



# Ethics Bulletin

The Newsletter of the New Jersey State Ethics Commission

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## THE STATE ETHICS COMMISSION

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## SUPPLEMENTAL ETHICS CODES

In September, 2006, the State Ethics Commission ("Commission") adopted the Uniform Ethics Code. The Uniform Ethics Code governs and guides the conduct of State officers and employees and special State officers and employees in State agencies in the Executive Branch of State government. The Uniform Ethics Code was adopted pursuant to changes made to the Conflicts Law in 2006. The purpose of the Uniform Ethics Code is to establish uniform ethics standards that are applicable to all executive branch employees and officers. With limited exceptions, any agency ethics codes promulgated prior to the adoption of the Uniform Ethics Code in September 2006 are no longer valid and enforceable.

Although the Uniform Ethics Code is the primary code of ethics for State agencies, some agencies have additional, agency-specific ethics requirements. Those agencies have the option of adopting a supplemental ethics code. Supplemental ethics codes do not duplicate the Uniform Ethics Code. Rather, they contain additional, agency-specific ethics requirements. For example, some agencies such as the State Ethics Commission and

the Election Law Enforcement Commission prohibit their employees from engaging in political activities. Those agencies have adopted supplemental ethics codes containing an additional provision prohibiting political activity.

The following agencies have adopted supplemental ethics codes:

Department of Agriculture  
 Department of Banking and Insurance  
 Department of Children and Families  
 Department of Human Services  
 Department of Law and Public Safety  
 Civil Service Commission  
 Department of the Public Advocate  
 Division of Gaming Enforcement  
 Election Law Enforcement Commission  
 Individual Health Coverage Program  
 New Jersey City University  
 New Jersey Institute of Technology  
 New Jersey Meadowlands Commission  
 Office of Administrative Law  
 Public Employment Relations Commission  
 Schools Development Authority  
 Small Employer Health Benefits Program  
 State Ethics Commission

Approved supplemental ethics codes are available on the Commission's website at the following link:

<http://nj.gov/ethics/ethics/state/>

## TRAINING UPDATE

The Commission is revising a series of on-line training programs to help ensure that all State

officials in the executive branch receive approved ethics training by the end of 2009. Each program includes a slide presentation and a detailed narrative that replicates the substance of the Commission's in-person training program. Revised training programs for State employees and special State officers are available on the Commission's website training page, and programs for State college and university trustees and State college and university faculty are in development. If you are a State employee or special State officer who has not yet received ethics training from the Commission, you will either receive in-person training or be instructed to complete the appropriate on-line training program by the end of 2009. Questions or concerns regarding the Commission's training programs should be directed to Margaret Cotoia, Training Officer, at 609-292-1892.

## COMPLIANCE UPDATE

### Statewide Distribution of Employee Ethics Survey

Last fall the Commission began the process of surveying State employees' attitudes toward their agency's ethics program and culture. Since that time, the survey has been distributed to certain agencies in conjunction with ethics compliance reviews by the Commission. To get a more complete and simultaneous picture of employee attitudes on ethics in N.J. State government, the survey is now being distributed to all employees through their agencies' e-mail systems.

Employees should be aware that the survey responses are anonymous. Employee's responses to the survey questions are sent to a data bank where they are merged with the responses submitted by all other agency employees. It is important that employees answer the survey questions thoughtfully and candidly so that the Commission can accurately assess ethics on agency and State-wide bases.

Questions or concerns regarding the Commission's Employee Ethics Survey should be directed to Jeffrey Stoolman, Compliance Officer, at 609-292-1892.

## RECUSAL RULE AMENDMENT - CAMPAIGN CONTRIBUTIONS

At its May 2009 meeting, the Commission authorized adoption of amendments to its recusal rule. The amendments provide guidance to State officials who may be required to recuse from matters involving persons or entities that have made campaign contributions to the State official. The Commission's new rule and amendments were published in the New Jersey Register on June 15, 2009.

## § 19:61-7.4 Situations where recusal is required

(a)-(b) (No change)

(c) A State official is required to recuse himself or herself from an official matter that involves any individual, association, corporation or other entity from which the State official received a campaign contribution, individually or in the aggregate, in an amount required to be reported by N.J.A.C. 19:25-10. Recusal is required regardless of whether the State official is elected to the office or position associated with the campaign contribution. The recusal shall remain in effect until the expiration of the term of office which the State official was seeking when the contribution was made.

[(c)] (d) No change in text

[(d)] (e) For purposes of [(c)] (d) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

[(e)] (f) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of [(c) and (d)] (d) and (e) above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Commission for guidance in such cases.

[(f)](g) (No change in text)

### *Examples*

1-4 (No change)

5. The Governor signed an Environmental Act that requires the establishment of a nine member Oversight Council, four of whom must be county and municipal officials from the region. One of the municipal officials appointed to the Council was recently elected and one of the county officials appointed to the Council recently lost his bid for State Senate. A local engineering firm made a substantial campaign contribution to the successful campaign of the municipal official, and another large donation to

the county official's unsuccessful campaign for the State Senate.

Pursuant to [N.J.A.C. 19:61-7.4\(c\)](#), the recently elected municipal official would have to recuse on those matters involving the engineering firm until his current term of office expires. If he sought re-election and received no contribution from the same engineering firm, the recusal rule would no longer be applicable once the new term commences.

Similarly, the county official who unsuccessfully sought a State Senate seat would also have to recuse from matters involving the engineering firm for the duration of the term of that Senate seat because the engineering firm's donation to his campaign could create the impression of conduct violative of his trust as a State official in his current position. If this county official subsequently runs for the State Senate seat again and he accepted another contribution from this engineering firm, he would also have to recuse for the next term of office for the State Senate seat.

## **UNIFORM ETHICS CODE AMENDMENT**

At the request of an employee of the Board of Public Utilities, the Commission reviewed the restrictions on seeking future employment contained in the Uniform Ethics Code and considered relaxing the portion of the code which prohibits a State employee from discussing employment with regulated entities or representatives that have a matter pending before the employee's agency.

The UEC provision under review prohibited a State official from soliciting or discussing employment with regulated entities, or their representatives, that have a specific cause, proceeding, application or other matter pending before the employee's agency. By contrast, a State official who has direct and substantial contact with an interested party that is not regulated by the employee's agency is permitted to engage in employment discussions so long as the interested party initiates the discussions, the employee issues a recusal from matters related to the entity while the employment discussions are taking place, and the employment discussions would not create an actual conflict of interest or an appearance of impropriety even if the necessary recusals are made. In addition, a State employee who does not have direct and substantial contact with an interested party that is not regulated by his agency can solicit employment and engage in employment discussions so long as he or she avoids situations that might give rise to an unwarranted advantage.

In the absence of any compelling reason why the restrictions on seeking future employment need to be stricter regarding interested parties that are regulated by a State employee's agency than the restrictions

applicable to an employee seeking employment with interested parties that are not regulated by the employing agency, the Commission authorized an amendment to the Uniform Ethics Code at its April 20, 2009 meeting. Section VIII of the UEC was amended in June 2009 as follows.

### **SEEKING FUTURE EMPLOYMENT**

State officers or employees who have direct and substantial contact with any interested parties must refrain from circulating resumes or in any manner seeking employment with those individuals or entities while still in State service. If an employee is solicited for potential employment by an entity with which he/she has direct and substantial contact, that solicitation must be disclosed immediately to the employee's management and to the agency's ELO. Employees who do not have direct and substantial contact with interested parties may circulate resumes and enter into discussions regarding potential employment with those individuals or entities so long as they avoid any situations that may give rise to an unwarranted advantage. All employees are cautioned that discussions, interviews, and negotiations shall not take place on State time.

### **ETHICS LIAISON OFFICERS' MEETINGS- 2009**

Pursuant to Executive Order No. 1 (Governor Corzine), Ethics Liaison Officers' meetings have been scheduled for Friday, September 11, 2009 at 10:00 a.m. and Wednesday, December 2, 2009 at 10:00 a.m. at the Mary Roebling Building located at 20 West State Street, 2<sup>nd</sup> Floor, Rooms 219/220.

All Ethics Liaison Officers or their designees should be in attendance at these meetings.

## COMMISSION CASES

The following case summaries are representative of matters resolved during the past several months.

### Commission Case No. 55-07

Subject: Appearance of Impropriety; Unwarranted Privilege

Facts: In his official capacity, a State employee made numerous presentations at seminars conducted for New Jersey employees contemplating retirement in the near future. The State employee, who is also an attorney engaged in the private practice of law, presented information at the seminars on topics including wills, probate, and inheritance and estate taxes, which are some of the same services that he provides in his private law practice. The employee advised seminar attendees that he is engaged in the private practice of law; he displayed his private business cards at the seminars, and distributed the cards upon request. Several of the State employee's private law clients were individuals who had attended the State-sponsored seminars. The seminars directly resulted in some additional private clients for the State employee.

Resolution: The Commission determined that the employee violated sections 23(e)(3) and (7) of the Conflicts Law. This case was resolved by a consent order. The employee paid a civil penalty of \$2,500.

Reasoning: The employee's display and/or distribution of private business cards while engaged in official State duties constitutes misuse of official position because his State position was serving as a means to obtain clients for his private law practice. The employee gained an unwarranted advantage by using his State position to make connections with potential clients and obtaining new clients from among the employees who attended the State-sponsored seminars where the business cards were displayed and/or distributed. The employee also created the reasonable suspicion or impression that he violated the public trust by using his State position to advance his private law practice.

The cases presented in the Ethics Bulletin are designed to provide State employees with examples of conflicts issues that have been addressed by the State Ethics Commission. Specific questions regarding a particular situation may be addressed directly to the Commission.

### Commission Case No. 25-08

Subject: Post Employment Restrictions.

Facts: A former Deputy Attorney General requested an opinion regarding whether he and his law firm were prohibited from being involved in litigation in which he was involved during his State employment. When employed by the State, the DAG held various supervisory positions, and provided advice, counseling and representation to the Department of Environmental Protection.

The former DAG was not the attorney representing the State in the litigation; however, he provided some input on how to frame the issue in the particular matter. He also suggested the type of claim that could be asserted and sent one e-mail discussing case law and strategy relative to the matter. The DAG who handled the case for the State described the former State employee's involvement in the case as "minimal."

The former employee's law firm is organized as a professional services corporation. In accordance with section 13(g) of the Conflicts Law, any section 17 restrictions imposed on the former employee are applicable to the law firm as well.

Resolution: The Commission determined that the involvement of the former State employee or his law firm in the matter would not violate section 17 of the Conflicts Law.

Reasoning: When reviewing a post-employment matter, the Commission renders fact-specific determinations using a two-pronged analysis. The first question is whether the former employee is representing, appearing for, negotiating on behalf of or providing information or services not generally available to a party other than the State. The Commission determined that the former employee's involvement in the same matter that he had dealings with in the course of his State employment constituted representation of a party other than the State and that the first prong of the analysis was met. The second prong of a post-employment analysis is whether the former employee was substantially and directly involved in the matter in question. The Commission found that the former employee's discussions and e-mail regarding the matter at issue constituted direct involvement, but that the nature of that involvement – the discussions with an agency official and the receipt and forwarding of one e-mail with a brief, appended commentary - was not substantial. Since an employee's involvement in a matter must be both substantial and direct to implicate the post-

employment restriction at issue, the Commission's finding allowed both the former employee and his law firm to remain involved in the matter. If the Commission had found that post-employment restrictions were applicable in this case, then both the employee and his law firm would have been prohibited from involvement in the matter.

#### Commission Case No. 38-06

Subject: Appearance of Impropriety; Unwarranted Privilege.

Facts: The State Employee used his State e-mail to conduct activities related to his outside, for profit businesses and also for matters related to a non-profit organization with which he was affiliated. Additionally, as a "favor" to the State employee, his assistant edited a personal document on State time for a family member of the State employee.

Resolution: The Commission determined that the employee violated sections 23(e)(3) and (7) of the Conflicts Law and his department's code of ethics. This case was resolved by a consent order. The employee paid a civil penalty of \$3,500.

Reasoning: The employee's use of State e-mail, State time and State resources to conduct activities related to two for-profit outside businesses and for volunteer activities provided an unwarranted benefit to himself and to the outside entities. Although the employee contends that his assistant voluntarily edited a document for the employee's family member, doing so on State time is nonetheless a misuse of State time and State resources.

#### Commission Case No. 51-05

Subject: Appearance of Impropriety; Unwarranted Privilege; Acceptance of Gifts; Favors; Services or Other Things of Value; Recusal; Personal Relationship

Facts: The State employee had a personal friendship with an employee of a contractor who did business with his agency. The employee reviewed and approved bills submitted by his friend on behalf of the contractor. Some of the invoices the employee approved included large expenditures for business meeting meals attended by the employee and other State officials. The employee also had additional business meals with the friend, for which he could not produce any documentation proving that he paid for his meals.

Resolution: The Commission determined that the employee violated sections 23(e)(3), (e)(6) and (e)(7) of the Conflicts Law and *N.J.A.C. 19:61-7.4*, the

Commission's recusal regulation. This case was resolved by a consent order. The employee paid a civil penalty of \$3,000. (The penalties applicable to the actions in this case allowed for a fine of \$100 to \$500 per violation.)

Reasoning: A State employee must recuse himself from a matter if he has any direct or indirect personal interest that is incompatible with the discharge of the State employee's official duties. A friendship with an employee of a contractor doing business with an employee's agency is an example of a direct personal interest that requires recusal. The State employee should have recused himself from any official involvement with the contractor, including the review and approval of bills submitted by his friend on behalf of the contractor doing business with his agency. The State employee contended that he paid for his portion of the meals at issue in cash or had another State officer or employee pay for his share of the meal. However, the employee had no receipts to demonstrate that he paid for his share of the meals. An employee cannot accept meals from a vendor doing business with his/her agency that are offered for the purpose of influencing the employee in the discharge of his/her official duties. Acceptance of meals from a vendor doing business with the employee's agency also creates the suspicion or impression that the employee may be engaged in conduct that is violative of his/her public trust.

#### Commission Case No. 31-02

Subject: Appearance of Impropriety

Facts: The State officer had a romantic relationship with an employee at his agency. The State officer made a phone call to the home of another agency employee who supervised the employee with whom the State officer had the romantic relationship. In the phone call to the supervisor, the State officer discussed the job responsibilities of and promotional opportunities for the employee with whom he had the relationship.

Resolution: The Commission found indications that the employee violated section 23(e)(3) and (7) of the Conflicts Law and issued a complaint. Following a hearing at the Office of Administrative Law, the Commission issued a final order in which it was determined that the State officer violated section 23(e)(7) of the Conflicts Law and assessed a civil penalty of \$500. (The penalties applicable to the actions in this case allowed for a fine of \$100 to \$500.) The matter is currently on appeal.

Reasoning: The State officer's phone call to a member of his agency's staff to discuss the terms and conditions of employment of an employee with whom he had a romantic relationship created the impression

or appearance that he was attempting to influence agency staff to give the employee a promotion or raise.

Commission Case No. 38-07

Subject: Recusal; Acting in an Official Capacity in a Matter Where the Employee has a Direct Personal Interest.

Facts: The State employee voted to approve a contract for professional services between his agency and a firm that employed both a friend and a family member as attorneys. The friend was a partner in the law firm and performed personal legal services for the State employee. The relative was an associate in the same firm. The State employee also used the firm to handle legal services for some of his outside business interests. The State employee participated in his agency's monthly votes to approve the bills of the firm that employed both his friend and relative.

Resolution: The Commission determined that the employee violated sections 23(e) (4) and (7) of the Conflicts Law and *N.J.A.C. 19:61-7.4*, the Commission's recusal rule. This case was resolved by a consent order. The employee paid a civil penalty of \$5,000.

Reasoning: The State employee's failure to recuse himself from the vote to approve his agency's hiring of the firm and his votes to approve the firm's monthly bills constitute a violation of the Commission's recusal rule. Recusal is required when an employee has an outside personal or financial interest that affects his objectivity and independent judgment or creates the appearance of impropriety. The State employee should have recused himself from any agency votes on matters involving the firm because the firm employed both a friend and a family member and because the employee also used the firm to provide legal services for his outside personal and business matters.

The Commission's newsletters are also available at:

<http://www.nj.gov/ethics>