disqualification is inherently fact bound.⁵ Without a factual record that a decision maker has exhibited actual bias or so egregious an appearance of bias as to taint the fundamental fairness of administrative proceedings, claims of bias and prejudice must fail.⁶ But the presumption that agency adjudicators are unbiased can be rebutted by showing a conflict of interest.⁷ Until the time of our discussion last month such a record did not clearly exist. In our opinion, there now exists a sufficient record to warrant caution on our part and to seek further guidance. We believe Mr. Kuck's lawsuit may constitute such a conflict of interest, and so we desire an opinion from the Attorney General on that issue before proceeding further. ✓

While today we do not express an ultimate opinion on the issue of whether such a bias or conflict does exist, we cannot ignore it, for it is well established that the State, like the individual citizen, is entitled to a fair hearing.⁸ It is our opinion that Mr. Kuck's initiating a lawsuit against the Commissioner of Public Safety presents a sufficient question of bias or conflict of interest in each case adjudicated by Mr. Kuck so as to

expose every successful appellant to potential additional litigation should the Commissioner choose to appeal from our decision. Such a situation would thus delay the issuance of a permit to every person who successfully appeals to this Board, and should such a person continue to assert his rights, expose him to the additional delay, inconvenience, and expense of a lawsuit in the Superior Court. We in good conscience cannot permit this to happen to persons who have patiently waited to have their cases determined by this Board. ✓

We serve on this Board in our capacity as attorneys admitted to the practice of law in the State of Connecticut. We are subject not only to the general laws which govern all persons in this state, but also to the ethical standards of our profession.⁹ Accordingly, we have a "special responsibility for the quality of justice".¹⁰ ✓

We believe that as members of the legal profession serving on this Board we have an obligation to both the appellants and the Commissioner of Public Safety to insure not only fair and impartial proceedings, but also to avoid any appearance of impropriety that might undermine the legitimacy of the Board's decisions in the eyes of any party or the general public. We also believe that as attorneys, we have an obligation to avoid needless proliferation of litigation, such as administrative appeals from the judgments of the Board which would impose personal and economic burdens on private citizens who have appealed to this Board, as is their right. ✓

We are also mindful and respectful of Mr. Kuck's interests, which he expressed to us by way of a letter from his attorney. Consequently, we take no action nor request any by him at this time, electing to preserve the status quo until we receive further guidance. ✓

In light of the situation between Mr. M. Peter Kuck and the Commissioner and members of the Department of Public Safety which has emerged since the adjournment of the last meeting of this Board, we are faced with two equally unacceptable alternatives. The first would be to go forward with hearings today and risk prejudice to the citizens who look to this Board for vindication of their rights, or the Commissioner of Public Safety, who also has a legitimate claim to a fair hearing at our hands. ✓

The other option, which is the more cautious approach, is to maintain the status quo until we can obtain an Attorney General's opinion as to whether a conflict exists, and if it does, what we must do to avoid creating prejudice to Mr. Kuck or any party appearing before us. ✓

We have chosen to proceed with caution and accordingly we decline to participate today in any contested hearing before this Board in the absence of an opinion from the Attorney General as to the proper manner in which to proceed under the present circumstances, so as to do no harm to any appellant, the Commissioner, or any member of the Board. We make the decision in the exercise of our professional and moral judgment as public citizens "with a special responsibility for the quality of justice". ✓

We sincerely regret the inconvenience to the appellants, the commissioner, and the witnesses, but we cannot, without further guidance, conscientiously participate in any adjudication in which the fairness and impartiality of the final decision is susceptible to question, the rights of any person, including a member of the Board, are unclear, or the possibility exists of proliferating needless litigation for both private citizens and the State by way of administrative appeals. It is our opinion that this is a situation which calls for extreme caution out of fairness for all involved. ✓

Respectfully submitted,

CHRISTOPHER R. ADAMS

JOSEPH T. CORRADINO

¹ It is well established that in administrative agency proceedings, the parties are entitled to be heard and have their issues determined by an impartial and unbiased tribunal. *Transportation General, Inc. v. Insurance Dept. of State of Conn.*, 36 Conn. App. 587, 591, 652 A.2d 1033 (1995). Under Connecticut law, there exists a presumption that administrative officers acting in an adjudicative capacity are not biased. *Clishan v. Board of Police Commissioners*, 223 Conn. 354, 362, 613 A.2d 254 (1992). That presumption is overcome upon a showing of actual bias, rather than a mere potential bias, of the hearing officer challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable. *Transportation General, Inc. v. Insurance Dept. of State of Conn.*, 236 Conn. 75, 670 A.2d 1302 (1996) (Hearing officer who first helped mediate dispute not disqualified); *Elf v. Department of Public Health*, 66 Conn. App. 410, 784 A.2d 979 (2001).

² See *Elf v. Department of Public Health*, 66 Conn. App. at 425. (hearing officer who is employee of department revoking day care does not violate due process).

³ *Transportation General, Inc. v. Insurance Dept. of State of Conn.*, 236 Conn. at 77.

⁴ A member of an administrative body is not disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not capable of judging a particular controversy fairly on basis of its own circumstances. *Breiner v. State Dental Com'n*, 57 Conn.App. 700, 707, 750 A.2d 1111, (2000)(Dental Board members who expressed opinions on mercury fillings not disqualified from disciplinary hearing of dentist concerning removal of such fillings).

⁵ *Transportation General, Inc. v. Insurance Dept. of State of Conn.*, 236 Conn. at 77.

⁶ *Hultman v. Department of Social Services*, 47 Conn. Supp. 228, 240, 783 A.2d 1265 (Conn. Super., 2000)(Claim that hearing officer biased by media reports insufficient for disqualification).

⁷ *Transportation General, Inc. v. Insurance Dept. of State of Conn.*, 36 Conn. App. 587, 652 A.2d 1033 (1995).

⁸ See *State v. Peeler*, 271 Conn. 338, 421, 857 A.2d 808, (2004), cert. denied 546 U.S. 845 (2005)

⁹ As set forth in the preamble to our code of ethical conduct prescribed by the Connecticut Rules of Court:

A lawyer is... an officer of the legal system and a public citizen having special responsibility for the quality of justice.... A lawyer should demonstrate respect for the legal system and for those who serve it,... While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.... As a public citizen, a lawyer should seek improvement of the law, [and] the administration of justice... Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct... However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to... exemplify the legal profession's ideals of public service.... Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.... The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.

Preamble, Connecticut Rules of Professional Responsibility.

¹⁰ *Id.*