

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 24-0005

IN THE MATTER

OF

KEVIN HAYDEN

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Kevin Hayden (“Hayden”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 20, 2022, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A, by Hayden. On October 19, 2023, the Commission concluded its inquiry and found reasonable cause to believe that Hayden violated G.L. c. 268A, § 23(b)(2)(ii).

The Commission and Hayden now agree to the following findings of fact and conclusions of law:

**Findings of Fact**

1. Massachusetts Governor Charles Baker appointed Hayden as District Attorney for Suffolk County (“Suffolk DA”) on January 6, 2022, after the resignation of his predecessor.
2. In early 2022, Hayden declared his candidacy for election to the office of Suffolk DA.

3. Hayden sought the nomination of the Democratic Party for Suffolk DA at the primary election, to be held on September 6, 2022.

4. Ricardo Arroyo (“Arroyo”) also sought the nomination.

5. On August 23, 2022, *The Boston Globe* reported that Arroyo had twice been investigated by the Boston Police Department (“BPD”) for alleged sexual assaults in 2005 and 2007, when he was reportedly a teenager (“Arroyo allegations”).

6. *The Boston Globe* article stated:

Police spokesman Sergeant Detective John Boyle said that both cases were referred to the district attorney’s office and that both were investigated. The 2005 investigation was closed without criminal charges after eight months; the 2008 investigation was closed without charges after five months. A spokesperson for Hayden’s office, James Borghesani, also declined to release complete sets of documents on the cases, citing state law that protects sexual assault reports. He declined to comment on why the cases were never prosecuted.

7. Soon after the Arroyo allegations were raised by *The Boston Globe*, Arroyo held a press conference. *The Boston Globe* reported that, during the press conference, Arroyo stated, “I have never assaulted anyone. Until a week ago, I had never been informed there were any such complaints ever made.” *The Boston Globe* also reported that Arroyo was accompanied at the press conference by the attorney for the woman involved in the 2007 allegations, who read a statement the attorney said was from the woman asserting that Arroyo had never assaulted her and that he was her friend.

8. In the two-week period after the August 23, 2022 *Boston Globe* article was published, multiple news media outlets reported on the Arroyo allegations and made multiple inquiries regarding the allegations, including to the Suffolk DA’s Office.

9. The Arroyo allegations became a focal point in the 2022 Democratic primary race for Suffolk DA and, in the aftermath of the August 23, 2022 *Boston Globe* article, some of the public figures previously supporting Arroyo, including Boston Mayor Michelle Wu, and United States Senators Elizabeth Warren and Edward J. Markey, withdrew their endorsement.

10. On August 30, 2022, *The Boston Globe* reported that the complainant in the 2005 allegations had stated that she stood by everything she alleged to police about Arroyo in 2005 and that she had not spoken to anyone from either the Hayden or Arroyo campaigns.

11. Also on August 30, 2022, Arroyo sued the City of Boston to obtain the files of the BPD investigations of the allegations concerning him, which were then under seal.

12. On September 1, 2022, a Justice of the Suffolk Superior Court ordered the release of some of the documents from the BPD files in redacted form to Arroyo by 2 p.m. on Friday, September 2nd.

13. Arroyo's claim that the material he sought from the BPD would show that the allegations were unfounded and that he did not assault anyone were widely reported in the news media.

14. Around the time the Arroyo allegations were first reported in *The Boston Globe*, Hayden's DA Office staff reviewed the files maintained at the DA's office that related to the Arroyo allegations ("Suffolk DA Arroyo files")

15. The contents of the Suffolk DA Arroyo files differed from the contents of the investigation files Arroyo had requested from the BPD.

16. During the weeks leading up to the primary election, Hayden spent much of his time campaigning. Nevertheless, his DA Office staff apprised Hayden of the contents of the Suffolk DA Arroyo files and of the news media inquiries made to the DA's Office regarding the Arroyo allegations, including inquiries regarding Arroyo's lawsuit for his BPD files.

17. During late August and early September 2022, Hayden discussed the news media inquiries to the DA's Office regarding the Arroyo allegations with members of his DA Office staff.

18. By September 2, 2022, Hayden was aware of the Arroyo allegations and Arroyo's lawsuit against the City of Boston for his BPD files.

19. Hayden was aware the DA's Office staff intended to issue a statement that was directly contrary to Arroyo's claim that the charges against him were unfounded.

20. While discussing the Arroyo allegations with his DA Office staff, Hayden did not discuss or provide any guidance to them concerning the state conflict of interest law prohibition of the use of public resources for election-related political activity.

21. At no point after announcing his candidacy for election to the office of Suffolk DA, did Hayden discuss or provide any guidance to his DA Office staff concerning the conflict of interest law prohibition against the use of public resources for election-related political activity.

22. On September 2, 2022, at 12:33 p.m., a staff member in the Suffolk DA's Office emailed a press release titled, *Statement of DA Kevin Hayden Regarding Case File Review*, to a reporter with *The Boston Globe* which included only the following quote ("the Statement"):

"We have thoroughly reviewed our entire unredacted file regarding the sexual assault allegations against Ricardo Arroyo. Nothing in the file suggests or indicates that the allegations were unfounded. Also, nothing in the file questions the validity of the victim's statements. The campaign to sabotage the victim's credibility is shameful."

23. At 12:59 p.m. on September 2, 2022, a staff member in the DA's Office emailed the press release including the Statement to a mass distribution list, newly retitled *Statement of Suffolk County District Attorney's Office Regarding Case File Review*.

24. The Statement was published by multiple news media sources, including the *Boston Globe*, *Commonwealth Magazine*, the *Boston Herald*, the *Bay State Banner*, *WCVB Channel 5*, *MSN*, *WGBH*, *Universal Hub*, *Boston.com*, *Boston News 25*.

25. Many of the news stories used the Statement as a response to and rebuttal of Arroyo's claim that the files he received from the BPD showed the allegations against him were unfounded.

26. A September 2, 2022, *Boston Globe* article published at 11:56 a.m., titled *Arroyo set to receive redacted sexual assault files after judge grants access*, which reported that Arroyo was scheduled to receive documents by 2 p.m. that day, was updated to quote the Statement and report that “current Suffolk District Attorney Kevin R. Hayden, released a statement saying prosecutors never deemed the case ‘unfounded.’” At 4:27 p.m. later that day, *The Boston Globe* published a second article titled *Unsealed court documents say 2005 sexual assault allegations against Arroyo were unfounded*’.

27. A September 2, 2022, article in *Commonwealth Magazine* discussed the records obtained by Arroyo from the BPD and quoted the Statement, as well as a statement from a spokesperson from the DA’s Office indicating that a “determination that no crime occurred does not mean the allegation against Arroyo made by the victim are untrue.”

28. Also on September 2, 2022, a *Boston Herald* reporter tweeted the Statement with the comment, “DA Kevin Hayden’s official office going after the Arroyo DA campaign in a press release an hour before the deadline for the city to hand over the police investigatory file.”

29. At the time the Statement was provided to the news media, the DA’s office did not intend to pursue any charges against Arroyo in connection with the Arroyo allegations.

30. The majority of the responses to media inquiries and the majority of press releases and statements issued by the DA's Office are made by staff members with Hayden's authorization but without his participation. It is, however, Hayden's usual practice to preview DA's Office press releases in relation to significant events or which contain a quote from him.

31. Prior to its issuance, the Statement was reviewed by three attorneys in the DA's office.

32. Hayden testified under oath during the Commission's investigation that he did not review the press release containing the Statement prior to its issuance.

33. After their release, Hayden did not take any steps to withdraw the press release or the Statement despite their inappropriate political nature.

34. Hayden won the September 6, 2022, Democratic primary election, with 54 percent of the vote to Arroyo's 46 percent, and subsequently won election as Suffolk DA in the November 2022 general election.

#### **Conclusions of Law**

35. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a public employee from, knowingly or with reason to know, using or attempting to use their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value which are not properly available to similarly situated individuals.

36. As the District Attorney, Hayden was, at all relevant times, a state employee, as defined in G.L. c. 268A, § 1(q).

37. The use of public agency staff to write and issue a press release in the name of the public agency for a private or personal political purpose is an unwarranted privilege that is not properly available to any public employee. Such use of public resources to gain advantage in an election to a public office is of substantial value.

38. In drafting and issuing the Statement and press release, the DA's Office staff used the DA's Office's files, staff and media contacts, as well as the weight and authority of the Suffolk DA's Office.

39. Hayden had reason to know that his DA's Office staff intended to use public resources to release a statement that directly contradicted Arroyo's claim that the charges against him were unfounded, when Arroyo was his main opponent in the Democratic primary election for Suffolk DA in the days leading up to the election.

40. Hayden had reason to know that issuing a statement from the DA's Office reflecting on his opponent's credibility would counter and significantly undermine any statement by Arroyo in connection with the files he received from the BPD.

41. Hayden had reason to know that a statement issued by the DA's Office regarding the Arroyo allegations would be widely reported in the news media and would influence public opinion regarding his political opponent.

42. The action of the DA's Office in releasing to the news media a statement challenging the credibility of the DA's opponent in the Democratic primary election regarding a matter in which the DA's Office was not publicly involved, particularly a statement timed to undercut the opposing candidate's claims of innocence in the days leading up to the election, was indisputably election-related political activity.



43. As Hayden knew, or had reason to know that his DA Office staff intended to release to the news media a statement challenging the credibility of his primary election opponent and, as Suffolk DA, failed to stop them from doing so, and as Hayden, as Suffolk DA, further failed to withdraw the statement after it was issued, Hayden knowingly or with reason to know used his official position as Suffolk DA to secure for himself the substantially valuable unwarranted privilege of the use of the public resources of the DA's Office for his own personal political advantage in the Democratic primary election. In so doing, Hayden violated § 23(b)(2)(ii).

**Disposition**

In view of the foregoing violations of G.L. c. 268A by Hayden, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Hayden:

- (1) that Hayden pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2)(ii); and
- (2) that Hayden waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

