



facilities, whether on State-compensated time or otherwise. (e.g., Comp. Ex. A (IDOL Policy Manual), pp. 35-36.)

3. On September 30, 2011, respondent used an IDOL fax machine to send a single fax related to the potential sale of his Victrola. This activity was not related to State business.

4. During the course of respondent's employment at IDOL, OEIG initiated an investigation to determine whether he may have violated certain IDOL employment-related policies.

5. During an interview with OEIG investigators held on March 6, 2013, respondent was asked about his understanding, if any, of IDOL's policy regarding the use of State-owned information technology equipment, including fax machines, for purposes other than official State business; he responded, "If it's not State related, don't send it." Respondent also was asked directly whether he had ever used an IDOL fax machine for personal business; he responded, "No."

6. In June and July 2013, OEIG investigators requested additional documents from respondent, including documents related to personal, non-State business ventures potentially associated with respondent. Respondent provided State and federal personal income taxes for 2010, 2011 and 2012.

7. On June 19, 2013, OEIG investigators made the following demand for documents from respondent:

- a. Copy of any/all leases and associated documents, including, but not limited to leases, applications and contact information sheets from January 1, 2010 to May 31, 2013 for the tenants occupying the six units at [redacted] Street in Springfield and the one unit at [redacted] Street in Alton, Illinois.
- b. Present cost to rent a unit in Springfield, Illinois.
- c. Present cost to rent a unit in Alton, Illinois.
- d. Any/all tenant's full names and telephone numbers for any and all individuals or businesses who conducted any maintenance, repair or any other work at the units at [redacted] Street in Springfield, Illinois and the unit at [redacted] Street in Alton, Illinois.
- e. Copy of any/all records, bills, invoices, etc. for advertisement for Leo Connors Rentals.

8. On July 22, 2013, OEIG received a letter from the Law Office of Eric M. Schwing, on behalf of respondent, notifying OEIG that counsel for respondent "had advised Mr. Connors not to respond to" OEIG's document requests, and that respondent was asserting his "rights to protect the requested information." A true and correct copy of counsel's letter of July 22, 2013, was attached to the Complaint as Exhibit C.

9. On September 4, 2013, OEIG responded to the above-referenced communication by reminding respondent, through his attorney, of respondent's obligation to cooperate with OEIG's

investigation. OEIG also advised respondent's counsel that his client's failure to cooperate with an OEIG investigation "can result in findings of misconduct that are then submitted to the Office of the Attorney General for prosecution before the Executive Ethics Commission." A true and correct copy of OEIG's letter was attached to the Complaint as Exhibit D.

10. On September 16, 2013, counsel for respondent replied to OEIG's letter of September 4, explaining that respondent was "exercising his rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and Article I of the Illinois Constitution of 1970," which sets out the Illinois Constitution's Bill of Rights. (Compl. Ex. E, Schwing Ltr. of 9/16/13.)

11. Thereafter, OEIG personnel contacted counsel for respondent by telephone to request an interview with respondent in connection with its investigation.

12. On October 8, 2013, counsel for respondent replied by letter to OEIG's interview request, informing investigators that respondent was declining its request to be interviewed, and was continuing "to assert his rights" under the authority referenced above. A true and correct copy of counsel for Respondent's letter of October 8, 2013, was attached to the Complaint as Exhibit F.

13. In light of respondent's refusal to produce documents or meet with OEIG investigators, OEIG referred this matter to the Illinois Attorney General on January 21, 2014. Thereafter, the Attorney General timely filed its Complaint on June 25, 2014.

### **UNDISPUTED CONCLUSIONS OF LAW AND MIXED QUESTIONS OF LAW AND FACT**

1. Pursuant to 5 ILCS 430/20-5(d), the Illinois Executive Ethics Commission ("the Commission") has jurisdiction over "all officers and employees of State agencies" for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission's authority extends to officers and employees of IDOL.

2. The State Officials and Employees Ethics Act (the "Ethics Act"), 5 ILCS 430/1-1 *et seq.*, provides, in relevant part, that OEIG has jurisdiction over "all officers and employees of . . . executive branch State agencies under the jurisdiction of the Executive Ethics Commission." *Id.* § 20-10(c). The Ethics Act authorizes OEIG to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, violations of the Act, or violations of other related laws and rules. *Id.*; *accord id.* § 20-20. Consequently, OEIG's investigative authority extends to IDOL and its officers and employees.

3. As an IDOL Labor Conciliator, Connors was a State employee, and thus subject to the provisions of the Ethics Act and the jurisdiction of the Commission with respect to matters arising under the Ethics Act. *Id.* §§ 20-5(d), 55(c)-(d).

4. As an IDOL Labor Conciliator, Connors' "ultimate jurisdictional authority" was the Governor. *Id.* §§ 1-5, 20-10(c).

5. Petitioner Ricardo Meza is the Executive Inspector General for the Agencies of the Governor, duly appointed by the Governor of the State of Illinois. *Id.* § 20-10.

6. As an IDOL employee, respondent had a duty to comply with the provisions of the Ethics Act, and with all policies adopted and implemented pursuant thereto. This includes the duty to cooperate with an OEIG investigation:

It is the duty of every... employee under the jurisdiction of an Executive Inspector General... to cooperate with the Executive Inspector General and the Attorney General in any investigation undertaken pursuant to this Act. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements. Failure to cooperate with an investigation of the Executive Inspector General or the Attorney General is grounds for disciplinary action, including dismissal.

*Id.* § 20-70; *see also id.* § 50-5(e).

7. Failure to cooperate with an investigation of the OEIG is grounds for disciplinary action, up to and including dismissal. *Id.*

8. The Commission may levy an administrative fine of up to \$5,000 against any person who violates the Ethics Act by intentionally obstructing or interfering with an Ethics Act investigation conducted by OEIG. *Id.* § 50-5(e).

9. On March 6, 2013, during an interview with OEIG investigators, respondent intentionally obstructed or interfered with an Ethics Act investigation, in violation of 5 ILCS 430/50-5(e) when he denied that he ever used a fax machine for purposes other than State business.

10. In June and July 2013, respondent failed to cooperate with an Executive Inspector General in an investigation undertaken pursuant to the Ethics Act, in violation of 5 ILCS 430/20-70, when respondent, through his attorney, refused to respond to the OEIG's document requests.

11. On October 8, 2013, respondent failed to cooperate with an Executive Inspector General in an investigation undertaken pursuant to the Ethics Act, in violation of 5 ILCS 430/20-70, when respondent, through his attorney, replied by letter to OEIG's interview request, informing investigators that respondent was declining its request to be interviewed, and was continuing "to assert his rights" under the authority referenced above.

#### STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination

entered by an administrative agency. See *Cano*, 250 Ill.App.3d at 138, 189 Ill.Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

#### ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that respondent violated Sections 20-70 and 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/20-70, 5 ILCS 430/50-5(e)).

Respondent’s violations consist of using the IDOL fax machine to send a single fax for personal business and denying that he had done so during an OEIG interview conducted 17 months later. No transcript or summary of the OEIG interview is before the Commission. Respondent also failed to cooperate with an investigation where, upon the advice of an attorney and having already turned over three years’ of tax returns, respondent did not provide three and one-half years’ of documents related to rental property he owned.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code 1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider in assessing an appropriate fine. Petitioner suggests that the following factors are relevant to the present matter:

- (1) the “nature of the violations.” The underlying misconduct that formed the basis of OEIG’s investigation involved the sending of a single fax from a State fax machine, and respondent failing to acknowledge this during an OEIG interview some 17 months later. Respondent also, having provided three years’ of tax returns, upon the advice of counsel, did not provide what would seem to be voluminous records of his rental business. The relevance of this information has not been disclosed in these proceedings. Therefore, the nature of the violation in question is trivial.
- (5) “the extent of a respondent’s intent or knowledge of the facts surrounding the

violation.” Respondent denied using the State fax machine for personal matters during an OEIG interview conducted 17 months later. No transcript or summary of the interview has been placed into evidence. Therefore, respondent’s intent or knowledge of the facts related to the statements he made during the OEIG interview is unclear.

- (11) “cooperation.” Section 20-70 of the Ethics Act obligates State employees to cooperate with, and not obstruct, an OEIG investigation. Respondent cooperated insofar as he provided three years of tax returns. Respondent failed to cooperate when, upon advice from an attorney, he did not respond to a request for voluminous documents that has not been demonstrated to the Commission to be relevant to the underlying investigation. Relying upon advice of an attorney does not absolve respondent of this violation, but the Commission views it to be a mitigating factor.
- (13) “prior disciplinary record or Ethics Act violation.” There is no evidence before the Commission that Respondent has any prior disciplinary record or committed any Ethics Act violation.

WHEREFORE, for the foregoing reasons, petitioner’s unopposed motion for summary judgment is granted. Respondent’s motion to strike petitioner’s rebuttal is denied. The Commission levies an administrative fine of \$100.00 against Respondent Leo Connors for violation of 5 ILCS 430/20-70 and 5 ILCS 430/50-5(e). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: February 11, 2015