

# GUIDELINES

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The Newsletter of the New Jersey Executive Commission on Ethical Standards

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## **THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS**

Chairwoman Elizabeth Randall, Vice Chair Janice Mitchell Mintz, Commissioner Alisha Griffin, Commissioner Deborah Jones, Commissioner Jane Kenny, Commissioner Fred Lopez, and Commissioner Alan Steinberg; Executive Director Rita L. Strmensky.

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

### **COMMISSION CASE NO. 35-97**

**SUBJECT:** Outside Employment, Impairment of Objectivity, Appearance of Impropriety.

**FACTS:** The agency requested advice from the Commission regarding whether the State employee's outside activities involving individuals with whom he came in contact in his official capacity represented a conflict of interest.

The State employee and his wife are both licensed real estate agents. They are employed by the same realtor and sometimes utilize a joint business card. The State employee worked at a State facility that was scheduled to close. This closure required the relocation of clients to another center or into community-based living arranged by private-sector pro-

viders. In the course of his official duties, the State employee gave his real estate business card to a representative of a provider that does business with his agency. In addition, the State employee's wife conducted several real estate transactions with providers under contract with the State employee's agency. The State employee also became involved in these transactions in his capacity as a realtor.

**RULING:** The Commission concurred with the agency that the State employee's outside real estate activities in connection with agency providers represented a conflict of interest.

The Commission also determined that the State employee's solicitation of and involvement with a provider in connection with the acquisition of

properties was violative of sections 23(e)(3), (e)(5) and (e)(7) of the Conflicts Law.

The Commission also advised the State employee that his name and picture should not be included on business cards distributed to agency providers by his wife. In addition, he should not accompany his wife when she is showing houses to agency providers, he must not refer providers to his wife or to the real estate agency by which they are both employed, and must not disclose information not generally available to the public which he acquires in the course of and by reason of his official duties.

**REASONING:** The Commission reviewed the facts and circumstances and determined that because the State employee's official duties involved substantial interaction with agency providers, real estate dealings with these same providers was prohibited. Under Commission precedent, State employees may not solicit clients from any source while performing their official duties, cannot accept as clients persons with whom they have contact in their official capacity and must not perform work for anyone who is or would be expected to deal with their State agency.

As to the State employee's solicitation of a provider, such solicitation can be viewed as the use of his official position to secure an unwarranted privilege for himself in violation of section 23(e)(3) of the Conflicts Law. The State employee was permitted to engage in outside employment as a realtor; however, real estate services to agency providers is violative of section 23(e)(5).

The Commission has no jurisdiction over the State employee's spouse; however, because of the couple's financial interdependence, the State employee's involvement in his wife's real estate interactions with providers, both through the use of the joint business card and his direct participation in the transactions, are prohibited.

### **COMMISSION CASE NO. 38-97**

**SUBJECT:** Use of Official Position to Secure Unwarranted Privilege, Direct or Indirect Personal Financial Interest, Appearance of Impropriety.

**FACTS:** An individual with whom the State employee resided was to present a training session, along with two other consulting firm employees, sponsored by a program for which the State employee had substantial responsibility. The State employee chaired the committee that recommended training topics and consultants for seminars and workshops.

**RULING:** The Commission determined that the State employee's retention of her housemate in connection with an agency training session was not violative of the Conflicts Law.

**REASONING:** The Commission reviewed the facts and circumstances and determined that as to section 23(e)(3) of the Conflicts Law, no unwarranted advantage appeared to have been secured for the housemate because the housemate was participating in the training session on a volunteer basis. As to section 23(e)(4), the State employee did not act in her official capacity in any matter wherein she had direct or indirect personal financial interest because her housemate was receiving no compensation for

services performed in connection with the training session. As to section 23(e)(7), the Commission determined that in light of the housemate's pro bono role in the training session, any appearance of impropriety seemed to be mitigated.

The Commission also noted that the State employee's supervisor gave final approval to the selection of consultants for the training session. The supervisor felt that because the housemate was presenting her portion of the training session on an uncompensated basis, no conflict existed.

#### **COMMISSION CASE NO. 1-98**

**SUBJECT:** Secondary Employment, Prohibited Representational Activity.

**FACTS:** The State employee appealed the decision of his agency that prohibited him from engaging in outside activity assisting clients in obtaining the support systems necessary to live in the community. A division of the State employee's agency had oversight responsibility for the program in question. The State employee was not employed by the particular division that oversaw the program.

**RULING:** The Commission concurred with the agency that, in fulfilling the job responsibilities of the outside position, the State employee had and would continue to represent the client in connection with the client's participation in the program in violation of section 16(b) of the Conflicts Law. Thus, this outside activity was not approvable.

**REASONING:** In several cases since 1993, the Commission has found that State employees who sign documents,

make telephone calls or submit correspondence in connection with matters pending before a State agency are in violation of section 16. The State employee had already submitted to the division in question a client plan and budget which he signed. The State employee was required to have monthly contacts with the division and to keep the division case manager current on important changes or developments in the client's situation. The State employee was also required to interface with the division with respect to documents and paperwork required by the division. Under the Commission's precedent, these activities can be classified as representing or acting on behalf of the client. None of the exceptions in section 16(c) applied to the State employee's situation.

#### **COMMISSION CASE NO. 8-98**

**SUBJECT:** Post-Employment.

**FACTS:** In his official position, the former State employee oversaw the activities of numerous divisions of his agency. In this capacity, he reviewed all activities and work product of the divisions to ensure that they were technically correct and in compliance with existing regulatory criteria and established departmental policy. He also served as a Chief Policy Adviser and was ultimately responsible for all staff policy recommendations to the agency head.

The former State employee requested an opinion regarding the following activities: testifying before the Legislature on behalf of a consulting firm or lobbyist group concerning legislation on a matter that he had been directly involved with in his official capacity, attending meetings with members of the

Legislature as a representative of a consulting firm or lobbyist group after the aforementioned legislation is introduced; attending internal meetings with companies with an interest in this legislation that are not attended by members of his former agency or the Legislature. The State employee also requested advice on engaging in the above activities in connection with a matter with which he had only general involvement during his State employment.

The final issue on which the former employee requested advice was the applicability of the agency's Code of Ethics to the situation in which he had general involvement. A number of agencies have specific post-employment restrictions in their codes of ethics. In this case, the agency's code prohibits a former employee from appearing before the agency in a representative capacity or as an expert witness within 6 months after severing association with the agency. In addition, the former employee may not appear after 6 months in any "proceeding" wherein he/she previously took an active part while associated with the agency.

**RULING:** In regard to the first issue, the Commission advised the former State employee that because he was substantially and directly involved in the initial drafting and editing of the proposed legislation, he was prohibited from acting in a representative capacity involving this matter. As to attending meetings with companies with an interest in the proposed legislation, under Commission precedent, the former State employee would be permitted to attend such meetings as long as he did so in an internal capacity and did not represent, appear for, negotiate on behalf of or

provide information or services not generally available to the public.

With regard to the question about activities in connection with a matter in which the former employee had only general involvement, the Commission determined that he would not be prohibited from engaging in post-employment activities in regard to this issue.

As to the final issue, whether he may appear before the agency after the 6 month period outlined in the agency code of ethics expires on behalf of a consulting firm or lobbyist group, because the agency had not formally considered the issue, there was never a "proceeding" in connection with this issue, and thus the code provision did not appear to prohibit his involvement.

**REASONING:** The section 17 post-employment restriction prohibits a former State employee from representing, appearing for or negotiating on behalf of a party other than the State in connection with any matter in which he was substantially and directly involved as a State employee. Whether a former State employee was substantially and directly involved in a matter is fact specific.

In regard to the first issue, the proposed legislation, the former State employee acknowledged that he was involved in the initial drafting and editing of the proposed legislation and in the drafting of the plan which the legislation was designed to implement. These activities constitute substantial and direct involvement under Commission precedent.

As to the second issue, the former State employee participated in three public informational meetings designed to discuss the scope of the issues involved. However, no legislation was drafted or introduced and there was no docket before the individual's former agency. The Commission determined that because the former employee's involvement in this issue was general in nature, it did not constitute substantial and direct involvement under its precedent.

The code of ethics post-employment provision had never been interpreted by the agency or by the Commission. The Commission noted that the code appears to be directed at a situation where there are ongoing formal proceedings regarding a particular issue. This was not the case at hand.

#### **ATTENDANCE AT EVENTS, HOSPITALITY SUITES**

Prior to the adoption of the current attendance rules, *N.J.A.C.* 19:61-6.1 et seq., the Commission permitted State employees to partake of food and beverages at a vendor's hospitality suite. The current attendance rules define event as "a meeting, conference, seminar, speaking engagement, symposium, training course, ground breaking, ribbon cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, is sponsored or co-sponsored by a non-government source and the invitation for which is extended to the State official because of his/her official position." The issue was raised at the Commission's April 23, 1998 meeting as to whether a hospitality suite is included in the

definition of event under the category "similar event."

At a recent training session, the Commission staff was advised that the hospitality suite under discussion provided shrimp cocktail, as well as a number of other higher priced food items, and alcoholic beverages. The attendance rules permit State employees to accept nominal refreshments such as nonalcoholic beverages, doughnuts, pastries and cookies. The fare at the hospitality suite in question clearly exceeded the nominal refreshment level. The State employees in attendance were quite upset when told that they would be prohibited from attending this type of event. The Commission's previous position on hospitality suites was brought up by one of the training session attendees.

After discussion, the Commission determined that the only refreshments that may be accepted from an interested party are the nominal refreshments (nonalcoholic beverages and snacks) permitted in the attendance rules.

#### **COMMISSION CASE 49-96**

**SUBJECT:** Outside Employment, Representational Activity.

**FACTS:** The State employee failed to seek agency approval for his outside employment or disclose his professional license as required under the Commission's rules and the agency's code of ethics. Over a period of years, the State employee drafted plans for an individual who eventually submitted the plans to a State agency in connection with an application.

**RULING:** The Commission determined that the State employee's failure to disclose his professional license and to obtain written approval for his outside activity were violative of the agencies code of ethics and the Conflicts Law.

**REASONING:** Under the Commission's rules and the agency's code of ethics, State employees are required to obtain written approval prior to engaging in any outside employment. In addition, disclosure of any licensed activity is required under the Conflicts Law and the agency's code of ethics. Information regarding the reporting requirement and the code of ethics was routinely distributed to all agency employees. The State employee had also been advised by the Commission staff several years prior to this decision, in connection with another Commission case, that it would be necessary for him to obtain approval for any outside employment and to disclose his professional license.

The submission of plans, signed by the State employee, to a State agency is prohibited under section 16 of the Conflicts Law. State employees are prohibited from representing, appearing for, or negotiating on behalf of any party other than the State before any State agency. Under Commission precedent, the submission of reports to a State agency is prohibited representational activity. The Commission has also determined that the submission of these reports by a third party does not mitigate the violation.

**Regarding "Guidelines"**

Please direct any comments or questions about "Guidelines" to Jeanne A. Mayer, Esq., Deputy Director, Executive Commission on Ethical Standards, P.O. Box 082, Trenton, NJ 08625, (609)292-1892.

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