



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

DOCKET NUMBER 95-7) STATE ETHICS COMMISSION
 IN THE MATTER OF A) 20 TRINITY STREET
 COMPLAINT AGAINST) HARTFORD, CT 06106
 MARIANNE SMITH) JULY 7, 1995

NOTICE OF TERMINATION OF PRELIMINARY INVESTIGATION
AND RESULTS THEREOF

Pursuant to Conn. Gen. Stat. §1-82a, the State Ethics Commission declares that on July 7, 1995 it terminated the preliminary investigation conducted with regard to this matter. As the result of this investigation the Commission makes the following finding:

Finding: The Commission finds that the complaint in question is precluded under the doctrine of collateral estoppel.

Reasons: The above complaint was filed by John Merchant, who is the Respondent in Ethics Commission Docket No. 94-2. During the course of the Commission's preliminary investigation of Docket No. 94-2, Mr. Merchant filed, on October 7, 1994, a Motion to Disqualify Commission staff members, including Marianne D. Smith, and on February 3, 1995, made a Motion to Dismiss the complaint. The allegations which are the subject of Docket No. 95-7 were also the subject of the referenced Motions in Docket No. 94-2. On October 7, 1994 and February 3, 1995 the Ethics Commission heard and denied the referenced Motions, finding the allegations raised therein to be without merit.

Motion to dismiss Docket No. 95-7 moved by Commissioner FitzMaurice; Seconded by Commissioner DeFronzo. Adopted 6-0.

Pursuant to Conn. Gen. Stat. §1-82a(a), the Respondent, Marianne D. Smith, has requested that this matter be open and public.

By order of the Commission,

Cindy Cannata
Cindy Cannata
Clerk of the Commission

Dated July 12, 1995

Certified No. 8516386260

CONNECTICUT STATE ETHICS COMMISSION
97 ELM STREET (REAR)
HARTFORD, CONNECTICUT 06106
Telephone Number 566-4472

COMPLAINT

I wish to register with the State Ethics Commission a complaint alleging a violation of:

XXXX The Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes.

_____ The Code of Ethics for Lobbyists, Chapter 10, Part II, General Statutes

XXXX The Code of Ethics for members and employees of the State Ethics Commission, Section 1-80(h) of the Connecticut General Statutes.

1. TIME AND DATE MATTERS COMPLAINED OF OCCURRED.

Complainant first became aware of the violation in September, 1994 but does not know exact date(s) of occurrence.

2. PLACE ALLEGED VIOLATIONS OCCURRED:

Ethics Commission office, telephone conversations, and unknown locations.

3. PERSONS INVOLVED:

Marianne Smith, Commission Staff Attorney

RECEIVED

JUN 9 1995

STATE ETHICS COMMISSION

4. WITNESSES:

John F. Merchant, Daniel E. Brennan, Esq., Attorney
Gary Mastronardi, and others, all of whom can be discovered by a proper investigation.

5. CIRCUMSTANCES WHICH INDICATED THAT THE CODE OF ETHICS DESIGNATED ABOVE WAS VIOLATED ARE AS FOLLOWS:

[See statement of facts attached hereto as EXHIBIT A]

000463

CERTIFICATION

I hereby certify under penalty of false statement that I believe that the foregoing statement, and the two (2) page attachment hereto describing a possible violation of the Code of Ethics, (which attachment is incorporated herein and made a part hereof) are true.

John F. Merchant May 23, 1995

Signature

Date

COMPLAINANT'S NAME AND ADDRESS:

John F. Merchant
480 Riders Lane
Fairfield, CT 06430

COMPLAINANT'S TELEPHONE NUMBER:

Home - 203-255-6643
Work - 203-827-7887

MAIL OR HAND DELIVER THIS COMPLAINT

State Ethics Commission
20 Trinity Street
Hartford, CT 06106

NOTES:

- (1) This Complaint may not be withdrawn by you, the Complainant, except with leave of the Ethics Commission.
- (2) In addition to the criminal penalties that may be imposed upon a complainant who, under penalty of false statement, knowingly files a false complaint, the Codes of Ethics provide that if any complaint is made with the knowledge that it is without foundation in fact, the person against whom the complaint is made (the respondent) has a cause of action against the complainant for double the amount of damage caused. If the respondent prevails in the action, the costs of the action together with reasonable attorney's fees may also be awarded the respondent by the court.
- (3) The Commission's preliminary investigation into a complaint is confidential, unless the respondent requests that it be open. Unless the Commission advises you otherwise, the allegations in the complaint and any information supplied to or received from the Commission shall not be disclosed during the investigation to any third party by the complainant, respondent, witness, designated party, or Commission or staff member.

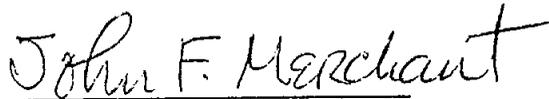
EXHIBIT A (Re Complaint of John F. Merchant dated May 22, 1995)

**STATEMENT OF FACTS REGARDING ETHICS COMPLAINT
BROUGHT BY JOHN F. MERCHANT AGAINST MARIANNE SMITH**

1. Upon knowledge and belief, Marianne Smith was, and is, employed as a staff attorney with the Ethics Commission of the State of Connecticut throughout the period covered herein.
2. On June 25, 1994, Jeffrey Olgin filed an Ethics Commission Complaint against John F. Merchant, which Complaint was assigned Docket #94-2.
3. On August 25, 1994, said Olgin filed a lawsuit in the U. S. District Court against John F. Merchant, *inter alia*, alleging violation of his civil rights.
4. In September, 1994, as part of her duties as a staff attorney with the Ethics Commission, Marianne Smith, met with John F. Merchant.
5. During the meeting, Marianne Smith advised Merchant that she had engaged in conversations with Attorney Gary Mastronardi, concerning a lawsuit he was about to file on behalf of Jeffrey Olgin, in which she:
 - a) revealed or acknowledged the existence of Ethics Commission Docket #94-2;
 - b) advised Attorney Mastronardi that he could recite the substance of the allegations involved in Ethics Commission Docket #94-2 but could not reveal that the allegations were contained in an "Ethics Commission" complaint; and,
 - c) advised Attorney Mastronardi that he could not list the "specific Charges" contained in Ethics Commission Docket #94-2, but further advised that Attorney Mastronardi could "summarize" the specifics in the lawsuit he was about to bring on behalf of Jeffrey Olgin.
6. Despite specific advice from Merchant's counsel that Jeffrey Olgin had violated the confidentiality provisions of the statute involving Ethics Commission complaints, Marianne Smith never reported Olgin's confidentiality violations to the Ethics Commission and/or never sought assistance from the Commission in protecting Merchant's rights.
7. Marianne Smith was advised by Attorney Mastronardi that Jeffrey Olgin had revealed the existence and substance of Ethics Commission Docket #94-2 and, despite knowing of this violation of Connecticut law, she never formally advised the Ethics Commission of this violation of the confidentiality provisions of the statutes regulating the Commission's activity.

8. Having personal knowledge of the violations of the confidentiality provisions of the statutes regulating the activities of the Ethics Commission, Marianne Smith failed to report the violations to the Ethics Commission or seek the statutory remedies provided for violation of the statutes.
9. In December, 1994, Marianne Smith, in writing, recommended dismissal of the complaint against John F. Merchant.
10. In January, 1995, the complaints against Merchant again became the subject and topic of media commentary.
11. Upon information and belief, Marianne Smith abandoned and changed her recommendation for dismissal because of her fear of media commentary.
12. Early in her investigation of the complaint against Merchant, Ethics Commission Docket #94-2, Marianne Smith told John F. Merchant that she was concerned about the potential of a lawsuit from Jeffrey Olgin, the complainant in Docket #94-2. Despite this expressed concern Marianne Smith did not recuse herself from the pending case.

Marianne Smith has violated Section 1-82a(a) of the Connecticut General Statutes.
Marianne Smith has violated Section 1-80(h) of the Connecticut General Statutes.


John F. Merchant
John F. Merchant

STATE OF CONNECTICUT)
HARTFORD) ss
COUNTY OF FAIRFIELD)

23 New Britain
May 22, 1995 at Bridgeport

The foregoing statement was subscribed and sworn to before me, this 23rd day of May, 1995


Bruce C. Johnson
Bruce C. Johnson
Commissioner of the Superior Court
JURIS #307986