

**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	The Town of Fairhaven, MA
Title or Position:	Vice Chairman
Agency/Department:	Board of Selectmen
Agency address:	40 Center Street Fairhaven, MA 02719
Office Phone:	(774) 263-1046
Office E-mail:	respindola@fairhaven-ma.gov
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	My participation in the interview process for the Town Administrator position, for which Wendy Graves is scheduled to be interviewed later today (2-23-2021).
What responsibility do you have for taking action or making a decision?	My responsibility, as a member of the Board of Selectmen, is to decide which candidate for the Town Administrator position should be appointed by the Board of Selectmen.
Explain your relationship or affiliation to the person or organization.	On February 22 nd , I received the attached email with documents attached to it (also included with this disclosure) from Horn & Loughlin Law Office, LLC, 12 Asylum Street, Mendon, MA 01756. This Attorney stated that they "have been retained by Wendy Graves to investigate and take legal action" (against the Town) alleging that I "made unwarranted and defamatory attacks and remarks against Ms. Graves".
How do your official actions or decision matter to the person or organization?	My vote will be one of three votes to determine the appointment of a new town administrator

Optional: Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	I would always be completely objective and vote to do what is in the best interest of the Town of Fairhaven. I will not allow these allegations against me to influence my ability to do what is in the best interest of the people in the Town of Fairhaven that I was elected to represent.
If you cannot confirm this statement, you should recuse yourself.	WRITE AN X TO CONFIRM THE STATEMENT BELOW. <input checked="" type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	
Date:	2-23-2021

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

Form revised July, 2012



Bob Espindola <selectmanbobespindola@gmail.com>

Fwd: WENDY GRAVES

1 message

Bob Espindola <selectmanbobespindola@gmail.com>

To: John Beauregard <jbeauregard@sylviagroup.com>, Tom Crotty <tomcrotty@tcrottylaw.com>

Mon, Feb 22, 2021 at 5:35 PM

Tom and John,

Please see attached email and files sent to me by acting Town Administrator, Wendy Graves Lawyer.

I have absolutely no idea what she is referring to but I believe you both need to see these documents.

Tom, I would like to speak with you before our meeting tonight if at all possible. Please call my cell phone at (774) 263-1046 if you have a minute to discuss.

Thanks,
Bob

----- Forwarded message -----

From: Robin Wring <robinwring@hornlaw.org>

Date: Mon, Feb 22, 2021 at 4:47 PM

Subject: Fwd: WENDY GRAVES

To: <selectmanbobespindola@gmail.com>, Ernest Horn <erniehorn@hornlaw.org>

Mr. Espindola,

Please be advised that Attorney Ernest Horn is representing Wendy Graves and I have attached two correspondences from him.

Thank you.

Robin A. Wring, Paralegal
Horn & O'Loughlin Law Office, LLC
12 Asylum Street
Mendon, MA 01756
833-244-3372

Website: HORN LAW.ORG

The information contained in this email may be confidential or attorney/client privileged information, both are protected under state and federal law. Notify the sender immediately if you are not the anticipated recipient.

2 attachments

LETTER - espindola (cease and desist) 2-22-21.pdf
114K

 LETTER - estindola (demand for protectin of evidence) 2-22-21.pdf
114K

HORN & O'LOUGHIN LAW OFFICE, LLC
12 Asylum Street, Mendon, MA 01756

TOLL FREE: 833-CHIEFS2 (833-244-3372) FAX (508) 458-8171 HORNLAW.ORG

Ernest H. Horn, Esq.
Thomas J. O'Loughlin, Esq.
Robin A. Wring, Paralegal

Email: erniehorn@hornlaw.org
Email: tjo@hornlaw.org
Email: robinwring@hornlaw.org

February 22, 2021

Mr. Robert J. Espindola, Vice Chairman
Board of Selectmen
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RE: Formal Legal Notice to Cease and Desist Defamatory Remarks Regarding Wendy Graves

Dear Mr. Espindola:

Please be advised that I have been retained by Wendy Graves to investigate and take legal action, if necessary, against you for a series of unwarranted and defamatory attacks and remarks against my client, namely that she has mismanaged town funds and is involved in racketeering.

Your unwarranted actions and baseless accusations have damaged my client's character and reputation. You have personally made willfully false and misleading comments about my client on numerous occasions.

The statements made in reference to my client are utterly false and without merit and they are defamation per se in that they depict my client in a false light, disrespect and exploit her.

Your attempts to spread libelous and defamatory material about my client have caused serious and irreparable injury to her and her reputation. My client will not stand by and allow this misconduct to continue.

Accordingly, I demand that you immediately cease and desist your unlawful defamation of my client and provide me with prompt written assurance within ten (10) days that you will cease and desist from further defamation of Wendy Graves' character and reputation.

If you do not comply with this cease and desist demand within this time period my client is entitled to seek monetary damages and equitable relief for your defamation. In the event you fail to meet this demand, please be advised that my client has asked me to communicate to you that she will pursue all available legal remedies, including seeking monetary damages and an order that you pay court costs and attorney's fees. Your liability and exposure under such legal action could be

considerable. Any further defamatory remarks made by you will be deemed harassment and grounds for a restraining order against you.

This is a very serious matter that requires your immediate attention. I strongly recommend that you provide me in writing within ten (10) days that you will cease and desist from these activities. This letter is your one and only chance to resolve this matter amicably. My client expressly reserves all legal and equitable rights.

Please be aware that this letter is a product of my law firm and you are not authorized to publish this in any manner. Use of this letter in posting, in full or in part, will subject you to further causes of action.

I recommend that you consult with your attorney regarding this matter. If you or your attorney have any questions, please contact me directly.

Very truly yours,



ERNEST H. HORN

EHH/raw
cc: Wendy Graves

SENT VIA: FIRST CLASS MAIL POSTAGE PREPAID AND
CERTIFIED MAIL RETURN RECEIPT REQUESTED

HORN & O'LOUGHIN LAW OFFICE, LLC
12 Asylum Street, Mendon, MA 01756

TOLL FREE: 833-CHIEFS2 (833-244-3372) FAX (508) 458-8171 HORNLAW.ORG

Ernest H. Horn, Esq.
Thomas J. O'Loughlin, Esq.
Robin A. Wring, Paralegal

Email: erniehorn@hornlaw.org
Email: tjo@hornlaw.org
Email: robinwring@hornlaw.org

February 22, 2021

Mr. Robert J. Espindola, Vice Chairman
Board of Selectmen
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RE: Wendy Graves

Dear Mr. Espindola:

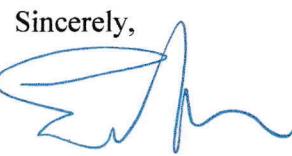
Please accept this letter as notice that this office has been retained to represent Wendy Graves in an employment matter with the Town of Fairhaven and you, both in your professional capacity as Vice Chairman of the Board of Selectmen and as an individual person.

On behalf of our client, we hereby demand that the Town of Fairhaven and Robert Espindola, Vice Chairman, Board of Selectmen and any and all other parties who may be in possession of or may come into possession of, directly or indirectly, any and all documents, data, both electronic and hard copies, that may be relevant to any action inter-alia, related to a claim of defamation that our client, Wendy Graves may bring. In addition, any minutes, notes, recordings of any type of any meetings, discussions regarding our client in any capacity and communications of any type with third parties regarding our client in any capacity. Additionally, we demand that all phone records for July 1, 2018 to present for town owned or controlled cellular phones and personal phones used or possessed by Robert Espindola, Vice Chairman of the Board of Selectmen. This includes text messaging, Apple iMessage or any other form of similar communication. More specifically, all such records on any devices used by Robert Espindola. We demand that you preserve such information as described above as it may be relevant and crucial to any action commenced on behalf of our client.

The failure to preserve and retain any documents, notes, handwritten notes, draft, approved minutes of any meetings, all electronic data and materials of any kind outlined in this notice may constitute spoliation of evidence which may subject you to legal claims for damages and/or evidentiary and monetary sanctions should legal action commence. A judge has broad discretion in sanctioning parties in matters of spoliation that would improperly deprive a party from

establishing facts that are relevant in the case, see Gath v. M/A-Com. Inc. 802 N.E.2d 521 Mass. 2003. "The destruction of relevant evidence ... has a pernicious effect on the truth-finding function of our commission." Fletcher v. Dorchester Mut. Ins. Co., 437 Mass. 544. 553 (2002). "The threat of a lawsuit must be sufficiently apparent, however, that a reasonable person in the spoliator's position would realize, at the time of spoliation, the possible importance of the evidence to the resolution of the potential dispute." Kippenhan v. Chaulk Servs., Inc.. 428 Mass. 124, 127 (1998). Clearly, based on past actions of McGovern Automotive Group and Matthew McGovern and if McGovern Automotive Group and Matthew McGovern continue to engage in harassment, and retaliatory treatment against our client, legal action will commence.

For purposes of this notice, electronic data or electronic evidence shall include, but not be limited to, word processing documents, presentation documents such as PowerPoint and financial data, spreadsheets, email (including local mail servers and hosted mail), email attachments, photos and images in any format, voice mail, text messaging and other electronic communications including telephone logs. Such information may be located on online (cloud-based storage/backups), offline (on local computers or servers) or removable media. It can be stored on laptops, desktops, portable devices, VoIP, voicemail systems, or networked servers. Specifically, you are instructed not to destroy, overwrite, disable (including auditing logs), erase, encrypt, alter, or otherwise make unavailable any electronic data and/or evidence relevant to any claims, and you are further instructed to take reasonable efforts to preserve such data and/or evidence. To meet this burden, you are instructed by way of example, and not limitation, to: preserve all data, backup files (i.e., not overwrite any previously existing backups); preserve and retain all electronic data generated or received by employees who may have personal knowledge of any facts involved in or related to a claim of defamation that our client, Wendy Graves may bring; preserve and retain all electronic data in any format, media, or location relating to the claims, including data on fixed and portable storage devices, backup media and smart phones; prevent employees from deleting or overwriting any electronic data related to potential claims; and take such other security measures, including, but not limited to, restricting physical and electronic access to all electronically stored data directly or indirectly related to any claims our client may bring.

Sincerely,

ERNEST H. HORN

EHH/raw

THOMAS P. CROTTY & ASSOCIATES, PLLC

LAW OFFICES
5 DOVER STREET ~ SUITE 102
NEW BEDFORD, MASSACHUSETTS 02740

THOMAS P. CROTTY

RUSSELL G. WHYNACHT

TELEPHONE 508.990.9101
FACSIMILE 508.990.9108
E-MAIL: info@tcrottylegal.com
www.tcrottylegal.com

February 23, 2021

Robert J. Espindola
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

Dear Bob:

You have asked for my opinion under the State Conflict of Interest Law as to whether you may participate in matters regarding Wendy Graves, town treasurer and interim town administrator, and specifically relating to her application for appointment to the position of permanent town administrator.

The facts are as follows:

You are the vice-chairman of the Board of Selectmen for the Town of Fairhaven.

The position of town administrator has been vacant since the first week of January 2021. Following the retirement of the previous town administrator the Board appointed Wendy Graves as interim town administrator.

A search committee appointed by the Board has made recommendations for a successor permanent town administrator. The three people recommended by the committee have been interviewed by the Board. The Board has also scheduled an interview with Wendy Graves for the position. That interview has been scheduled for Tuesday, February 23, 2021.

On Monday, February 22, 2021 you received two letters from Attorney Ernest Horn representing Wendy Graves. In one he demands that you stop making defamatory remarks that Wendy Graves "has mismanaged town funds and is involved in racketeering", and threatens to sue if you do not comply with that demand.

In the second letter he states that he represents Wendy Graves "in an employment matter with the Town of Fairhaven and you" as Vice Chairman and personally. In that letter he demands that the Town of Fairhaven and you as Vice Chairman of the Board of Selectmen preserve records related to a claim of defamation that Wendy Graves may bring.

You have told me that you have made no statements that suggest Wendy Graves has mismanaged town funds, or is involved in racketeering.

Two sections of the State Conflict of Interest Law come into play in this situation.

Section 19:

The law prohibits you from participating in a particular matter in which you have a financial interest. I will assume for discussion purposes that if you are sued for defamation you would have a financial interest in that lawsuit. (You would be covered by the Town's insurance coverage if the claim arises from your actions as a town official; but that insurance may not cover your actions as a private citizen.)

The letters from Attorney Horn do not suggest that a lawsuit will be brought if you participate in the interview of Wendy Graves, or if you participate in the vote on the appointment of a permanent town administrator. The letter threatens litigation only if you make defamatory statements suggesting mismanagement of town funds or involvement in racketeering.

Accordingly you have no financial interest in your participation in the interview of Wendy Graves or in the vote to appoint a permanent town administrator, and may do so without violating Section 19 of the conflict law – so long as you do not make statements alleging mismanagement and racketeering.

Section 23

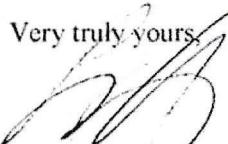
Commonly called "the appearance of conflict", the conflict law prohibits you from acting in a manner that would lead a person to think you could be improperly influenced in the performance of your official duties. That appearance of conflict is avoided by you disclosing in a public manner the facts which lead to the conclusion that you might be improperly influenced.

In this case, that disclosure should include the facts as I have recited them above, as well as copies of the letters from Attorney Horn as well as a statement by you that those letters will not unduly influence the performance of your official duties. That statement should be filed with the Town Clerk.

You should also make that disclosure publicly at a meeting before participating in an interview with Wendy Graves or in a vote on the appointment of a permanent town administrator.

Lastly, if the board votes to reschedule the interview with Wendy Graves, you may participate in that vote and do not need to make a conflict disclosure, since you have no financial interest in a continuance of the matter, and there is no reason to think your vote on a continuance is the result of undue influence.

Please let me know if you have any further questions in this regard

Very truly yours,

Thomas P. Crotty
Town Counsel

TPC/mch