

**ORDER OF THE STATE PERSONNEL BOARD DENYING PETITION FOR HEARING**

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**RICHARD MIGNOGNA,**

Complainant,

vs.

**DEPARTMENT OF REGULATORY AGENCIES, DIVISION OF REGISTRATIONS,**

Respondent.

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This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on August 16, 2011. During this public session, the Board considered the Preliminary Recommendation of the Administrative Law Judge.

Based upon the Board's review and consideration of the Preliminary Recommendation, the Board finds there is an insufficient basis to uphold the Preliminary Recommendation of the Administrative Law Judge.

**IT IS HEREBY ORDERED** that the Preliminary Recommendation of the Administrative Law Judge is rejected and the petition for hearing is **DENIED** on the grounds that the Board finds Complainant has not presented a sufficient evidentiary and legal basis to demonstrate that the Colorado Whistle Blower Act (§ 24-50.5-101 *et seq.* C.R.S.) has been violated or that Complainant's federal or state constitutional rights, including his right to protection by the First Amendment, have been violated.

The Board finds Complainant did not establish a *prima facie* case for a valid whistleblower claim, as the disclosures were not protected under (§ 24-50.5-101 *et seq.* C.R.S.). The Board further finds that the Complainant wrote the draft PV Report in the course of his normal work duties, that Complainant's supervisor was in the process of reviewing the PV Report and had requested Complainant to substantiate his conclusions, and that Complainant's supervisor had limited the publication of the report because the supervisor found the report to be deficient and unsupported.

The Board finds Complainant did not establish that his actions were protected by the First Amendment, as Complainant was holding himself out to be acting in his official capacity and used his official title and official contact information as well as the official state seal on communication Complainant alleged was protected by the First Amendment. The Board further finds Complainant did not have the right to discuss his

work product and draft reports, which were prepared for his employer's review and consideration, with vendors and/or the general public, as doing so was outside of the direction provided by his supervisors and violated the more paramount duties owed to his employer's interest.



Dated this 25<sup>th</sup> day of August, 2011.

Dana Shea-Reid, Acting Board Chair  
State Personnel Board  
633 17th Street, Suite 1320  
Denver, Colorado 80202-3604

**NOTICE OF APPEAL**

Each party has the following rights:

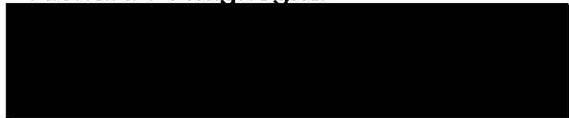
1. To abide by the decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to Section 24-4-106(11), C.R.S., as provided in Section 24-50-125.4(3), C.R.S.

In the event the decision is appealed, pursuant to Section 24-4-106(11)(b), C.R.S., the party filing the appeal with the Court of Appeals must serve the State Personnel Board with a copy of the Notice of Appeal at: 633 17th Street, Suite 1320, Denver, Colorado 80202-3604. In addition to serving the State Personnel Board with a copy of the Notice of Appeal, the party filing the appeal with the Court of Appeals must name the State Personnel Board as a party (appellee) to the appeal. Section 24-4-106(11)(d), C.R.S.

**CERTIFICATE OF MAILING**

This is to certify that on the 31<sup>st</sup> day of August, 2011, I electronically served true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD DENYING PETITION FOR HEARING**, addressed as follows:

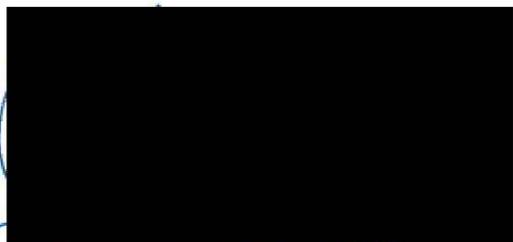
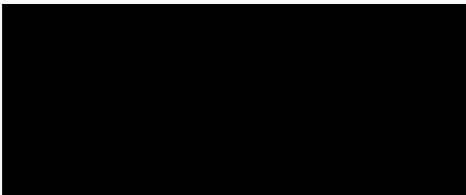
Richard P. Mignogna



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Eric Freund



Andrea C. Woods