

NAME OF COMPLAINANT(S) : BEFORE THE EDISON
John Paff :
 V. : TOWNSHIP
 : ETHICS BOARD
 NAME OF RESPONDENT(S) : COMPLAINT FORM
Thomas Lankey :

I, John Paff, residing at
 (Name of Complainant)

P.O. Box 5424, Somerset, NJ 08875, 732-873-1251, paff@pobox.com
 (Address/City/State/Zip Code, E-mail address & Phone Number of Complainant)

request the Edison Township Ethics Board to consider a complaint against the above
 named respondent whose **resident address** is
unknown home address
 (Address/City/State/Zip Code)

in accordance with the authority of the Edison Township Ethics Board to entertain such
 complaints under N.J.S.A. 40A:9-22.1 et seq.

The facts upon which this complaint is based are as follows: (Set down below in
 individually numbered paragraphs the specific facts upon which this complaint is based
 that cause you to believe that a violation of the Code of Ethics has occurred. You must
 also include the date(s) of the occurrence(s) upon which the complaint is based. Cite the
 section(s) of the Code of Ethics which you believe have been violated. Indicate what, if
 any, relationship you have to the respondent. Please note that you have the burden to
 prove factually the allegations set forth herein and must include with your complaint, any
 supporting documentation that you plan to submit.)

1. See the allegations set forth in my September 27, 2014 letter, attached to the
complaint. Also know that I object to filling out this form for the reasons stated in
footnote 1 of that letter. I am filling it out only because Michelle Kasperski informed me
by e-mail that the form must be completed. So, right or wrong, I am compelled to fill
out this form in order to have my complaint considered.

2. _____


3. _____

4. _____

WHEREFORE, I as the complainant, request the Edison Township Ethics Board find and determine that the above-named Respondent has violated the Code of Ethics and that he/she be subject to such penalty as the Edison Township Ethics Board deem appropriate.

10/01/14

(Date)



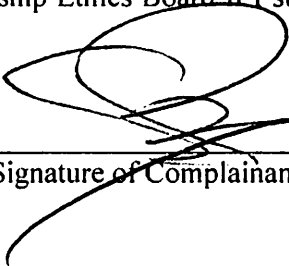
(Signature of Complainant or his/her Attorney)

CERTIFICATION UNDER OATH

John Paff _____, of full age, being duly sworn upon his/her
oath according to law deposes and says:

1. I am the complainant in this matter.
2. I have read the complaint and certify that the facts contained therein are true to the best of my knowledge and belief.
3. This matter is not pending in any other court of law or administrative agency of this State. I will advise the Edison Township Ethics Board if I subsequently become aware that it is pending elsewhere.

10/01/14
_____ Date


_____ Signature of Complainant

Sworn and subscribed to before me this
1st day of Oct, 20 14


_____ Signature

HOWARD A WILLIAMS
Notary Public
State of New Jersey
My Commission Expires Feb. 17, 2017
I.D.# 2417473

John Paff

P.O. Box 5424

Somerset, NJ 08875-5424

E-mail – paff@pobox.com

September 27, 2014

Telephone – 732-873-1251

Fax – 908-325-0129

Edison Township Ethics Board
c/o Edison Township Municipal Clerk
100 Municipal Boulevard
Edison, NJ 08817 (via regular mail and e-mail to crussomanno@edisonnj.org)

Dear Sir or Madam:

Please accept this letter¹ as my written complaint under Edison Code §4-2.11 against Edison Mayor Thomas Lankey. The factual basis for my complaint is laid out in the attached September 27, 2014 Star Ledger article, "Edison mayor busted for using cellphone while driving," by Brian Amaral, September 27, 2014. According to the article, Edison Township Attorney William Northgrave provided pro bono representation to Mayor Lankey in a traffic court matter. Northgrave and Lankey, both of whom were quoted in the article, admitted to the pro bono representation but claimed that that Northgrave's representation was offered because of a professional relationship that predates Lankey becoming mayor.

Given these admissions, it does not appear that there are any material facts in genuine dispute. I suspect that both Lankey and Northgrave will readily admit that the pro bono representation indeed took place. The question, which is legal rather than factual, is whether Lankey violated the

¹ I am aware that the Ethics Board has adopted a complaint form which, according to its instructions, "is required to be filed." I note that the form and instructions impose requirements upon the complainant that are not found in §4-2.11. Among those requirements are the submission of the form in triplicate and the complainant's notarized statement attesting to the truth of his or her allegations.

Further, the form states that I, as the complainant, have "the burden to prove factually the allegations set forth" in the complaint and requires me to "include with [my] complaint, any supporting documentation that [I] plan to submit." This strongly suggests that the Ethics Board expects me to attach evidentiary documents, such as the municipal court's disposition, to my complaint and that my failure to do so will later preclude these documents from being put into evidence. My complaint is based upon allegations contained in a newspaper article of which I have no personal knowledge. Also, I do not presently have access to the court filings and other documents described in the article.

I note that the Board is obligated by §4-2.11 to "initiate an investigation concerning the facts and circumstances set forth in the complaint." I also note that the Board is empowered by §4-2.9 to "issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing." This suggests to me that, contrary to the form and its instructions, a complainant needs only to allege "a minimal factual basis" (§4-2.11(d)) for a violation of the code that is within the Board's jurisdiction. If the complaint survives this standard, it then becomes the duty of the Board to gather evidence, secure the attendance of witnesses and prosecute the ethics matter on the complainant's and the public's behalf.

Ethics Law by accepting free legal services from Northgrave. The legal sufficiency of this complaint will be resolved by the Board's initial determination made in accordance with §4-2.11(b), (c) and (d). Those sections require the Board, after an initial investigation is completed, to determine whether the complaints is "outside its jurisdiction, frivolous or without factual basis."

I believe that the complaint is clearly within the Board's jurisdiction and that the newspaper article and the admissions made within it provide a clear factual foundation. Therefore, the complaint shall move forward only if the Board determines it to not be "frivolous." Unlike a sham pleading which contains "palpably or inherently false" factual allegations, a frivolous pleading may state the truth but lack legal merit. *Fidelity Mut. Life Ins. Co. v. Wilkes-Barre & H.R. Co.*, 98 N.J.L. 507, 510 (N.J. Err. & App. 1923)². In determining whether or not my complaint is frivolous, the Board must determine if the facts alleged, taken as true, amount to a violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.5, which Edison code §4-2.8 has adopted by reference.

Edison's Township Attorney is appointed by the Mayor, with the advice and consent of the Council. Edison Code §2-71.1. Accordingly, whether Northgrave is denied future appointments as the Edison Township Attorney is within the sole discretion of the Mayor. While it is possible that Northgrave, based on his previous professional relationship with Lankey, may have represented him for free even if he was not the mayor, it is also possible that Northgrave felt that not providing free legal services to Mayor Lankey may have jeopardized his ability to secure future professional appointments from Edison Township.

The Local Government Ethics Law states:

Whenever the public *perceives* a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled.

N.J.S.A. 40A:9-22.2(b), emphasis supplied.

And, New Jersey case law holds that "a conflicting interest does not require that the interest actually influence the action of the representative, but only that the interest creates a conflict." *Meyer v. MW Red Bank, LLC*, 401 N.J. Super. 482, 491-92 (App. Div. 2008).

² There is a marked distinction between pleadings which are frivolous and those which are sham. "While the courts sometimes use the terms 'frivolous' and 'sham' as meaning the same thing, and a motion to strike is often based on the ground that a plea is both frivolous and sham, there is nevertheless a clear distinction between the two in that a sham plea is good on its face, but false in fact, while a frivolous plea is one which on its face sets up no defense, although it may be true. A frivolous pleading is always assumed to be true, while a sham pleading must be proved to be false; the character of the former is determined by mere inspection, while that of the latter is usually determined by proof aliunde." *In re Beam*, 93 N.J. Eq. 593, 595 (N.J. Prerog. 1922)

Thus, it appears that the Local Government Ethics Law forbids not only actual conflicts, but also relationships and transactions which the public can reasonably perceive as being conflicting. And, the Board is not burdened with proving that the Mayor's appointment decisions will actually be influenced by Northgrave's gift of free services, but only that a conflict exists.

N.J.S.A. 40A:9-22.5(f) states in relevant part that

No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.

Clearly, Northgrave's representation of Mayor Lankey in municipal court was a "service" and a "thing of value." The question is whether there was an "understanding" between Northgrave and Lankey that Northgrave's decision of whether or not to afford free legal services would at least indirectly influence Mayor Lankey's decision to reappoint Northgrave to his position of Township Attorney at the end of his present term of office. A similar question regarding what, if anything, Northgrave expected to receive in exchange for giving Lankey free legal services is key to determining whether Lankey violated other provisions of N.J.S.A. 40A:9-22.5 such as (c)³ or (g)⁴.

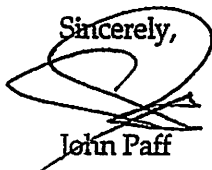
No one can delve into Northgrave's or Lankey's minds to determine their true intentions and expectations. And, the Board can clearly expect Northgrave and Lankey, if called to testify, to both claim that the giving of free legal services had nothing to do with Lankey's appointment power over Northgrave's position.

As I stated in the Star Ledger article, my intent on filing this complaint is to help establish some guidelines that public officials can consult to direct their future actions. If the Board finds the Mayor to have violated the ethics law, it will be clear to everyone that it is impermissible for a public official to accept free services from someone who is under the official's supervision or control. If the Board finds that the Mayor did not violate, then it will be equally clear that there is no ethical proscription against accepting free services from an appointee as long as both the official and the appointee later claim that the official's appointing power over the appointee had nothing to do with the transaction.

³ "No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others."

⁴ "No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated."

Thank you very much for your attention to this matter.

Sincerely,

John Paff



Edison mayor busted for using cellphone while driving

Brian Amaral | NJ Advance Media for NJ.com By Brian Amaral | NJ Advance Media for NJ.com

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on September 27, 2014 at 8:00 AM, updated September 27, 2014 at 11:58 AM

Edison Mayor Thomas Lankey's name is in newspaper advertisements this week exhorting readers not to use their cellphones while driving.

In June, Thomas Lankey's name was on a traffic ticket. He was using his cellphone while driving, according to documents obtained by NJ Advance Media.

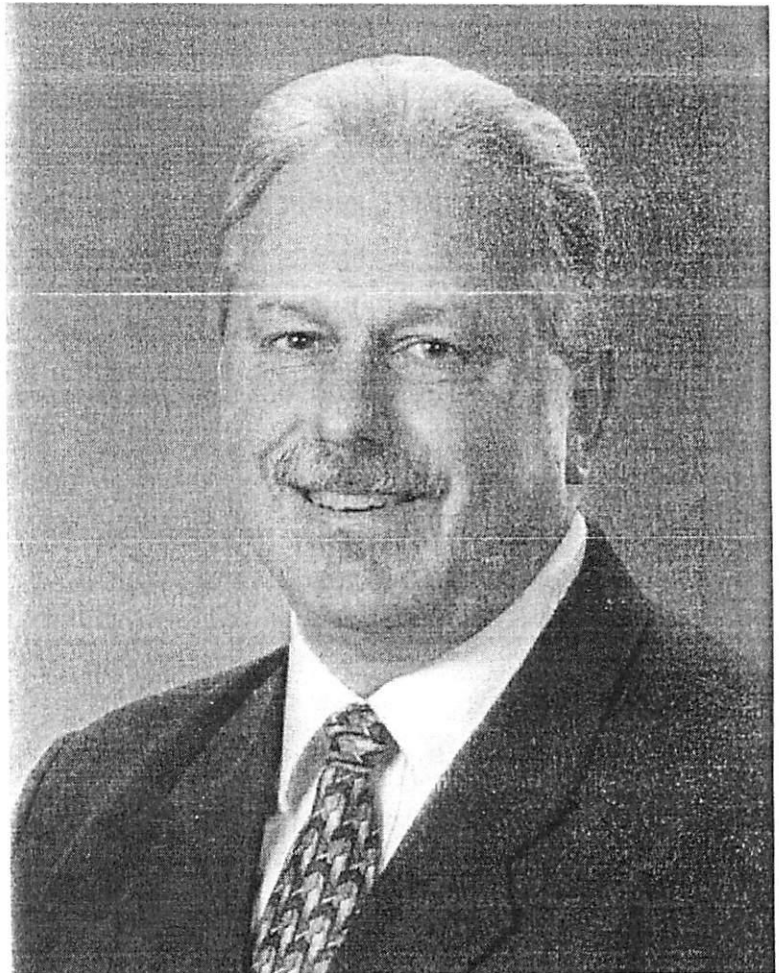
Lankey said his Infiniti's Bluetooth hands-free device, which keeps him on the right side of the law, wasn't working properly on June 10. So he picked up the cellphone to "see what was going on."

A Highland Park police officer spotted Lankey looking at his phone around noon while he was driving near River Road and Cleveland Avenue, according to the ticket. The officer didn't pull him over, Lankey said; instead, he got a ticket mailed to his house.

According to New Jersey motor vehicle law, a driver can only use a cellphone with one hand on the steering wheel if he or she fears for his or her safety, or if the driver is reporting something to authorities, like a traffic accident or a drunk fellow driver. Although drivers may use hands-free devices like Bluetooth while driving, there's no exception **in the law** for fixing that hands-free device, while driving, when it malfunctions.

Lankey paid \$100 after pleading guilty in South Brunswick Municipal Court – the case was moved twice because of conflicts of interest.

By Lankey's side in court that day was another familiar name in Edison: William Northgrave, the township's own attorney. Northgrave said he represented Lankey pro bono in the "personal matter."



Edison Mayor Thomas Lankey

File photo

In a phone interview -- from his office -- Lankey dismissed potential criticism of using the township attorney for his traffic ticket. Northgrave represented him because they have a professional relationship that predates their time as top township officials, not because he's the mayor, Lankey said.

Northgrave also said that there was nothing wrong with the arrangement.

"There's no unwarranted advantage," Northgrave said. "There's nothing wrong with what I did."

Northgrave said that having a lawyer present can help navigate the court system.

"If nothing else, at least I get you in and out faster," he said. "And that's what happened here. Actually I didn't get him out faster. It was the slowest court I've ever been in."

He said he has represented plenty of people in municipal court -- secretaries in his office, siblings of his children's friends. If it was a member of the town council, or someone working in the municipal office, or a certain regular fixture at a town council meeting who needed help in court, he'd have probably done the same thing, he said.

"I didn't represent him because he's the mayor," Northgrave said. "I represented him because he's someone I'm in daily contact with that had to go to municipal court."

Northgrave said that allegations of impropriety are "absurd."

But good-government advocates disagree.

"It's suspect to me," said John Paff of the state Libertarian Party's Open Government Advocacy Project. "It would at least warrant a complaint."

Paff said he'd likely file a complaint, which would help clear up issues that are often murky. He raised this hypothetical: What if the township attorney didn't want to represent the mayor pro bono?

"He's got to be thinking, 'I'm going to need this mayor's support for the contract renewal here,'" Paff said when advised of the contours of the case, but not the specific town. "It's just a very unwise move. All the attorneys out there, why not get somebody at an arm's-length distance? It's also a freaking cellphone ticket. It just seems like poor judgment by the mayor and the attorney to get themselves involved in that."

Bill Schluter, a former vice chairman of the state ethics commission and Republican state senator, said he considered it an "open and shut case" of a public official getting unwarranted privileges and advantage. That's covered under the state ethics law.

"Getting the local attorney, pro bono, to defend him, is an unwarranted advantage," Schluter said. "Pure and

simple."

This advertisement appeared in several local newspapers this week.
Brian Amaral | NJ Advance Media for
NJ.com

Lankey, who is the director of public safety in Edison, said he didn't get a break for showing up in court, where he was trying to get a

reduction. The judge ordered him to pay the same amount as he would have paid if he hadn't showed up, he said. He said he only went to court because he didn't know the local prosecutor doesn't give reductions.

But was his \$100 guilty plea in court equal to what he would have paid if he had just pleaded guilty immediately and paid online or by mail? That doesn't jibe with the documents. The original ticket Lankey was issued included a \$130 charge. According to court documents, he was charged \$70 in fines -- the amount of \$100 under the "fines" field had been scratched out and replaced with 70 -- and \$30 in court fees. Lankey himself said he paid \$100.

Lankey said he wasn't sure why there was a discrepancy between the ticket and the plea, but surmised that the \$130 ticket included \$30 in court costs that the municipal judge eliminated.

"I do not condone distracted driving for any reason," Lankey said. "It has proven to be a contributing factor in far too many motor vehicle accidents."

Indeed, for that very reason, the town this week started rolling out a new campaign on distracted driving.

Half-page ads in local newspapers put it in stark terms: "One Text or Call Could WRECK It All."

*Brian Amaral may be reached at bamaral@njadvancemedia.com. Follow him on Twitter @bamaral44. Find **NJ.com on Facebook**.*

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