

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Martin Desmond, Appellant, v. Mahoning County Prosecutor's Office, Appellee.	Case No. Administrative Law Judge
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NOTICE OF APPEAL OF MARTIN DESMOND

Appellant Martin Desmond respectfully notifies the State Personnel Board of Review of his appeal, as reflected on the attached corrected notice-of-appeal form.¹ A summary of the action being appealed, as required by Ohio Admin. Code § 124-5-01, follows.

Summary of Action Being Appealed

Attorney Desmond is appealing retaliatory disciplinary actions—ultimately culminating in his termination—that followed his reporting of misconduct within the prosecutor's office.

For 13 years, Mr. Desmond served as an assistant prosecuting attorney with the Mahoning County Prosecutor's Office (for a total of 18 years of law-enforcement experience). He prosecuted over 1,000 criminals, including murderers, gang members, drug dealers, robbers, burglars, and sex offenders. Known for his diligence and integrity, he had, since 2009, been lead prosecutor for the Mahoning Valley Law Enforcement Task Force and Mahoning Valley Violent Crimes Task Force. He had received awards from the FBI, the Ohio Attorney General, and the

¹ This corrected notice contains no substantive changes from the original notice submitted on October 28, 2021. Appellant submits this corrected notice of appeal to properly reflect counsel for Appellant Desmond on the Board's notice-of-appeal form.

Mahoning Valley Chiefs of Police Association. He was also selected to the National District Attorneys Association Marijuana Policy Working Group.

This matter stems from revelations the Mahoning County Prosecutor's Office made on October 27 and 28, 2021 during a record hearing in an already filed appeal, No. 2020-RMD-02-0037. (That related matter concerns Mr. Desmond's termination on April 5, 2017, after Desmond presented to his boss, Mahoning County Prosecuting Attorney Paul Gains, on January 27, 2017 a memorandum identifying misconduct of which he had become aware within the prosecutor's office—conduct that violated state or federal statutes, rules including the Ohio Rules of Professional Conduct, or regulations, or was a misuse of public resources.)

During the hearing in that related matter, Paul Gains testified and disclosed for the first time that his decision to terminate Mr. Desmond was motivated the fact that Desmond reported to a special prosecutor, Assistant Ohio Attorney General Dan Kasaris, information concerning criminal offenses by members of the Mahoning County Prosecutor's Office and other individuals with whom Gains had a relationship. Desmond reasonably believed the matters he reported to Kasaris were criminal offenses. In reporting those issues to Kasaris, Desmond prepared and provided Kasaris the handwritten document, which sets forth and diagrams the alleged activity. This writing was a report protected under R.C. 124.341(A). Although Mr. Desmond made this report during or around August–October 2016, the Mahoning County Prosecutor's Office had not identified this matter as one of its bases for Mr. Desmond's April 5, 2017 termination notice until the record hearing that began on October 27, 2021.

On March 23, 2017, Mr. Desmond received a pre-disciplinary letter placing him on administrative leave pending a March 31 pre-disciplinary hearing. Neither the letter nor the hearing addressed any issues related to Desmond's report to Kasaris. He remained on administrative leave for 14 days. On April 5, 2017, he received a letter stating that he was

terminated effective April 6, 2017. Neither his termination letter nor Gains's April 5 press conference decrying Desmond mentioned Desmond's report to Kasaris as a basis for termination. Gains later signed an affidavit (Exhibit B to Appellee's motion to dismiss in Desmond's original SPBR whistleblower case) in June 2017; responded to discovery requests in Desmond's civil litigation against Gains and others in 2019; and testified during his civil-litigation deposition in January 2021. Never did Gains disclose that Desmond's report to Kasaris was a basis for his termination.

Upon hearing Paul Gains testify (for the first time at the SPBR record hearing) that he terminated Desmond because of what he discussed with Kasaris, Desmond believes Gains unlawfully retaliated against him, at least in part, for making his report to Kasaris.

Mr. Desmond respectfully appeals to the Board to reverse Gains's unlawful termination of Desmond.

A standard form notice of appeal is attached. Mr. Desmond will separately request that the Board consolidate the new appeal with the pending matter because they involve substantially identical issues of law and fact.

Respectfully submitted,

/s/ Subodh Chandra

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/s/ Martin Desmond

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CERTIFICATE OF SERVICE

I certify that on October 29, 2021, I served the above document by email on the following:

Paul Gains
Mahoning County Prosecuting Attorney
21 West Boardman St.,
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Youngstown, OH 44503
pgains@mahoningcountyoh.gov

as well as his counsel of record in the separate SPBR matter.

/s/ Patrick Haney
One of the attorneys for Appellant Martin Desmond



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 State Personnel Board of Review
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NOTICE OF APPEAL / REQUEST FOR INVESTIGATION

Please **do not submit** any confidential, proprietary or sensitive personally identifiable information (e.g., **social security number; date of birth; driver's license number; medical records; or credit card, bank account or other financial information**). **Please redact this information from exhibits where necessary.**

1. Name of Appellant (individual filing appeal / request for investigation): Martin Desmond	
Address: 3366 Ridgely Park	Telephone: (330) 559-4505
City, State, ZIP Poland, Ohio 44514	Email: mpmd4@hotmail.com
2. Name of Appellee (employer, agency, department, board, commission): Mahoning County Prosecutor's Office	
Address: 21 West Boardman Street, 6th Floor	Telephone: (330) 740-2300
City, State, ZIP Youngstown, Ohio 44503	Email:

3. Reason(s) for filing:

Notice is hereby given that Appellant appeals to the State Personnel Board of Review from the Order or Notice of: (all that apply)

- | | | |
|---------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Removal | <input type="checkbox"/> Layoff | <input type="checkbox"/> Reduction in Pay or Position |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Abolishment | <input type="checkbox"/> Fine |
| <input checked="" type="checkbox"/> Investigation | <input type="checkbox"/> Reclassification | <input type="checkbox"/> Involuntary Disability Separation |
| <input type="checkbox"/> Other:
_____ | <input checked="" type="checkbox"/> Suspension: (<input checked="" type="checkbox"/> one) | <input type="checkbox"/> Failure to Reinstate from IDS |
| | <input type="checkbox"/> Working | <input checked="" type="checkbox"/> Retaliatory Discipline: (<input checked="" type="checkbox"/> all that apply) |
| | <input checked="" type="checkbox"/> Non-Working | <input checked="" type="checkbox"/> Whistleblower |
| | 14_# of Days | <input type="checkbox"/> Health and Safety (includes OSHA and Public Employment Risk Reduction Program) |

4. When did you receive notice of the action being appealed? October 27-28, 2021 (see notice of appeal)
5. When was the action being appealed effective? See notice of appeal

If applicable:

6. Name of Attorney for Appellant: Martin Desmond (self-representing), Subodh Chandra, Patrick Haney	
Address: The Chandra Law Firm LLC	Telephone: (216) 578-1800
City, State, ZIP Cleveland, Ohio 44113	Email: Subodh.Chandra@ChandraLaw.com; Patrick.Haney@ChandraLaw.com

Pursuant to Ohio Administrative Code Section 124-5-01, this appeal / request for investigation must be filed in writing with the State Personnel Board of Review. The completed document may be hand-delivered, sent by regular USPS mail or courier service, sent by fax or sent by electronic mail to the address at the top of the form.