

CONFIDENTIAL

OGIG 19-0129

ERIC MARECKI

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Origin of Case

In October 2019, Robert Williams, Executive Director, reported that [REDACTED] informed him that Eric Marecki, then-Associate Judge (“AJ”) for the Division of Horse Racing and Pari-Mutuel Wagering (“Division”), is gambling and [REDACTED].

Nature of Allegation

Specifically, it was alleged that [REDACTED]. In addition, it was alleged that Marecki participates in interactive fantasy sports (“IFS”) contests and that, in November 2016, an [REDACTED] United States Trotting Association (“USTA”) member who is also an official at a private racing entity indicated that Marecki owed him money for a fantasy sports pool.

Investigative Action

In furtherance of this investigation, Commission, licensee, and third-party records were reviewed, including, but not limited to, internet usage reports, HALT licensee history reports, personnel records, IFS account histories, and cellular phone records; and interviews were conducted, including, but not limited to, [REDACTED]; Marecki; [REDACTED] and [REDACTED].

Relevant Authority

Racing, Pari-Mutuel Wagering and Breeding Law (“PML”) §101 – Definitions

PML Section 101(5) defines gaming activity as “the conduct of any form of legalized gaming, including but not limited to, Class III gaming under the Indian Gaming Regulatory Act 25 U.S.C. §2701 et seq., pari-mutuel wagering, both on-track and off-track, bingo and charitable games of chance and the state lottery for education.”

PML §107 – Conflicts Prohibited

PML Section 107(3) prohibits any member, officer, official, or employee of the Commission from wagering on any gaming activity conducted within the State.

PML Article 14 – Interactive Fantasy Sports (“IFS”)

Effective August 3, 2016, this article authorized IFS contests to be registered and conducted in New York State.¹

¹ On October 26, 2018, Acting Supreme Court Justice Gerald W. Connolly ruled that the Legislature could not authorize the registration and conduct of IFS without a constitutional amendment, but the Legislature could create an exception for IFS under the Penal Law (“PL”)’s gambling statutes. On February 6, 2020, the Appellate Division Third

Public Officers Law (“POL”) §74 – Code of Ethics

In general, POL Sections 74(3) (b), (c), (d), and (h) prohibit any officer or employee of the State from engaging in any business or transaction which is in substantial conflict with the proper discharge of one’s duties. This prohibition includes not only actual conflicts, but also perceived conflicts as well. Specifically, subsection 3(h) states that an employee should engage in “a course of conduct which will not raise suspicion among the public” that an employee is likely to have acted in a manner which violates his or her trust.

Commission Code HR-002 – Code of Ethics for Gaming Commission Employees²

Commission policy reiterates that employees are mandated to comply with the above referenced statutory provisions and are “expected to adhere to the goals and philosophies of conduct that reflect heightened public expectations regarding public servants,” including, but not limited to, compliance with the spirit of Commission rules and regulations³ and behaving ethically at and outside of work.⁴

This policy establishes a code of ethics which governs the conduct and responsibilities of employees. The guiding principle is that employees are held to the highest standards of conduct and integrity and are expected to perform their duties promptly, courteously, thoughtfully, and free from improper influence or bias. Additionally, employees are expected to exhibit ethical behavior, both on and off the job, and are expected to perform their duties in an impartial manner and avoid any appearance of acting otherwise. This policy also prohibits employees from disclosing confidential information obtained because of one’s position and explicitly states “no employee of a State agency shall disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.”

Commission Code 4F-101 – Wagering Prohibition for Gaming Commission Employees⁵

This purpose of the policy is “[t]o ensure that the statutory prohibitions placed upon the Commission employees from wagering upon any gaming or horse racing activity within the State of New York are understood and upheld.” A signed attestation that the employee has read and understood the policy is a condition of employment and should be filed in the employee’s personal history file (“PHF”) in the Human Resources Management (“HRM”) office. Specifically, “[v]iolations of this policy are grounds for dismissal.”

Department upheld the former ruling, but found that the two provisions were not severable and ruled the PL exception unconstitutional as well. As of February 21, 2020, a preliminary appeals statement was processed by the clerk of the Court of Appeals as a matter of right on constitutional grounds. See CPLR §5601(b)(1). On August 27, 2020, FanDuel et al were granted leave to file a brief *amici curiae* on the appeal. Currently, IFS is being conducted, with the Commission approving contests, but no rules or regulations have been promulgated.

² Commission Codes are posted on the Commission’s Intranet page and can be provided electronically upon request. It should be noted this policy erroneously advises employees to report complaints to the State Inspector General rather than this Office.

³ See Commission Code HR-002, at A, “Goals and Philosophy,” 4, “COMPLIANCE WITH THE SPIRIT AS WELL AS THE LETTER OF COMMISSION RULES AND REGULATIONS.”

⁴ *Id.*, at A, “Goals and Philosophy,” 5, “ETHICAL BEHAVIOR, BOTH ON AND OFF THE JOB.”

⁵ It should be noted that on the Commission’s intranet, this policy is incorrectly titled “PROHIBITING GAMING COMMISSION EMPLOYEES FROM PURCHASING TICKETS & CLAIMING PRIZES.”

This Office has been advised that the policy was disseminated to staff employed with the then-Division of the Lottery and then-New York State Racing and Wagering Board (“RWB”), including per diems, and that a signed acknowledgment should have been returned for inclusion into each employee’s PHF.

Commission Code INFO-SEC-001 – Information Security

This policy states that

information systems, data, and physical assets may be used for business purposes only, as required by job duties. Communication transmitted through information technology tools is intended for business purposes only; these tools may not be used for personal matters. Commission’s management, in coordination with Information Security staff, will determine inappropriate use. Division directors and bureau/office heads will be the authority in responding to violations in this policy.

Furthermore, “access to and use of Commission-authorized computer systems and information assets within those systems must be restricted to valid business use based on job duties.” The policy also states that

access to the internet is provided for employees and affiliates for the efficient exchange of information and the completion of assigned responsibilities consistent with the Commission’s statutory purposes. Incidental non-business use of the Internet may be permitted if it does not impede the ability of the individual or others to fulfill work-related responsibilities or violate policies.

This privilege may also be revoked at any time. ITS Policy NYS-P14-001 section 4.1 provides examples of unacceptable use.⁶

Section X, Social Media, only states that with respect to personal social media,

It is not permissible to create a link from a personal website or social networking site to a Commission website or social network. An employee or authorized affiliate may not represent him/herself as an official spokesperson for the Commission. Employees may not use the Commission's logo, nor that of any of its divisions or other intellectual property, on personal social media accounts.

However, the policy does not discuss whether it is appropriate to identify one’s position and/or comment on Commission-related issues.

⁶ The policy defines occasional and incidental personal use as “occasional and incidental personal use of information technology resources to schedule a lunch date, cancel a sports practice, check their bank accounts or other personal investments, or to communicate with a volunteer charity organization.” Section 4.1 provides guidance on what may be deemed “unacceptable use” of NYS technological equipment while Section 4.2 sets forth “Occasional and Incidental Personal Use.”

Memorandum - Gaming Commission Employees -Prohibition in relation to Interactive Fantasy Sports⁷

On August 9, 2016, [REDACTED], [REDACTED], sent a Commission-wide email attaching a memorandum from [REDACTED] regarding the August 3, 2016 authorization of IFS. [REDACTED] advised that the Commission would now be regulating IFS, and, as with the other types of gaming regulated by the Commission, Commission employees are prohibited from “participating in interactive fantasy sports (IFS) activity” to remain in compliance with POL 74(3)(h)’s admonition to “avoid any conflict or appearance of conflict.” Specifically, employees were advised that

As of today, there are four IFS applications under review by Commission staff. No licenses have been issued yet, but it is expected that temporary licenses will be issued to IFS providers who were in business as of November 10, 2015.

Therefore, if you currently are a participant in IFS dating back to November, [sic] 2015, please make arrangements to conclude your affairs with that IFS provider.

Furthermore, employees are from this point forward prohibited from joining an IFS during the term of your employment with the Gaming Commission.

This prohibition will apply only to Gaming Commission employees and not members of your household. (emphasis added)

However, it should be noted that the memorandum also stated that the Commission’s “directive on Ethics” would be revised accordingly. To date, no such change to either the Commission’s Code of Ethics or Wagering Prohibition policies has been made.

Division Appointment Letter

The Division’s appointment letter for per diem staff makes no mention of the Commission’s wagering prohibition or requirement that employees receive approval for outside activities. Rather, there is a general advisement that “no Commission employee shall have any interest, financial or otherwise, or engage in any business or transaction or professional activity or incur any obligation, which is in substantial conflict with the proper discharge of his or her duties in the public interest.” Employees also affirm that they do not have “a relative or relationship with any other person who has a financial interest in or is employed at the race track” where they are assigned that would present a conflict or “a relative or relationship with any other person who is a horse owner, trainer, driver/jockey, track management staff or other person or entity regulated by the Commission” that would present a conflict. If they do have such a relative or relationship, they are expected to include the names of such people.

⁷ See Aug. 9, 2016 email and attachment, annexed hereto as Exhibit “1.” It should be noted that this email and attachment were located in Marecki’s email account.

Marecki HALT and Personnel History

On August 9, 2001, Marecki was first licensed as a harness racing groom by the RWB and was subsequently licensed as an owner, provisional driver, and trainer. He maintained his license until he began working for the RWB. On January 11, 2013, Marecki was appointed as a Paddock Judge. On May 4, 2013, he was promoted to AJ at Yonkers. On May 10, 2018, Marecki was appointed as a PJ, but his primary assignment remained as an AJ at Yonkers. On March 2, 2020, he was appointed PJ at Monticello Raceway (“Monticello”). No performance evaluations were located in Marecki’s PHF.

Marecki’s PHF contained multiple acknowledgments from January 11, 2013, that he read the RWB Employee Handbook, which contains a section on ethics and the wagering prohibition, as well as completed the State’s courses on Ethics and Sexual Harassment Prevention.⁸ There is no signed attestation regarding the Commission’s wagering policy. Marecki also attended this Office’s Corruption Awareness Training on February 16, 2016, and June 20, 2019.⁹ Although not noted in his PHF, he was designated a policy maker to JCOPE on December 31, 2015; attended JCOPE’s Comprehensive Ethics Training Course (“CETC”) on December 7, 2016; completed JCOPE’s Online Ethics Orientation (“OEO”) on February 23, 2017;¹⁰ and attended an online JCOPE Ethics Refresher training conducted by the Commission’s [REDACTED], on January 13, 2021.

As part of this Office’s review, an updated list of Commission JCOPE filers was obtained, which revealed that Marecki’s position has not been updated to PJ, and the list does not include all of the Division’s regular per diem staff assigned as Assistants to the PJ/Steward, AJs, PJs, Starters, Stewards, and Supervising Veterinarians, which have been deemed policy maker titles, such as [REDACTED]

[REDACTED]¹¹ The Commission should also consider designating Paddock and Recording Judges policy makers, as well as standby per diem staff who may work in the aforementioned titles, even if it is not their primary assignment.

Marecki IFS Accounts

As noted above, on August 3, 2016, IFS was legalized in New York State. On March 13, 2017, For Player-By Player, LLC (“FFPC”) was issued a temporary permit to offer IFS contests. On March 27, 2017, RealTime Fantasy Sports, LLC (“RTFS”) was issued a temporary permit.

FFPC

On July 29, 2018, Marecki opened an FFPC account under the username [REDACTED]. He provided his social security number, email address of [REDACTED],¹² and home

⁸ See Marecki attestations, annexed hereto as Exhibit “2.”

⁹ See Feb. 16, 2016 and Jun. 20, 2019 Corruption Awareness Training Sign-In Sheets, annexed hereto as Exhibit “3.”

¹⁰ Marecki did not need to complete the OEO as he had previously attended the CETC.

¹¹ See relevant portion of the Commission’s JCOPE financial disclosure filers as of Mar. 11, 2021, annexed hereto as Exhibit “4.”

¹² Marecki has used this email address to correspond with staff from the Division.

address of [REDACTED] In 2018, he was issued a 1099-Misc for [REDACTED] in winnings. In 2020, he was issued a 1099-Misc for [REDACTED] in winnings.

RTFS

RTFS has been in business since 2007, and, initially, players could have multiple accounts. When RTFS began conducting fantasy sports contests in 2013, they attempted to merge duplicate accounts. RTFS could not pinpoint the exact date that Marecki first created an account, but the earliest record located was from March 21, 2011. At that time, Marecki opened his account using the email [REDACTED]” and home address of [REDACTED]

However, on August 9, 2016, RTFS also recorded that Marecki opened an account using a Yahoo email account [REDACTED] and assigned customer number [REDACTED]. For that account, he provided his date of birth of [REDACTED] as well as his address as [REDACTED].¹⁴ Notably, the date this account was opened was the same day [REDACTED] sent [REDACTED] memorandum prohibiting IFS wagering by Commission employees.

On March 3, 2021, after his interview with this Office, Marecki requested that funds in his account be refunded to him rather than issued as a credit.

Records Review

[REDACTED]

[REDACTED]

[REDACTED]

¹³ According to Marecki’s PHF, this is Marecki’s current home address.
¹⁴ Marecki has previously provided this address to the Commission.
¹⁵ According to Marecki’s PHF, this is Marecki’s date of birth.
¹⁶ Marecki has previously provided this address to the Commission. Additionally, RTFS uses a third-party electronic verification system, which only requires the last four digits of someone’s social security number to verify their identity if name, address, and date of birth are not sufficient. The information provided by Marecki was sufficient.
¹⁷ [REDACTED]

Internet Usage Reports

Marecki's Commission internet use was reviewed over three periods, from September 2, 2019, to December 3, 2019; from September 28, 2020, to December 8, 2020; and from December 8, 2020, to February 8, 2021, to determine whether he was visiting IFS websites while he was working. The internet history reports capture various data, including site and URL¹⁸ associated with sites accessed by a user, and each URL is timestamped and classified into different categories, such as gambling, games, and sports.

For the 2019 period, there were 160,073 unique values. Of those values, 2,090 sites contained "ffpc,"¹⁹ which is part of the website name of FFPC, and 6,900 contained "rtsports," which is part of the website name of RTFS. In addition, 78 contained "cbssports"; 13,858 contained "espn"; and 1,151 contained "yahoo." There were 4,383 values categorized as streaming media from websites such as ESPN, Vimeo, and YouTube. In comparison, there were only 4,149 that contained "etrack," the website used by the Commission to conduct draws. It should be noted that the URLs associated to RTFS were classified as games, while those for FFPC were classified as sports.

For the 2020 period, there were 124,029 unique values. Of those values, 365 sites contained "ffpc" and 4,190 contained "rtsports." In addition, 143 contained "cbssports"; 4,512 contained "espn"; and 1,641 contained "yahoo." There were 1,236 values categorized as streaming media from websites such as ESPN, Vimeo, and YouTube. In comparison, there were 2,310 that contained "etrack."

For the 2020-2021 period, there were 52,021 unique values. Of those values, no sites contained "ffpc," while 82 contained "rtsports," all occurring on January 26, 2021. In addition, 22 contained "cbssports"; 8,701 contained "espn"; and 299 contained "yahoo." There were 45 values categorized as streaming media from websites such as CBS and YouTube. In comparison, there were 651 that contained "etrack."

During each time period, there were values containing "draftkings" and "fanduel," but they appeared to be for advertisements. A review of the date and time stamps for Marecki's internet use showed that the activity did not occur during races and was limited to when he would be working in the office.

This Office also compared Marecki's Commission internet use to the IP addresses captured by RTFS and FFPC's databases. [REDACTED]

[REDACTED]. On January 26, 2021, Marecki's Commission IP address was used to request a cash out from RTFS. On that day, Monticello

¹⁸ URL stands for Uniform Resource Locator, which "incorporates the domain name, along with other detailed information, to create a complete address (or "web address") to direct a browser to a specific page online called a web page." See https://www.verisign.com/en_US/website-presence/online/what-is-a-url/index.xhtml, last accessed March 25, 2021.

¹⁹ This review focused on the site data rather than URL data, as that could include background or advertisements from a site, such as an advertisement for DraftKings on Facebook.

canceled racing. Otherwise, no account-related activity was recorded as having taken place during his Commission work hours.

Key Interviews

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] drivers board.

[REDACTED] *former Commission* [REDACTED]

This Office spoke with [REDACTED] [REDACTED] [REDACTED] regarding any conversation he may have had with Marecki as it relates to IFS. Although [REDACTED] could not recall a specific conversation with Marecki, he confirmed that he conducted an ethics training at Monticello in 2016, which was attended by Yonkers staff. Additionally, [REDACTED] stated that he would not have told staff that they were permitted to continue using a pre-existing IFS account, as his default response would be that staff should not engage in wagering at all. Further, [REDACTED] stated if he was asked a specific question after a training, it was his practice to request that the person send him an email with the details of his/her situation so that he could respond accordingly. No such email exchange was located between Marecki and [REDACTED]

Eric Marecki

Marecki has been employed with the Commission since 2014 working in various positions, including, Inspector, Paddock Judge, AJ, and PJ. He explained that following his college graduation he worked as a [REDACTED]. Marecki became friends with [REDACTED], a former trainer, USTA [REDACTED] and Standardbred Owners Association [REDACTED] and as a result, he became involved in horse racing as a trainer and owner from about 2001 to 2013. He stated that he owned half a horse with [REDACTED] and approximately 70 horses in total prior to working for the Commission. Marecki added that he trained hundreds of horses. He was racing horses at Yonkers when he heard that the Commission was hiring, and [REDACTED], he decided to apply. He was interviewed by [REDACTED].

In 2014, Marecki served as an AJ at Tioga Downs and then at Yonkers. In 2017, he served as a PJ at Monticello, but continued to work primarily as an AJ at Yonkers Raceway. In September 2020, he became a full-time PJ, assigned to Monticello, but working at various tracks except for Buffalo Raceway.

Marecki described working as an AJ at Yonkers to include arriving at the track between 2:30 and 3:00 P.M. to review the program, judges' sheet, and entries. He explained that once the entry box closed, the entries are collected, and the Race Office would put together a race card based on the entries. Thereafter, a drawing is conducted to determine post positions, and the proofs provided to the judges are reviewed to ensure eligibility. The judges then officiate the races and end their day. [REDACTED]

[REDACTED]

Marecki admitted that he knows many licensees as he was horsemen, but commented that he no longer speaks with anyone outside of work. He stated that he has no family members involved in racing, [REDACTED]

[REDACTED] Marecki identified some of the horsemen he knew to be [REDACTED].

Marecki confirmed that he checks his Commission email daily when he is at work, noting that they receive telephone communications and have a bulletin board for posting announcements and other important items. He said that the PJ is responsible for the bulletin board, though office

staff will just pin up what they believe to be important. Marecki stated that he rarely uses his personal email for work, but may have during the initial phases of the COVID-19 pandemic. [REDACTED], Recording Judge, prints and distributes any training material and will also have the staff sign an acknowledgement sheet and return the list to Schenectady.

Marecki stated that he is also required to attend JCOPE ethics trainings, the last time conducted by [REDACTED], Commission [REDACTED], in 2021. He believed that he has been a JCOPE filer since 2016. Marecki added that he has also taken the OGIG training at least twice, once at Yonkers Raceway and the other time at Monticello Raceway.²⁰

Sometime in 2016, Marecki attended ethics training conducted by an individual believed to be [REDACTED], former Commission [REDACTED], at Monticello, who advised that the Commission would be regulating IFS.²¹ At the end of the training, Marecki said that he approached [REDACTED] and informed [REDACTED] that he had a FanDuel account, which he opened when he resided in New Jersey, and that members of his family (father, wife, and in-laws) use the account as well. Marecki claimed that [REDACTED] stated that it was okay for him and members of his household to use the account and for him to gamble in another state as long as it was not on horse racing conducted in the state. He explained that the account was opened prior to 2015 and before the Commission assumed regulatory oversight of IFS and that he and his wife fund the account. Marecki stated that he also has a DraftKings account, but that it is unused. He added that he has had an active account with "RT Sports"²² since 2009.²³ Marecki further stated that he still plays in approximately 12 fantasy football leagues with friends.

Marecki admitted that he used his Commission-assigned desktop to check his RT Sports account to read sports articles, but not for financial or other transactions. He stated that he only did this when there was downtime in the office and only for a few minutes, perhaps no more than 20. Marecki explained that he would log onto the site and then leave it running on the desktop while doing other tasks and acknowledged that it is possible that people in the Commission office saw the site up on his computer screen.

In addition, Marecki acknowledged that he played in a league set up by his cousin on the FFPC site, as well as a now-defunct league with other racing officials, which lasted approximately five years, from about 2014 to 2019. He said that the racing officials included [REDACTED]. The league used Yahoo Sports to keep track of their standings. Marecki denied that anyone from the Commission is part of any leagues in which he is currently participating.

²⁰ According to OGIG records, Marecki attended both trainings at Yonkers Raceway.

²¹ The training was on December 15, 2016, after IFS was legalized. See Dec. 13, 2016 email exchange, annexed hereto as Exhibit "5."

²² As noted above, the URL for RTFS includes rtsports.

²³ Marecki subsequently provided this Office with a screenshot from his RTFS account showing activity from October 2011. See Screenshot, annexed hereto as Exhibit "6."

²⁴ [REDACTED] denied wagering on any sporting events or participating in any gaming activities regulated by the Commission. [REDACTED].

²⁵ [REDACTED] resides in [REDACTED].

Marecki was also asked about his social media accounts. He advised that he uses Facebook and Instagram, but said that he is not a “prolific” poster. Marecki has had these accounts since prior to his employment with the Commission, and as such, many of his friends on Facebook are licensees/horsemen he knew when he was a horseman, as he never “cleaned up” his friends. He admitted that he has posted his opinions regarding racing, including about rules, though he does not believe that he discussed any races he officiated.²⁶ A review of Marecki’s Facebook page revealed that he identified himself as a Judge at Yonkers.²⁷

At the conclusion of the interview, Marecki stated that he would immediately close his IFS and social media accounts and provide documentation to show that he had his IFS accounts prior to 2015, as well as the closure of any accounts. To date, Marecki advised this Office that he was in the process of closing his Facebook account.²⁸ This Office has also learned that Marecki requested to cash out his RTFS account.

Findings

This investigation determined the following:

- 1) [REDACTED]
- 3) Marecki has been participating in IFS since at least 2011 and continued to do so, despite receiving the August 9, 2016 memorandum issued by the Commission’s [REDACTED] advising that Commission employees were prohibited in engaging in such wagering and attending the December 15, 2016 ethics training conducted at Monticello. This Office finds it unlikely that [REDACTED] advised Marecki that he could continue to have an IFS account in his name, even if purportedly used solely by family members. It is possible that if Marecki asked whether his family members could engage in IFS that [REDACTED] replied that they could, as there is no prohibition for Commission family members residing in the same household.
- 4) Marecki admitted being part of a fantasy sports pool, using the Yahoo Sports platform, that included Commission staff and other racing officials from 2015 to 2019. [REDACTED] is likely the [REDACTED] looking to collect money from Marecki for a fantasy sports pool in November 2016.

²⁶ See Facebook Intro, annexed hereto as Exhibit “7.”

²⁷ See Sample Facebook posts, annexed hereto as Exhibit “8.”

²⁸ See Mar. 4, 2021 email, annexed hereto as Exhibit “9.”

- 5) Marecki admitted that he is Facebook friends with several Division licensees who race at the tracks where he has worked, as they were his friends prior to his tenure with the Commission.
- 6) Marecki's Facebook account identified him as a Judge at Yonkers, and he admitted that he posted commentaries on racing, including racing rules, although he claims not to have discussed races he has officiated.
- 7) As of March 11, 2021, the Commission's JCOPE filers list did not accurately include all of the per diem staff assigned to policy maker titles in the Division of Racing, specifically, Assistant to the PJ/Steward, AJ, PJ, Starter, Steward, and Supervising Veterinarian.

Conclusions & Recommendations

As a result of the above findings, it is recommended that this case be closed as **partially substantiated**. This Office did not find sufficient evidence to support that [REDACTED]

This investigation, however, determined that Marecki has been participating in IFS, even after August 3, 2016, when IFS was authorized to be conducted in New York State, and despite receiving the August 9, 2016 email regarding the Commission's IFS wagering prohibition and attending the December 15, 2016 ethics training. Further, Marecki admitted to participating in a fantasy sports pool with Commission and other racing officials supporting the allegation that an [REDACTED] USTA member was seeking to collect money from him.

Additionally, Marecki identified himself as a Judge at Yonkers on his Facebook account. Yet, he continued to be Facebook friends with licensees after he began working for the Commission, which could create the appearance of a conflict, in that, he favored those licensees. Further, Marecki admitted to commenting on racing, including racing rules, which could be construed as him speaking for the Commission, as he identifies himself as a Judge.

Lastly, this Office's review found that the JCOPE's list of Commission filers does not accurately include all of the Division per diem staff who are assigned in the various policy maker titles, creating a corruption hazard, as those staff do not complete financial disclosure forms and are not required to attend JCOPE's ethics trainings.

Accordingly, the following is recommended:

- 1) The findings as they pertain to Marecki's conduct are referred to the Executive Director for review and any other action deemed appropriate, including administrative and/or disciplinary action, up to and including termination;
- 2) As the Commission continues to update policies, procedures, and forms, the Commission should consider updating the attestation on per diem appointment letters,

in particular, with respect to the wagering prohibition and outside activities, as well as the Commission's social media policy to include that staff should not be "friends" with licensees or vendors and to remind staff not to discuss work-related matters; and

- 3) The Commission must regularly update its JCOPE's filers list to include all the per diem staff assigned to work in policy maker positions for the Division. The Commission should consider including standby per diem staff to the list.